Pastures of plenty

Public land and public spaces:

Management and exploitation of the Adelaide park lands
in the new century

John Bridgland

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John Bridgland
Email contact via website: www.adelaideparklandssecrets.com

The author is not a member of the Adelaide Park Lands Association, but applauds the APA's principles and passion.

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Foreword

When I retired from the Adelaide Park Lands Authority Board in 2013, I signed off in my newsletter with the words: "Defend the park lands with a passion – there is nothing else!" Eleven years later, this call to arms is still relevant. If anything has changed, it's for the worse.

Enter John Bridgland and his vast collection of historical facts and figures, and his decades-long experience of recording attacks on the Adelaide park lands. He has the passion and the records archive needed to change the "nothing else". Meticulously, and with a tenacity that would put a bull terrier to shame, John has collated his research and produced a 20-year-long record that communicates at many levels the "vast web of complexity" inherent in park lands management and the politics of protecting Adelaide's unique community land. "Passion" barely describes it.

Yet, John's work has been described also as a polemic, the word coming from the Greek for warlike or belligerent. It is sometimes used negatively to describe, for example, a controversial or aggressive attack on an idea, person or situation. I, for one, think it's time for a polemic – a challenge to the widely accepted belief about how South Australian state and local governments have "protected" the park lands. Through his detailed coverage of the issues, John is showing us the "quagmire of policy connection and coherence" created by those governments, and he is leading us to the way out.

Consequently, this book is not just about historical "raids" and "ruses" and the "exploitation of cheap land". John Bridgland has looked forward to the time when the park lands are fully protected by legislation with teeth and community attitudes to match. He makes perfectly sensible recommendations for achieving such a state of grace – if only there were enough ears to listen, minds to think and a sincere political will to enable it to happen.

I can't pretend that *Pastures of plenty* is an easy read. It's hard work and astonishingly confronting if you're a politician. But, even if you delve into just the chapters of your own particular interest, you will be well rewarded with an enhanced understanding of the fight to save the Adelaide park lands.

Gunta Groves
Board member 2010–2013, Adelaide Park Lands Authority
Honorary Life Member, Adelaide Park Lands Association

Preface

This work was easy to create. All I did was observe Adelaide park lands matters for more than 20 years, all the time progressively accumulating many boxes of reference papers. In the meantime I read history and planning references about my city of Adelaide, the capital of South Australia. During 2016 and 2017 I reviewed and indexed the assembled material. That allowed me to work long hours to pour my observations into drafts, at the same time as I checked and rechecked files and queried people who were there during the period of study – as I was.[1] As I did so, policy and practice in park lands management continued to evolve, so I was challenged to note and analyse these at the same time as I was noting and researching that which had applied in the past. Many of the matters featured shenanigans, raids and ruses with characteristics similar to those carried out by earlier administrators and parliamentarians.

Why 1998 to 2018?

By nothing more than fortunate circumstances for a researching writer, the 20-year period of this book's study featured a clustering of events, political circumstances, new legislation and new park lands documentation that, at year-end of the study period appeared unlikely to be repeated on the same scale and to the same extent. Consider the extent of change between 1998 and 2018. The new *City of Adelaide Act 1998* created the Capital City Committee, which would later play a key (but obscured) role in park lands matters during the period of this study. Amendments to the *Local Government Act 1999* required the creation of *Community Land Management Plans* for the park lands. The first *Park Lands Management Strategy Report* was released in 1999. The failure of a major park lands bill – an early sign of Adelaide's restlessness about park lands management – preceded the electoral victory in 2002 of a new state Labor government administration that over the next 16 years would win four consecutive elections to 2018. During that period, new park lands legislation, the *Adelaide Park Lands Act 2005*, was proclaimed and brought into operation. It gradually influenced the shape and operation of a new management framework, under the advisory guidance of a new Adelaide Park Lands Authority (2007). Over the years between commencement of the Authority's operations and the end of the study period, creation of a vast array of park lands strategic, policy and guideline documentation reframed the way park lands land managers (the city council – but effectively, the state government) pursued their priorities. By year-end 2018, the state Labor government had ended its four-term incumbency and was back on the opposition benches. This allowed

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[1] To read more about the background that inspired this work please refer to Chapter 6: 'Notes on writing a park lands reference – Professor Carr advises'.

contemplation of four consecutive terms of the application of Labor's South Australian park lands policy and administrative style. During the entire 20-year study period the influence of the central statute affecting development across the park lands, the *Development Act 1993*, was able to be explored, regarding the park lands zone policy areas' consequences of amendments to its instrument, the *Adelaide (City) Development Plan*. This plan played a central role in almost all park lands development determinations.[2]

At the conclusion of the study period, year-end 2018, it was too early to comprehend how profoundly the new *Planning, Development and Infrastructure Act 2016* and its instrument, the *Planning and Design Code*, would change the political and administrative assumptions and philosophies of the previous period. But by mid-2021, it was clear that another major park lands policy and planning revolution was under way. This was being prosecuted by a new state Liberal Party administration, after 16 years in the political wilderness. The policy and planning themes explored in this work will be a very useful template on which to base a future study of this new era. By early 2022, a revealing perspective was already emerging.

In light of the changes evident in 2022, some fresh observations can be made about this work. Most of its administrative and procedural observations remain relevant, given that the *Adelaide Park Lands Act 2005* remained relatively unamended, which means the administrative park lands 'cogs and wheels' remain in place, including the directions and aspirations of the statutory policy instruments, the *Adelaide Park Lands Management Strategy* and the *Community Land Management Plan*. Except for the technical specifics of the *Adelaide (City) Development Plan*, all of the other policy reflections about it as a planning instrument remain relevant, as are observations about the provisions of the *Local Government Act 1999* that allowed the City of Adelaide's long-established culture of administrative secrecy about park lands management to endure. That is unlikely to change any time soon. Key park lands management roles also endure, as are the roles of state and city council elected members – including those of the Adelaide Park Lands Authority.

The original intent of this work was not to be an exclusive *planning-focused study* and I hope that it does not appear that way now. However, as readers will realise as they work through the chapters and appendices, the politics of planning underscore everything in any study of land-use management. Revolutions always draw on at least some aspects of what went before to fuel their new directions, and there remains one particular historical feature that remains continually energised – the capacity by those in power to manipulate rules and procedures to get what they want.

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2 Between 2016 and 2018 the Development Act was being replaced very slowly by the *Planning, Development and Infrastructure Act 2016*. Progressive gazettal of parts of this Act allowed provisions of the former statute to be 'switched off' as the new Act's provisions were 'switched on'. But to all intents and purposes, the application of the *Development Act 1993* and its instrument the *Adelaide (City) Development Plan* continued to apply over the park lands zone policy areas to year-end 2018 (and effectively to early 2021). A new *Planning and Design Code* would replace it on 19 March 2021, a planning instrument arising from the 2016 legislation.

In light of that, it could be said that this work presents a 20-year study of how some people in a small southern Australian mainland capital city exploited the product of a late 1990s policy revolution relating to the management of public land to suit state or commercial priorities. Much of the funding came from Adelaide rate-paying or tax-paying communities that had a sneaking suspicion about what was going on, but neither a clear comprehension of how the complicated procedures worked nor an understanding of the scale and complexity of some of the raids, ruses and regrets that contributed to Adelaide park lands history over the years of study.

I believe that change is possible. It may not stop every caper, lark and lurk, but the next generation could put a brake on the most exploitative ones. I explore this at the conclusion of this work.[3]

That next generation includes future parliamentarians and bureaucrats. They will be crucial to the creation of a more accountable, transparent and equitable management framework for Adelaide's park lands that, in practical terms, delivers on that long-held aspiration of candidates in state and local government elections – 'protection'.

But only time will tell whether there is any motivation to do so, especially in light of the next planning revolution now looming for the park lands zone policy areas. Its effect on the integrity of the park lands landscapes has the potential to be even more damaging than the planning model that existed between 1998 and 2018 when the *Adelaide (City) Development Plan* was in effect. At least with this work readers now have an opportunity to comprehend the arrangements of the immediate past to reflect on the wisdom – or not – of new planning and management arrangements likely to apply in the immediate future.

John Bridgland
Adelaide
2024

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[3] To be found in Chapter 57: 'What *can* be done?'

About this work

No-one has created a work like this before. It may be because there's a false perception that no-one in the 21st century is interested to learn about the administrative and political machinery directing management of a unique circle of park lands surrounding South Australia's capital city of Adelaide. Much of the existing literature focuses on the long social and cultural history of Adelaide's park lands, spanning more than 180 years since 1837. It explores topics such as origins and legal status, cultural history, activities, events and biodiversity; as well as influences, such as the economic development of the state and town planning theory and practice.

But, as at 2022, a contemporary study did not exist that explored in detail the park lands management and administrative aspects over the first two decades of the 21st century. Further, no-one had catalogued the challenges and difficulties faced by the public in its attempts to participate in park lands management determinations over this period.

I'm not suggesting that there have been no investigations into the management of Adelaide's park lands from a political, planning or economic perspective. There is material available. But no-one appears to have shown much interest in pulling together the threads and exploring that material in any cohesive way, especially over the study period 1998 to 2018. One reason might be because if you're not a planning lawyer, an economist or a historian with a particular academic brief to research these aspects of the management of Adelaide's park lands, it can be challenging.

Despite those challenges, many South Australians are keenly interested in the management of Adelaide's park lands, some passionately so. That passion can be especially stirred when those in charge seek to implement change about which 'the passionate ones' disagree. It is at these times that those committed to challenge controversial determinations wish to better comprehend the legal, administrative and political machinery that enables those controversial decisions to be implemented. This work hopefully contributes to addressing that need.

One of the challenges to those who seek to explore these aspects is that the engine room motivations and the legislative and administrative 'motors, levers and wheels' of the machinery are not all kept in the same box or administered by the same people. Moreover, some are operated via non-transparent means. This makes it difficult to pinpoint and analyse the sources of cause and effect behind some of the park lands determinations. Not for more than 20 years have those parts and roles been examined in a single study, highlighting how and why the levers work to make the cogs mesh, and whether they turn accountably, transparently or equitably.

As the author's preface explained, this work is also unique because it presents a brief history of significant legal and administrative change that influenced how Adelaide's park lands have been managed, and by which means, in recent times – especially since 2007. At 2022 I was not aware of other works that did this in any comprehensive way.

Can this work's structure and contents be succinctly summarised? Below follow brief summaries of each of the parts.

1 An introduction – the what, why, how and the who

Part 1 features two studies. The first examines the Adelaide park lands in contemporary context (to year-end 2018). The second explores the poorly comprehended park lands management complexities, and then examines the key elements of the management machinery.

2 Setting the scene – were you there?

Part 2 also features two studies. The first reflects on the writing of history; in particular (from this author's perspective), a history of the Adelaide park lands during this brief period. The second reflects on a trio of personalities who played influential roles during the period, and then examines several seminal reference sources of the time that have been largely forgotten.

3 The planning and the management contexts

Part 3 takes the reader back to 1998 and examines two foundation documents of the time that influenced the course of park lands administration and management history to follow. A concluding chapter reflects on the Adelaide governance of public space and the influence of state planning practice on the park lands, a matter whose political, administrative and operational machinery is poorly understood by most South Australians.

4 Retrospective phase 1: 1999–2001

Part 4 features a study of park lands politics between the formative years 1999 to 2001, exploring a failed park lands bill, a select committee that never concluded its brief, and a rising politician set to play a key role in park lands matters in the years ahead.

5 Retrospective phase 2: 2002–2006

Part 5 features a study of the arrival of a new political era for South Australia, and how state bureaucrats managed the complexities of delivering on a political park lands 'protection' pledge, an independent 'Trust' – which no-one in the bureaucracy wanted and subsequently never delivered.

6 Retrospective phase 3: 2006–2011, eastern park lands

Part 6 examines park lands activity in the second term of the Labor government, exploring some local government administrative complexities. It records a bitter people-versus-the-government fight about a big development proposal for the eastern park lands. The concluding chapter jumps ahead four years to reflect on how the Labor government achieved an audacious park lands development goal, turning an embarrassing defeat in 2007 in one park into a commercial victory four years later in 2011 in another park.

7 Retrospective phase 4: 2006–2013, western park lands

Part 7 swings west and examines Labor's exploitation of the open spaces of the western park lands in its second term, and the arrival of the 'Great Park' extravaganza, adjacent to a commercially influenced, river-edge state infrastructure building spree capitalising on the rezoning of land originally defined as park lands. There is also a study of a decision to build a huge new hospital on land earmarked not for construction, but to be returned to park lands.

8 Retrospective phase 5: 2008–2016, the evolving policy pathway

Part 8 features an administrative and political analysis that follows on from Part 3's exploration of park lands foundation documents; in particular, the first *Park Lands Management Strategy Report*. It explores how versions 2 and 3 evolved, and how an enlightened Landscape Master Plan for the whole of the park lands was created but then abandoned within five years, as the third version of the Strategy redefined new state visions for the park lands. Another chapter studies the commercial consequences of park lands documentation beyond 2010, which saw a wave of sport facility construction projects, contributing to a perception of a creeping privatisation of public land. A concluding chapter explores how the state reframed its view of the likely purpose of the Adelaide park lands in the new century – an 'urban address' as an adjunct to high-density inner-city and city rim residential development policy.

9 A critical analysis of the Adelaide park lands machine

Part 9 features a brief reflection on the 170-year history of park lands raids, followed by six chapter studies of features of the management 'machine'. Despite oft-stated intentions by state and local government to 'protect and enhance' the park lands, the chapters reveal the ruses, capers, games, larks and lurks that have compromised what ought to be open and transparent administrative processes. A concluding two-part chapter explores the loopholes that evaded elimination during the original 2005 parliamentary debates about the Adelaide Park Lands Bill 2005, and the loopholes routinely exploited since.

10 More critical analysis – the Adelaide park lands management superstructure

Part 10 features four chapters exploring a park lands administrative system that struggles to deliver coherence and congruence; a complicated management arrangement drawing on multiple park lands policy sources; an unresolved 20-year quest for World Heritage and State Heritage listing; and a swamp of semantics characterising every aspect of the park lands management narrative.

11 What is to be done?

Part 11 comprises three parts: 'What has been done?'; 'What ought to be done'; and 'What *can* be done?'. Recommendations appear in this latter chapter. They include: reviewing the nexus between certain statutes; reviewing confidentiality provisions; reviewing public consultation models and procedures; addressing implementation silences in the *Adelaide Park Lands Act 2005*; and possibly legislating to allow a referendum mechanism to measure support for future park lands development proposals.

Each of these parts features discussions that link to 30 appendices that further explore the finer details.

For global readers seeking to understand the recent state of play in Adelaide's city edged community land management, this study also has a contribution to make. If nothing else, it will allow those who live in other major cities to reflect on how and in what way they manage their own surviving community lands, set aside sometimes centuries earlier, adjacent to their own city business districts. It may be that they have something to learn. But it also may be that their own management machinery, procedures and practices reveal by comparison something worrying about the way South Australian parliamentarians and bureaucrats have made recent determinations about one of the world's exemplars in city planning. Adelaide's park lands are notable not only for their expanse but also their relatively intact state, compared to other world parks in the early 21st century.

Pathways through this work

Readers are offered a blend of chronological history and procedural and policy content analysis. The one-page chapter summaries that appear at the commencement of each part or section indicate in condensed form what a reader may expect to find.

However, some readers may have prior professional knowledge and, rather than read chapters sequentially, may choose to read more selectively.

For those seeking a broad **historical review** of the period, Parts 2 to 8 may be sufficient, with due regard to links to the appendices, which pursue certain matters in finer detail.

For those seeking an **analytical and thematic perspective**, Parts 3, and 9 to 11, may suffice, but again, with due regard to links to the appendices.

Finally, for those who do not wish to systematically work through the chapter essays, and instead randomly explore park lands topics of personal interest, the **appendices** offer a mixed bag of essays on multiple topics. A contents list, with condensed summaries, precedes the appendix section. Should sufficient interest be prompted as a result, a return to the earlier chapters across Parts 1 to 11 may be a useful approach.

The 21st century future of Adelaide's park lands

In 2036 – not far away – the state of South Australia will celebrate its 200th birthday, the anniversary of settlement of a new colony and the City of Adelaide's survey and design by Colonel William Light. One year later, in 2037, South Australians will celebrate Light's 1837 creation of the Adelaide City Plan, with its encirclement of park lands surrounding the settlement, sometimes titled 'Light's Plan'. These park lands survive today, despite a history of attempts to compromise the open spaces of the 'plan', a long struggle to protect the pastures and woodlands from exploitation and alienation; in particular, the acreage under the custodianship of the Adelaide City Council. The presence of the park lands endows Adelaide with a special character among the world's capitals. The city may remain a relatively insignificant state capital on the world's stage, but this asset gives it special status, and draws visitors to it. In 2010 city administrators observed that "The Adelaide park lands and city layout is widely regarded as a masterwork of urban design and signifies a turning point in the settlement of Australia." [1]

In the years leading up to 2037 there is an opportunity for South Australians to explore and reflect on the state's recent past management of this unique land parcel, and to consider the park lands future. The political and administrative management flaws of the past have been many, the complexities at times overwhelming. Of greatest concern is Adelaide's communities' broad incomprehension of these complexities and how those in charge have acted to exploit them.

An opportunity arises as a result of a fresh perspective on a recent (and historically very brief) 20-year period, between 1998 and 2018, during which there emerged evolution of political views of how the park lands should contribute to state development, as well as significant legislative and administrative change to the management machinery controlling recreational activity and built-form development across the park lands.

The period of study in this work begins with preparations for the 1999 publication of a new *Park Lands Management Strategy Report 2000–2037*, an 'action plan' that aimed to guide management decisions across the subsequent 38 years to the 200th anniversary. The period of study in this work concludes in 2018 with that Strategy and its visions long abandoned and, over the 20 years, significant amendment to the policy superstructure of park lands management. By 2018, the metaphorical political and management landscape was so different that a former Adelaide resident, who might have left home in 1998, and on return in 2018 observed only one enduring aspect familiar with the 1998 circumstances – the capacity by the state to manipulate and exploit this unique city asset for short-term political expediency.

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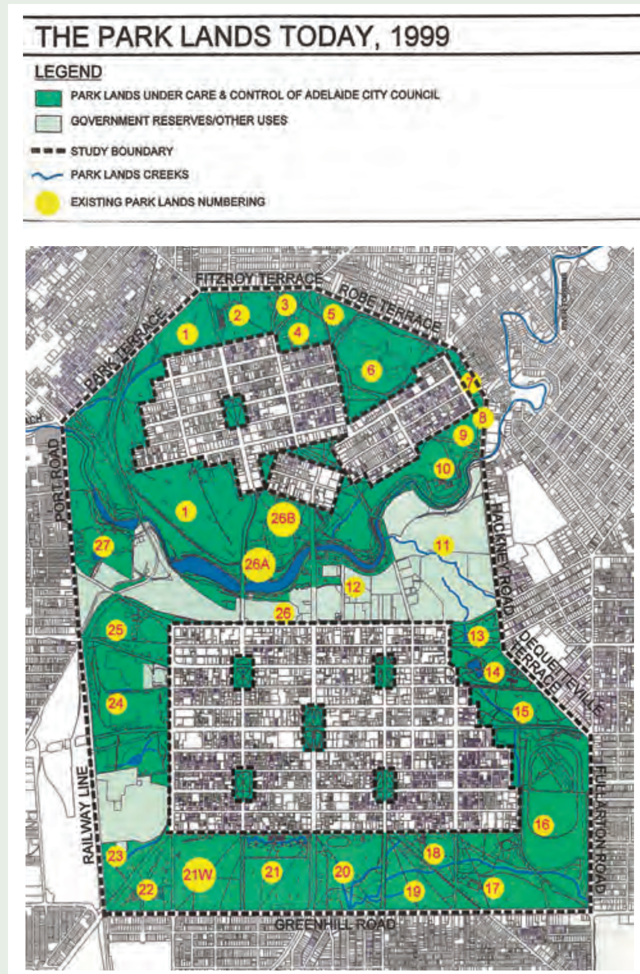
[1] Adelaide City Council, *Adelaide Park Lands Draft Master Plan*, 'Guiding Principles', Chapter 1, 'City in a park', October 2010, page 18.

Professional historians warn that histories written too soon lack a suitably 'distanced' perspective. They may be right. But the evidence presented in this work should go some way to providing at least three advantages to South Australians contemplating how confident they are about the future management and control of Adelaide's park lands as they anticipate celebrating the 200th anniversary in 2037.

Firstly, they will enjoy a detailed understanding of a very recent period of change in the political and administrative management of Adelaide's park lands. Secondly, they will enjoy a better comprehension of how and why the change occurred, often with the best of intentions, but sometimes with less than ideal outcomes. And thirdly – because this work has been published well ahead of 2037 – they will be better informed to contribute to how the park lands legislative and policy elements might be more accountably, transparently and equitably managed. Their vision might go as far as confronting the view held by the major decision-makers over the period of study that political expediency should continue to be the principal basis for future management determinations about the integrity of Adelaide's priceless asset.

These park numbers remain largely unchanged, despite the passing of more than 20 years after this figure was published in the 1999 *Park Lands Management Strategy Report: Directions for Adelaide's Park Lands 2000–2037*.



A numbering system is an easily comprehended approach, especially for those unfamiliar with the Adelaide park lands layout. In 1999 the segmentation referred only to 27 sites, but more than 20 years later the Adelaide City Council was administratively segmenting the park lands into 41 sites. They included six city squares and various smaller sites within some of the numbered parks.

In 1997 the Adelaide City Council began pursuing a Kaurna naming project, under which each park or site would feature a Kaurna title, drawn from the language of the Kaurna people of the Adelaide plains. In 2004 the council determined to use only the Kaurna title in park lands figures and maps, without reference to the number. However, several practical challenges arose. The first was that five Kaurna titles had had to be 'newly constructed' because there was no known Kaurna title for those parks or sites. In other words, the descendants of the Aboriginal people who occupied the land surrounding the new settlement of Adelaide did not have a whole-of-site systematic naming approach for the 930ha of land that Colonel William Light identified in his 1837 Adelaide City Plan, as the council sought to imply 167 years later. Secondly, a 21st century map reference to a park lands park or site exclusively using the Kaurna word, without an accompanying reference to the park number, had potential to confuse the public because South Australians were almost universally unfamiliar with the Kaurna language and did not memorise Kaurna park lands site titles. In the years since 2004 council maps of sites across the Adelaide Park Lands Plan showing individual parks have most commonly contained both the Kaurna title, and the park number.

Reference source: Adelaide City Council A4 brochure: *Kaurna naming of Adelaide City Council park lands, city squares and city features*, [month unclear] 2003, 14 pages.

Fact or fiction?

How many of these statements about the Adelaide park lands were true in 2018?

- The loss to Adelaide's park lands through construction of state infrastructure and expansion of sports buildings, courts, kiosks, paths and car parks has been reversed and the park lands at 2018 feature much less development than in the past.
- The values under the 2008 National Heritage listing of the Adelaide park lands represent a major hurdle to authorisation of new development project proposals for the park lands.
- The National Heritage listing includes the whole of Adelaide's 930ha of park lands surrounding the city, so every hectare is protected.
- The *Adelaide Park Lands Act 2005* protects the park lands from exploitation and alienation of park sections from public access.
- The Act makes it impossible for the government to change the planning rules to allow new major developments and infrastructure on the park lands.
- The *Adelaide Park Lands Management Strategy* is a strictly monitored set of rules to ensure that commercial or state government interests can't exploit the park lands or restrict public access.
- There is an Adelaide Park Lands Authority that, under the Act, controls all park-lands-related activities and approvals.
- The state government cannot over-rule the Authority, because it is a statutory authority under the *Adelaide Park Lands Act 2005*, which means it makes all the final decisions – and has the power to enforce them.
- City council park lands management policy papers and guidelines are legally enforceable documents because the *Adelaide Park Lands Act 2005* says so.
- The Capital City Committee, which often discusses park lands proposals and development of long-term policy for the park lands, must have open meetings, table its deliberations online and keep detailed minutes for public inspection.
- Under South Australian law, city council and state government deliberations about, or proposals for, the park lands must occur in a very transparent way, so that everyone knows what is going on.
- The Adelaide City Council has the power to over-rule the state government about park lands proposals because it has had custodianship care and control of the park lands since 1849 state legislation.
- The Adelaide City Council gets generous state government funding to fulfil this role and the local government councils surrounding the perimeter of Adelaide's park lands also contribute generously to those costs.

- All park lands lease agreements are disclosed in full on one internet database.
- You cannot get a lease or renew a lease on a park lands site if you are planning to build or redevelop something permanent in any of the parks.
- If you get a licence to access a park lands site for not-for-profit or commercial event purposes you must apply every year to renew it, disclose to the city council your financial statements (including any profit made) for the previous licence period, and table your business plan and revenue forecasts for any future licence period.
- Recent new rules have banned all car parking on the park lands.

Answer

Not one of these statements was true.

If you're surprised, it only illustrates that 'protection' of the integrity of Adelaide's park lands is managed in ways most South Australians do not comprehend, and yet the land is a public asset – community land first described in Colonel William Light's Adelaide City Plan of 1837.

A 'snapshot' of Adelaide's park lands

Although many readers are aware of the Adelaide park lands, few are aware of their historical, cultural and landscape significance.

> *The perceived loss of green, publicly accessible park lands is a matter of great sensitivity to both the South Australian state government and the city council. Both have made determinations that have led to alienation of the park lands. There has been an enduring culture of public protest about this. The routine call to 'protect' the park lands is often interpreted as a bid to cease further 'loss', but of all the verbs applying to management of Adelaide's park lands, while 'protect' may be the most used, it is the least clear.*

Extract from Appendix 1.

Significance Internationally

> "Other early planned cities such as Philadelphia (1687), Savannah (1733) and Toronto (1788) included squares and 'common ground' but these plans either didn't eventuate or didn't survive. ... Krakow in Poland has an almost intact ring of park lands but only by virtue of the removal of the medieval town walls. It was not planned as such. Other parks such as Moor Park in Preston, England, and Boston Common in the US, started life around the same time but evolved out of degraded common ground, entering the public domain by accident. So it seems that Adelaide was probably the first city that included a planned, public system of parks which, importantly, has survived, largely intact and in public ownership."

– Adelaide Lord Mayor, Martin Haese, 18 October 2018.[1]

Significance to Australia

In November 2008, Adelaide's park lands and city layout were entered into the National Heritage listing. Recognising its "outstanding heritage value to the nation", this listing acknowledged its "design excellence in the way it accommodated topography, provided a ring of park lands and a hierarchy of streets interspersed with regular squares." It also recognised that the park lands had survived "remarkably intact", consistent with the vision of the city's surveyor and designer, Colonel William Light, in 1837. At year-end 2018 city administrators were also exploring the potential of establishing World Heritage status.[2]

A subsequent Adelaide Park Lands Authority (APLA) workshop in May 2019 observed:

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1 Adelaide Park Lands Authority (APLA), Agenda, 'Message from the presiding member', 18 October 2018, page 10.

2 Scoping in 2021 concluded that significant research would be required.

> "What differentiates the Adelaide plan from all other cities, in the World Heritage context, is that: [a] The design is an expression of the ideals of the early 19th century social reform movement and represents a culmination of colonial town planning exercises and theories from that period; [b] The settlement of the City and hinterland is the first manifestation of Edward Gibbon Wakefield's systematic colonisation model (selection, containment, sale) and represents a turning point in the expansion of the British Empire; and [c] The originally planned combination of public park lands, squares and formal, gridded street layout has survived, substantially intact."[3]

Signficance to South Australia

In 2009, the South Australian Premier told state parliament:

> "What we need to remember about the park lands and their relationship to this city is that modern regions ... compete on the attractiveness of their capital cities, and one of the critical elements that makes South Australia attractive and Adelaide an incredibly attractive city is those park lands. Very difficult debates have occurred ever since this colony was established about the future of those park lands. There were deep debates, even around the establishment of rail yards on those park lands. Every inch of that turf has been analysed and subject to a deep public policy debate in this state, because the South Australian citizens have always understood the importance of the park lands not only for their enjoyment of their city but also because of the attractiveness of the state."[4]

Heritage assessments between the years 2007 and 2018 to explore the potential to achieve State Heritage listing under the *State Heritage Places Act 1993* have recommended that most of the compliance criteria could be satisfied to justify listing. However, no listing had been achieved as at the conclusion of the period of study, year-end 2018.[5]

Attributes

Size and boundaries

The Adelaide park lands are defined by the Adelaide Park Lands Plan as specified in the *Adelaide Park Lands Act 2005*. Every part of the park lands is included except for Government House and the state parliament building, and a small area of railway land owned by the Australian commonwealth government.

Compared to parks in other major global cities, Adelaide's 930ha of park lands are expansive. New York's Central Park is only 341ha and London's Olympic Park is only 200ha.[6]

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[3] Source: APLA board meeting, Minutes, Item 7.2, 'Presentation: World Heritage nomination, 23 May 2019, page 32.

[4] Hon Jay Weatherill, Labor Minister for the Environment, Parliament of South Australia, *Hansard*, House of Assembly, 1 December 2009, page 4879.

[5] Indeed, listing still had not been achieved at year-end 2022. The reasons why can be explored by referring to Chapter 53, 'A frustration of listings leverage'.

[6] Adelaide Park Lands Authority, Board meeting, Minutes, 28 February 2013, page 24: 'Place shaping framework', 5000+ partnership, three tiers of government.

The extent of the park lands was calculated in a 2018 study as 930ha.[7] Of this, the area managed by the City of Adelaide was 728.5ha, as recorded in June 2018.[8] However, in November 2019 (after the close of the study period of this work) this figure was recalculated as 690ha.[9]

The natural landscape

The park lands are acknowledged globally as an exemplar of city planning surrounding Adelaide, South Australia's capital. However, there is nothing particularly original remaining in today's park lands landscapes. As an expert wrote in a park lands biodiversity study in 2003: "The destruction of flora and fauna over the Adelaide Plains has been extensive since European settlement [1836]. Land clearance by the first European settlers was staggering, with native vegetation felled for house construction, agriculture and stock grazing." [10]

At 2018, the landscape was notable for its mix of exotic and native flora. As that 2003 biodiversity survey concluded, of 514 plant taxa recorded, 309 are introduced. There were 33 mammal species (of which nine were extinct and six introduced); as well as 150 bird species.[11] Although not significant biologically, the landscapes are deemed significant for their potential for habitat reconstruction, environmental education, conspicuous bird populations (especially parrots) and large trees. "The River Torrens and some of the more natural areas have a locally high diversity of species ..." wrote that expert in 2003.[12]

As far as many of the park lands management staff and maintenance workers are concerned, the acreage under the Corporation of the City of Adelaide's care, control and custodianship comprises just another city asset that has to be maintained. It is a landscape ranging from small, tall-timber pockets of serenity (adjacent to water courses), to sun-blasted, dry stubble stretches of bush far from the central business district. But there are other sites closer to the city and North Adelaide streets that are manicured into exquisite, but quite uncharacteristic, garden condition, compared to the way the South Australian flora ('the bush') usually appears.

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7 Adelaide Park Lands Authority, Board meeting, Agenda, Item 7.2, 'State of the park lands', 21 June 2018, pages 2–4.

8 Adelaide Park Lands Authority, Board meeting, Agenda, Item 7.2, 'State of the park lands', 21 June 2018, Link 1, 'Relevant decisions', page 2. "Managed by City of Adelaide, Category 'Green/effective park lands', 728.5ha, 'Includes squares and river'. However, this was then recalculated and slightly re-adjusted to 723.5ha – but as noted above, 17 months later it was recalculated again, to 690ha. The contracted council staff member who made the calculations noted in an email communication to this work's author on 12 November 2019: "It's such a complex calculation that involves a number of subjective decisions..."

9 As found in: Adelaide City Council, The Committee, Agenda, Item 5.3, 'Adelaide park lands expenditure and income', 12 November 2019, page 38.

10 M Long, *A biodiversity survey of the Adelaide park lands South Australia*, Biological survey and monitoring, Science and Conservation Directorate, Department for Environment and Heritage, South Australia, 2003, page 4, funded by Adelaide City Council.

11 M Long, ibid., page v.

12 M Long, ibid., page 6.

The built landscape

There has been much construction on park lands since settlement. Built-form intentions began as a very conservative vision. A 2013 city council document noted: "[Colonel] Light originally only allocated approximately 1.3 per cent of the park lands to built form [in 1837]." One hundred and seventy six years later (in 2013) city council calculations concluded that, of the original 930ha of park lands, 77.4ha (8.3 per cent) was then occupied by buildings.[13]

But a subsequent 2018 study recorded that 138ha of the park lands was "occupied predominantly by built form and/or not normally publicly accessible."[14] This left 792ha – but even that area was in dispute at year-end 2018.

Management

The money

During financial year 2018–19 the City of Adelaide spent about 11.5 per cent of its 2018–19 $205m budget on its management portion (74 per cent) of Adelaide's park lands. The amount totalled $23.5m.[15]

Shared management

At 2018 the city council claimed to manage about 80 per cent of the total area, and the state government the remaining 20 per cent. However, in November 2019, these figures were recalculated as 74 and 26 per cent respectively.[16]

The 'lost park lands' debate

In a 2018 Adelaide Park Lands Authority study, area calculated as "green, publicly accessible Adelaide park lands" was measured at 728.5ha, but soon after recalculated as 723.5ha.[17] Green? Publicly accessible? This has long been a subject of dispute because some argue that if it's not green, and not publicly accessible, it's 'lost' to park lands. This is further explored in a continuation of this chapter in Appendix 1: 'The 'lost' park lands and the administrator's magic trick routine'.

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[13] Adelaide City Council, City Planning and Development Committee Meeting, Agenda, 'Council submission on Riverbank Health and Entertainment Areas Development Plan Amendment', Item 8, 3 September 2013, page 81.

[14] Adelaide Park Lands Authority, Board meeting, Agenda, Item 7.2, 'State of the park lands', 21 June 2018, Link 3: unnumbered table, 'Areas of park lands occupied predominantly by built form and/or not normally publicly accessible', page 6 of that link.

[15] Non-capital spending totalled $17.4m (2017–18); $16.7m (2018–19) and $17m (2019–20). (2019–20 amounts were based on forecasts.) Total spending for these periods (including grants) was $37.5m, $26m and $33.1m respectively. Spending less grant monies totalled $25.8m, $23.5m, and $25.6m respectively. Source: Adelaide City Council, The Committee, Agenda, Item 5.3, 'Adelaide park lands expenditure and income', 12 November 2019, page 38. For further detailed exploration: please refer to Appendix 28 in this work: 'What does it cost to manage the Adelaide park lands?'

[16] Adelaide City Council, ibid., (page 38): "... of the total 930ha, including the six squares and River Torrens ... as shown in the Adelaide Park Lands Plan."

[17] Adelaide Park Lands Authority, Board meeting, Agenda, Item 7.2, 'State of the park lands', 21 June 2018, page 36.

PART 1

The notion of alienation also applies in relation to South Australians' understanding of the instruments of park lands management, elements of the machinery that drives deliberation on matters, and the political machine that controls the operation of both. ... most of Adelaide 'communities of interest' are to some extent alienated from a detailed understanding of what has occurred, how it occurred, and why it occurred, over the study period.

Extract, Chapter 2:
'Adelaide's park lands – a blessing or a burden?'

Adelaide's communities have periodically vigorously protested about plans to exploit Adelaide's park lands for commercial purposes, especially if the plans were presented as not-negotiable. This crowd in early 2019 was responding to late 2018 news that the Adelaide Oval Stadium Management Authority (Adelaide Oval SMA Ltd) would borrow $42m via a low-interest loan from the South Australian Government Financing Authority to build a five-storey hotel on the stadium's eastern façade, overlooking the park lands. The protest was organised by the Adelaide Park Lands Association.

The public disquiet about the concept was motivated by the fact that there had been no parliamentary or public debate about it before the surprise 25 November 2018 announcement. There had been no formal public consultation process that sometimes accompanied such proposals; no legal opportunity to formally object to the development application or its assessment (which was done in a record nine days); nor was there legal opportunity to appeal the development assessment determination. The project had clearly been subject to years of confidential discussions with ministers during the term of the Weatherill Labor administration (2014–18), but kept a close secret.

Labor lost the March 2018 election to a Marshall Liberal government. But the secret discussions had obviously continued with ministers in that new Liberal administration, to ensure their quick endorsement in late 2018. The sudden public announcement, and the speed with which the development was approved, removed any doubt among South Australian observers that the newly elected Liberal state administration would deal in the same way as the former Labor administration regarding major commercial development proposals for the park lands. The message was clear – park lands exploitation for development purposes was supported by both sides of parliament, despite regular speeches by MPs delivering earnest pledges to the contrary.

Photo courtesy the Adelaide Park Lands Association.

PART 1 An introduction – the what, why, how and the who

Chapters

1 | The park lands development ambush no-one saw coming
(The curious case of a $42m bid to build a 2020 park lands hotel, approved within nine days against much public disquiet.)

2 | Adelaide's park lands – a blessing or a burden?
(Is a unique, vast park surrounding a small southern Australian city a burden or a bonus – and for whom?)

3 | The emotional landscape that frames a 'tension' of views
(How a unique Australian city asset feeds an enduring – and sometimes divisive – conversation.)

Table | An Adelaide park lands planning and administrative chronology 1998–2018

Figure | Legal status and tenure: Adelaide park lands 1999

4 | The park lands rules – a vast web of complexity
(Why observers might be surprised if they understood the management complications.)

5 | A brief introduction to Adelaide's park lands administrative machinery
(Why so few South Australians have the time – or the courage – to explore how the machinery works.)

Many who take an interest in the way the state of South Australia manages its city park lands will be unaware of the extent to which changes to park lands management policy and procedure, especially since 2006, reset the course of park lands landscape preservation policy.

Extract, Chapter 2:
'Adelaide's park lands – a blessing or a burden?'

Other links to chapters in PART 1

Chapter	Appendix link	Other chapter links
4 | 'The park lands rules – a vast web of complexity'.	**Appendix 2:** 'Eighteen other laws relating to activity on the park lands'.	**Part 10:** 51 | 'The park lands policy system that struggles to work'. 52 | 'A quagmire of policy connection and coherence'. 54 | 'Semantic alienation across the park lands pastures'.
5 | 'A brief introduction to Adelaide's park lands administrative machinery'.	**Appendices 5–8, and 10, 11:** • 'The Capital City Committee'. • 'The Adelaide Park Lands Authority'. • 'The *30 Year Plan for Greater Adelaide*'. • 'The *Adelaide Park Lands Act 2005*'. • '*Adelaide (City) Development Plan*'. • '*Community Land Management Plan*'.	

1 | The park lands development ambush no-one saw coming

The moral of the Adelaide park lands management tale is that, if parliament passes project-oriented development legislation, such as the Adelaide Oval Redevelopment and Management Act 2011*, there can be major traps buried in it, giving a minister at a future time unfettered discretion to allow subsequent commercial development under the minister's original lease terms.*

On 25 November 2018, seven weeks before the originally intended end of the study period of this work, I was reviewing its many chapters when a corporate sports announcement fell into my email inbox. It was a copy of an online notice to the members of Adelaide's 150-year-old cricket club, the South Australian Cricket Association (SACA), carrying startling news. There would be a 128-room, five-storey hotel built abutting the eastern end of the five-year-old Adelaide oval stadium, in Park 26, one of the city's many park lands parks. Park 26 begins at the southern residential edge of North Adelaide and runs to the edge of the River Torrens, adjacent to the northern boundary of the city business district.

I was not a member of SACA, and had never been one, but for the study you are reading now I had researched the relatively recent history of the 2011 legislation that allowed construction of this huge sports stadium on park lands, to be shared between cricket and football interests.[1] I had also researched the origins of the government-created Adelaide Oval Stadium Management Authority (AOSMA) that would run the stadium, half of whose board members were SACA-nominated; the other half being SA National Football League Inc-nominated.

The construction of the stadium, and the way it had been authorised in 2011, appeared at the time to test the limits of the audacity of commercial interests, aided by state parliamentarians, to construct one of the largest contemporary built forms in Adelaide's park lands, dominating the landscape of Park 26. But the November 2018 news about the proposed hotel development would top that in audacity terms. It would illustrate, so close to the end of this work's study period, that fresh, commercially motivated raids on public community land could still occur. Most surprisingly, they could occur in ways apparently inconceivable to long-term park lands observers who assumed that aspects of the *Adelaide Park Lands Act 2005* and its interacting *Development Act 1993* and *Local Government Act 1999* would block such attempts. As it turned out, these statutes proved to be toothless with regard to this particular site and proposal.[2]

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[1] There is a case study of that controversial development appearing later in this work, as well as a history of SACA's long occupation, and gradual expansion of facilities, at that park lands site. See: Part 6, Chapter 27.

[2] The Development Act's planning instrument, the *Adelaide (City) Development Plan* (park lands zone and policy areas) was rendered irrelevant under the provisions of the *Adelaide Oval Redevelopment and Management Act 2011*, which prescribed a site (the stadium and some land adjacent), within which otherwise non-complying development was allowed. This effectively meant that the hotel development application could be quickly approved, even though the authors of the 2011 Act never anticipated such a future development concept.

A tactical success

The hotel bid would prove to be the most tactically prosecuted raid on community land of this 20-year period of study. Development approval would be achieved within a record nine days: the briefest of administrative periods, unheard of in the post-1998 history of approvals for commercial development on the park lands. Moreover, the rationale behind the development concept would kick aside any aesthetic park lands 'protection' preoccupation. The sole motivation was the seeking of fresh revenue streams to shore up an oval operations model, run by AOSMA (Adelaide Oval SMA Ltd), only five years old. Economic survival was the game, and the only game. No mention was made of the park lands legislation's Statutory Principles, including the one that stated: "The Adelaide park lands reflect and support a diverse range of environmental, cultural, recreational and social values and activities that should be protected and enhanced."[3]

Neither was there mention of the views of many South Australians whose passionate efforts had been directed, over many years, to resisting bids to turn various park lands sections into state or commercial sites that held financial advantage mainly for the political or economic benefit of their lessees. Such a development would mean that a park lands site would be essentially privatised, and for commercial purpose.

Baffling elements

Given that I had spent years exploring the post-1998 political and administrative history of Adelaide's park lands, especially the history of public response to state or commercial exploitation of Adelaide's park lands landscapes, the November 2018 news was at first baffling. On a simplistic early analysis, such a proposal appeared to be as inconceivable as it was politically unlikely. It would cost a large sum of money for a start, and AOSMA's board member organisations, which included the SACA, did not have it. Secondly, even if funding could be found, contemplation of the concept would appear recklessly insensitive to public sentiment. It was being prosecuted by the newly elected South Australian Marshall Liberal government, only eight months after it had won the March 2018 state poll, ending 16 years in the state political wilderness. For the first six months the new state administration appeared to be working hard to avoid controversy about traditionally controversial political matters. But within a relatively short time the party had begun to reflect a cavalier attitude about contemplating commercial development on the park lands, a matter that traditionally jabbed nerve endings across Adelaide's communities. Surely there was no contemplation of a major construction concept that would inevitably trigger a turf war, not only with the traditional communities of interest and an opportunistic Labor state opposition, but also with the politically powerful Adelaide hotels lobby. This was at a time when new CBD hotel development applications were multiplying, boosting overnight accommodation capacity far in excess of what was required in a small city like Adelaide in 2018.

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[3] *Adelaide Park Lands Act 2005*, section 4, Statutory Principles, (c).

Within weeks of the announcement the park lands custodian and landlord, the city council's elected members, would unanimously reject the proposal, only to later learn from legal advice that its rejection was toothless. The proposal would proceed, regardless of the uproar.

Traditional development roadblocks

Initial observer scrutiny of the feasibility of the proposal drew on knowledge of what long-established park lands law and arising policy would allow. Two potential Adelaide Park Lands Act-prescribed roadblocks were immediately evident. They are well explored in the many chapters of this work. There was no contemplation of allowances for constructing a commercial hotel for that part of the park lands (or any other) in the then park lands action-plan policy 'rule book', the *Adelaide Park Lands Management Strategy 2015–2025*. Neither was there any contemplation in the *Park 26 Community Land Management Plan*, the other 'rule book' that specified management directions for the site. These policies, by themselves, should have blocked the construction proposal. But observers later learned that the policies did not apply. The reason was simple. A piece of relatively recent legislation, focused mainly on the oval site, over-ruled them, as did the terms of a lease signed off seven years earlier. It was a matter about which few South Australians, including some recently elected state parliamentarians, were aware.

The state confirms the bid

Within days of the SACA 25 November 2018 announcement there followed confirmation of the proposal by the Marshall government, and confirmation that it would make available the necessary $42m funding via a loan from the South Australian Financing Authority. This at least addressed the money mystery.

The remainder of November and early days in December 2018 would be taken up with progressive media announcements, and public responses, many of which expressed outrage and dismay. This replicated a pattern of responses to previous major park lands construction announcements by previous governments, a pattern noted in some of the history chapters in this work. In response, in early December 2018, state parliament's Legislative Council approved the formation of a parliamentary select committee to investigate the background to the proposal and the likely consequences. As Christmas day loomed, the hotel concept, in the form of a development application and plans and drawings, which had not been publicly released, was confirmed by news media to have been approved by the State Commission Assessment Panel (SCAP). No agenda or minutes of the meeting existed at that time on the SCAP website. It would subsequently take a brief period of public pressure during January 2019 for the plans and drawings to be made publicly accessible. In that process, it would become clear that the entire application approval process, from lodgement to approval by SCAP, had taken only nine days: a record for a park-lands-related development application.

The 2018 raid on Adelaide's park lands progressed over a total of only four weeks, from first announcement of the concept, to final development approval. There had been no forewarning, no debate in state parliament, no consultation with the public about what would be one of the largest commercial development proposals on community land. The paradox, which was still confounding those who thought they understood the rules controlling development on the park lands, was that under the particular legal circumstances applying exclusively to that oval site, there was no need for any of that. This would have stunned the parliamentarians whose debates in 2011 led to the proclamation and enactment of the statute, focused on construction of a sports stadium – but anticipating no subsequent development.

The question then was simple. After 11 years' operation of 2005 park lands law, the statute interacting with myriad others, an avalanche of arising new policy and procedures documentation, and millions spent on city council expansion of administrative complexity – how had it come to this? And further, had Adelaide made any progress at all in 'protecting' the integrity of its world-renowned park lands? It would signal that, whatever hand-on-heart pledges were made by either South Australian Liberal or Labor state administrations since 1999 when the first *Park Lands Management Strategy Report 2000–2037*, *Directions for the Adelaide Park Lands* emerged, if state parliament determined otherwise, a city landscape asset admired globally remained as vulnerable as ever to commercial exploitation and future threats to its long-cherished integrity. The moral of the Adelaide park lands management tale is that, if parliament passes project-oriented development legislation, such as the *Adelaide Oval Redevelopment and Management Act 2011*, there can be major traps buried in it, giving a minister at a future time unfettered discretion to allow subsequent commercial development under the minister's original lease terms.

Further reading

- **Please refer to Chapter 27: 'Case study – Adelaide Oval 2011'.**
- **Please refer to Appendix 27: 'State parliament explores: the Legislative Council's 2018 Select Committee on the "Redevelopment of Adelaide Oval"'.**

2 | Adelaide's park lands – a blessing or a burden?

Much current debate about Adelaide's park lands is fuelled by emotion and is often poorly informed. That is not the fault of the crowd; it is the fault of the politicians and the bureaucrats who occupy a legislative or management role in a space riddled with demanding policy complexities, procedures and guidelines, to which exceptions or loopholes can be found whenever there is the political will to do so.

This work is not a history of the South Australian park lands since the state's settlement in 1836. Some fine publications have already covered this. Cease now any anticipation that this work is another history of a long-forgotten past. For a start, the period of study, focused mainly on the first two decades of the 21st century, is far too recent. Some matters remain only partially progressed, some issues only partially resolved; the effect of some major legislation is only now coming to light. But some park lands matters have been progressed and resolved enough since 1998 to warrant attention.

This work covers recent park lands events, developments and management machinery whose effects could, should the political will exist, be reviewed and changed. This includes legislative change to block the potential of certain repeat performances. Given the extent of park lands under the city council's custodianship (74 per cent), there remains much public pasture and woodland open to future alienation and there remains much park lands policy machinery still open to future 'in confidence' deliberation, well away from the disinfecting sunlight of public scrutiny. There is no general agreement among the people of South Australia about the extent of alienation in relation to the city's park lands. The only commonly held view is that Adelaide's park lands as open, contemplative places are precious, and not simply because they are exceptional among the world's cities as a planning feature surrounding the city of Adelaide.

Alienation – an enduring theme

The notion of alienation also applies in relation to South Australians' understanding of the instruments of park lands management, elements of the machinery that drives deliberation on matters, and the political machine that controls the operation of both. It will be one theme of this publication that most of Adelaide's 'communities of interest' are to some extent alienated from a detailed understanding of what has occurred, how it occurred, and why it occurred, over the study period. This is a regrettable feature of South Australia's political, economic and social fabric. Imagine, for example, if its communities of interest struggled to understand the notion of democracy and its vital machinery, and the role of elections in periodically testing and replacing state administrations.

This work asserts that significant, relatively recent change to park lands policy already is evident and that it will have a long-term effect on the integrity of Adelaide's globally

recognised asset. Indeed, in management terms there is evidence of significant, even profound, evolution, which by comparison to earlier periods has been almost revolutionary. However, unlike some revolutions, it has not been successful in overwhelming some of the park lands management bad habits of the past. Much of this change has occurred via complex mechanisms that operate out of the public eye and are poorly understood by many South Australians. Setting aside some large, recent built-form developments that are impossible to miss on the park lands skyline, many who take an interest in the way the state of South Australia manages its city park lands will be unaware of the extent to which changes to park lands management policy and procedure, especially since 2006, have reset the course of park lands landscape preservation policy. Towards the end of the second decade, the management of Adelaide's park lands policy was again moving in a new direction. For example, take this December 2018 comment by the opposition leader of state Labor, the party that for four consecutive terms (until March 2018) controlled park lands policy evolution. "The key [to] developing the Adelaide park lands is striking the right balance between maintaining open and accessible green space ..." That much reflected the broad theme over the preceding 20 years. But he then added: "... while also ensuring the park lands remain relevant to South Australians in the modern era."[1] The push to 'remain relevant' is a relatively recent and loaded term. It has nothing to do with the older notion that the park lands comprised contemplative spaces, relevant for that reason alone. Also loaded is the concept of 'the modern era'. It implies that the era during which the original park lands management model was in place – which ensured that Adelaide's park lands landscapes remained relatively intact, despite voracious development appetites at times – is no longer relevant. The 'modern era' has arrived, so things must change.

Many South Australians who take little notice of the grand political statements continue to think that all is well with a city asset that is 'publicly owned'.[2] Governments at state and local government level continue to believe they act with honour, integrity and propriety in the park lands custodianship – but there is nonetheless plenty of evidence to show that those who have had early 21st century control of Adelaide's park lands estate have infected management of the broad hectares with a 'build it and they will come' recreational and government infrastructure virus. The popular Labor government euphemism for recreation that emerged around 2015 was described by the word 'activation'. It is generally one of the first signs that bureaucracies are up to something when they resort to a euphemism to describe a future vision.

Blessing or burden?

Is Adelaide blessed or burdened by the management complexities presented by the existence of its unique park lands? Most observers would conclude that it is blessed and that the complexities and determinations, as city council administrators like to put it, 'strike a balance' between extreme points of view. But others who have more

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[1] Peter Malinauskas, *Sunday Mail*, 'Oval "hotel" triggers turf war', 2 December 2018, page 12.

[2] It is defined as Crown land, but some historians prefer to use the word 'nominally' to preface that observation, for reasons explored in other, earlier histories.

closely watched the tides ebbing and flowing in South Australian political, economic and social determinations affecting the park lands – especially towards the latter half of this publication's study period, say beyond 2010 – could cite evidence that the balance is now out of kilter.

Some South Australians hold a bleak view about the future of the park lands. The 'burden' manifests as a commercially valuable state asset encircling the city, whose desirable qualities lured (and continue to lure) opportunists seeking potentially profitable commercial or state-convenient developments. It is, of course, the cheapest land adjacent to the city that, while not for sale, may be occupied by lease for very long periods if the political will allows it. For some, the weight of this burden on Adelaide's capacity to manage a natural asset is seen as too much to sustain emotionally. As one observer noted:

> "Perhaps there is too much park lands for one little city. 700 [hectares] for one million people. Well, not really a million. Perhaps a couple of thousand [users] ... these endless acres mean nothing to the good folks at Davoren Park or Christies Beach, and probably never will."[3]

While most South Australians philosophically treasure Adelaide's park lands for their cultural significance and open-space character, it seems that no one political administration has succeeded in satisfactorily resisting the pressures and satisfactorily addressing the tension between points of view. It is as if Colonel Light's legacy has endowed the city with a unique task, in comparison to other Australian capitals: the responsibility to manage, in a 'balanced' way, the endless, rancorous tugs-of-war that South Australian park lands historians have observed over all of the decades that followed settlement in 1836.

The continual ferment

It has not just been the lengthy record of energies spent to nurture and conserve the park lands that has contributed to Adelaide's history. It also has been the record of energies spent resisting appropriations of parts of the park lands that added to that contribution. Each illustrates that inner Adelaide's various communities of interest have been in a state of virtually continual ferment – a reaction between factions that rarely stayed at blood temperature for long. This was, and is, but one of Adelaide's unique social and cultural features, by comparison to other Australian capitals, especially those on Australia's eastern seaboard, many of whose post-settlement open spaces have been swallowed up early by development, contrary to original visions and plans. There is a paradox about Adelaide, in the state of South Australia. It was a convict-free settlement that took then and retains today a significant pride in its religious freedoms and generally enlightened social and political progress. The paradox is that Adelaide has been sometimes more defined by the deep divisions that grew between its communities to either more creatively adapt the city's unique park lands to broader uses or, alternatively, to withstand those pressures and preserve them from development. At 2018, the end of the study period of this work, this tension endured.

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3 Stephen Orr, *The Adelaide Review*, 'Let it go', May 2010, page 46.

There would have to be a great deal more to come if the park lands ever became a mere remnant of the original 'Light's Plan' intention.[4] But the observations, records and case studies in this work, covering what has clearly been a significant period, throw a light on the pathway that the park lands may be following. It's a pathway which some intuitively consider to be leading the wrong way, if the integrity of the open space character of Adelaide's magnificent state asset is to remain intact – as it was perceived in 2005 when a new bill was introduced into state parliament to ensure 'protection of those park lands and for their management as an asset to be preserved for its special landscape character for the benefit of present and future generations'.[5] That bill became law in late 2005, was proclaimed in early 2006, and brought into operation later that year. In terms of the publication date of this work, it is not long past.

Policy complexities

Much current debate (that is, 'current' at the end of the second decade of the 21st century) about Adelaide's park lands is fuelled by emotion and is often poorly informed. That is not the fault of the crowd; it is the fault of the politicians and the bureaucrats who occupy a legislative or management role in a space riddled with demanding policy complexities, procedures and guidelines, to which exceptions or loopholes can be found whenever there is the political will to do so. Subsequent debates are triggered by chattering city and suburban tribes, and the objectivity of those debates has struggled under two handicaps. The first is a deeply entrenched culture of 'in-confidence' deliberations at government and city council level about park lands policy management, as well as about development project proposals for certain sites. The second is the declining capacity for scrutiny once exercised by the older analogue media, which better informed communities about park lands matters. Now much park-lands-related reportage occurs through a 24/7 digital media chatter, in which superficiality thrives. In that often shrill, hectic, electronic domain there exist only two fundamental positions. At one extreme some desire to see Adelaide's park lands left unchanged to grow wild, with no barriers to entry, no long-term leases, a natural Australian bush landscape character as Colonel William Light would have observed it in 1837. At the other extreme, some desire to see the estate developed into a manicured, active spread of recreational sites, a landscape of stadiums, sports pavilions and kiosks, bars, ovals, courts and pitches, park lands car parks, wide pathways taking on the dimensions of roads, and annual calendars thick with entertainment events made financially viable through the equity bestowed by city council approvals of multi-year licensed events periods. In other words, something similar to some of the major recreation parks in US or European cities.

This work may throw light on how it has come to this.

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4 Surveyor General Colonel William Light's Adelaide City Plan of 1837.

5 Hon Paul Holloway MLC, 'Adelaide Park Lands Bill 2005', South Australian Parliament, *Hansard*, Legislative Council, 15 September 2005, page 2557.

3 | The emotional landscape that frames a 'tension' of views

> *"Those who are yelling for development and extra infrastructure in our parkland have forgotten the ONE thing that sets Adelaide apart from other cities in the world: our unique ring of green around the city. As for a tourism drawcard, ask the many international tourists who come here mainly for that reason. They are not coming here to see another glass and concrete city with token parks that this government seems intent on creating, which could be in any city in the world."*

4 November 2016 online respondent to an *InDaily* online article about Adelaide's park lands.

Every South Australian believes that, in emotional terms, he or she has rights over Adelaide's park lands, if nothing more than a sense of public ownership and a capacity to voice an opinion about their management and use, sometimes vigorously. In the public's mind, the park lands are one of the state's enduring public assets and, as a South Australian's awareness of them begins at an early age, there is a progressive reinforcement of the view that Adelaide's green belt belongs to all. This is supported by much evidence, cited in various histories of the state and, especially, histories of the evolution of the city. In contemporary times, scores of surveys conducted since the 1990s highlight a continuity of this belief. There has arisen from these surveys tens of thousands of views about how the care and control of Adelaide's park lands should be managed. Once analysed, it is evident that there is – and for many years has been – what park lands administrators describe as a 'tension' of views. One summary, written by council-contracted consultants Hassell Pty Ltd in February 1998 arising from extensive public consultation and review of the data, observed:

> "... examination of issues through consultation suggests that at this early stage of issue identification there is an emerging consensus that the park lands represent a unique natural asset and that alienation through buildings encroaching on the park lands should cease. Notwithstanding this, there is an equally strong view that there should be as much diversity as possible in the use of the park lands and that enhancement of the park lands is highly desirable to provide for a greater community accessibility and use."[1]

The spread of community views also reflected something deeper and particular to South Australia's communities, and especially to Adelaide's metropolitan communities, in the view of one close observer. Two years earlier, in 1996, Peter Morton, author of the major work *A history of the City of Adelaide and its council, 1878–1928* observed that:

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1 Hassell, *Park Lands Management Strategy Issues Report*, February 1998, part 1, section 1, page 2.

> "… the ethos of South Australia was Janus-faced; it was a peculiar and unpredictable blend of the deeply conservative and the mildly radical. It has remained so, presenting itself bewilderingly, now as reactionary, now as progressive; now puritan, now liberal; now innovative, now stolidly conservative; now socially aware, now boorishly indifferent, its ideal of a public man now a Tom Playford, now a Don Dunstan."[2]

At 2018, the end of the study period of this work, this had not changed.

Amenity, sustainability, environment and heritage

In 2006, the year that the *Adelaide Park Lands Act 2005* was progressively being brought into operation, a seminar was held in Adelaide about the future of the park lands. It was a timely event, coinciding with what participants believed was the significant achievement of the passing of new park lands legislation. They were anticipating much as a result. At the conclusion, a skilled observer analysed the spectrum of views and concluded that two key themes were evident.

> "The common themes that can be teased out are not so uncommon if we consider them in the context of experience in other places concerned with similar themes. One is Amenity and Sustainability. There are two particular polarities that stood out as persistent themes: man and nature, and the conflict between amenity and sustainability."[3]

The second theme was equally important:

> "The second common theme concerns Environment and Heritage. A positive sense of the past is an essential but somewhat neglected aspect of environmental appreciation. Many Australians seem to prefer to forget history than to celebrate it, because nothing in Australia seems old, interesting or virtuous enough to be historic."[4]

The cultural liberation of the park lands

The observer, James Hayter, also noted that some knowledgeable symposium contributors did not accept so easily the complexities arising from "the multiplicity of the different values which are ascribed to the park lands". This was evident with one contributor, Trevor Nottle, who appeared to suggest that the view was less complicated than many made out and that the pathway to the park lands future lay in moving beyond the cautious and conservative views of the past.

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[2] Peter Morton, *After Light, A history of the City of Adelaide and its council, 1878–1928*, Wakefield Press, 1996, page 17. These men were premiers of South Australia: Playford in the 1950s, and Dunstan (briefly) in the late 1960s (and later) for most of the 1970s.

[3] James Hayter, *Program summing up*, Adelaide Parklands Symposium: A balancing act: past–present–future, 10 November 2006, co-presented by The Centre for Settlement Studies, Louis Laybourne Smith School of Architecture and Design, UniSA; The Bob Hawke Prime Ministerial Centre, University of South Australia; and the Adelaide Parklands Preservation Association, page 2 source: http://w3.unisa.edu.au/hawkecentre/events/2006events/Parklands_Symp.asp.

[4] James Hayter, ibid.

> "One of the key questions to be addressed is that of the influence of the 'culture of constraint'; the psychological attitude that 'everything is nice and comfortable and that we didn't need to change'. I have referred to this phenomenon as the impact of Adelaide's Establishment – the *ancienne regime*. Perhaps this is too provocative a term for the forces of conservatism that stymie innovation and development, even of the parklands no less than the city squares, traffic flow, building design and population. It does, however, remain one of the strongest negative influences on establishing a vision for the park lands.
>
> Overcoming such influences goes beyond achieving a critical population mass as advocated by some pro-development personalities. At the core the challenge is to provide encouragement to building a fresh awareness and imaginative use of the park lands as a collective of open-air venues where a wide range of community sub-groups can give expression and affirmation to being part of the cultural mix of the city. This symposium will enable the cultural liberation of the Adelaide park lands to begin. The result can be a park lands where the balance between economic, social and environmental functions is restored ..."[5]

Nottle had a point, and eight years later this view, incorporating the idea of the 'cultural liberation' of the park lands, was to manifest in early drafts of the third version of the *Adelaide Park Lands Management Strategy*. It had taken another four years beyond the second revision of the Strategy (2010) before the state government identified a time to formally flag major change – liberating (but never using that word) the future of the park lands from its previous, more cautious cultural management template. The third version of the Strategy is, as this work elsewhere discusses, a marked departure in approach and content. But it is debatable that it will have restored, or even reasonably addressed, the 'balance between economic, social and environmental functions'. It is arguable that it might have led to a greater imbalance than ever, a matter at year-end 2018 that could not yet be easily observed because the Strategy's many features and proposals had yet to be fully implemented. The most obvious will be illustrated in a wave of new master plans to give shape to the new concepts in the Strategy. In other words, the full realisation of the grand 'activation' plan had only just begun at the end of the focus period of study covered in this work.

If, or more realistically, when this occurs, it will throw fresh light on Nottle's speculative 2006 vision about the park lands becoming, as he said, "... a collective of open-air venues where a wide range of community sub-groups can give expression and affirmation to being part of the cultural mix of the city". This utopian concept, focusing on the key phrase 'open-air venues' appears to have assumed in 2006 that it could be given effect without infrastructure, which would prove in most cases to

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5 Trevor Nottle, 'The past and present as essential exemplars for the future', PhD candidate, School of Architecture, Landscape Architecture and Urban Design, University of Adelaide, In: Adelaide Parklands Symposium: *A balancing act: past–present–future*, 10 November 2006. Co-presented by The Centre for Settlement Studies, Louis Laybourne Smith School of Architecture and Design, UniSA; The Bob Hawke Prime Ministerial Centre, University of South Australia; and the Adelaide Parklands Preservation Association, pages 159–173: http://w3.unisa.edu.au/hawkecentre/events/2006events/Parklands_Symp.asp.

be misguided, especially on the basis of what was conceptually proposed between 2016 and 2018. This most certainly applies in relation to infrastructure in the form of car parks, new sports club pavilions, new playground and barbecue facilities, new sports courts and new pathways. In addition there was temporary but recurring fencing associated not only in relation to sport clubs' special-event use of grounds leased by them but also in terms of big liquor-licensed entertainment and recreational events, often held in summer and authorised under park lands events licences, the sites of which had to be fenced under the *Liquor Licensing Act 1997*.

In 2016 the Adelaide Park Lands Authority summarised the essence of the dilemma.

> "Organised sport requires buildings to support use (clubrooms/ changerooms). Sports buildings are generally leased to a particular club, with public opinion reflecting concern in relation to exclusivity of use and commercial activities. Organised sport (and informal recreation) drive demand for car parking. Biodiversity areas are highly protected and preclude movements to support organised sports in areas where more sports facilities are sought." [6]

The numbers at the time, in terms of public responses to a new 2016 draft *Adelaide Park Lands Management Strategy*, showed a resistance to "organised sport (including hubs, and rights of use); car parking; and commercial activity".[7]

In this tension in the 'conflict between amenity and sustainability', amenities tend to dominate the discussion. There were other stimuli for tension, too. Development projects on the park lands came to be much more brutally enforced by a government capitalising on all of the loopholes of the state's planning system. Within five years of the 2006 symposium a park lands construction trend had begun, featuring new buildings and infrastructure development associated with long-term leases not only challenging but also confronting the notion of free and unfettered public access. It commenced in 2011 with a radical, new project-oriented development statute making possible the significant redevelopment of the historical Adelaide Oval facilities. In the same year construction occurred of a large University of Adelaide pavilion at Park 10, accompanied by a fresh, 42-year lease (2011). This was followed by construction of a new River Torrens footbridge linking the new Adelaide Oval stadium with the Riverbank Precinct (Torrens Lake 2011, but completed and opened in 2015); the new Royal Adelaide Hospital (2011, but completed in 2017); the redevelopment of the Convention Centre West (2013, opened in 2015); a large new South Australian Cricket Association pavilion at Park 25, with a fresh, 42-year lease (2015, opened in 2017); the new Adelaide Botanic High School on Frome Road in the eastern park lands (2016, opened in 2019); and new Tennis SA pavilions in Parks 1 and 26, capitalising on a very

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[6] Adelaide Park Lands Authority (APLA), Special board meeting, Agenda, Item 1, 'Project Advisory Group for Adelaide Park Lands Management Review Meeting ... and 'Consultation results: Strategy', 9 May 2016, page 7.

[7] APLA, ibid.

recently refreshed 42-year lease (lease 2017 but Park 1 pavilion opened in 2019) as well as a (fortunately failed) helipad landing facility proposed lease and construction at Park 27, adjacent to Torrens Lake (2017). (The initial years stated here related to development application procedures, where applicable.) Expansion of hard-stand (concrete and bitumen) areas and car parks also spread for sports clubs. The loss of green, open-space park lands through hard-stand areas and car parks is as significant, but less obvious against the horizon.

This construction binge appeared to some of those seeking the 'liberation' of the park lands for cultural events to be occurring in a parallel universe. Some appeared unaware of its extent or, if they were, they appeared unconcerned. One reason was that the wave of park lands developments was given profoundly different promotional public awareness treatment, mainly by those prosecuting the plans (state government) or those most likely to profit from aspects of it. Adelaide print media coverage delivered saturated and positive views about the consequences of new developments on public land and was largely indifferent to the exceptional procedural machinery that was allowing it to occur. One aspect would have been that the media didn't understand most of the procedures, but liked the outcomes. In May 2013, the looming wave of development and the media's support of it was observed by city councillor and Deputy Lord Mayor, David Plumridge.

> "Over recent months there seems to have been a rising campaign mounted by the Murdoch Press [News Corp], encouraged by the usual suspects in the property and development industries and condoned by compliant state governments (and oppositions) to put about the idea that the park lands are little more than a barren wasteland crying out for 'long-overdue development'. Opponents of that view are dismissed as naysayers, whereas in reality it is they who are maintaining [Colonel] Light's Vision …
>
> The Adelaide park lands must be preserved, not just for the needs of the increasing number of residents but also for the enjoyment of all South Australians. We need visionaries working hard to preserve the vision that Colonel Light promulgated, and which we should all commemorate; his vision to give the community the precious gift of 'just plain open space'. And let's understand just what that means, let's not mince words: it is not just about the odd café or kiosk in the south park lands or the occasional sporting facility in the west park lands or the 'small' intrusion for the Adelaide High School [1950]. I am not against sensitive development in the park lands that supports activation of these precious spaces … But it has to be done in a way that enhances their use for the people of South Australia for whom they are held in trust by the city council. Appropriating park lands for commercial developments, driven by greed and vested interests, should not be facilitated by governments using heavy handed legislation to destroy the purpose and pleasure of our precious park lands."[8]

[8] Newsletter: *Notes from Councillor David Plumridge's desk*, Issue 94, 1 May 2013, page 1.

The contemporary view

In 2018, 20 years after publication of the 1998 Hassell *Issues Report* (as a precursor to the writing, a year later, of the first *Park Lands Management Strategy Report*) South Australians' mixed views did not appear to have changed much. In 2018 they appeared to be as divided but as passionate as they were in 1863 in the South Australian State Parliament's House of Assembly when MP Joseph Peacock stood up and reminded his colleagues of how "... the inhabitants manifested extreme jealousy at any attempts to deprive them of the entire use of the park lands ..."[9]

This 'jealousy' of views was still thriving 153 years later, in 2016. The public feedback response to a November 2016 *InDaily* online article written by a city councillor typified what would commonly occur.[10] South Australians once again exhibited a contrasting range of views after a city councillor had been critical of the behind-the-scenes management approach, driven by the work of a special, government-nominated committee (a 'Project Group'), which prompted the direction of the philosophical content that eventually formed the 2016 Strategy (the third version since 1999). The group's perception had been politically nourished, and it rationalised its role in May 2016 as dealing with "... the challenges by the Strategy to address the tension between the perceived lack of utilisation, against the protection/preservation approach".[11]

By all accounts (and as evidenced in the feedback to the draft Strategy exhibited in May 2016) that tension had not been resolved. In fact, the subtle political pressure on that Project Group, and the outcome of its work, had increased the tension. As these 2016 online comments attached to the *InDaily* article illustrated, in a selection here randomly chosen to illustrate the spectrum, South Australians continued to disagree.[12]

- Respondent X: "I don't think there is anything wrong with making the park lands more accessible and attractive. Wild bush land does nothing for me ... comments around a supposed focus only on the bordering suburbs is not right. The park lands are there for all South Australians, stop just focusing on geography. Do I agree with more building on the park lands? Absolutely not. If they are attractive, irrigated and maintained people will use them. The government, however, I think, sees the park lands as some sort of gravy train and this view will lead to further destruction of our heritage."

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9 *The Register*, 1 October 1863 report: [South Australian] Parliamentary Debates, House of Assembly, third reading of bill, *Proceedings in parliament*, 30 September 1863, as noted in: Jim Daly, *Decisions and disasters*, Bland House, 1987, note 12, chapter 8, page 209.

10 Councillor Phil Martin, 'The great park lands heist', *InDaily*, 4 November 2016. An edited version of the councillor's article was published in an insert to the newsletter of the North Adelaide Society Inc., in December 2016, and appears as Appendix 20 to this work.

11 Adelaide Park Lands Authority, Special board meeting, Agenda, Item 1, 'Project Advisory Group for Adelaide Park Lands Management Review Meeting' ... and 'Consultation results: Strategy', 9 May 2016, page 11.

12 *InDaily*, 'The great parklands heist', 4 November 2016.

- Respondent Y: "Most South Australians are well and truly in favour of these types of developments. Build a racetrack, build a grandstand, build a stadium for United and maybe a future NRL team, build another for the 36ers and Thunderbirds, build cafes and pubs and restaurants. Let's get this city moving!!!"
- Respondent Z: "Those who are yelling for development and extra infrastructure in our parkland have forgotten the ONE thing that sets Adelaide apart from other cities in the world: our unique ring of green around the city. As for a tourism drawcard, ask the many international tourists who come here mainly for that reason. They are not coming here to see another glass and concrete city with token parks that this government seems intent on creating, which could be in any city in the world. They come to see what [Colonel William] Light envisaged, a city encircled by park lands. We all share the desire to see Adelaide take its place on the world stage, but not at the expense of what actually makes it different and special. Despite lack of interest from the government, and the gathering developers, who view it as cheap land to build on, our unique park lands layout, if promoted correctly, would be a tourism gold-mine. What a shame that anyone who suggests retaining our unique heritage is labelled as 'closed-minded, out-dated or dumb'."

There it is – the hills and valleys of the contemporary emotional landscape highlighting the 'jealousy' of views about Adelaide's park lands. And no wonder the academics and administrators continue to acknowledge 'a tension'!

The 'sub-conscious' view

In 2014 a biennial Adelaide Park Lands Art Prize competition began and attracted 300 entries, shortlisted to 85 finalists. In 2016 it attracted 200 entries (75 finalists) and the same number in 2018. Initiated by the Adelaide Park Lands Preservation Association (APPA), it partially depended on Adelaide City Council funding, and took advice from the Adelaide Park Lands Authority. The fascinating aspect about the works submitted (which included craft work and photography, among other media) was that a significant majority of the images presented a landscape focus. It was overwhelmingly devoid of features of the built realm across the 728.5 hectares of land under the care and control of the city council, such as fences, car parks, roads, paths, signs, seating, and of course, the buildings, from garden and changing sheds to grandstands that dot the landscape of some of the park lands parks. Some buildings by 2018 grossly visually dominated the vistas, such as the new, multi-storey concrete and glass 'pavilions' erected by sports groups under fresh, long-term leases, not to mention the colossal Adelaide Oval stadium, and the new, multi-level Royal Adelaide Hospital, whose bulk occupies about 10ha of former rail yard land that in 1999 had been nominated to be returned to park lands. In one respect, the art competition might have been seen as a test of the artists' comprehension of what the park lands meant to them, obviously mostly formed subconsciously. They overwhelmingly chose beautiful landscapes and created, for the most part, exquisite nature-based imagery. It is reasonable to conclude that they did this not only because of the images' likely aesthetic attraction to the judges, but also because

these were what the artists valued most about the park lands. The competition was a public relations success for the council, ironically responsible over many previous years for approving many of the alienating features that angered park lands 'protection' advocates and tested the boundaries of the tension of views. The imagery delivered a collective impression of an Eden-like landscape of great beauty, at times so verdant and green as to misrepresent the real, dry-bush South Australian flora across many sections of the park lands. It formed an attractive – but in many cases misleading – picture for interstate and international observers. Most of the works could not have been completed without the artist spending much time visiting and observing the park lands vistas, at the same time moving around car parks, toilet blocks and sheds, and infrastructure works-in-progress featuring machinery and tools locked in temporary enclosures, and trenches surrounded by temporary fencing in a landscape dominated by winter bogs and summer dust storms.

The art prize competition remains a rewarding interstate and international publicity exercise for the state government, as well as city local government administrators. The irony is that it was initiated and made successful by the very body incorporated 30 years earlier, in 1987, to 'preserve' the park lands from exploitation and alienation, as embodied by many of the features listed above. There is no hint in the publicity material behind the art prize of the struggle that has raged over APPA's 31 years (to year-end 2018, the end of the study period of this work) to resist or at least stall, council and government attempts to exploit the public land surrounding the city of Adelaide. At 2018 it would not matter philosophically if APPA withdrew from participating in the competition and the city council claimed full ownership and funded the entire cost.[13] It has a momentum of its own, rather similar to various ideas and concepts for development across the park lands, which often begin with not much more than a concept looking for government in-principle support, media advocacy and subsequent council park lands maintenance funding. As to the wisdom of APPA in initiating this prize and its inadvertent effect, its then newsletter editor, Kelly Henderson, had this to say in May 2014: "The question is, did APPA retain its effectiveness as a park lands watchdog whilst being a patron of the arts? Did it signal the Association's opposition to the Adelaide Festival Centre, Adelaide Casino, and government pursuing a new commercial 1400-car, four-level car park, on park lands within view of the Art Prize exhibition [at the Festival Centre]? Did the exhibition deter exploitation or annexation of any park lands? Or in its immediate vicinity? It seems not ...". [14]

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[13] It was a matter poorly understood by Adelaide's art community that the council did not fully fund the event. APPA coordinated the collection of about 60 per cent of the funds required for running the competition, separate from the council, in the form of sponsor contributions, artists' entry fees, and through APPA's commission on sales of art works.

[14] Adelaide Park Lands Preservation Association, *Park Lands News*, Edition 54, May 2014, page 3.

An Adelaide park lands
Planning and Administrative Chronology 1998–2018

This is not an exhaustive summary. It selectively lists key milestones. Some are initially discussed in chapters 4 and 5, but also in detail elsewhere. During the period the principal planning legislation was the *Development Act 1993*, and its planning instrument was the *Adelaide (City) Development Plan*. Among key interacting statutes was the *Local Government Act 1999*.

Planning and/or administrative initiatives (Federal, State or SA Local Government)	Adelaide City Council administrative initiatives (paper/policy)
Adelaide (City) Development Plan[1]	
	1998 Park Lands Management Strategy *Issues Report* (Hassell)
	1999 *Park Lands Management Strategy Report: Directions for Adelaide's Park Lands 2000–2037*
2003 The Adelaide Park Lands Committee formed[2]	
2004 Adelaide City Council begins writing Community Land Management Plans for park lands zone precincts[3]	**2004** City Council commissions *Adelaide Park Lands & Squares Cultural Landscape Assessment Study*
2005 *Adelaide Park Lands Act 2005* (proclaimed early 2006; fully enacted late that year)[4]	
2007 Adelaide Park Lands Authority board begins sitting[5]	**2007** *Adelaide Park Lands & Squares Cultural Landscape Assessment Study*
2008 Commonwealth Government National Heritage listing of the Adelaide Park Lands	**2008** *Park Lands Building Design Guidelines*
2009 First version of South Australian Government's *30 Year Plan for Greater Adelaide*	**2009** First versions of the *Community Land Management Plans* completed
	2010 *Adelaide Park Lands Management Strategy: Towards 2020*
2011 *Adelaide Oval Redevelopment and Management Act 2011*	**2011** *Adelaide Park Lands Landscape Master Plan* (adjunct to 2010 Park Lands Management Strategy)
	2013 Sports Infrastructure Master Plan **2013** Second version of park lands *Community Land Management Plan*
	2016 *Adelaide Park Lands Management Strategy: 2015–2025*

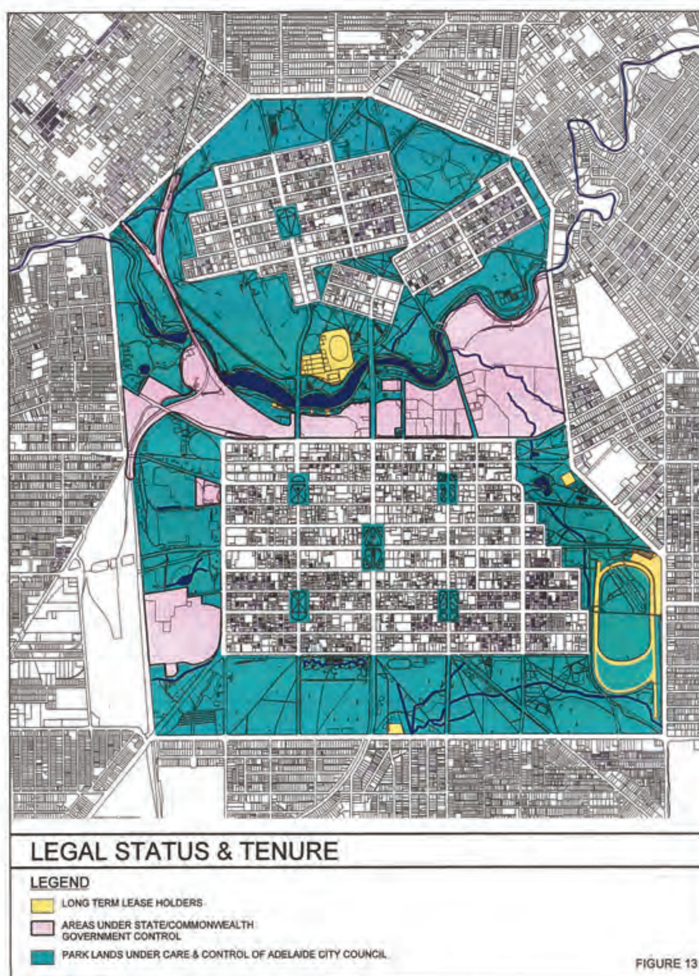
1 This was already in place at the beginning of the study period of this work. There were at least 12 amendments to the *Adelaide (City) Development Plan* between 2006 and 2018 to progress park lands planning matters. Some were city council triggered; the more controversial were ministerially triggered.

2 This was a precursor to the creation of the Adelaide Park Lands Authority, a council subsidiary.

3 Instruments of the *Local Government Act 1999*.

4 Interacting SA statutes included the *City of Adelaide Act 1998*, the *Development Act 1993*, the *Highways Act 1926*, the *Local Government Act 1999*, the *National Wine Centre (Restructuring and Leasing Arrangements) Act 2002*, the *Roads (Opening and Closing) Act 1991*, the *South Australian Motor Sport Act 1984* and the *Waterworks Act 1932*.

5 Operating as a subsidiary of Adelaide City Council, the Authority's output over subsequent years would include creation of much park-lands-related documentation. It would include 17 key references, covering strategic issues; policy; operating guidelines; and register (charter) documents. They are listed in Chapter 4 of this work, and widely discussed in others.



Adelaide park lands figure published in the 1999 Adelaide City Council-commissioned *Park Lands Management Strategy Report: Directions for Adelaide's Park Lands 2000–2037*.[1] This figure highlighted something that few observers comprehended at the time, or even subsequent to the 20-year study period of this work. Despite a widely held assumption to the contrary, there was "no dedicated agency to manage and improve the park lands *as a whole*" [emphasis added]. This observation was noted in a 2018 city council/state-government-commissioned report, which few South Australians read at the time, or later.[2]

At 2018, the city council had tenure and 'care and control' of about 74 per cent of the total area of the park lands. Most of the remainder was under the registered proprietorship of the state government, with some very small areas tenured to the commonwealth government.[3] The reason originated well over a century earlier, and stemmed from a succession of statutes, which maintained the division of responsibility between the council and the state government. At year-end 2018, the shaded 'care and control' areas in this figure remained roughly similar to that which had applied 20 years earlier. However, over the same 20-year period, the number of lease holders, the extent of their long-term leased areas, and the tenure periods, had significantly expanded. The lease trend correlated with a trend reflecting an increase in the number and scale of new buildings and other infrastructure constructed across the park lands.

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[1] 10 November 1999, Section 3, page 25.

[2] *Adelaide Park Lands and City Layout: Issues and opportunities analysis for the National Heritage Listing*, by DASH Architects and planner Stephanie Johnston, commissioned by Heritage SA and the South Australian Department of Environment and Water, 17 May 2018, Appendix 1: 'Key issues in managing potential impacts', page 42.

[3] About 22ha, mainly relating to rail infrastructure.

4 | The park lands rules – a vast web of complexity

A vast web of management complexity metaphorically stretches across every hectare of community land park lands under the custodianship of the city council. It has the potential to snare every request to get formal access to the parks in an administrative glue that can be sticky with detail. Applicants for leases are warned by their lawyers that the process can be long, tedious and costly, and sometimes unsuccessful. Of those that fail, the sight of the large, permanent, privately owned sports pavilions erected under 42-year leases that often profit from sub-lessee revenues, must appear as a paradoxical image on the horizon, a testament to the interpretive rules translation abilities of skilled, high-fee commercial advocates.

Perhaps the most intriguing aspect about Adelaide's park lands is that behind the imagery of colourful entertainment events and playing fields of recreational pleasure exists a web of rules whose complexity can be so challenging that only well experienced park lands administrators and planning lawyers can tease it out. But from the sky every possibility appears attractive to visitors who fly in and gaze down upon the enticing encirclement of bush and turf surrounding South Australia's small capital city.

For many South Australians, the experience of probing the complexities behind the legal, policy and procedural rules prescribing how Adelaide's park lands are managed is a little like enquiring into how a machine works without understanding anything about machinery technology. At first glance it all looks fairly simple. Indeed, except for certain special park lands events, which are fenced off for limited periods, there appear to be no metaphorical signs that say 'Keep off the grass'.

The lure of superficial simplicity is enhanced by a vista that is generally attractive and accessible, sometimes meticulously landscaped and mostly serene. But every park pasture, playing field, roadway, pathway, car park, shed, pavilion, grandstand, fence, sign and tree, and every event site licence or long-term lease, is subject to an intricate matrix of laws and bylaws, regulations, policies, guidelines and procedures that legitimise their presence. This matrix is most commonly only fully understood by specialist experts and certain employees and contractors of the city council whose trustee care and control role over the park lands dates back to 1849.

An Authority without management authority

The Adelaide Park Lands Authority in operation since 2007 advises the city council that determines the answers to most detailed enquiries, but the Authority has no power to enforce the rules. This might illustrate the first paradox – an Authority without any authority. That authority instead exists with a state government minister, and in some cases a miscellany of other ministers as well because of the myriad other interacting statutes that relate to the park lands.

It should not be surprising that the city council employs a number of staff highly knowledgeable in park lands details. Some have acquired the expertise over many years and their knowledge and interpretive skill is so highly valued that one in 2018, the Park Lands Authority's executive officer (a city council contractor), received an annual salary package of $130,331 – equivalent to that of a senior local government executive with major management responsibilities. Others assisting in the determination of park lands management decisions within the council are also well paid to encourage them to stay in a job that few others could do without long-term training under long-term advisory guidance, often from lawyers when things get complicated. Theirs is a highly skilled advisory role. But except for a handful of South Australian park lands observers and a few parliamentarians per generation, their work is practised unseen – and almost never acknowledged as relevant, let alone vital to ensure that the complex web of rules and procedures works in an operational synchrony that delivers at least some sense of order. This need to maintain the order is perhaps the greatest challenge, as aspects of the web of complexity mutate. It is perhaps analogous to the biodiversity of the park lands: its wide-ranging species of flora and fauna are in a state of continual evolutionary change while the broad themes superficially appear to remain static.

Fourteen agencies; 26 land use state references

A small number of highly skilled people working for the state government also have some knowledge of the park lands rules and what they determine, especially about those that affect the state organisational areas in which they are employed. In 2006, at the time of the proclamation of the *Adelaide Park Lands Act 2005*, these people were scattered across up to 14 state agencies managing arrangements across the gamut of government services, including water, the arts, education, employment and training, energy, science, history bodies, police, transport – and even the burying of the dead at Adelaide's West Terrace Cemetery.[1]

By 2018 the titles and structural links between these state agencies had changed, but the complexity remained. These agencies were monitoring activities linked to sections of the parks (as defined at 2018) that make up the Adelaide Park Lands Plan. In 2006, the land-use issues connecting this web of agencies totalled 24 and added up to roughly the same 12 years later in 2018 (noting some deletions and some controversial additions). Most land uses tell a story. No part of that story relates to the glorious pastoral imagery that the city council or Tourism SA promoters like to highlight in their brochures or on their websites. In reality, the story is about the buildings or man-made sites across the park lands that began creeping across Colonel Light's original 1837 plan for open park lands (excepting his allowance for a few government buildings and other sites) in the decades following his death in 1839. The land uses he didn't anticipate were introduced mostly between the years 1860 to about 1920, then in the decades following 1950. At 2018 they included (not in historical order and not exhaustively) an art gallery,

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[1] Government of South Australia, 'Adelaide Park Lands Regulations', Minutes, Hon Gail Gago: correspondence to Minister for Education and Children's Services, Hon Jane Lomax-Smith, 12 June 2006.

state library, museum, railway station, a police barracks, a gaol, two university campuses, two high schools, two hospitals (Light anticipated one, but not where either was eventually constructed), the Adelaide Festival Centre and adjacent commercial offices, convention centre, government and commercial buildings, a huge sports stadium, a national wine centre, a commercial gym hub, a tennis stadium and buildings, a hotel and a casino in the city's central railway station (not to mention the station's railway tracks and adjacent land that caused a vast area of the west park lands to be alienated when steam train travel arrived in Australia).

The principal law – interacting with eight other Acts

If observers are not yet confused by the detail so far, here is some more. The principal law relating to the park lands (as at 2018) was the *Adelaide Park Lands Act 2005*, whose proclamation in January 2006 immediately prompted the suspension of many of its sections until the provisions of eight other interacting Acts had been amended so as to make the 2005 Act workable. This would avoid risk of disorder in the enforcement of related park lands laws. They included the *City of Adelaide Act 1998*, the *Development Act 1993*, the *Highways Act 1926*, the *Local Government Act 1999*, the *National Wine Centre (Restructuring and Leasing Arrangements) Act 2002*, the *Roads (Opening and Closing) Act 1991*, the *South Australian Motor Sport Act 1984* and the *Waterworks Act 1932*. The amendment of these interacting statutes took most of 2006 to be completed. For the administrators and parliamentarians it was a major effort.

Perhaps the Park Lands Act's biggest handicap, which many naively assume is the most comprehensive statute 'protecting' Adelaide's park lands, is that it is not 'peak' or head legislation. It could only have been such had it been written soon after the settlement of South Australia in 1836, or once the city council began operating in 1840, or once legislation allowed the council to become the park lands trustee a little over a decade later. That way, all other relevant subsequent laws relating to the park lands would have had to defer to and interact with that Act. But by the time the 2005 Act had been proclaimed, 170 years had passed, and many other statutes had been proclaimed that potentially or literally captured and determined legal circumstances relating to Adelaide's park lands. Here emerges a lawyer's picnic and a parliamentary counsel's nightmare – ensuring that one law relating to the park lands is consistent with another. When the 2005 Act was passed, it included a clause to allow flexibility to, as was said at the time, "... ensure consistency with – the operation of another Act (including an Act amending another Act) enacted after the commencement of this Act ...".[2] This acknowledges that the 2005 Act is rather late in South Australia's history, and must join the statutes queue and factor in many that came before it, as well as allow for others that might follow. You can see that in the complicated matrix comprising levels of government, and agencies within state government, as well as a multitude of statutes, there is a high likelihood of rules chaos arising. But that is not the sum of it.

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2 South Australian Parliament, *Hansard*, Legislative Council, 'Adelaide Park Lands Bill 2005', 22 November 2005, Hon Ian Gilfillan, page 3158.

An appendix in this book notes an updated (2016) list of commonwealth and state legislation (which would include state regulations) totalling 18 other statutes that make up the legislative framework behind park lands management and operations; in particular, activities by the city council in managing its assets (which include the park lands). See Appendix 2: 'Eighteen other laws relating to activity on the park lands'.

Vital cogs in the local machine: 17 strategies, policies and guidelines

At the lowest tier, local government in the city of Adelaide, there is an administrative obsession to ensure that park lands policy and procedure keeps abreast of statute amendment. Accidental breaches of state law remain an enduring terror in the minds of city council administrators, and to this end no expense is spared in maintaining documentation that tries to reflect the park lands legal arrangements that state parliament desires. In the years following the passing of the *Adelaide Park Lands Act 2005*, the Adelaide Park Lands Authority advisors and board members spent their early years deliberating on and creating an avalanche of advisory policy in various documented forms. As a result, a mountain of paper grew. Ultimately, the council determined to identify redundancies, throw out dated documents, and monitor any further growth. By September 2017, a city council policy clean-out had washed away much paper detritus, but as the cleansing administrative waters receded, what remained continued to highlight an extraordinary level of complexity. Park lands documentation, or at least documentation critical to inform policy at Authority level, as well as to inform the public's enquiries into park lands matters, comprised 17 references.[3] The city council's segmentation illustrated four categories across those 17 key papers, covering strategic issues, policy, operating guidelines, and register documents:

- **Strategic:** the *Adelaide Park Lands Management Strategy 2015–25*; *Asset Management Plan – Park Lands and Open Space*; and *Park Lands Olive Management Plan*.
- **Policy:** *Community Land Management Plan* (a document that contains the management direction contemplations for all of the park lands parks); *Liquor Licensing Policy*; *Park Lands Leasing and Licensing Policy*; *Referral of Park Lands Matters to the Adelaide Park Lands Authority (APLA) Operating Guidelines*; and a *Site Contamination Policy*. Operating guidelines documents included: *Noise Management Incentive Scheme*, *Operating Guidelines and Acoustic Advisory Service*; and *Park Lands Leasing and Licensing Operating Guidelines*.
- **Operating guidelines:** the *Adelaide Park Lands Events Management Plan*; *(Adelaide (City) Development Plan*; *Site Contamination Operating Guidelines*; *Biodiversity and Water Quality Action Plan 2011–16*; and a *Tree Management Framework*.
- **Register:** the *Adelaide Park Lands Authority Charter*. This featured the 2006 rules under which the Authority operates. It was significantly amended in 2018.

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[3] Adelaide City Council, Council Meeting, Agenda, Item 7.10, 'Council policy reform', 12 September 2017, pages 141–154.

More policy paper exists than is suggested above. Moreover, after September 2017 a number of the key documents were amended. As each amendment was progressed, detailed checks had to be made as to whether the amendments affected the contents of other, related policies. The practical challenge to link park lands management operations with policy is further explored in Chapter 52 of this work, titled 'A quagmire of policy connection and coherence'.

As a result of this enduring mountain of paper, South Australians tempted to ask simple questions about the park lands rules in pursuit of simple answers have since 2007 often been surprised at the complicated responses they have sometimes received. Put simply, a vast web of management complexity metaphorically stretches across every hectare of community land park lands under the custodianship of the city council. It has the potential to snare every request to get formal access to the parks in an administrative glue that can be sticky with detail. Applicants for leases are warned by their lawyers that the process can be long, tedious and costly, and sometimes unsuccessful. Of those that fail, the sight of the large, permanent, privately owned sports pavilions erected under 42-year leases that often profit from sub-lessee revenues, must appear as a paradoxical image on the horizon, a testament to the interpretive rules translation abilities of skilled, high-fee commercial advocates. An exploration of loopholes evident during deliberations during parliamentary sessions examining the Adelaide Park Lands Bill 2005, and the subsequent inequitable application of rules for park lands access, appears later in this book in two chapters (49 and 50) titled: 'The loopholes lurk', parts 1 and 2.

Further reading

Please refer to Appendix 2: 'Eighteen other laws relating to activity on the park lands'. It records commonwealth and state legislation that forms the legislative framework influencing Adelaide park lands management and operations.

5 | A brief introduction to Adelaide's park lands administrative machinery

Adelaide's park lands are managed through the work of a combination of bodies whose advice and directions arising from related laws, instruments, policies and other guidelines comprise the machinery behind management of these park lands.

Multiple references to the bodies and documents appear throughout this work. This section introduces them.

Besides the commonwealth government, in South Australia there are two levels of government. At the state level, there is a government administration, comprising elected members who can form a majority in the state parliament's House of Assembly. At the local level, there are a number of corporations operating under the *Local Government Act 1999* across the state. The corporation that manages Adelaide's park lands (74 per cent of the total 930ha) is the Corporation of the City of Adelaide. More commonly it is referred to as the Adelaide City Council.

There is a state minister whose duties include administering the *Adelaide Park Lands Act 2005*. There are other ministers whose duties include administering other Acts with which the 2005 Act interacts.

The most relevant elements of the administrative machinery can be segmented into three groups.

THE PEOPLE

1. The masters of the machinery

THE BODIES

Of greatest relevance in administration terms during the period were two bodies:

1. The Capital City Committee.
2. The Adelaide Park Lands Authority, a subsidiary of the city council.

THE DOCUMENTS

Of greatest relevance in administration terms are five documents:

1. *30 Year Plan for Greater Adelaide*.
2. *Adelaide Park Lands Act 2005*.
3. *Adelaide (City) Development Plan*[1].
4. *Adelaide Park Lands Management Strategy*.
5. *Community Land Management Plan*.

[1] This planning instrument was in force for the whole of the study period (1998–2018). It was replaced on 19 March 2021 by the *Planning and Design Code*. It fulfilled the same purpose.

THE PEOPLE

FEATURES	COMMENTS
What	**The masters of the machinery**
Who	Who really pulls the levers? As the text below about the Capital City Committee observes, it's a group effort. But certain people play critical roles at critical times. This table addresses only the Lord Mayors of the City of Adelaide, not only because of their positions on the Capital City Committee, but also because of their roles as elected head of the council whose custodianship of much of the park lands goes back to 1849, and whose care and control of the park lands maintenance in the financial year 2018–19 required an annual budget of $16.7m, or if one included capital spending, $23.5m. The office of Lord Mayor is therefore vital in park lands administrative and decision-making terms.
Role	The Lord Mayor has multiple roles, but in the case of the park lands, the key role is to liaise with the corporation's chief executive officer in preliminary discussions, and then submit matters for determination (beyond routine maintenance) to various boards and committees and, ultimately, the elected members of the council. A resulting determination is rarely 'the final decision'. In most cases it would need to be authorised by the state government of the day.
The identities	Over the period of study (1998–2018) there were five Lord Mayors. All of them pledged to 'protect' the park lands as candidates. • 1997–2000: Dr Jane Lomax-Smith, who in 2002 became the state Labor MP for the electorate of Adelaide, which includes the whole of the park lands. As Lord Mayor, Lomax-Smith was responsible for the publication of the first *Park Lands Management Strategy Report 2000–2037*. This was a precedent-setting action – as well as a definitive and visionary document. As a state minister (which included being Minister for the City of Adelaide) she played a major park lands role in state cabinet as the Adelaide Park Lands Bill 2005 was being written in late 2004, passed by state parliament in late 2005, and proclaimed in 2006. Her two terms of ministerial office were noted for her strong advocacy to 'protect' the park lands from further alienation, at the same time as other ministers were pursuing park lands developments. • 2000–2003: Alfred Huang. Lord Mayor Huang occupied the role during an ostensibly quiet historical time in relation to the park lands, but it was only really quiet at local government level. There had been parliamentary efforts to pass new laws about the park lands. During his term, a state Labor government gained office (2002) under Premier Mike Rann. Rann's pledge to create new law to 'protect' the park lands would ultimately see the emergence of the new Adelaide Park Lands Act late in 2005.

THE PEOPLE *(continued)*

FEATURES	COMMENTS
The identities *(continued)*	• 2003–2010: Michael Harbison. Lord Mayor Harbison presided over a period of major park lands administrative change. A key event was the commencement of meetings of the new Adelaide Park Lands Authority board, in 2007. Towards the end of his term the second (and significantly different) version of the *Park Lands Management Strategy* was written and endorsed by the council. The contents of this work explore the scope of the change and the administrative – and political – matters that characterised Lord Mayor Harbison's two-term reign. • 2010–2014: Stephen Yarwood. Lord Mayor Yarwood's term saw the beginning of an aggressive new state phase in park lands development, originating under the Rann Labor government, which by 2010 had won its third consecutive election. Within a year the party would elect Jay Weatherill as Premier, and the record between 2011–2018 illustrates how during his role as leader many matters changed regarding the park lands. Lord Mayor Yarwood's term saw the city council overwhelmed by not-negotiable state imperatives regarding development on the park lands. • 2014–2018: Martin Haese. Lord Mayor Haese's term also saw much change. His council was again heavily overwhelmed by state-induced policy change. Elements could be traced to the influence of the Capital City Committee, but given members' strict 'duty of confidence' – and rigid legal provisions restricting public access to information discussed at the committee – that influence remains difficult to quantify.
Historical relevance in the context of a 1998 to 2018 study	The city council is the 'custodian' of a major part of Adelaide's park lands, which implies a significant 'care and control' responsibility. Lord Mayors have a voice and, if used to openly debate politically driven park lands proposals that interfere with this responsibility, can be an effective mechanism to resist government pressures. But few in the history of the period exercised this opportunity. It is one of Adelaide's features that figureheads, such as Lord Mayors, practise a genteel political discretion, informed by an awareness that power at local government level is in effect only disbursed by the state at the state's discretion. Lord Mayor Yarwood captured this view in 2011, one year into his four-year term. "The council is not a lobby group," he said. "We are a level of government and we need to be at the table. To be at the table we need to be acting in a professional way and working with the government."[2]

[2] Daniel Wills, *The Advertiser*, 'It's time for the city to deliver the goods', 12 November 2011, page 28.

THE PEOPLE *(continued)*

FEATURES	COMMENTS
Park lands management outcomes	The scope and complexity of park lands outcomes are explored in this work. One theme is that culpability for exploitation and alienation of the park lands is historically shared. The park lands 'custodian' has been complicit. As one former Lord Mayor who became a state parliamentarian, Steve Condous, aptly noted in 1999: "Governments have been blatantly obvious; councils have done it only periodically."[3]
Other park lands relevancies	Many council-led park lands deliberations and actions have never been formally recorded, which makes it difficult to ascribe certain park lands exploitation matters directly to any particular Lord Mayor. Council (and Adelaide Park Lands Authority) agendas and minutes only ever reveal part of any story. But sometimes former Lord Mayors revert to plain English to succinctly summarise park lands matters that, until then, remained cloaked in documentation infected with managerial ambiguity under the guise of formality. For example, former Lord Mayor Steve Condous presented an informative verbal summary (and brief analysis) of the post-war history of park lands abuses in state parliament in August 1999.[4] His observations commenced with 1950 when he was a child living in the city's west end. The period covered the 1950s (Sir Thomas Playford as Premier), 1960s and 1970s (Dunstan government), 1980s (Bannon government) and 1990s (Olsen government). For historians his recollections provide a short but illuminating record, and for readers of this work, it underscores the belief that 'History repeats; only the people change'. These might be words on a future plaque above the desk in the Office of the Lord Mayor, to be noted when a newly elected person begins his or her term and commences to focus on delivering the common pledge: 'I will protect the park lands'.

Further reading

Two essays on the role of the office of the Adelaide Lord Mayor regarding park lands matters appear in the appendices.

- **Appendix 3: 'Four common traps for newly elected Adelaide Lord Mayors who pledge to 'protect' the park lands'.**
- **Appendix 4: 'Haese's park lands legacy blots his report card' (This is an essay on the participation in park lands matters of Lord Mayors Harbison and Yarwood and, in particular, Martin Haese (2014–18).**

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3 Parliament of South Australia, *Hansard*, House of Assembly, 'Local Government Bill', 4 August 1999, page 2016.

4 Parliament of South Australia, ibid., page 2016.

THE BODIES – 1

FEATURES	COMMENTS
What	**The Capital City Committee** An advisory body to state cabinet of the South Australian state government. Chaired by the Premier (alternatively, a nominated Minister, most often the Deputy Premier), and at times including the Minister for Transport and Infrastructure, the Minister for the City of Adelaide, the city Lord Mayor and deputy, and a city councillor. Notably, however, the MP for the state electorate of Adelaide (which includes the whole of the park lands) cannot be a member unless he or she is a member of the government occupying a relevant ministerial role. This meant that between the years 2010 and 2018 the Liberal Party MP for the electorate of Adelaide, Rachel Sanderson, was excluded and therefore could not access details of committee deliberations, and could not represent the views of her electorate on park lands matters.
When	Established through an Act of Parliament, the *City of Adelaide Act 1998*.
Why	Originally to improve communications between the state government and the city council after a disastrous period in 1996 when the Brown Liberal government threatened to sack the council during the Lord Mayoralty of Henry Ninio. In more recent times the committee has played a particularly active park-lands-related role with the city council, especially after state Labor's 2010 win, and after leader Mike Rann was replaced by new Premier, Jay Weatherill, in late 2011.
Role	The formal line is: "Building relationships between the state government and city council to reinforce their long-term commitment to work together, with the goal of integrating efforts and investment for the city's benefit."[5]
Personnel changes over time	Many ministers, Lord Mayors and councillors were members over the 20-year period to year-end 2018.
Park lands management features	While not at all exclusively focused on park lands, the committee is the principal source of government-inspired dialogues if the committee chooses to focus on the park lands. Its broader purpose is to: "Identify and promote key strategic requirements for the economic, social, physical and environmental development and the growth of the city."[6] Four other purposes include coordinating resources; monitoring implementation of programs; coordinating key strategies, goals and commitments; and collecting and analysing information about development and growth of the city.

5 Capital City Committee, *Annual Report*, 2014–15, page 3.

6 Adelaide City Council meeting, Agenda, Item 19, 'Capital City Committee, Development Program 2012–13', 23 October 2012, page 144.

THE BODIES – 1 *(continued)*

FEATURES	COMMENTS
Political downside	Minimal. Meetings are held 'in confidence', and no minutes are publicly circulated. The lack of public access to meetings and to documents created for and by the committee for many years prompted criticism that state governments (in both Liberal and Labor administrations over time) have something to hide, especially when it comes to park lands matters. The committee produces a publicly available annual Capital City Development Program (a very brief summary) and also an annual report, but the report rarely describes the explicit deliberative detail about government and city council participation or direction in city council park lands initiatives.
Political upside	A project-focused body 'at the highest political level', but like state cabinet, operated under legislated conditions that ensure its contemplations remain opaque. Once intended to be a collaborative group sharing views, by 2014 the committee had assumed a role beyond that, seeking to lock in real intentions.[7] These intentions would include local government commitments to embrace the policies of the government of the day. In excluding the Adelaide MP, Rachel Sanderson, in the opposition Liberal Party between the years 2010 and 2018, this allowed the government Labor Party to exercise a blatantly partisan role, which compromised that MP's ability to effectively represent her constituents and advocate on their behalf on park lands matters. This, coupled with legal restrictions on access to any documentation prepared for the committee, very effectively quarantined knowledge of state-directed matters to a select few, and who had to participate under a 'duty of confidence'. Controversial deliberations could be initiated and concluded in secret, out of the purview of the Adelaide Park Lands Authority or city council. The links between government directives given informally at Capital City Committee level, and activity arising at Adelaide Park Lands Authority or city council level, could be easily obscured. The origins of post-2012 park lands management outcomes could be traced to this committee, but much of the evidentiary trail was obscured under provisions in its legislation. This level of secrecy fed a public illusion that the Authority or city council, whose meetings were generally held in the open (with agendas and minutes), were the principal originators of policy direction. In reality, the state government used the Capital City Committee as a preliminary sounding board for, and basis of, the commencement and pursuit of politically safe carriage of occasionally major determinations about the park lands.

[7] Capital City Committee, *Annual Report*, 2014–15, page 3.

THE BODIES – 1 *(continued)*

FEATURES	COMMENTS
Reference chapters in this work	• 40. 'The 2016 revolution' (Part 8). • 41. 'The silent abandonment of a unique park lands master plan' (Part 8). • 46. 'The secrecy tradition' (Part 9). • 48. 'The consultation lark' (Part 9).

Further reading

A more detailed exploration of the Capital City Committee and its history is contained in Appendix 5: 'The Capital City Committee'.

THE BODIES – 2

FEATURES	COMMENTS
What	**The Adelaide Park Lands Authority** A subsidiary of the Corporation of the City of Adelaide. A management board of 10 members. The city council's Lord Mayor has first option to chair. Each Lord Mayor during the period 2007–2018 accepted the role.
When	Began meetings in 2007.
Why	An attempt to fulfil Labor's pledge early in its first term (2002–06) to put in place an 'independent' body to advise on park lands management determinations.
Role	Advice to the city council and state government.
Administrative revisions since first adopted	The Authority's original charter was written in 2006. It was significantly revised in 2018. The charter describes the rules under which the Authority operates.
Park lands management features	Occupied (and still occupies) a central role in exploring and advising on park lands matters. Has the responsibility to act as the first respondent to park lands proposals. But this is not guaranteed. The determination falls to the Lord Mayor and the council's CEO. Over the period 2007–18 it produced a vast collection of advisory papers, covering strategic issues, policy, operating guidelines and register (charter) documents.
Potential strengths	Has a voice. Has potential to draw attention to exploitative proposals for the park lands. Has rarely exercised this ability. Government-appointed board members are commonly silent in public forum on controversial matters.

THE BODIES – 2 *(continued)*

FEATURES	COMMENTS
Potential weaknesses	Although a statutory authority under the *Adelaide Park Lands Act 2005*, in reality this council subsidiary has little authority, despite the name. The state government has control over five of the ten board member appointments; the city council has control over the other five. The Authority can only advise the city council and the government, but none of its advice carries any lawful weight. Cost-free to the state (totally funded by the city council's ratepayers). Cost-free to adjacent local government corporations whose ratepayers access the facilities of the park lands but pay nothing towards administration or maintenance. Over the period of study the state government often exploited the Authority's advisory outcomes. Of the board of 10 members, only one has been appointed from non-council or non-government-experienced backgrounds.
Reference chapters in this work	There are many chapters covering the post-2007 era in this work (as well as a detailed appendix which explores views and assumptions before the Authority began sitting in 2007, and over the years that followed).

Further reading

A more detailed exploration of the Adelaide Park Lands Authority, its history, roles and responsibilities is contained in:

- **Appendix 6: 'The Adelaide Park Lands Authority'.**
- **Additional further reading appears in Appendix 28: 'What does it cost to manage the Adelaide park lands?'**

THE DOCUMENTS – 1

FEATURES	COMMENTS
What	***30 Year Plan for Greater Adelaide***
When	Applies from 2010 to 2040 (as at 2018).
Why	To set out the land-use policies to manage the growth and change that was at 2010 forecast to occur in the greater Adelaide region over the 30 years to 2040.
Role	A core state planning policy document containing the state government's 'broad vision for sustainable land use and the built development of the state'. It is the relevant volume within the *Planning Strategy.* In park lands terms, the objective is 'maintain and improve liveability'.
Revisions since first adopted	The February 2010 iteration was formally noted as current at June 2017.
Park lands management features	Not specified in the *Adelaide Park Lands Act 2005*, but a major influence on the content of the third version (2016) of the *Adelaide Park Lands Management Strategy*, which at 2018 occupied a key role under the Act. However, while the 30 Year Plan's focus was ostensibly not on park lands, one of its aims did directly affect subsequent park lands policy direction. Broad plan aims were: steady population growth of 560,000 people over the 30-year period; the containment of the metropolitan area with a greater emphasis on in-fill development; the location of new growth areas next to transport corridors, including creation of 13 new transport-oriented developments; the revitalisation of major activity centres, particularly the City of Adelaide which would play an important part in achieving the planned population target; the creation of a network of greenways and open space precincts in transport corridors; the reinforcement of the role of the park lands; and the focus on major projects such as Victoria Square and the Torrens Riverbank.[8]
Political downside	Appeared to be far-sighted when released (at the time of the 2010 state election, which state Labor won for a third consecutive term). But as expectations were not met in subsequent years and as the 'urban consolidation' consequences became clearer, it became subject to widespread criticism.

8 Adelaide Park Lands Authority (APLA), Agenda, Board meeting, 'Response to draft *30 Year Plan for Greater Adelaide*', point 6, 17 September 2009, page 5974.

THE DOCUMENTS – 1 *(continued)*

FEATURES	COMMENTS
Political downside *(continued)*	Few South Australians realised the scope of change anticipated for the park lands, to be driven under this plan, and state Labor did a poor job in 'selling' the existence and relevance of the plan and its contents. Its aim to 'reinforce the role of the park lands' manifested in a visionary agenda for major new objectives to be achieved across the Adelaide park lands. An agenda of the Adelaide Park Lands Authority on 17 September 2009 had succinctly described the extent of change contemplated by the state.[9] Most objectives would be achieved within seven years. The Authority had noted the directions: • "… the major sporting facility hub at the Adelaide Oval/Memorial Drive Precinct; • Adelaide Gaol as a tourist precinct[10] ; • activation of the Torrens Riverbank and Elder Park; • proposed [new] Royal Adelaide Hospital (RAH) with links to the Riverbank Precinct; • upgrading of the city squares; • improvement to cycle networks and links to metropolitan Adelaide; • development of the existing [old] RAH site; • activation of the park lands and making them safer through improved facilities, increased activities (both active and passive), major events and by enhancing linkages (including the Park Lands Trail); and finally, • development of medium-rise apartment buildings fronting onto the park lands to provide activity, safety and enclosure." Park-lands-related criticism emerged early because it quickly became clear that state Labor had neglected to indicate how the objectives would be properly funded. In 2009 the Adelaide Park Lands Authority noted that: "The draft [30 Year] plan appears to lack any direction/commitment in relation to the [park lands] funding and management arrangements for implementing the proposed infrastructure."[11] Criticism would be broader than that. It was not only about the money; it also was about some infrastructure plans that prompted public concern.

[9] Adelaide Park Lands Authority (APLA), Board meeting, 'Response to draft *30 Year Plan for Greater Adelaide*', 17 September 2009, point 9, 'Section F1 – Regional Targets and Directions for the City of Adelaide. Map F1 – *Adelaide City directions*. This referred to several '… *current plans and possible future options* that relate to the Adelaide park lands', page 5976.

[10] This objective was the only one outstanding as at June 2022.

[11] APLA, op. cit., point 21, 17 September 2009, page 5979.

THE DOCUMENTS – 1 *(continued)*

FEATURES	COMMENTS
Political upside	• A document that, almost invisibly, sat high in the state planning policy hierarchy, whose vision directed the writing of many subsequent policy directions of the city council and the Adelaide Park Lands Authority. Its presence highlighted the state's control of the broad directions of park lands management policy. • A document to which the state government could refer when justifying changes to park lands policy over subsequent years. This was especially relevant to government-initiated changes to the *Adelaide (City) Development Plan*, which prescribed the rules for development in many city policy areas; in particular, the park lands zone policy areas. • The Labor government's political assumption in 2010 was that the policy was soundly based, the concepts were complementary to existing park lands documentation, and that the city's and other inner-city communities agreed with the concept that the park lands were an 'open space asset servicing metropolitan Adelaide' to which major infrastructure change might be applied. But this was not the assumption of some council planners or local communities living adjacent to the park lands.
Reference chapters in this work	• 35. 'Towards the second Park Lands Management Strategy'. • 36. 'The 2010 *Adelaide Park Lands Management Strategy*'. • 40. 'The 2016 revolution'. • 42. 'The new 'urban address' narrative'.

Further reading

A more detailed exploration of the *30 Year Plan* appears in Appendix 7: 'The *30 Year Plan for Greater Adelaide*'.

THE DOCUMENTS – 2

FEATURES	COMMENTS
What	**The *Adelaide Park Lands Act 2005***
When	Proclaimed early 2006, but not fully enacted ('brought into operation') until late 2006.
Why	New legislation that the state Labor government created to 'protect' the park lands.
Role	Put in place many elements. The Statutory Principles were intended to illustrate the best of intentions, against which future contemplations for park lands use and management were to be assessed. Made provision for the *Adelaide Park Lands Management Strategy* (which already existed in an earlier, non-legislated version written in 1999 by the city council). Also made provision for a new Adelaide Park Lands Authority. Acknowledged (under the *Local Government Act 1999* with which the new Park Lands Act interacted) the requirement for Community Land Management Plans (CLMPs) for all sections of the park lands. The Strategy and the CLMPs made up the 'working parts' of the management regime.
Revisions since first adopted	No substantial amendments as at December 2018. However, there were many amendments to the *Adelaide (City) Development Plan* whose 'teeth' were given effect by the *Development Act 1993*, with which the Park Lands Act also interacted. In 2018 this Act was gradually being replaced by the *Planning, Development and Infrastructure Act 2016*, but at year-end 2018 the *Adelaide (City) Development Plan* was still in force, pursuant to the former Act.[12]
Park lands management features	The Park Lands Act does a poor job (because it says so little) in directing the operational relationship between park lands management, strategy and policy. This leaves open opportunities for park lands managers to adopt their own approaches to their work, which opens up opportunities for political manipulation. In theory the Act directed that key documents (the Strategy and the CLMPs) be 'consistent' with each other. This was administratively difficult because the first was an action plan, and the second was a management direction plan. The creation of the Authority (but only as a subsidiary of the city council) did not allow for any stand-alone independence from the state government. The Authority progressively managed the creation of a vast array of park lands policy documentation, the maintenance of whose consistency became highly demanding. The Act interacts with other legislation relating to the park lands. The most frustrating public matter has been the existence of confidentiality provisions under the *Local Government Act 1999*, which allowed

[12] Its replacement, by the *Planning and Design Code*, occurred on 19 March 2021.

THE DOCUMENTS – 2 *(continued)*

FEATURES	COMMENTS
Park lands management features *(continued)*	park lands discussions and preliminary plans to be progressed 'in confidence', the restrictions of which have bound Authority board members and city councillors to the same secrecy provisions. The lack of transparency at times of controversy progressively became an administrative feature of the operations of the Authority.
Political downside	Creating new legislation always risks a later realisation that it may be flawed, and attempting to amend those flaws can be politically risky. There are flaws to this Act, including its very general approach to how some of its provisions might be interpreted in practice. For example, it made provision for the key future park lands policy document, the *Adelaide Park Lands Management Strategy*, which administrators later assumed (without any legislated basis) had an influential planning status because it could be used to not only inform but also drive amendments to the *Adelaide (City) Development Plan*. This was the land-use planning instrument for the park lands zone policy areas. Draft Strategy amendments became open to state political manipulation, through the Authority (which created the drafts) and the city council (which approved the final versions).
Political upside	State Labor, which initiated the legislation in 2005, capitalised on the legislation across three subsequent consecutive terms to March 2018, sometimes drawing on the Act's provisions to highlight the government's 'best intentions'. History shows that the intentions were often preoccupied with exploiting the park lands, because it was 'free land' close to the city. This caper was mostly evident when the state initiated development plan amendments, or created and had passed new, project-oriented development legislation to override the provisions of the Park Lands Act, to authorise park lands developments that otherwise couldn't have been achieved. The existence of the Act encouraged a state tactical approach ranging from manipulation (in which confusion became a strategy) to 'crash-or-crash-through' planning manoeuvres.
Reference chapters in this work	Most chapters.

Further reading

- **More detailed exploration of the *Adelaide Park Lands Act 2005* appears in Appendix 8: 'The *Adelaide Park Lands Act 2005*'.**
- **Also see Appendix 9: '2018 observations on the Minister's introduction to parts of the Adelaide Park Lands Bill 2005'.**
- **An exploration of the 2005 parliamentary scrutiny of the 2005 bill appears in Chapter 49: 'The loopholes lurk (Part 1)'.**

THE DOCUMENTS – 3

FEATURES	COMMENTS
What	**The *Adelaide (City) Development Plan***
When	In place at the beginning of the period of study of this work. Given statutory effect under the *Development Act 1993*. At year-end 2018, the end of the study period of this work, the state's intention to replace 72 local government development plans with one 'code' under new legislation had not been finalised. For the purposes of the period covered by this work, the 1993 Act remained in operation.[13]
Why	A development plan specifies the rules for development planning assessment in a certain area, commonly within the boundaries of a local government corporation. These areas are described as zones. In the City of Adelaide's case (for the purposes of this work) the relevant zones were Park Lands Zone and Riverbank Zone, segmented into policy areas. Most of this work's discussion focuses on the Park Lands Zone, which covered much of the park lands as observed today.
Role	In the context of this work, and in the context of the City of Adelaide, the plan defined what 'development' is, and how it could be determined to be 'complying' or 'non-complying' for the policy areas of Adelaide's Park Lands Zone.
Revisions since first adopted	Over the study period of this work to year-end 2018, the plan underwent a regular process of amendment. Amendments to the plan occurred either when the state government created and finalised a development plan amendment (a document and a procedure), or asked the city council to do so on its behalf. The Development Act's provisions determined procedural and content matters relating to changes to, or the interpretation of, the development plan.
Park lands management features	At times the plan did not need to be referenced to categorise certain minor developments as 'complying' or 'non-complying', but with a majority of those proposed over the study period, when the proposal reached a council or government planning assessment body, this was an early matter for determination.

[13] A replacement development statute was passed by state parliament in 2016. As at July 2018 a city council observation stated that it was "being slowly switched on and the *Development Act 1993* was being slowly switched off". The new legislation did not come fully into operation until mid-2020. The new *Planning and Design Code* in relation to the metropolitan area came into operation on 19 March 2021.

THE DOCUMENTS – 3 *(continued)*

FEATURES	COMMENTS
Political downside	• Government administrations could amend the development plan if it didn't allow for an objective that the government wanted to achieve within the park lands. Changing the rules to fit a proposal was more convenient than making the proposal fit the rules, and the state government did not always have to publicly argue its case beforehand. A minister could direct the change to the plan, or ask the city council to do it. • However, development plan amendments (DPAs) could be complicated processes, and almost always difficult for the public to comprehend. The process, via a council, could be slow because it was methodical. If a government was in a hurry (very common in the case of park lands projects) there was a risk that the public consultation that might have to occur might prompt some public resistance and protest and slow the process. There were procedures in place for a minister to fast-track this process, using what was called a 'ministerial DPA', and a mechanism for making it immediately effective (described as bringing it into 'interim operation').
Political upside	• Once an amendment to the development plan was authorised (by the government), if it related to more than one policy area of the park lands, the government could subsequently approve other unforeshadowed significant developments in those other policy areas, without having to consult with the public. This was because once the change to the plan was applied to those areas of the park lands, any subsequent application was deemed to be complying and as such classified 'Category 1'. Such categories of development didn't require public consultation. • An amendment to the plan didn't have to be examined by parliament. However, if there was an impetus for parliamentary scrutiny, the examination could occur after the amendment had been completed. But even then the parliament's mechanism (a standing committee) did not have much power to change the outcome. This is because it relied on a government minister to act on its advice, and at times ministers were not motivated to act. • Because amendments were difficult for the public to comprehend, there was a low probability of significant public awareness and therefore protest. In this way, over the study period of this work to year-end 2018, the public would often find out about a proposed new development project for the park lands zone only after it had been approved.

THE DOCUMENTS – 3 *(continued)*

FEATURES	COMMENTS
Political upside *(continued)*	• The power given under the Development Act (or any later replacement statute) for a minister to amend a development plan meant that the minister could change the rules to suit a proposal. • Most development plans were the product of earlier deep deliberation by the local government corporation that initially crafted them. This was particularly so in relation to the city council and its contemplation of rules for development across much of the area of park lands over which it had 'custodianship'. An ability to change those rules at whim illustrated the power of the state over the power of local government in terms of park lands management and exploitation.
Reference chapters in this work	Further background: please refer to Chapter 12 in this work: 'The governance of public space and the politics of planning'.

Further reading

A further exploration of the development plan is contained in Appendix 10: '*Adelaide (City) Development Plan*'.

THE DOCUMENTS – 4

FEATURES	COMMENTS
What	The *Adelaide Park Lands Management Strategy*
When	First plan (city council initiated): 1999. Second (Act-initiated): 2010. Third: 2016 (Act initiated).
Why	The city council had commissioned an Issues Report (released in 1998), which highlighted many park lands management issues that needed to be addressed. The first Strategy was the result.[14] The council commissioned it; but at the time there was no law that required it. The *Adelaide Park Lands Act 2005* formally provided for creation of a Strategy, and for periodical reviews.
Role	There were multiple purposes (see the extract of section 18 of the Act at the end of this section). But its most actively visible role was to (3) (c) "identify goals, set priorities and identify strategies with respect to the management of the Adelaide Park Lands."
Revisions since first adopted	Major revisions evident in versions 2 and 3. Details are explored in chapters in this work.
Park lands management features	Too many to note here. See Chapters 35, 36 and 40 in this work.
Political downside	Any formal documentation commits its authoring body to action, and subsequent public assessment of achievements. This reduces the flexibility of government to suddenly change course and adopt new directions and priorities. The safest political tactic is to avoid committing to anything in writing. The Strategy was supposed to be a 10-year plan, a span of years that no government enjoys under the constraints of four-year terms. Times change – and so can governments and their new priorities. Amendment of policy documentation can be slow and tedious. The public has to be asked for an opinion, and few governments enjoy criticism.
Political upside	• There was an existing upside for the new, post-2002 Rann Labor administration, because the council-authored 1999 version indicated that much needed to be done to improve management of the park lands at the time. This was consistent with Labor's pledge to better 'protect' the park lands.

[14] *Park Lands Management Strategy Report: Directions for Adelaide's Park Lands 2000–2037.*

THE DOCUMENTS – 4 *(continued)*

FEATURES	COMMENTS
Political upside *(continued)*	• The writing of the second (2010) Strategy indicated fresh commitments. Despite six principles that implied laudable intentions, the 2010 Strategy carried the essence of new government directions, best summarised under Principle 5: "Undertaking research, planning, design and policy development to guide the enhancement of the places and facilities and the development of programs and activities based on user and general community needs (high priority)."[15] • The writing of the third (2016) Strategy expanded this concept and comprehensively increased the focus on a strong 'activation' plan, to be applied across the whole of the park lands. Forty-four hubs were envisaged in the unfunded Strategy and each would be accompanied by permitted commercial development, according to the size of the hub and the likely approval process. This was in 2016 a radical change compared to previous Strategies' content, but at year-end 2018 only one major concept had been state-funded and implemented. The upside for the state Labor government (and any alternative state administration to follow) was that the means remained in place to implement this vision across the park lands unless and until the content was amended in a future Strategy document. At year-end 2018 (the end of the study period of this work) there was no indication that the contents of this Strategy were under 'review'.[16]
Reference chapters in this work	10. 'The 'watershed' period begins'. 11. 'The first Park Lands Management Strategy Report'. 35. 'Towards the second Park Lands Management Strategy'. 36. 'The 2010 Adelaide Park Lands Management Strategy'. 38. 'Private investment on the park lands'. 40. 'The 2016 revolution'. 41. 'The silent abandonment of a unique park lands master plan'. 42. 'The new 'urban address' narrative'.

Further reading

There is no appendix discussion of this Strategy because one chapter would be insufficient. However, multiple chapters in this work (in Parts 3 and 8) are devoted to exploring the political and administrative history and evolution of this key park lands policy document. Please refer to the chapters noted above.

[15] 2009 draft of the 2010 *Adelaide Park Lands Management Strategy: Towards 2000*, page 21, as found in: Adelaide City Council Meeting, Agenda, 'Adoption of proposed *Adelaide Park Lands Management Strategy*', 15 June 2009, page 11897.

[16] Indeed, at August 2022 there was still no indication, five years after the minister's August 2017 sign-off.

| **EXTRACT** | **from the *Adelaide Park Lands Act 2005***

Section 18 of the new Act had required that there be "an *Adelaide Park Lands Management Strategy*." Subsequent clauses noted:

"(2) The management strategy will be prepared and maintained by the Authority.

(3) The management strategy must—

(a) in relation to each piece of land within the Adelaide Park Lands owned, occupied or under the care, control or management of the Crown, a State authority or the Adelaide City Council—

(i) describe the occupation, tenure and existing use of the land; and

(ii) provide information about the State Government's or the Council's (as the case may be) plans for the use and management of the land into the future; and

(iii) identify any plans or feasible options for increasing public access to the land for recreational purposes (taking into account the existing or proposed use of the land); and

(iv) if the land is owned, occupied or under the care, control or management of the Crown or a State authority—provide information about its suitability for use as park lands under the care, control and management of the Adelaide City Council, or through transferring the land to the Council, and, if appropriate, a program for its future use as park lands; and ..."

The Act also required at least two other aspects:

"(b) identify any land within the Adelaide Park Lands that is, or that is proposed to be (according to information in the possession of the Authority), subject to a lease or licence with a term exceeding 5 years (including any right of extension), other than a lease or licence that falls within any exception prescribed by the regulations for the purposes of this paragraph; and

(c) ***identify goals, set priorities and identify strategies*** [emphasis added] with respect to the management of the Adelaide Park Lands; ..."

THE DOCUMENTS – 5

FEATURES	COMMENTS
What	***Community Land Management Plan (CLMP)***
When	A provision in the *Local Government Act 1999*. (See extract at the end of this section.)
Why	All community land within the boundary of a local government area, including park lands, is required to have CLMP documentation to indicate its purpose, whether the land is to be subject to lease or licence, and how it would be managed for the benefit of the community.
Role	A land management purpose. Plans contain objectives, statements of community values, performance targets and indicators, descriptions of each, and identification, discussion and resolution of issues and processes to implement actions. Under the *Adelaide Park Lands Act 2005* a CLMP occupies a shared role with the *Adelaide Park Lands Management Strategy*, which had an action plan purpose. The Act said both should be 'consistent' with each other. But establishing definitive assessment direction, simultaneously using a management plan and an action plan written at different times for different purposes, would prove to be challenging.
Revisions since first adopted	The Adelaide City Council slowly wrote CLMPs for sections of the park lands between 2004 and 2009, but revised almost all of them in 2012–13.[17] In the early versions, comprehensive cultural and historical landscape assessment detail was included, focusing on 10 'component types' used to analyse the park lands historical and cultural space, among them including 'land uses', 'vegetation', 'structures', and 'historical views and aesthetic qualities'. First version CLMPs covered each park lands section's history of use, but in the later CLMP versions this detail was omitted, and only a digital link to that detail was provided. This was interpreted by some as indicating a change in the city council's and the Adelaide Park Lands Authority's view about the relevance of such information when exploring future management direction.

[17] The first CLMP versions up to about 2009 comprised individual plans for each park or small group of parks. Thus the document reference was in the plural: CLM *Plans*. However, after about 2012, when the plans were significantly revised, the collection of plans began to be described as one document, thus being referred to under a singular reference, as the *Community Land Management Plan*.

THE DOCUMENTS – 5 *(continued)*

FEATURES	COMMENTS
Park lands management features	CLMPs contribute to transparency of management direction for use of community (public) land. But they mean different things to different assessors, and this ambiguity increased over time during the period of study. The early versions aimed to 'establish a vision for a park'; 'outline the management context'; 'explain the existing status of the park'; 'provide an assessment of management issues relating to the park'; 'develop its future policy directions and implementation strategy' and 'consider the context of adjoining areas and the park lands as a whole'.[18]
Political downside	The concept of the CLMP emerged as a result of the amendment of the *Local Government Act 1934* (creating the 1999 version). Under this amendment, the park lands had to be included. Plans for community land were required to be irrevocable. Because the *Adelaide Park Lands Act 2005* interacted with the Local Government Act, the 2005 Act's authors had to acknowledge and embrace the existence and purpose of CLMPs. In practice, this led to an uneasy fit with the Adelaide Park Lands Act's provisions for the *Adelaide Park Lands Management Strategy*. The Act naively required that both be 'consistent' but Authority administrators soon learned that this was difficult in practice. As soon as one was amended, did the other need to be immediately amended? And what did 'consistent' really mean? Over time, the state government was able to influence content amendment of subsequent Strategies. But the content of the CLMPs sometimes contrasted with those new directions, and had potential to act as an approvals brake on new concepts envisaged by government. Because early CLMPs came in segmented modules (sometimes covering only one park, but often more than one) they would need to be amended individually. This was demanding of the city council. Moreover, any revision had to follow the provisions of the *Local Government Act 1999*, and be publicly consulted on before being adopted. Despite an informal and unstated government desire to diminish the relevance of the CLMP concept from park lands management policy and procedures, deleting the park lands requirement would have been too legislatively risky, and would have been highly controversial.
Political upside	Given the abilities (and enthusiasm) of government lawyers and bureaucrats to interpret meanings in park lands documentation, there were times when a CLMP could be used to support a development proposal for a section of the park lands. Lawyers also even went to the extent of claiming that if a CLMP had no 'contemplation' for a proposal, then it axiomatically provided endorsement for it!

[18] CLMP introduction. This source: *Adelaide Park Lands Community Land Management Plans*, Tulya Wodli (Park 27) (2006 version), 'Introduction': no page number.

THE DOCUMENTS – 5 *(continued)*

FEATURES	COMMENTS
Reference chapters in this work	23. 'The park lands papers that froze time'. Many other chapters contain themes relating to the existence or contents of CLMPs for various park lands precincts, parks or other sites.

Further reading

A more detailed exploration of the *Community Land Management Plan* is contained in Appendix 11.

| EXTRACT | from the *Local Government Act 1999*

Division 4—Management plans

196—Management plans

(1) A council must prepare and adopt a management plan or management plans for its community land if—
- (a) the land falls within the ambit of section 194(1)(b) or (c); or
- (b) the land is, or is to be, occupied under a lease or licence; or
- (c) the land has been, or is to be, specifically modified or adapted for the benefit or enjoyment of the community.

(1a) The Adelaide City Council must prepare and adopt a management plan for the Adelaide Park Lands.

(2) A single management plan may apply to one or more separate holdings of community land.

(3) A management plan must—
- (a) identify the land to which it applies; and
- (b) state the purpose for which the land is held by the council; and
- (c) state the council's objectives, policies (if any) and proposals for the management of the land; and
- (d) state performance targets and how the council proposes to measure its performance against its objectives and performance targets; and
- (e) in the case of the management plan for the Adelaide Park Lands—
  - (i) provide information on any arrangements or restrictions on public use of any part of the park lands, or on movement through the park lands; and
  - (ii) provide specific information on the council's policies for the granting of leases or licences over any part of the park lands.

| EXTRACT |

from 2005 parliamentary debate about the Adelaide Park Lands Bill

Division 2—Management plans

19—Adelaide City Council

[The ministerial explanatory statement:] "This clause requires the Adelaide City Council to ensure that its management plan for community land within the Adelaide Park Lands under Chapter 11 of the *Local Government Act 1999* is consistent with the Adelaide Park Lands Management Strategy. The clause also includes provisions relating to public consultation with respect to a proposed management plan (or proposed amendments to such a plan) and comprehensive review of the Adelaide City Council's management plan for community land within the Adelaide Park Lands."

FEATURES	COMMENTS
What	**Park lands documentation covering strategic issues, policy, operating guidelines, and register (charter) documents.**
When	Mostly created by the Adelaide Park Lands Authority for city council and state government reference. All documentation must be approved by the council, and the state government maintains a close watch, sometimes in an authorising role.
Why	City council is the 'custodian' of the park lands, but the state government has the authority to set and amend all the rules.
Role	Defining the rules.
Revisions since first adopted	Significant revisions to many documents over the period 2007–18 and later.
Park lands management features	Management cannot progress a proposal unless detailed, regular reference to these rules occurs.
Political downsides	Few.
Political upsides	Many. Once a document is authorised, council and state use it to rationalise park lands determinations. Political parties are dominated by lawyers. Lawyers seek documentation. Administrators can be pressured to act if the documentation says what the lawyer likes.
Reference chapters in this work	Chapter 4: 'The park lands rules – a vast web of complexity'.

PART 2

The management of the Adelaide park lands has always incited strong South Australian passions. There cannot have been many public officials who did not heave a deep sigh of relief when sensitive park lands debates passed and they could get back to administering less-controversial and more predictable matters.

Extract, Chapter 7:
'The 'giants' of the park lands dialogue,
1998 to 2010'

The Adelaide Park Lands and City Layout, highlighting the estate's 2008 National Heritage listing. Repetitive state government and Adelaide City Council publicity campaigns referring to this listing and this map have contributed to a post-2008 South Australian delusion that a major new commonwealth legislative mechanism now 'protects' the entire park lands from commercial and state development. Unfortunately, this is not true.

Note the vast, white-shaded area on the map showing land between North Terrace and the southern edge of the River Torrens and Torrens Lake, and running east to west across hundreds of hectares. This area comprises the Institutional precincts and Riverbank zone , and is exempt from National Heritage listing. It means that none of the huge buildings constructed in that area since the 2008 listing has been, or needs to be, reported for assessment as potentially impacting on the Adelaide park lands National Heritage values.

Ten years after the 2008 National Heritage listing, evidence emerged that city council and state machinery were not functioning as was intended under the commonwealth law that created the listing, the *Environment Protection and Biodiversity Conservation Act 1999*.

A little-known and poorly publicised 2018 South Australian report revealed all, but Adelaide's media and parliamentarians ignored it. Its most damning observation was that: *"There is no dedicated agency to manage and improve the park lands as a whole."*

It had been commissioned by Heritage SA and the SA state Department of Environment and Water (DEW). Jointly funded by the state-government and city council, the 17 December 2018 report remains one of the most revealing, but least publicised, park lands administrative audits published during the period explored in *Pastures of plenty*. Today, few South Australians are aware of it. Details are contained in this work, in Appendix 29.

PART 2 Setting the scene – were you there?

Chapters

6 | Notes on writing a park lands reference – Professor Carr advises
(Sound advice for a work like this, capitalising on one academic's lifetime of reflection about the writing of history.)

7 | The 'giants' of the park lands dialogue, 1998 to 2010
(Two men and a woman: recent, but now largely forgotten South Australians who were driven by passion and purpose.)

8 | That 1987 Daly book – why it matters more than ever
(A once-provocative and still-unique park lands study now consigned to history.)

9 | Why is David Jones' work relegated to the archives?
(Why the past is always out of fashion.)

Daly quoted the anthropologist Margaret Mead, describing her as someone "who saw the power of committed small groups such as APPA". She had said: "Never doubt what a small group of thoughtful citizens can do to change the world. Indeed, it is the only thing that ever has."

Extract, Chapter 7: 'The 'giants' of the park lands dialogue, 1998 to 2010'

Other links to chapters in PART 2

Chapter	Appendix link
7 | 'The 'giants' of the park lands dialogue, 1998 to 2010'.	
8 | 'That 1987 Daly book – why it matters more than ever'.	
9 | 'Why is David Jones' work relegated to the archives?'	**Appendix 12:** 'Exploring the David Jones' study mystery'.

6 | Notes on writing a park lands reference – Professor Carr advises

The idea of the importance of the pursuit of 'progress' is something buried deep within the South Australian public psyche, although some who participated in the park lands debates didn't appear to have interrogated their own minds as to what 'progress' really meant.

This work does not claim to be a history in a form that professional historians generally accept as proper and academically acceptable. For a start, I am not a professional historian and thus post, up front, a caveat that this work might be better termed 'Essays exploring a potential history'. Moreover, I have taken some precautions and accessed a commonly used reference for amateur historians, *What is history?* written by British Professor Edward (EH) Carr, published in 1961 but no less relevant for the years that have passed since then.[1] In the last few decades of the 20th century it was a popular reference for history undergraduates and, despite the passing of more than 50 years, it remains an enlightening and useful read (although some references at 2018 suggested it is no longer held in the same esteem as it was[2]). Professor Carr makes numerous observations about the challenges of and pitfalls in writing 'proper' histories and, regardless of his peers' subsequent critiques, some themes are worth exploring here, if only to anticipate likely historian-prompted responses to this work.

Definitive record not possible

The first theme is that this work should not be seen as a triumphant, forensic, all-encompassing examination of the sum total of all available South Australian park-lands-related documentation created during the period. For a start, this was impossible, given the extent of city council and state government documents subject to confidentiality orders, and Capital City Committee and state cabinet-in-confidence restrictions. These limited my ability to reflect on certain matters. I shall leave it to PhD candidates and other authors in the future, if and when those orders are revoked, any other restrictions are lifted and more information is released into the public domain. As a result, no doubt some of their contents will give rise to fresh observations and potentially different conclusions from those reflected in the themes of this work.

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1 EH Carr, *What is history?* A Pelican book, The George Macaulay Trevelyan Lectures delivered at the University of Cambridge, January to March, 1961, first published by Cambridge University Press in 1961, later by Penguin Books in 1964.

2 Indeed, within a few years after the publication of Carr's work other UK academics challenged his approach and views; for example, GR Elton, in 1969, in his work *The practice of history* (Fontana). Elton's book was republished in 2002.

Facts

A second theme relates to facts. Professor Carr: "… the facts of history never come to us 'pure', since they do not and cannot exist in pure form: they are always refracted through the mind of the recorder."[3] I note this because many of the primary source documents from which I have drawn information have been 'refracted' through administrator authors acting under instructions (real or implied) rarely written down, and often arising from commonly understood contemporary political imperatives now obscured by the passing of time. This ought to be acknowledged early. Professor Carr also cautions: "… we cannot view the past, and achieve our understanding of the past, only through the eyes of the present."[4] On this, I am fortunate, for I lived through the period of this work and in the same place among the same people, and thus I was able to view, note and reflect on this past.[5] It allowed me to deliver in this work what I believe is a broader and more enhanced understanding because of that. I make no claim, however, that this 'enhancement' is a super-analytical capacity; merely that it is a capacity better informed of the subtleties and nuances of the time, aided at the time through my access to the informal views of participating people, as well as other documentary sources, many of which are now lost to the contemporary archival paper trail, leaving most commonly only the formal records (fairly reliable, but dry) as well as some paper records of the community and media chatter (less reliable, but more colourful). That said, this 'capacity' needs to be weighed up against objectivity, and mine is as compromised as that of anyone else who lived through the period with the same level of interest in park lands matters. I shall have more to say about objectivity later, under the topic of 'history as progress'.

Professor Carr warns about persons who attempt histories (or versions that others might perceive as histories) when he says: "In my first lecture I said: Before you study history, study the historian. Now I would add: Before you study the historian, study his historical and social environment." To that I would say this. My historical environment during the two-decade period of this work's study was the one I lived in and actively participated in, as a ratepayer in the City of Adelaide, and living in North Adelaide, that smaller part of the city entirely surrounded by park lands. I was a close observer as a journalist at the edge of the administrative and political centre, but not an employee or committee member of any allied park-lands-focused organisation, such as the Adelaide Parklands Preservation Association Inc. (APPA)[6]. The two exceptions were the North Adelaide Society, a local, incorporated residents'

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3 EH Carr, op. cit., 1961, page 22.

4 EH Carr, ibid., page 24.

5 As an Adelaide journalist and editor during the period, my articles and essays leave a paper trail in the archives of *The Adelaide Review*, the Adelaide Parklands Preservation Association and the North Adelaide Society (state library). My authorship of North Adelaide Society submissions on park lands matters would be evident within state (planning) and city council archives. Additionally, many of my letters were published over the period by *The Advertiser* on park lands matters.

6 This organisation slightly amended its title in 2008 to the Adelaide Park Lands Preservation Association. The acronym, however, was retained as APPA.

association active in a part of the city surrounded by park lands, and the relatively short-lived Parklands Alliance.[7] My membership of the society began in the same year as the commencement of the study period, 1998, and I was still a member 20 years later. The society's affiliation with the Parklands Alliance covered the years 1999 to about 2005. As to my social and political environment, the bulk of it was focused on society matters, preoccupied as it was with the outcomes of city council politics – the same city council acknowledged as the custodian of a large portion of the 930ha of Adelaide's park lands. Park lands matters often became the focus of society discussion and lobbying at both local and state government level.

Professor Carr writes about the way he practised his profession: reading and writing, allowing the continuing reading to re-shape early drafts, a simultaneous process of input and output. This was my style for this work, too, but I have no particular confidence that I haven't committed what he describes as 'heresies'. "Either you write 'scissors and paste history' without meaning or significance; or you write propaganda or historical fiction, and merely use facts of the past to embroider a kind of writing which has nothing to do with history." He warns about the "dichotomy of fact and interpretation": "... the particular and the general, the empirical and the theoretical, the objective and the subjective."[8] More traps for the amateur, in particular, interpretation. Fifty pages later in his book he returns to the theme: "Historical facts ... presuppose some measure of interpretation; and historical interpretations always involve moral judgements – or, if you prefer a more neutral-sounding term, value judgements."[9] This point is important with regard to Adelaide park lands matters. Every person contributing to the debate, since the creation of Colonel Light's Adelaide City Plan of 1837, has based his or her statements on value judgements and I am not immune to that. However, my approach, which is not new given 20 years of participation in the form of public statements, letters to editors, essays in newsletters and submissions to state and local government administrations, has always been to try to support my views with reference to specific support documentation, if that evidence was available to use, arguing logically and with a view to prompting further public discussion. It was sometimes challenging then, and with this work it has been just as challenging, in explaining why a certain judgement is a reasonable one in relation to whatever circumstances were being examined at the time.

The 'cult of the individual'

A third theme relates to the matter of a history based on the 'cult of the individual', which risks multiple traps, especially in the writing of this South Australian park lands work. This is because, when all is said and done, the key players in the early period (1999 through to about 2010) were mainly a few South Australian state politicians and city local government elected members, and not a lot of them. I make two points.

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[7] The Alliance was a loose coalition of incorporated bodies, including APPA, as well as professional organisations, but had no constitution and was not incorporated.

[8] EH Carr, ibid., page 29.

[9] EH Carr, ibid., page 79.

The first is that it was only after the determination was made as to which South Australian political party would hold the balance of power after the 2002 election, that certain individuals got the chance to make something of their ideological commitment to implementing policy change in relation to park lands matters. The determination was made by an independent MP, Peter Lewis, who chose to side with Labor, rather than his former party, the Liberal Party. Had he not done so, Labor would have remained in opposition, and the Liberal Party's different approach to reforming park lands legislative and administrative arrangements would have led to a different course of history.

Secondly, those dominant in the 'park lands conversation' (as it might have been described in the political period immediately before and especially after the 2002 state election) had to bring the people with them. They had to win over significant numbers in significant communities of interest for there to be political momentum sufficient to lead to fresh legislation. As Professor Carr writes: "All effective movements have few leaders and a multitude of followers; but this does not mean that the multitude is not essential to their success. Numbers count in history." [10]

For the remainder of the period, roughly 2011 to 2018, key political players determining the management of Adelaide's park lands appeared less prominent as 'change agents' in the public domain, because the hard work had already been done. New park lands legislation had been enacted late in 2006, giving rise to new policy instrument versions and changed policies. These were informing procedural functions as political imperatives evolved. Put simply, the 'leaders' no longer needed to pursue the same noisy level of influence in the so-called reformed park lands movement – or actively engage 'the multitude of followers' because the machinery was in place to do the job. Moreover, given a number of 'silences' in the *Adelaide Park Lands Act 2005*, the institutions (state parliament, the Adelaide Park Lands Authority and the city council) were able to implement their own procedures relating to those instruments, and the elected members of local government at city council level were able to create fresh policies and related procedures without formal recourse to state parliament's politicians of the day. Some individuals also were able to pull strings behind the scenes, but their influence was often obscured by the 'duty of confidence' procedures at Capital City Committee, and confidentiality orders at Adelaide Park Lands Authority and other city council and committee levels) thus frustrating an attempt at linking evolving change in causal terms to any one prominent personality at the time.

That said, there will be evident in this work some focus on at least two individuals, Dr Jane Lomax-Smith and Mike Rann, across the period 1999 to about 2010, for the reasons captured by Professor Carr in a quote he extracts from a historical work by the 19th century German philosopher George Hegel.[11]

> "The great man of the age is the one who can put into words the will of his age, tell his age what his will is, and accomplish it. What he does is the heart and essence of his age; he actualises his age."

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[10] EH Carr, ibid., page 50.

[11] George Hegel, *Philosophy of right*, Oxford at the Clarendon Press, 1942, page 295.

(The notion during Hegel's lifetime was that only men made history.) Of course, a question remains as to whether Lomax-Smith or Rann accomplished anything more than a legislative outcome, given what occurred after 2010 and after they had departed the political scene. Full marks to the politicians for aspiration; fewer marks for accomplishment once subsequent demands tested the legislation and found it wanting.

Assigning cause to events

Another theme relates to the challenge of assigning cause to events in this history. Professor Carr discusses two options, and I'm attracted to his option of 'the functional approach: how it happened' over the interpretation approach of 'why it happened'. For one thing, it's easier. But he suggests that the functional approach "... seems inevitably to involve the question of how it came to happen, and so leads us back to the question Why?"[12] My discussions with some participants during the period covered by this work occasionally elicited perceptions of singular causes, but historians know that this is far too simplistic. The good professor summarised it well in one sentence and I shall ignore the context of its discussion and merely plagiarise the phrase: "... a random jumble of economic, political, ideological and personal causes, of long-term and short-term causes." [13] The challenge, as he observes, is to reduce causes to order, on the grounds that: "Every historical argument revolves around the question of the priority of causes." Some events also might be put down to chance, but Professor Carr warns about the simplicity of this conclusion and suggests that much causality related to chance can actually be explained rationally and "put into the broader pattern of events".[14] To consider a South Australian example, the decision by parliamentarian Peter Lewis in 2002 (weeks after the March state election) to endorse the Labor Party as the one that would be invited to form a government, in preference to the Liberal Party, and thus give rise to a Labor state administration that inspired the creation of the *Adelaide Park Lands Act 2005*, did at the time appear to be a chance result. Even Labor's leader, Mike Rann, had concluded before Lewis's decision that the odds would be very long of his Party's getting selected to form government. For historians, there is the fallback position of interpretation: "Interpretation in history is ... always bound up with value judgements, and causality is bound up with interpretation." [15]

History as progress

A fifth theme, history as progress, prompts inquiry. The notion inspires a historical approach to some of the most contentious park lands issues and their resolution, given that, for many South Australians, judging the efficacy and wisdom of determinations between 1998 and 2018 affecting park lands management and policy has relied on their own concept of progress – or not, resulting in at least two camps.

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[12] EH Carr, ibid., page 88.

[13] EH Carr, ibid., page 89.

[14] EH Carr, ibid., page 102.

[15] EH Carr, ibid., page 107.

The idea of the importance of the pursuit of 'progress' is something buried deep within the South Australian public psyche, although some who participated in the park lands debates didn't appear to have interrogated their own minds as to what 'progress' really meant. History has often been taught in the west as the pursuit of progress – whatever that means. Professor Carr describes the pursuit as the 'cult of progress'. The commonly acknowledged 'tension' tradition that arises out of competing views about the management of Adelaide's park lands has as its foundation a dialogue between stasis and change – points of view exploring and commenting on the pathway towards 'progress'.

Take a simple example. Readers of this work may perceive the gradual accumulation of a comprehensive library of policies and progressive amendments to the contents of statutory instruments of park lands management between the years 2007 (when the Adelaide Park Lands Authority commenced sitting) and 2018 (the end of the period of study of this work) as being evidence of 'progress'. They also may see the evolution of demanding procedures arising from these instruments, with the implication that certain checks and balances appear to be embedded in them, as more evidence. But others who more closely examine the policies and guidelines, and the amendment of the instruments' contents that follow, might draw the opposite conclusion – that growth of a large and complex web of policy content, which administrators must routinely review and continuously update, then cherry-pick and interpret to deliver advice to the decision makers, is actually retardation – progress in reverse. It all appeared to be so simple back in the late 1990s, as one document loomed on the horizon, intended to be the definitive 10-year action plan, with an additional vision for 2037: the first version of the *Park Lands Management Strategy Report of 1999*.[16] Those who undertake a detailed examination of subsequent outcomes, focusing on various case studies of park lands management outcomes over the two-decade period, might perceive a level of administrative and political manipulation. It capitalised on: the complexity of the post-2007 instruments' contents and the policies; legal provisions for in-confidence deliberations whose records could be kept secret for long periods; and the consequent policy interpretation procedures that had to be followed to produce draft resolutions or assessment determinations. Some observers would conclude that manipulated deliberations and assessments could not be perceived as progress. But the beneficiaries probably did not concern themselves with this academic concept because they got what they wanted, regardless.

The 'cult of progress' theme manifests in various park-lands-linked statutes, including the *Local Government Act 1999*, and the *Adelaide Park Lands Act 2005*, with which the 1999 Act interacts. The 1999 Act requires the creation of Community Land Management Plans (CLMPs), which must be regularly reviewed and updated. Over a 14-year period the CLMPs for Adelaide's park lands were

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[16] Hassell, *Park Lands Management Strategy Report: Directions for Adelaide's Park Lands 2000–2037*, November 1999. The actual cover title is: *Park Lands Management Strategy, City of Adelaide Park Lands*.

updated twice[17], which implies progress, but chapters in this work critically explore and challenge this.

In regard to the *Adelaide Park Lands Management Strategy*, the *Adelaide Park Lands Act 2005* requires a periodical 'comprehensive review', which implies that a fresh and significantly revised document will emerge, and somehow be an improvement on the previous one. As it happened, the Adelaide Park Lands Authority amended the first (1999) version within two years of its commencement of sitting, delivering a 2009 draft and then a 2010 final version. It did it all again, five years later, always ensuring that the draft received ministerial approval before it could be claimed to be 'endorsed'. But a question arises in relation to the content of versions 2 (2010) and 3 (2016), by comparison to version 1 (1999) – do versions 2 and 3 highlight incremental improvement over the original in clarity and action plan themes, or was there wholesale redrafting for other reasons and purposes? A process to 'review' creates potential for radical change, either replacing or at least reprioritising the relevance of elements in the former content, or overwhelming them with new recreational concepts and/or planning imperatives, in the process layering the text with fresh ambiguities and new jargon. These matters prompt questions about what 'progress' really means in park lands terms. For the South Australian public the 2005 legislation's requirement of five-year 'revisions' after version 2 created an illusion that park lands administrative 'progress' was occurring because updated versions kept appearing and that, of itself, had to be a good thing. But very few ratepayers or taxpayers actually read either version.

Evolution – Darwinian or what?

Park lands administrators (and South Australian politicians) at the time would have argued that the emphasis has been not on a notion of definitive 'progress' but on 'evolution'. Professor Carr has a warning for them.

> "The Darwinian revolution appeared to remove all embarrassments by equating evolution and progress: nature, like history, turned out after all to be progressive. But this opened the way to a much graver misunderstanding, by confusing biological inheritance, which is the source of evolution, with social acquisition, which is the source of progress in history. ... The transmission of acquired characteristics, which until recently was comprehensively rejected by biologists, is the very foundation of social progress. History is progress through the transmission of acquired skills from one generation to another." [18]

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[17] At year-end 2018 the entire *Community Land Management Plan* (multiple documents covering all of the sections of the park lands) was being reviewed a third time, but had not been released for public consultation. Administrators found this too demanding and in 2020 invented a much easier tactic. They took the original (and universal) CLMP Framework, rebadged it as a 'Chapter 1 General Provisions' and inserted new Access and Car Parking loopholes that encouraged excessive access opportunities and broad car parking allowances. This was not progress. It actively encouraged exploitation across the park lands. Source: Adelaide City Council, Agenda, Item 10.11, 'Draft Community Land Management Plan: General Provisions', 15 December 2020, pages 178–204.

[18] EH Carr, ibid., pages 113 and 114.

In the case of the management of Adelaide's park lands, the acquired administrative skills, or skills that needed to be acquired, were not significantly changed over the 20-year period of study in terms of the documentation and procedures, although as the procedures gained in complexity better administrative skills were needed to keep pace. So does he mean 'acquired knowledge' as well? There are people involved in park lands management in South Australia who would argue that, by comparison to 1998, the state's comprehension of all of the aspects that make up the challenge of competently and accountably managing the Adelaide park lands have been enhanced by progressively acquired additional knowledge and, as such, this view satisfies the 'progress' adherents. Professor Carr later describes his concept as 'acquired assets' and thus tends to agree. At the end of the study period of this work (2018), there existed in the archives an 11-year collection of Adelaide Park Lands Authority agendas and minutes, whose pursuit of subject matters had prompted many additional city council associated agenda studies, separate from the Authority's archives. These included policy development documents, master plans, asset management plans and park lands zone policy area development plan amendment investigations, among other reports. Before the enactment of the *Adelaide Park Lands Act 2005* (in late 2006), the city council had responded to fewer, and less well-informed references and, as such, the post-2007 expanded reference material could suggest 'progress' [19]. But as always, it is not the abundance of reports and data that counts, it is the action that stems from them, under the administrative guidance of the bureaucrats who must deliver according to the political breezes of the times. The political will is preoccupied with the notion of progress only in so far as who might benefit, how, and by when. If it cannot source rationales to justify the 'progress', it creates them. Evidence appears later in this work.

Objectivity

Turning to objectivity, Professor Carr makes a sound point when, in relation to historians being objective (and one being perceived as more objective than another) he advises: "Not ... simply that he gets his facts right, but rather that he chooses the right facts, or, in other words, that he applies the right standard of significance." [20] He writes of one's capacity to "recognise the extent of his involvement in that situation, to recognise, that is to say, the impossibility of total objectivity".[21]

I recognise it, and readers of this work who enjoy a broad knowledge of park lands matters of this period will do more than recognise it. These readers will perceive a high potential for subjective flaws. Their view may be hopefully informed by a comprehension of the significant number of city council confidentiality orders initiated over the period, especially after 2007, which resulted in the restriction of

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19 [The 2007 reference:] Although the *Adelaide Park Lands Act 2005* was proclaimed in 2005, enactment was only finalised in late 2006, and the Adelaide Park Lands Authority did not begin to meet and begin focusing on park lands management matters until early 2007.

20 EH Carr, ibid., page 123.

21 EH Carr, ibid., page 123.

public and academic access to many agenda items and minutes, and their briefing notes, legal advices, background papers or internet links. Some of those orders continued to remain in place at year-end 2018, at the conclusion of the study period of this work. Determinations of administrators, assisted by resolutions of elected members who trusted in their judgements in recommending application of confidentiality orders, have meant that any claim to objective sourcing of 'the right facts' has to be qualified.

Finally, to discuss the notion that the recording of history is about moving in the right direction, from worse to better – this is Professor Carr's idea. He makes a key point when he says: "History is, by and large, a record of what people did, not of what they failed to do: to this extent it is inevitably a success story." [22] It will be my contention that, 20 years after the commencement of a period that led to major legislative and administrative changes to park lands management, a number of matters have not ended up as 'success stories'; in fact, quite the reverse. Chapters in this work address this in detail, and the concluding chapter (Chapter 57: 'What *can* be done?') delivers recommendations for change.

While I make no claim about the standard of this work, I think Professor Carr's observation might be one test, but with some qualification: "Great history is written precisely when the historian's vision of the past is illuminated by insights into the problems of the present."[23]

This work is by no means a 'great' history. I would prefer to use the word 'timely', rather than great. At the conclusion of a tumultuous 20-year period of South Australian park lands management, this work certainly is timely in at least one sense, especially if the state is to reach the 200th anniversary in 2037 of the creation of Colonel Light's 1837 Adelaide City Plan (which includes the whole of the park lands) with a more administratively and politically transparent and accountable approach to managing the landscape character of the open spaces of Adelaide's world-renowned green belt. One can only hope that, in the process, someone succeeds in defining the meaning of those two loaded words that litter the records of every year of the period studied: 'protect' and 'enhance'. The exploration of the tension between those leading and those being led has turned on the meaning of those loaded concepts across the whole of the period of study. It would be a great handicap for future historians likely to attempt a fresh examination of the period if that matter were to remain unaddressed.

[22] EH Carr, ibid., page 124.

[23] EH Carr, ibid., page 37.

7 | The 'giants' of the park lands dialogue, 1998 to 2010

Researchers examining Adelaide historical material covering the first half of this period of study to about 2010 will find that the most definitive, perceptive and profound observations made during park lands debates can be more often than not sourced to these three 'giants'. The themes on which they focused were not just aimed at addressing the occasional fiery political dialogues, but had a timeless quality. They spoke of good faith, integrity, honesty, transparency, accountability and fairness. The tragedy for them was that others in power in South Australia at crucial times were content to sacrifice these values for short-term expediency, a park lands theme that is as old as the state itself.

Community debates that endure for long periods are often dominated by personalities who get involved either because they inadvertently find themselves in a certain place at a certain time – and as public figures therefore cannot avoid participating – or for reasons of their own self-promotion. South Australian park lands history has seen this theme over many periods. At these times, some of the more vocal people appear to be defining the direction and content of the debate, but when the tide of a particular historical period recedes, evidence of the value or originality of their participation is not always compelling. However, this cannot apply to the likes of three South Australians, Ian Gilfillan, Dr Jane Lomax-Smith and Jim Daly, who should be seen by researchers examining the period 1998 to about 2010, to have been giants striding the Adelaide park lands stage. There was a post-2002 period when deep currents of potential park lands change were flowing just below the surface of Adelaide's political waters. That period was to be followed by one of the biggest political storms to break over Adelaide's park lands, in 2007, over a multi-purpose 'grandstand' construction proposal at Victoria Park (Park 16), east of the city. It would shatter a relative calm born of the earlier years of a new Labor state administration that promised much. The storm would lead to formation of vocal tribal factions and highlight their vastly different visions of how the park lands open spaces and landscapes ought to be managed.

Many of the other personalities who played a part during the phases of that 12-year span were actually victims of circumstance – parliamentarians and their bureaucrat advisors at state level, and elected members at local government level, caught in the crossfire of sometimes angry debates. In the local government sphere, their role was to manage the facts as they saw them and procedural complexities, and keep the administrative ship afloat. The parliamentarians' aim was mostly to survive the debates with minimal political damage. It was not an easy thing to do. The management of the Adelaide park lands has always incited strong South Australian passions. There cannot have been many public officials who did not heave a deep sigh of relief when sensitive park lands debates passed and they could get back to administering less-controversial and more predictable matters. The exception, of course, from the beginning of the new century, applied to Labor's opposition leader,

later Premier, Mike Rann, who said he was committed to ensuring that Adelaide avoided becoming "a city in a car park", instead remaining "a city in a park". It convinced many South Australians that his preoccupation with park lands protection matters was as evangelical as the beliefs of some of the other park lands 'protection' advocates at the time, many of whom preached a park lands gospel focused on the notion of 'preservation'. Elsewhere in this work appears a more detailed analysis of Rann's political participation. Being a politician, his participation had more complicated motivations, by comparison to a more fundamental set of beliefs evidenced by a broad South Australian community that wished to see Adelaide's park lands survive periods of exploitative administrative shenanigans to which the open spaces had over decades been randomly subject.

Two of the three giants that would stride the park lands stage during this time and leave an enduring legacy were politicians.

Ian Gilfillan

Ian Gilfillan was an Australian Democrats member of state parliament's Legislative Council over several terms between 1982 and 2006 (but not continuously). When he retired in 2006, for some time he was viewed from the perspective of a former politician whose preoccupation with park lands matters might have been so obsessive that it kept him deeply involved in debates for years afterwards. But others viewed his 'high moral ground' approach as genuine evidence that, after he retired, he was not simply involving himself in park lands matters for political reasons. He had initiated the formation of the politically noisy but behind-the-scenes effective Adelaide Parklands Preservation Association Incorporated (APPA) in 1987 and earlier in that same year had tried unsuccessfully to get a bill passed to 'protect' the park lands. It was the same year in which Adelaide recreational administrator Jim Daly looked again at his 1980 master's thesis on park lands history.[1] He revised and updated its last chapter, and turned it into a book, *Decisions and disasters, Alienation of the Adelaide Parklands*. Gilfillan was president of APPA in the challenging years of the late 1990s when the state Liberal Party tried unsuccessfully to pursue a park lands bill that prompted much uproar but was a lost cause by the time the 2002 state election loomed. His APPA presidency ended in June 2006, but the years leading up to that year allowed him much sway, especially the early years of the new Labor administration, when Labor's park lands bill was being discussed. Even after presidential retirement, he remained on APPA's committee. There is no doubt that Gilfillan's long-term commitment to the pursuit of his and his colleagues' park lands preservation principles gave rise to substantial and significant park lands policy directions that otherwise might never have been followed. He had a grip on park lands detail unchallenged even by expert administrators whose job was to advise the decision makers, and he had a determination to confront lies, damn lies and statistics in media interviews with an ability informed by his years in the South Australian parliament. Far from settling to a life of quiet, no-further-comment

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[1] *The Adelaide Parklands: A history of alienation.* (Master of Arts degree in history, University of Adelaide, 1980, awarded April 1981.)

post-2006 retirement, which was common in Adelaide among other parliamentarians, his energy appeared to increase once his parliamentary commitments ceased. His parliamentary experience had also taught him that 20 per cent of something was better than 100 per cent of nothing. It was this philosophical approach that steeled him and his APPA colleague Jim Daly through public consultation periods about a future park lands management model, as well as Daly's 2003 and 2004 participation in government discussions leading to the 2005 park lands bill and the eventual legislation. There was high pressure from some APPA members and other members of the public, who were keen to ensure that an independent park lands Trust would emerge as the political endgame, with some making it clear that they would brook no compromise. But they would discover that although the state government was sympathetic about an 'independence' model, very late in the process it had quietly changed its mind. When the government suddenly sidestepped proposing the Trust concept that it earlier had implied would be the preferred model, park lands advocates had to accept what was a major compromise on the original vision held by and best articulated by some of Gilfillan's APPA colleagues. His '20 per cent' factor, however, remained in his mind as debates loomed about a park lands bill and moved towards deliberations on draft legislation.

Gilfillan's 2005 presence in debates in state parliament's Legislative Council marks his contribution there as perhaps his finest hour, although given that he had been a park lands campaigner for decades he had in reality enjoyed a number of such hours. He was to play a composed, constructive and ultimately vital role in achieving a number of practical amendments to the park lands bill, in sessions where the record shows that few other parliamentarians had any particular view on the necessity for small changes that had big potential for better 'protection' of the park lands. Of Gilfillan's knowledge and communication skills, most South Australian parliamentarians were clear. All had respect for him. As House of Assembly MP Ivan Venning noted in a 29 November 2005 session, Gilfillan was a determined fighter for his cause: "I congratulate the Hon Ian Gilfillan, who has been a long-time campaigner on this issue," he said in reference to the presence of the bill. "I must admit that over the years I have thought: 'What is he on about now?' However, in hindsight, thank goodness the Hon Ian Gilfillan took up the cudgels when he did, took on the campaign and fought hard to recover it."[2] Another parliamentarian, Mark Brindal, who also had considerable (but unsuccessful) former experience in seeking parliamentary endorsement of earlier park lands draft legislation, also jokingly praised Gilfillan: "I, therefore, disagree not with the Hon Ian Gilfillan, who has taken this [park lands] matter up over three centuries, to my knowledge, the whole of his working life ..."[3] Notwithstanding the praise at that particular November 2005 session, which was concluding the merits of a bill soon to be passed, there remained a bitter-sweet residue to Gilfillan's personal achievement, because he knew that it remained flawed. His unsuccessful attempts only days earlier in the

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[2] Parliament of South Australia, *Hansard*, House of Assembly, 'Adelaide Park Lands Bill', 29 November 2005, page 4221.

[3] Parliament of South Australia, ibid., page 4224.

Legislative Council to amend some matters, which would later prove to represent significant loopholes, would have confirmed that. It was left to House of Assembly MP Peter Lewis to be blunt: "The bill, as it stands, goes some distance but not far enough in protecting the park lands from the rapacious desires of government agencies and other well-heeled nefarious influences that could seek to sway the mood of the moment by putting spin on their propositions to con the public."[4]

When the Adelaide Park Lands Authority that arose out of the new Act prepared for its first meeting, in early 2007, Gilfillan was the first 'outsider' board member to be appointed by the minister to sit at its board table. The role was a 2005 Adelaide Park Lands Act concession that had delivered one place to non-agency outsiders – but, as a precautionary matter, only those who had been nominated by an "incorporated body" with substantial park lands knowledge and advocacy experience such as APPA. That allowance would open doors later, again via ministerial acceptance, to other APPA members (and their proxies) in subsequent years. It was a valuable – some might say critical – opportunity. Gilfillan's presence at the Authority table in 2007 was to deliver major tactical value in a year when the biggest philosophical park lands fight of the period was to be waged about development on Park 16, Victoria Park. It would be won by 'the people', but it would be the last time the people would win a government-activated park lands war again during the period of this work's study. Gilfillan's wise counsel and constant media presence during that fight had been vital. Once the Labor government's bruises healed, never again would any of its park lands confrontations depend on a relatively open and transparent tussle at local government level (which included its subsidiary, the Authority) drawing mainly on the Act and the contents of the first (1999) *Park Lands Management Strategy Report* (but in the absence of a site Community Land Management Plan for Victoria Park) for policy guidance. One post-2007 government tactic would feature fresh, alternative, project-oriented development legislation, in 2011, overwhelming the *Adelaide Park Lands Act 2005* and the standard park lands planning rigours of the interacting *Development Act 1993*. Alternatively, and more commonly, at other times the state would use ministerial or (ministerially leveraged) council development plan amendments that sidestepped the original rigour of the *Adelaide (City) Development Plan*. Fair play was the first casualty in these later dialogues, a brutal political response born of that 2007 government 'perceived defeat' but which had been pursued with a Labor Party confidence born of its second consecutive election win in 2006, and a prospect of another in 2010.[5] The other casualty, of course, was transparency. These 'sidestep' procedures were largely incomprehensible to an uninformed public, a matter of great convenience for Labor's planning ministers and their advisors. Notwithstanding all of the abilities available to tough campaigners like Gilfillan, these post-2007 hurdles, imposed between 2009 and 2015, would be insurmountable. The long-term lesson for people like him would be that skilled

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4 Parliament of South Australia, ibid., page 4228.

5 Despite significant margin losses in some electorates, Labor did win in 2010, and again (for a fourth term) in 2014.

resistance on the park lands pastures had the unfortunate potential to prompt even more ruthless means at state level to frustrate public protest, if a government thought it could prevail, despite what 'the people' might have thought of the subsequent outcome.

Dr Jane Lomax-Smith

Lomax-Smith was also a politician, a London-born, Australian-trained pathologist whose public office service began as a two-term councillor at the Adelaide City Council (1991–93; 1993–95), then as Lord Mayor (1997–2000). When her term ended, she joined the state Labor Party, became the preselected party candidate for the electorate of Adelaide, and was elected in the 2002 state election. Her bona fides had been established in her early years as a councillor expressing a passion for the City of Adelaide's heritage buildings and park lands 'protection' matters, and gold-plated during her Lord Mayoralty when her council on 10 November 1999 released the definitive *Park Lands Management Strategy Report: Directions for Adelaide's Park Lands 2000–2037*.[6] She had signed off on that seminal document. It was one that, among others, challenged the complacency of Adelaide city council administration at the time, establishing a more considered park lands policy base, to be a formalised reminder to subsequent Lord Mayors and council administrators how a new park lands 'custodianship' standard could manifest during future terms. As Adelaide MP, she was to play a key role in guiding post-2002 debate about future park lands management concepts and potential legislation, and ensuring that it, and associated assessment models, survived the political argy bargy that, on any other topic, might have seen much effort otherwise jettisoned in the years following the 2002 election, as more serious schools, hospitals and police matters demanded attention.

But Premier Mike Rann never gave Lomax-Smith the ministerial portfolio that managed the introduction of park lands policy change in the crucial years 2002 to 2004, instead allotting it to former teacher, John Hill, as environment minister. It did, after all, belong in that portfolio. Further, and more profoundly, Rann also never gave her the portfolio of planning, a policy area in which she would have been unusually well prepared because of her extensive local government experience. Given Lomax-Smith's temptation to dialogue with the nexus between the state's planning policy and policy relating to future administration and control of development in the park lands, the party could never have risked it. Instead, she was given the education portfolio. In retrospect it is now clear that most of state cabinet's metaphorical gambling chips remained placed on the square of maintaining the park lands 'status quo' arrangements, despite all it had said leading up to the 2005 park lands bill and, when the Act was fully enacted in late 2006, as a new 'Authority' board began sitting in early 2007. Nonetheless, a public illusion, the survival of which Labor encouraged, was that the park lands were 'under new management', and it paid political dividends for a period. Lomax-Smith played a key role in the lead-up years to parliamentary introduction of the park lands bill to ensure that it would require amendments to the interacting *Development Act 1993*

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6 Subsequently more commonly referred to as the *Park Lands Management Strategy 2000–2037*.

to disable certain development provisions in it that otherwise would have continued to be applied to the park lands. These included major project, Crown development and electricity infrastructure provisions that had been used by the former Olsen Liberal government in the 1990s to allow construction of buildings in the park lands. This disablement bid was one reason why the so-called 'new management' concept was easily comprehended and therefore attractive to the public mind. A second vital factor soon after the Adelaide Park Lands Act came into operation in late 2006 was a state cabinet dispensation for Lomax-Smith to speak publicly against a Labor government concept to construct a permanent building, a 'multi-purpose grandstand', this time at Park 16, Victoria Park, a major events site. The bid was contrary to assumed state policy and to the Statutory Principles of a new Act whose publicly perceived intention was to prevent any such thing. Many South Australians were lulled into a false sense of security about the park lands future for periods valuable to the Labor Party in its first term, 2002 to 2006, and in the years beyond the 2006 election that saw Lomax-Smith re-elected more convincingly, even though her feisty cabinet colleague, Deputy Premier Kevin Foley soon after began publicly resisting her desire to block all future major development on the park lands with his Victoria Park 'grandstand' plan.

The long, retrospective view at 2018 is that despite years of community discussion and much sound and fury over various subsequent chapters of park lands exploitation, the state would remain fully in control of park lands outcomes – with that one exception: the highly controversial 2007 government backdown over that permanent development concept for Victoria Park. It had featured a proposal for a four-storey, 250m-long building, later reduced to three-storeys and 200m-long. It was infrastructure ostensibly crucial to the rocky business operations of a horse racing industry run by the SA Jockey Club, but in reality it was more critical to the operational future of a government-backed park lands V8 car race. It was perceived as controversial dynamite to park lands 'protection' advocates in the Adelaide community who neither bet on horses nor followed the careers of V8 drivers who raced in circles on a track that had been laid in park lands against much community opposition, 23 years earlier, in 1984. It was telling that Lomax-Smith was given that special state cabinet dispensation to publicly not support the 'grandstand' concept and encourage a swelling group of protesters from across the inner-metropolitan electorates, many of whom had in good faith given Labor their 2006 vote to enable it to govern for a second term, until 2010, on the assumption that its ministers would continue to 'protect' the park lands.

The Lomax-Smith park lands 'brand' was a valuable asset for Labor, even during the lead-up to subsequent controversial decisions to redevelop Adelaide oval facilities, including a 2009 announcement about a concept for a new park lands football and cricket stadium using $450m of public money that, after the 2010 election was increased to $535m. That outcome, combined with an earlier Labor announcement that it would renege on a 1999 *Park Lands Management Strategy Report* vision to restore rail yard land to park lands so that a huge new hospital could be constructed there, began to eat away at the public's confidence about Labor's park lands 'protection' convictions. The return of the western rail yards to park lands had been

a vision that she had convincingly endorsed in 1999, but in 2006 she was to discover that her colleagues were instead confidentially planning to zone the land for that massive new hospital. The use of the land would be endorsed in the 2010 iteration of the *Adelaide Park Lands Management Strategy*, a significant revision of the original 1999 version. To cap it off, her cabinet colleague, Labor's planning minister, Paul Holloway, would be the minister to authorise the new version. The original new Royal Adelaide Hospital announcement, in 2007, stressed Lomax-Smith's image as a 'park lands protector', given that it was to occur in her electorate and she was sitting at the cabinet table and witness to what was going on behind closed doors. In the years that followed 2007 she would attend other cabinet meetings and have to listen to ministerial concept proposals for other new infrastructure to be constructed in the park lands.

Lomax-Smith's defeat in the March 2010 election (a swing of 15.5 per cent against her) said much about how far a nominally Liberal electorate might allow a Labor MP to go before suffering a political backlash. Post-election analysis indicated that the loss was related to other political issues, but the electorate's disappointment about Labor's direction on the park lands must have contributed. She had enjoyed a stellar state parliamentary career over eight years, and her passion for the park lands endured. It appeared to peak over the 2007 Victoria Park fight in which she had emerged as a strong park lands preservation advocate, but her parliamentary park lands contribution might have been evidenced several years earlier in November 2005 when in the House of Assembly discussion about the park lands bill she said:

> "I rise to speak as the member for Adelaide, and as someone who has had a keen interest and understanding of the park lands for many years. Perhaps, because I come from a place where the parks and gardens movement arose in the late Georgian and early Victorian era, I understand the quest that there was in settlement to build what was thought of as the lungs of the city around our habitable area. The iconic [Adelaide] park lands are now less than 900 hectares in area.[7] They have been the subject of continuous encroachment, damage and destruction since settlement. ... For those members who cannot understand my passion for this issue and my desire to protect the park lands, perhaps they have not lived as I have through the appalling encroachments, not just by the previous [Liberal] government, but, I must admit, previous Labor governments also."[8]

Lomax-Smith's appeal in the South Australian community had been not only her plain-speaking style, compared to many other ministers, but also her raw honesty at times, stating that one simply couldn't trust governments when it came to the park lands. In 2006, as hints were emerging from among her colleagues about a potential future raid on the park lands, she focused on how they might be frustrated:

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[7] They officially totalled 930ha at the time, but because of more than a century of built-form development, the open spaces comprised much less than 930ha.

[8] Parliament of South Australia, op. cit., 29 November 2005, page 4208.

> "The next battle has to be, not in making decisions about development, but having a development plan which actually prevents developments occurring – actually prescribes what is a legitimate use, not just for permanent buildings, but for temporary activities as well – and which of those temporary activities should never be considered in our park lands, because that land is irreplaceable. So for me, we've come a long way. We [the government tiers, state and local] have no major developments [on the horizon], but I promise you the debates that I have run through will recur. [9]

At the conclusion of the 2010 state election, with a new Liberal Party incumbent representing the electorate of Adelaide (who had not campaigned on park lands issues), few noticed that a number of other Labor ministers had also suffered a poll backlash, with an average 10 per cent swings against them, but not enough to unseat them. Labor commenced a third consecutive term after which the park lands history of commercial exploitation was to take a darker, more exploitative direction over subsequent years. It was as if Lomax-Smith's resistance was perceived by those surviving Labor MPs as a dragging philosophical anchor on their commitment to a pro-development future. It would feature a period of significant park lands development and exploitation. But between the years of her city council incumbency, beginning in 1991 and ending when her state political office concluded in 2010, she had embedded her views across a span of influential years. Tens of thousands of South Australians were influenced by it. The doubters and the waverers, especially among a younger generation not well versed in the long history of the exploitation of Adelaide's park lands, had embraced the legitimacy of her views, and the passion with which they had been put, and adopted them as their own. That generation, by 2018, were becoming senior decision makers.

Jim Daly

The third 'giant' in contemporary park lands history, Jim Daly, was not a politician. He would not label himself as someone driven by political preoccupation, either, given his usually quiet, contemplative manner and a non-political career. He worked as a state public servant, a senior officer in the Department of Recreation and Sport until retirement in 2000. The 2007 Victoria Park fight coincided with the first year of his presidency of the Adelaide Parklands Preservation Association, following the June 2006 retirement of Ian Gilfillan. While Gilfillan remained on the committee, the new role pitched Daly, an author of a widely read park lands history, into a bitter public dialogue featuring a high-stakes tactical confrontation with the state Labor government and, in particular, its aggressive minister and Deputy Premier, Kevin Foley. It had been 20 years since Daly's book had 'called out' some of the park lands ruses behind the assumption of highly sought-after park lands sites by 'entitled'

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[9] Park lands public forum 12 November 2006 – Adelaide Town Hall, final Q and A session: 'The Adelaide park lands threats, challenges and solutions', day 3 of: *The Adelaide Parklands Symposium: A balancing act: past–present–future*, 10 November 2006, co-presented by The Centre for Settlement Studies, Louis Laybourne Smith School of Architecture and Design, The Bob Hawke Prime Ministerial Centre, University of SA; and the Adelaide Parklands Preservation Association. A record of Lomax-Smith's speech appears in this work's Chapter 55: 'What has been done? A historical perspective'.

government agencies and commercial lessees.[10] In the meantime, he had been a long-term member of APPA and a key participant (as one of a trio) in 2003 negotiations with the state government that gave rise to the park lands bill, leading to the *Adelaide Park Lands Act 2005* and a new Authority whose first year of operation would be 2007 – the year Victoria Park became the focus of government development proposals. It was a row whose intensity and transparent political pressures were not publicly seen again.[11] It took all of Daly's skills and energies to manage the confrontation, not just because of the weight of 'good faith' he carried as president of APPA, good faith he had demonstrated during the 2003 and 2004 years of close government liaison to create a bill to deliver what was anticipated to be a seminal piece of community land 'protection' legislation. But it was also because, deep down, Daly was not confrontational. He had never been in political public office. He had been merely a state employee, paid to research and administer, monitor and make recommendations on recreational and sporting matters, which sometimes contributed to council and state park lands policy. The 2007 'win' – the community's resistance to the 'grandstand' plan and the state government's eventual abandonment of its bid – was a triumph. It was undoubtedly one of APPA's finest hours, and Daly remained president until 2009 before handing over to a younger member. In June 2008, reflecting on APPA's extreme challenges during 2006 and 2007, he recorded his thoughts in the Association's newsletter, thanking its members and outgoing committee members. He quoted the anthropologist Margaret Mead, describing her as someone "who saw the power of committed small groups such as APPA". She had said: "Never doubt what a small group of thoughtful citizens can do to change the world. Indeed, it is the only thing that ever has."[12]

Daly's park lands 'career' had covered more than three decades at that time. He remained an APPA member subsequent to his departure from the presidential role and in 2017 he began writing a PhD thesis, 17 years after his formal retirement from a paid day job. The topic was the role of the Adelaide park lands in the 21st century. His passion for the park lands endured.

Researchers examining Adelaide historical material covering the first half of this period of study to about 2010 will find that the most definitive, perceptive and profound observations made during park lands debates can be more often than not sourced to these three 'giants'. The themes on which they focused were not just aimed at addressing the occasional fiery political dialogues, but had a timeless quality. They spoke of good faith, integrity, honesty, transparency, accountability and fairness. The tragedy for them was that others in power in South Australia at crucial times were content to sacrifice these values for short-term expediency, a park lands theme that is as old as the state itself.

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[10] The book is further discussed in Chapter 8: 'That 1987 Daly book – why it matters more than ever'.

[11] There would be another public conflict in 2010 but without the highly emotive confrontations of 2007.

[12] Adelaide Park Lands Preservation Association, *Park Lands News*, June 2008, page 2. Other internet sources recording this quote publish the words 'thoughtful citizens' as 'thoughtful, committed citizens', but the exact quote and the original reference source is contested. See: https://en.wikiquote.org/wiki/Margaret_Mead.

8 | That 1987 Daly book – why it matters more than ever

In retrospect, such words – expediency, ad hoc planning, haphazard development, campaigns to alienate land, [political] *conflicts and sudden changes in policy – summarise not only the period 1837 to 1987, but also the subsequent period to the present day.*

South Australians seeking a broader understanding of past park lands politics are encouraged to locate and read what is perhaps the most important reference created just after the period that many believe was Adelaide's most culturally prosperous post-war years – the 1970s.

Jim Daly's 1980 master's thesis that was the basis for his 1987 book *Decisions and disasters* made tangible what was in retrospect a brilliant and fresh idea that might have occurred to any other writer years earlier, but didn't.[1]

His 'historical study of the alienation process' in relation to Adelaide's park lands set a public standard from the late 1980s (as opposed to any unpublished academic effort that may still exist in dusty archives) that was never subsequently replicated to the same extent. Nor was it challenged. In retrospect, this is surprising, given the chorus of opinions, in the form of media articles, parliamentary speeches, letters to editors, essays and other efforts that have accompanied the passing of the years on a topic dear to the hearts of many South Australians. It may be that a study of park land policy, instruments, procedures and politics is an effort not worth pursuing beyond a brief episode of curiosity, either because of the extent of study involved, or because of the manifest complexity of the topic once one begins probing the detail. But it also may be that, in the scrutiny, the discovery and revelation of lodes of humbug and skulduggery might, when published, have encouraged legal action in a small capital city like Adelaide.[2] A review of documentation in relation to park lands politics shows that such discovery is most often revealed in parliamentary discussions under privilege. But outside state parliament, attempted publication of the juicy bits is more risky. Daly's work skilfully avoided such traps. The subsequent relatively muted long-form comment about the politics (as opposed to the other matters such as settlement history, landscape and biodiversity, recreation and planning) is probably testimony to a local awareness of and sensitivity to the so-called 'free speech' risks in a small, conservative southern Australian capital city like Adelaide.

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[1] Jim Daly, *Decisions and disasters, Alienation of the Adelaide Parklands*, Bland House, Adelaide, 1987.

[2] On reviewing a draft of this chapter in March 2019, Daly noted: "[The book was] never challenged because of thorough referencing. Facts are hard to argue against."

It is worth quoting, with permission, Daly's refreshingly succinct introduction in which he summarises the motivations for his 1980 thesis, and his 1987 book:

> "First, the Adelaide Parklands are of world importance as an urban park system and they merit study in their own right. Second, the vision of the park lands as conceived by Colonel Light have been [sic] blurred by expediency, ad hoc planning and haphazard development. The extent of this alienation needs to be documented. Third, pressure groups have conducted successful campaigns to alienate parklands and the strategies by which individuals, public institutions and sporting organisations have done so are worthy of study. Fourth, because conflicts exist at state and local government level of the care, control and management of the park lands, no overall study as a whole has been undertaken, so a historical study of the alienation process is timely. Fifth, changes in policies by the state government and the Adelaide City Council over the years have created anomalies and it is appropriate to consider alternative management structures."

In retrospect, such words – expediency, ad hoc planning, haphazard development, campaigns to alienate land, [political] conflicts and sudden changes in policy – summarise not only the period 1837 to 1987, but also the subsequent period to the present day. This is despite the emergence of apparently 'ground breaking', new and enlightened park lands legislation 19 years after publication of Daly's book[3], and costly and substantial multi-tier government effort between the enacting of that legislation (late 2006) and the 10 years and more that followed. Moreover, it is also despite the fact that, during the period 2002 and 2018, the same political party was in power and therefore was not only in a position to craft this new legislation, but also to consistently pursue – in theory without any political shenanigans – the 'care, control and management' policy philosophy arising out of the early years of its incumbency. This would be in the form of myriad strategies, policies and guidelines that emerged as the years passed. That it didn't avoid the temptation of political manipulation – in the opinion of the author of the publication you are reading now – illustrates why more long-form analysis is needed to stimulate robust discussion and maintain high-level awareness about what is possible.

This is not to suggest that the particular work you are reading now is a follow-on to Daly's seminal effort. Firstly, there will be evident more than a decade's gap in historical and political coverage between the 1980s and 1998, which future researchers attempting something like Daly's academic style ought to consider covering, and in the way Daly did. Those years are certainly important, on the basis that every year subsequent to 1980 brought park land policy change, especially change in planning instrument (the development plan) evolution, as well as the fact that during part of that 1987–1998 period the state political party in

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[3] The *Adelaide Park Lands Act 2005* was proclaimed in early 2006.

office changed several times and each had a different policy approach towards park lands management. Secondly, this work, whose study period concludes in 2018, doesn't attempt to duplicate the same disciplined approach that Daly adopted, especially given his (originally academic) emphasis on a chronological historical focus on recreational activity as well as his central focus on the way recreation policy preoccupied the minds of the Adelaide park lands land managers. In this new work (*Pastures of plenty*), it appears in retrospect ironic that the very significant, government-driven exploitation of some sections of the park lands between 2010 and 2018 was predicated on a government notion of 'activation', capitalising on an attractive and effective ruse based on the idea of *further* expanding recreational opportunity. In one sense, the repeat of that theme illustrates the common observation arising out of any study of history – that the more things change the more they remain the same; only the rationalisations and justifications differ.

An unpaid debt

The South Australian community owes much to Jim Daly. He it was who, in a series of most illuminating ways, made this plain back in 1980, and in his subsequent book in 1987. He had chosen the title of the book from a statement made by South Australian Premier, John Bannon, in 1986: "There have been some brilliant decisions and some disasters. Naturally I would like to think that the disaster stage is behind us, and that nothing but brilliant decisions will be made from now on. Realistically, history tells us that this is unlikely to be the case."[4]

Daly's book is a work that, like Premier Bannon's quip, stands the test of time. The book is notable not only for the chronology, but also for the fresh light he shone on the political and administrative shenanigans related to economic matters, to which other park lands authors had not formally drawn to the public's attention. To quote a February 1998 report published 11 years after Daly's book was published:

> "Daly (1987) provides a history of the impact of sport and the alienation of the park lands from wider public use. [He] commented that the promise of further development was often used to convince [the city] council to extend the lease for a period that the club considered sufficient to make the proposed investment financially attractive. He further commented that another strategy that those clubs used to eliminate any potential competition was to seek commitment about lease renewals several years ahead of the expiry date."[5]

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[4] Extract from: Jim Daly, *Decisions and disasters*, quote on inside cover, attributed to an extract from a Bannon paper titled 'The alienation of the Adelaide park lands', presented by Premier John Bannon at a meeting of the Historical Society of South Australia on 30 May 1986.

[5] Hassell, *Park Lands Management Strategy, Issues Report*, 23 February 1998. Appendix: 'Review of Economic Contribution' prepared for the City of Adelaide 19 February 1998, Doug Young, SA Centre for Economic Studies, University of Adelaide, page 2.

There is much more to Daly's book than this, but Daly was the first to call out some of the tactical games park lands lessees played, some of the concessions allowed by the lessor (the city council), and some of the ways policy makers allowed the ruses to thrive.

A core reference

Decisions and disasters should be a resource in every South Australian home and office or, better still, accessible on every South Australian digital device. In late 2017 Daly was asked about whether his book had been digitised and was available in PDF or other form.[6] He responded that it was not, and that the question had not occurred to him. One reason might well have been that, by 2017, 30 years after publication, awareness about the book, and consequent demand, was low. To put it another way, the generation that had pursued and protested about park lands exploitation matters in the 1990s and early 2000s had forgotten about the book, and the critical role that Daly played in creating a vital historical perspective to (then) contemporary park lands matters, shared among active participants at the time.[7]

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[6] John Bridgland: email communication to Jim Daly.

[7] A PDF copy of Daly's book can be found at: www.adelaideparklandssecrets.com

9 | Why is David Jones' work relegated to the archives?

There is another South Australian park lands resource of immense relevance and scholarship – but very few park lands observers are aware of it. The *Adelaide Park Lands & Squares Cultural Landscape Assessment Study* is a six-volume work whose scope is extensive and whose content is extraordinarily detailed. It was written by Associate Professor Dr David Jones of the School of Architecture, Landscape Architecture and Urban Design, at the University of Adelaide, through a 2004 commission from Adelaide City Council. This was to assist the council as it commenced the writing of Community Land Management Plans for the park lands. Why do so few park lands 'protection' advocates know about this work? Some reasons are explored below.

The study's origins and purpose are explained in the following extract, taken from page 3 of volume 1.

> "There is a general community acceptance that the *Plan of the City of Adelaide*[1], as prepared and surveyed by Colonel William Light, is a significant attribute of the City of Adelaide. Within this plan are the park lands and squares that are the 'green lungs' of the municipality, but also a major community resource. To this end the Corporation [of the City of Adelaide] successfully sponsored the nomination for the 'City of Adelaide Plan' to the Register of the National Estate, as administered by the Australian Heritage Commission, in 2004. This nomination followed extensive community consultation that enabled the development of the *Park Lands Management Strategy Report: Directions for Adelaide's Park Lands 2000–2037* (1999). But what was lacking from both the Strategy (1999) and the registration (2004) was a substantive examination of how the park lands and squares had evolved and particularly what was of cultural heritage merit and significance today."[2]

Remarkable insight

The study's executive statement went on:

> "This *Assessment Study* (2007) provides a remarkable insight into the 'making of the Adelaide park lands and squares'. It reviews the historical development of each park land block and squares, considers development and management themes, identifies tangible and intangible extant cultural heritage, and assesses the cultural heritage merit of components identified.

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1 More commonly referred to as: 'Adelaide City Plan'.

2 Associate Professor, Dr David Jones, (through) Adelaide Research and Innovation Ltd, University of Adelaide, The *Adelaide Park Lands & Squares Cultural Landscape Assessment Study,* publicly released in October 2007, 'Executive statement', page 3, 0.0 Contents.

> More importantly it unfolds the tapestry of how and why the park lands and squares have been developed the way they have, and firmly demonstrates that while the 'Plan' itself is of major cultural significance, so too is the process of 'making the Adelaide park lands and squares' as well as much of the physical evidence that narrates this 'making'.
>
> The *Assessment Study* (2007) has applied a detailed historical analysis approach, reviewed in detail the historical development of each park land block and square, and identified extant evidence of cultural heritage merit. Thereupon it has proposed policy and heritage recommendations, including considering the overall context and position of the Adelaide park lands and squares against a local, state, national and international cultural heritage criterion.
>
> Whatever the recommendations and actions that evolve from this *Assessment Study* (2007), the report itself provides the answers about our relationship with the park lands and squares and how it has changed, grown, and wilted over the years. It unravels the myths and narratives about the 'making' of this landscape and will remain a significant resource in its own right."[3]

For readers who seek a brief overview of the chronology of the evolution of the park lands and squares, Jones' work includes a comprehensive, seven-page summary of key dates related to key events. That might not sound much, but it covers about 2,100 events.

Later outcomes prompt further inquiry

The 'lost' aspect of this major resource, in day-to-day management terms, and especially in relation to the *Community Land Management Plan* for the park lands, demands explanation. The simplest rationale may be the size – six volumes – and the fact that the detail is voluminous – and in fine print. That may be a superficial reason.

A second reason – explored further in an appendix to this chapter[4] – may be that the 2007 study served an important purpose for about six years, but in 2012 when city council decisions were taken to revise the content of the first versions of the *Community Land Management Plans*, the content of the study was no longer deemed as highly relevant to contemporary park lands policy as it was in 2007. This is at the very least curious. Were there other reasons? One potential motivation may have been a desire by administrators to diminish reference to the highly detailed David Jones study for convenience reasons, and possibly manipulative reasons.

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3 Associate Professor, Dr David Jones', ibid., page 3.

4 Appendix 12 (*Pastures of plenty*) 'Exploring the David Jones' study mystery'.

These are explored in Appendix 12 of this work (*Pastures of plenty*): 'Exploring the David Jones' study mystery'. Rationales may include:

- Not sufficiently exhaustive to endure as a working reference.
- Administrative determinations about the future content of Community Land Management Plans.
- The political consequences of the study's recommendations for heritage listing.
- Policy revision opportunities made possible in the *absence* of explicit reference to the contents of the David Jones 2007 study.

A more detailed exploration of Community Land Management Plans[5] in this work began with Chapter 5: 'A brief introduction to Adelaide's park lands administrative machinery'; in particular, the section within it that examines the concept of *Community Land Management Plans*.[5] A deeper analysis of CLMP origins and park lands policy role continues in Appendix 11: '*Community Land Management Plan*'.

A warning for beginners

One of the many themes of this work is that certain park lands documentation, while enthusiastically endorsed for a time, could reach a use-by date, sometimes suddenly, and be set aside in favour of new documentation that underwrote a new policy direction. That direction is almost always politically driven. The history of the rise and fall of the perceived value and relevance of the David Jones study, and the subsequent evolutionary pathway of versions of the *Community Land Management Plans* to guide management direction of Adelaide's park lands, illustrate that significant city council administrative policy investment could be written off if the political will directed. Readers' pursuit of these details can take them into a demanding review pathway pot-holed with administrative complexity, frequently informed by political currents that are not always obvious at the time, the traces of which fade quickly.

[5] The first CLMP versions up to about 2009 comprised individual plans for each park or small group of parks. Thus the document reference was in the plural: CLM *Plans*. However, after about 2012, when the plans were significantly revised, the collection of plans began to be described as one document, thus being captured under a singular reference, as the *Community Land Management Plan*.

PART 3

The document was rich with philosophical, historical and cultural management concepts, but the one really big idea was confined to one page and two paragraphs. There would now be a specific past and a specific future for the Adelaide park lands.

Extract, Chapter 11:
'The first *Park Lands Management Strategy Report*'

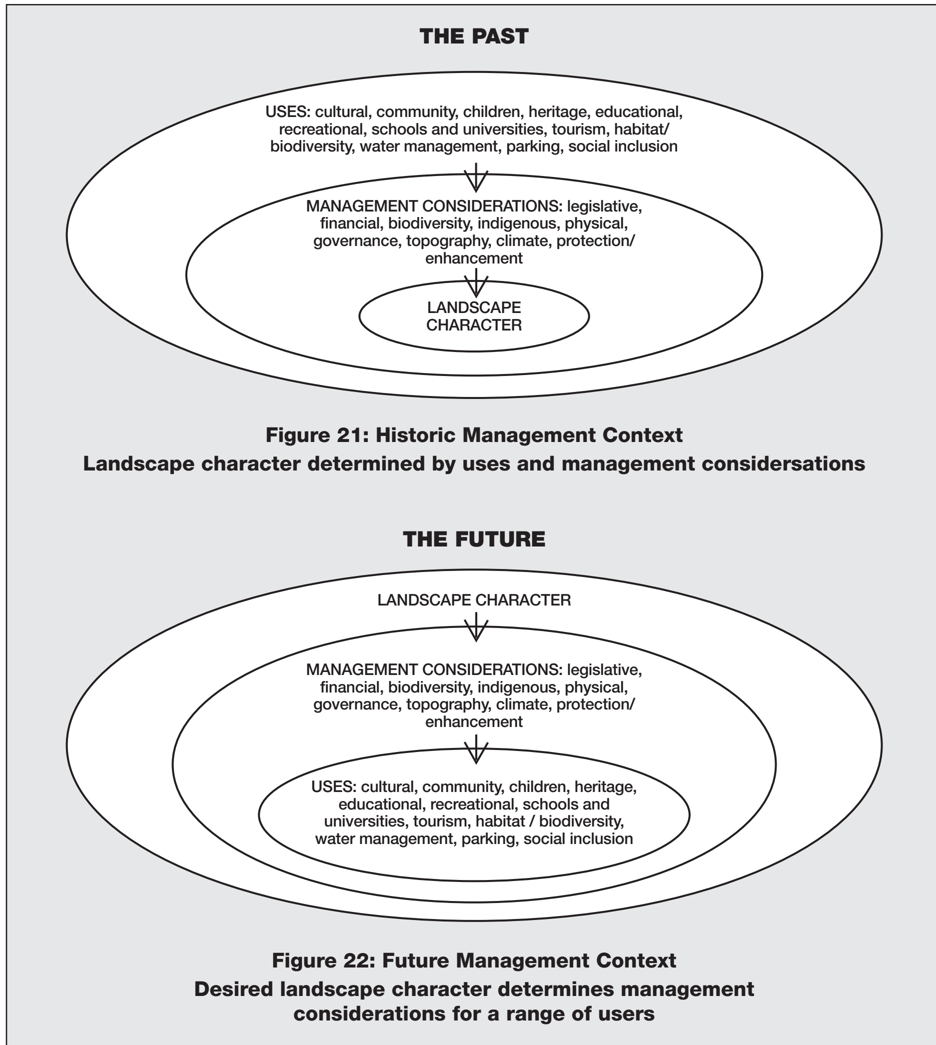

Figure 21: Historic Management Context
Landscape character determined by uses and management considersations

Figure 22: Future Management Context
Desired landscape character determines management considerations for a range of users

The past – and a new future. What appeared as a simple concept in 1999, published in the first Adelaide City Council *Park Lands Management Strategy Report, in retrospect signalled a profound new policy approach at the time. Above: Figures 21 and 22 from the report. They summarised how council administrators in 1999 saw a new future direction for management of Adelaide's park lands. The landscape character focus would linger for more than a decade. But the 2010 emergence of the second version of the *Park Lands Management Strategy* gave early hints that a state preoccupation with landscape character in park lands management was to be replaced with a more focused sport and recreation 'activation' vision, with less focus on landscape typologies. The definitive end of the 1999 landscape focus came in 2016, when the 2011 *Adelaide Park Lands Landscape Master Plan*, a complementary appendix to the 2010 Strategy, was very suddenly, and without public notice, rescinded to make way for the new ideology, in the form of the third Strategy (2016).**

(*Source of these figures:
Park Lands Management Strategy Report [1999]:
Directions for Adelaide's Park Lands 2000–2037, Section 7, Figures 21 and 22, page 47.)

PART 3 The planning and the management contexts

Chapters

10 | The 'watershed' period begins
(The 1998 report that explored the park lands management terrain, a probing audit lost in time.)

11 | The first *Park Lands Management Strategy Report*
(A visionary 1999 publication, a 37-year plan for a 2037 celebration, now long abandoned.)

12 | The governance of public space and the politics of planning
(Why so few park lands 'protectionists' comprehend the way planners perceive park lands dirt.)

"Historically, the park lands have been defined by uses and management considerations which have dictated the landscape character. It is intended that the future management of the park lands will be a reversal of this process and that desired landscape character will guide management considerations and uses."

Extract – Hassell, *Park Lands Management Strategy Report: Directions for Adelaide's Park Lands 2000–2037*, published November 1999: Section 7, 'Broad future character areas', 'Overview', page 47.

Other links to chapters in PART 3

Chapter	Appendix link
10 | 'The 'watershed' period begins'. **11 | 'The first *Park Lands Management Strategy Report*'.**	**Appendix 13:** '2018 author retrospective on the 1998 *Issues Report*'s concerns about park lands management'.
12 | 'The governance of public space and the politics of planning'.	**Appendix 14:** • **PART 1:** 'Park lands planning and the political environment in the 1990s'. • **PART 2:** 'Reflections on late 20th century planning matters regarding the park lands'.

10 | The 'watershed' period begins

No study of park lands documentation, policy and procedure during the 20-year period between 1998 and 2018 should commence without detailed reference to the 1998 Hassell Issues Report because it catalogues the history and 'state of play' in relation to the administrative provisions in place at the beginning of what would become a watershed period. But even in 1998 it had not been a widely circulated document. That feature would apply to the subsequent 1999 Management Strategy that arose from it.

The management context – Part 1

The year 1998 didn't mark the beginning of the story of Adelaide's park lands, but it might have been perceived that way for the South Australians who were in their mid-40s then but too busy to conclude otherwise. Any perception that 1998 was 'Year Zero' would have been based on the commonplace fallacy that histories have definitive 'beginnings'.

By 1998, almost 160 years of the South Australian history of the park lands had been recorded, discussed and archived, with comprehensive references noting the decisions, operational phases and functions to which the park lands were subject. However, the focus on its recreational purposes, as opposed to its development purposes, is much more recent, first formally emerging in a review in 1916, in the opinion of one 1987 researcher.[1] That means there was an even shorter period, covering only about 100 years.

The years leading up to 1998 constituted a period during which the custodian of much of the park lands, the city council, was approaching what can now be described as a watershed period. But it did not emerge from nowhere, and it was not exclusively focused on the council. Eleven years earlier, in 1987, a political and social ferment would first see a draft bill and much community noise "... to prevent development of the City of Adelaide park lands without approval of both houses of parliament ..."[2] In the same year there was re-activation of an older park lands protection advocacy group, accompanied by its renaming as the Adelaide Parklands Preservation Association Inc. Members of this group would play a major role in influencing the evolution of park lands management approaches by the city council and the state government.

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1 Jim Daly, *Decisions and disasters, Alienation of the Adelaide parklands*, Bland House, 1987, page 181.

2 Jim Daly, op. cit., Index, page 213, 'Draft Bill Prepared by the Parliamentary Council on the instruction of the Hon IG Gilfillan, MLC, 29 January, 1987'.

Rumblings, but no eruption

In 1999 there had been more activity in the form of further attempted legislative change in presentation to parliament of another park lands bill by the state Liberals. It is discussed in detail elsewhere in this work. Both the 1987 and the 1999 bills can now be seen as signs of early metaphorical volcanic activity, more rumbling than eruption. One reason was because the circumstances necessary for the ultimate eruption were not all in place. Neither were the personalities yet in positions of power capable of creating it. This would emerge a few years later, between 2002 and 2005, when the most profound changes would be triggered and new legislation passed that would have effect to the end of the span of years of this study, and likely well beyond. The outcomes of those dynamic years represent the 'present day' approach to park lands management – and many park lands observers today, perhaps naively, assume that it has always been this way.

The landmark document: The *Park Lands Management Strategy Issues Report,* 1998

This city council-commissioned report remains a landmark in park lands history.[3] It foreshadowed the evolution of orderly preparation and presentation of new park lands management ideas, concepts and plans, and came at a time when the apparent balance between park lands recreation and park lands sporting activity was perceived to be at risk. There also were other forces of change leading up to 1998. As the *Issues Report* noted:

> "It is against this contemporary context of new attitudes to recreation, economic viability, changing demographic profiles (both in the City of Adelaide and South Australia), new attitudes towards environmental controls, and a desire for greater community involvement in decisions which affect them, that the review undertaken in this issues paper has examined a comprehensive range of issues as they relate to the park lands."[4]

Much of the cultural shift summed up in the above extract as a "contemporary context of new attitudes" is self-explanatory, except perhaps the demographic profiles matter, which may not now be something that post-2018 readers recall. It referred to Adelaide's extent of multicultural change via immigration to South Australia in the decades leading up to the 1990s and a consequent increase in demand by foreign-born communities to stage events in the park lands to reflect and celebrate that diversity.

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3 The full title is: Hassell, *Park Lands Management Strategy, Issues Report, Prepared for the City of Adelaide, 23 February 1998*.

4 Hassell, op. ct., 23 February 1998, John Bedford, Project Manager, Part 2, 1, Context, [Footer:] "Part 2, section 1, page 3".

The 1998 *Issues Report* is of significant historical note because it illuminates economic and administrative features at the beginning of the ferment that was to follow. Today, very few South Australians have read it. More particularly, neither have many park lands commentators, critics and 'protection' advocates. This foundation document was prepared for the City of Adelaide by consultants Hassell Pty Ltd, the research commencing in 1997 and the outcome result distributed on 23 February 1998. Ten expert reviews explored a range of matters. Note that it was published by the city council, not the state government. In one sense this was proper, given the long-held role of the council in regard to the park lands that surrounded the city, and had been since the council was given a 'care and control' operational and administrative role as a result of legislation in 1849[5], which 'custodianship' was legislatively fine-tuned 12 years later. The 1998 *Issues Report* would be the precursor to the first *Park Lands Management Strategy*. That followed a year later, again commissioned by the city council.

A bold exploration

The 1998 report was not only vigorously curious in its explorations, but also seemingly definitive in its vision. On that theme, it will not be surprising to those who follow South Australian park lands history that the final document was delivered by someone many viewed as similarly vigorously curious and definitive in her views, a Lord Mayor who was of a distinctly different stamp from many of her council elected member forebears – Dr Jane Lomax-Smith. A pathologist by vocation, her preoccupation with Adelaide's park lands and passion to resist its alienation and exploitation was notable. The *Issues Report* had been an objective first contemplated by government in 1994, and may not have arrived in 1998 but for the drive with which Lomax-Smith pursued a goal of establishing a basis on which future park lands management might be consistently and more thoroughly established.

No study of park lands documentation, policy and procedure during the 20-year period between 1998 and 2018 should commence without detailed reference to this report because it catalogues the history and 'state of play' in relation to the administrative provisions – as well as the poorly addressed areas – in place at the beginning of what would become a watershed period. But even in 1998 it had not been a widely circulated document. That feature would apply to the subsequent 1999 Management Strategy that arose from it.

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[5] The *Municipal Corporations Act 1849* – placing the park lands under the 'care, control and management' of the Adelaide City Council, apart from six government reserves. The City Commissioners managed this responsibility until the Act was proclaimed on 1 June 1852. The 1849 legislation did not imply that the council owned the park lands. Legislation in 1861 stated that they would be vested in Her Majesty (Queen Victoria) and her successors.

Primitive management basis in previous decades

One extract from the *Issues Report* may surprise some today who assume that park lands management, and especially development (land-use planning) considerations, had always been a methodical and planned process, following a series of evolutionary documentation phases that ran in logical and sequential ways, expanding on what went before. The report notes that this is a myth.

> "Until the 1970s and 1980s, the park lands development was not supported by written management and development policies. In response to this, statutory documents were prepared to 'write in' and 'write out' acceptable forms of development in the park lands, within a strong and conservative framework ... The existing Planning and Design guidelines [as at 1998] which support the statutory framework only make brief mention of the Adelaide park lands."[6]

This point is reinforced in the report's appendices, and one in particular, the Appendix review, *Review of Statutory Planning Framework for Adelaide Park Lands*.[7]

The park lands operational context

The 1998 Hassell *Issues Report* usefully contains 10 appendix expert reviews that preserve in time summaries of the social, economic, administrative and political comprehension of key park lands issues prevailing in the late 1990s – long before the 'big bang' of the 2005 Adelaide Park Lands Act and the avalanche of policy documentation that would follow. Today the report's appendices comprise an invaluable baseline reference with which to compare subsequent arrangements and features. Reviews are listed in the sequence as they appeared.

- Review of recreation and sport.
- Public art Report.
- Cultural activities and events.
- The cultural significance of the Adelaide park lands: A preliminary assessment.
- Review of environmental issues.
- Stormwater management and land contamination.
- Traffic report.
- Origins and legal status of the Adelaide park lands.
- Review of Statutory Planning Framework Report.
- Review of Economic Contribution Report.

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[6] Hassell, op. cit., 23 February 1998, John Bedford, Project Manager, Part 2, 1, Context, [Footer:] "Part 2, section 1, page 1".

[7] Hassell, op. cit., 23 February 1998, author, Terry Mosel (Hassell), review filed for inclusion in the study: 17 February 1998.

Core themes in brief

- There was a focus on the need to establish 'the right balance' between recreation and sport activities, noting that demands for leases (for organised sporting groups) at times exceeded demands for (shorter term) permits and, as such, were seen as a symptom of a lack of balance.
- There was a lack of community, council and government awareness about how unique were the park lands to 'the psyche of the population' of South Australia. (This observation was made by an observer with interstate experience, which gave him a broader perspective with which to observe local 'blind spots'.)
- There was a tension between the city council's allowances and approvals for park lands use, and the state's desire to see the park lands used 'in keeping with the overall projection of the city's character'.
- There was more tension regarding the difficulty of establishing a meaningful distinction between 'public recreation, amusement, health and enjoyment', and formal sport groups' enthusiasm to construct buildings and infrastructure of a permanent and sometimes visually dominating character.
- This contrasted with what was seen to be a conservative city council policy approach to events planning, with it reflecting a 'facilitation rather than creation' approach. It also had no coherent financial approach to managing park lands revenue and expenditure matters that might not only determine the real cost of park lands use but also prompt adoption of policy to address it.
- There was evidence for the beginnings of a gradual evolution of Adelaide planners' views about park lands uses – 'rejecting the notion of arriving at specific end points' and instead favouring 'evolution towards a number of potential scenarios'.
- This contrasted with the rather primitive planning policy management environment in place at the time.

Further reading

An appendix to this work explores the contents of each review report, and adds 'in retrospect' observations that, at year-end 2018, put the 20-year-old *Issues Report's* appendix discussions into contemporary context. For a more detailed exploration of these themes see Appendix 13: 'A 2018 author retrospective on the 1998 *Issues Report's* concerns'.

11 | The first *Park Lands Management Strategy Report*

> *"The Park Lands Management Strategy proposes substantial changes to the Adelaide park lands, as set out in the Vision and Directions, and as set out in the framework drawings* [11 figures]. *These changes will gradually occur, over 37 years, reflecting the size of the program, the desire for quality and the reality of the time it takes to fully understand and bring appropriate change to park land areas."* [1]

The management context — Part 2

The 1999 *Park Lands Management Strategy Report: Directions for Adelaide's Park Lands 2000–2037* totalled 78 pages, followed by about another 30 pages of appendices. The project team that created it comprised every relevant Adelaide expert willing to assist at the time. The Olsen Liberal government was two years into its second term. It was a period in which there was much heated debate about the future of the Adelaide park lands. Two topical proposed park lands development projects, being contemplated for approval by the state Liberals, were dividing not only residential communities but also parliamentary communities. They were the construction of a National Wine Centre in the east park lands adjacent to the Botanic Gardens, and a major redevelopment of a private commercial gym, the 'David Lloyd Leisure Centre' opposite Pinky Flat overlooking Torrens Lake.

The council's *Strategy Report* advisory team included a management committee of seven, as well as five administrative advisors, 20 from a 'cross divisional officer's group', 16 from an advisory group, and 23 experts from four of Adelaide's best project management consultancies. As well, two came from the University of SA, and one from the University of Adelaide. Many were local, but others brought interstate perspectives. In addition, two others came from the Kaurna Aboriginal community of the Adelaide plains, as well as an architect from a private firm. To note that it was a group effort would have been an understatement.

The 'one big idea'

The document was rich with philosophical, historical and cultural management concepts, but the one really big idea was confined to one page and two paragraphs. There would now be a specific past and a specific future for the Adelaide park lands.

> "The park lands today are a result of the past 163 years of management, considerations and uses. What started out as natural habitat manipulated by the indigenous people has become a reconstructed, managed landscape with little resemblance to the original form and structure.

[1] Hassell, *Park Lands Management Strategy Report: Directions for Adelaide's Park Lands 2000–2037*, 10 November 1999: part C, section 10, Implementation, page 73.

> Historically, the park lands have been defined by uses and management considerations which have dictated the landscape character. It is intended that the future management of the park lands will be a reversal of this process and that desired landscape character will guide management considerations and uses."[2]

Consistent with that philosophy, the Strategy's environment directions were crafted to achieve that vision. They included directions to:

- "manage and promote the park lands as a comprehensive and integrated system with areas linked through landscape features …
- "classify the park lands according to landscape and environmental precincts" and
- "protect and enhance existing biodiversity habitat."[3]

Origins

The origins of the Strategy dated back to city council investigations in 1997 leading up to publication of a ground-breaking 1998 summary document – the council-commissioned Hassell *Issues Report* of 1998.[4] Other source material had comprised 1970s and 1980s versions of the primitive planning guideline *The City of Adelaide Plan*, and the more advanced city development plan current as at 1998, as well as the social, environmental and political management philosophies reflected in existing city council and parliamentary views leading up to the date of the release of the *Issues Report*.

One plan for one park lands future

Although the release of the 1999 Strategy suggested that here at last was the definitive, long-term plan prescribing in great detail aspects of future management of the park lands, the apparent commitment to its directions and action plans would prove to be short-lived. Within 10 years, the document would be replaced by a new, significantly revised draft.

A 37-year vision

It is a matter long forgotten, but the 1999 Strategy was intended to survive, operationally intact, until 2037, the 200th anniversary of the creation of Colonel William Light's 1837 Adelaide City Plan. That intention was driven by Adelaide Lord Mayor, Dr Jane Lomax-Smith, the leader of the management committee and the advisory group. The Strategy featured actions, priorities and timelines, as well as 'a plan indicating how much of the overall strategy should be achieved by 2037'.

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[2] Hassell, op. cit., 10 November 1999, Section 7, Broad future character areas, Overview, page 47.

[3] Hassell, op. cit., 10 November 1999, Vision and Directions, 6, Vision and Directions, Directions, Environment, [Footer:)] Section 6, page 44.

[4] The full title was: Hassell, *Park Lands Management Strategy, Issues Report, Prepared for the City of Adelaide*, 23 February 1998.

A strong theme was that there was a new energy to pursue a trend towards park lands 'social enterprise', as opposed to 'commercial enterprise'. In her preface to the Strategy, Dr Lomax-Smith wrote:

> "The Management Strategy reflects the broad consensus of our community; that the park lands are of outstanding value, helping to define Adelaide physically, culturally and emotionally, in ways both obvious and subtle; that there should be no further commercial development within them and that they must be protected and enhanced into the future." [5]

The "no further commercial development" intention spoke of the prevailing sentiment, widely shared.

But within a decade the Strategy's intended shelf life would be overwhelmed after the enactment of a new *Adelaide Park Lands Act 2005*. It formalised a requirement for a Strategy under law, which until then had simply been a city council initiative of 1998. The 2005 Act required that a Strategy must be 'reviewed' every five years and perhaps amended. It wasn't specific on that point, on which would turn subsequent actions that would see the creation of a new Strategy well before all of the goals and objectives of the 1999 version had been achieved. It would also allow for progressive growth of a culture of park lands documentation revisionism that over subsequent years would give rise to aspirations and visions that would have disturbed those in control in 1999. For example, the words "no further commercial development" within the park lands would never be seen again in a subsequent Strategy during the study period of this work.[6] Moreover, within 17 years, at the 2016 publication of the third Strategy version, the notion that "desired landscape character will guide management considerations and uses" would be overwhelmed and buried beneath the weight of the state government's anticipated future directions, including a suite of new 'activation' aspirations, captured in that 2016 version.

Binocular vision ahead

The 1999 Strategy had featured two approaches – a 10-year plan, and a 37-year plan. The action plan to 2009 required sufficient time for the gathering of comprehensive but critical management data in the early years, accompanied by directions to implement management priorities across five core themes. They were:

- Environment
- Buildings and land
- Accessibility
- Management and funding
- Community and culture.

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[5] In: Hassell, op. cit., 10 November 1999, Preface, [Footer] Executive summary, page ii.

[6] *Pastures of plenty*.

Given that reviews, further studies and master planning work would take time to be completed, the Strategy very reasonably anticipated requiring the period 2000 to 2009 to finalise them and implement the recommended changes. But events would work against this intention. After the *Adelaide Park Lands Act 2005* was finally fully brought into operation in late 2006, Adelaide Park Lands Authority activity that subsequently commenced in 2007 would ensure the replacement of the original vision of the 1999 document with a 2010 vision that would be significantly different. In delivering that second version, the Authority would relegate the 1999 Strategy to the archives. That archiving included aspects of its far-sighted long-term action plan[7] aimed at directions to be achieved by 2037 – a major South Australian state and park lands anniversary: 200 years after Colonel William Light created his Adelaide City Plan featuring a ring of park lands surrounding the city. The premature end to the shelf life of the 1999 Strategy would see the demise of its major philosophical direction. It had been captured in the following extract:

> "The seemingly differing attitudes and expectations regarding protection of the park lands from development of new buildings and enclosures, while ensuring the continued viability and amenity of buildings and enclosures servicing recreation and cultural activities, can be facilitated through a strict management policy of overall reduction in building footprint and enclosures during the vision period, 2000–2037."[8]

Among other directions had been an aspiration to return certain park lands sites to "publicly accessible park land areas" over periods of between one and 30 years.[9] Much of that aspiration would not be delivered, either. Among its 'Buildings and land' directions was a goal to "... achieve a significant reduction in building floor areas and hard-paved areas in the park lands".[10] This aspiration would also never be achieved over the study period of this work, to 2018, or indeed, to 2022. Indeed, it would increase as time passed.

A new Authority wields authority

Agendas and minutes covering the first year of operation of the Adelaide Park Lands Authority in 2007 show that board members and administrative staff worked under considerable duress to quickly address a number of demanding matters.

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7 Titled "Park Lands Concept Plan 2037, 200 yrs after Colonel William Light conceived the park lands". (Figure 34 in the Strategy document.)

8 Hassell, op. cit., 10 November 1999, 8, Park Lands: Overall Frameworks, [Footer text:] Section 8, page 52.

9 Hassell, op. cit., 10 November 1999, Park Lands: Overall Frameworks – Table 2, 'Alienated land, priority returns', [Footer text:] Section 8, page 54. Of the six sites listed in 1999, only one had been returned as green open space 20 years later – the SA Water depot at Thebarton (Park 25, adjacent to Port Road).

10 Hassell, op. cit., 10 November 1999, 6, Vision and Directions, Directions, Buildings and Land, [Footer text:] Section 6, page 44. In fact, both building floor areas and hard-paved areas would significantly expand as the number of park lands buildings and sporting facilities increased, especially beyond 2011.

This particularly applied to an apparent urgency to 'review' the 1999 *Park Lands Management Strategy Report*. In practice, that 'review' became 'replacement'. This urgency was based on an assumption that the Authority had to replicate the original 1999 task and create a fresh Strategy, but board members should have hesitated before they committed to the task. They had read the new *Adelaide Park Lands Act 2005* and its section 18 which stated: "(1) There will be a *Park Lands Management Strategy*; (2) The management strategy will be prepared and maintained by the Authority." But there already was a Strategy, it already had been 'prepared', and at 2007 its action plan matters were still to be fully addressed. The longer-term action plan, aiming at 2037 objectives, had barely begun to take effect.

In the original Strategy there had been 16 'Year-1' (that is, year 2000) 'priority actions' describing a heavy workload of surveys, projects to create databases, events planning, reviews and project commencements. Some were still 'works in progress' six years later in 2007. These were linked to a more extensive list of strategies and actions across 16 detailed pages, covering the five core themes (environment, buildings and land, accessibility, management and funding, and community and culture). A total of 14 key directions and multiples of associated actions underscored a fine-grained approach to future park lands management.

In the Strategy's preface, Lord Mayor Lomax-Smith had written that the document would be intended "... to foster a new clarity of direction".[11] That, at least, was the aspiration. However, future political and administrative influences would not only alter that direction, but also fog the clarity that had so abundantly characterised the contents of that first Strategy.

Further reading

Readers seeking to explore how administrators rationalised the abandonment of the 1999 Strategy should turn to Part 8, which begins with Chapter 35: 'Towards the second Park Lands Management Strategy'.

Readers seeking to explore the political context in which the 1998 *Issues Report*, and the 1999 *Park Lands Management Strategy Report 2000–2037* were contemplated, could continue with the chronological flow of chapters, or go to Part 4 and its first Chapter 13, 'Seismic rumblings – park lands dialogue as the new century arrives'.

[11] Hassell, op. cit., 10 November 1999, Preface, Executive summary, page i.

12 | The governance of public space and the politics of planning

In the South Australian governance of public space, the politics of planning play a central role in terms of how development can occur across Adelaide's park lands. It is regrettable that so few South Australians – mostly strongly committed to the 'protection' of Adelaide's park lands – comprehend the machinery arising from the legislative framework that is brought into play when a development application emerges. One reason is that the machinery applies in a late-stage forum separate from day-to-day city council administration, and draws on a planning instrument that few know about, and even fewer have scrutinised.

The planning context

South Australians in the late 1990s who understood little about the rules for development in the park lands would have been forgiven for assuming that the new *Park Lands Management Strategy Report 2000–2037* was the planning reference on which the city council would rely when a development proposal arose, such as construction of buildings, bridges, fencing, car parks or facilities for sport and recreation. This assumption was false, but it had been based on regular references to that action plan in the years following its 1999 publication. These references created a public impression that the Strategy was the principal 'rule book' that determined what got approved, and how and why.

But the real reference was prescribed by planning legislation and one particular instrument, a document that planners used to assess whether or not a proposed development could be approved.

As the 'watershed period' of the late 1990s was evolving into the early years of the new century, the principal park-lands-related legislation was the *Development Act 1993*, and the instrument was the *Adelaide (City) Development Plan* for the city's park lands zone.[1]

To those South Australians passionate about preserving the park lands landscapes, but not trained in legal matters, the 1993 Act and the development plan were poorly acknowledged references, and the way in which land-use determinations were made was difficult for most observers to comprehend. A major reason for this was that, although a proposal might be first discussed at city council level, the assessment of a development application would be made only at the end-stage, not by the park lands managers, but by professional expert planners and assessors in a

[1] This was the precursor to the *Planning and Design Code*, which would replace it 22 years later in March 2021 under updated (2016) planning legislation.

separate forum, following procedures and conventions prescribed under the 1993 Act. In many cases, public attendance at the approvals forum was minimal, and most observers who did attend did not clearly understand how assessment worked.

The machinery in brief

Arrangements under the 1993 Act were complicated and demanding of planners. The development plan was challenging to work through, and even more demanding of non-expert audiences. Twenty years after that 1993 legislation came into operation, a 2013 city council assessment noted in retrospect: "A fundamental constraint with development plans is that they contain a large number and range of policy provisions to be worked through to undertake an assessment, impacting efficiency and ease of assessment."[2]

Other aspects, which also contributed to confusion and suspicion of dark, developer-led conspiracies among park lands 'protection' advocates, arose from how planners and determining bodies arrived at recommendations to approve. For example, as the city council also noted in 2013: "A fundamental constraint with the development plan ... is that it puts forward a benchmark of 'outstanding' development but allows in practice a much lower test of 'reasonableness'." [3] One reason for this arose from a government change in plan statutory policy during the 10 years to 2013 from a 'prescriptive' to a 'performance-based' approach. "A prescriptive policy approach is where the development plan describes in an easily measureable term (often with numerical standards) the standard [that] new development is to meet."[4] [But] "A performance-based approach is where the development plan is written to describe the outcomes to be achieved by 'development', but the plan leaves it open to the developer to determine how to satisfy the outcome." [5]

By the end of the study period of this work, at 2018 two other approaches applied to the *Adelaide (City) Development Plan*, and therefore to planning assessment of proposals for the park lands. As the council had noted in 2013: "The city council has been a leader in the use of desired character statements since prior to the *Development Act 1993* and its experience supports the value of having desired character statements. It is also the experience that the relationship between Desired Character Statements and Principles of Development Control can lead to [a] lack of user friendliness." [6]

Put more bluntly, what the council observed was that, for most non-planners and objectors to development proposals for the park lands, the language used in the statements and the principles was often at best ambiguous and at worst confusing, and that, over the 20-year period of study of this work, these features allowed assessors plenty of interpretation wriggle room to justify recommendations for

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2 Adelaide City Council (ACC), City Planning and Development Committee, Agenda, Item 13, 'Planning reform: experiences, questions and suggestions', 6 August 2013, page 332.

3 ACC, ibid., 6 August 2013, page 331.

4 ACC, ibid.

5 ACC, ibid.

6 ACC, ibid., page 322.

development application approvals, especially relating to the park lands zone. The determining bodies rarely took issue with those interpretations. Moreover, a majority of council elected members, non-planners, didn't understand the subtleties either, so if they had earlier determined that a development concept was consistent with the content of the *Adelaide Park Lands Management Strategy*, they were also happy to endorse subsequent planning approval recommendations from sources perceived to be more knowledgeable.

The rise of park lands economic development concepts

Community uproars about park lands development have accompanied the entire history of the park lands, and those during the 1980s were no exception. A bill to 'protect' the parklands had been discussed in state parliament in 1987. It prompted much noise, but failed in the Legislative Council. As the 1990s commenced, state policy makers sought a rationale to explain and justify contemplation of any future land-use development of park lands. That rationale was to be articulated in the 1990s but, except for the professional planner community, was poorly understood by most South Australians, because planning is a complicated field and planners tend to be an insular group of specialist advisors. Elements of it contained the seeds of an idea. As early as the original 1974 *City Plan*, there had existed a vague concept of how the park lands might *contribute* to the economic development of the state. This was carried through subsequent plan versions and its language was in subtle ways exported into the first *Park Lands Management Strategy Report 2000–2037*. This presented a more definitive park lands vision than that which had existed in previous plans, with goals, priorities and strategies. It was praised by some advocates pursuing park lands 'protection', including some who falsely assumed that the Strategy was the definitive planning guideline. Some extracts prompted optimism; others should have been cause for alarm, especially in regard to the state concept of contribution to state economic development.

The planning detail revealed

Planning-related elements of the 1999 city council *Park Lands Management Strategy Report 2000–2037* had been based on the contents of the previous year's exploratory document, the 1998 *Issues Report*.[7]

Among other things it discussed the emergence of the January 1998 state government's *Planning Strategy* ("the principal source of planning policy for Adelaide"), the *Development Act 1993* ("which gives effect to the Strategy") and the economic context for Adelaide. The 1998 *State Planning Strategy* listed ways in which the park lands could contribute, in the context of "… the key economic imperatives facing metropolitan Adelaide".[8]

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[7] Hassell, *Park Lands Management Strategy Issues Report,* 23 February 1998. Appendix: Hassell, Terry Mosel, 'Review of statutory planning framework for Adelaide park lands', 17 February 1998.

[8] Hassell, op. cit., 17 February 1998, page 5.

Among goals, the achievement of which was deemed relevant in terms of what the park lands could contribute, three were noted: Economic activity and tourism; Natural resources; and Arts, Heritage and Design. Each of these headed an expanded discussion extracted from the *State Planning Strategy* document. However, by 2004, these had changed because of the intentions of a new amendment to the *Adelaide (City) Development Plan*[9]. Under this, "goals, priorities and strategies" presented in March 2004 also had changed, but were potentially confusing in their hierarchical listing. For example, while "Economic activity" appeared (presumably as a goal), it featured three (presumed) strategies: "Reinforce the City of Adelaide's character"; "Conserve and compliment [sic] the city's human scale, heritage character and accessibility"; and "Enhance Adelaide's image as a gracious garden city by improving the enjoyment of its park lands." Four others followed. They included Living ("Provide open space which is multifunctional, accessible and meets local needs"); Natural Resources ("Native vegetation, other habitats and quality landscapes protected and managed as land and water use in their own right"); Access ("Cycling and walking to be safe and increasingly used"); and Central Sector ("Boost the quality, vitality and management of the park lands", and "Develop a consistent approach to public and commercial use of facilities").[10] The 'priorities' were not spelled out.

In the South Australian governance of public space, the politics of planning play a central role in terms of how development can occur across Adelaide's park lands. It is regrettable that so few South Australians – mostly strongly committed to the 'protection' of Adelaide's park lands – comprehend the machinery arising from the legislative framework that is brought into play when a development application emerges. One reason is that the machinery applies in a late-stage forum separate from day-to-day city council administration, and draws on a planning instrument that few know about, and even fewer have scrutinised.

More detailed discussions about the history and evolution of the *Adelaide (City) Development Plan* appear in multiple other chapters, and appendix chapters, of this work.

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9 Adelaide City Council (ACC), Development Plan Amendment Committee, 'draft *Adelaide (City) Development Plan*, Park Lands, Development Plan Amendment Report, Statement of Investigations', 3 March 2004, page 2.

10 ACC, ibid.

Further reading

For more reflection on the 1990s planning environment as it related to the Adelaide park lands, please refer to Appendix 13: 'A 2018 author retrospective on the 1998 *Issues Report's* concerns'; in particular, its last two sections: 'The statutory planning framework' and 'Review of Economic Contribution Report'.

In addition, two essays of relevance to this chapter follow in Appendix 14:

- Part 1: 'Park lands planning and the political environment in the 1990s'.
- Part 2: 'Reflections on late 20th century planning matters regarding the park lands'.

PART 4

"We have witnessed quite an extraordinary situation today. We have seen that every member in this chamber, on both sides, from the tops of their heads to the tips of their toes, wants to protect the park lands. One wonders what it is we are protecting the park lands from, if it is not ourselves."

Hon Patrick Conlon MP,
Parliament of South Australia, House of Assembly,
4 August 1999. As quoted in Chapter 13:
'Seismic rumblings – park lands dialogue as
the new century arrives'.

Throughout the 20th century various Adelaide individuals and groups agitated to influence park lands state or council policies or determinations that were seen to be encouraging exploitation of the Adelaide park lands. It was commonly a symptom of periods of authoritarian government control of park lands matters, perceived by the protesters to be either ruthless or politically and strategically incompetent – or both.

Long forgotten today, but active and noisy in 1999 and during several years that followed, was the Parklands Alliance. It comprised a coalition of Adelaide park lands protection activists and their incorporated organisations during the Liberal government's 1997–2002 term. Between 1999 and 2001 several ministers sought to bring park lands bills to parliament to 'protect' the park lands. One was particularly controversial, and the Alliance formed to express a coordinated view that the bill, as legislation, would do more harm than good.

The group included the Adelaide Parklands Preservation Association; the North Adelaide Society; National Trust (SA); The Conservation Council; the Civic Trust; the Norwood Residents' Association and the Architecture Foundation of SA. Later, senior elected members of Burnside and Unley councils also joined.

The group closely monitored the Liberal bill's progress, demonstrating media-savvy skills to challenge government claims. The group also opposed the construction of the National Wine Centre in the east park lands. The photo shows members protesting at this site in February 2001. Members relied on inquisitive journalists to amplify their messages because they had no funding for advertising. The Alliance was never incorporated and had no constitution. It had a chairman, Peter McWilliams, but he was just one of many who spoke for the group. Some of its members were professionally trained in relevant fields, including architecture and law, skilled at advocacy and confident when addressing policy makers and parliamentarians. Their voices carried weight.

PART 4 Retrospective phase 1: 1999–2001

Chapters

13 | Seismic rumblings – park lands dialogue as the new century arrives
(The radical veto and referendum idea that may have changed the course of Adelaide's park lands history.)

14 | Minister Kotz and her 2000 bill
(How a government minister created a bold bill, but which succumbed to political point-scoring.)

15 | The parliamentary Select Committee 2001 that never concluded
(Why timing is everything, notwithstanding the best of intentions.)

16 | Right time, right place
(Enter: the 'formidable modern politician', master of the grand gesture.)

Governments – especially during first terms – have the time to invest in their pre-election gestures' continuing health and endurance. The grander they are, the longer they can pay dividends. Well chosen, a political gesture presented in opposition can represent 'a gift that keeps on giving' in government, at least until the gloss wears off, and months turn into years, and the reality in the metropolitan electorates dawns...

Extract, Chapter 16: 'Right time, right place'.

Other links to chapters in PART 4

Chapter	Appendix link
14 | 'Minister Kotz and her 2000 bill'.	**Appendix 15:** 'The triumphal delusion: the pursuit of the park lands Statutory Principles'. **Appendix 16:** 'Observations made by the city council about what the 2000 Kotz bill proposed, and how the council might improve on those proposals'.

13 Seismic rumblings – park lands dialogue as the new century arrives

At 2018 the 1999 Lewis concept remained unrealised: an idea to share authority between parliament and the park lands custodian, the city council, allowing council veto over park lands projects perceived to be exploitative and alienating. It was a simple but confronting concept. But its simplicity and a referendum's capacity for transparency were fatal. In the three years leading to election year 2002, tribal South Australian state politics toyed with ideas about changing the legislative machinery behind park lands management, playing on the people's fear about loss of 'protection', but delivering nothing but debate.

The aerial 'dogfight'

Park lands history over the intense few years after 1998 reflects patterns of dialogue and disruption that, to an outsider, might resemble an aerial dogfight between slow-moving aircraft, viewed from the ground. There appears to be a lot of noise, the loudness of which changes over time; sometimes a soft drone, other times a sharp acceleration. It has a sense of the deadly serious and suggests defining moments, but which might be illusory. At times the vision is fogged by cloud cover, then clears to blue sky. A short-term clarity follows, but the aircraft again disappear. Some of these metaphorical dogfights go on for months. Some stretch across a span of years, waxing and waning in intensity.

At about the same time as the city council-commissioned 1999 draft *Park Lands Management Strategy Report 2000–2037* was being finalised and endorsed within its corridors, there was park lands debate within state parliament. Archive material from the period suggests that South Australians perceived that the park lands were at risk of something – in particular, the fearful prospect of new buildings appearing on the pastures in places determined by persons unaccountable to the people. The fear was that the 'unaccountable ones' included parliamentarians, but they insisted that they were not. In Adelaide's suburbs there were pockets of deep distrust, as evidenced by letters to editors. There was much taunting of the state government by Labor opposition members, capitalising on the public's fears. There were 'red herrings' thrown into the discussion and the media reported randomly and sometimes confusingly, delighting in the emotion and the outbursts. A clique of noisy park lands protection advocates articulated dominating views, often in the absence of a sound legal understanding of how park lands determinations were being made at the time under the machinery of state and local government.[1] Distant observers became uneasy, but weren't really sure why.

[1] The unincorporated Parklands Alliance.

A radical bill

There were several unsuccessful attempts to bring park-lands-related bills to state parliament between 1999 and 2001 – a brief but noisy period by comparison to the early years of the Liberal state government which had won office in 1993 and been re-elected, under the premiership of John Olsen, in 1997. Perhaps the least remembered bill today was the one proposing two radical ideas, proposals that might have changed the course of park lands history.

The bill that never got beyond a second reading in parliament and never became law was one raised in spring 1999 by Liberal MP Peter Lewis. It was titled City of Adelaide (Development within park lands) Amendment Bill: 'A bill for: An Act to amend the *City of Adelaide Act 1998*'. It sought several amendments. Lewis was later to play a vital role in park lands history by later determining, as an independent MP, which party got to form government after the 2002 election. But for the purposes of this chapter, in 1999 he was a Liberal Party MP occupying an important parliamentary role as presiding officer of parliament's Public Works Committee. He enjoyed the gravitas of the role and the benefits of being a member of the Liberal team occupying the government benches. The Lewis bill, an attempt to amend existing legislation affecting the city council, was introduced on 28 October 1999 in the South Australian House of Assembly.

It was remarkable in its simplicity. It comprised only four pages. Lewis focused on the 'hot button' issues of the time – which remained 'hot button' at the conclusion of the period studied in this work at 2018.

Succinct new schedule, alarming proposals

Lewis proposed the addition of a new schedule to the *City of Adelaide Act 1998* titled 'Special provisions relating to development within the Adelaide park lands'. In it were three proposals.

Firstly, the extent of the park lands was defined, a matter of contention at the time.

Secondly, the schedule proposed that certain parliamentary proposals affecting the park lands could not be activated unless both houses of parliament *as well* as the city council agreed. Thirdly was an idea to allow a state referendum to be used at certain times, related to the contents of his bill. On the controversial matter of agreement between both houses, *as well* as the city council, Lewis directed attention to the contents of the proposed schedule. He said: "Under clause 2 certain activities require parliamentary and council approval, and those activities are to make a change to an existing structure or to build any new structure which would cost $100,000 as at 27 October 1999, that amount to be indexed so that there is no necessity for us to revisit it in 10, 15 or 20 years."[2]

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[2] Parliament of South Australia, *Hansard*, House of Assembly, City of Adelaide (Development within park lands) Amendment Bill: 'A bill for: An Act to amend the *City of Adelaide Act 1998*', 28 October 1999, page 314.

What he was effectively proposing was conceptually freezing the built-form state of the park lands as at that date using a new, descriptive schedule, and requiring future development aspirants to signal very clearly to parliament that if they wanted to "construct, enlarge or expand" any structure within the park lands boundaries that exceeded that relatively low capital value, they would have to reveal all. Moreover, they could also face the risk of a city council veto over the proposal.

The idea of state parliament allowing a South Australian council to have veto power over state parliament development proposals was radical and confronting, and was not supported by most parliamentarians. But it addressed a fundamental authority issue that had constrained the city council as custodian of the park lands since it had been first assigned responsibility under the *Municipal Corporations Act 1849* for the care, control and management of large areas of the Adelaide park lands – but subject always to parliament's legislative determinations. The proposal might have had a certain logic to it, given the key role the city council had had for a very long time, but no parliamentarian was going to support the idea of veto power over a parliamentary matter.

Lewis's bill proposed the setting of a dollar valuation threshold on park lands development projects. It attempted to establish a benchmark. Any proposal for a new structure to cost more than $100,000 was captured. The bill said: "... the construction, enlargement or extension of a building on any part of the Adelaide park lands where the total amount to be applied in the performance of the work will, when all stages are completed, exceed $100,000 [indexed to the CPI]." There were a few minor exceptions.

The proposal, capturing the idea that parliament and council share determination authorisation, read: "[authorisation of activities in relation to] the development or alienation of any part of the [park lands] so as to interfere with the use and enjoyment of [the park lands] by members of the public." Addressing the House of Assembly, he put it better in plain English.

> "So, regardless of whatever other measure any government may take, including the present government, to protect park land in some form or other, it would be for all time put beyond the power of executive government to make decisions about the alienation of the park lands unless the parliament approved of it – both houses – and the Adelaide City Council approved of it. That would [address] the kind of disquiet which has grown up over recent time (and I mean in the past couple of years or so) about these developments which have been undertaken by executive government, where executive government has overridden the city council for better or for worse ..." [3]

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[3] Parliament of South Australia, *Hansard*, House of Assembly, op. cit., 28 October 1999, page 313.

There were also a few minor exceptions in relation to the council's right to grant (or extend under specific conditions) leases and licences under the *Local Government Act 1999*, as well as "... any development or alienation that will not interfere with the use or enjoyment of a part of the [park lands] for more than three months."

The referendum bogey

Lewis's bill also contained the idea of a mechanism for a state referendum "of electors for the House of Assembly" should his proposed new schedule to the City of Adelaide Act be endorsed by parliamentary assent but later come under new parliamentary pressure to have it "repealed, suspended or brought to an end by expiry".[4] Parliaments the world over are cautious about extending power to the people beyond the periodical ballot box, and the South Australian legislature was no different. But Lewis argued that a provision for a referendum would act not only as insurance for the future, but also a red-light warning for when the legislature might be prompted to consider something particularly exploitative.

In an earlier August 1999 debate on another park lands bill pursued by another parliamentarian, Lewis had referred to his upcoming bill and said: "No future government would dare rip up that piece of legislation without there being an enormous furore, because clearly there would be an intention, stated or otherwise, that by repealing that piece [my piece] such a government would have had intentions of alienating open space in the park land for some undisclosed purpose."[5]

Had aspects of the Lewis bill been passed, its provisions could have altered the course of park lands management history at a crucial time. It was when the Olsen Liberal administration was struggling to satisfy the park lands management demands of its constituencies, and the Labor opposition was affecting to offer something more comprehensive and optimistic in the lead-up to the 2002 election. An amended *City of Adelaide Act 1998* incorporating aspects of Lewis's schedule may have significantly handicapped Labor's pre-2002 campaigning on park lands issues, and its post-2003 activity leading to the creation of the Adelaide Park Lands Bill 2005.

The context at the time

Lewis's 1999 role on the Public Works Committee had led to a March 1999 committee report that recommended blocking a bid to build a $20m National Wine Centre on park lands, and for him to consider the ideas that were later reflected in his bill. Between March and October 1999, no publicly revealed ministerial response had followed the committee's communication. The Local Government Minister, Mark Brindal, was not keen to pursue it. This was for reasons that became clear when Minister Brindal began preparing for another,

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4 Parliament of South Australia, *Hansard*, House of Assembly, op. cit., 28 October 1999, Schedule 3, Special provision for a referendum, 3 (1).

5 Parliament of South Australia, *Hansard*, House of Assembly, 'The Local Government Bill', [Armitage amendments], 4 August 1999, page 2020.

more detailed bill at around the same time as Lewis was introducing his bill. (That Brindal bill emerged in September 2000 and is discussed in the next chapter of this work.) Lewis's criticism of several park lands developments current at the time did not help his cause. The Olsen government, of which he was a member, favoured the National Wine Centre proposal and also would make possible another private project, a redevelopment of land adjacent to the Memorial Drive tennis courts to create a large new building for commercial gym purposes, on park lands, via the section 46 'major development project' provisions in the *Development Act 1993*.

In Lewis's October 1999 parliamentary speech he drew attention to his and the public's disquiet at how state executive government "... had overridden the city council, for better or for worse, such as in relation to the Memorial Drive [Tennis Centre] development" [adjacent to Pinky Flat, in park lands]. He added: "The public has wanted to put an end to that; they do not approve of that process; they do not think it in any way appropriate".[6] Lewis stressed that if South Australians thought the park lands were unsafe from alienation, then parliament ought to give them effective mechanisms to resist that alienation.

> "As members of parliament the only way we will convince the public that indeed the park lands are safe is for us to take unto ourselves the responsibility in future of determining whether or not to allow development, and to act in concert with the lawfully established first local government body in Australia, the Adelaide City Council. We will all need to pass a resolution accordingly agreeing to such development before that development can go ahead."[7]

When 'the people' are called to judge

In essence, the Lewis bill attempted to address the matter of tightly controlled executive government planning authority that lurked behind every park lands debate and was rarely addressed because parliamentarians were loath to restrict the state executive's prerogative to initiate development projects on the green open spaces. The 'big stick' referendum concept would have been seen not only as confrontational, but also as an undignified concept – to parliamentarians – that there might arise a need occasionally for the people to be called upon to step in and vote, with determining authority, when exploitative and alienating park lands proposals emerged. A feature of Adelaide park lands history (rather similar to its electoral history) is that 'the people' sometimes tend to exercise their discretion rather better than parliamentarians and bureaucrats, and make judgements astutely, but conservatively, when they are called upon to contemplate and vote on a matter. At the core of the Lewis bill and its two radical ideas was a confrontation of executive government as well as of state parliamentarians.

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[6] Parliament of South Australia, *Hansard*, House of Assembly, City of Adelaide (Development within Park Lands) Amendment Bill, 2000: 'A bill for: An Act to amend the *City of Adelaide Act 1998*', 28 October 1999, page 313.

[7] Parliament of South Australia, ibid.

The legal and political complexities

Critics in 1999, and in later years, would have made much of what might have resulted, had the Lewis bill successfully led to the amendment of the *City of Adelaide Act 1998*. The bill's definition of the precise extent of the park lands and its boundaries appeared simplistic, but was sensible, a matter marginally better addressed in the 2000 Brindal and Kotz bill that followed, and much better addressed again in the later Adelaide Park Lands Bill 2005, which became the *Adelaide Park Lands Act 2005*. Australian Democrats member of the Legislative Council, Ian Gilfillan, later tried unsuccessfully to introduce a similar bill to the Legislative Council on 6 June 2002, months after Labor had come to power, but it disappeared into history. His earlier public judgement of the Lewis bill, in March 2000, was that it would: "… comprehensively protect the park lands".[8] But by mid-2002 state Labor was contemplating a much broader scope for change. Perhaps not surprisingly, the city council veto power idea was not to be a feature of the ultimate 2005 outcome; indeed, the 2005 bill left a minister totally in control of routine park lands determinations, and the houses of parliament in charge of more complex matters. And as to the idea of a referendum, should the legislature seek to amend matters that might encourage significant exploitation or alienation of Adelaide's park lands, in the 2005 bill there was silence.

The Lewis bill's flaws

The passing of the Lewis bill could have frustrated much, but with the hindsight of subsequent park lands history, it would not have been effective in a circumstance where the city council agreed with both houses of parliament about any proposed park lands development project, perhaps under duress, or cooperated with a ministerial attempt, perhaps under duress, through a development plan amendment, or (less feasibly) through exploitative amendment of regulations schedules, or creative interpretation of regulations, or introduction of new regulations, to activate park lands change. Debate in 1999 did not explore these possibilities, but parliamentarians were already well informed about the Public Works Committee's objection and recommendation, notwithstanding the then Local Government minister's lack of response. Parliamentary debate in August, about Liberal minister and state member for Adelaide, Michael Armitage's attempt to amend the *Local Government Act 1999* for park lands management purposes, had revealed hints, with Labor MP Gay (Mary Gabrielle) Thompson noting that the city council was not "in a position to protect the park lands".[9]

In a tunnel vision exercise typical of and evident in scores of other debates, before, during and after this period, instead of supporting the inclusion into the debate of comment on how the council's impotence might be lessened, she instead focused on the proposed Armitage amendments under debate. Much debate focused on a

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8 Adelaide Parklands Preservation Association, *Parklands News*, edition 4, March 2000.

9 Parliament of South Australia, *Hansard*, House of Assembly, 'The Local Government Bill', [Armitage amendments], 4 August 1999, page 2022.

claim that the proposed amendments were to be made to the wrong Act. But Lewis wanted to focus on the substance, rather than the appropriateness or not of the statute. He said:

> "I am saying now to the minister, bring back a bill which includes those provisions [his concept, to include the city council in certain determination provisions by sharing power to determine], which are also in the proposition which we have been discussing during the course of this [August 1999] debate, and I think it will pass on the voices." [10]

Armitage's proposed amendments failed to pass. Lewis was subsequently prompted to introduce his own bill two months later in October, unrelated to the Armitage-proposed amendments which had been heavily criticised, inside parliament and outside, for its park lands 'land bank' concept. Lewis believed he was right (and others probably agreed with him privately) about the potential of his apparently simple 1999 bill to be a game-changer about future South Australian control over, and management of, construction projects in the park lands. But Lewis faced two handicaps. He was publicly criticising his government's pursuit of park lands development. Secondly, he was challenging the legislature's perceived right to maintain its power over determinations affecting the park lands. Some in the Assembly might have agreed with Lewis in principle, but in practice it was different.

The future Premier speaks

In the August debate about the Armitage bill, while parliamentarians well understood Lewis's ideas, Labor opposition leader Mike Rann also contributed, but not about Lewis's proposal. In less than three years he would be Premier and Labor would be a minority government depending on the support of independent Peter Lewis during 2002. In 1999 Rann instead focused on the Liberal's (Armitage) Local Government bill's perceived flaws, the Liberal's apparently 'toothless' Environment Protection Act, and how poorly perceived was the Liberal's management of park lands matters. "The member for Adelaide [Armitage] bleats because he knows that this will be a political issue at the next election – and let me promise him it will be. ... I do not believe that this government would do the right thing by the environment whether it involves the Adelaide park lands or any other part of this state, and we will make that a central issue at the next election." [11]

History shows that Labor delivered on that promise. But had the Lewis bill received better attention and wider support, events that led to the subsequent *Adelaide Park Lands Act 2005* might never have been sufficiently fuelled by the parliamentarians' aspirations fermenting in the lead-up to the 2002 election, and what would follow as Labor began the first of four consecutive terms in government.

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[10] Parliament of South Australia, ibid.

[11] Parliament of South Australia, ibid., page 2020.

The political upside tempts

Analysis of the period 1999 through to 2005 indicates that the skirmishes about 'saving' the park lands proved to be an immensely profitable activity in political terms for state Labor as South Australians' aspirations for a 'protected' park lands were manipulated by people inside and outside of parliament. Addressing the fundamental theme – the parliamentary consolidation of power over park lands determinations – by agreeing to share it would have short-circuited the energy lighting the political theatre whose repeated stage performances paid increasing dividends the longer the curtain remained open. Labor Minister Patrick Conlon summarised that theatre well in August 1999, on one day of furious parliamentary debate.

> "We have witnessed quite an extraordinary situation today. We have seen that every member in this chamber, on both sides, from the tops of their heads to the tips of their toes, wants to protect the park lands. One wonders what it is we are protecting the park lands from, if it is not ourselves. On the evidence presented today, the park lands have nothing ever to worry about, which leads me to the conclusion that perhaps someone is not being quite as open in relation to their real designs for the park lands." [12]

At 2018, the end of the study period of this work, the 1999 Lewis concept remained unrealised: an idea to share authority between parliament and the park lands custodian, the city council, allowing council veto over park lands projects perceived to be exploitative and alienating. It was a simple but confronting concept. But its simplicity and a referendum's capacity for transparency were fatal. In the three years leading to election year 2002, tribal South Australian state politics toyed with ideas about changing the legislative machinery behind park lands management, playing on the people's fear about loss of 'protection', but delivering nothing but debate.

[12] Parliament of South Australia, ibid., page 2020.

14 | Minister Kotz and her 2000 bill

Labor effectively derailed a bill comprising elements of significant and potentially useful merit. But it wasn't perfect, and Labor made that clear. Moreover, Labor's tactics were to seek to commandeer the moral high ground as Adelaide's park lands future great protector, simultaneously avoiding much of the hard work that the Liberals had invested for more than three years leading up to the state election – which Labor then won.

On 15 February 2000, Liberal Local Government Minister Dorothy Kotz released a consultation paper seeking "comments on the way in which legislation might contribute to the longer-term preservation and protection of the Adelaide park lands". "I believe that this community discussion is essential if we are to reach an outcome which will protect the Adelaide park lands, both for ourselves and for our children," she said.[1]

Under more commonly occurring political and social Adelaide conditions, the consultation ought to have followed a predictable pathway, ending up with responses to a draft bill.[2] The 'City of Adelaide (Adelaide Park Lands) Amendment Bill 2000' was tagged for entry later in 2000 into state parliament and Liberal parliamentarians were anticipating calm and reasoned subsequent debate. Of course, being park lands, there was potential for politicisation of the process, but few anticipated what would follow. It was to be the beginning of a highly stressful period for the minister, her staff and Premier John Olsen's advisors. It would culminate in a parliamentary select committee inquiry into related park lands matters whose progress, about 18 months after the consultation paper had been first circulated, would be stymied by the announcement of a looming state election in 2002. Despite more than a year of increasingly shrill public response, media sound and fury, and hundreds of hours of ministerial and ministerial staff consultation and meetings, public and private, the bill never reached parliament. As the major parties prepared for electoral battle in late 2001, from the Liberal Party's point of view the effort had been stamped with an F for failure. But for the Labor party, which had worked assiduously, and with significant public support, to denigrate the minister's efforts and criticise the bill's contents, it represented a C for creditable result. Whether intentional or not, Labor had effectively derailed a bill comprising elements of significant potential merit. But it wasn't perfect, and Labor made that clear. Moreover, Labor's tactics were to seek to commandeer the moral

1 Government of South Australia, 'Message from the new Minister for Local Government': Consultation Paper. 'Proposals for new legislation to ensure the long-term care and protection of the Adelaide park lands', 15 February 2000.

2 Parliament of South Australia, House of Assembly, 'City of Adelaide (Adelaide Park lands) Amendment Bill 2000'.

high ground as Adelaide's park lands future great protector, simultaneously avoiding much of the hard work that the Liberals had invested for more than three years leading up to the state election – which Labor then won.

Timing isn't everything

The public resistance to the bill illustrated many of the predicaments that can befall a political party, even when the will to succeed legislatively was strong, well resourced, and well planned. In theory, a February 2000 bid to amend and improve laws about Adelaide's park lands by a political party enjoying its second term of government, and with effectively two years to go before the next election, should have had a reasonable chance of success. The failure can be put down to a mix of circumstances, some unintended.

The first Liberal minister to attempt change around this time was Michael Armitage, MP for Adelaide, who in July and August 1999 attempted amendment of the Local Government Act (via a 'Local Government Bill'). Strategically, that was a mistake, but one made in good faith. Opposition members made that clear and ignored the good faith. Proposed amendments prompted significant resistance. A 'land bank' concept in which twice as much park land-adjacent open space area would be required to be allocated, to replace any land area taken up by development, thereby conceptually increasing subsequent park land area, met stiff opposition. Much was based on fear and distrust – and the political opportunism that it gave to Labor inside state parliament's House of Assembly, and outside in the streets. Armitage, despite comprehensive research, and demonstrably prepared to argue his case, would eventually abandon the bid. But not before he made the point that Labor had used it to 'play party politics': "They do not care one jot about the park lands. In speaking one-on-one to the many people who have come into my electorate office, they have said: 'Now I understand what you are doing', and the vast majority have said, 'I wish I had not signed the petition.'"[3] The eight-page *Hansard* transcript of debates on one particular day in the House of Assembly, 4 August 1999, recording comments from both parties' MPs, presents a revealing snapshot. It distils Adelaide's legislators' preoccupations about the future of their park lands rather like a 'day-in-a-life' novelette, a glimpse of a dysfunctional family's conversation – vigorous, articulate and sometimes shrill, minutely cataloguing the experiences of contemporary state political careers: recollections, complaints, distrust and regrets. For example, one MP, the former Lord Mayor of Adelaide, Steve Condous, who was at that time the Member for Colton, described his experience with the recent history of park lands alienations.

> "Since my youth, I have watched successively, year after year, the Adelaide park lands continue to decrease in size ... My first disappointment was to see Sir Thomas Playford develop Adelaide High School ... Then we saw Don Dunstan ... Elder Park ... to put the Festival Centre there."

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3 Parliament of South Australia, *Hansard*, House of Assembly, 'Local Government Bill', 4 August 1999, page 2017. (This includes a reference to a petition opposing Armitage's bill at the time.)

He then mentioned the Bannon government that made possible the construction of the ASER development[4] and the Hyatt Hotel, and the convention centre and the Exhibition Centre.

> "Now I have seen my own government [Liberal] today with the tennis centre and the wine centre, and I thought to myself, enough is enough. … I also took on the Bannon Government [as Lord Mayor] when it wanted to put a car park for the Royal Adelaide Hospital right on park lands property. … [and years earlier] the government intruded, totally against what the people of Adelaide wanted, and took up a massive piece of the park lands to build the Adelaide Aquatic Centre. … Prior to my time, the [city] council also developed the restaurant at the [Torrens] weir and also the restaurant in Veale Gardens, alienating park lands for commercial use."[5]

A new bill

The second Liberal Party MP to attempt change was Mark Brindal, Local Government Minister at the time Armitage presented his bill. It would fail too, but not without significant investment of energy. Having observed the Armitage debates, Minister Brindal began to consider how park lands legislative change might occur via more appropriate amendment to the *City of Adelaide Act 1998*, but also with related amendments to the *Local Government Act 1999*. By early 2000 his people were preparing for a drawn-out procedure of wide public consultation that might lead to a bill. Then occurred an event highlighting how the circumstances of government administration can sometimes rapidly change, with consequences. Brindal's local government portfolio was reallocated to another MP, Dorothy Kotz, but not before many complicated park lands bill issues had been discussed at government level, and a detailed list of proposals drawn up to address them. Twenty proposals under nine themes informed the contents of the state government's February 2000 Consultation Paper titled *Proposals for new legislation to ensure the long-term care and protection of the Adelaide park lands*. The transfer of portfolio to a minister less well versed in the complexities of park lands matters would test Minister Kotz. She may not have sensed it then, but the metaphorical carriage into which she had stepped to prosecute the party's case was to travel on increasingly rocky ground as some citizens of Adelaide responded in ever-louder and more critical tones. Moreover, certain external, but related, events lit a fire that was to singe those in government seeking deeply considered and well informed change to park-lands-related law. Put simply, the very action of submitting to public consultation proposed changes to laws that might consequently affect park lands management was like waving a red rag at a bull for some Adelaide communities at this time. This was because there were numerous social and political undercurrents that were not necessarily obvious at the time.

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[4] The Adelaide Station Environs Redevelopment (ASER).

[5] Parliament of South Australia, ibid., 4 August 1999, page 2016.

Election footing defines

The first of them was that state Labor was in election mode even then, two years ahead of the poll year, and its insiders saw to it that controlling public perceptions of the politics of park lands management would be one of its domains. This was boosted through additional expertise and experience from the looming nominee for preselection for the electorate of Adelaide, Lord Mayor Dr Jane Lomax-Smith, the city's dominant and perhaps most articulate advocate at the time for park lands 'protection'. Her council term was to conclude late in 2000, months ahead of the year she signed up to be a member of the state Labor Party. She brought with her vast expertise in park lands matters, having administered the creation of, and signed off on, the first *Park Lands Management Strategy Report, 2000–2037*, released in November 1999. Some perceived this as the 'handbook' likely to deliver future park lands 'protection'. It was a misleading assumption, but it paid dividends for Labor.

There was a second matter, but one not obvious throughout most of 2000, while the consultation paper's discussions were informing the writing of a draft bill. This was the poor comprehension by many South Australians of the complicated issues requiring addressing when seeking change to legislation regarding the Adelaide park lands. Few respondents were lawyers. Many were 'bush lawyers' whose understanding of park lands management history, interpretations of related law and management complexities was often misinformed. Almost all of the 'protection' advocates were fuelled by emotion, which was fed by suspicion about government motives. Many were to the left of the political spectrum, but not all, and even when more politically conservative (but sometimes better informed) persons publicly criticised detail, the comments would prompt additional negative responses from those relying on their judgements. This atmosphere was heavily capitalised on by a number of Labor's MPs in media releases and other public statements.

Despite a general community lack of clarity about the Olsen government intentions, some park lands 'protection' advocates, who possessed the necessary expertise, were clear about what the proposal lacked. For example, a member of the Adelaide Parklands Preservation Association commented in March 2000 that:

> "... the city squares have been deliberately excluded; the proposals relate to the outer perimeter of the park lands; heritage is not a feature (neither state- or world-heritage-listing); it is not intended that the resulting bill contain any limitation on the role of the major projects legislation [section 46 of the *Development Act 1993*]; there does not appear to be any intention to limit major events such as the multiplicity of commercial, motor vehicle events; there is no real definition of park lands." [6]

These would prove to be significant omissions. Later, several other matters arose in regard to the procedures over which Minister Kotz had control. The bill emerged in

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6 Eliza Bagley, Adelaide Parklands Preservation Association, *Parklands News*, March 2000, page 6.

September 2000, but many respondents to the public consultation claimed they had not been given a copy. They sensed a conspiracy. When they did get a copy, its contents disturbed them. A bill can inform readers more clearly (but sometimes confusingly to non-lawyers) than a conceptual 'ideas' paper, but legalistic wording can be easily misunderstood. The absence of a proposed park lands map (a park lands plan) provoked criticism, as did non-existent master plans to which the November 1999 *Park Lands Management Strategy Report* had referred, which the bill intended to embrace. Reference in the bill supporting built-form construction '*and facilities*' (emphasis added) on the banks of the River Torrens frightened readers. It was not surprising that, when Minister Kotz was confronted in October 2000 by about 100 noisy and critical attendees at a public meeting called at short notice, she immediately announced an extension to the consultation period.

The city council's view

Adelaide City Council administrators reviewed the bill and shared their views with elected members on 17 October.[7] Administrators recommended 27 changes, many of them relating to procedures that should emerge, and ought to be adopted, should the bill become law. With the hindsight of 17 years (to the end of the period studied by this work), the Brindal and Kotz bill presented something similar in intentions to the 2005 bill that became the *Adelaide Park Lands Act 2005*, but with some notable differences. The similarities are relevant here. A key feature was that it sought "to enshrine some guiding principles that should govern all decisions and future management of the park lands".[8] At the time, this appeared to be a novel inclusion into the 2000 bill. By 2005 it was no longer seen as novel; it was seen as fundamental. However, the idea of principles would lead to the manifestation of a triumph of a 'hope over experience', a hope that the listing of new guiding principles would inexorably handicap future exploitation of park lands.

Other similarities included the concept of a park lands fund; the 'irrevocable' classification of the city of Adelaide park lands as community land under the *Local Government Act 1999* (which that Act already required); an expressly stated intention to have the *Development Act 1993* apply to the park lands; and rights to the Crown or prescribed bodies/persons for park lands access of public infrastructure (water, electricity, gas, etc), especially replacement or removal of infrastructure on the park lands under the council's care. Each of these matters would, in time, give rise to unanticipated outcomes, or worse, outcomes that the writers of the 2005 Act would later create statute loopholes to enable.

But these matters were invisible to the volatile crowd at the time. It did not help that there was a general community sense that the Olsen Liberal state administration knew more about future park lands proposals than it was prepared to admit.

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7 Adelaide City Council, Agenda, City Strategy Committee, Item 3, 'City of Adelaide (Adelaide Park Lands) Amendment Bill 2000 – suggested amendments', 17 October 2000, page 3.

8 Adelaide City Council, op. cit., 17 October 2000, point 10, page 4.

The broader picture prevails

It can be fatal to a consultation process for a draft bill if the community is disturbed by evidence that the government has taken an action contrary to the intentions of the bill. Such evidence appeared in about September 2000, when plans emerged for the holding of two motor races on park lands, at Victoria Park (Park 16), a follow-up to a former lost Formula 1 race that had moved to Victoria. This provoked public disquiet about park lands exploitation at the Victoria Park site, at the same time as Minister Kotz was attempting to assure South Australians that the legislative proposal she was pursuing would resist such matters. A month later, as a new affiliation of community organisations, the Parklands Alliance, gained public prominence, the progress of the bill faced direct confrontation. Seven community bodies, members of the Alliance, condemned it. They included the Adelaide Parklands Preservation Association; the North Adelaide Society; National Trust (SA); The Conservation Council; the Civic Trust; the Norwood Residents' Association; and the Architecture Foundation of SA. Later, senior members of Burnside and Unley councils would also condemn it. The broader social context was not assisted by the fact that the Liberals had only recently made possible the alienation of park lands for a large National Wine Centre building on park lands near the Botanic Gardens, as well as a large new construction for a 'Next Generation' gym and tennis centre, near Pinky Flat (park lands). The message was clear to the sceptics – and temptingly convincing even to the more conservative among Adelaide's communities. As a noted architect stated in a letter to the editor of *The Advertiser* in November 2000: "Already the Olsen government's inroads into this [park lands] heritage include a major tennis centre and a wine centre but the bill sets the scene for much more. It is hoped that justice and common sense will prevail, and parliament will firmly halt the devastation of our finest environmental asset – the bill should be firmly rejected." [9]

The heat increases

On 3 January 2001, in an 'exclusive' report in Adelaide's daily newspaper, front-page headlines announced: "$24m Victoria Park proposal". The story began: "An upgrading of Victoria Park featuring permanent facilities for car racing plus new grandstands and lighting for twilight races is being considered by the state government."[10] The details were confirmed by Premier John Olsen. An editorial on the same day noted: "It makes sense [that] an area which hosts such major events should have permanent facilities ..." [11] The details shocked many who already had reservations about the Kotz bill, especially the newspaper details of construction plans for 52 pit garages, 2500 grandstand seats, a media centre, corporate suites, a control tower and major catering and dining facilities for level 1. Weeks of media

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9 John Chappel, Hackney, letter to the editor of *The Advertiser*, 2 November 2000.

10 *The Advertiser,* "$24m Victoria Park proposal", 3 January 2001, page 1.

11 *The Advertiser,* Editorial, 3 January 2001, page 16. [There was no reference to the *South Australian Motor Sport Act 1984*, which proscribed the construction of permanent facilities at the site.]

coverage followed, and included more controversy about the $24m National Wine Centre (whose cost had blown out from $20m) by then under construction in the park lands east of the Botanic Gardens. Labor party claims alleged that the SA Department of Industry and Trade had spent $40,000 for preliminary work and strategy development for new legislation for the park lands, with questions about why this occurred when the bill should have been a predominantly parliamentary counsel focus. The reason, obscured by the hullaballoo that endured for weeks, was that the department was in the Local Government Minister's portfolio. By March 2001, Parklands Alliance spokesman Peter McWilliams revealed that the Alliance had collected 5393 signatures on a petition to state parliament calling to 'Protect the park lands by stopping the erection of buildings and other structures on the park lands by rejecting the City of Adelaide (Adelaide Park Lands) Amendment Bill 2000'. "Enough is enough," he was reported as saying in a media interview.[12] The minister's media team, under heavy pressure, had three months earlier in December 2001 released information claiming strong support for her bill from Sports SA, "... a body representing more than 32,000 regular park lands users."[13] But a subsequent petition gathered by recreational groups with an intention to contradict the Alliance petition, and noted on 30 May 2001 in a Kotz ministerial statement, carried only 1211 signatures, and in a politically awkward summary in the ministerial statement claimed to call for retaining 'amenities and facilities' on the park lands, at the same time as supporting the bill "... and rejects proposals that would seek to end the use of the Adelaide park lands for community events and sporting and recreation facilities".[14]

A call for respite

On the same date, 30 May 2001, Minister Kotz announced that the bill would be subject to an inquiry by a House of Assembly Select Committee. When it was established, on 7 July, it detailed its brief "... to assess the long-term protection of the Adelaide park lands as land for public benefit, recreation and enjoyment".[15] Many communities interpreted it as a call for a respite, and there was a hint of capitulation. Minister Kotz admitted in a media interview that, over the 12-week period of public consultation (double the normal period), her office had received 102 comments, including 32 letters of support (mainly from recreational users), and 68 opposing the introduction of the bill, but, as she stated in a ministerial statement: "... in many cases on the basis of provisions which form part of the existing law governing the management of the park lands by the Adelaide City Council".[16]

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12 *City Messenger*, 21 March 2001.

13 Government of South Australia, Minister for Local Government, ministerial statement (media release), 11 December 2000.

14 Government of SA: Minister for Local Government, media release, 30 May 2001.

15 Advertisement: *The Advertiser,* 7 July 2001.

16 Government of South Australia, Minister for Local Government, ministerial statement (media release), 30 May 2001.

She continued:

> "This government has been the first to actually take steps to legislatively identify and protect the land that, consistent with Light's vision, is popularly known as the Adelaide park lands. We have been genuine in our attempts to include the views and aspirations of all South Australians who share our desire to maintain this unique heritage."

For many opponents, the experience during 2000 and 2001 had been the first time that some had tried to scrutinise park lands rules machinery, confronting the challenge to comprehend the significant complexities of the definition of park lands, as well as the legal machinery and interacting statutes that might ensure future 'protection'. But to others the so-called complications didn't matter – within the park lands at the time there were vivid illustrations of construction activity, as well as future plans for more, and the media images were an easy basis on which to form a view. It was not what the minister or the premier was saying, but what park lands construction teams were *doing*, that spoke to those who opposed the bill. The initiation of a Select Committee was seen by many as the symbolic beginning of the end for the bill, and so it came to pass, many months later, as a state election loomed and parliament was prorogued in early 2002.

The paperwork trail that remains of this period reveals much more detail than is provided here. But one of the matters that would have enduring relevance was the idea of creating new guiding principles to attach to any future park lands legislation. This idea is further explored in Appendix 15: 'The triumphal delusion: the pursuit of the park lands Statutory Principles'.

Further reading

More discussion about the Kotz bill also appears in Appendix 16: 'Observations made by the city council about what the 2000 Kotz bill proposed, and how the council might improve on those proposals'. Some reflection on what followed in and beyond 2005 is also presented.

15 | The parliamentary Select Committee 2001 that never concluded

"Adelaide's park lands are like one of those itches that must be scratched. ... [They] are like a generous, forgiving mother who will go on giving until she is quite drained away. ... Everyone has a solution: Ian Gilfillan wants world heritage listing; Local Government Minister Dorothy Kotz wants legislation to codify abuse of the park lands; maverick MP Peter Lewis has a park lands bill of his own. Adelaide city council likes to point out that it runs the place."[1]

Journalist Tim Lloyd, *The Advertiser*, 9 June 2001.

It was unfortunate for South Australians that the Select Committee on Adelaide Park Lands Protection never finalised its task.[2] It was given consent in state parliament on 7 June and began hearings on 7 July 2001. It took submissions for months. There were about 40, of which about 12 were presented orally. But it had not completed its task by the time the parliament was prorogued on 15 January 2002. This would be to the convenience of the Rann Labor government that a few months later won office. The failure to pass the Kotz 2000 park lands bill and the premature end to the select committee later contributed to a misguided community belief that all of the conceptual ideas that became the basis for Labor's 2005 Park Lands Act came from Rann administration exploration in the two years that followed the March 2002 election. There were some new concepts but many of the key themes that materialised as a result of the Olsen government investigations during 2000 and 2001 became the product of 'rebranding' by Labor, adjusted in parts and added to, and then claimed as its own all-original creation in the lead-up to the drafting of the 2005 bill. For the victorious new government administration, after nine years in opposition, it would be a case of 'winner take all'.

The existence and contents of the Adelaide park lands Kotz bill[3] would have been very well known among the select committee members, three of the five of whom were Liberal Party MPs. It would have been fascinating to see how the Olsen government might have addressed (in a formal submission) the five terms of reference, which emerged well after the Kotz draft bill had emerged, 10 months earlier, in September 2000. However, the Labor opposition also did not submit to the committee. Both Labor members on the committee had been vigorous public opponents of the bill, but their political attacks had not often been based on detailed technical argument. Only three submissions came from government departments, focused on water resources, and several others came from inner-city councils.

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1 Journalist Tim Lloyd, *The Advertiser*, 'Still not seeing the value in park lands', 9 June 2001.

2 Parliament of South Australia, House of Assembly, Select Committee on Adelaide Park Lands Protection, 2001.

3 The City of Adelaide (Adelaide Park lands) Amendment Bill 2000.

Most submissions came from private individuals and lobby groups, apart from the city council. The small total number of submissions contrasted with the 5393 signatures collected on a previous 'no park lands buildings and other structures' petition and presented to state parliament, but this fact would have been no surprise to any select committee executive officer, given that submissions tended to be the manifestation of passionate views, strongly motivated to be heard and further scrutinised within parliament's committee rooms.

The terms of reference

Transcriptions of interviews or submissions listed in August 2001 may be found today on a public record but the concepts, ideas and opinions (including several that were given in confidence) were never knitted together into recommendations that might have addressed the demands of parliament's House of Assembly, as reflected in the terms of reference. They were:

a) Desirable protective measures to ensure the continuing availability of land for public recreational purposes.
b) Arrangements for management responsibility and accountability.
c) The desirability of legislative protection and the form of legislation, if considered necessary.
d) The impact and feasibility of seeking to list the Adelaide park lands on the World Heritage List.
e) Any other related matter.

Had the Olsen government provided a submission, it might have simply reproduced its own 12 September 2000 summary of its City of Adelaide (Adelaide Park lands) Amendment Bill 2000. Its 'key points' were:

- The redefining of the physical area of the park lands "to include the land now dedicated to the care, control and management of the Adelaide City Council and the government reserves occupied by Crown agencies".
- A stipulation that "land may not be removed (alienated) ... without the express approval of the parliament and the Adelaide City Council".
- A process be "established for public reporting on the state government's occupation of land within the park lands, including a report of future intentions for use and/or occupation".
- A recommendation for a mechanism "created for the transfer to the city council of land which is no longer required for government purposes".
- A "planning and accountability framework" for the city council "in respect of that area of the park lands which is dedicated to the city council".
- A fund "to provide for the enhancement and beautification of the area of the park lands for which the council has custodianship".[4]

[4] 'Adelaide park lands consultation bill for public comment', one-page 'key points' summary signed by Minister Kotz, 17 September 2000, attached to the draft bill, dated (by parliamentary counsel) 12 September 2000.

A comparison of the key points with the July 2000 terms of reference suggests that someone within the Olsen government administration was seeking more advice on at least one matter that, until then, had not been deemed to be of relevance in the Kotz bill. The "impact and feasibility" of World Heritage listing was probably listed as a topic because of pressure by the Adelaide Park Lands Preservation Association and its members.

An economic rationalist advises

In relation to reference term (a) it was unfortunate that journalists or editorial executives on the Adelaide daily newspaper *The Advertiser* didn't submit either, given a proposition that one of them had advanced publicly in the month that Minister Kotz received House of Assembly permission to set up the Committee.

> "Given we live in economic rationalist times, [why not] commercially value the park lands? Prices based on city and suburban land values might range from $200 to $1000 or more a square metre, or $2m to $10m a hectare. When users applied for parts of the park lands, these values would set the prices – if the proposals were suitable. When users applied to remove a club room or a tennis court, they would be similarly rewarded, if there were any money in the kitty. At least then we would have a level playing field to weigh up all the other ridiculous arguments that are ventured in an effort to snare a slice of the place. Right now we do not value the park lands enough." [5]

What the city council thought

Archive documentation can help a reader today obtain informed and instructive understanding of how key players responded to the Kotz bill, and later the select committee inquiry. Two useful sources of information reveal what a central participant in this Adelaide debate was thinking at the time – the city council. Having been the 'custodian' of the park lands for more than 150 years, responsible for 'care and control' of much of the park lands, it was in a strong position to put into perspective many of the so-called new concepts proposed in the bill. Its first was a 10-page agenda summary written in November 2000, at the height of the controversy about the bill.[6]

The second source was the council's submission, 10 months later, on 28 August 2001, to the committee.[7]

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[5] Tim Lloyd, *The Advertiser*, 'Still not seeing the value in park lands', 9 June 2001.

[6] Adelaide City Council: City Strategy Committee, Agenda, Item 5.3, 'City of Adelaide (Adelaide Park Lands) Amendment Bill 2000' – suggested amendments, 17 October 2000, 10 pages.

[7] *Submission by the Adelaide City Council to the Select Committee on Adelaide Park Lands Protection*, 28 August 2001. Six-page document, with cover letter. Note: The Select Committee's Submission Index of August 2001 recorded, however, that the council's submission was presented as 'oral evidence'. The council team presented the paper, and associated visuals, and spoke to it. This means that more evidence may have been provided orally.

One key message was summarised:

> "The government is still the ultimate land owner and is able to pass specific legislation alienating further areas. More worrying, however, is the use of the major projects provisions of the *Development Act 1993* to push through development it considers to have 'state significance'. This is essentially an administrative decision requiring no parliamentary mandate. It is this ability of the government to override other controls on the park lands and allow some form of exclusive use that most threatens their use for public benefit, recreation and enjoyment. Legislative protection is needed to secure the park lands against such intrusions, which have tended to degrade the park lands, and to provide an appropriate mechanism for approving such proposals through parliament."[8]

The legal complexities of planning

Another submission, given orally to the select committee, came on 3 October 2001 from the South Australian government, from Phil Smith, Director, Development Assessment, Planning SA.[9] The department's topic was 'Development assessment process'. The transcript was revealing. The questions raised by the committee members during this discussion, asked of an expert in state planning, illustrated how poorly as parliamentarians they grasped the significant complexities in relation to park lands zone development rules. They were all parliamentarians of some years' experience (Minister Dorothy Kotz was chair), but the questions and the complexity of answers illustrated that the intricacies of planning and the development assessment process – even within parliament's corridors – had significant potential to confuse because of the high level of knowledge needed to comprehend concepts under park-lands-related law, especially land-use management and development under the *Development Act 1993* and associated instruments of park lands planning, such as the *Adelaide (City) Development Plan.*

Smith's was an instructive presentation, explaining not only state planning matters but also presenting a 2001 picture of park lands zoning determination complexities, and contemporary controversies. In light of this, it is not surprising that the debates that had raged outside parliament between mid-2000 and the July 2001 select committee had been significantly confused and compromised because of the public's similar lack of expertise. The complexities also pointed to something else – the major challenge of consulting with South Australians about potential change to the rules for park lands law and management – and the struggle to obtain meaningful and practicable feedback. For many citizens, the arising confusion quickly gave way to suspicion, fuelled by years of prior Adelaide observations about park lands management, a view that any political bid to change the rules was a bid

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8 *Submission by the Adelaide City Council to the Select Committee on Adelaide Park Lands Protection*, 28 August 2001, page 6.

9 Phil Smith, Development Assessment, Planning SA, Witness presentation to the Adelaide Park Lands Select Committee, 040 'Official Hansard Report', pages 1–15, paragraphs 1–38, Wednesday 3 October 2001, 4.30pm.

anticipating more government-driven alienation and exploitation. Suspicion can be highlighted, but isn't useful for administrators seeking rational feedback. Smith's best advice in 2001 at the select committee hearing was sound then, and remains sound.

> "I think that the best thing we can do – and this applies across the whole state, not just to the park lands – is to be clear about our development intentions. My view is that the clearer the document, the better for all, and the clearer the city development plan [is] the better for all concerned. People often ask, 'How do you have a planning system which gives certainty but which is flexible?' I would argue that we can deliver that under the Development Act through the amount of detail we put in policy documents, such as the City of Adelaide [Development] Plan. If we want absolute certainty in an area we write very clear and rigid policies." [10]

Other council observations

The city council's select committee submission appeared to be written in the absence of the guiding hand of the council's park lands expert, former Lord Mayor, Dr Jane Lomax-Smith, who had concluded her term as Lord Mayor. Many recommendations reflected the broad community view that the park lands ought to be 'protected'. Various mechanisms were recommended, including one to give the *Park Lands Management Strategy Report* (first version, 1999) "direct legislative support".[11] In the 2005 Act, provision for this would be made, not to that version, but to a subsequent future version (which emerged in 2010). It appears that the administrator who wrote this document was not as experienced as the one who wrote the council's 17 November 2000 city council's Strategy Committee report about the City of Adelaide (Adelaide Park Lands) Amendment Bill 2000. Nonetheless there were some pertinent observations about rules abuses by government, noting that: "Responsibility for alienation of park lands should not rest with the government of the day. The significance and impact of decisions [to alienate the park lands] is such that only the parliament should make them." [12] It did not take up the Lewis bill's proposition, that council might enjoy a new 'veto' power with state parliament about future park lands proposals. The author must have thought that the council's lower-tier and subservient role to the state was preordained and immutable. Perhaps they had read the commonwealth constitution and noted local government's lack of status.

World heritage listing – the political complications

The city council also gave useful advice (which in retrospect remains timely, more than 20 years later) in relation to the committee's fourth reference term: '(d) The impact and feasibility of seeking to list the Adelaide park lands on the World Heritage List'. This listing was still not achieved by year-end 2018, despite

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10 Phil Smith, op. cit., page 15, paragraph 37, Wednesday 3 October 2001, 4.30pm.

11 Adelaide City Council, Submission to the Select Committee on Adelaide Park Lands Protection (Lord Mayor Alfred Huang), 28 August 2001.

12 Adelaide City Council, op. cit., comment response to term (c), sixth page of unnumbered submission, 28 August 2001.

significant public effort, mostly driven by the Adelaide Park Lands Preservation Association. The council in 2001 submitted that it supported the bid, but called for the state government to put the case, which would involve much work. It noted that whole-of-park-lands (area, as opposed to place) State Heritage listing would assist (which partially explained the enduring efforts to achieve this listing). But there was a hurdle.

> "In order to make a case it would probably be necessary to deal with the issue of alienated land and the level of the government's commitment to maintaining/restoring the integrity of the park lands. In this sense, protection legislation, that clearly enunciates both the virtues of the park lands and the principles required to manage the qualities that are of significance, is likely to be a prerequisite …".[13]

The council also warned: "Listing could bring about a 'trigger' for commonwealth control under the *Environment Protection and Biodiversity Conservation Act, 2000*.[14] The commonwealth government would then have an interest in the management of the park lands to ensure the essential qualities (of international importance) are not eroded."[15]

Labor's year 2003 contemplations

The new Rann Labor administration, which had come to office in March 2002, toyed with the park lands World Heritage listing bid for a few years. The objective appeared among a list of others in 2003, leading up to the 2004 drafting of the Adelaide Park Lands Bill 2005, but when the Act was proclaimed in 2006 there was no reference to it, and no indication that the Labor government was keen to pursue it, which by early 2006 was facing its second election, which it won. State bureaucrats may have argued that the objective did not need to form part of the legislation. However, the administrative lack of interest contrasted with the interest of University of Adelaide Associate Professor, Dr David Jones and his city-council-commissioned, six-volume park lands cultural history study which was finalised in 2006 and publicly released in October 2007.[16] He concluded that there was "merit and relevance in the Adelaide park lands and squares being considered for a World Heritage nomination".[17]

The Jones study had been commissioned to inform the city council's 2004 project to write Community Land Management Plans for the park lands. But when these were revised (between 2012 and 2013), extracts from the study had been deleted,

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13 Adelaide City Council, ibid., 28 August 2001.

14 The Act is actually dated 1999.

15 Adelaide City Council, ibid., seventh page in unnumbered submission, 28 August 2001.

16 Associate Professor, Dr David Jones, (through) Adelaide Research and Innovation Ltd, University of Adelaide, The *Adelaide and Park Lands & Squares Cultural Landscape Assessment Study 2007*, publicly released in October 2007, volume 6, 6.5, 'World Heritage Significance', pages 1153–54.

17 Dr David Jones, op. cit., page 1154.

leaving only an internet link. Despite what may have been the best academic exploration of the merits of having World Heritage significance formally recognised for Adelaide's park lands, the institutional and administrative memories of both tiers of government were rapidly fading. The political downside of achieving the listing may have been one reason contributing to that amnesia.

Postscript: December 2018

Further references to World Heritage listing emerged in the lead-up to the city council 2018 elections, when one candidate pledged to pursue the listing, through a motion without notice to the Adelaide Park Lands Authority (APLA). Personal APLA-sourced advice to this work's author was that the Authority "… has not been involved in any World Heritage listing proposal to date".[18] This may have been technically correct, but it had been involved in giving advice, on demand, which indicated that some interest had existed during the 12 years between 2000 and 2011.[19] Documents included: records of a council resolution on 9 February 2000 expressing in-principle support; a council reference to a proposal sent to the Capital City Committee (CCC) in September 2001; council's calling for a report on the matter in January 2003; and a report to the Capital City Committee in November 2011. That report, which was written by the executive officer of the Authority, remained confidential under the CCC legislation.

This work's Chapter 5 on the Capital City Committee contains further detail on the non-transparency of this body's work. It remains a major handicap to historical research.

Further reading

More discussion about attempts to achieve World Heritage listing for Adelaide's park lands appears in Chapter 53: 'A frustration of listings leverage'.

[18] Martin Cook, executive officer, APLA, email communication, 22 August 2018.

[19] Martin Cook, executive officer, APLA.

16 | Right time, right place

> *"Like him or not,* [Mike] *Rann was a formidable modern politician. In government he wedged the Liberals on the political right with his law and order crusade and cleverly wooed other conservatives to join his government. No Liberal Opposition leader anywhere in the nation would have laid a glove on him between 2002 and 2009."*[1]
>
> Haydon Manning, Australian political scientist and Adjunct Professor with the College of Business, Government and Law at the Flinders University of South Australia, 6 March 2015.

In terms of grand gestures, state Labor's in relation to Adelaide park lands stands out like a beacon in recent South Australian history. Governments – especially during first terms – have the time to invest in their pre-election gestures' continuing health and endurance. The grander they are, the longer they can pay dividends. Well chosen, a political gesture presented in opposition can represent 'a gift that keeps on giving' in government, at least until the gloss wears off, and months turn into years, and the reality in the metropolitan electorates dawns that government pledges cannot always be delivered in the way they had suggested, sometimes specifically, in the heat of pre-election skirmishes.

Labor's park lands gesture began taking shape as a result of the skilful monitoring of widespread community anxiety about park lands management in the years towards the end of the second term of the Olsen Government, 1997–2002. The Labor opposition, led by Mike Rann, began planning for the March 2002 state election well ahead of that poll year, tackling a tiring Olsen administration on a number of fronts. By the time his opposition team was ready to face an election, Rann's political instincts were razor sharp.

'Media Mike'

Mike Rann was not only a skilled politician but also a superb media communicator. He had been a communications advisor in the later period of Labor Premier Don Dunstan's reign, whose political career ended in 1979. Rann carried over those skills, remaining in government administration as John Bannon's Labor premiership began. Bannon's political career ended after the State Bank's financial collapse in 1989, the consequences of which within a few years resulted in the end of a long period of Labor rule in South Australia. A Liberal administration replaced Labor in 1993, under Premier Dean Brown, who in 1997 was replaced by John Olsen. Rann's time in opposition during that decade contributed immensely to his development as a formidable politician and leader. Although British-born, he

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1 Online article: *InDaily*: Haydon Manning: 'SA Liberals: More unlucky than hopeless', 6 March 2015: https://indaily.com.au/news/business/analysis/2015/03/06/sa-liberals-unlucky-hopeless/

had spent his formative years in New Zealand and had come to Adelaide with high-level skills in communications, complemented by a Master of Arts degree. During the Dunstan and Bannon years he had intimately observed the nature of South Australian cultural sensitivities, including a community desire to protect the park lands from government-endorsed incursions or commercial exploitation. It was an issue of widespread and enduring public concern. In the 1990s, and especially during Olsen's premiership that began in 1997, as opposition leader Rann and his colleagues observed a gold-plated park lands electioneering opportunity (among many) to tap into the desires of a broad, multi-age constituency across many state electorates. There were other 'sensitivity' opportunities, too, the proposed future resolution of which he distilled into a neat, short list of his core pledges in the period leading up to the March 2002 poll.

The 'pocket list' had all the ingredients of more 'grand gestures' and typified shrewd electioneering, tapping into fundamental voter unrest about the needs and wants of many South Australian voters that previous party politicians had failed to satisfactorily address, leaving a trail of broken promises. Rann's pre-election 'pledge card' read:

> "My pledge to you. (1) Under Labor there will be no more privatisations. (2) We will fix our electricity system and an interconnector to NSW will be built to bring you cheaper power. (3) Better schools and more teachers. (4) Better hospitals and more beds. (5) Proceeds from all speeding fines will go to the police and road safety. (6) We will cut government waste and redirect millions now spent on consultants to hospitals and schools."[2]

By the conclusion of his premiership in 2011, Rann had not delivered on most of these pledges, moving on as state cabinet's (and the electorate's) patience with him was wearing thin. Cabinet colleague, Jay Weatherill, was installed to refresh the ranks and lead Labor into the remaining three years of its third term. Curiously, addressing the park lands public distemper had not been listed on Rann's 2002 'core' pledge card, but it had been a matter central to his many public statements in the lead-up period before the 2002 election. Electioneering is a political craft which, when best practised, promotes the broadest range of temptations that might assist when the people might be asked to reflect on whether the time was right to end a relatively long-running government regime that was clearly getting tired.

Best intentions

The Olsen Liberal administration in the late 1990s believed that its propositions about improved park lands management featured nothing but good intentions. Indeed, when newly promoted Liberal Minister for Local Government, Dorothy Kotz, had released a park lands consultation paper in February 2000, in preparation

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[2] Archival 2002 reference reproduced in *The Australian* ('Cut and Paste'), 17 September 2016.

for a proposed new bill, her sentiments had been very similar to Rann's. "I believe that this community discussion is essential if we are to reach an outcome which will protect the Adelaide park lands both for ourselves and our children," she had said.[3] As would occur again and again, that word 'protect' defined the focus of the debate. But her party significantly underestimated the rising level of community frustration in achieving a result, sooner rather than later. In retrospect, introduction of the Kotz bill in late 2000 was not a strategic error in terms of some of its content, but one of bad timing, which played into Labor's hands as the 2002 poll date edged closer. By late 2001 the South Australian mood was reflecting a raw public sensitivity to and distrust about government management of park lands for the public good – and Rann tapped into that sensitivity brilliantly.

Enter Lomax-Smith

Rann was not alone. The new Labor candidate for the electorate of Adelaide, Dr Jane Lomax-Smith, was immediate past Lord Mayor of Adelaide. She had been Lord Mayor at the time of the creation of the first *Park Lands Management Strategy Report 2000–2037*. She had shepherded it through the council's committees and, less visibly (because of the veil of legislated secrecy under which it operated) the government's Capital City Committee. This body, more than any other, kept a close watch on park lands matters and ensured that government maintained its grip on park lands policy, despite the illusion that the city council as 'custodian' played the major determining role. The fact that the new 1999 Strategy had been signed off by Lomax-Smith was formal confirmation of her metaphorical 'ownership' of the park lands agenda. It was like an authorisation letter that might have been tucked into the pocket of the park lands gamekeeper. Whenever something exploitative occurred in the park lands, the media called her for definitive comment. The fact that she constantly placed herself into the public domain as the estate's chief 'protection' prosecutor did not go unnoticed within Labor's inner circle. Years later Rann confessed that he had wooed Lomax-Smith several times in 2000 and 2001 with the prospect of her taking the Labor pledge (by joining the Party), adding his undertaking to support her preselection for the state seat of Adelaide if she agreed. But Lomax-Smith's passion for the protection of the park lands had emerged significantly in advance of Rann's, nurtured during her time as a city councillor, beginning in 1993. Her established credibility via the creation of the Strategy during her term as Lord Mayor brought to Labor a policy authenticity that the Olsen administration lacked. It was of inestimable political value to Labor in opposition. The party's subsequent 2001 pledge in its park lands 'Directions Statement' brochure was to pay big dividends as voters considered which candidates deserved their vote. That brochure policy statement suggested that there was only one political party that could act to once and for all address South

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[3] Government of South Australia, 'Message from the new Minister for Local Government', Insert to: *The Adelaide Park Lands*, consultation paper, 'Proposals for new legislation to ensure the long-term care and protection of the Adelaide Park Lands,' February 2000.

Australians' desire to forever 'protect' the park lands and ensure the survival of the city's surrounding belt of grassy pastures and woodlands as Colonel William Light had defined them in 1837. This idea was widely and seductively attractive across the electorates, especially certain metropolitan ones, which Labor sought to either retain against the odds, or win back, against the odds. The state electorate of Adelaide was, in political and administrative terms, park lands 'central' but it was held by the Liberal Party. When Lomax-Smith won Adelaide in 2002, on a slim margin, she brought together all of the elements necessary for contemplation of the creation of new legislation that might usher in a new social and economic culture applying to the city's 'jewel in the crown', a park lands term she and other Labor people commonly used in media interviews. Another phrase at the time (and well beyond that time) was: "The park lands isn't cheap land, it's priceless." As slogans went, it punched home a 'no compromise' message that might have been penned by Rann himself. South Australians liked the simple, no-compromise messages. But the years ahead would test the politics of compromise to the limit.

PART 5

"In the past there has been no clear, agreed vision for the park lands as a whole that is shared by state and local governments and the community."

Labor South Australia, *Directions Statement, 'Labor's plan to save the park lands'*, September 2001.

Labor, however, had claimed in the statement that it had *"a plan of action to protect our park lands in the interest of all South Australians"*.

Extract, Chapter 17: 'Regime change'.

Labor Leader Mike Rann

Labor's plan to save the parklands

Adelaide's Parklands help make our city special. We are the city in the park.

The open, green space of the Parklands, including our city squares, is an amenity enjoyed by people who live in the metropolitan area as well as those who live and work in or around the city.

For visitors from overseas or interstate, the Parklands set our city apart from others. Yet our Parklands seem to be continually under threat.

In the past there has been no clear, agreed vision for the Parklands as a whole that is shared by State and Local Governments and the community.

Too often the Parklands have been seen as land on which to build, as empty space. Meanwhile, their economic role and value in terms of tourism and their impact on the value of adjacent property is continually discounted.

Quality of life is a highly marketable commodity, if difficult to quantify. Of course the value of the Parklands to those of us that love them cannot be assessed in purely monetary terms.

Parkland isn't cheap land... it's priceless.

The Rann park lands 'manifesto' of September 2001, circulated six months ahead of the 2002 state election. Labor's political strategy regarding the future management of Adelaide's park lands was to assume the moral high ground, seize ownership of 'the problem' and propose solutions to it. In opposition, Labor had been prosecuting a 'fear factor' for several years, based on Olsen Liberal government attempts at writing draft legislation for the park lands. The 'problem', according to Labor party pamphleteering, was that "Your park lands [are] under threat". (Labor South Australia, *Labor's plan to save the parklands*, September 2001, unnumbered page.)

Rann's eight-page manifesto proposed a way forward, on the fictitious rationale that: "In the past there has been no clear, agreed vision for the park lands as a whole …" But two years earlier the Adelaide City Council had published a comprehensive *Park Lands Management Strategy Report*, featuring a 37-year plan of action based on a finely articulated and widely endorsed long-term vision. Pages later in the manifesto Rann did acknowledge this report. "But," he wrote, "without full and genuine commitment to the park lands at the state government level, their future can never be adequately guaranteed. A Rann Labor government will bring that commitment and that vision." Over the decades that followed, which included four consecutive Labor government terms (the first two under Rann), Labor's so-called commitment and vision would see state endorsement of major infrastructure construction projects across the park lands, despite the passing of 2005 legislation that purported to 'protect' and 'enhance' the green open spaces.

PART 5 Retrospective phase 2: 2002–2006

Chapters

17 | Regime change
(How the lure of 'park lands management independence' became Adelaide's great new century political seduction.)

18 | Bureaucrats' challenge
(How the bureaucrats managed the sleight of hand.)

19 | Sealing the deal
(Why a looming state election drove political expediency.)

20 | Logjam politics – in the beginning
(How the sudden growth of park lands paper foreshadowed a long tradition of public incomprehension.)

21 | Calming the herd
(Maintaining calm as a park lands paper storm blew, a sign of weather patterns to come.)

22 | The horse, the dog and the poodle
(How South Australians reacted when they unwrapped the proposed new park lands model.)

There is no doubt that in 2001 the pledge to take control of park lands determinations from the government and place it under independent, arm's length control was one of Labor's most seductive offers. It had been at the core of many writers' comments to newspaper editors, and of the community groups' wishlists …

Extract, Chapter 17: 'Regime change'.

Other links to chapters in PART 5

Chapter	Appendix link
19 | 'Sealing the deal'.	**Appendix 6:** 'The Adelaide Park Lands Authority'.

17 | Regime change

In a political context Labor's park lands protection pledges had been expertly written. Apart from about three matters, the list actually summarised a plan of 'steady as she goes', soaked in a solution of optimistic hope against some odds, especially the odds of the state government and the city council agreeing on a model that might please each other as well as South Australians, and the odds against any state administration changing its authoritarian ways.

In park lands terms there were at least three unanticipated outcomes that followed state Labor's win in March 2002 and the progression of its first term of government. Firstly, the pledge to fast-track change regarding park lands control very quickly turned into what appeared to be a slow, contemplative meander, as government administrators, under new Environment Minister, John Hill, inched towards resolution of a potential management model that might lead to draft legislation that could 'protect' the park lands. Gone was the shrill and impatient Labor opposition call for revolution that had endured for at least 12 months previously. Former opposition Labor MPs, some of whose news releases in the lead-up to the election had shouted at and heckled the Olsen government about the urgent need to block its exploitative park lands developments, fell silent as some of them assumed ministerial portfolios and became suddenly very grown-up and cautious. The news media moved on to other controversies, as calls by journalists for progress reports were stalled pending administrative announcements, which rarely came.

Secondly, the outspoken former Lord Mayor who had won a seat, Dr Jane Lomax-Smith, largely retreated from the debate and assumed an unrelated ministerial portfolio, which kept her busy. Her park lands protection pledges during 2001 had dominated her bid to snatch the electorate of Adelaide from long-term Liberal party incumbency. The public record suggests that she was subsequently not to play a hands-on role in the group that was formed to pursue park lands matters, except to voice authoritative media opinion as the MP for Adelaide – an electorate comprising the whole of the park lands.

Thirdly, the concept of an independent body to manage park lands determinations, free of government control, so faithfully pledged by opposition leader Mike Rann in 2001, would never eventuate. "Labor says it's time our park lands were protected for good," he had written in 2001.[1] But history shows that in year 2002 – or any year later in the period of study of this work – wasn't the time.

New government, new direction

That pledge had been one of a number contained in a 'Directions Statement' brochure titled *Labor's plan to save the parklands* signed off by Mike Rann in

1 Labor South Australia, *Labor's plan to save the parklands*, September 2001.

September 2001 and widely circulated. It was not made clear what the park lands needed to be saved from, but the implication was that it ought to be saved from the darstardly deeds of the past. The six months leading to the state election had been a period of heightened park lands debate, not only within the hearings of the House of Assembly's Select Committee on Adelaide Parklands Protection that was occasionally sitting at the time, but also in the streets, pubs and homes of many South Australians, stirred on by reports of pre-election claim and counter claim in Adelaide's morning daily *The Advertiser*. A reader of the Labor brochure more than 20 years later can still sense the urgency of Rann's tone, and the energy with which the opposition leader was pursuing the matter in the months ahead of the looming poll. The brochure's high level of detail suggested that Labor had already done much preliminary work and would be ready to implement change as soon as it won government. This turned out to be a misapprehension. "This Directions Statement is a draft 'greenprint' for the park lands – a plan designed to preserve, maintain and enhance our park lands," Rann had authorised the brochure to claim.[2] "In the past there has been no clear, agreed vision for the park lands as a whole that is shared by state and local governments and the community." Labor, however, had claimed in the statement that it had a "plan of action to protect our park lands in the interest of all South Australians".[3] Ten pledges followed.

Paper undertakings

In retrospect, in a political context Labor's park lands protection pledges had been expertly written. Apart from about three matters, the list actually summarised a plan of 'steady as she goes', soaked in a solution of optimistic hope against some odds, especially the odds of the state government and the city council agreeing on a model that might please each other as well as South Australians, and the odds against any state administration changing its authoritarian ways. These ways embraced the work of high-level state bureaucrats uninterested in major administrative change, most of whom were decidedly against handing park lands control to someone or something else. Labor's pre-election pledges had either implied changes by using vague verbs such as 'investigate' – as in the case of "investigate the creation of an independent body to manage our city park lands" – or they offered to alter arrangements to better run park lands matters or make the park lands more attractive. For example, make the park lands "a showcase of world best practice in landscape architecture, green space and public garden design". One pledge about reclaiming alienated land simply replicated an existing objective in the two-year-old, council-published *Park Lands Management Strategy Report 2000–2037*. Labor already knew which land was tagged for reclaiming, and so would have voters familiar with that Strategy. But there wouldn't have been many because busy people rarely scrutinise wordy policy documents, nor would many have recalled the 1999 detail published more than two years earlier. Several other Labor promises cheekily promised what amounted to existing arrangements in relation to events and sports-group use, whose features in

2 Labor South Australia, op. cit., September 2001.

3 Already those ambiguous words 'protect' and 'enhance' were slipping into the narrative. Over the next two decades they would never be formally defined.

terms of event management and dominating occupancy of some park lands sections by "sporting clubs, schools and community groups" had been the source of complaints in previous years. This was because of how poorly or at least how inequitably they (and their licences and lease arrangements) had been managed by the city council.

The 'major development' bogey

However, there was one specific pledge, which topped the brochure's list. It was to: "change the law to block state governments overriding proper planning processes by the use of Major Project status to impose developments in the park lands." This topped the list because it related to the most sensitive political nerve within the Olsen Liberal administration, given its recent use of this provision to authorise construction of a wine centre and an expanded, commercial exercise hub (the 'Next Generation' gym) on park lands. Like most political pledges, however, it contained a fib. The Olsen state government had not 'overridden proper planning processes' because the processes were legitimately allowed under the *Development Act 1993* under section 46. The more accurate description should have been 'capitalising on existing but controversial provisions, provisions very unpopular with the people of South Australia'. Ultimately, under Labor there would be no change in the existing law; the enactment of the 2005 Adelaide Park Lands Act would merely disable several development provisions in the *Development Act 1993*, as it would interact with the future 2005 Act. The disablement arrangement would be driven by Dr Lomax-Smith in Labor cabinet deliberations in the years leading up to 2005. It would be a popular policy proposal, one that ahead of the 2002 election the public easily understood and strongly supported when Labor was in opposition.

The lure of independence

There is no doubt that in 2001 the pledge to take control of park lands determinations from the government and place it under independent, arm's length control was one of Labor's most seductive offers. It had been at the core of many writers' comments to newspaper editors, and of the community groups' wishlists, including the seven-group-member Parklands Alliance, which included the long-established Adelaide Parklands Preservation Association. Labor's vocal presence in the lead-up to the 2002 election had been strongly focused on this desire and the Rann brochure (and many radio and TV statements at the time) addressed it in detail. "Labor is committed to addressing the question of the administration of the park lands in partnership with the Adelaide City Council and the people of Adelaide," Rann had written.[4] Then followed the big pledge, in bold: "**A Rann Labor government will investigate the creation of a single independent body to manage our park lands with a charter to maintain, preserve and enhance the Adelaide park lands as green space, open to the public.**" This dangled a truly tempting aspiration that generations of South Australians had held, a vision of an emancipated pastoral estate, free of the exploitations, ruses and legal loopholes that

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[4] Labor South Australia, *Labor's plan to save the parklands*, September 2001.

had contaminated the management of its recreational open spaces surrounding the city for so long.[5] The Rann brochure continued: "The investigation would include a full public consultation process involving the Adelaide City Council, adjacent councils, residents and all other relevant bodies, authorities and interested parties." There was no reference to the state's stranglehold on park lands planning determinations. To an uninformed reader, the suggestion appeared to be that it was not the state but the city council that needed to be brought to heel, as if it determined park lands land-use matters and needed the fresh, disciplined direction of a body independent of it to behave better. The brochure continued: "There are many models used to manage city parks interstate and overseas. They include independent trusts and foundations. Adelaide's park lands are unique. They will require their own tailor-made solution. But the systems used elsewhere may provide valuable examples of how a new system to administer the park lands can be crafted."

Another page was dedicated to examples of global parks management, including Central Park in New York. "There are a range of models of city park management around the world that can help inform the development of a new administrative plan ... For instance, the most famous city park in the world, New York's Central Park, is now administered by a charity. ... Closer to home, some major Sydney parks are managed through a Trust." Further detail was explored in the brochure about Sydney's Moore Park Trust. There was no doubt left in the reader's mind about Labor's proposed investigations of, and commitment to, the notion of a new, independent South Australian body that would liberate Adelaide's park lands from the past's irregular and politically directed government determinations, and the exploitative abuses which had so riled many South Australians.

The search for Adelaide's administrative 'holy grail'

The story of how this alluring management concept was to be dealt with by bureaucrats under government instruction over the next two years is one that records the final stage of the aspirational search for Adelaide's metaphorical holy grail. But while a new park lands bill did become an Act, the prospect of independence from manipulative and unpredictable government control of Adelaide's park lands was to slowly fade away – not that South Australians would perceive it that way for some time. The years between 2002 and 2004 became a period during which bureaucrats explored how the great Rann pledge could be managed sufficiently to allow his government to prepare to win a second term, as drafts of a new bill were being prepared for tabling in state parliament in 2005. The timing was good – a state election loomed in early 2006. That Labor did win highlighted the consummate expertise available to the Rann administration within South Australia's state bureaucracy.

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[5] Like so many aspects of South Australian politics, the idea was not new, but Labor made no mention of previous bids. For example, 29 years earlier, in July 1972, inner-city petitioners had, according to Adelaide's morning daily newspaper, collected many thousands of signatures opposing a city council by-law amendment allowing a doubling of car park area on park lands. The petition also called for a "trust of professional administrators to protect the park lands and remove them from the control of council." Source: *The Advertiser*, 'Parking protests by the barrowload', 5 July 1972; reprinted *The Advertiser*, 4 July 2022, 'The way we were', page 36.

18 | Bureaucrats' challenge

Ultimately, the story of how the concept of an independent Trust model was predetermined by the bureaucracy remains poorly perceived by most South Australians. Administrators did it by writing an expedient, pre-consultation definition of what it might do and, critically, to whom it would report – a government minister. After that, the reporting line and the ongoing extent of government control was pre-ordained, even though many respondents continued to assume something else.

Labor opposition leader Mike Rann's pledge to create "a single independent body to manage our park lands" was rather like most seduction routines – tempting. It fell to a working group set up about seven months after Labor's March 2002 victory, comprising a state employee, a senior council employee and a sports recreation retiree to create its own definition of what an 'Adelaide City Parklands Trust' would look like and how it would be defined under a future statute. But it wasn't what most people involved in the pre-election debates of 2001 meant, or what subsequent post-election public consultations either assumed or specifically indicated. Nonetheless, that definition quietly progressed through a period of wide public consultation. By the end of the consultation period, the public still assumed one thing – and their preferences were in a majority for it – but the administrators would have known that, on paper, it meant something else. Of this, more later.

There was a reason why street-level history records very little. South Australia's media paid insufficient attention to fine detail at a crucial time, and was not assisted by a snowstorm of administrative consultation options and technical explanations. These also significantly confused some park lands 'protection' advocates who, before the election, thought they understood the key issues and the solutions necessary. The case for an independent body free of instruction from the government of the day was, in the eyes of a majority, fairly clear in 2001. This view was two years later evidenced by the consultation results. A comprehensive community consultation was held early in 2003, involving 110 people in forums; 160 others providing feedback to a government form; and the writers of 46 submissions. The 160 community feedback forms revealed that the Trust concept was not only the most desired model (65 per cent, plus another 13.8 per cent as 'neutral or not stated') but also that the alternatives were significantly less supported.[1] The 160 community feedback forms revealed that an alternative model – city council management – elicited only a 30 per cent support response. An alternative model, management by a council/state partnership, elicited even less support, at 26.2 per cent. Electronic responses indicated more than 50 per cent support for the Trust model.[2] Moreover,

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1 *Managing Light's vision, Options for the Management of Adelaide's Parklands*, Consultation Report, Porter Novelli/Janet Gould + Associates Project Team, June 2003, pages 15–18.

2 n=18, of 32, plus two 'neutral'.

in the submissions sample there was favourable support in 17 of 38 responses. Some submissions only hesitated in fully endorsing a Trust concept because the model's operational and funding features remained ambiguous at the time. The submission by the Parklands Alliance, whose seven community group members supported a Trust concept, was counted as one submission, but might also have been counted as seven preferences, taking the tally to 23 of those 38 responses. Most tellingly, preference for the other two models was much less. Overall, two matters worked against recording an even stronger preference trend. Firstly, there was ambiguity in assumptions about the independent model. It also remained unclear how widely the 'reporting to a minister' concept had been disseminated and comprehended. Hence, there was hesitation to commit to an unequivocal 'yes' response. Secondly, there was a lack of assurance that, if an independent Trust model were put into place (of whatever construction), existing city council funding would be "... not at risk, and/or that appropriate structures and funding arrangements [would be] in place for the future management of the park lands".[3] At the time, the city council was spending about $12m annually on park lands maintenance and operations and there was no proposal to replace that funding by any other agency. The state government had a strong interest in continuity, too. It was contributing less than 10 per cent of that $12m and it had no plans to change that arrangement.

In news management, timing is everything

It didn't help that the result of the public consultation took so long to be known after the 2002 Labor government victory that, in news terms, it was deemed by editors to be overwhelmed by more current events. Moreover, in news media operational terms, skilful media manipulation by the Rann government at the time sold a fresh angle instead, which was just emerging. It was exciting news about new draft law that would monitor and control park lands matters, resolving all of the problems of the past and forever protecting the grassy vistas to enable unfettered, open-access, park lands recreational pleasure for the people of South Australia. It was a triumph, not only by politicians but also by their senior administrators, that the abandonment of the pursuit of a body genuinely independent of the government of the day so explicitly foreshadowed by an opposition leader only two years earlier, had gone unnoticed by the media. The longer-term outcome (with the use of that misleading term, an 'authority') would still mean that the park lands remained under the same manipulative, government-directed regime as existed before the 2002 election. Worse, the new arrangements would ensure the growth of a new park lands bureaucracy, continually expanding budget demands, but exclusively funded by City of Adelaide ratepayers. This would be accompanied by an ever-growing library of evolving new policy and guideline documents whose complex and sometimes confusing interrelationships would within 15 years threaten to challenge the efficacy of the council's administration of park lands matters.

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[3] *Managing Light's vision, Options for the Management of Adelaide's Parklands*, Consultation Report, Porter Novelli/Janet Gould + Associates Project Team, June 2003, page 10.

Voices from the past

The idea for the Trust dated back some years and was widely debated – as well as conceptually supported – by the seven members of the Parklands Alliance, including members of the National Trust (SA), Norwood Residents' Association, Conservation Council SA, and the Cities of Unley and West Torrens. As noted in the previous chapter, the Trust concept was embraced by Labor in opposition for its potential as tempting bait to win votes. After Labor won in March, between May and September 2002 early discussions were initiated by government administrators. All would have been aware of the earlier, well-articulated voices. A year before, in 2001, one well-argued paper put to the Select Committee on Adelaide Park Lands Protection by the SA branch of the National Trust, had spelled out what a 'Trust' (it used the word 'authority') might mean.

> "As the significance of the park lands extends beyond the City of Adelaide, it is proposed that legislation be enacted in order to define the roles of state and council and to establish an independent park lands management authority/commission: (i) whose priority is the preservation of the park lands as open space; (ii) that is empowered to make decisions on all development proposals and advise on events management in the park lands; (iii) to be responsible for the development of open and transparent processes for the assessment of development proposals in the park lands and determine their compatibility with the cultural and natural values of the park lands; (iv) to implement the City of Adelaide's Park Lands Management Strategy (and take responsibility for the commissioning of further management strategies and conservation management plans); (v) to promote the significance and enjoyment of the park lands, to visitors and the people of South Australia. The intent of establishing specific legislation, and the proposed authority, is to ensure [that] responsibility for maintenance and development of the park lands *is removed from the government of the day*." [emphasis added.][4]

The recommendation concluded that if decision-making power was not proposed to be attached to the proposed authority, then decisions should be "made by the parliament". In terms of the future "erection of permanent or long-term buildings or structures (including the widening of roads and other ancillary uses such as the sealing of surfaces for car parking), enclosures and leases should be: (1) the responsibility of an independent park lands authority/commission, empowered by its own legislation to make and enforce such decisions; or (2) subject to the consent of both houses of parliament."

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4 National Trust (SA), paper 29, submission to the Select Committee on Adelaide Parklands Protection, July 2001, page 3.

The 'devil in the detail'

Expositions such as these may have germinated early thoughts in the bureaucrats' minds that the idea of an 'authority' might be the concept that allowed them the wriggle room to deliver after March 2002 an alternative to what opposition leader, now Premier – Mike Rann – had so effusively implied might result back in September 2001. In particular, the implication arising from concepts in Labor's September 2001 'Directions Statement' was that a Trust's decisions might be arrived at autonomously, without a necessity for ministerial consultation or authorisation, and written into law under a statute that would give the Trust its independent teeth. That is what the National Trust (SA) had said too, and many others had also said, but perhaps in a less articulate way. The key SA National Trust extracts (as recorded above) are duplicated here: "... *(ii)* [an authority] *that is empowered to make decisions on all development proposals and advise on events management in the park lands;* [and] ... *(1) the responsibility of an independent park lands authority/commission, empowered by its own legislation to make and enforce such decisions; or (2) subject to the consent of both houses of parliament.*"

In retrospect, the default alternative "subject to the consent of both houses of parliament" did rather take the wind out of the sails of the preceding part of the paragraph, which was in the spirit of the time – a bold bid for a radical, new, independent body, "empowered by its own legislation".

A committee of three

In October 2002, seven months after the 2002 state election, three ministerially chosen men met to discuss next steps in pursuit of how to deliver on the Rann government's park lands pledges. Their brief was to establish a working group. They were Stephen Forbes (Director, Botanic Gardens); Stuart Moseley (Manager, City Development, Adelaide City Council); and Jim Daly (community representative). Daly, who had retired in 2000, had been chosen not only because he was the author of an informative 1987 book about park lands recreational and legislative history, *Decisions and disasters*, but also he held a masters degree that arose from his recreational studies that had led to the publication. He also was a member of the Environment and National Parks Minister's Open Space Advisory Committee, as well as a member of the Adelaide Parklands Preservation Association. Given all of these 'hats', he was trusted to be able to work collaboratively with the other two senior administrators and discuss management concepts familiar to their own domains. "I was probably selected because of my membership on the Environment and National Parks Minister's Open Space Advisory Committee," he wrote, years later. "John Hill, the then minister, knew of my interest in the park lands. Also, Kim Winter-Dewhurst, who was head of the minister's office, knew me through his previous involvement with the park lands."[5]

[5] Jim Daly, personal communication, email, 4 April 2018.

The group drew up a 12-point list that they described as "major issues (not necessarily in priority order) that should be addressed to improve the overall protection, management and enhancement of the park lands".[6] It was perhaps the first indication that the concept of an independent Trust would have to compete with myriad other priorities, because on the basis of this list it was not a priority matter. The list included:

- "Protection and enhancement of the park lands and their values.
- Use of major projects provisions in the *Development Act 1993*.
- Return of alienated government reserves to park lands, and no new large-scale developments within park lands.
- Consideration of biodiversity values in park lands management.
- Ensuring diversity of uses in the park lands and both ethical and equitable access for the broad community.
- Sectoral interests monopolising areas of the park lands.
- Integration of the park lands and government reserves under a single management structure.
- Management of landscape elements appropriate to scale and integrity of the park lands.
- Need to amalgamate and rationalise some sites with similar uses.
- Licences need to reflect realistic costs and user pays principles.
- Financial resources need to better reflect 'public good' values and the environmental and social significance of the park lands.
- Maintenance and capital development needs to be adequately funded and best-practice measures established to protect and enhance values."

Terms of reference a licence to define

The working group's terms stated that it must produce a "well researched draft options paper, setting out the issues and options (including management models) for achieving the vision for the park lands of both the Adelaide City Council and the state government".[7]

By February 2003, three models had been proposed. In regard to one of them, the Trust concept, for looming consultation purposes the group concluded that this would be described as: 'Option B' – "Management by a statutory Parklands Trust or similar authority (requiring additional legislation for its establishment)."[8] It then went on to describe this Trust in a way that, on closer scrutiny, would have prompted consternation among some community park lands advocates. This was because what emerged was an explicit operational and legislative definition that was not subsequently subject to any concurrent wider consultation within any of the agencies or public groups that had called for the independent model. It wasn't the

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[6] Source: Jim Daly, 13 November 2002.

[7] *Managing Light's vision, Options for the Management of Adelaide's Parklands*, Consultation Report, Porter Novelli/Janet Gould + Associates Project Team, June 2003, page 2.

[8] *Managing Light's vision*, [Community consultation booklet] Management options for Adelaide's park lands, 23 February 2003, page 8.

model that opposition leader Mike Rann and Labor had implied before the election. In fact, without any notice drawn to it, the government's working group took what had been a strong pre-election preference for a body legally independent of both the city council and the state government, and in the exercise of its post-election brief, described a different model. Option B's '*or similar authority*' well described the subsequent, effectively toothless, Adelaide Park Lands Authority concept that emerged in the *Adelaide Park Lands Act 2005*. While the result did end up a 'statutory' body under the Act, the notion that it would be a 'Parklands Trust' would be set aside, even though 'Option B' continued to subsequently describe it in that way during public consultation procedures.

Words and assumptions

The precise wording in the 23 February consultation booklet was this:

> "The trust would be appointed by, and responsible to, the Minister for Environment and Conservation. It would be responsible for planning, management and governance of the park lands and would be required to make an annual report to the minister. The trust would operate under the new legislation; however, additional legislative provisions would be required to specify the powers and operation of the trust. Funding arrangements would have to be determined and jointly agreed upon by the government, the Adelaide City Council and adjoining councils."[9]

The definition was sufficient to prompt some alarm, but it arose only among those who closely scrutinised the wording. As one submission published in the subsequent public consultation results in June 2003 noted: "With members appointed by the Minister, and the Trust being responsible to the Minister, effective control of the park lands would be ceded to the state government. In my view not a desirable outcome."[10] That respondent may have been speaking for hundreds of others invited to participate in the public consultation phase, had they better scrutinised the wording, as well as others who had participated in the uproars and protests leading up to the March 2002 state election, but may not have chosen to provide feedback to the 2003 consultation.

Another submission, from the Conservation Council SA, had stressed the desired importance of the 'arm's length' nature of the concept: "Management is perhaps not the correct term for the functions of a Parklands Trust ... The Trust would supervise the implementation of legislation and develop policies for the future of the park lands, but it would leave the day-to-day administration of the park lands to the Adelaide City Council." That respondent would be wrong about 'implementation of legislation', and the assumption highlighted how unclear were many others at the time. It wasn't assisted by the vague descriptions penned by the working group.

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9 *Managing Light's vision*, ibid., 23 February 2003, page 9.

10 *Managing Light's vision, Options for the Management of Adelaide's Parklands*, Consultation Report, Porter Novelli/Janet Gould + Associates Project Team, June 2003, Appendix D, page 4.

Its explicit definition that the trust would be "responsible for planning, management and governance of the park lands" would prove to be highly misleading. Planning matters would remain quarantined from the purview of the subsequent Authority, under the *Development Act 1993*, through its planning instrument, the *Adelaide (City) Development Plan*. Governance would remain in the domain of the city council, but largely directed by the state. When the 2005 park lands legislation finally came into operation, the Authority would become nothing more than a subsidiary committee of the city council, whose primary role would be to give advice. Politically, it would be powerless.

The 'predetermined' outcome

Ultimately, the story of how the concept of an independent Trust model was predetermined by the state bureaucracy remains poorly perceived by most South Australians. Administrators did it by writing an expedient, pre-consultation definition of what it might do and, critically, to whom it would report – a government minister. After that, the reporting line and the ongoing extent of government control was pre-ordained, even though many respondents continued to assume something else. Moreover, the community consultation period had ended on 31 May 2003, but it was not until four months later that more details emerged in the *Final Report of the Adelaide Park Lands Group*, released on 9 September 2003. A detailed examination of the way the working group conceived how 'the management model' would operate is discussed in Chapter 22 in this Part 5 of this work: 'The horse, the dog and the poodle'.

Procedures that release more specifics only after conclusion of a public consultation period had highlighted the political and administrative pressures at the time. It led many 'protection' respondents to make incorrect assumptions about the park lands management model, compared to that which they had preferred. It would be several years before those passionate about liberating park lands management from the state's grip realised that the 2001 concept of real independence from the government of the day and from the state planning legislation and apparatus had been nothing but a seductive illusion.

What do they say about the price of liberty being 'eternal vigilance'? In this case, the price of park lands management and policy liberty from the government of the day was just too high a price that the Rann Labor administration and the state's bureaucrats were prepared to pay. And, by crafting features of the definition before the public consultation, and releasing more specifics only later, the model that people got was the simplest political model to adopt – the one most expedient for government. The outcome made many of the assurances in the pre-consultation 2003 documentation sound hollow. These especially applied to the implied intention to embrace 'Trust' models operating elsewhere, models that really did place the management of public land at arm's length from government administrations.

19 | Sealing the deal

The awful truth, as the months raced towards the preparation of the park lands bill for entry into the House of Assembly a year later in 2005, was that there wasn't going to be any equal partnership between the government and the council. It was the same old pre-2002 deal. The government called the tune; an 'Authority' board, whose membership would be influenced by a minister, replaced a previous, less regulated city council park lands committee and, to add insult to injury, the council became responsible for paying the board's costs forever. ... Besides, there was a state election looming in 2006 and much hung on the government's ability to be seen to deliver on its 2001 pledge to forever 'protect' Adelaide's park lands.

There were a number of very good reasons why the concept of the park lands Trust, free of the government of the day was shelved ahead of the March–April period of 2003 public consultation. As the previous chapter noted, there had to be something tangible on paper to enable pernickety respondents to read specifics if they sought them, but attention didn't need to be excessively drawn to them and the feedback in submissions did not indicate that many noticed. The specifics were in place to pre-empt the creation, after the consultation, of something alternatively specific by any parties seeking to propose and lobby for a model of greater independence. Perhaps the most telling feature at the time was that the working group never released what it had learned when investigating potential models – and there had been many to draw inspiration from. As a government handout noted: "The working group examined over 15 different management models, including many from interstate and overseas, that reflected situations that might be similar to Adelaide. Examples of management models examined include those for Sydney's Centennial Park and New York's Central Park."[1] Despite this brief reference, full release of the working group's research (assuming it had been done) would have been highly relevant to Adelaide communities at this time. The group's research would have delivered significant detail about financial and organisational models and relevant legislation directing the management of other world parks.[2] But in tactical terms, publication in 2003 would have only further encouraged pursuit of alternative models, so it is not surprising that the research never saw the light of day.

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1 Government of South Australia, Consultation background paper, *Key questions: Adelaide Parklands management options*, April 2003, page 1.

2 It would not be until the city council's endorsement, six years later, of its 2011 *Adelaide Park Lands Landscape Master Plan* that some alternative research would become publicly available. That seven-chapter master plan, created by contracted consultants, would feature seven 'precedent studies', explicit references to other world park sites. While they did not explore costs or management structures, they explored accessibility, events, user groups, and relevant characteristics. Sites included: Centennial Park Lands, Sydney, Australia (three parks); Hyde Park, Sydney, Australia; Pyrmont Park, Sydney, Australia; Princes Park, Melbourne, Australia; Birrarung Marr, Melbourne, Australia; Waitangi Park, Wellington, New Zealand; and Bryant Park, New York, USA.

The politics of procedure

There were also a number of other telling features at the time, but once the political motivations began to drive public debates, certain content matters were simply never publicly referred to in the procedure. The most obvious would have been the cost implications likely in adopting any of the alternative '15 different management models', at a time during which the state government was reluctant to forecast estimates for future spending on park lands management.

The second most obvious reason was that there already was a model of park lands management in place – the city council's Park Lands Committee. The council had the long-term experience, and the funding was already in place. No other local government corporation adjacent to the park lands boundaries had to spend a cent. Their ratepayers could enjoy all of the recreational benefits of the open spaces of Adelaide's park lands at no cost to the corporations. Moreover, for the Rann government, there was the awkward fact that there had been low public support for this 'council only' model's survival under a new concept of park lands control (only a 30 per cent support response; see previous chapter). Despite this lacklustre public response, the significant political advantages of a council-only model would have been appealing at ministerial level. Who commissioned, wrote and 'owned' the *Park Lands Management Strategy Report 2000–2037*? The city council. Who assumed such a heavy level of responsibility for the care and control of park lands matters? The city council. Who had held 'custodianship' of more than 700ha of Adelaide's park lands for 150 years? The city council. These were strong reasons supporting the case for no change.

There were other temptations, too. No other residential or commercial constituencies beyond the park lands boundaries had to be drawn into endorsing an alternative proposal for management, for which they might have had to pay, an option that would have been politically risky. Then there was the highly significant matter that there was little time to pursue any other model. From mid-2003, the political timetable drove a need to bed down the operational complexities and embrace or dismiss potential alternatives, so that a new draft bill, capitalising on existing resources, could be written. The substitution of what many respondents wanted, with the model that the government preferred, was a crucial first step to establish it as 'the preferred' option.[3] It was therefore unsurprising that, on completion of the public consultation phase in June 2003, a ministerial media release claimed:

> "The majority of submissions from park land advocacy groups, councils and the community, have favoured a management model that allows more community involvement in decision-making, and gives some independence from state government and the city council. However, there was also support for Adelaide City Council continuing to play a major role in the park lands."[4]

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[3] Remember that the ultimate outcome was entirely in the hands of the minister. The working group was reporting to the minister and the minister no doubt would have taken other advice before making the determination to endorse the 'preferred' option.

[4] Media Release, Government of South Australia, 'Parklands changes supported', Hon John Hill, Minister for Environment and Conservation, Sunday 22 June 2003.

The announcement also contained the curious statement that: "There was strong interest from surrounding councils in having a say in the protection and management of the park lands." This was a political half-truth; several councils had expressed interest in liaising with an independent Trust model, but all made clear that they were not interested in making financial contributions towards it or towards park lands operations or maintenance. Which made the next media statement sentence equally curious: "Adelaide City Council ratepayers should not have to bear almost all of the cost of management of park lands when residents of nearby suburbs and all South Australians benefit from the park lands in some way." Many years later, nothing had changed, and at the end of the period of study the 2018–19 annual operations and maintenance cost borne by the city council had risen to $17m – 12.2 per cent of the council's 2019–20 budget.[5]

More fiction

The concluding sentence of the 22 June media release also implied a fiction, that no definitive outcome had been determined by the government or its administrative teams in response to the public consultation results. "The government will look carefully at the response from the community and will have discussions with Adelaide City Council to see what changes might be made," it stated. But it had already made the change, months earlier, prescribing a model that would report to a minister and be under instruction from the government of the day.

Some understanding of this did ultimately spread among respondents. The concept of an independent Trust was still being communicated. For example, in November 2003, Minister Hill wrote to the North Adelaide Society Inc. "The proposal put forward in the final report of the Working Group provides for continued involvement in the council, and proposes that the community of South Australia has a greater say in the park lands through an Adelaide City Park Lands Trust managed by Council and the State Government."[6] In late 2003 one residential respondent, Peter McWilliams, wrote to minister Hill about the structure of the new model, which the minister was still calling 'a Trust'.[7] The minister responded: "The public consultation on park lands management options demonstrated that a majority of the community wanted the continued involvement of the ACC [Adelaide City Council] in direct management of the park lands."[8] Direct management? The consultation results did not indicate a preference for the council, and certainly not by 'a majority' of respondents. 'Direct management' implied policy control over management determinations. While the ultimate Authority became a

5 Adelaide City Council, Agenda, The Committee, Item 5.3, 'Adelaide Park Lands Expenditure and Income', 12 November 2019.

6 Letter: Government of South Australia, Hon John Hill MP to the Chairman of the North Adelaide Society, Edgar Briedis, 22 November 2003.

7 Mr McWilliams had been an active member of the Parklands Alliance, a park lands 'watchdog' that formed in 1999.

8 Letter: Minister John Hill to Peter McWilliams, 12 January 2004.

statutory authority, it would not have policy control over management. Once formalised under the *Adelaide Park Lands Act 2005* it would merely give advice to the city council in its role as a subsidiary committee. Perhaps the minister was naively referring to council's then 150 years of hands-on operational and maintenance responsibility as park lands 'custodian'. In the same January 2004 letter, the minister also wrote that "… the park lands legislation, including a more specific structure for the Trust, will be available for comment in the first half of 2004". That deadline wasn't met. In fact, for much of 2004 there was substantial back-room horse-trading about aspects likely to inform the writing of the park lands bill and how elements of it might operate effectively. The matter of the 'Trust' was among these.

What, exactly, was the model?

Weeks after the 18 February 2005 first draft of the Adelaide City Park Lands Bill 2005 was released[9], the concept of the 'Trust' had finally disappeared from the dialogue, replaced by the ultimate term – an Authority, but as a subsidiary to the city council. In other words, a mere sub-committee, with no authority.

There was also evidence that the government was during late 2004 and early 2005 still attempting to resolve how the 'Authority' would operate, but it was only when the draft bill emerged that this became obvious – and of concern – to the council. Council and government scrutiny of the draft bill indicated that advisors remained confused about the actual powers that a mere subsidiary might have. On 11 April 2005, for example, the city council discussed clauses (functions) relating to the proposed 'Authority's' roles in terms of providing advice, promoting awareness, undertaking consultations and administering a fund.

> "These [functions] are sufficiently broad in their scope as to effectively give the Authority any role it chooses to undertake, but without giving it the express powers to do so. It remains for council (with approval of the minister(s)) to determine what powers will be delegated to the Authority. This may set up situations or confusion or conflict with existing statutory provisions and management roles."[10]

These deliberations highlighted how poorly the city council was being briefed about the model that, much earlier, the government had specified under its Option B, but only to the extent that it was clear it was never to be independent of government control. More specifics, of course, took time to come. By the time the bill was being further discussed, they were available, and in the 11 April 2005

[9] The word 'City' was soon afterwards dropped from the title.

[10] Adelaide City Council (ACC), Agenda, Item 12.3, 'Response to the Minister for Environment and Conservation regarding the draft Adelaide City Park Lands Bill 2005', 11 April 2005, page 8538.

agenda paper the council noted the extent of the ministerial control that would take effect, noting that clause 13 of the bill:

> "... contains additional provisions that modify the operation of the *Local Government Act 1999* so as to constrain council's ability to control the subsidiary. The most significant of these are that: Council must not adopt or amend the charter of the Authority without first obtaining the approval of both the minister responsible for the Act and the minister responsible for the Adelaide City Park Lands Act; and, Council must not give direction to the Authority without consulting the minister".[11]

To cap it off, the council noted that the bill "is silent on the operational costs of the Authority and therefore they will be borne by council".[12] Nothing better underscored the subservient role that council was anticipated to play under the provisions of the bill. It was glaringly clear that, only a few months ahead of the bill entering parliament, that the council remained fully in the grip of the Rann Labor government, noting that it still didn't fully understand much crucial detail, and that "the functions and powers of the Authority should be clarified, along with relationships to the powers of existing land managers ..."[13]

Briefing the experts

The extent to which the government administrators were racing ahead of those seeking major clarifications about the administrative fine detail, leaving key participants badly briefed, is evidenced in the personal response submission by Jim Daly. Daly, of course, was at the time and later arguably South Australia's most respected and qualified person to be involved in this exercise. To underscore the minister's confidence in his knowledge, he had been one of the three members chosen to form the 2003 working group, but it is clear that he had been left far behind in the bureaucrats' dialogues, and that his good-faith attempt to keep up with developments had not been supported by those in government administration. In his 4 April 2005 submission to the Minister for Environment and Conservation, John Hill, Daly unwittingly demonstrated just how little the bureaucrats had told him of their intentions. "This name change from 'Trust' to 'Authority'," he wrote, "is excellent as it provides a wider scope for implementing management policies and still protect the park lands, which was one of the main reasons for introducing the legislation in the first place."[14] He also wrote: "Is there any other way to establish this Authority than under the *Local Government Act 1999*? It is to be an Authority involving local and state governments in a partnership, and therefore distinct from usual bodies established under this provision."[15]

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[11] ACC, ibid.,11 April 2005, page 8539.

[12] ACC, ibid., page 8540.

[13] ACC, ibid.

[14] Jim Daly, 'Comments: Adelaide City Park Lands Bill 2005', submission to the Minister for Environment and Conservation, 4 April 2005, page 1.

[15] Jim Daly, ibid.

The awful truth, as the months raced towards the preparation of the park lands bill for entry into the House of Assembly a year later in 2005, was that there wasn't going to be any equal partnership between the government and the council. It was the same old, pre-2002 deal. The government called the tune; an 'Authority' board, whose membership would be influenced by a minister, replaced a previous, less regulated city council park lands committee and, to add insult to injury, the council became responsible for paying the board's costs forever. No ifs, no buts. Besides, there was a state election looming in 2006 and much hung on the government's ability to be seen to deliver on its 2001 pledge to forever 'protect' Adelaide's park lands.

Further reading

A more detailed exploration of the Adelaide Park Lands Authority, its history, roles and responsibilities is contained in Appendix 6: 'The Adelaide Park Lands Authority'.

20 | Logjam politics – in the beginning

In the year 2000 the need for a Plan Amendment Report for the park lands (which took six years to finalise) signalled for the first time the disaggregated nature of the evolution of documentation relating to park lands policy, and the administrative way that evolution would be managed. South Australians who paid attention to the detail were to see an increasingly ragged race as experts were drawn into a constant process of updating separate but related legal and policy documents prescribing how the park lands were to be managed.

One of the many themes of this work is that Adelaide park lands management is clogged with legal document and procedural complexity, such that few South Australians fully comprehend how many variables there are in the mix. The beginnings of this logjam occurred close to the commencement of this work's study period, in 1999. It might be described as the beginning of the great park lands administrative logjam. While the sun rose and set across the glorious hectares of one of the state's most treasured public pastures surrounding its capital city of Adelaide, few who walked and played across its parks and playing fields had any idea that behind the scenes in the administrative corridors was germinating a new forest of complication and complexity – but all with the best of intentions.

In the beginning, two documents dominated the administrators' landscape.

One was the city-council-commissioned *Park Lands Management Strategy Report 2000–2037*. This was a 'state of play' report on the park lands at the time, with various analyses and recommendations for what needed to be addressed, if the park lands were to be more aesthetically and methodically managed in the future. A detailed study of this Strategy appears elsewhere in this work. This would be the basis of two subsequent versions over the 20 years to 2018.

The other document would address the concept, under the newly amended and updated Local Government Act, in 1999, that the park lands should be legally identified as 'community land' and, as such, its sites and features needed to be recorded in the form of a *Community Land Management Plan* (CLMP). The city council began this process in 2004 and determined that staff would write separate plans for each precinct. There would be 11 'policy areas' and therefore plans. The writing process followed specific legal criteria. Each CLMP aimed at capturing the sites' (park lands policy areas) existing arrangements and allowances, including leases in place at the time, as well as noting performance targets for future management. As city council managers confirmed, each was to contribute to "... a coherent, consistent, accountable and workable management system."[1] A detailed study of the park lands CLMPs appears in Appendix 11 of this work.

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[1] Source quote: Associate Professor Dr David Jones, 'Uncovering heritage merit and significance', seminar paper presented at: Proceedings: *The Adelaide Parklands Symposium, A balancing act: past–present–future*, University of South Australia, Adelaide, 10 November 2006, page 130, reporting on personal communications with key city council park lands staff.

Between 1999 and 2005 the *Park Lands Management Strategy Report 2000–2037* had no significance at law, that is, it had not been created because legislation at the time required it. Only after the passing of the *Adelaide Park Lands Act 2005* was a Strategy formally required, and as Labor minister Paul Holloway had foreshadowed in state parliament late in 2005, it would be perceived as a 'defining' planning document.[2] Holloway's words had been: "It is intended that the management strategy in turn will also become a defining document with respect to the planning system. With the passage of this bill, the opportunity presents itself for the Park Lands Management Strategy to be incorporated into the *Planning Strategy* or the development plan." It was only after the passing of the bill and the gradual enactment of all of its sections, in late 2006, that the procedural and interpretation matters between the two 'guidelines', the Management Strategy and the CLMPs, began to get complicated.

The peculiarities of planning law

As well as these two documents, anything that went on in terms of planning law in the park lands was, and remained effectively subject to the *Development Act 1993*. This determined planning *procedure*, and provided for creation of instruments described as development plans, which determined policy. A development plan is a set of guidelines containing criteria put in place by a state government or local government corporation (a council) managing land to be referred to when development is contemplated. The first created by the city council on 18 October 1976 was *The City of Adelaide Plan*, which mainly focused on the city, but referred briefly to the park lands. Various updates followed over subsequent years, slowly expanding in detail, until the mid-1990's creation of the comprehensive, post-1996 *Adelaide (City) Development Plan*. In that form, it prescribed in detail planning policy (as enabled under the Development Act) as it applied to multiple city zones as well as the park lands zone. This policy applied across what was once described as districts and precincts, but after 2006 described as zones, segmented into 'policy areas'. These approximately aligned with park lands parks for boundary separation convenience. One particular feature of development plans was their specialist jargon regarding terms and concepts, initiated by planners. To fully penetrate the jargon jungle (and live to relay the experience) most lay readers needed an interpreter.

The public perplexity

It is not surprising that most South Australians, confronted occasionally with what they saw as exploitative park lands developments, were challenged to understand the machinery of park lands development determinations. The principal players strutting the park lands stage all through the study period of this work were not botanists, biodiversity scientists, recreation advisors or turf specialists, but lawyers, planners, architects and politicians. In the theatre of the management of Adelaide's world-renowned belt of green surrounding the city and policy zones of North Adelaide, the business of coordinating the complexities of managing the park lands has been to the principal benefit of these professions. In a way, because of the complexity of park

[2] Hon Paul Holloway, Parliament of South Australia, Hansard, Legislative Council, second reading of the 'Adelaide Park Lands Bill 2005', 15 September 2005, page 2557.

lands rules and regulatory documentation, the park lands from about 1999 have been 'the gift that keeps on giving' to these professions. But this was not anticipated late in 1999 when a determined Lord Mayor of Adelaide, Dr Jane Lomax-Smith, first delivered the *Park Lands Management Strategy Report 2000–2037*. Neither was it anticipated when parliamentarians in 1999 thought that it was a sound idea that public land be tagged 'community land', requiring fresh council documentation under the provisions of a newly amended Local Government Act. Nor was it clearly anticipated in 2004 when council administrators and parliamentarians agreed that the Local Government Act and Development Act should interact with a park lands 'protection' bill – or, more correctly, a new park lands bill should interact with these older statutes. Moreover, when council planners in 2004 diligently interpreted versions of the *Adelaide (City) Development Plan*, administrators generally accepted without much challenge the concept that the Strategy should be a key reference document to help determine what future 'development' might be allowed across Adelaide's park lands.[3] This added further complexity to the management of existing documentation, and writing of subsequent policy guidelines.

And one more document ...

There was another document in this mix, and the history of the progression of one of these, between the years 2000 and 2006, illustrated a new layer of political complexity. It was a Plan Amendment Report (PAR) later retitled as a Development Plan Amendment, but the same thing. It was something that had to be written to amend the development intent and rules in a development plan. These PARs were very challenging for the public to interpret. They were almost always triggered because of political circumstances driven by commercial or state pressures. But the planners who crafted them would never confirm this, because if they wanted to keep their jobs they were sworn to principles of unfailing objectivity. Their task was to follow instructions and shut up. Their council-based jobs depended on discreet silence about the political or commercial motivations, and their work was distinguished by enduring diplomacy in relation to how they revised development plans, especially relating to the park lands zone, or (later) the Riverbank zone (within Adelaide's park lands), to make possible development opportunities about which the public might object.

Six-year gestation period

The year 2000 impetus for the creation of the *Adelaide General and Park Lands Plan Amendment Report*, in park lands terms, had initially related to the release of the *Park Lands Management Strategy Report 2000–2037* in 1999, and the consequent perceived need, in January 2000, to update the *Adelaide (City) Development Plan* "consistent with the policies adopted in the Strategy".[4] Importantly, however, in relation to the park lands zone, this was not a requirement of legislation; merely a convention encouraged by politicians, administrators and state bureaucrats.

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[3] It was also wrong. It would take some years to be accepted as without legitimate basis. None of the three Strategies created over the next 20 years had any formal planning function. But that did not stop development proponents and some planners from referring to the 'aspirations' of any Strategy.

[4] Adelaide City Council: Draft Park Lands PAR, 'Statement of investigations, Background and Statement of Intent', January 2000, page 1.

This PAR took six years to finalise, a record in itself. It was a defining document in the history of the park lands covered by the early period of study of this work. But very few South Australians followed its progress. This was despite a law that required that the city council widely consult with the public and seek feedback about it. By 2018, its relevance, in park lands terms, has been forgotten. In fact, most of it did not apply to the park lands. The 'General' part of it was about boosting city population: "... people living, visiting, working and learning in the city to an optimum sustainable level".[5] The 2006 council information sheet announcing the change didn't mention the park lands at all, although the cover letter that accompanied it noted that it would "Protect the park lands from inappropriate development".[6] This was an assurance not supported by the detailed changes evident in the PAR as it was very slowly being amended, and amended again, between the years 2004 and 2006. The progress of the park lands references in the PAR became so politically sensitive that in October 2004 they were split off and set aside. A state election in 17 months may have been a contributing factor. Government policy about the park lands was evolving in controversial directions, with some aspects facing criticism by various community groups. It was decided to let the city-focused 'General' portion be determined, leaving the park lands aspects to be debated into 2006.

The ragged race begins

The need to update this PAR signalled for the first time the disaggregated nature of the evolution of documentation relating to park lands policy, and the administrative way that this evolution would be managed. In summary, South Australians who did pay attention to the detail were to see an increasingly ragged race as experts were drawn into a constant process of updating separate but related legal and policy documents prescribing how the park lands were to be managed. It may be likened to the challenge of the apprentice juggler – first only a couple of documents were drafted, consulted and launched, then more and more, until the activity became burdened with the number of 'things in the air'. It was an unbecoming scene, but the product wholly of the parliamentarians' and administrators' own making.

In the years between 1999 and 2005, all of the documents and assumed conventions described above were in play, with some procedurally competing with each other, such as the creation of *Community Land Management Plans* (CLMPs) whose management determination concepts were different from the action plans contained in or implied in the 1999 Strategy. Later, when the *Adelaide Park Lands Act 2005* was progressively being enacted during 2006, the juggling challenge would be ramped up after the Adelaide Park Lands Authority began sitting in early 2007, as a new race to revise the 1999 Strategy began. This revision process ultimately would align with full revisions of the CLMPs (in 2012 and 2013), condensing their content. From 2007 on, observers would see a never-ending cycle of creation, updating, amendment and replacement of mountains of paper.

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5 Adelaide City Council summary: 'Overview of the NEW [council's capitals] Development Plan for the City', January 2006. [Referenced in a letter to the North Adelaide Society Inc., 16 January 2006, from Don Donaldson, Manager, Development Planning, Adelaide City Council.]

6 Letter: Don Donaldson: Manager, Development Planning, Adelaide City Council, ACC letter to the North Adelaide Society Inc., 16 January 2006.

The invisible backdrop

There was one other document that hung like a theatre stage rear curtain behind all of the development-related documentation relating to Adelaide's park lands. It was something about which few South Australians were aware, because it existed in the exclusive policy domain of the state's politicians, managed under the expert guiding hands of the princes of planning process, the state planning policy bureaucrats. This was the 1998 *Planning Strategy for Metropolitan Adelaide*, a document briefly referred to earlier in this work.

In the year 2000 statement in the park lands PAR summarising what this *Planning Strategy* aimed to do there appeared the use of those slippery and difficult-to-define words that have sprouted in myriad park lands documentation over the years – 'protection' and 'enhancement'. As a theme running through this work notes, these two words would plague discussions and visions of the intentions and proposals to which South Australia's parliamentarians would occasionally subject the park lands. Because their meanings were ambiguous they meant (and still mean) different things to different people, and almost always could be found linked to instances of park lands alienation and exploitation in various forms over the study period of this work. Here is the government statement.

> "The *Planning Strategy for Metropolitan Adelaide* (1998) sets out the State Government's vision for the development of the metropolitan area, and is intended to be a framework for Plan Amendment Reports. In particular, the Economic Activity and Central Sector sections of the Planning Strategy promote the protection and enhancement of the park lands for the enjoyment of residents, visitors and recreational users. The park lands are recognised as providing an identifiable character for Adelaide, with the Planning Strategy outlining a number of goals, objectives and strategies to enhance this character and promote passive and active use of the park lands as part of the Metropolitan Open Space System."[7]

These goals and objectives addressed a range of topics, many of which were first highlighted in the council's Park Lands Management Strategy Report of 1999. They included Economic Activity (tourism, recreation, entertainment and cultural development); Living; Natural Resources (catchment management, biodiversity, open space and recreation); and Access. Further, under the title 'Central Sector': 'City of Adelaide', came the following text, in bullet-list form. "Boost the quality, vitality and management of the park lands; [and] Develop a consistent approach to public and commercial use of facilities." [8]

The aspirations on paper were laudable, but the interpretation, as usual, would be in the eye of the beholder.

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7 As found in: Adelaide City Council, Draft Park Lands PAR, 'Statement of investigations, Background and Statement of Intent', January 2000, page 1.

8 As found in: Adelaide City Council, ibid., January 2000, page 2.

21 | Calming the herd

The late 2004 message for the government strategists was that there was no time to waste, with the increasingly negative debris about the park lands needing to be sorted out before the March 2006 state election date if the Rann administration was to please a significant constituency of voters. Despite this, after the mid-2004 Park Lands Plan Amendment Report public consultation phase concluded, with all of its awkward public objections, significant additional changes were to be made, adding even more disturbing allowances for park lands land-use development.

In hindsight, it was folly that in 2004 Rann government tacticians tried to manage the evolution of a controversial park lands bill at the same time as they watched unstoppable city council progression of a draft Plan Amendment Report (PAR) for the Adelaide park lands. It was a PAR the commencement of which a Liberal government minister had approved years earlier in 2000, and then only after stalling it for six years after its original contemplation in 1994. That stalling was in anticipation of delivery of an apparently imminent city council Park Lands Management Strategy, but which took five years to arrive. While this was old history in political terms at 2004, the scenario the first-term Labor government faced typified the usual 'unforeshadowed circumstances' phenomenon that all relatively new administrations experience as the reverberations of former government activity continued to disrupt the timing of best-laid plans. Labor's challenge was to try to resolve controversies well ahead of the 2006 election, but by mid-2004, both the draft bill and the PAR were prompting criticism among members of a key park-lands-focused community that the minister in charge had hoped would be more supportive and thus smooth the path, based on some of its members' expertise and long-term commitment to addressing park lands matters. If everything went according to plan, their endorsement would signal to others less focused that there were no major concerns.

Origins

The PAR grew from a year 2000 'Statement of Intent' sent to a planning minister prefacing an update to the *Adelaide (City) Development Plan*. One impetus was to make it consistent with the newly minted (1999) *Park Lands Management Strategy Report 2000–2037*. Key topics included landscape character; environmental management and biodiversity; community cultural and recreational use (including cultural significance for the Kaurna people); accessibility; and, most politically sensitive, land use and development. The park lands section that addressed these was, in the scheme of things, a smaller element of the larger PAR. In October 2004 it was decided to progress the city section separately, leaving the park lands section open to further public consultation and amendment if necessary.

In retrospect, the government's problem was fuelled by apparently straightforward administrative requirements under law to finalise the updating of the city-focused part of the development plan, rather than political urgency. In terms of the park

lands section, it is probable that government strategists would have preferred that the PAR process for that might conveniently go away for a while given the delicate timing but, once begun, the procedure followed a pathway prescribed by law, and delays in the years following 2000 added extra reason to progress matters. As it turned out, the 2004 draft was not to be finalised until January 2006 and even then would later be seen to have been signed off under highly controversial circumstances relating to at least one of the 11 park lands policy areas – Victoria Park. Of that, more follows in later chapters.

A call for calm

The public effect of publicising the park lands elements of the PAR and the need for feedback was confusion, because the majority of South Australians who had developed an interest in the idea of new park lands 'protection' legislation were, after 2003, focused primarily on resolution of the pledge to create a park lands management model independent of the government or the city council. Many observers were perplexed at the slowness of progress to finalise the drafting of the new park lands bill during 2004 (after comprehensive consultation and noise in 2003) and confused at community suggestions that the management model would not deliver what opposition leader Mike Rann had implied so prominently and in such detail in his 'Directions Statement' of 2001. A second element of confusion had its origins in South Australians' very poor comprehension of development law, such that few knew that something called a development plan for the park lands existed, or why it had to be revised at this sensitive time. It may not have had such effect were it not for the fact that the public were strongly encouraged to contribute their views about the PAR's contents. The council had had to create some noise to bring it to public attention, given its decidedly 'unsexy' characteristics. It was at that stage, in April 2004 that many became aware that the notion of 'land use and development' (as the PAR jargon went) among a range of often ambiguous statements, was to be something applying to the future park lands. In fact, it had applied to the park lands since the proclamation and enactment of the *Development Act 1993* in 1994 – 10 years earlier – but to many this was a new notion, and a deeply disturbing one.

The context at the time

The highly sensitive social and political context of the time needs to be acknowledged. Less than two years after this period, a journalist summing up Rann's first term noted that Rann's predecessor, John Olsen, and his Liberal government, had sown the seeds of major distrust in government determinations for the park lands and this distrust remained after Rann won. It increased again during 2004 and 2005. *The Advertiser* journalist, Chris Kenny wrote:

> "It is ... difficult to overlook the folly of [construction of] the National Wine Centre [on park lands]. It stands as a monument to successive administrations' disdain for the park lands. The Rann government also seems intent on building out Adelaide's unique status as a 'city in a park'. An imaginative government one day will remove buildings from the park lands, landscape the entries to the city, and enhance the character of the city in a park."[1]

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[1] Chris Kenny, *The Advertiser*, 'Man who 'saved' SA', 17 February 2007, page 47.

Various members of the Parklands Alliance responded to the PAR. The North Adelaide Society Inc. noted in its November 2004 newsletter (responding to the public consultation April 2004 draft version):

> "The draft ... while stating 'The number and extent of buildings in the park lands should be reduced', still features a range of loopholes and outright exemptions to this idea, as well as a range of other exceptions to land-use ideas. We note instances of clauses or wordings in many sections of the report that could give rise to abuses similar to those we have seen over the past 20 years. They include notions that 'new buildings' will be considered if they are aesthetically appropriate; that existing buildings could be moved elsewhere as long as they are no bigger; that some buildings could be replaced with 'structures more appropriate' (in one case defined as) 'pavilions and structures which are sensitively sited'."[2]

The society also noted a lack of adequate prescription for how long a 'special event' might be allowed to run; as well as a lack of clarity about the definition of 'non-complying development' or, more controversially, what constituted 'complying development, in which case its Category 1 classification meant no public consultation would occur.[3] "In other words," noted the society newsletter, "when it is deemed appropriate, council could give itself the permission to commence it without having to notify anyone."

APPA sounds alarm

The reception from the Adelaide Parklands Preservation Association (APPA) was worse, and its condemnation of the PAR would have given ministers of the Rann administration much heartburn – especially Environment Minister, John Hill, who was busy working on the park lands bill and not preoccupied with the planning minister's attention focused on the PAR. The Association was at the time being led by president Ian Gilfillan, the former Australian Democrat MLC whose pedigree in park lands matters dated back to 1987 when he proposed a bill to protect the park lands and, in the same year, formed APPA. In 2004 Gilfillan allowed APPA's response to be coordinated by city newcomer and new APPA member, David Plumridge, a former mayor of the South Australian metropolitan City of Salisbury. As a former architectural draughtsman he was very well versed in Development Act matters, but his collaborative style allowed other members who lacked planning qualifications and experience to add their own content. APPA's five-page submission rejecting the PAR was highly critical:

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[2] The North Adelaide Society Inc., *Newsletter 137*, November 2004, page 4.

[3] Proposed developments would be classified under one of three planning assessment categories, depending on deemed compliance with park lands zone aspects of the *Adelaide (City) Development Plan*. Full compliance generally led to a Category 1 classification, which did not require public consultation.

> "… the PAR is contrary to the public interest, has insufficient protection for the park lands and the city squares, and is intrinsically, explicitly and implicitly damaging to the park lands and the city squares. … [it] does nothing to enhance the preservation of the park lands. … The challenge for us all is to ensure that the visions and the goals of the *Park Lands Management Strategy* are not lost in its transition for the legal framework of the PAR."[4]

The submission's view was that the PAR was littered with flaws and ambiguities, but in retrospect, some of its content merely highlighted the challenge planners faced as they wrestled with the PAR requirements, using planning jargon and a complicated structure, to address two matters. Firstly, it sought to acknowledge the new ideas in the 1999 Strategy, to embrace a framework to ensure consistency between the two documents. Secondly, it had to properly address planning complexities about land use and other matters. It did not matter to the planners that other parties, especially non-planner South Australians, wanted it to be a vehicle for the 'protection for the park lands and the city squares'. That was a political matter and one that planners, in the absence of further instruction, paid no heed to.

Anxiety and confusion

A retrospective observation might be that asking the non-planning-professional public to comment on the complicated contents of a PAR was an invitation to prompt receipt of submissions reflecting misunderstanding of the complexities of planning documents. But it highlights something that government administrations noting this phenomenon over these and subsequent years never did anything to simplify such documents, or address obvious ambiguities and at times untranslatable jargon. In fact, it was the jargon and ambiguity of development plans – as well as other state planning policy documents – that was sometimes useful to planning bureaucrats because the ambiguities allowed interpretation that was politically favourable at both local and state tiers. This was especially applicable to development applications for park lands sites, and the way experienced planning lawyers benefited from it.

Even to the non-professional, there was no doubting three notable aspects about the park lands PAR draft, as perceived by community groups at the time. Firstly, some of its words described or at least implied sufficient allowances and concepts to cause much anxiety to those who wished the park lands to be 'protected' from new buildings, additional car parks, event fencing, poorly managed longer-term events, and a lack of guarantee of public consultation about future 'development' or event proposals. Secondly, among some readers, the matter of the 'independent Trust' had not gone away. This went to the heart of the sense of betrayal that many park lands 'protection' advocates sensed had occurred between 2003 and 2004, and now something apparently related to it was anticipated to soon be implemented under law as an amendment to the council's *Adelaide (City) Development Plan* relating to the park lands zone. As the APPA had noted:

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4 APPA, 'Submission on City of Adelaide General and Park Lands Plan Amendment Report', July 2004, pages 1 and 5.

> "The issue of the proposed Parklands Trust has not been addressed. If the council does not delegate all of its park lands development powers to the Trust, then the council will be able to overrule the Trust on any matter that constitutes development in the park lands. This would undermine the whole intention of the Trust."[5]

But the idea about delegating development powers was legally tenuous and 'out of scope' of the work of the PAR's authors. The concept of a 'Trust' was also out of scope. The draft bill had not yet been released, and such ideas were 'in the ether'. Whether any were legally feasible or practicable in planning terms would be debated only if the right time arrived.

The third matter related to provisions under the *Development Act 1993*, allowing the triggering of 'Major Project' provisions to allow large developments on the park lands. The PAR consultation process run by the council said nothing about this, and appropriately so because an amendment to a development plan does not address potential legislative amendment matters because it is merely a policy matter. However, an amendment to provisions in, or a variation of regulations of, an Act can do this, because it is a procedural matter. This would occur with the new Park Lands Act of 2005, relating to relevant interacting park lands development provisions – sections 46 and 49 in the *Development Act 1993*. But that was a long way off. In the meantime, the 2004 message to the council – and the state government – was rejection.

No time to waste

The late 2004 message for the government strategists was that there was no time to waste, with the increasingly negative debris about the park lands needing to be sorted out before the March 2006 election date if the Rann administration was to please a significant constituency of voters. Despite this, after the mid-2004 Park Lands PAR public consultation phase concluded, with all its awkward public objections, significant additional changes were to be made, adding even more disturbing allowances for park lands land-use development. The PAR was quietly given state approval in January 2006, but by then the public froth and bubble of a looming March 2006 state election meant that its contents and approval remained obscured and poorly understood. In park lands terms, the major government message to the people of South Australia at the 2006 election was about the passing of the new Adelaide Park Lands Act. It championed a once-in-a-generation accomplishment, which was undeniable, but the specifics were yet to be tested. And it was far too early for broad public awareness about the compromises that had been made on the road to that parliamentary outcome, compared to the pledges made in the lead-up to the 2002 state election. Awareness of those compromises would come, but only on the safe side of the election, as 2006 led into 2007. It was just as well, too, because everything would be tested under pressure when 2007 began.

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[5] APPA, ibid., July 2004, page 2.

22 | The horse, the dog and the poodle

"Apologists for the now-evident outcomes admit that nothing radical was ever likely to succeed [in relation to the park lands]. The outcome is a bit like saying 'We know you wanted a horse, but at least you got a dog'. They are right in one sense: the Authority as a body with real policy independence capable of delivering what electors wanted certainly has the potential to be a dog – and a poodle at that."[1]

These comments, published in an Adelaide Parklands Preservation Association (APPA) 2006 park lands newsletter essay after the proclamation of the *Adelaide Park Lands Act 2005*, reflected what others had been thinking at the time about the Adelaide Park Lands Authority, created under that Act. The article also referred to aspects that were not being discussed publicly in the early 2005 lead-up to the passing of the Act. One of those was that the city council was making it plain to the state government that unless it was able to continue to play a key role in future park lands management it would not cooperate. The government had sensed this as early as 2003. The 2006 essay, published in the APPA newsletter, reflected on that time:

> "It is widely known in Adelaide circles that the 2002–05 experience of pushing through new park lands legislation was like 'walking on eggshells', given the myriad interests and conflicting agendas of those who called the shots on park lands developments leading up to 2002. At the beginning, in about 2003, it was an open secret that council had made it clear that it would go along with the new bill only if it were guaranteed half the seats on any 'Authority'." [2]

The government agreed to the council's demand. In fact, it was very much in the state's interests that the council was given the impression that, through this mechanism, it would retain some of the power it had previously held about park lands determinations. Labor opposition leader Mike Rann's comments before the 2002 state election had implied that the glory days of council's liberties over park lands management might be curbed. Even as late as September 2003, when the government-run working group's final report noted that an 'authority' would "provide for a strong and broad-based policy setting/monitoring body that can hold land managers accountable for delivering policies" it was clear that the implied threat to council's perceived autonomy was still primed and ready to activate.[3]

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1 Journalist John Bridgland, 'Why South Australians have been conned over future park lands management', *Parklands News*, published by the Adelaide Parklands Preservation Association, December 2006, pages 8–9.

2 John Bridgland, ibid., December 2006.

3 Government of South Australia, Report to the Minister for Environment and Conservation and the Adelaide City Council, by the Adelaide Park Lands Working Group, *Final Report of the Adelaide Park Lands Group*, August 2003, page 7.

It took some time behind closed doors for the government to clarify that the threat was not as real as it appeared, and that council's long-held role would continue – must continue – but via another mechanism. This would be the manifestation of the trade-off that government administrators had made when they abandoned the concept of a truly independent-of-government Trust.

The legacy of distrust

The lead-up to the creation of the bill illustrated that a legacy of distrust, born in late 2003, still endured between the city council and the state government. The 2003 concept within the state government of a 'Trust' remained, to the extent that the working group's final report, dated August and released in September 2003, still referred to that word 'Trust', but its explanations were bogging down in semantics the longer it went on: "... to be known as the Adelaide City Park Lands Trust – a title that emphasises the fact that it is responsible for the park lands which are held in trust for the broader community."[4]

The arm's-length concept also endured. But it was contradicted by the detail, even then. The working group had noted the existence of a new council committee, the Adelaide Park Lands Committee, set up in June 2003, which comprised only councillors. Its eight functions addressed all of the functions that a later Authority would fulfil and, in retrospect, suggested that the council was acting tactically to establish a timely feasible model which would allow council to retain and continue its primary role.[5] The tactical element was revealed in a paragraph that confessed that council did not normally have a committee structure "based on issues" but that it was "considered appropriate".[6] But the government had other plans, and these were at the same time being fine-tuned by its working group's administrative team. The group recommended that the Authority embrace "broader interests ... recognising the metropolitan and state significance of the park lands".[7] That was code for the inclusion of government nominated members and a new board. (This later turned out to be a balanced arrangement of state government and council appointments, with one board seat open for nomination of potential appointees by an incorporated body with park lands knowledge. But all board nominations had to be vetted and approved by the state and delays in ministerial appointment approvals meant that any imbalance at the table was generally in the government's favour.)

In 2003 this detail had not been resolved, but its later adoption made the working group's earlier 2003 comment curious. "The model should put park lands management policy-setting at arm's length, both from council and the state government. This reinforces the broader significance of the park lands and minimises the risk of either local or state considerations unduly dominating park lands decisions."[8]

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[4] Government of South Australia, ibid., page 6.

[5] Adelaide City Council (ACC), Agenda, Adelaide Park Lands Committee, Item 12.2, 14 July 2003, pages 460–463.

[6] ACC, ibid., page 461.

[7] ACC, ibid.

[8] Government of South Australia, *Report to the Minister for Environment and Conservation and the Adelaide City Council, by the Adelaide Park Lands Working Group*, op. cit., pages 5–6.

The rhetoric went further, but grew confused. On one hand, the new Trust would set policy, but on the other, the council and the state government would 'deliver policies'. The vibrant tone implied that it was going to be one of those 'great leaps forward' between tiers of government.

> "The adoption of these recommendations provides the opportunity for a new level of cooperation between state government and the Adelaide City Council in protecting and managing the Adelaide City park lands. They provide for a strong and broad-based policy setting/monitoring body that can hold land managements [council and the state government] accountable for delivering policies, and provide a basis for council, the state government and the Trust to agree on future co-funded initiatives and improvements." [9]

The triumphant tone at Town Hall

In April 2005 the city council discussed the park lands bill, which had been released that month. An 11 April agenda had a triumphant tone to it, although several unresolved issues remained of concern, including the realisation that the council would have to pay for the operations of an Authority, and that there would be "additional costs in preparing and reviewing a new, whole-of-park lands Strategy (estimated at $160,000 per annum for three years)".[10] Concerns about money were in part allayed by a government plan to provide $1m to council for future operational expenses, money that ostensibly related to a former arrangement that had, until then, provided "unlimited free mains water for park lands use".[11] The 'swap' meant that council would have to pay for its own water in future. The money would come from the state government in the form of "an annual payment to council of equivalent value, indexed to the price of bulk water and 'tied' so that it must be used for park lands improvements or upkeep".[12] The offer would have been timely and was politically tactical, given the council's discoveries about new funding demands.

There were deeper concerns, too. Both were about power. As the council noted: "However, two significant issues require further discussion in order to ensure the potential benefits of the draft bill are maximised: the functions and powers of the Authority should be clarified, along with relationships to the powers of existing land managements [managers]; and the frameworks for defining the park lands and

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9 Government of South Australia, Report to the Minister for Environment and Conservation and the Adelaide City Council, by the Adelaide Park Lands Working Group, op. cit., page 7.

10 Adelaide City Council (ACC), Agenda, 'Response to the Minister for Environment and Conservation regarding the draft Adelaide City Park Lands Bill 2005', 11 April 2005, page 8540. (This would be the next version – version 2 – titled the *Adelaide Park Lands Management Strategy.*)

11 Government of South Australia, Report to the Minister for Environment and Conservation and the Adelaide City Council, by the Adelaide Park Lands Working Group, op. cit., page 5.

12 Government of South Australia, op. cit., page 5.

returning alienated land could be strengthened".[13] The politics of returning alienated land – or not – would be fully comprehended only when it was tested, and that would come later. When it did, it would provide evidence of a classic political backflip. Two years later, in 2007 for example, the Rann government made it clear that it would not be returning rail yard land to park lands as anticipated in the 1999 *Park Lands Management Strategy Report 2000–2037*. Instead, the government began progressing state cabinet 2006 plans for a major new hospital to be constructed there, using a ministerial Development Plan Amendment to achieve it.[14] The government would assume tenure of 10 hectares of former park lands, first alienated when the railway lines had been laid, several decades after the 1839 death of Colonel William Light.

'Most significant in history'

If the sound and fury expressed over the period of four years leading to the park lands bill can be briefly set aside, and the hot air exhaled as to then government claims about new park lands legislation, the bill delivered only a few major new features, but they were undeniably important. As to the claim spruiked to city journalists fed by government spin doctors that the new law would give rise to "… the most significant protection of the city's greenbelt in history" – that would be in the eye of the beholder.[15] Subsequent outcomes suggest that much hot air still remained. There was significant optimism among those non-government actors whose objectivity was more trusted to reflect on the outcome. Reflecting on the bill's aim to thwart future tactics similar to those successfully used to allow construction of the park-lands-sited National Wine Centre and Next Generation gym (Memorial Drive near Pinky Flat), the president of the Adelaide Parklands Preservation Association, Ian Gilfillan, was reported as saying: "It's the most significant move to protect the park lands that's been made within living memory. The mood now is so clear that such projects would have Buckley's hope of getting support." [16] History was to prove him wrong, but at the time he could never have anticipated future ministerial development plan amendments, or worse, alternative park lands project-oriented development legislation that would step nimbly around or overwhelm the subsequent Act and its statutory policy instruments, as well as contemptuously ignore the spirit and intent of the new Act's Statutory Principles. Perhaps the most curious media quote at the time was delivered by Lord Mayor, Michael Harbison, who was reported as saying (in the same 8 December 2005 media article) that the legislation "… gives the whole community an understanding of what the park lands are, and where they are. Before now, the protection of the park lands has really relied on the Lord Mayor and councillors, and now we have help".[17] But it would be

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13 ACC, Agenda, op. cit., 11 April 2005, page 8540.

14 Adelaide City Council, Agenda, City Strategy Committee, 26 November 2007, page 27.

15 Emma Graham, *City Messenger,* 'Protecting the city's greenbelt', 8 December 2005.

16 Emma Graham, ibid.

17 Emma Graham, ibid.

much more than 'help'. It would be the inception of controlling ministerial direction of the new Authority, with the Act (via related amendments to the interacting Local Government Act and other statutes) making clear that the council could not finalise the Authority's charter, or 'give direction' to the Authority unless and until the minister agreed. In effect, while the government allowed council board representation to sit around the new Authority table, under the new Act it was formally taking full control of the board, by virtue of appointment hiring and firing authorisation under the Act, and therefore the direction of almost every likely piece of advice that would affect determinations of council over subsequent years. There were one or two exceptions in the decade to follow, but not many. A post-2007 history of the Authority's work to year-end 2018 would suggest that it rarely stepped outside of the limitations – real or implied – of the policy of the government of the day. It would be the same Labor government, over four terms, until March 2018. And even when the Authority did attempt to resist certain proposals for the park lands, it would experience the embarrassing discovery that it was essentially toothless.

The new Act's key elements

The council's 11 April 2005 summary of what the new park lands bill would deliver remains useful.[18] Its list strips away many of the additional, speculative 'options for discussion' that had clogged agendas for pre-bill discussions for more than a year, and pre-working-group (2002–2003) discussions that had wrestled with a challenging range of topics – reflecting a jumble of competing issues. The six tangible improvements that had survived this process would thus survive the journey to the parliamentary counsel's desk and appear in the form of a bill included:

- Introducing a set of Statutory Principles, which would guide the operation of the Act, and any person or body who administers the Act or is involved in the care, control and management of the park lands.
- Establishing a new Authority.
- Broadening the scope of the current strategic and management planning requirements so that they apply to all park lands, "rather than just council managed park lands as is currently the case".
- Introducing new arrangements for legal designation/definition of the park lands by formally mapping land commonly known as the park lands as well as the six squares, and other associated state managed areas, as well as rectifying various tenure anomalies.
- Establishing a framework for the transfer of land from the state to council, which could facilitate the return of a number of important land parcels in turn contributing to a stronger, more consolidated park lands.
- Amending the *Development Act 1993* to prevent the state government undertaking development in the park lands through the use of major projects development and Crown development powers.[19]

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[18] Adelaide City Council, Agenda, 'Response to the Minister for Environment and Conservation regarding the draft Adelaide City Park Lands Bill, 2005', 11 April 2005.

[19] In the end, these powers provisions were disabled.

In addition, the new bill proposed amendments to seven other statutes with which it would need to interact. This was a significantly complicated matter, and highlighted just how challenging was the work of parliamentary counsel when drafting it. In a symbolic way, this particular element illustrated how challenging it was to bring together myriad legal matters, some established under law as far back as 1926, and put in place amendments so that the new machinery's cogs, wheels and pulleys all worked in synchrony. The complexities highlighted just one of the many reasons why past generations, when speculating about the concept of future park lands legislation, might have hesitated. But by 2005, the hesitation was over, and the 'brave new world' of park lands management was soon to be explored.

Further reading

A more detailed exploration of the Adelaide Park Lands Authority, its history, roles and responsibilities is contained in Appendix 6: 'The Adelaide Park Lands Authority'.

PART 6

Events that occurred in 2006 illustrate how Machiavellian were the politics of South Australian park lands development bids. The fine details were rarely revealed. They involved high-stakes political games, drawing on extensive legal and administrative knowledge and skills. But in the end, they distilled to games of bluff and counter bluff, heavily dependent on good luck and good timing.

Extract, Chapter 25:
'The ecstasy and the treachery'.

December 2007 street newspaper poster referring to a press article reporting a last-minute bid on 9 December by state Liberal opposition leader, Martin Hamilton-Smith, to snatch a park lands development victory from the jaws of certain defeat. He had called for an urgent, pre-Christmas recall of state parliament and the speedy writing and passing of new legislation to allow construction of a Labor-inspired, $33m, three-storey, 200m-long 'multi-purpose grandstand' at Victoria Park (Park 16). The bid failed.

In 2006, Kevin Foley, as Deputy Premier in the Rann Labor government, had initiated departmental plans to part-fund and construct a 'grandstand' at the park lands site. In reality, it was a multi-purpose corporate box. Although ostensibly for use by the horse racing industry, it was in practice designed for the motor racing industry, which used the park annually for a car race but legally could not construct permanent infrastructure there.

The grandstand concept was pursued by Foley in cabinet submissions during 2006 and early 2007. However, one of his cabinet colleagues, Adelaide MP Dr Jane Lomax-Smith, so opposed the proposal that she won state cabinet dispensation to vigorously and publicly oppose it.

Once the secret cabinet plans were known, the concept prompted bitter divisions within Adelaide's communities during 2007 while local and state government politicians bickered about whether any new permanent buildings of any size should be constructed on park lands. There was much government pressure applied on the Adelaide City Council to agree to the proposal. Labor's bid ultimately failed when newly elected city councillors in November 2007 refused to endorse a new lease for the proposal.

Hamilton-Smith's tactical plan to save the day at the last minute was hatched far too late to have any chance of success, but it said much about the shared pro-development views of the Liberal state opposition with the Rann Labor government.

PART 6 Retrospective phase 3: 2006–2011, eastern park lands

Chapters

23 | The park lands papers that froze time
(Why the complexities behind the concept of park lands Community Land Management Plans led many to misunderstand their relevance.)

24 | The hottest acreage in town
(How retarding the advance of the paper trail advantaged a tactical sortie for Victoria Park.)

25 | The ecstasy and the treachery
(How the Rann Labor government pursued a new park lands development project while the 'protection' ink of the Adelaide Park Lands Act was barely dry.)

26 | The 'rotting albatross' of Victoria Park
(Why a winner-take-all government grandstand bid succumbed to the will of the people.)

27 | Case study – Adelaide Oval 2011, and a stadium in Park 26
(How a state government learned a 2007 Victoria Park park lands lesson, and got its revenge four years later.)

The 2007 story of the failed attempt by the state government to have endorsed 2006 plans to develop a permanent motor race hub in Adelaide's Victoria Park (Park 16) is a record of a bitter, drawn-out and hard-fought park lands ideological war. It is also a record that would stamp 2007 as the year everything changed, although no-one would know that at the time.

Extract, Chapter 26: 'The 'rotting albatross' of Victoria Park'.

Other links to chapters in PART 6

Chapter	Appendix link
23 | 'The park lands papers that froze time.	**Appendix 11:** *'Community Land Management Plan'.*
25 | 'The ecstasy and the treachery'.	**Appendix 17:** 'Case study: *South Australian Motor Sport Act 1984'.*
26 | 'The 'rotting albatross' of Victoria Park'.	**Appendix 17:** 'Case study: *South Australian Motor Sport Act 1984'.*

23 | The park lands papers that froze time

Procedurally, a Community Land Management Plan for a certain area, or park, was like a minor land mine, metaphorically buried under the park lands pasture, which over future years could occasionally have the capacity to thwart park lands exploitation plans. But it was not surprising, later, to discover that the plans also could be interpreted to assist such future concepts. Perhaps the plans' most fundamental flaw was that many were silent about certain matters, which opened the way for proponents of ill-fitting development concepts to pursue what they wanted. Lawyers delight in this, despite well knowing that a plan's lack of contemplation is in reality a simple 'no'.

One theme evident through this two-decade study is that there arose development implications from every document created in relation to the management of park lands. Some of them had a quick effect, others dribbled out consequences whenever fresh attention fell on a certain park, often for a major event or, more controversially, a development concept being contemplated. The totality of the plans might have been likened to one map dense with detail about metaphorical signs, directional advice and no-go areas scattered across the most desired park locations for big events; a map that read innocuously at the time but, on later interpretation, with the data analysed and in combination with other paper, meant something different. Put simply, the post-2004 years were a period of highly demanding administrative complexity that, for some within the city council, was almost overwhelming.

The long distance, three-legged race

As if the challenges of finalising the draft wording in 2004 of new park lands legislation were not enough, there was also the challenging gathering of public feedback about a Plan Amendment Report (PAR) to change park-lands-related aspects of the *Adelaide (City) Development Plan*. Few South Australians knew of that plan, let alone understood it. Then there were the preparations to write new *Community Land Management Plans* (CLMPs). All of this would have indicated to city council staff that the park lands administrative genie was well out of the bottle. It was a genie accompanied by powerful magic. A PAR would subsequently redefine what would be authorised in park lands policy areas in the form of a new version of the *Adelaide (City) Development Plan* – which few South Australians knew existed, and even fewer had read. The new CLMPs were a different beast again, and the rationale for the need for their fresh creation was so poorly understood that the city council had to commence with a 2004 education campaign to explain their purpose. Few 'joined up the dots' such that they saw that a 1999 state law (the Local Government Act) was years later prompting the

creation of a new administrative paper landscape capturing management aspects of all the sections of Adelaide's park lands. To make it even more difficult for observers, in this avalanche of new paper, easy connections were not found. They were not logical because the genie was influenced by two separate and unrelated laws, one signed off by parliament in 1993 (the Development Act), and the other in 1934 but amended and brought up to date in 1999 (the Local Government Act). Although state parliament had passed each, it fell to the city council to complete the task to ensure that the administrative machinery was consistent with those statutes. Thus, well before the *Adelaide Park Lands Act 2005* had been proclaimed in 2006 and fully enacted by that year's end, the chase for new paper that began in 2004 meant that council's 'ragged race' (as previously described) had been under way for some time, like an exhausting, long-distance, three-legged stumble at a park lands sports day.

The background

The 2004 objective to write Community Land Management Plans (CLMPs) had been triggered by a 1999 amendment of the *Local Government Act 1999*, which required plans for all community land, park lands included. This task was not an aspect of the *Park Lands Management Strategy* work by the city council. It was about creating separate and different paper, with significant legal effect. Linked to the CLMP task would arise a major new study into the cultural history of the park lands, triggered because the council realised that the plans needed more detailed background information before they could be signed off.

Park lands managers in the early 2000s were at first slow to act about the new requirement for CLMPs. They had initially rationalised that the council-endorsed 1999 Strategy did the job to some extent. But they knew that this excuse wouldn't last. Advice to them as early as 2003, when discussions about plans to draft a park lands bill were under way, indicated that the Local Government Act amendments of 1999 would need to be addressed in detail because the CLMP provisions in that Act would have to interact with provisions of an anticipated park lands bill. This applied fresh pressure on council administrators to prepare for what turned out to be a daunting and demanding project that took more than four years to complete, culminating in 2009. Thus, even though the 1999 Local Government Act stipulated the need to create CLMPs for all community land – including land in the park lands – it was to take 10 years before the work was almost complete. Legislation (the Local Government Act) was amended in about 2003 to allow extra time for council staff to complete the job.

One feature of the work was that when the public was consulted about the CLMPs the response commonly indicated that the public didn't understand much of it, why it was being done or, more profoundly, what future effect it might have.

The weaknesses of the 1999 Strategy

The reason for the need to write plans arose from a city council acceptance that the *Park Lands Management Strategy Report 2000–2037* was, after only a few years, not up to the job of providing enough information about management direction of the parks' precincts (later renamed policy areas, mostly correlating with larger single or smaller clustered numbered parks). But there were also three other problems.

Firstly, the Strategy was seen to have been too 'broadscale', and it had offered, in the eyes of one expert in a 2006 reflection, Associate Professor Dr David Jones of the University of Adelaide, only "a cursory preliminary assessment".[1] Secondly, as Dr Jones noted, the 2004 view had been that council wanted to "realise a high quality engagement with each park land block, to lay the management framework for any future management decisions for the park lands under the [looming park lands] bill, and to resolve deficiencies in information and scope that were not addressed as part of the consultancy [for the 1999 Strategy]".[2]

Thirdly, there wasn't enough information available to fully inform the anticipated new CLMPs. As Dr Jones noted: "... the Strategy process inadequately assessed the cultural heritage of the park lands ... Thus the full spectrum of cultural heritage and landscape qualities were not analysed, assessed and coherently considered".[3] The result of this had been the commissioning by the city council in 2004 of a historically unprecedented and, ultimately, very finely detailed park lands cultural landscape study to be done by Jones. The *Adelaide Park Lands & Squares Cultural Landscape Assessment Study* remains a key park lands reference, but very few South Australians know about it or have ever read it. Dr Jones' efforts resulted in an extraordinary, six-volume reference work. As elements came together, they were extracted to inform the slow writing of the CLMPs.

One of the nine focus areas of Jones' work was to examine land uses: "... human forces and processes that had been imposed upon the landscape, particularly those that had a degree of cultural continuity in aim and character, like recreation".[4] Selections of Dr Jones' excerpts formed an appendix to each CLMP, resulting in a source of very high level analysis of each park lands section, usually numbered parks. The process, and outcome, was nothing if not thorough. But it would take longer than administrators assumed it would to finalise the CLMP task. When the Adelaide Park Lands Authority began meeting in early 2007, several remained unwritten. One of these would be for Park 16, Victoria Park. An early draft had been stalled. The reasons, as is often the case in park lands history, were partly strategic, and partly political.

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[1] Associate Professor, Dr David Jones, 'Uncovering heritage merit and significance, Assessing the cultural landscape of the Adelaide park lands', in: *Proceedings. The Adelaide Parklands Symposium, A Balancing Act: Past-Present-Future*, University of South Australia, Adelaide, 10 November 2006, page 131.

[2] Dr David Jones, ibid.

[3] Dr David Jones, ibid.

[4] Dr David Jones, ibid., page 134.

When 'what is there' might determine 'what might be'

The crafting of the CLMPs would also highlight a critical issue, but one that assumed political weight only later. It was that each finalised CLMP recorded what was in place in any particular park at the time, especially in terms of land use, structures and small-scale elements, and froze those particulars in time. In effect, a CLMP described the recreational infrastructure template for a specific park or site in a park, a template that defined what had been administratively endorsed in the past there and up to the time of the writing of each CLMP. This was a controversial assumption for some parks even then, because construction of some infrastructure had already been subject to dispute and previous public protest. However, and more critically, each also defined what might be legitimised in the park in the future as judged by what was already there. Put simply, if a park CLMP recorded in 2006 that certain grandstands, toilets, storage buildings, pavilions (and smaller elements such as outbuildings, hard-stand playing courts, memorials and statues) existed at the time, these structures had high potential to establish a type of (non-legal) 'precedent' status when subsequent discussions arose about future management directions that might legitimise and help determine development applications for more of some or all of these features at or near that park site.

This feature, and that potential, would have been the least visible among all of the matters that public respondents to the broad CLMP consultation phases would have contemplated on examination of each of these CLMPs in 2006 when a number of them were released publicly for comment. Historically, this would prove to be a major public lapse, and one that had the most consequences for some parks in subsequent years.

Reading the mind map

A comparison might be made of a person asked to examine a map: it illustrates what is there. But it also might illustrate – to an enquiring mind – what might be authorised in land-use terms in the future because of what is there now. The records of public feedback to most of the CLMPs, during the period 2006–09 when the first versions were published, indicated that there were few enquiring minds examining them, with one exception, the CLMP for Victoria Park. This had had to be stalled in 2006 because of uncertainty about a government proposal for a major, 'multi-purpose, permanent grandstand' proposal. That CLMP did not get written until 2008, after the 'grandstand' concept had been rejected and the proposal lapsed.

An enquiring mind also might have asked the question: How are these CLMPs to be used in the contemplation of the management futures of each focus area (each park)? Both were fundamental *procedural* questions, and more information might have been provided. Many of the future rationales within the administrative ranks, both council and state, would base their assumptions, and form their tentative *management* approaches, on the basis of the CLMP for that park. This was proper: the CLMPs were about management direction; the *Park Lands Management Strategy Report* was

about action plans. In November 2006 Lord Mayor Michael Harbison was quizzed at a public forum about the looming CLMP for Victoria Park. He noted the legal obligation to prepare CLMPs.

> "Inevitably, in the preparation of those plans, you'd have to look at what all the possibilities might be, and there's no doubt that in Victoria Park there are a lot of buildings that, frankly, should be bulldozed, so while there is no council decision made to make plans of buildings and so on, I think it's understandable that the staff involved in the preparation of documents in relation to the CLMPs for this area have to draw, or commission, diagrams of various things to be considered as possibilities. But there's no evil intent in that or any sort of feeling that this is what our staff want to happen, and I'd say certainly knowing them, if anything, they probably are dead against it, but this really is their obligation to present all of these possible outcomes to the public."[5]

High currency value

Where land managers (the council) explored options for future development in any section of the park lands, the currency value of a CLMP was high. Although not lawfully perceived and valued as 'the gold standard' under the *Adelaide Park Lands Act 2005* each nonetheless had value. (Under the Act's provisions, the CLMP appeared to be subservient to the *Park Lands Management Strategy* but without actually saying so; the Act ambiguously required only that both be merely 'consistent'.)

Procedurally, a CLMP for a certain area, or park, was like a minor land mine, metaphorically buried under the park lands pasture, which over future years could occasionally have the capacity to thwart park lands exploitation plans. But it was not surprising, later, to discover that the plans also could be interpreted to assist such future concepts. Perhaps the plans' most fundamental flaw was that many were silent about certain matters, which opened the way for proponents of ill-fitting development concepts to pursue what they wanted. Lawyers delight in this, despite well knowing that a plan's lack of contemplation is in reality a simple 'no'.

Further reading

A more detailed exploration of the administrative history of the *Community Land Management Plan* is contained in Appendix 11: '*Community Land Management Plan*'.

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[5] Response given in the final Q and A session of the Symposium, 'Park lands forum: The Adelaide park lands threats, challenges and solutions', Adelaide Town Hall, 12 November 2006, transcript page 19.

24 | The hottest acreage in town

A Community Land Management Plan for Victoria Park would have had no alternative but to acknowledge the site's existing major event horse and car racing facilities and infrastructure, and gone further in the form of 'Forward planning for capital works and maintenance', had plans for capital works existed. They did – bold concepts and grand visions. It is easy now to join up the dots. There was a tactical advantage in not progressing the CLMP to sign-off stage.

One of the early sites in the Adelaide park lands to be subject in 2004 to the creation of a new *Community Land Management Plan* (third in priority) was Victoria Park (Park 16). Its purpose would have been fivefold:

- Enhancement and preservation of cultural, recreational and environmental values.
- Forward planning for capital works and maintenance.
- Better decision making.
- Anticipation of future community needs.
- Sustainable land uses and management practices.[1]

However, administrators knew, even then, that this park might be the subject of major community concerns about whether or not a large, new, permanent 'multi-purpose grandstand' would be constructed adjacent to the horse racing track. The concept's origins, principally related to car racing activity and facilities, dated back to 2001. It mutated in various versions in the years subsequent to 2001, then appeared to gain pace and clear form in 2004, at the same time as the city council planned to write the CLMP for the park. Victoria Park would be central to plans for the use of park lands for major commercial events, and the fact that two lessees of this particular park ultimately stood to benefit from an initial pledge of $35m government funding would, in 2007, define the matter as a 'winner-take-all' challenge. At the time, 2004, the SA Jockey Club operated a horse-racing venue in the park and a government body, the SA Motor Sport Board, coordinated an annual motor race, under special legislation that 'declared' a large slice of Victoria Park exempt from other laws that otherwise would have forbidden it. It was a case of old legislation (1984, as amended) that allowed many hectares of the park to be quarantined from the provisions of the new 2005 Park Lands Act for a 'declared' period, annually. But this did not mean it was quarantined from the sensitivities of many South Australians who sought open access to their park lands, including Victoria Park, as recreation areas, rather than fenced-off sites for commercial sport such as car racing.

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1 Adelaide City Council, *The Adelaide Park Lands, Community Land Management Plans* (green DL brochure) #27256_12_03 (probably December 2003; circulated in early 2004).

Bad timing prompts hesitation

While the city council's desire to finalise a legal plan that would guide management decision-making for the park was reasonable, the timing was awkward. By 2004 Victoria Park (Park 16) had became the hottest park lands estate of all of Adelaide's park lands because of the tension between lessees, eastern suburbs park lands walkers and park lands 'protection' advocates. Ultimately, the dispute would be extremely challenging for administrators, and the CLMP was stalled, not to be finalised until the end of 2008 after the park fight had ended. It meant that the period between 2004 and the end of 2007, which saw the biggest park lands dispute in Victoria Park's post-1984 history, was to be administratively traversed without the guiding features of a CLMP. History shows that the fight's rules were to be largely defined by the *Adelaide (City) Development Plan* which itself was being subject through 2004 and 2005 to proposals for change under a Plan Amendment Report. The contents of the 1999 *Park Lands Management Strategy Report 2000–2037* also applied. But even that Strategy was not fully up to the guidance task. Its contribution had been that it specified that Park 16 would be one of only a few sites to be defined as a "multiple use/events area, with an emphasis on increased sport".[2] In hindsight, the resolution of whether Park 16 was to remain as it was – publicly accessible open space for most of the year – or was to become the site of future major, permanent redevelopment of old existing buildings to make feasible activities requiring new, landscape-dominant infrastructure at high cost to taxpayers, was to be made under park lands administrative documentation not up to the task. In that context, when the first big test arrived, the optimism that had arisen from the 1999 release of the *Park Lands Management Strategy Report* was seven years later to be dashed with the cold water of political reality.

Early pursuit stirs quick reaction

Before the Victoria Park CLMP project was shelved, its draft version was administratively pursued over some time but public consultation prompted negative comment. The council's October 2004 promotional view was that CLMPs would "... help ensure good management and provide an enhanced level of transparency and accountability".[3] The Park 16 CLMP proposal would "develop a concept plan which provides for racing in a park lands setting as well as a number of other recreational and sporting activities and events. The primary objective is to re-create the area as a major community recreation facility". However, in a detailed list of 'key features' the council sought the CLMP to address (among the last items on the list) "... horse and car race track realignments ... and … New, centrally located Grandstand to replace temporary stands currently used [and] maximise effectiveness for both major sports".[4] This was evidence of the Olsen government's 2001 concept for a development of a major *permanent* car race facility in the park.

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[2] Adelaide City Council (ACC), 'Fact Sheet', *Community Land Management Plans, for Consultation Area 3, Victoria Park/Bakkabakkandi (16)*, October 2004.

[3] ACC: 'Fact Sheet', ibid., October 2004.

[4] ACC: 'Fact Sheet', ibid.

For park lands 'protection' advocates, the CLMP conceptually symbolised the formalisation, in what was to be a statutory management plan, of the groundwork making feasible the realisation of this long-held development vision. The Adelaide Parklands Preservation Association (APPA) was quick to respond in its own brochure, titled '*What next for Victoria Park?*'

> "What the ACC is doing is seeking approval to make a land grab that would increase commercial activity, especially motor racing, on a permanent basis. They want a new permanent car track, separated from a shorter horse track by a permanent multi-storey function centre ... This is not a Community Land Management Plan. It is a back-door development application."[5]

Apart from the obvious conclusions to be drawn, there was cause for paranoia as well, given that, while a small council brochure mentioned the 'new Grandstand', the council CLMP background *Fact Sheet Consultation Area 3* did not include this reference. It was dominated with feel-good environmental restoration concepts, including the claim that the Jockey Club's concept for future park use would "protect and enhance the park's open space".[6]

The concept plan report

In September 2004, the city council had released a *Concept Plan Report for Victoria Park*, summarising the park's 'preferred future', with an objective to "rejuvenate and develop Victoria Park as a major community recreation facility".[7] The new grandstand concept was central to drawings in the plan. Confusingly, however, the concept plan claimed that it would result in '... the reduction in the number of buildings, minor structures and hard surface areas currently existing ...".[8] This was accurate: the plan aimed to see removal of many older buildings at the same time. The numbers, however, were revealing. Floor areas to be removed were 9452m^2, but new areas arising would be 12,131m^2.[9] That said something profound about the expansion plans upward as multi-storey built form. References to the new grandstand were couched as 'possible Grandstand'. But the images were unequivocally clear. The grandstand was to be an enormous building. This prompted a strong reaction. *The Advertiser* journalist Tim Lloyd wrote:

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[5] APPA, brochure, '*What next for Victoria Park?*', undated, early October 2004, foreshadowing a council open day at the park on 10 October 2004, aimed at gathering feedback on the draft CLMP.

[6] ACC: 'Fact Sheet', op. cit., October 2004.

[7] Adelaide City Council (ACC), *Concept Plan Report for Victoria Park*, September 2004, page 3.

[8] ACC, ibid., page 8.

[9] ACC, ibid., page 15.

[10] ACC, ibid., page 16.

> "Many people grudgingly approved of Formula 1 car racing in the park lands [in 1984] because of the prestige of the event. They had no idea it would continue to be used for car racing after Formula 1. Now we have the possibility that yet another lever is being pulled to take the park lands away from its intent: a serene and quiet breathing space in a bustling city."[11]

The consequences for the draft CLMP

Ultimately, the proposed CLMP for Victoria Park (Park 16) was stalled, then shelved, until 2008. The significance of this tactical decision at this time was obscured by the uproar that arose over the matters revealed in the council's September 2004 concept plan, and later in 2006 when more details emerged. The council's inability to make its Victoria Park concept a reality was linked to the fact that, as controversy increased about likely development at Victoria Park, the crucial CLMP that might have endorsed it did not exist. Publicly there was a good reason for the decision to cease progressing the draft CLMP at the time, because as promotional material at the time assured consultation participants, "... CLMPs will reflect community values and wishes ...".[12] This pledge was clearly going to be difficult to deliver at Victoria Park. Well before the fight became politically serious in 2006, it was obvious that community wishes did not want to see new major, permanent infrastructure in Victoria Park. Moreover, at the same time the council's proposed changes to elements of its Plan Amendment Report also were being discussed. As an earlier chapter in this work explored, the concepts and the wording relating to park lands, in terms of 'new buildings and pavilions' were also not gaining much community support either.

Development plan signed off just in time

In 2006 the Plan Amendment Report was finally signed off by the government, and its amendments merged into a fresh version of the *Adelaide (City) Development Plan* – just in time to inform decision makers of what might be built, as 'complying development' in Victoria Park. The existing infrastructure at the park met some requirements for the commercial operation of two land uses – horse racing and car racing, but both of those industries' organisations wanted much more. A finalised CLMP would have indicated recent public acceptance of 'what is there', but more profoundly potentially legitimising 'what might be added' in terms of built form. In other words, a signed-off CLMP would have 'frozen in time' existing land uses: extensive facilities for horse and car racing, and on that basis legitimised the potential for future infrastructure requirements to allow progressive further development. The car racing facilities dated back only to the year of the first race, 1985, but the horse racing facilities dated back well over a century. But there was a hitch. The problem

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[11] Tim Lloyd, *The Advertiser*, 21 August 2004, page 45.

[12] ACC, *The Adelaide Park Lands, Community Land Management Plans* (green DL brochure) #27256_12_03 [probably December 2003; circulated 2004].

for the SA Jockey Club at this time was that its lease had expired in 2004. Significant subsequent issues would turn on this fact. The proposal for the new 'multi-function grandstand' was publicly focused on the club's requirements, even though the government's back-room tactical agenda was to achieve substantial infrastructure development to shore up the political future of the car race, and to keep it in South Australia.

Hindsight's 20-20 vision

A Community Land Management Plan for Victoria Park would have had no alternative but to acknowledge the site's existing major event horse and car racing facilities and infrastructure, and gone further in the form of 'Forward planning for capital works and maintenance', had plans for capital works existed. They did – bold concepts and grand visions. These had existed since 2004 and were being circulated by the same city council whose task was to create and finalise the CLMP.

It is easy now to join up the dots. There was a tactical advantage in not progressing the CLMP to sign-off stage. Construction of an enormous, permanent 'grandstand' (in reality predominantly comprising corporate boxes for the select few) could only go ahead under a lease proposal, and to sign off on that, the contents of a new CLMP would first have to undergo a fresh and potentially time-demanding round of public consultation about that proposal. Far better to have no CLMP in place, to allow for the finalisation of a lease without the administrative baggage of amending a new CLMP. When the 2006 decision was made to delay pursuit of the Victoria Park CLMP, few understood how important this decision might be to the subsequent 2007 determination of the future landscape character of one of Adelaide's most widely used park lands sites.

25 | The ecstasy and the treachery

The January 2006 suspension of some provisions of the new Adelaide Park Lands Act would appear seven months later to encourage the writing of a confidential submission to state cabinet in August that so contrasted the spirit and intent of the new Act that one parliamentarian was prompted to describe the rumour of its existence as 'treachery of the highest order'. It would be confirmation of words spoken, she claimed, by another parliamentarian, a Labor minister, that "The greatest enemy of the park lands is government".

In the two-decade span covered by this work, the period between 2005 to 2007 stands out as defining years regarding the exploitation of the Adelaide park lands, not only because so much clamour arose, but also because so much definitive matter was concluded, which would influence many other subsequent park lands exploitation strategies.

The year 2005 saw the September entry into parliament of the Adelaide Park Lands Bill 2005, and its exit, within a few months, in the form of the *Adelaide Park Lands Act 2005*, ready to be proclaimed. This accomplishment may be perceived by some as the defining outcome of the whole of the 20-year period. But as with so many big events in history, the passing of the Act would in later years prompt reflections on a warning historians sometimes deliver: 'Be careful what you wish for'.

Events that occurred in 2006 illustrate how Machiavellian were the politics of South Australian park lands development bids. The fine details were rarely revealed. They involved high-stakes political games, drawing on extensive legal and administrative knowledge and skills. But in the end, they distilled to games of bluff and counter bluff, heavily dependent on good luck and good timing.

Cabinet-in-confidence 'treachery'

The year 2006 saw a January freezing of the Act's immediate effect as some provisions were suspended under a determination by the South Australian Governor for a range of reasons. One of them might have been publicly perceived as fundamentally political, but the administrators privately advising the politicians noted that multiple other legal reasons existed to justify the suspension. Numerous interacting statutes needed to be amended first. This advice did not end up as an item in the news. The period of suspension would appear seven months later to encourage the writing of a confidential submission to state cabinet in August that so contrasted the spirit and intent of the new Act that one parliamentarian was prompted to describe the rumour of its existence as 'treachery of the highest order'.

It would be confirmation of words spoken, she claimed, by another parliamentarian, a Labor minister, that: "The greatest enemy of the park lands is government."[1] The 'treachery' observation was made by Ian Gilfillan, a member of state parliament's Legislative Council, and the 'greatest enemy' statement had been made by Dr Jane Lomax-Smith, Adelaide MP, at a park lands public forum on 12 November 2006. The transcript of that meeting records her as saying: "Well, I've always made it clear that I believe that the greatest threat to our park lands has always been the state government." [2] This view is further explored later in this chapter.

The 2005 passage of the Adelaide Park Lands Bill

An appendix to this work explores various aspects of parliamentary debates over the Adelaide Park Lands Bill. Some themes that arose as matters for exploration within parliament later re-emerged as matters of great significance, unanticipated at the time. The bill had been endorsed relatively quickly – within two months of entering parliament. Within the House of Assembly there was very broad support.

The bill entered the Legislative Council on 15 September 2005. Discussion followed on 20 September. Criticism permeated debate on 22 September and 24 September.[3] The introduction of the bill in that place was read by Planning Minister, Paul Holloway. The 22 and 24 September debates were dominated by Ian Gilfillan MLC, who was also president of the Adelaide Parklands Preservation Association. Topics included potential loopholes in the bill's wording as well as ambiguities. Most of the requests for amendment were successfully resisted by the Labor MP responding, Carmel Zollo MLC.

The second reading in the House of Assembly occurred across several days, on 24 and 29 November 2005. There was very broad support. Topics for debate included water for the park lands; the proposed new Authority; the risk of an Authority voting deadlock because the chairman would not have a casting vote; length of leases; the legal standing of the proposed *Adelaide Park Lands Management Strategy*; and the historical origins and concept of the 'Trust'. There was a failed attempt by MP Peter Lewis to once again have his year 2000 'Lewis bill' reintroduced in the form of amendments to the Adelaide Park Lands bill; and an attempt by MP Kris Hanna to re-open the park lands Select Committee of 2001, as well as a bid by him to have the *Adelaide Park Lands Management Strategy* laid before both houses of

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1 South Australian Parliament, *Hansard,* Legislative Council, 'Adelaide Parklands', debate between Sandra Kanck and Gail Gago, Minister for Environment and Conservation, 21 November 2006, page 1074.

2 Dr Jane Lomax-Smith, Adelaide MP, Adelaide Town Hall, final Q and A session (12 November 2006) of the Symposium, 'Park lands forum: The Adelaide park lands threats, challenges and solutions', transcript page 18. [*Adelaide Parklands Symposium: A balancing act: past–present–future,* 10 November 2006, co-presented by The Centre for Settlement Studies, Louis Laybourne Smith School of Architecture and Design, UniSA; The Bob Hawke Prime Ministerial Centre, UniSA; and the Adelaide Parklands Preservation Association].

3 South Australian Parliament, *Hansard*, Legislative Council, 22 September: pages 3155–3163; 24 September, pages 3218–3228.

parliament at appropriate times, with an ability to disallow it, as an additional check on the work of the proposed 'Authority'. All failed. By 30 November 2005 the bill had been passed. It was proclaimed on 1 February 2006 – but not fully enacted.

2006 – The suspension of key provisions

The virtually immediate post-parliamentary suspension of certain provisions of the new Act went unnoticed among communities celebrating the passing of new legislation that many thought would bring an end to the park lands squabbles and bad government habits of the past. The fact that the Adelaide Park Lands Authority in 2006 could not immediately begin sitting and deliberating on park lands matters when the new year commenced was broadly attributed to a claim that various operational aspects still needed bedding down. Only the most obsessed park lands 'protection' advocates might have seen page 346 of the South Australian *Government Gazette* in the form of a notice on 25 January 2006 headed 'Adelaide Park Lands Act (Commencement) Proclamation 2006'. It noted that the Act (no. 69 of 2005) would come into operation on 1 February 2006. Then it read:

> "The operation of the following provisions of the Act is suspended until a day or time or days or times to be fixed by subsequent proclamation or proclamations. Sections 5 to 26 (inclusive); Schedule 1, Parts 2 to 6 (inclusive); Schedule 1 Parts 8 to 11 (inclusive). Made by the Governor, with the advice and consent of the Executive Council on 25 January 2006."

This was effectively a suspension of most sections of the Act, with the exception of the Statutory Principles. The rationales were complicated. None was addressed in the 25 January 2006 edition of the *Government Gazette*.[4] They mainly related to proposed amendments to other Acts that were to interact with the new Adelaide Park Lands Act, but which had not yet been made. It meant that the state government's park lands 'protection' intent was not yet fulfilled. Only the government bureaucrats and the parliamentarians whom they briefed would have grasped the complexities. But within six months one conceptual vision would become obvious to Adelaide's communities of interest. Concept plans already existed for the erection of permanent infrastructure in the form of a huge 'multi-function grandstand' towards the northern edge of the park lands Victoria Park (Park 16). While that suspension of sections lasted, one general but misleading public assumption was that the full enactment of *Adelaide Park Lands Act 2005* was being stalled for no other reason than political convenience.

Anti-development hurdles not in place

A key intention behind the drafting of the new legislation had been to see the amendment or disabling of certain sections of the *Development Act 1993*. The delay meant that, for a period of more than eight months, an intention to block any potential permanent grandstand development application was not formalised.

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[4] South Australian *Government Gazette*, 25 January 2006, page 346.

These provisions existed in three sections of the Development Act – Major projects (section 46); Crown development (section 49) and Infrastructure development (section 49a). They had been the subject of explicit Labor government focus during 2004 and 2005, accompanied by pledges leading up to the passing of the Act that these sections would be disabled under the proposed Adelaide Park Lands Act. But in winter 2006, despite the apparent passing of the Act with its Schedule 1 intention to do so, those provisions under Schedule 1 were suspended. As the 'bush lawyer' community comprehension of what had occurred began to circulate, public perception concluded that the old bogey had quietly returned, obscured under the cloak of legal complexity. More particularly, one 2006 interpretation among some South Australians (who mostly never read the *Government Gazette*) was that, despite the hoopla of the passing of the Act, the development bogey had never gone away. Vivid memories remained among the Adelaide park lands 'protection' fraternity opposing Olsen Liberal government activity in the years before the 2002 election. Premier Olsen's government's determination to capitalise on those Development Act development provisions had been a legal tactic used in 1999 to progress, under the section 46 Major Project provisions, the controversial park lands bid to construct a National Wine Centre in the eastern park lands, as well as the Memorial Drive 'Next Generation' gym facility, near Torrens Lake. Once suspicion of a potential repeat performance in 2006 began to spread, this time focusing on Victoria Park, broad distrust once again seeded the conversations in Adelaide streets, pubs and kitchens. In essence, it fed a paranoia that had taken years of Labor Party assurances to quell – a pledge that new legislation would change everything, liberating the park lands from the bad provisions of the Development Act, and the quarantining of the park lands forever from its Major Projects provisions.

Awaiting the Adelaide Park Lands Plan

A June 2006 state government briefing note explained to state bureaucrats that the January suspension of provisions was also related to the need to write, fine tune and finalise the regulations under the *Adelaide Park Lands Act 2005*. Most related to a clutch of minor administrative matters that required specific attention, such as public notices, classes of lease and licences, and how management plans should be publicly inspected. Its author had assured department administrators: "In responding, it is important to keep in perspective the original government policy position and intent of the legislation, namely, to prevent future state governments imposing developments in the park lands without appropriate scrutiny."[5] No such assurance was given to the public at the time of the note. In fact, no communication strategy for the public was proposed. The note was circulated to 14 agencies: an illuminating illustration in itself, revealing how many areas of government administration were affected when new, park-lands-related law was proclaimed, prompting consideration of new regulations. The tally of 14 was one of many indications of the logistical dimension of administrative complexity arising.

5 Government of South Australia, Adelaide Park Lands Regulations, Minutes, Hon Gail Gago: correspondence to Minister for Education and Children's Services, 15 June 2006.

However, there were also four other suspension reasons, noting that the suspension order by the Governor was in place "until one or more of the following have occurred":

- The Adelaide Park Lands Plan has been developed.
- A charter for the Adelaide Park Lands Authority has been approved and members appointed.
- A deed of agreement has been concluded with Adelaide City Council in relation to financial compensation for repeal of provisions that provide the council with free water.
- Roads (Opening and Closing) Variation Regulations 2006 have been made with respect to provisions under the *Roads (Opening and Closing) Act 1991* amended by the *Adelaide Park Lands Act 2005*.[6]

These four matters would take until late in 2006 to be fully addressed. The regulations matters went to state cabinet in October 2006, but the other matters took longer. Given the late period in the calendar year, it made sense that the Authority would not be authorised to sit until the commencement of 2007. But in the middle of 2006, when increasing anxiety was spreading over plans by the city council to make possible the construction of a new and permanent Victoria Park 'multi-function grandstand' for commercial benefit (horse and car racing), the technical complexities would have given no assurances to park lands observers. They sensed that the park lands remained as vulnerable as ever to commercial exploitation and alienation.

The law that legitimised park lands car racing

The anxiety had a source. In 2006 there had been clear indication that the state government wished to see permanent buildings at Victoria Park to support a car racing activity and industry that annually conducted a major event there. The government had been urged on by the city council, which had some time before spent $54,000 developing a concept plan for the site, featuring what it described as a proposal for a new 'grandstand'. But while council leadership appeared to be supportive, there was no guarantee that council's restless and unpredictable elected members would support the concept at some critical future time.

The SA Jockey Club on a previously leased adjacent site had occupied the park for so long that some South Australians assumed that it owned the land on which sat its ageing buildings, sheds, horse stalls and car parks. Nearby circled a bitumen and concrete Adelaide Grand Prix race track, which had been constructed for the inaugural 1985 Formula 1 race, taking up many hectares of park lands as well as parks-edge roads and city streets. Upon Formula 1's departure to the Australian state of Victoria in 1995 it was replaced in 1998 by an endurance car racing tournament at the same site. The *South Australian Motor Sport Act 1984* (that arose out of an amendment to the original legislation, the *Australian Formula One Grand Prix Act 1984*) made the race legally possible on park lands because it overrode

6 Government of South Australia, ibid., 15 June 2006.

other park lands-use laws and instruments by use of a 'declared area and period' mechanism. As a parliamentarian had noted: "The amended Act provided a legal and administrative framework for the staging of any style of motor sport within a declared area of our state."[7] (A reference to this legislation and use of this park lands site for car racing appears in Appendix 17 of this work.)

'Crown development and public infrastructure'

Under state legislation, all car race infrastructure at Victoria Park had to be temporary. This included buildings, pits, grandstands and fencing. In 2001 the Olsen Liberal state government had contemplated a change to this temporary feature, but failed to implement it. By 2004, despite the race operators' and the government's desire to pursue it, discussions about the Adelaide Park Lands bill were too focused on avoiding future park lands development, permanent or temporary, for the topic to be politically safe to pursue. But in 2006, however, one minister saw an opportunity: Labor's Deputy Premier, Kevin Foley. The bid coincided with the suspension of sections of the proclaimed but not fully enacted Adelaide Park Lands Act. State cabinet attention was sought on 14 August, and a more detailed amended submission followed on 21 August.[8] The 14 August document described the development tactic to be pursued, to use "Section 49 *Development Act 1993*" (Crown development and public infrastructure). But seven days later, in the 21 August submission, this wording had disappeared. It was replaced by the words "... pursuant to a private development … under the *Development Act 1993*".[9] This specific clause was used in belated recognition of the looming effects of the government's own legislative efforts, fulfilling a long-held pledge, to have the new *Adelaide Park Lands Act 2005* trigger amendment of the Development Act by disabling sections 46 (major project), 49 (Crown development) and 49a (electricity infrastructure) within the park lands.

An earlier government explanatory note had explained: "The impact of these amendments, once brought into operation, is that developments ... by state authorities ... will have to be submitted as if they were a private development and be considered against the Development Plan. [This was the *Adelaide (City) Development Plan*.] Consequently, depending on the circumstances, some developments may be subject to third party appeals."[10]

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7 South Australian Parliament, *Hansard*, House of Assembly, 'South Australian Motor Sport (Miscellaneous) Amendment Bill', Hon Joan Hall, Wednesday 24 May 1984, page 1180.

8 *Freedom of Information Act 1991*: Bridgland application to the Department of the Premier and Cabinet (DPC) under DPC Circular PC031, 'Disclosure of Cabinet documents 10 years or older': South Australian Government: Cabinet cover sheets, TF06-064CS, 'Victoria Park Redevelopment', 14 and 21 August 2006, Minister Kevin Foley, Deputy Premier/Treasurer.

9 *Freedom of Information Act 1991*: Bridgland application to the Department of the Premier and Cabinet (DPC) under DPC Circular PC031, 'Disclosure of Cabinet documents 10 years or older': South Australian Government: Cabinet cover sheet, TF06-064CS, 'Victoria Park Redevelopment', 3.7, 'Development Assessment', 21 August 2006, page 7.

10 Government of South Australia, 'Background to proposed amendments in the Development Regulations 1993', addendum to Minutes 06EC1872, Adelaide Park Lands Regulations, received by Minister for Education and Children's Services, 15 June 2006, page 1.

The prospect of a third-party appeal – a court appeal possible by any South Australian – was not what the government wanted to trigger. But there also was at least one tactical opportunity being explored behind these complexities. The 21 August cabinet submission had advised: "... as they are now to be considered as private developments, they need to be assigned to the state's Development Assessment Commission [DAC] for consideration, otherwise they would have been considered by Adelaide City Council". DAC assessment would have been tactically useful, given the notorious unpredictability of the city council when political pressure was applied. The DAC was judged at the time to be a far more sympathetic assessor of major state infrastructure development proposals for Adelaide's park lands.

As with other cabinet papers, the August state cabinet submissions were to remain confidential for a long time, even though a number of non-Labor MPs intuitively sensed that something about Victoria Park had been submitted to state cabinet, debated in confidence, and was in place for later announcement. During 2006 the submissions sat in the file like an insurance policy, should triggering of a development application be determined feasible. Avoiding determination at city council level, where resistance was rising, would be critical.

Saying one thing, doing another

Public release of the confidential state cabinet 'Victoria Park Redevelopment' submissions, pursued by Deputy Premier and Treasurer, Kevin Foley, would have shocked many in the South Australian community, some of whom had only recently voted for Labor in the 2006 election. The result had given the Rann administration a second term in government, winning comfortably, scoring 28 seats to the Liberal Party's 15. Some of that goodwill had arisen from Labor's park lands 'protection commitment' via its pursuit through parliament of the new *Adelaide Park Lands Act 2005*.

Deputy Premier Foley's 21 August 2006 submission's details profoundly contrasted with park lands 'protection' statements made by Premier Rann and other government ministers (and opposition members) during the parliamentary debates less than a year before as the Adelaide Park Lands Bill was being debated. The cabinet submissions also contrasted with many of the park lands 'protection' pledges made by Labor's MPs during the lead-up to the March 2006 election date.

Labor's 2006 cabinet bid, for "... redevelopment of the Victoria Park Racecourse ... as a multi-purpose venue with new facilities designed for both the SA Jockey Club and the SA Motor Sport Board to maximise the return of additional land to the park lands" was a call for a $33.758m permanent grandstand and other infrastructure in Victoria Park. It was sold to ministers around the cabinet table as a government development proposal potentially to be managed by the SA Motor

Sport Board (SAMSB), with some financial relief to be sought from both the SA Jockey Club (SAJC) and the city council (ACC). The submission stated:

> "A minimum total contribution of $10m will be sought from the SAJC and the ACC [Adelaide City Council] towards the cost of this building. This will require negotiation; however, in-principle support for a contribution has been given by SAJC. The actual amount of contribution will depend on the final selling price of Cheltenham Racecourse by the SAJC."[11]

In a masterful understatement, the cabinet submission noted that: "This development will create significant public interest and comment." [12] Had it been publicly revealed at the time – only five months after the 2006 state election – it would have prompted a park lands riot.

The public consultation loophole

Advisors to Deputy Premier Foley had assured him of three aspects that would likely follow, all in the interests of the government plan to construct the 'grandstand'. The first was that a development application would be approved under the recently revised *Adelaide (City) Development Plan*, after five years of drawn-out negotiations about it and amendments to it, during the same period as concepts for future Victoria Park infrastructure development had been publicly discussed. The second was that it was assumed that the proposal's consistency with the revised version of the development plan would define it as a Category 1 'complying' application – which meant that no public consultation would be required. The third was that it was assumed that: "It is likely that the Adelaide City Council will declare an interest in this matter ... [and consequently there would be a high likelihood that the proposal] will be referred to the Development Assessment Commission for consideration."[13] This was tactically vital, because of the risk that the city council, as the nominal park lands development application assessor, through its Development Assessment Panel, might otherwise stall, or worse, block the application.

With the exception of Dr Jane Lomax-Smith who was the MP for the state electorate of Adelaide, which included the proposed site, it is probable that those around the cabinet table concluded that this development proposal was a masterstroke in terms of its detail about the permanent requirements for the site. But there was at least one major hurdle still to be jumped. As the 21 August submission noted: "As the land required to accommodate the proposed development is under the care and control of Adelaide City Council, a long-term

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[11] South Australian Government: Cabinet cover sheet, 'Victoria Park Redevelopment', op., cit., 21 August 2006, 3.2, sub-section 3.2.1, 'Cost of building', page 4.

[12] South Australian Government, Cabinet cover sheet, 'Victoria Park Redevelopment, op. cit., 21 August 2006, 8., 'Risks', page 2.

[13] South Australian Government: Cabinet cover sheet, 'Victoria Park Redevelopment', op., cit., 21 August 2006, 3.7, 'Development Assessment', page 7.

lease will need to be negotiated."[14] This procedure would ultimately prove to be the proposal's greatest threat. But park lands administrators saw only opportunity.

Given that no Community Land Management Plan (CLMP) had at the time been created for Victoria Park, there were advantages for those pursuing a lease bid. This was because the absence of a CLMP meant that there would be no requirement for a tedious and potentially slow (and thus risky) public consultation procedure to have a new lease proposal endorsed in a CLMP's 'vision' for that park. But there were also risks. The lack of an existing CLMP could mean that elected members could point out that there was no Victoria Park statutory policy management-direction guideline under the new *Adelaide Park Lands Act 2005* for them to follow when contemplating a proposal for a lease.[15]

The timing was potentially important, too, because a council election was due within 12 months. With the risk of a major change in elected member makeup, who knew what might happen? The story of how the bid for a lease, and the 2007 council election, would thwart the state government's and Deputy Premier's vision for Victoria Park, is told in the next chapter.

Further reading

A brief study of the origins and intentions of the *South Australian Motor Sport Act 1984* appears in Appendix 17.

[14] South Australian Government: Cabinet cover sheet, 'Victoria Park Redevelopment', op., cit., 21 August 2006, 3.8, 'Tenure', page 7.

[15] The other policy guideline was the *Park Lands Management Strategy Report* (1999), but it made no reference to any 'grandstand' concept for that park.

26 | The 'rotting albatross' of Victoria Park

The Victoria Park story highlighted what can happen when, despite some political collaboration on both sides of parliament, the electorates are allowed sufficient time to comprehend the dimensions of a looming park lands raid, can marshal a judicious mix of expert volunteer assistance, and capitalise on much good luck. If these criteria apply, Adelaide's householders' passion about 'protecting' their park lands can prevail. But 2007 saw a close-run thing.

As the October 2008 afternoon sun threw lengthened shadows from the buildings in Victoria Park, in the east park lands, South Australia's Labor government was still licking its wounds from self-inflicted political pain as it sought solace over a major park lands defeat. "Victoria Park hangs on the neck of Labor MPs like a rotting albatross," wrote journalist Hendrik Gout. "The leadership group's plan was to spend more than $35m to build a corporate facility in the iconic east park lands for the V8 race. ... The protests were immediate and vocal." [1]

A bitter and hard-fought park lands ideological war

The 2007 story of the failed attempt by the state government to have endorsed 2006 plans to develop a permanent motor race hub in Adelaide's Victoria Park (Park 16) is a record of a bitter, drawn-out and hard-fought park lands ideological war. It is also a record that would stamp 2007 as the year everything changed, although no-one would know that at the time. A significantly more breathtaking park lands development would follow four years later, with Labor capitalising on the tactical lessons learned.

Victoria Park's story remains unique for a range of reasons. It would certainly eclipse memories of the era of bad blood that still lingered over 1999 Olsen Liberal government park lands 'major projects' developments. In 2007 the Rann Labor state government got a broken nose and bruised knuckles out of it. Two recreational park lands-based sport industries became subject to contemptuous public criticism for more than 18 months. South Australians' distrust of government pledges to cease old park lands exploitation habits became further ingrained. While SA Labor would survive for two more four-year terms, its tacticians would consolidate what they learned from the 2007 experience. The biggest lesson for them would be to avoid any similar circumstances; never to make that sequence of errors across a time period that it did not control, leaving them open to flank attacks and the vagaries of determinations by others not willing to risk the political consequences.

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1 Hendrik Gout, *The Independent Weekly*, 'How the drama unfolded: Victoria Park', 24–30 October 2008, page 4.

After 2007 the state would adopt new ways of assuming park lands sites for large-scale developments. These would range from fast-tracked park lands zone development plan amendments to new statute preparation under strict secrecy, followed by speedy entrance into parliament's houses, capitalising on the possibilities open to government when the lure of significant state economic benefit can be flagged and, consequently, the numbers can be counted on for support.

The fundamentals

The Victoria Park story highlighted what can happen when, despite some political collaboration on both sides of parliament, the electorates are allowed sufficient time to comprehend the dimensions of a looming park lands raid, can marshal a judicious mix of expert volunteer assistance, and capitalise on much good luck. If these criteria apply, Adelaide's householders' passion about 'protecting' their park lands can prevail. But 2007 saw a close-run thing. Tempers ran hot. Reputations were gambled and a number were scandalously attacked. Anger and distrust corroded long-established recreational business and industry relationships. Old park-lands-related alliances were shattered. New ones were forged.

The year 2007 also saw the entry of the Adelaide Park Lands Authority onto the park lands administrative stage as its ministerially endorsed members replaced the city council's Adelaide Park Lands Committee that had been meeting since 2003. The Authority's arrival coincided with the commencement of one of the most divisive Adelaide park lands disputes across multiple South Australian constituencies and social tribes. The new Authority would struggle to keep up, not only administratively because it was so new, but also because of the pace of events, whose speed would be capitalised on by state bureaucrats to thwart the Authority from closely monitoring events as they were occurring. While it would play a role in clumsily frustrating government development plans for Victoria Park, it would be simultaneously learning how toothless it really was.

Strong personalities

The park lands history of the horse-racing occupation of Victoria Park goes back to the 1840s. The history of motor racing is much more recent: 1985. In retrospect, the 2007 Victoria Park saga is but a blip in the history of attempted exploitation of the park lands. Many South Australians who were there at the time within a decade had forgotten everything about it. Reminded, they recall strong personalities attempting to dominate debate about a major events park lands site and striving to dictate the direction in which a public land-use occupation proposal might go, across the domains of both local and state government. This occurred in a council realm where there was a desire for secrets to be kept under the means afforded by the *Local Government Act 1999*. It also penetrated another realm, deep within Adelaide's suburban family communities, where street-wise observers called for open, accountable transparency of government park lands determinations. As the Victoria Park controversy peaked, views were passionately shared and disputed in the streets, clubs and pubs, as well as within the many park lands sports groups' change rooms.

Opinions also fed into the newspaper letters pages and radio talkback programs, the transcripts of which dripped with disgruntlement and cynicism about the legitimate use of Adelaide's park lands. These were views stemming from tribal affinities established over many years, not only within the horse-racing and motor racing industries but also within the park lands sporting and recreational communities whose clubs leased or sub-leased sections of turf, defined on the green landscapes by sheds and change rooms, their adjacent roadways lined with the parked cars of visitors on weeknights and weekends.

Bulging files

In the park-lands-related archives examined for this work, the files covering Victoria Park 2004–2007 are fat with media and other group reports of rumour, innuendo, claims and counter-claims, parliamentary uproars, pledges and allegations of political manipulation, threats, suspicions of cabals and secret commissions, controversial resolutions, construction concepts, building technicalities and their estimates, budget forecasts, interviews, and summaries of consultations responding to complicated proposals accompanied by contestable advices. Among the papers are scattered architectural drawings and maps, more diplomatic and apparently emotionally detached agendas and minutes of the city council, as well as those of a brand-new Adelaide Park Lands Authority, feeling its way in its first year of operation among the administrative tricks and traps of park lands management. Each agenda and minute records, in that typical dry, distilled way, the best of intentions to establish the facts and nothing but the facts, despite the metaphorical sound of park lands cannon fire beyond the meeting rooms' walls as 2007's weeks passed into months: autumn giving way to a veritable winter of discontent.

A contest of wills

The 2007 Victoria Park story is one of attempted brinkmanship. It was a contest of strong wills: that traditional impetus of wars down through the ages. Those dominating were Labor Deputy Premier Kevin Foley, opposed by his cabinet colleague, Dr Jane Lomax-Smith. But each was accompanied during debates by similarly strong personalities within state parliament, on both sides of the houses. Victoria Park's conflagration was a war of words within one small city, further energised by a splintering of views among city and suburban communities of interest. Its intensity was fed by those classical historical elements that always stir suspicion and arouse contempt – land, money and power, pursued through means perceived by increasingly suspicious people as shadowy and compromised.

Land, money and power

First: to the land. The park lands was public space: it belonged to 'the people'. Second: to the money. This would be provided by both local and state governments as preparations in 2004 began when the city council threw $54,000 at 'grandstand' plans – long before any decision had been made to authorise a grandstand to become permanent infrastructure – in the form of a 250-metre long, multi-level

building of brick, steel and glass. Towards the late stages of the fight, the total government money pledge reached $55m – to be paid not only in part by the bodies accessing Victoria Park at the time, but also by South Australian taxpayers – tens of thousands of whom had never attended a horse race or sat in sun-scorched grandstands watching speeding V8 race cars circle a park lands track.

Third: to the power. There were plenty of people in positions of power. But more often the 2007 question pondered by lawyers and later, in the heat of the battle, by administrators and high-level state advisors under pressure, was about whether these people really had the legal power under the *South Australian Motor Sport Act 1984* to realise a vision to construct a *permanent* grandstand to benefit a motor race board that in 1984 had required special quarantine legislation, but legislation that only authorised *temporary* infrastructure in one of the city's most widely attended events parks. Although this matter was at the time under intense deliberation, it is history now that the lowest tier, the city council, retained a power to determine the outcome, simply because agreement allowing a lease ahead of a development application was legally its decision to make.

In the end, the lawyers' and planners' equivocations didn't really matter. Various polls and consultations led up to, and interrupted, the critical period. But the city council's opinion poll was the most definitive about the grandstand proposal. By October 2007 a public verdict about the proposal made matters clear. As a journalist noted 12 months later in 2008: "Adelaide City Council consultation showed 95.7 per cent of [766] respondents hated it, a [percentage] figure which approximates the number of people opposed to it in [state Labor's] caucus."[2]

The influential ones

Victoria Park's ideological war was played out on an Adelaide stage crowded with influential people in a mix characteristic of the intricate, unmapped and often unpredictable personal networks that thrive in all small cities. They included a plain-talking, confrontational Labor Deputy Premier (Kevin Foley, driving the project) and his party colleagues. An apparently calmer, more measured Premier (Mike Rann) was contradicted by the oppositional presence of his non-politician, public relations broker brother (Chris Rann) who was publicly agitating against the plan. Also resisting was Labor cabinet minister, Dr Jane Lomax-Smith, MP for the electorate of Adelaide in which Victoria Park was sited. Her entire political career, which had begun 14 years earlier at the city council, had been focused on 'protecting' the park lands. To this end, she had obtained rare and controversial cabinet dispensation to speak openly against the proposal. There also was an opposition leader and other Liberal party MPs, whose opinions and support waxed and waned with the wind, as well as that of the Lord Mayor (Michael Harbison, former 2002 Liberal candidate for the electorate of Adelaide), accompanied by his warring councillors, whose views and tempers were almost always volatile and unpredictable.

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[2] Hendrik Gout, *The Independent Weekly*, 'How the drama unfolded: Victoria Park', 24–30 October 2008, page 4.

Yet to step onto the stage in 2006 would be appointments later in 2007 to the Adelaide Park Lands Authority, whose memberships would have to be authorised by government in the usual controlling ministerial way to minimise risk of administrative mutiny. The Authority's 2007 task appeared to be already compromised ahead of time in the view of some media observers. As journalist Diana Carroll noted: "The Authority's presiding member will be Adelaide Lord Mayor, with [a] political spinner extraordinaire, [and a] former chief of staff to [Labor's] Pat Conlon, as deputy presiding member." Her journalism concluded that the park lands were at the time subject to a betrayal of Labor park lands policy, only nine months after the March 2006 election.[3] Then there were the board members of the 23-years-old South Australian Motor Sports Board whose membership depended on government authorisation; as well as the committee members of the 157-year-old SA Jockey Club, whose membership drew deeply from the well of Adelaide horse-racing industry royalty and other high-profile financial and administrative professions. In yet another corner of the stage in 2006 stood the battle-scarred committee members of the 19-year-old Adelaide Parklands Preservation Association (APPA), for whom this fight would be their protest Waterloo (because the protest that they led, against the odds, succeeded); and, of course, the ever-present, baying chorus of Adelaide's print and electronic media that fed hungrily on every rumour, claim and counter claim as the confrontation expanded and the political temperature rose. Beyond the state executive and the fourth estate, even the courts would become involved late in Victoria Park-related proceedings as an APPA joust over allegations of council-versus-Motor Sport Board conflict of interest were explored in the South Australian Supreme Court, and parties probed the probity of the tactics employed to pursue a favourable result. That case was won; conflict of interest was established, but not until after the government had abandoned its construction bid.

The features, distilled

A number of features made the Victoria Park park lands fight unique. They remain unique at the conclusion of the period covered by this work. In retrospect, it was an occurrence unlikely to be repeated again in the same way in South Australian park lands history. The origins of the war had begun in 2001 with a political idea to construct permanent motor race infrastructure at the park's race site, a vast northern edge area of the park. Focused pursuit of the concept lapsed for political reasons as state elections loomed and were concluded (early 2002, then early 2006). Adelaide readers probably forget (or now simply don't know) that during both the 2002 and 2006 election lead-ups, Labor had capitalised on its store of park lands political goodwill and had thrown significant resources towards its apparently unwavering public commitment to 'protect' the park lands from future alienation and development.

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[3] Diana Carroll, *The Adelaide Independent*, 'The betrayal of the park lands', 23 December 2006, page 17.

The race track and infrastructure upgrade concept re-emerged in 2004, funded by the city council, but lapsed again as Adelaide's park recreational tribes celebrated the passing in late 2005 of new park lands law, ostensibly created to protect the park lands from the prospect of construction of large buildings on the landscape. Focused marshalling of pro-development forces became evident in 2006, after the state election, which Labor won, and after its state cabinet secretly resolved to spend almost $35m on a 'multi-function grandstand' and to convince the South Australian public that it was a grand and far-sighted plan to support the future requirements of both the horse racing and car racing industries occupying that park. That public campaign would begin with a strategic leak. "In a display of political cowardice, the government has relied on leaked announcements, letting the cabinet decision slip out," concluded observer Diana Carroll late in 2006.[4] In the minds of many of Labor's politicians, there remained only two challenges. The first was to "take the people with them on this", as the Deputy Premier, Kevin Foley, optimistically explained to journalists in 2006. The second was the simple formality of obtaining city council approval of a lease ahead of lodgement of an application for the new development. This, to follow a theatrical analogy, might be recorded as Act 1. As the 2006 calendar turned over to 2007 and the first meeting of the new Adelaide Park Lands Authority commenced, Act 2 began. Summer turned to autumn, and opposing forces began staking their claims and outlining how the battle for the hearts and minds of the people might be fought. Vast government resources and loud public statements made the quieter philosophical comments by those opposing appear whining and fractured, and the barking of the media dogs made some Labor politicians and their advisors nervous, fraying tempers in parliament's House of Assembly.

The independent MPs said it best. "The point that really takes my breath away is why the city council and the Rann government are supporting a permanent structure in the park lands when they have both been publicly saying, 'These are iconic park lands and wonderful facilities' and there they are going to do something worse than anything [former Liberal Premier] John Olsen did. He allowed the wine centre to be built ... the fitness centre in Memorial Drive ... but here we will have something that is more intrusive, more obvious and more outrageous than anything John Olsen did."[5]

The casting vote anomaly

In mid-2007 Lord Mayor Harbison's chairing skills (using his casting vote to tip a voting deadlock into an affirmative outcome, contrary to traditional chair procedure) saw an agreement 'in principle' to support the plan. It gave the government hope. But as public uproar increased, the fourth estate sat up to watch the fireworks. Next step – the lease. But the lease matters took longer to prepare – ultimately, too long, as the caretaker period leading up to the 2007 city council election period kicked in,

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4 Diana Carroll, *The Adelaide Independent*, 'The betrayal of the park lands', 23 December 2006, page 17.

5 Hon Bob Such MP, South Australian Parliament, *Hansard*, House of Assembly, 22 February 2007, page 1874.

and October caretaker period rules paralysed any likelihood of council approval before the council poll date. Here, as with earlier events, timing became the determining feature for opponents, as the election's unavoidable presence interrupted the theatre's high-stakes play at the worst possible time for the government. The timing was doubly exquisite. Few acknowledged that this election had been delayed a year because of unrelated representation matters linked to a return of a wards system to the City of Adelaide. Had it been a year earlier, when the election had been originally scheduled, the outcome may have been very different. When the post-poll dust had cleared and a new, fresh and feisty group of park-lands-aware councillors met in late 2007, the critical vote to support a lease application for the grandstand and infrastructure proposal resulted in a division of 9–2 against. Some observers had earlier claimed that the council election would be a referendum on the Victoria Park matter. They were right. After the election, journalists mused on the earlier result of the council's Victoria Park plan public consultation, which had returned a 97.7 per cent 'no' vote. Journalist Chris Milne wrote:

> "The new council, charged with being the custodian and manager of the encircling park lands for all Adelaide's citizens, was bound to accept that verdict and refuse the state government [permission for] a 21-year lease to construct its building within a fenced site covering 9050sq m in the centre of the park. And, apart from alienating public park lands within its security fence, it was to be a building that had no public seating whatsoever for the Clipsal 500 patrons – only hospitality suites for the government and the corporate sector's staff, clients and cronies, and only limited public seating off the western horse-racing side of the structure. Reluctantly, the state government, despite threats to legislate to overthrow the council's clear decision, had to admit the game was up."[6]

Bid to snatch victory from the jaws of defeat

Towards the end of the period of confrontation, long-experienced city journalist Rex Jory noted a fundamental theme, based on decades of reporting park lands stories. "The Adelaide park lands remain a dangerous political tar baby," he wrote. "Touch them and the black tar sticks and tarnishes. The state government is turning itself inside out to have a permanent grandstand for motor racing and horse racing built on the east park lands without touching the tar baby. Premier Mike Rann is learning that it can't be done."[7] Within weeks it was all over: the state plan abandoned, Labor's Deputy Premier Foley vanquished.

But Jory's warning was discounted by members of the state Liberal party, whose often ambiguous positions on the park proposal during the heat of the battle had left them in a relatively safe political position, free to equivocate on either side of the argument,

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6 Chris Milne, *The Advertiser*, 'My view': 'Next course of action up to SAJC', 30 December 2007, page 33.

7 Rex Jory, *The Advertiser*, 'Talk', 'Park lands still the pariah of SA politics', 14 November 2007.

while Labor's team – apart from the MP of the electorate, Dr Jane Lomax-Smith – had gambled all. The decision to abandon the proposal by the Labor Party appeared final. But in a sudden 9 December bid, initiated by new Liberal opposition leader Martin Hamilton-Smith, he called for the urgent recall of state parliament. His bid imagined that victory could be snatched at the last minute from the jaws of defeat. His proposal was to recall parliament's houses and present a bill to hand control of Victoria Park for development purposes to the government. The next likely scheduled sitting month for state parliament was February 2008, and Hamilton-Smith's politically courageous attempt reflected his confident character, born of career successes during his pre-parliamentary army days (he had ended his army career as a Lieutenant Colonel, a courageous leader of men). Alas, the bid was too courageous, the timing far too tight. It required, at extremely short notice, the permissions of Speaker of the House of Assembly and the President of the Legislative Council. And then there was a matter of a hastily written bill and potentially damaging debate at a time when parliamentary members had already made plans for their year-end recess, as the Assembly MPs returned to their electorates. Despite the high-stakes features of the plan, Adelaide's daily *The Advertiser* praised it, noting that, after everything that Labor's MPs had done, their government "has been humiliated ... The opposition has been able to seize the political initiative ..." it thundered, urging on the last-minute tactic.[8] Its pro-development stance, contrasting with the views of a number of its senior reporters whose comprehension of the *realpolitik* of the saga was better informed and more accurate, illustrated the old South Australian masthead's 'build it and they will come' convictions. It would not be the last time that it discounted many months of debate, the random but passionate, pro-park-lands views of thousands of South Australians, and the solid weight of opinion polls that underscored the political folly of proposing significant development projects in the park lands. For *The Advertiser*'s leader writers, Jory's 'tar baby' notion was irrelevant in the face of anticipated horse and motor racing advertising revenues that would flow for the only daily in town, once $33m of predominantly taxpayers' money had been invested for the benefit of two park lands sport industries. As would occur in the future, Adelaide's business constituency could never detach itself from the notion that Colonel Light's park lands were, after all, mere sites of potentially lucrative yield, if only the people recognised the potential.

Oh, the ironies

At least two ironies arose out of the many, highly complicated movements, feints, thrusts and skirmishes of the Victoria Park 2004–2007 park lands war. The first was that, with the permanent grandstand concept abandoned, there would remain in place an age-old, and very run-down, horse-racing facility with a fenced grass track dominating a large portion of the park. But within a few years the club facilities and track would be gone, the run-down buildings demolished and track fencing removed. It was the end of an era for the SA Jockey Club, which by then was struggling financially and still had no lease for the site.

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8 *The Advertiser*, Editorial, 'Grandstand bungle a humiliation', 10 December 2007, page 16.

But there also would remain a temporary annual car racing facility at the north-eastern edge of the park for annual use over five formal, lawfully prescribed days, effectively limiting random public access to that part of the park for up to six months of the year. This was because of a temporary, $20m demountable covered building used for the annual V8 car race, as well as a collection of temporary, multi-level, steel spectator stands, all of which were annually fenced to keep out the non-paying public. Although it was clear that the fight had not been about opposition to horse racing there, it was less clear about the car race. Its presence, and opposition to its occupation of the park lands, could be linked to divisions born many years earlier. It had begun in 1985 after 1984 legislation had been passed to allow car racing through the occupation of about 16 hectares of the park – temporarily annually – the race arrangements quarantined from a suite of interacting park lands laws that otherwise regulated against such thing. It was obvious even as early as 2001 that the race event prompted and nurtured a divisive, festering political park lands sore within some Adelaide communities, and the unhealed injury prompted fresh pain in late 2006 as the cabinet submission rumour to build a 'grandstand' had begun to circulate. A Labor government, led by Premier John Bannon, had initiated that motor sport race through stormy but fast-tracked 1984 parliamentary debate. Several subsequent Liberal government administrations had enthusiastically kept it going in later years, amending the legislation to keep alive the summer scream of ethanol-fuelled car racing in the park after the Formula 1 Grand Prix had given way (after a brief and embarrassing three-year hiatus when it moved to Victoria) to an annual weekend V8 car racing carnival.

The second irony about the Victoria Park clash arose in relation to the final outcome. Park lands development proposal determination stages studied in this work sometimes reached unpredictable and seemingly illogical conclusions. This would be one of them. Some ideological policy clashes suggest that certain outcomes should be inconceivable, given the facts playing out at the time, and the energies of some protagonists. But at the conclusion of this particular piece of park lands theatre, the aggressive protagonist, Deputy Premier Kevin Foley, got off lightly, notwithstanding his contribution to a well-established legacy of public distrust about park lands development motivations.

As a long-experienced newspaper journalist noted, as state Labor's Victoria Park 'grandstand' proposal abandonment was publicly acknowledged five days after Christmas Day 2007: "By default, the government has honoured its 2002 election policy – much trumpeted by now Premier Rann at the time – to prevent any further commercial development of the park lands. And, after all, that was what the row was all about."[9]

Further reading

Please refer to Appendix 17 for further background on the *South Australian Motor Sport Act 1984* and its implications, beyond 1985, for Victoria Park (Park 16).

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[9] Chris Milne, *The Advertiser*, 'My view': 'Next course of action up to SAJC', 30 December 2007, page 33.

27 Case study – Adelaide Oval 2011, and a stadium in Park 26

In retrospect, it had the hallmarks of an ambitious, politically risky, winner-take-all bid whose fundamental driver had been a 2009 Labor party pre-election narrative that a decision to redevelop the Adelaide Oval facilities was a cricket and football industry story – a story not 'owned' by the government. Moreover, it was put about that redevelopment was crucial to progress a long-anticipated reconciliation of the cricket and football tribes, a glorious restoration of common interests, to be based at the redeveloped oval site. This clever tactic kept the public focus on the reconciliation, not the details or consequences of ground-breaking legislation profoundly contradicting the spirit and intent of park lands 'protection' legislation only six years old.

FEATURES	COMMENTS
What	Adelaide Oval redevelopment into a stadium for football and cricket. Construction of a new stadium, made possible by the enactment of the *Adelaide Oval Redevelopment and Management Act 2011*, and the signing of a lease between a government minister and the City of Adelaide.
Park land area	Park 26, Tarntanya Wama. More than six hectares of oval land, but also significant acreage surrounding the northern and western edges of the oval's walls. This was subject to a ministerial sub-licence for access and use, under conditions, for 80 years.
Beneficiaries	The South Australian Cricket Association (SACA) and the South Australian National Football League (SANFL), and members.
Cost	$450m initial estimate (2010), rising to $535m in 2011 to pay off an $85m SACA debt. Additional subsequent commonwealth funding (federal Labor) of $30m paid for an underground car park for the exclusive use of Adelaide Oval Stadium Management Authority (AOSMA) authorised users. That money had made up for a shortfall, a limitation that the Rann Labor state government knew existed but restricted itself from appropriating through the 2011 bill because of the political sensitivity of the project.

FEATURES	COMMENTS
Historical relevance in the context of a 1998 to 2018 study	First park-lands-related project-oriented development legislation to follow the enactment of the *Adelaide Park Lands Act 2005*. It was created by the Rann Labor government in the year after the Party's third consecutive election win of 2010. The Act overrode existing park lands 'protection' law and statutory policy instruments, and authorised exclusive park land oval site management control under a new public company, the Adelaide Oval Stadium Management Authority.[1] Despite the title, it was not a public authority.
Park lands management features	The *Adelaide Park Lands Act 2005* at this time was only six years old; the 2010 version of the *Adelaide Park Lands Management Strategy* was only one year old. The lead-up period to and the passing of the 2011 legislation highlighted the powerlessness of the Adelaide Park Lands Authority. A vote by its board had rejected the stadium proposal. Procedures capitalised heavily on confidentiality provisions of the *Local Government Act 1999*. Many Authority and council deliberations about this proposal were declared secret, which frustrated public access to information. Some records of the 2010 and 2011 Authority and city council deliberations remained legally confidential as at year-end of the study period of this work.
Park lands relevancies	• The trigger for the timing of parliamentary entry of the bill on 18 May 2011, which had been drafted in confidence well in advance, was determined by the government to respond to the result of a SACA cricket club opinion poll, to which only club members had access and voting rights. Non-members (all other South Australians) played no part in the vote, and the voting papers were never publicly scrutinised or released. • Controversially, \$85m of the \$535m was tagged to pay off SACA's pre-2011 debt. While the sum had nothing to do with the construction plan, knowledge by SACA members that a 'yes' vote would deliver this windfall result was a strong motivating factor to vote 'yes' and approve the proposal. The financial conflict of interest was obvious. • The state government used the 'yes' result as the justification to introduce the draft legislation to parliament. The 2 May 2011 SACA vote – 16 days before the bill was introduced and cast by only 12,539 members (of a total of 19,203) – resulted in an 80 per cent 'yes' vote among those 12,539. But the development was subsequently funded through taxes collected from more than one million state taxpayers, most of whom were not SACA members or even regular visitors to the park lands, let alone oval events.

1 Adelaide Oval SMA Ltd.

FEATURES	COMMENTS
Park lands relevancies *(continued)*	• Labor Party parliamentary chatter at the time quietly ignored the fact that 6664 SACA members had not voted. Many had objected to the proposal, and refused to take part in the poll. • During the year preceding the introduction of the bill there had begun a long news campaign by Adelaide's only daily newspaper, *The Advertiser*, criticising the idea of any likely participatory role in the determination by the city council, the 'custodian' of the park lands. The newspaper claimed that the council would not support the plan 'in principle' and instead would try to protect the park lands from the proposal. That prediction was accurate. In this way the public proposition was presented as a 'with us, or against us' competition, either in support of what was claimed to be a proposal delivering state economic benefit, or a desire to apply older, more conservative park lands policy management, where economic benefit was not the sole determinant. • *The Advertiser*, which had often in the past posed as a park lands 'protection' champion, plumbed new lows in reporting standards as the debate progressed and it only sporadically covered the June and July 2011 parliamentary debates, especially critiques, as the bill progressed. Pro-oval-stadium jingoism characterised a tabloid orgy of reporting bias that informed Adelaide's comprehension of a decision to build a huge stadium on park lands and alienate access to sections of Park 26 via a new 80-year lease. • Few questioned the legitimacy of the claim that the SACA 'poll' mechanism was the proper (and sole) trigger to justify the writing of new project-oriented, state development legislation to override existing state park lands 'protection' legislation, its statutory policy instruments, as well as development legislation and other city council policies. • Under the provisions of the 2011 oval bill, the provisions of the *Adelaide Park Lands Act 2005*, including its Statutory Principles, were deemed inapplicable to the site. • Proposed development at the site (which ultimately became the new stadium) was deemed to be complying with the *Development Act 1993*, and consequently the *Adelaide (City) Development Plan*. Classified as a Category 1 development (because it 'complied'), this meant that no public consultation was necessary, nor could the public demand consultation, nor could the public appeal particulars of the development application's approval in a court.

FEATURES	COMMENTS
Park lands relevancies *(continued)*	• The extent of the likely construction work was understood before the bill was passed, and the Oval Act specified the likely cost, allowing for the appropriation of $535m of public money. • The *Adelaide Oval Redevelopment and Management Act 2011* overwhelmed many checks and balances including parliament's ability to scrutinise lease and licence allowances. The oval's 'core area' became subject to a lease between a government minister and the City of Adelaide, but the minister was effectively in control of the lease conditions. Seven years later this would lead to significant and controversial unforeseen consequences in the form of another commercial development (a hotel) abutting the stadium's eastern walls, enabled by the minister.[2] • The 2011 legislation allowed the Adelaide Oval Stadium Management Authority to set its own priorities on this public land. These factors highlighted the potential vulnerability of any other section of Adelaide's park lands, should a similar legislative approach be pursued by future governments and passed by state parliament.

> *"This Act embodies the blackest day in the history of the Adelaide park lands. By removing the Adelaide City Council from its historical role as custodian of the park lands* [and] *from this important Adelaide Oval precinct, our* [South Australian] *parliament is complicit in handing over community owned park lands to private commercial sporting bodies. The Act not only breaks down and undermines the integrity of our National Heritage listed park lands,* [but also] *it places the rest of the park lands at grave risk of similar state government adventures in the future."*[3]

Build it and they will come

The 2011 proclamation of new and overriding development legislation to formalise exclusive controls over sections of the park lands under the gaze of Adelaide's statue of Colonel William Light represented an Adelaide pivotal moment in its community land land-use history. His statue, adjacent to the oval site, was symbolic – and the direction in which his finger pointed, deeply ironic.

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[2] Full details are contained in Appendix 27 of this work: 'State parliament explores: the Legislative Council's 2018 Select Committee on the "Redevelopment of Adelaide Oval".'

[3] Adelaide Park Lands Preservation Association, Article by Philip Groves, *Park Lands News*, September 2011, page 8. (This 'government adventures' comment would prove to be prescient. Seven years later, a $42m hotel construction proposal abutting the stadium's eastern walls was approved for construction in 2018, capitalising on the Act and the 2011 lease terms.)

The Act made possible state government ministerial leasing of the Adelaide Oval to an Adelaide Oval Stadium Management Authority (AOSMA), under exclusive lease terms, and a period totalling 80 years – 38 more than the parliamentary allowance that had previously applied to any park lands. The AOSMA had been created by the state government in 2009, as Adelaide Oval SMA Ltd., using $5m seed money, to bring together formerly warring clans, the South Australian National Football League (SANFL), and the South Australian Cricket Association (SACA). Members from each would sit on a new AOSMA board.

Ostensibly to apply to only six hectares of the historic Adelaide Oval site and its spectator facilities, the AOSMA's original 2009 constitution defined its precinct as a vast sweep of park lands from Pinky Flat, south, by the river, to the northern Moreton Bay fig tree line along Pennington Terrace, overlooked by the Anglican St Peters Cathedral. This comprised the whole of Park 26's 54ha, as defined under its 2009 *Community Land Management Plan* (CLMP). It identified and named the site as Tarntanya Wama (red kangaroo/rock/plain or oval). The 2011 legislation authorised exclusive AOSMA control over access to and use of the land within the Adelaide Oval's walls, as well as special rights under a proposed new sub-licence to access and use adjacent turf and pasture at the oval's west and northern edges. The Adelaide City Council was prevailed upon to license the SA Government to use the northern and western areas closely surrounding the stadium for a 20-year term, with a right of renewal for three further 20-year terms. The government sub-licensed the use of the western area (Oval No 2) to the SANFL, SACA and AOSMA.

The 'core area'

The assumption of sections of Park 26, the site of one of Australia's revered Victorian-era cricket grounds, was by 2010 specifically focused on SACA's leased oval land, but with a bid to expand its boundaries. Moreover, when the bill was read a first time, on 18 May 2011, it had the features of an 'ambit claim' aiming to include broader areas of the Park 26 precinct to be subject to a future licence, and effectively disabling the usual checks and balances of all of the other statutes and instruments, including the *Development Act 1993* and the *Adelaide (City) Development Plan* that would usually apply to that park lands site under the *Adelaide Park Lands Act 2005*. This claim was later amended, restricted to the oval itself, to 'a core area'.

In retrospect, it had the hallmarks of an ambitious, politically risky, winner-take-all bid whose fundamental driver had been a 2009 Labor Party pre-election narrative that a decision to redevelop the Adelaide Oval facilities was a cricket and football industry story – a story not 'owned' by the government. Moreover, it was put about that redevelopment was crucial to progress a long-anticipated reconciliation of the two cricket and football tribes, a glorious restoration of common interests, to be based at the redeveloped oval site. This clever tactic kept the public focus on the reconciliation, not the details or consequences of ground-breaking legislation profoundly contradicting the spirit and intent of park lands 'protection' legislation only six years old.

Not everyone viewed the necessity to write new legislation as warranted. Adelaide Park Lands Authority Board member, Gunta Groves, noted in her personal newsletter of 19 May 2011: "Of course, the bill is unnecessary because the current provisions for negotiating licences and leases are perfectly adequate for the situation. And the redevelopment, as described in the media and the bill, is unnecessary because the latest upgrade of the oval by SACA is perfectly adequate to cope with AFL crowds."[4] Behind the scenes, however, the bid was focused on assuming total control of that section of the park lands, to be controlled by a government minister, and giving exclusive control for managing and maintaining the oval precinct to a body that was, despite the title, not a public authority. It was a non-profit public company limited by guarantee. This endgame concept was poorly comprehended by the public at the time, and overwhelmed by the media hullaballoo. It most certainly did not get analysed in this way in Adelaide's daily newspaper, *The Advertiser*. Nonetheless, 'outraged' letters to the editor flowed, but with no effect. In October 2010, seven months before the bill arrived in parliament, a quarterly newsletter of The North Adelaide Society Inc. had noted:

> "South Australians should be in no doubt as to which juggernaut has kept this story on the boil, long after the Rann government's need to create it as a pre-election stunt had gone cold. After [the state election of] 20 March 2010, the impetus had to be maintained by a party so obvious that many busy people who do not have the time to judge would not have noticed – the only newspaper in town – *The Advertiser*. It sets the Adelaide news agenda, but radio and TV pick it up with such speed you do not notice the source. Any doubt about the newspaper's vested interest was removed on 31 July 2010, exactly one month before the Stadium Management Authority was due to present its final costings and designs. *The Advertiser*'s Saturday morning headline shouted: 'If you want footy in the city then back Adelaide oval plans'. The story claimed that the proposed concept was the only one; there was no plan B. It presented a view that bringing back AFL matches to the city was a universally agreed outcome that everyone ardently desired. At this point, even SACA's 20,000 members had not voted but that was discreetly not mentioned. It went on: 'If the city centre is to be revitalised, the redevelopment of the Adelaide oval is a vital element ... and will bring people back to the CBD in their droves. There are too many vested interests – especially the unrepresentative Adelaide City Council with its unreasonable demands for the protection of the park lands as well as those SACA members who still hanker for the good old days – trying to prevent the project proceeding'."[5]

4 Gunta Groves, [personal newsletter] *News from the Adelaide Park Lands Authority,* #17, 19 May 2011, page 2.

5 The North Adelaide Society Inc., *Newsletter* 160, October 2010, 'Vested interests', commenting on an article in *The Advertiser*, published on 31 July 2010.

The 'custodian' is sidelined

Months later, the notion that the custodian of the park lands – the city council – would present the principal hurdle, was explored by the newspaper.

> "All parties realise that the biggest stumbling block to such a dramatic redevelopment in Adelaide's park lands will be the Adelaide City Council. History tells us it is unlikely to make decisions based on the greater good of the state. The obvious solution seems to be for the government to legislate to acquire the entire Adelaide Oval precinct ..."[6]

In fact, the bill would propose the quarantining of the council from any participation, as a council briefing note had conceded. It had been written by CEO Peter Smith two months earlier on 1 June 2010: "Adelaide City Council involvement is not required to facilitate the development (including the grant of the lease). This removes the need for landlord approval, consideration of the Adelaide Park Lands Act or public consultation under the Local Government Act."[7]

Men in dark suits

Over the eight years leading up to the 2010 state election, there had been major work done on plans to redevelop the South Australian Cricket Association's ageing oval cricket facilities, generously funded in 2007 with a $25m grant from the state government, and another $25m from the commonwealth government. Money was spent and some facilities were improved, but the SACA board members remained unhappy. In December 2008, reflecting on a draft update of the Park 26 *Community Land Management Plan* (CLMP), chief executive Michael J Deare wrote: "This is not a 'vision' or strategy; this is negativism ... If this is to be a plan which is not just for the management of Park 26, but which looks to the future requirements of Adelaide and South Australia, then surely it must encompass ideas and strategies to facilitate the creation of that world-class sporting stadium that we must have."[8] Mr Deare had mistakenly assumed that the CLMP was an action plan. But CLMPs had a management-direction focus, and were in place to acknowledge and reflect the cultural history of each park land site, following criteria described in provisions of the *Local Government Act 1999*.

The oval's grand expansion plan was announced by Premier Mike Rann and other powerful, connected men in dark suits, photographed for a newspaper article in December 2009, four months before the election. In public perception terms, the plan might have been from a parallel universe in regard to the scope of its vision by comparison to the original 2001 Adelaide Oval Conservation Plan, and earlier project estimates and concepts. At a cost estimate of $450m, for many South

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6 Football identity and commentator, Graham Cornes, *The Advertiser,* 7 August 2010, page 117.

7 Adelaide City Council, Briefing Note, 'Adelaide Oval Redevelopment and Management Bill 2011: 'Interpretation', 1 June 2010.

8 SACA, Letter to the city council, 12 December 2008, in: Adelaide City Council, Agenda, Council meeting, 10 August 2009, page 13653.

Australian taxpayers it was perceived to be a breathtaking concept, especially given that the upgrade was to serve the exclusive interests of only two sporting tribes – football and cricket – as well as the commercial interests of the bodies that administered those tribes in South Australia. Moreover, it was to be done on park lands. The news at once began to divide Adelaide communities, in one faction the sporting communities that accessed park lands for their games or attended the old cricket club's events as members or visitors and, in another, communities that either rarely visited the park lands, or only used them occasionally for recreational purposes and wondered why the public purse should be the source of such generous funding. It also divided members of the football and cricket clubs themselves. Some wanted no change at all.

By the time of the 2011 parliamentary debates, the financial estimate had been increased to $535m, as a result of an additional deal by state Treasurer, Kevin Foley, to settle an $85m debt owed by the SACA. This would be compensation for its agreement that football, after more than three decades, would return to the oval site under a 50–50 equity deal: football access in winter; cricket in summer. News of SACA's debt prompted another wave of public distemper.

Tactical mechanisms – speed and self-interest

The introduction of the bill in mid-2011 and its rapid progress through state parliament within a few months was the culmination of several preliminary years of quiet, tactical planning. The Act's proclamation symbolised something profound in recent park lands history. It was in major contrast to the political disaster of four years earlier at Victoria Park in 2007, in which a Rann government bid to have constructed a $54m 'multi-function grandstand' for horse and car racing interests in park lands (the cost estimate falling to $33m at the final stage) had provoked community uproar for more than a year and ended in failure and government embarrassment. But the Adelaide Oval proposal was far more likely to succeed because of plans to adopt a new legislative approach – a new Act, sweeping aside traditional park lands legal and policy hurdles applying to the oval area. It featured a new and ruthless approach in the government's park lands armoury – project-oriented development legislation that, in terms of the oval land, overrode hurdles put in place only six years earlier under the *Adelaide Park Lands Act 2005* and overrode non-complying development status procedure by legislative measure. The new law provided that any development proposal for the site would be deemed to be complying under the *Development Act 1993*. It also made redundant the land-use management provisions applying to the oval land as defined by the *Community Land Management Plan* for Park 26.

There also was a critical second tactical weapon in play – the speed in which the bill was introduced, debated and passed, as well as a political and community atmosphere in which opposition voices were very effectively frustrated and silenced. This occurred not only through the restriction of information that usually flowed to the Adelaide Park Lands Authority, but also poor access to Adelaide Oval Stadium Management Authority personnel who might better inform board members as to what was occurring. Behind the scenes there was a resolute government will to

avoid the mistakes and embarrassment of 2007. The government communications machine also capitalised on sport and media self-interest, which focused on winning a lucrative government jackpot whose size was unparalleled in the recent history of park lands access and occupation. The 2011 Oval Act was a law that generations of South Australians only a few years earlier would have thought inconceivable, given the common assumption that state park lands law, such as the *Adelaide Park Lands Act 2005*, had been created to block future outcomes like this.

Park Lands Authority blindsided

In the period leading up to the passing of 2011 legislation, the Adelaide Park Lands Authority board, in only its fifth year of operation, had been giving policy advice to the park lands custodian, the city council. Its board members held a general (but in retrospect naive) assumption that they would be deeply involved in providing policy advice about future oval and adjacent park lands operations and the 2011 draft bill's preparation. However, during the early stages of stadium planning and the writing of the oval bill (which was occurring behind the scenes and quite separate from the Authority), the board was actively prevented from participating in and exploring plans, leading to frustration of its members. When it did access the detail and comprehended the government strategy, in a historically uncharacteristic outburst it vigorously opposed the concept of commercial assumption by new statute of oval land for expanded construction purposes. On 27 May 2011, as a result of a resolution the previous day, the Authority's board executive officer wrote to Premier Rann, describing the board's view that the bill was "... unwarranted and unconscionable, and should be withdrawn as the purpose ... is to permit unfettered commercial development".[9] The Authority's resolution also had stated: "The Authority supports the Adelaide City Council in its statutory right to remain the custodians and managers of the whole of Park 26."[10]

The letter had no effect. Besides, when Premier Rann had announced the plan before the 2010 election, he and his colleagues had convinced Adelaide's media that the political and ethical responsibilities and consequences of park lands exploitation had been quietly passed to the keepers of Adelaide's cricket and football clubs who should forget their differences and capitalise on a lucrative state offer. It was far too late and decidedly inconvenient for the Premier to become mired in an ideological war with an 'Authority', especially given that his government had defined it in its *Adelaide Park Lands Act 2005* to be a mere subsidiary of the city council under the control of a minister, and utterly powerless to direct local or state government. Astute park lands observers in 2011 were to gain their first clear perspective about where real power lay in terms of who ultimately defined and enforced the park lands rules.

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[9] The Authority author was not to know how prescient this observation would be, in light of what occurred at this site seven years later, when an Oval Hotel proposal was authorised. More is revealed in Appendix 27 of this work: 'State parliament explores: the Legislative Council's 2018 Select Committee on the "Redevelopment of Adelaide Oval".'

[10] Adelaide Park Lands Authority, Agenda, Special Meeting, 26 May 2011, page 4.

Money, money, money

Tactically, there was one other major feature that had critical effect. It was an avalanche of new money from not just state sources ($450m, rising to $535m), but also federal sources. On 28 December 2011, the Federal Member for Adelaide, Kate Ellis, in the Adelaide presence of Prime Minister Julia Gillard, suddenly announced a $30m commonwealth handout to build an underground car park below the oval, which she described as "creating more parking solutions to the precinct and freeing up space on residential streets".[11] In fact, the car park would be the exclusive domain of sport executives, players and entertainment participants, not residents or the sport-watching public.[12] The requirement for the money from another source illustrated how politically touchy it would have been for the state government in 2011 to have had to announce a further $30m increase on Mike Rann's 'not a penny more' pledge relating to the $535m amount locked down by him. It also highlighted how poorly the planning of the oval stadium had been thought through, such that the need for additional funding for 300 car spaces underground had remained unaddressed and unfunded until then and how urgently the work had to proceed ahead of construction of above-ground grandstands. The grant, and the timing of the announcement, was constructed by media tacticians to appear as a minor follow-up matter to an oval construction arrangement by then progressing 'full steam ahead'. The fact that it cost $30m for 300 spaces meant that each space cost $100,000. *The Advertiser* did not bother to report that fact.

Further 'devil in the detail'

After the legislation had been passed there came a critical day in December 2011 when the sub-licence wording and complexities came under pre-signing scrutiny, defining the extent to which the new Act would prescribe rights to the AOSMA for use of the land within the oval walls but also, and equally importantly, sections west and north of the oval's walls. Adelaide Park Lands Authority board members a week earlier had been prompted by administrators to hold these discussions in secret. Endorsement of that administrative recommendation provoked some board resistance, the deliberations of which remained secret for many years, such that former members by law were forbidden to discuss the confidential proceedings. On 1 December 2011, the city council was presented with a recommendation to endorse the licence arrangements favourable to the AOSMA, which its elected members did with alacrity, and to the pleasure of a Labor Government which had brought off a park lands coup unlikely to be eclipsed for some time. An end note to this chapter describes the new legislation's prescriptions for the new oval 'core area' and 'licence area'.

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[11] Letter, Kate Ellis, Adelaide (federal) MP, to JS Bridgland, North Adelaide resident, 28 December 2011.

[12] From 2021 it would also serve as a car park for visitors to a new oval hotel that was constructed abutting the stadium's eastern walls.

Reflections on the political risk

Five years later, in 2016, former State Treasurer Kevin Foley was interviewed by an online *InDaily* journalist about the period leading up to the state election in 2010 and the proposal to build a major stadium in place of existing facilities.

"[Premier] Mike [Rann] was very hesitant because [he was worried about] the state seat of Adelaide, the North Adelaide residents, and he wasn't sure what [then-Adelaide MP Jane Lomax-Smith's] view would be on it."

At the time, the electorate of Adelaide was held by Labor's park lands protection 'star', Dr Jane Lomax-Smith, who had increased her margin in the 2006 election and been prominent in publicly opposing the 2007 Victoria Park bid to build a 'multi-function grandstand'.

The journalist recorded Foley as saying: "His [Rann's] political gut feel was that this could be bad, this could upset a lot of people and it's not going to be clever politics."

Foley: "I had a direct opposite view – I thought this could be a political game-changer and be incredibly popular, but he wasn't convinced."

The reporter: "He [Foley] said the government even did internal polling, which was 'iffy', suggesting Labor 'could lose the seat of Adelaide' – which, in the event, it did."[13]

The reporter continued: "Foley, as has been previously revealed, hijacked Rann with a surprise meeting of the AFL stakeholders in Melbourne – 'He got really shitty because I set him up' – but the Premier was ultimately convinced."

The reporter: "Yet if the stakeholders were on board, the cabinet was not."

"If we had to put it to a vote I wouldn't have got it through cabinet," Foley revealed.

"But the Premier supported it, [Transport and Infrastructure Minister] Pat Conlon got in behind it and a couple of other key ministers, so we got it through [but] support was very lukewarm. There were certain individuals conniving with my colleagues to try to stop me doing this."

The reporter: "In this climate, shortly before the 2010 election, with the upgrade having been officially announced as Labor policy, came another game-changer – one that was instrumental in Foley's political downfall."

Foley: "The mistake I made was I popped in to see [SANFL chief] Leigh Whicker, and he said 'Mate, $450m is not going to be enough [to get the project done]'."

The reporter: "Foley was told another $85m was needed to clear SACA's debt."

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[13] The 2010 swing against Lomax-Smith was 15 per cent, a brutal voter response, although a number of other unpopular electorate matters contributed, and it is impossible to know how much the park lands proposal defined this result. Moreover there were significant swings against other Labor candidates, including Premier Rann, but insufficient to see them lose their seats.

Foley: "I said 'Oh shit', [and thought] 'Oh well, we can't do anything between now and the election, we'll have to wait till after' – if we won." [14]

The Labor party did win, but within two years both Kevin Foley and Mike Rann had ended their political careers, prompting concurrent by-elections.

Themes: the oval's historical context

The history leading up to the 2011 oval proposal went back 10 years, and was initially not just dominated but controlled by the shadow of the god of Australian cricket, Adelaide resident and SACA patriarch, Sir Don Bradman. He had long prescribed that football would never play at Adelaide Oval while he lived, and football interests had in the 1970s taken their operations far west, to the Adelaide suburb of West Lakes, investing millions in separate facilities. Bradman died in 2001. As soon as his voice was stilled, oval interests and members of what would after 2002 become the Labor government began to talk.

The Adelaide Oval and its facilities had long symbolised Adelaide's contribution to the great English tradition of cricket, at a venue more than a century old and of major historical status. In 2001 a Conservation Management Plan had been written by the city council to acknowledge and preserve its buildings and landscape features, the old grandstands of which were – ostensibly – forever protected under State Heritage listings. But less than 10 years later, demolition of almost the whole of the oval's old grandstands and other facilities would be under way. They would be replaced by an enormous stadium and lights towers, the financial operation of which would be directed equally between cricket and football interests through the Adelaide Oval Stadium Management Authority (AOSMA). Moreover, through the Adelaide Oval Act licence arrangements prescribed under that 2011 legislation, and the subsequent lease, the AOSMA would have to pay a rising scale of indexed annual fees, at the time calculated to peak in 2019–20 at $1m (indexed). Land described as the oval licence area around the western-edged 'Oval No 2' would be made available for AOSMA to use under the Act for 80 years (20+20+20+20) at a $10 per 20-year term fee. Only two years earlier, in August 2009, SACA had held a different licence and only for a term of three years. The new conditions, in effect, gave freehold title for multiple generations of administrators. It was a remarkable, and remarkably speedy, park lands outcome of great benefit to the Cricket Association.

The story of the South Australian Cricket Association

In park lands terms, the history of the use of Adelaide oval went back to 1879. The original site of 6.07ha had been authorised under the Adelaide Oval Act of 1879.[15] The legislation gave the South Australian Cricketing Association a solid legal basis for park lands tenure and the best of lease conditions – 25 years.[16] The site was supposed to cater for a range of sports, but some historians claim that it did not,

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[14] *InDaily*, 26 April 2016, https://indaily.com.au/news/politics/2016/04/28/foley-tells-mike-ranns-foul-mouthed-gift-to-the-aflm-rat-fck-to-the-afl/

[15] Jim Daly, *Decisions and disasters*, Bland House, 1987, page 145.

[16] Jim Daly, ibid.

and 100 years later, after football had been banished in the 1970s, it remained focused on cricket and the interests of the evolving Cricketing Association. The passing years conferred a thick coating of respectability. The Association's focus on the paramount importance of the paid privileges of its members prompted a park-lands-focused author in 1987 to observe: "The continued exclusive use of this area of the park lands by an association of members with so little regard for the public is contrary to the concept of sporting use of public park lands."[17] In post-2011 terms, this culture was magnified greatly, and cricket and football associations with monopoly seasonal access to, and control of access to, the oval were able to promote the exclusive privileges of their paying members ahead of local non-members and other visitors.

The gradual assumption of 'ownership'

The park lands Park 26 site today remains a classic case study of what can happen when a sports field in Adelaide's park lands is initially leased under generous terms and then is progressively developed over subsequent decades. The pattern is well worn – a long-term lease, gradual erection of fencing, then erection of small buildings, gradually expanding into larger buildings and other facilities, with accompanying restrictions on public access on 'play days' or demands for financial contribution to watch. The city council archives reveal a long record of the SACA's determinations affecting the use of the park lands to suit its own ends, usually very generously and sometimes only formally permitted or endorsed by the city council after the fact. The records also reflect enduring public discussion (and a trail of matters recorded throughout the 20th century) about the SACA's access to and use of public land through other leases, and how communities responded to the exercise of that access and use. One feature became almost invisible to South Australians as the generations passed – that the oval site, SACA's most dominant presence – remained park lands. Instead, the public consciousness over time increasingly perceived the land as being a privately owned title, owned by a serious sport business, with access to the oval more often than not restricted from the wandering public. On sports event days the best seats were primarily for the benefit of the Association and its fee-paying members and guests, under strict dress rules. Further, in a construct reminiscent of British culture, there were two classes of sport-watching attendees, members and non-members. Non-members were not allowed to occupy certain seating or gain entry to some areas. Moreover, some board members achieved the status of Adelaide royalty (and some Adelaide 'royalty' achieved the status of board members, rubbing shoulders with retired batting or bowling heroes who were members or guests of the SACA). After Don Bradman died, there also was a built-form deity to revere, and the religious analogy could extend to a place of worship – the Don Bradman Stand, the most recently constructed grandstand.

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[17] Jim Daly, ibid.

There were often long waiting lists to join the SACA, and fees were high. Honorary membership status was extended to important people; in particular, elected members of the city council and state parliament. There was rarely any public comment about the obvious conflicts of interest this created when either the council or the parliament deliberated favourably on oval lease terms and conditions or operational matters or adjacent park lands access matters. Moreover, there was rarely any declaration of such conflict when determinations favourable to the SACA were made; the mere public suggestion of which might have been seen as affronting and unfair, even though the elected member might often dine in the oval's member dining room, sharing a table with board members.

Club facilities for club members

As a result of regular SACA and government tourism promotion of the old oval site, the public mind was commonly focused on its heritage value as defined by its permanent, heritage-listed grandstands and famous ageing scoreboard, hence the Conservation Plan of 2001. Conversations mused on a desire for upgrades of the old grandstands and facilities without damaging the heritage fabric, but there was a strong counter argument that the fabric contributed to the fundamental historic character of the site and shouldn't be changed. In the years following 2001, this argument was gradually critiqued negatively by Adelaide's daily, *The Advertiser*, whose commercial alliances included Adelaide's high-revenue major sport industries, particularly cricket and football. Its articles and editorials strongly informed subsequent electronic media opinion. When *The Advertiser* decided to pursue a matter to its commercial advantage, woe betide those who took a different view. As an Adelaide Park Lands Preservation Association newsletter author (and SACA member) noted only a few months before the oval bill entered parliament in 2011: "*The Advertiser*'s decade-long pro-commercial development campaign for the Adelaide park lands has been characterised by demonising, marginalising and belittling any individuals or organisations with an opposing view. At the same time, the development lobby has been measurably over-represented in its pages."[18]

The Rann Labor government, which spent much of its first two terms (2002 to 2010) commandeering the political high ground for its commitment to park lands 'protection', also recognised the defining major advantages in collaborating and supporting the newspaper's views, as well as those of Adelaide's most prominent two sports groups. Pre-election 2009 Labor pledges committing to full financial support for the redevelopment of the Adelaide Oval into a stadium underscored Labor's mutually satisfying alliance with the SACA's senior cricket administrators and board members. This alliance included South Australian 'cricket establishment' families, shored up by goodwill arising from the major events that the board,

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[18] Philip Groves, Adelaide Park Lands Preservation Association, *Park Lands News*, March 2011, page 4.

members and players organised in the park lands. While Don Bradman lived, the tradition and the heritage fabric remained preserved under the old model, dominated by cricket played at the Bradman shrine, and occupied by spectators sitting in a 1980s grandstand named after him. It was a hallowed tradition and had been for many decades administered by the respected old cricket club, recording great names and great games on honour boards and in glossy reports and books – Adelaide's record of cricket heroes.

Change and the pace of change

It is an old theme in park lands history, however, that Adelaide's belt of public land surrounding the city can play host to dramatic social and political twists and turns, and the outcome for the Adelaide Oval, under the 2011 Act illustrated this well. In 2001 land and a heritage cricket site unequivocally out of reach of park lands developers or new, sports-based commercial companies was, by the close of 2011, to be the lawful site of the construction of the largest park lands sports facility built form in South Australia's park lands history at that time. Moreover, under the terms of a historically unprecedented 80-year lease and control by the Adelaide Oval Stadium Management Authority, a commercially focused business monopoly, it would represent the triumphant re-marriage of cricket and football events at the one site.

Perhaps the most telling of symbols became evident only once the construction teams had departed. The stadium is so huge and its grandstands and lights so high that a visitor to Adelaide standing under the Montefiore Hill statue of Colonel William Light overlooking the city can no longer see the city. The metaphor is profound. The new stadium was made possible only by excluding the provisions of the *Adelaide Park Lands Act 2005*; the participatory role of the Adelaide Park Lands Authority; the city council; and all of the legal checks and balances that usually had effect on the progression of park lands construction project determinations. Today, the city of Adelaide remains visually obscured to interstate visitors standing at Montefiore Hill.

The stadium's stunning scale was only later to be eclipsed by the erection of a colossal new hospital building about a kilometre south-west on railway land that before 2010 had been tagged in the first version of the *Park Lands Management Strategy Report* (1999) to be returned to park lands. At the time of the announcement of the hospital concept a Labor minister had used another legal device to make possible development of that land. The return-to-park-lands goal in the 1999 Strategy had been deleted from the pages of a replacement Strategy, endorsed and signed off by the Rann government in 2010. The hospital was initially estimated to cost $1.7b, but on opening, in 2017, had cost $2.4b. By comparison, the oval stadium had been a steal.

End Note: What the new oval legislation allowed

This was the view of the Adelaide Park Lands Preservation Association in September 2011.[19]

> **"Adelaide Oval Core Area**
>
> The Act prescribes that the ACC [Adelaide City Council] must, at the request of the Minister, grant a lease to the Minister over all of the Adelaide Oval Core Area (being the Adelaide Oval proper) or any part of that area specified by the Minister. The Minister is authorised to grant a lease of up to 80 years over any part of the Adelaide Oval Core Area to the Adelaide Oval Stadium Management Authority. The previous maximum leasehold period of 42 years, which required the approval of both houses of parliament, is now bypassed. An 80-year lease of community owned park lands is, to all intents and purposes, handing effective freehold title to private commercial sporting bodies. Any development within the Adelaide Oval Core Area will be taken to be complying development under section 35 of the *Development Act 1993*, with the Development Assessment Commission taken to be the relevant authority in relation to any proposed development." [20]
>
> **"Adelaide Oval Licence Area**
>
> The Act prescribes a licence to the Minister in the same manner as the Core Area prescribes a lease. The licence period must be a term of up to 20 years at a time, with the total term of a licence not exceeding 80 years. The licence area is effectively all of the remaining open space park lands surrounding the Adelaide Oval, with the exception of Creswell Garden and Pennington Gardens West. Given that the eastern boundary of the Adelaide Oval expansion will absorb more than 8000m^2 of Creswell Garden and Pennington Gardens West, there is no comfort in their exclusion from the Licence Area. The Act provides for the existing *Community Land Management Plan* (CLMP) to remain in force over the nominated Licence Areas, although it is hard to see how the CLMP provisions will have any further relevance in practical terms. The main effect of the Licence Area is for the Minister to be able to sub-lease the areas to the SMA [the Adelaide Oval Stadium Management Authority] for the purposes of car parking on event days. Both the Core Area and the Licence Area have been declared 'designated land' and is, therefore, exempt from rates under the *Local Government Act 1999*. There is no doubt that the Minister will create a sub-lease to the SMA which will enable private commercial sporting bodies to charge and retain car parking fees and revenue from community owned park lands."[21]

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[19] Adelaide Park Lands Preservation Association, *Park Lands News*, September 2011, page 8. Author: Philip Groves, APPA committee member.

[20] By 2018 this body's assessment agency had been retitled the State Commission Assessment Panel, SCAP.

[21] This prediction proved to be accurate.

> **"Special annual sub-lease fee**
>
> The Act stipulates that the SMA pays an annual sub-lease fee for its use of the Adelaide Oval Core Area. The initial lease fee of $200,000 for the 2015–2016 financial year will rise by $200,000 annually until the 2019–2020 financial year when the lease is fixed at $1,000,000 (indexed) thereafter. The Act requires the State Treasurer to pay all amounts received from the SMA sub-lease into the Sport and Recreation Fund. Again, the park lands are reduced to a government cash cow rather than the money being paid into the Park Lands Fund managed by the Adelaide Park Lands Authority."[22]

History students seeking information on details of the subsequent commercialisation of this site over the seven years that followed to 2018 can access a parliamentary inquiry report.[23] It contains evidence of lucrative financial returns to AOSMA's shareholders, the South Australian Cricket Association and South Australian National Football League, as well as many other parties that used the venue, as approved by the AOSMA, over the period.

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22 Source: The Adelaide Park Lands Preservation Association, *Park Lands News*, September 2011, page 8. Author: Philip Groves, APPA committee member.

23 Parliament of South Australia, Legislative Council, *Interim Report of the Select Committee on the "Redevelopment of Adelaide Oval"*, Parliamentary Paper 257, 68 pages, laid on the table Legislative Council, 3 December 2019.

PART 7

Labor's split personality view about its park lands 'protection' bona fides, versus its development intentions for [the] *vast, city edge section of rail yard park lands, would endure throughout its 2006–10 term of office. Labor's next leader ... Jay Weatherill, would exploit the party's dual personality at every opportunity. It would be a discourse based on Labor's notion that its approach was more 'sensitive' to park lands issues than was the Liberal opposition's.*

Extract, Chapter 28:
'The western waste lands'.

In the very early years of the new century, Adelaide City Council's vision for sections of the park lands was to return much alienated land north of the CBD and North Terrace to open-space park lands, consistent with public sentiment at the time. North Terrace, one of the four carriageways defining the city 'square mile', aligned with the edge of the park lands. The council's *Park Lands Management Strategy Report* of 1999 identified rail yard land north of North Terrace and south of Torrens Lake as one site to be returned.

North Terrace land adjacent to parliament house (far right of this photo) could not be returned because it had already been developed as a result of 1984 Bannon Labor government park lands development legislation. That had created a high-density clutch of commercial and government towers, including a casino in a re-purposed railway station. But towards the west (centre and at left in this photo) the land comprised a railroad corridor with open space land south of it. Government investigations concluded that much of the railway infrastructure could be reconfigured, and the land potentially returned to green, open space, similar to land adjacent, across the water, north of the lake. However, on 10 July 2006 in the secret confines of state cabinet, this vision was challenged by a Labor minister. It occurred only four months after the state election, during which Labor's team of candidates had invested much energy pledging allegiance to a 'no building on the park lands' credo. As winter set in, a Labor state cabinet submission was put before ministers. Titled 'Regenerating City West', a 'program of initiatives', it was tabled by Infrastructure Minister, Patrick Conlon. It would signal the beginning of a billion-dollar government infrastructure building spree, that a decade later would manifest in the image shown here.

The ability of the government to build on that part of the city's edge would confirm that, by 2007 (the first year of full enactment of the *Adelaide Park Lands Act 2005*) the legislation had left sufficient 'wriggle room' to allow government premeditation of the state health infrastructure construction concept. It would include plans for a huge, new Royal Adelaide Hospital (as seen on the far left in this photo).

The original 1999 city council vision, as reflected in its *Park Lands Management Strategy Report*, appeared clear. It spoke about a "Progressive return [to public use] with emphasis along North Terrace and Port Road, subject to remediation of contaminated land". However, it left a residue of ambiguity that would prove useful to health bureaucrats five years later. In a 1999 Strategy table titled 'Redevelopment of existing structures and buildings' for 'the Riverbank precinct' it had stated: "Substantial renovations and *development* [emphasis added] which will give new identity to the precinct as the premier cultural and tourist area." But a subsequent sentence clarified the intent, stating that the objective was to create: "New connections and improved pedestrian links to the park lands and River Torrens from North Terrace." Decades later, with the entire length of land adjacent to North Terrace fully developed with government infrastructure, there are no easy connections available to the public seeking access north into the open spaces of the park lands. The towering spine of medical buildings, and fencing makes that impossible. Moreover, there is an even more regrettable outcome in terms of city design. On its CBD's northern edge, on the long stretch west from King William Road to Port Road, the park lands now cannot be seen. Vision of Adelaide's world-renowned vista of green, open space, less than one kilometre north of the CBD, has been forever obliterated.

PART 7 Retrospective phase 4: 2006–2013, western park lands

Chapters

28 | The western waste lands
(How Labor's secret 2006 plans revealed its dual personality about its commitment to western park lands 'protection'.)

29 | Case study – The new Royal Adelaide Hospital
(How the Park Lands Authority smoothed the way to a grand park lands raid.)

30 | Three hectares of western park lands equivocation
(How city local government struggled to manage its own conflicts over its park lands 'care and control' role.)

31 | Hot air and helicopter plans
(How city council park lands policy amendment attempts led to a helicopter landing facility debacle.)

32 | Western park lands development vision expands east
(How a major park lands raid, based on a legal technicality, began to spread east.)

33 | The 'Great Park' extravaganza
(How state bureaucrats fast-tracked a zone plan and overwhelmed city council resistance.)

34 | New precinct Authority model energises a 'Great Park' development vision
(How a new 'precinct' concept established a potential model for a future park lands river-edge development spree.)

The [state's post-2010] *management and operational approach to the park lands would be implied to be about responding to inexorable, evolutionary change, as if the park lands were some biological phenomenon, going through a natural metamorphosis. The government-contracted designers, landscape architects, informed the biological analogy ... by 2013, the designers suggested, the evolutionary park lands organism was ripe for mutating – but apparently only for that 332ha on the north and south banks of the River Torrens ...*

Extract, Chapter 33: 'The 'Great Park' extravaganza'.

Other links to chapters in PART 7

Chapter	Appendix link
32 | 'Western park lands development vision expands east'.	**Appendix 18:** 'How the 2011 Convention Centre development legals had been managed'.

28 | The western waste lands

It was clear that the state was already committed to trash the 1999 Park Lands Management Strategy Report's restoration vision for the western park lands, as well as the Community Land Management Plan's management vision, and this intention would be set in stone so soon after the 2006 state election ... As the July 2006 state cabinet document stated: "Once the master plan and PAR [plan amendment report] is prepared, the government and the private sector will have greater confidence and certainty in developing what is likely to be the biggest and most strategic development in the city for many decades."[1] Here would be the evidence of the first signs of planning for the construction of a new hospital whose footprint would spread over a substantial area.

While much political heat had resulted from the state government's attempt to install permanent car racing 'grandstand' facilities on Adelaide's eastern park lands during 2007, there was a public feeling, as 2008 arrived, that government development threats to other areas of the park lands might also be abandoned. The mood suggested that state Labor had finally got the message about South Australian community resistance to concept plans elsewhere. But taxpayers in 2008 who entertained this illusion were not to know that at the same time as the government had been planning the Victoria Park development two years earlier it was also drawing up development concepts for the western park lands. Hints of a hospital construction plan had begun to emerge publicly in 2007.

Post-poll cabinet deliberations

The bid to use rail yards in the western park lands had emerged in state cabinet in-confidence discussions only four months after Premier Mike Rann had gone to the 2006 state election, promising to stand by the new legislation's provisions for the ongoing 'protection' of the park lands. In confidential July 2006 cabinet discussions, ministers had begun examining a new concept that would contradict a long-held public vision for this land, contained in a park lands document whose status was widely acknowledged at the time. It was one that Labor parliamentarians when praising the Adelaide Park Lands Bill in late 2005 insisted would be the key planning guideline (in whatever future iteration that may follow enactment of that legislation), central to future park lands *action plan* management. At the time the version was the city council-commissioned, seven-year-old park lands core reference, the first *Park Lands Management Strategy Report 2000–2037*, which

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1 *Freedom of Information Act 1991*: Bridgland application to the Government of South Australia, Department of the Premier and Cabinet (DPC) under DPC Circular PC031, 'Disclosure of Cabinet documents 10 years or older': Cabinet cover sheet, MFI016-014 CS, 'Regenerating City West', 10 July 2006, 3.3, 'Opening up the west for major public and private investment', 3.3.6, page 4.

foresaw "how much of the overall strategy should be achieved by 2037, the 200th anniversary of Colonel Light's original [park lands] plan".[2] A figure illustrating the Strategy's Park Lands Concept Plan 2037 (to be achieved less than "200 years after Colonel William Light conceived the park lands") had presented a list of 34 deliverables across the whole of the park lands. One of these was Action 8 – "Return railway land, with an agreed program of decontamination and landscape improvements."[3]

This vision was also embraced in the final draft of the new 2006 *Community Land Management Plan* (CLMP) for Park 27 (Bonython Park), the other major statutory instrument policy guideline cited in the *Adelaide Park Lands Act 2005*. It gave legislative teeth to park lands management-direction determinations, given effect under the interacting *Local Government Act 1999*. It reflected the city council's management aspirations for the site. "The railway yards [infrastructure] should be removed and landscaped as park lands," it stated unambiguously.[4]

Cabinet confidentiality obscures development plans

However, these specific visions and intentions were ignored in a 10 July 2006 state cabinet submission titled *Regenerating City West*, a 'program of initiatives', which was presented to ministers by Infrastructure Minister, Patrick Conlon.[5] In it, there was no mention of either the *Adelaide (City) Development Plan*'s park lands policy areas' desired future character, or the Strategy, or the CLMP. Instead, it focused on a number of new adjacent city infrastructure concepts as well as a plan to upgrade the rail yard site by creating a master plan. This would manifest, in planning terms, through a Plan Amendment Report (PAR) with an intention to amend the *Adelaide (City) Development Plan*'s contents regarding the relevant park lands zone policy area. But cabinet ministers (or at least their advisors) were nervous about it. The sensitivity was noted in the document. "Master plan and PAR for rail yard site: It is possible that some interest groups and members of Adelaide city council will express concern that the government has backtracked from its previous commitment not to allow development in the park lands and runs contrary to the spirit of the new park lands legislation." But the author had already considered a good excuse: "The government can state that most of the land is degraded and inaccessible and that the aim is to open up the site for public use and provide safe and convenient access from North Terrace to the river."[6]

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2 Hassell, *Park Lands Management Strategy Report 2000–2037*, Executive summary, page 8.

3 Hassell, *Park Lands Management Strategy Report 2000–2037, The Park Lands Concept Plan* 2037, Figure 24, as found in: section 9 'Park Lands Concept Plan, 200 years after inception', page 70.

4 Adelaide Park Lands *Community Land Management Plans*, Tulya Wodli (Park 27), 'Comparison of present and future landscapes', unnumbered page; follows section 4.8.

5 Government of South Australia, op. cit., Cabinet cover sheet, MF016-014 CS, 'Regenerating City West', 10 July 2006.

6 Government of South Australia, op. cit., Cabinet cover sheet, 'Regenerating City West', 10 July 2006, 'Risk Management Strategy', 3.12, page 7.

For the historical record, the 'access to the river' idea was pure spin. Many years later, and well beyond the study period (year-end 2018), this remained nothing more than a concept and no public plans were in place to deliver it.

Pages later in the cabinet submission the potential for major public and private investment was discussed.

> "The rail yard and surrounding land west of the Morphett Street bridge has long been recognised by the private sector as valuable and future development site given its proximity to the city core, the waterfront and its North Terrace address. In the past, developers have envisaged a range of uses including high-density housing, five-star hotels and entertainment facilities. Being an operational rail yard, the degraded state of the land and the surrounding park lands makes it a complex and politically sensitive site to develop." [7]

It noted that, other than retaining certain rail tracks, existing ageing rail infrastructure could be resited.

> "This means that close to 20 hectares of the site, including some of the land under the control of ACC [Adelaide City Council] could be packaged as a potential development site for public and private uses. By doing so, it opens up the opportunity to: Consider locating new health care facilities (currently being examined by the Department of Health) ... [and many other options]."[8]

Given that this land was tagged at this time to be returned to park lands, public revelation of contemplation of that intention would have been politically very risky. It was a clear illustration of state Labor's hypocrisy about its so-called commitment to park lands 'protection'. But on the basis of the cabinet document it was also clear that the state was already committed to trash the 1999 Strategy's park lands restoration vision for the western park lands, as well as the CLMP management vision, and this intention would be set in stone soon after the 2006 state election, despite the fact that the CLMP was in final draft, ready to be adopted. As the July 2006 state cabinet document stated: "Once the master plan and PAR is prepared, the government and the private sector will have greater confidence and certainty in developing what is likely to be the biggest and most strategic development in the city for many decades."[9] Here would be the evidence of the first signs of planning for the construction of a new hospital whose footprint would spread over a substantial area.

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[7] Government of South Australia, op. cit., Cabinet cover sheet, 'Regenerating City West', 10 July 2006, 3.3 'Opening up the west for major public and private investment', 3.3.1–3.3.2, page 3.

[8] Government of South Australia, ibid., 10 July 2006, 3.3.3–3.3.4, pages 3–4.

[9] Government of South Australia, Cabinet cover sheet, ibid.,10 July 2006, 3.3.6, page 4.

The political machine

Labor's split personality view about its park lands 'protection' bona fides, versus its development intentions for this vast, city edge section of rail yard park lands, would endure throughout its 2006–10 term of office. Labor's next leader (but at that time the Minister for Environment and Conservation), Jay Weatherill, would exploit the party's dual personality at every opportunity. It would be a discourse based on Labor's notion that its approach was more 'sensitive' to park lands issues than was the Liberal opposition's. For example, late in 2009, only months ahead of the March 2010 state election, the state Liberal Party revealed a policy position to build big on this land, and was open about it. Weatherill's parliamentary criticism followed:

> "What do we see about this [Liberal Party] proposition? We see a plan which bears none of the subtlety of those [park lands] debates ... What we see is an extraordinary proposition where the whole of the area of the park lands between the Morphett Street bridge and the Adelaide gaol and from North Terrace to the river is entirely devoted to development. Then what we see on the northern side of the river is a huge high-rise building. We are not talking about shades of grey and degrees of debate about what should be the sensitive use of the park lands; we are seeing a completely rampant and reckless decision which pays no regard to the careful steps that have been taken over decades ... The so called 'vision' here is one of massive alienation of incredibly large chunks of the park lands ... We have essentially gone from a series of debates about ensuring that these park lands are carefully used and developed for the benefit of our community to an incredibly reckless plan that simply allows a group of developers and private investors to let rip on a very large chunk of our park lands. This is utterly unacceptable to, and will be repudiated by, the South Australian community."[10]

Shades of grey

Three years earlier – and only four months after the 2006 state election – the concepts and visions outlined in Labor's state cabinet July 2006 *Regenerating City West* submission would illustrate – behind closed doors – the first of many Labor unofficial government policy positions. This submission reflected an unambiguous contradiction of its public position, even in 2006, months after it had run for office for a second term citing its deep park lands 'protection' commitments. 'Shades of grey' would be features of other post-2006 park lands government development intentions. They are covered in later chapters in this section.

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[10] South Australian Parliament, *Hansard*, House of Assembly, 'City West Development', 1 December 2009, page 4897.

29 | Case study – The new Royal Adelaide Hospital

FEATURES	COMMENTS
What	Seven-storey hospital; former rail yard land, formerly park lands (part of Colonel Light's 1837 Adelaide City Plan).
Park land area	10 hectares.
Beneficiaries	State government health programs, South Australians.
Cost	$2.4b (original 2007 estimate was $1.8b).
Historical relevance in the context of a 1998 to 2018 study	• Land originally earmarked in 1999 for return to park lands, after about 150 years' use as rail yards, was zoned in May 2009 in anticipation of one of the largest state construction projects in South Australian history. • Concept was rejected 'in-principle' in 2008 by board members of the Adelaide Park Lands Authority, but went ahead anyway. • Made possible in planning terms through use of one of the major *ministerial* Plan Amendment Reports of the study period of this work. • The planning raid on this section of land took just over two years to accomplish, despite myriad potential complications. Hospital construction took more than seven years to complete.
Park lands management features	Land subject to 1999 *Park Lands Management Strategy Report* focus, and a *Community Land Management Plan*. Neither contemplated the construction of the hospital or ancillary uses.
Park lands relevancies	• No park lands policy documentation in 2007 supported the government bid. • However, changes made by the Adelaide Park Lands Authority in 2009 to create a new 2010 *Adelaide Park Lands Management Strategy*, had deleted an aspiration in the 1999 Strategy to have the alienated land returned to park lands open space. • This signalled to park lands managers that, despite a complex structure of policies ostensibly with the 'teeth' to be used as checks to park lands development proposals, if government wished to assume some park lands sites and build, it could. • The ability of the government to build in that part of the park lands signalled to all that, by 2007 (the first full year of operation of the *Adelaide Park Lands Act 2005*) there were sufficient loopholes in the Act to encourage premeditation of the RAH construction plan. This had, and still had at the end of the study period of this work, major implications for legislators who hoped that the Act would be used in future to restore 'lost' (alienated) park lands to the 2005 Act's Adelaide Park Lands Plan.

> *The hospital was built, but the Authority's board members' resistance in 2008, in only its second year of operation, would become the first of a small number of valiant efforts to 'protect' the park lands, consistent with the spirit and intent of the* Adelaide Park Lands Act 2005. *Those 'valiant efforts' might well have been interpreted as shouting at the wind. In one sense, the scale of the development, and the government's public health focus, bluffed many South Australians into accepting without much resistance one of the most significant land-use raids on park lands in the study period of this work.*

The assumption of land in the western rail yards to build a new state hospital was one of the largest park land acreage raids commissioned in the first decade of the new century, encompassing 10ha of former rail yard. It would be the single largest development in the city's history, according to the Adelaide Park Lands Authority. A study of the Rann Labor government's and the city council's early documentation about plans to construct a 'new' Royal Adelaide Hospital (RAH) reveals a pattern of anticipation of benefits described in various claims, whose extent might be seen in retrospect to correlate with the large area of land sought. Contemplation began in February 2007 when state cabinet determined to replace the city's eastern-edge hospital, some buildings of which had been constructed on park lands more than 70 years earlier.[1]

The first major benefit of the western site plan, according to state cabinet, would be a land swap, "... returning approximately 3.8ha of the existing RAH to botanic gardens".[2] The idea to assume a site in western park lands and in return give back sections of an old hospital building site to manifest as additional eastern park lands in the Botanic Gardens was publicised widely by Premier Rann's ministerial team at and after the public announcement. The strategy was to allay potential resistance to the idea that park lands were once again going to be raided for construction purposes. It would be a false promise. At the end of the study period of this work, 2018, and additional years later, at year-end 2022, the land swap had still not occurred, even though the new hospital had been operating for several years and the old hospital site was in the process of being redeveloped for other purposes.[3] Another 2007 government claim was: "Through design, a formal linking of the city to the related section of the River Torrens will also occur, making the river more accessible to the community."[4] By year-end 2018 this had not been delivered either.

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1 Facilities at the old RAH, (North Terrace and Frome Road) had been built on eastern park lands space that had been raided for the purpose. The site had been "dedicated as a reserve to be used for hospital purposes", pursuant to section 5 of the *Crown Lands Act 1929*. Source: Adelaide Park Lands Authority, Board meeting, Agenda, Attachment A, 17 July 2007, page 2103.

2 *Freedom of Information Act 1991*: Bridgland application to the Department of the Premier and Cabinet (DPC) under DPC Circular PC031, 'Disclosure of Cabinet documents 10 years or older': Government of South Australia: Cabinet cover sheet, 'Health Reform', HEACS/07/180, 26 February 2007, page 14.

3 Rezoning would turn the precinct into a space technology hub, titled Lot Fourteen. There would be no dedication of any of the land for green, open-space purposes.

4 Government of South Australia, Cabinet cover sheet, 'Health Reform', op. cit., 26 February 2007, page 14.

Delusions thrived elsewhere, too. In July 2007, when the Adelaide Park Lands Authority examined the proposal for the first time, its agenda discussion also enthusiastically embraced several other delusions. “In creating the new major public hospital on the under-utilised and unattractive rail yards site, this ... had the potential to reinvigorate this sector of the city and have significant flow-on economic, social and cultural benefits to the city as a whole.”[5] This would prove to be spin, and even if any potential economic or cultural benefits had existed at the former site, the relocation would simply move these several kilometres west, when the former RAH (closed in 2017) ceased delivering them. In 2009, the Authority also claimed: “The increased focus on the precinct, which the presence of this proposed hospital will bring, also has the potential to revitalise the surrounding park lands as well as adjacent features [such] as the historic Adelaide Gaol and Police Barracks site.”[6] This was also political spin. In fact, as this chapter later explores, about nine years after the 2009 claim there would be revelation of new state cabinet plans to consider these Park 27 sites for construction of another state health building, a new Women’s and Children’s Hospital, to replace the existing hospital in North Adelaide. But they would be revealed only after a 2018 Freedom-of-Information Act search by Adelaide’s daily, *The Advertiser*.[7]

Expansion plans

The 26 February 2007 state cabinet submission had noted: “Due to the sensitive nature of the proposal, extensive consultation has not been possible. There is a risk that the changes proposed will not be acceptable to clinicians.”[8] When cabinet members had made the decision, they did not encourage discussion as to whether the government use of land originally earmarked to be returned to park lands would be acceptable to South Australians. Some were irritated that a 1999 plan to restore contaminated western rail yards to park lands was to be ignored, and the land instead built on. It was more evidence of a political behaviour pattern that had emerged after Labor had won its second election, in March 2006. Four years later, in 2010 when an ambitious Labor minister began positioning himself to replace Rann, he publicly admitted what others in state cabinet would not. Jay Weatherill, then Education Minister, had attended a public meeting. A journalist at the meeting noted: “Weatherill placed himself in sympathy with his audience without actually betraying the government of which he was a senior member. But he flirted with it, bemoaning governments which shy away from consultation, disappear into their bureaucracies, hire experts, then make policy announcements and hang on for dear life.”[9]

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[5] Adelaide Park Lands Authority (APLA), Board meeting, Agenda, 17 July 2007, page 2099.

[6] APLA, ibid., page 2099.

[7] *The Advertiser*, ‘Secret files for WCH rebuild’, 31 July 2018, pages 1 and 4.

[8] Government of South Australia, Cabinet cover sheet, ‘Health Reform’, op. cit., 26 February 2007, page 14.

[9] Penelope Debelle, *The Advertiser, SA Weekend*, ‘Leading light’, 7 August 2010, page 9.

Minister Weatherill was quoted as saying: “We have got into the habit of trying to avoid public criticism by truncating the public policy process … Sometimes we get away with that and sometimes we don’t.” The journalist: “Governments – his government by implication – must stop making policy in isolation and start engaging with the community.” Weatherill: “They call it the ‘announce and defend’ versus the debate and decide’ model, and we have to be in the latter, we have to be in the debate and decide.” The journalist concluded: “He did not give examples, but they would be likely to include the decision to relocate the Royal Adelaide Hospital …”[10]

The ‘cheap land’ solution

Buried in the February 2007 state cabinet submission was another idea, which would later inform a plan to access even more adjacent park lands at the rail yard site. This was the need to allow for “expanded research and education facilities.”[11] The subsequent development of a new Health and Medical Research Institute adjacent to the new western hospital would take up more open-space acreage, and other buildings would follow, as new research and teaching high-rise towers mushroomed further east, towards the Morphett Street bridge. This development expansion idea arose first in a government minute of 10 July 2006 in which land availability had been discussed.[12] In that minute, the least feasible site for these developments had been deemed to be this rail yard site, until everything changed over the eight months that followed when the government realised that if it built a new hospital there, an institute facility would be ideally placed nearby. It would address the land availability dilemma, and avoid political complications in relation to other potential park lands sites that had been explored earlier, for example, the National Wine Centre site in the east park lands. Its 1999 construction under the Olsen government had been highly controversial, not only because of its scale and cost, but also because of its location.

Other medical teaching facility construction would follow at the western rail yard site, delivering a line of glass- and steel-clad high-rise that by 2018 occupied the whole of the southern edge of the city’s rail yards, adjacent to North Terrace, blocking views of the park lands north of the site.

The land grab

Records from this period show that government tactics were based not on the pledges that the Rann government in its first term had expressed about ‘protecting’ the park lands and restoring former park lands sites to open-space recreation sites, but instead on expediency and opportunity. This approach contradicted pledges

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10 Penelope Debelle, ibid., page 9.

11 Government of South Australia, Cabinet cover sheet, ‘Health Reform’, op. cit., 26 February 2007, page 4.

12 Government of South Australia, Minute: Chief of staff, Minister for the City of Adelaide, ‘Progress report’, 10 July 2006.

that Premier Mike Rann and his ministers had made as they went to the March 2006 election, only 16 months earlier. Behind the closed doors of state cabinet, ministers read of the tactic to be employed. As the state cabinet submissions advised: "The site is currently zoned as park lands."[13] "The Attorney General's Department advice is that the land held by TransAdelaide may be transferred without legislation to a minister or instrumentality of the Crown for the purposes of the proposed hospital."[14] With no need for legislative amendment, the government simply sought further interpretation assistance as to how the pathway could be pursued. At this point, an unlikely ally arrived.

Authority agenda identifies the opportunities

The Adelaide Park Lands Authority in July 2007 wasted no time in exploring the loopholes that might allow construction of the huge hospital, examining provisions of the new *Adelaide Park Lands Act 2005*. While the Act had been proclaimed in early 2006, many of its provisions had not been enacted until other interacting legislation had been amended, so 2007 effectively became the beginning of the operation of this statute. In the Act was a provision written in good faith to have former park lands returned to park lands. Under section 23 of the Act, provision was made for former park lands no longer required for a purpose (for example, the rail yard) to be subject to a report to state parliament. The report was required to be lodged within 18 months and describe the condition of the land and any action required to make the land suitable for public use as park lands. It then had to be laid before both houses of state parliament and presented to the city council. If a government failed to do this, the consequences would fall to determinations of the Environment, Resources and Development Committee of the parliament. However, this was a politically neutered instrument of parliament because the government of the day always ensured that the numbers went the government's way, so as a 'check' on abuse of this section, it was toothless. Its political and/or administrative ineffectiveness had been identified in parliamentary debates long before the Rann government had been elected in 2002.

In July 2007 then, a practical test arose. The Authority noted the tempting practical reality: "Section 23 of the Act does not state that land within the park lands occupied by the Crown or a state authority that is no longer required for its existing uses *must* be returned to park lands." (Emphasis added.)[15] It then explored a second loophole, which depended for its potential for abuse on the semantics that parliamentarians only two years earlier also had allowed to survive, despite probing debates, in the Legislative Council as debate on the Adelaide Park Lands Bill 2005 was nearing conclusion. The Act stated that its first two Statutory Principles, in

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13 In technical terms it was described as 'alienated park lands', having been used for rail transport purposes for the previous 160 years.

14 Government of South Australia, Cabinet cover sheet, 'Health Reform', op. cit., 'New Hospital Site', 3.32, page 9.

15 Adelaide Park Lands Authority, Board meeting, Agenda, 17 July 2007, page 2100.

particular, 4 (1) (a), should place primary focus on what Colonel William Light had envisaged in 1837 – decades ahead of the arrival of steam train travel and its requirement for rail yards. Light's view was that South Australian, city edge, just-surveyed park land ought to be open space, accessible to all. So much for good intentions. The Act's Statutory Principle clause, calling for this, began: "(a) the land comprising the Adelaide Park lands should, *as far as is reasonably appropriate*" ... [Emphasis added.] The second principle also featured ambiguity, calling for the park lands to be: "(b) ... held for public benefit of the people of South Australia, and should be generally available to them for their use and enjoyment (*recognising that certain uses of the Park Lands may restrict or prevent access to particular parts of the Park Lands*)." [Emphasis added.] The Authority smugly concluded: "In summary, while the Act encourages the custodians of alienated park lands to return them once they are surplus to requirements, it provides a process where exemptions can be justified."[16]

This would have been music to state cabinet's ministerial ears.

Other hurdles to rail yard development

The principal hurdle was the *Development Act 1993*, and its instrument the *Adelaide (City) Development Plan*, which categorised the hospital proposal as non-complying for that land because its use was not consistent with the policy provisions applying to the Park Lands Zone River Torrens West Area. The solution would be for the state to write a Plan Amendment Report (PAR). This was a legal planning tool that allowed a government to revise the development rules for a site to fit with a proposed construction plan. In other words, where the development plan for the park lands policy area had been written to apply rigour and prevent non-complying development, the government could ignore that earlier intention, effectively turning the process on its head. It also chose to use a *ministerial* PAR, which did not rely on the city council to do the work. A 'ministerial' was a most powerful and effective amendment tool.

The Authority noted that under the Development Regulations (1993) the Development Assessment Commission (DAC) would be the relevant planning authority when development is undertaken in the park lands by a state government agency. This would be of convenience; the operational history of this Commission illustrated a considerable flexibility in its interpretation of the rules when the state wanted to build something on the park lands. Moreover, amendments made to park lands policy area provisions before the application reached the DAC would ensure that the words fitted with the proposal. This made it very difficult for the DAC to reject such an application.

The Adelaide Park Lands Authority also noted that if the hospital plan were to succeed, park lands policy documents such as the 1999 *Park Lands Management Strategy Report 2000–2037* would have to be revised. This would touch a

16 Adelaide Park Lands Authority, Board meeting, Agenda, 17 July 2007, page 2101.

community nerve later given that, at this time, the Strategy stated that this part of the rail yards should be returned to park lands open space. The Labor planning minister who introduced the Adelaide Park Lands bill to the Legislative Council in 2005 had stressed how important this Strategy would be in 'protecting' the park lands. He stressed in vain. The proposal to revise the Strategy to fit the western hospital concept would be one of the earliest indications in the history of Authority operations of 'tail wags dog' practice in relation to park lands documentation management, where a new political vision seeking development access to park lands would prompt amendments to existing documents that did not contemplate them. This occurred in late 2008 and a revised draft Strategy was publicly released for comment in February 2009. As a journalist noted at the time:

> "A new version of the Park Lands Management Strategy has just been released for public comment, and the classification for the site ... has been changed. Land that was originally tagged 'priority return to park lands subject to agreements' has now been changed to the Orwellian descriptor 'wellness focus', newspeak for a huge hospital site. Few South Australians invited to comment will have read the original [1999] version, and it will not be circulated with the new version, so the whitewash will be invisible." [17]

A fake roadblock

By 2008 it was clear that some board members did not agree with this approach to placating a state government wanting to implement a park lands development so contradictory to park lands 'protection' principles. The board members also were not impressed that within nine months the state had released its master plan for the site. It implied that the pathway to construction was assured. The hospital was to be named after the much-admired South Australian athlete, Marjorie Jackson-Nelson.[18] Within less than a month of release of the master plan, on 1 May 2008 the Authority board members voted to reject 'in-principle' the proposal to build a hospital on park lands. That much was clear. They resolved: "The Marjorie Jackson-Nelson Hospital [MJNH] Precinct Master Plan is inconsistent with part of the [1999] *Park Lands Management Strategy* and the *Community Land Management Plan* for Park 27 (Tulya Wodli) in that it does not return the whole of the rail yards to park lands and is also inconsistent with the *Adelaide (City) Development Plan* in that the proposed use of the site as a hospital would not comply with the current zoning."[19]

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[17] John Bridgland, *The Adelaide Review*, 'Test of credibility, 'Marj' plan shows vulnerability of the park lands', February 2009, page 18.

[18] Subsequent political clashes about the construction and multiple other health-portfolio-related issues prompted Ms Jackson-Nelson to revoke permission to use her name.

[19] Adelaide Park Lands Authority (APLA), Board meeting, Minutes, 1 May 2008.

They had good reason to be doubtful about the master plan. As the May 2008 Authority agenda paper had noted:

> "The MJNH Precinct Master Plan is a high-level document. While it states that the buildings' planned floor-space will be 170,000sq m, it provides no definitive guidance to the size of the building's footprint and adjacent infrastructure such as access roads. Nor does the master plan provide information on the form and height of the proposal, although it identifies that the hospital should address the different boundary interfaces with the park lands including the adjacent rail corridor and landscape of the River Park and the River Torrens and the open landscape character of the park lands to the west. In this respect it is important that the guiding principles be sufficiently robust so as to minimise the size and form of proposals received through the PPP [Public Private Partnership] process." [20]

It went on:

> "The master plan does not address on-site parking numbers although it specifies an undercroft car park and indicates that surface parking should be minimised. It is also silent on the spillover parking into Narnungga (Park 25) on the southern side of Port Road. The master plan should at least recognise the potential for this to occur and recommend measures to address the issue." [21]

What also would not have been well received was a pattern of information delivery that the state government would go on to repeat many times in subsequent years, especially in relation to subsequent Riverbank proposals further east of the proposed hospital site – releasing draft plans and then anticipating very quick response by the Authority or the city council. The Authority had received the master plan in April 2008, the state demanded a response in less than a month, then released its final plan in July 2008.[22]

In retrospect, this hurried approach was early evidence of Labor's 'announce and defend' approach. It was to become endemic in relation to the state's subsequent development proposals for park lands.

The development plan amendment

The new Royal Adelaide Hospital's huge construction plan was made possible through a ministerial Plan Amendment Report (PAR).[23] Discussed in an Authority agenda of 20 November 2008, under a documentation heading 'The need for an amendment', substantial text explained that the government had decided that it needed to build a new hospital. It then concluded that, because it wanted park lands to be the site, there had to be a change to park lands zoning. That was where the land was 'cheapest'. (It was free.) But it did not mention the fact that the land

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[20] APLA, Board meeting, Agenda, 1 May 2008, page 2910.

[21] APLA, ibid.

[22] APLA, Board Meeting Agenda, 20 November 2008, page 4105.

[23] In later years PARs were retitled as development plan amendments – DPAs – but the procedure was essentially the same.

was free. The real reason for the amendment was that a non-complying development application (under the existing development plan) would have been administratively difficult and politically risky. The rules that existed just before the full enactment of the *Adelaide Park Lands Act 2005* had allowed government access to Development Act provisions for section 49 'Crown Development' rights, but this section had been disabled once the Act had been fully brought into operation in late 2006. It had been a Rann Labor government gesture to suggest that it would never again want to indulge in Crown development on the park lands. The new rules meant that, unless the zoning was altered through a ministerial Plan Amendment Report, the government would have to seek application approval under different rules. Those rules would have allowed for court appeals. Park lands protection advocates would have resisted the application with even more leverage, using the appeals mechanism available under the development plan's Category 3 development classification. Hence the government's need to amend the development plan.

As the Authority noted in November 2008:

> "The site selected for the hospital falls within the park lands zone of the *Adelaide (City) Development Plan*, and more specifically within the River Torrens West Policy Area 37 of that zone. Unless exempted, all development within the park lands zone is non-complying. A hospital is not exempted and therefore would be subject to a non-complying development assessment process."[24]

There was a second reason for the 'need for an amendment' – avoidance of public consultation. Once the state government had rezoned the rail yards, the hospital and other related construction projects there would be classified in a development application as Category 1, with no requirement for public consultation about the application. This frustrated the opportunity for dissenting public voices to scrutinise plans and drawings and lodge formal objections. The PAR was gazetted on 14 May 2009.

It had taken the state's bureaucrats and ministers just over two years – from state cabinet debate to gazettal – to enable planning development control over a vast section of rail yard park lands for the building of a colossal, multi-storey hospital. This would be the first of many other building projects, as a spine of new medical research buildings would progressively expand east of the hospital.

Much followed, captured in myriad documents over thousands of pages in subsequent hospital project preparation documents. The hospital construction would soon commence. But the Authority's board members' resistance in 2008, in only its second year of operation, would become the first of a small number of valiant efforts to 'protect' the park lands, consistent with the spirit and intent of the *Adelaide Park Lands Act 2005*. Those 'valiant efforts' might well have been interpreted as shouting at the wind. In one sense, the scale of the development, and the government's public health focus, bluffed many South Australians into accepting without much resistance one of the most significant land-use raids on park lands in the study period of this work.

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[24] APLA, Board meeting, op. cit., 20 November 2008, page 4114.

More hospital 'visions'

Nine years after the gazettal of the new RAH Plan Amendment Report, news emerged that the state government had spent the four years of its fourth term (2010–2014) secretly exploring other park lands sites near the hospital for a new project. This was to construct a new Women's and Children's Hospital, which at the time was located in lower North Adelaide. Plan images published in 2018 in *The Advertiser* showed a number of site options.[25] The Health Department images were based on aerial photos of the hospital site and adjacent park lands and, given the lack of images of several new major developments east of the Health and Medical Research Institute high-rise tower subsequently constructed, dated the photo to about 2014. This was the year in which the Weatherill Labor government had won its fourth consecutive state election. Of the four sites short-listed for the big project, three were in park lands. The one most likely to be controversial would have been on park lands west, across the train lines, on which existed the Thebarton Police Barracks and adjacent olive groves and horse paddocks. This was in the River Torrens West policy area 24, which, while open to some 'infrastructure' development under a 2016 development plan amendment, was not open to fresh government institutional high-rise. Similarly, another option highlighted in the Health Department papers was to use a northern site that one year later would be tagged by the city council for a helicopter landing site, but which was abandoned in late 2017. That site, while short-listed, was least preferred by SA Health not only because of its distance from the new RAH but also because it, too, was park lands whose development plan provisions did not contemplate high-rise hospital construction.

Ultimately, the state government in November 2018 announced that it would construct an 11-storey (four levels underground) Women's and Children's Hospital immediately west of the new RAH. This also was on former park lands that had been rezoned in 2009 for the new RAH.[26]

However, this conclusion didn't mean that others had not had, and did not continue to have, eyes on the development potential of immediately adjacent park lands sites. This was of particular relevance to Helen Mayo Park, a sliver of water-edged Park 27 park lands that had been a proposed site for a fenced, helicopter landing pad. Hints would also emerge of concept plans for construction of a six-star, 27-storey hotel there in December 2017, but at the time construction appeared legally and politically infeasible. It would take a change in government three months later, in March 2018, and subsequent new announcements, for more substance to emerge that would significantly increase the level of public concern about the viability of this concept, and the vulnerability to commercial exploitation of park lands sites adjacent to Torrens Lake. The saga is explored in the next chapter.

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[25] *The Advertiser*, ' Secret files for WCH rebuild' (page 1) and 'Secret plans for WCH' (page 4), 31 July 2018.

[26] Brad Crouch, *The Advertiser*, 'Air bridge as new Women's and Children's Hospital revealed: "Baby RAH"', 4 December 2018, pages 1 and 4.

30 | Three hectares of western park lands equivocation

While the contemporary (post-1998) history of land-use determinations about sections of Bonython Park (Park 27 in the western park lands) reveals predominantly local government fingerprints, in park lands matters there is always a state government presence behind the scenes.

This chapter, and the one that follows, focus on local government, the Adelaide City Council, and its role in determining and managing certain park lands land uses, and their 'activation'. It comprises a study of a particular park lands site that reveals the role and powers open to local government, and the city council in particular, the corporation traditionally holding 'custodianship' over much of the park lands, over many years. These powers often relate to opportunities that could be created for the commercial benefit of others, often contrary to park lands policy and guidelines that did not contemplate such benefits. The study highlights a number of themes, and in the following sequence:

- Park lands neglect (140 years of rail-yard-related contaminated land-use history).
- Financial expediency (lowest cost capping of this contamination).
- High-cost park lands restoration (as a newly upgraded park lands recreation site but with design driven by a desire to create a car park for commercial benefit).
- More financial expediency (a dumping ground for lake dredge soil).
- A potential commercial aviation site (a helicopter landing facility). This was contrary to the site's *Community Land Management Plan*, which neither contemplated a lease for such use, nor construction of aviation infrastructure, which would feature significant loss of vegetation and substantial fencing.

The state's fingerprints

South Australian local government rarely acts without the knowledge of, and concurrence with, the state. The evidence for the state government presence behind the scenes had appeared in previously confidential state cabinet deliberations, many years earlier, in July 2006.[1] These deliberations explored development potential for "the rail yard and surrounding land west of the Morphett Street bridge" and discussed options that (among other things) would: "... clean up a degraded site and pollution source to the Torrens; and integrate the land with the adjoining Riverbank precinct".[2] While these two visions appeared sound, it should be remembered (as is documented in the previous chapter) that the state's fundamental

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1 *Freedom of Information Act 1991*: Bridgland application to the Department of the Premier and Cabinet (DPC) under DPC Circular PC031, 'Disclosure of Cabinet documents 10 years or older': Government of South Australia: Cabinet cover sheet, Minutes (MFI06/014 CS) *Regenerating City West*, section 3.3 'Opening up the west for major public and private investment', 10 July 2006, pages 3–4.)

2 Government of South Australia, State Cabinet cover sheet, op. cit., section 3.3.4, page 4.

motivation was to 'package' state land and adjacent park lands – "... close to 20ha of the site (including some of the land under the control of ACC) could be packaged as a potential development site for public and private uses".[3] These confidential state cabinet motivations were contrary to public park lands policy and guidelines at the time, including the *Park Lands Management Strategy Report 2000–2037*, which had been in place for six years when the state ministers met in July 2006, as well as a new 2006 *Community Land Management Plan* for this park.

A sliver of land by Torrens Lake

Bonython Park comprises a 118ha collection of five separate sections of park lands sites that, from an aerial view, presents as portions of land sliced by a railway line heading north, the body of water in the Torrens Lake and, further west, the meandering River Torrens. Park 27 was described in the *Community Land Management Plans, Tulya Wodli Park 27* (endorsed in 2006 which remained the endorsed version for about another six years) as a "large area [with] a number of different land managers".[4] The largest and most well known area comprised the site titled Bonython Park, abutting Port Road Thebarton with the river at its north-eastern edge. However, about one kilometre south-east, one 3.4ha sliver of Park 27 abutted Torrens Lake, on its southern edge (adjacent to rail yards and west of the Morphett Street bridge; now known as Helen Mayo Park). It was a site few South Australians visited. Among all of Adelaide's park lands sites, this small area of land had perhaps the most intriguing history in terms of its record of use and the political expediency with which city council made determinations about its use. None of them would have been made without state government concurrence, but all of them were transacted at local government level, with no evidence that the state was dissatisfied with the administrative direction that each took.

Isolated scrub and contamination

Being adjacent to the rail yards, the site has been recorded over more than a century after the laying of the rail lines as scrubby, isolated and rarely visited and, over time, gradually becoming contaminated from rail yard activity. In 1994 when the State Transport Authority transferred the title to the Adelaide City Council, it became a site for council's periodical dumping of contaminated soil, dredged from Torrens Lake and subsequently fenced to block public access. Between about 2000 and 2018 (the end of the study period of this work) its land uses (real and proposed) were many and varied. They included a soil dump; a fully restored, grassed and landscaped park lands events site (including a recreation site, but which was designed to be a de-facto car park for Adelaide oval attendees in 2014); and later, a proposed helicopter landing site (2016–17). At 2018, after council's failure to implement the helicopter landing site concept proposal, what had once been an

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3 Government of South Australia, State Cabinet cover sheet, Minutes, op. cit., section 3.3.4, page 4.

4 *Adelaide Park Lands Community Land Management Plans, Tulya Wodli (Park 27)*, Introduction 1, 2006, No page number.

'activated' and restored park lands site was informally abandoned as waste land once again. Half of the site was capped with clay and this was periodically covered with river dredge soil (alienated by temporary fencing during those periods). The other half continued to present as the 2014 park land park, but by then badly neglected. To all intents and purposes it had once again become a 'lost' section of the park lands, even though the city council in 2012 had invested $1.7m in a master-planned restoration project that formally anticipated the planting of hundreds of trees. Elements of the master plan had been delivered by 2014, but the envisaged forest of trees had not, because that would have made the subsequent car park space configuration impossible to implement. (It also would have made later contemplation of a helicopter landing site impossible.) The known contamination at the site was never removed; it was merely capped with soil that had been dug from beneath the site of the Adelaide Oval stadium less than a kilometre east to allow for construction there of a 300-space underground oval car park. The lack of action for this little park lands site contradicted the contemplations in the 2006 *Community Land Management Plan* (CLMP) for Park 27, one of two statutory policy documents cited in the *Adelaide Park Lands Act 2005*. The CLMP gave specific guideline direction to park lands management determinations, and had effect under the *Local Government Act 1999*. It stated: "The area of park land west of the Morphett Street bridge between the railway lines and the Torrens River shall be decontaminated and re-graded to provide a grassed recreation space looking over the river."[5] This wording, however, had also disappeared after the 2006 CLMP was revised in 2012. The revision reduced a highly detailed document of about 75 pages to 14 pages (as 'Chapter 7' of one big CLMP).[6] Much specific detail about this small section had disappeared, leaving flexible the potential for administrative deliberation and further change in terms of this park's policy options. This underscored a recurring theme in which instruments of park lands policy (strategies and guidelines) required under the *Adelaide Park Lands Act 2005* could be and were revised by Adelaide Park Lands Authority or city council administrators, altering their original rigour and clearly stated pre-2012 intentions and replacing them with either ambiguity or, more often, silence, each instance of which allowed for flexible interpretation in ways convenient to the administrators of the day.

$504,000 commercial park lands windfall anticipated

In 2012 the redevelopment of the Park 26 Adelaide Oval facilities had begun. A stadium would replace them. Oval soil, dug out to create a large car park under the new stadium, was trucked to the nearby, Torrens Lake-edged Park 27 site to cover the contamination. This saved the South Australian Cricket Association millions in dump fees. It was also the cheapest remedy available to the council to cap the contamination. The council plan, negotiated with the state government, was that oval visitors' cars would be able to use the site as a car park. It was ideally sited – less than

5 *Adelaide Park Lands Community Land Management Plans*, *Tulya Wodli (Park 27)*, 2006, 'Comparison of present and future landscapes', follows section 4.8, unnumbered page.

6 Adelaide Park Lands Authority (APLA), Agenda, 12 July 2012, pages 43–54.

one kilometre from the oval. Up to 80 oval events were anticipated annually. There was lucrative revenue potential arising from this small park lands site. While the city council was bold in its publicity about the restoration of the site to park lands, there was little publicity about the contamination that ought to have been first removed before the soil capping arrived. Council left it to the Environment Protection Authority to approve this arrangement. Curiously, it did. Intriguingly, however, there was no announcement that the park lands 'recreation' site had been designated for use as a car park, even though the Adelaide Park Lands Authority (APLA) site drawings, which it and the council endorsed, made it abundantly clear. In an APLA July 2012 agenda, a business case for the car park anticipated annual revenues of $504,000 based on 600 car park spaces on the turf.[7] It later prompted city area councillor and Deputy Lord Mayor, David Plumridge, to note his objection at council. He recorded in his personal newsletter:

> "Council approved the master plan for the redevelopment of Park 27 – rail yard site, noted APLA advice and called for a report on an appropriate policy for using the redeveloped park for car parking for major events. In my opinion the use of this soon-to-be-recovered and redeveloped park land area for a car park on 80 occasions a year would be a travesty. Such blatant commercialisation of park lands flies in the face of the role of council as custodians of the park lands."[8]

In the years that followed, despite the business plan, the site did not see much use as a car park because oval attendees found other parking alternatives.

Council coy on change of plan

Years later, in 2016 there was no announcement when the council began using the remediated recreation site as a river dredge soil dump. Neither was there an announcement that the park had been suddenly and without explanation deleted from the council's events recreation site list, or that most of the site was by then inaccessible because of temporary fencing surrounding huge piles of bagged river dredge, drying in the sun. At the conclusion of 2018 the soil dredge was gone, but remediation consistent with the 2012 master plan had not occurred. It was an example of the sort of casual and unaccountable park lands neglect that had typified pre-1980s city council administrations. It was as if the Adelaide Park Lands Act's hierarchy of documents directing management and action plan guidance for Adelaide's public lands did not apply to this Park 27 site.

But another bid, between 2016 and 2017 to assess the site's suitability as a helicopter landing site, would prove to be an even more telling illustration of the city council's inability to competently manage proposals for park lands use, proposals that compromised almost all of the Statutory Principles of the *Adelaide Park Lands Act 2005*. That story appears in the next chapter.

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7 APLA, Agenda, 12 July 2012, page 12, referring to an Adelaide City Council analysis in: Adelaide City Council, Agenda, Item 36, 26 June 2012, page 217.

8 David Plumridge, *Newsletter 97*, 12 June 2013.

31 | Hot air and helicopter plans

Case study – Park 27 – Helen Mayo Park – West of the Morphett Street bridge

FEATURES	COMMENTS
What	A city council attempt to obtain public endorsement for the leasing of Torrens Lake-edge park lands for a helicopter landing facility, and to have the site's park lands *Community Land Management Plan* (CLMP) amended to endorse that draft lease. Secondly, to get public endorsement for commercial construction and operation of a commercial helipad at the site, and to have the same *Community Land Management Plan* amended to endorse that development. The council's proposal to amend the CLMP, which contemplated neither the lease nor the development concept, attempted to make existing (older) policy comply with the new proposal, turning the usual procedure on its head and, as such, compromising the rigour of the CLMP management process in relation to any section of the Adelaide park lands.
Park land area	Park 27 – Helen Mayo Park – a 3.4ha sliver of Bonython Park, due west of the Morphett Street bridge and adjacent to Park 26.
Beneficiaries	An unidentified commercial helipad lessee and operator as well as all South Australian commercial helicopter firms and pilots likely to use the facility, and potentially high-roller customers of the Adelaide SkyCity Casino, located about one kilometre east of the site.
Cost	Construction cost of the potential development never revealed by the city council, although confidential tender documents in receipt of the council would have indicated all costs. Cost of Adelaide Park Lands Authority and council time spent on administration of the matter: $42,420 over more than two years of administrative pursuit. Additional $35,000 spent on a site study.
Historical relevance in the context of a 1998 to 2018 study	Sole formal commercial helipad proposal for the park lands open spaces in the period covered by this work. A non-complying development that some administrators thought the *Adelaide (City) Development Plan* might actually allow – if statutory policy instruments could be interpreted as endorsing the concept. Never tested because the proposal lapsed.

FEATURES	COMMENTS
Park lands management features	If the bid had been successful it would have turned a section of park lands adjacent to Torrens Lake into a treeless, restricted-access, fenced, commercial operation, contradicting the land-use and landscape intentions for a park lands section that had been restored in 2013 under a 2012 $1.7m council master plan, with intentions to create an events site for public access.
Park lands relevancies	Provoked a 'big question' of the period – should site-specific management policy documentation (the CLMP) be amended to endorse future leases or development concepts; in other words, should administrators be allowed to reverse the process, enabling advocacy for a future proposal to dictate existing statutory policy instrument content?

> *This was a classic case of the council's development-enthusiastic tail wagging the park lands rules dog. It illustrated a key procedural theme in the City of Adelaide's park lands management at the time, and periods since – an increasing trend of seeking to amend the policy paperwork to fit the proposal, turning the checks-and-balances rigour on its head to achieve a result that administrators (and commercial developers) sought.*

The attempt to determine whether a Torrens Lake-edged slice of Adelaide's park lands should become a privately leased, treeless, fenced area for a helicopter landing site was notable in Adelaide's recent park lands history for four reasons, each unprecedented in the city council's contemporary (two-decade) experience, leading up to 2017.

- Firstly, after seeking a 2017 public response as to whether a lease ought to be approved 'in principle' for a potential developer, when overwhelming public rejection followed (by a ratio of 43 –7 public responses) the council as custodian of the park lands blithely ignored the result and continued progressing the project through the vehicle of the Adelaide Park Lands Authority. This was despite the fact that the *Community Land Management Plan* (CLMP) for the site, one of the key *Adelaide Park Lands Act 2005* management policy instruments, did not contemplate the idea of a lease at this site and that alone should have been a strong indication of the folly of the bid.
- Secondly, after seeking a further public response (this time to a subsequent proposal that the council make policy documentation amendments to endorse private construction of the helipad on park lands) the council would belatedly discover evidence that its *YourSay* mechanism for public feedback had been so corrupted by private, helicopter-industry linked sources that the analysis and potential subsequent steps had to be abandoned and the sample set aside. This resulted in deep management embarrassment.

- Thirdly, despite expert advice that significant aviation risk would arise, should a helipad's development result in aviation activity, it was only when that advice was tested by a potential commercial proponent did it become obvious that the risk advice had been disturbingly accurate and ought to have prompted great caution at the initial discussion phase. This discovery prompted more organisational embarrassment.
- Fourthly, after implementing a special inquiry into how the council could have so mismanaged the project, involving much Park Lands Authority and council effort that invested 707 administrative hours and cost $42,420 over two years, the inquiry results suggested that no hidden agendas had existed, no conflicts of interest were proven, no-one could be charged for transgression of process, and that there was no evidence of council improper process in relation to the pursuit of something that was almost certainly bound to fail. Moreover, the inquiry terms of reference had not called for exploration as to whether investigations and procedures at Adelaide Park Lands Authority or council level had been conducted transparently. Nor had they inquired into whether any confidential state government agenda had driven the matter, despite enthusiastic public support by the park land site's neighbour, the Adelaide SkyCity Casino, and a minister in the state government. As a casino manager had written: "We fully support this development and will encourage further progress and send a positive message nationally that Adelaide is moving forward."[1] The state government's view, put by Labor's Transport and Infrastructure Minister, Stephen Mullighan, had been similarly buoyant in a letter of 19 July 2017, but curiously expressed no concern that the development concept, which was tagged to be constructed on Adelaide's park lands, was something that his Labor colleagues administering other portfolios would have been highly unlikely to support, based on Labor's ostensibly more traditional park lands policy which – publicly – did not support exploitation of park lands, especially for private commercial benefit.

Development plan central to the decision-making

The council's proposal to lease a site for a construction of a helipad on a park lands site that it had remediated at significant expense and subsequently defined as a park lands public events space threw light on the procedural relevance, for planning purposes, of the *Adelaide (City) Development Plan* and its provisions for park lands zone policy areas. At the time, the plan did not allow for construction of a helipad landing facility at that site.

The council's pursuit of the matter also highlighted operational pressures on board members of the Adelaide Park Lands Authority. Its advice was not based on the development plan, but on the contents of statutory instrument documentation stipulated under the *Adelaide Park Lands Act 2005*: the action plan (the *Adelaide Park Lands Management Strategy 2015–25*) and the management plan (the *Community Land Management Plan*).

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[1] Greg Stirling, SkyCity Casino general manager, marketing, email to city councillors and Lord Mayor, 19 July 2017, sourced in: Adelaide City Council meeting, Agenda, Item 12.6, 25 July 2017, page 138.

Authority board appointments

The helipad matter emerged in 2016, but most of that year's discussions had been subject to confidentiality orders. It emerged publicly in 2017 soon after three staff departmental advisors to the Minister for Planning, John Rau, had been appointed by him to the Authority board at the beginning of the year. The nominations had been made at the close of 2016, to apply in 2017. Was the timing coincidence? One aspect was certain. Government staff joining the Authority's board set a precedent because they were salaried government employees, senior advisors to that minister, unlike previous board members chosen most often from non-departmental places and with specialist, non-government fields of expertise. The three officers filled the places of others whose appointments had not been renewed by the minister, even though some of their terms had not concluded when the minister acted. The public interpretation was that there had been a ministerial sacking of these former board members for reasons unclear, and fresh ministerial appointments made for 2017, again, for reasons unclear. The Authority's activity in 2017 led to advice, which the city council then used to progress the helipad matter. One early 2017 inquiry had focused on seeking public response to a proposal to allow the helipad on park lands. By the middle of the year, feedback was being collated. A July 2017 Adelaide Park Lands Authority agenda paper discussed the contents of 50 public consultation submissions, 43 of which advocated strongly against a council-initiated helipad proposal. While that ought to have indicated that there was little public enthusiasm for the proposal, the Authority was encouraged to continue exploring the matter.

Ambiguities and loopholes

The Authority was prevailed upon to provide supporting advice. Some policy support could be found among the traditional loopholes evident, firstly in the legislation, the *Planning, Development and Infrastructure Act 2016*.[2] Importantly, however, the planning instrument still lawfully in place at the time was the *Adelaide (City) Development Plan*. The new 2016 legislation had proposed a new *Planning and Design Code* to replace it, but its likely content was not known in 2017, and it would not come into operation for another four years.[3] The existing development plan was not supportive of a helicopter landing facility at this park lands site as a 'complying development'; however, some ambiguity existed (more below).

This lack of support did not appear to dampen the council's enthusiasm to seek ways in which other statutory instruments under the 2005 Act might be either positively interpreted, or simply revised, to legitimise the council's desire to bring about the means by which the helicopter landing facility might be endorsed. Administrators sought loopholes, which might be exploited.

The first was identified as coming from the *Adelaide Park Lands Act 2005*, in the form of the concluding clause of its second (and by this time notorious) Statutory

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2 This had replaced the *Development Act 1993*.

3 It would come into operation on 19 March 2021.

Principle (b) whose words ended in an 'opt-out' opportunity: "... (recognising that certain uses of the park lands may restrict or prevent access to particular parts of the park lands)".

A second came from scrutiny of the *Adelaide Park Lands Management Strategy 2015–25* (signed off in 2016). It assisted administrators to come to a view that the proposal also might be supported through a range of its ambiguous 'aspirations' statements.

Critically, the *Adelaide (City) Development Plan* gave administrators some hope, especially if the site were to be found to be a policy area in the park lands zone. This was likely, but not certain.[4] Under amendments made by Labor's planning minister John Rau two years earlier in 2015, a number of park lands policy areas had been released from certain development restrictions, allowing for 'Development for the purpose of public infrastructure'. The River Torrens West Policy Area 24 – which included all sections of Park 27 – had been included. The development plan's Principles of Development Control specifically allowed: "(e) all other facilities that have traditionally been provided by the State (but not necessarily only by the State) as community or public facilities; [including] where undertaken: (i) by a State agency (whether or not in partnership or joint venture with a person or body that is not a State agency); and/or (ii) by a person or body (that is not a State agency) where the development is specifically endorsed by a State agency."[5] This was followed by other encouraging words: "Additional or replacement buildings and structures should only be established, and existing buildings should only be enlarged, if the development rationalises or improves the appearance of undesirable or intrusive existing buildings or uses, *or provides facilities for public purposes*." [Emphasis added.][6]

CLMP explored for potential influence

A further challenge was to explore potential for a lease that would be necessary for the operator of the helicopter facility. The council drew up a draft lease, but knew that it would need a policy avenue through which a lease could be legitimised. Administrators explored one of the Adelaide Park Lands Act's statutory park lands policy instruments, the *Community Land Management Plan* for the site (Park 27). At 2017 few observers were aware of the substantial changes that had been made to this document since 2006. As the second phase of revisions began in 2012, Adelaide Park Lands Authority amendments to CLMPs across the park lands policy areas had reduced this one in size from about 75 pages to 14, stripping it of much detail often useful and sometimes critical for determinations.

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[4] The lease 'plan', released publicly later, which should have shown exactly where construction would occur, was left blank, leaving uncertain the precise boundaries of the development proposal. Were they in the zone? It was not clear.

[5] As subsequently highlighted in a June 2017 consolidated version of the *Adelaide (City) Development Plan*, Principles of Development Control (PDC), 'Form of development', Principles of Development Control (PDC) 7, 20 June 2017, page 254.

[6] As subsequently highlighted in a June 2017 consolidated version *Adelaide (City) Development Plan*, 'Built form and public environment', Principles of Development Control (PDC) 9, 20 June 2017, page 255.

Notwithstanding this, to allow a proposal for a new lease relating to a new land-use development concept, such as a helipad, which the existing version of the CLMP did not contemplate, the CLMP for Park 27 would have to be revised. This would mean that the public would have to be consulted about a proposed new version in which a lease for a helipad was contemplated, and to indicate strong in-principle support for that version.

This was a classic case of the council's development-enthusiastic tail wagging the park lands rules dog. It illustrated another key procedural theme in the City of Adelaide's park lands management at the time, and periods since – an increasing trend of seeking to amend the policy paperwork to fit the proposal, turning the checks-and-balances rigour on its head to achieve a result that administrators (and commercial developers) sought.

Lease consultation trigger

The trigger for the city council to commence the public consultation about the 'in-principle' draft lease proposal in June 2017 was not made clear, given that the resolution to do so was taken under secrecy provisions of the *Local Government Act 1999*, using a confidentiality order. Authority board members had resolved months earlier, on 16 February 2017, to explore the opportunity to establish a helipad at this particular site, on the grounds that it had "the least environmental and planning and social impacts" [7] among the selection of five discussed. But this was not supported by the evidence. A council-commissioned report, *Environmental and Social Multi-Criteria Analysis*, had shown that only one site delivered the least impact – the existing helipad site atop the old Royal Adelaide Hospital adjacent to the CBD's eastern Frame District, kilometres from the western, water-edge Helen Mayo Park site. Only that site exclusively and fully addressed the criteria (among five options). Results relating to the Helen Mayo site, tagged 'Site 2' indicated that it featured multiple negative features including air, ecology, contamination, planning, public spaces and public activity problems. It was therefore curious that the resolution of 16 February 2017 ignored the ideal preference – for the existing helipad at the old RAH site – and opted for the Torrens Lake Park 27 site. No explanation appeared in the Authority's minutes of 16 February 2017.

The planning 'elephant in the room'

It is clear today that those 2017 council and subsidiary committee (the Authority) discussions were not considering the obvious planning complexities while administrators searched for policy loopholes. Admittedly, planning issues would be usually addressed at the conclusion of other policy investigations – but only after satisfactory compliance with those policy instruments had been established.

One view today is that the council's helipad tactical advisors were totally out of their depth in regard to the likely planning problems, because they were not qualified to comprehend them. For example, during the 2017 public Authority and

[7] APLA, Minutes, Item 6, point 4, 16 February 2017, page 4.

council discussions no-one appeared to be aware of the emerging matter of 'interface' issues between park lands policy zones, and adjacent other zones, such as the new Riverbank zone. This was a key planning matter, but in publicly accessible documentation the city council appeared to be blissfully unaware of its relevance. A major new hospital was coming into operation only about 200m from the proposed helicopter landing site. The siting of the huge building would ultimately prove to be a critical interface factor regarding the site of the proposed helicopter landing facility.

Interface issues definitive

Problems arising from 'interface' issues had emerged as a result of Planning Minister John Rau's extensive planning activities from the year he assumed the portfolio. He had initiated his own *ministerial* development plan amendments (DPAs) (as in the Riverbank DPA). Rau's changes had begun in March 2012, in the form of a highly controversial ministerial DPA regarding the city and North Adelaide. Other council-initiated DPAs had also been prompted under more prodding by the minister. Substantial areas of the city and other inner city local government areas became subject to major development plan changes allowing unprecedented, high and high-density development along main street zones of the city and North Adelaide, and other arterial roads farther out. One consequence was a complication arising (in planning terms) with interface matters. For example, if a 12-storey high-rise tower was erected immediately adjacent to a one- or two-storey existing development, there arose what planners described as an interface problem.

Helipad proposal prompts fresh questions

The 2017 helipad proposal suddenly threw into sharp relief similar problematic interface issues. Indeed, the government's lack of responsive planning policy adaptations to interface problems highlighted a number of fresh and disturbing issues faced by any custodian of the park lands. At the time of the helipad proposal (early 2017) there was no indication that the Authority sought to explore this planning problem within the park lands. Its presiding officer, the Lord Mayor, would have confirmed that planning was not the Authority's purview, and that view was supported by the *Adelaide Park Lands Act 2005*. But there was evidence that someone within council had contemplated the planning complexities relating to a helicopter landing facility, because a paper trail showed that council had already been tempted, in 2015, to develop a proposal for a commercial helipad operation somewhere in the city of Adelaide.[8] The contemplations would almost certainly have been progressed under confidentiality orders. But by June 2017 it was clear that the council was by then contemplating nothing more than leasing a site to a third party to build and operate a landing facility, and for the council to act at arm's

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8 Adelaide City Council, Agenda, 'Helipad Landing Feasibility Study', Strategy Planning and Partnerships Committee, 3 November 2015. Extract: "Notes 1: Next steps following 22 September 2015 meeting. Resolution: That Admin prepares a brief report to outline the budget and timeframes required to develop a proposal for a commercial helipad in the City of Adelaide. Notes 2: This contemplates next steps for a study." This extract suggests that council was at the time planning to own and run its own operation, a position that changed some time later.

length of the development complications and consequences. The extent to which council had explored the options over two years was illustrated in a June 2017 public consultation brochure, which read: "The preferred operator or consortia will be covering all costs associated with this project and the City of Adelaide will not be offering any financial support."[9] In light of the potential interface issues and other likely planning issues, this was an administratively and politically safe policy approach. In July 2017, in a submission to the council, one city ratepayer's public observation had said:

> "This proposal focuses on the potential provision of a lease only (from council's point of view) and as such allows council to avoid addressing development plan, development application matters, the development itself, construction issues, road access issues, and operational issues likely to affect the amenity of the park lands or the adjacent medical community (south) or the residential community (north)."[10]

Council 'all at sea'

There was even more to explore, but the more the public scrutinised the scant lease consultation documentation the more it became obvious that likely interface consequences, while potentially substantial, were not going to be publicly discussed or addressed. As North Adelaide residents had discovered years earlier with the sudden March 2012 announcement of a ministerial DPA for city and North Adelaide main street zones, the minister's advisors were flying blind when it came to contemplating how the interface consequences were to be managed. Similarly, council's June 2017 park lands helipad landing facility proposal, prompting scores of questions, offered few answers. And in this instance, unlike the main street zone development plan changes (where it would take the erection of new, large scale built form some years into the future to trigger tangible interface problems), in the case of a helicopter landing facility, it would take only the arrival of the first helicopter to trigger park lands interface issues with immediate effect. This would have consequences not only on adjacent communities of interest (the new hospital and the residential communities in North Adelaide) but also with authorities whose role was to ensure aviation safety. As a 4 July 2017 public submission observed: "[Up to and including the June 2017 public consultation procedure] Council is publicly perceived to have 'distanced itself' from its planning and/or park land policy responsibilities and the need to fully understand the consequences of entering into a lease."[11] There was little joy to be had from the Adelaide Park Lands Authority about this but, in any case, almost certainly its response would

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9 Quote from the *YourSay* public consultation brochure 'Proposed Helipad', (FAQ), June 2017.

10 Submission to Adelaide City Council: John Bridgland, 4 July 2017: 'Helipad lease proposal: Adelaide's park lands: 26 reasons why the city council's consultation procedure was unsound'. (10 pages; this extract from point 17.)

11 Submission to Adelaide City Council: John Bridgland, 4 July 2017: 'Helipad lease proposal: Adelaide's park lands: 26 reasons why the city council's consultation procedure was unsound'. (10 pages; this extract from point 22.)

have been to highlight that planning issues and consequences were to be addressed and resolved when a development application arose, and that would be for a planning authority to address much later – not the Authority.

The ultimate faux pas

Having discounted significant public opposition to the 'in-principle' lease proposal, the city council explored further, via the Authority. Under the *Adelaide Park Lands Act 2005* the council was not supposed to give direction to the Authority, but in the usually ambiguous way under which legal complexities were addressed, it could seek 'advice'. When the advice was received, it could be interpreted by the public as if it justified and encouraged the original, council-activated, motivation. As if to add a further, timely complication, in September 2017, a helicopter pilot with a future commercial interest in this helipad project outcome allegedly, with the city council's permission, landed and took off from the Park 27 park lands site.[12]

The test flight had been an apparent attempt to convince the media of the wisdom of the proposal, and to test sound levels. It triggered the Civil Aviation Safety Authority (CASA) to immediately divert other flights over the site for safety reasons. Moreover, CASA simultaneously discovered that the new hospital monolith had blocked Adelaide airport communications with the helicopter pilot at the Helen Mayo Park site. The news disturbed council managers – even though similar expert ratepayer advice (by an aviation professional) had been provided much earlier. Administrators had discounted the advice.

A second attempt follows

A month after the flight, in October 2017, the Adelaide Park Lands Authority was prompted to pursue a second public consultation. This time it sought to test whether the public would endorse an amendment of the *Community Land Management Plan* for the park lands site.[13] A prompt, inordinately large and positive online response resulted, totalling 188, of which 136 respondents supported the amendment.[14] But very quickly it became clear that most responses had arisen through a private website's offer of a lottery prize of a free $1500

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[12] There was no evidence of this in APLA or council documentation at the time, but it was subsequently reported in *The City* newspaper of 31 January 2018, headlined 'Safety concerns ground city helipad proposal', page 10. It reported that: "The helicopter flight had council permission." Clear evidence would, however, have existed within council in the form of a $100 receipt issued to the pilot, the cost of the landing fee. In April 2017 this standard council helicopter landing fee had been subject to a sudden 53.8 per cent reduction, from $217 to $100. The timing suggested that the council was keen to encourage park lands helicopter landings, an enthusiasm that may, however, have waned by early 2018.

[13] The actual phase 2 *YourSay* consultation [online and paper] brochure question was: "Do you support the CLMP for Park 27 to be amended to include the following wording to support a commercial helipad in the indicative location below? – 'Support the development and operation of a commercial helipad' – Yes/No." *YourSay* consultation brochure, public consultation closes 6 September 2017, page 8 of 9.

[14] Adelaide Park Lands Authority, Board meeting, Agenda, Item 8.3, (results breakdown), 19 October 2017, page 30.

helicopter flight for four people if respondents voted yes at the council's *YourSay* online site and subsequently registered that fact and their names with the private operator. The Adelaide Park Lands Preservation Association (APPA) promptly analysed the result.

> "The Council's agenda [actually the Park Lands Authority agenda of 19 October, summarising results of its poll] states that 72 per cent of people responding to its community consultation supported putting a helipad in this location. However, the truth is very different. Most of the respondents supported having a helipad in the city. So did APPA. However, merely seven out of 188 specifically endorsed this park lands location. Even those who specifically opposed this site or called for a helipad in a better CBD location, rather than the park lands, have been falsely cited [in Authority summaries] as being in support of this riverside location! Council could easily keep both sides of the debate happy by putting a helipad in a commercial CBD location, without alienating the park lands."[15]

A learning experience

Six months later, in April 2018, responding to the tabling of a council-commissioned lawyer's report, a council administrator wrote: "The helipad project was outside the usual expertise of the Administration. There was some confusion from Administration staff and council members regarding the process adopted ..."[16] This would prove to be the council's understatement of the year, and the park-lands-related experience would be one of the most sobering within its management hierarchy during the council's 2014–18 term.

But even within the political machinery of local government, there is a predilection for spin. It had arisen after a 30 January 2018 meeting at which embarrassed council elected members and administrators reviewed results of a December 2017 council-initiated management inquiry, pursuing an 'internal operational process review of the helipad project' by consultants Deloitte. "The Deloitte report identified that the City of Adelaide has enhanced its project management practice methodology, predominantly in the areas of capital works and infrastructure delivery ..."[17]

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[15] Shane Sody, President, Adelaide Park Lands Preservation Association, email to members, friends and the media, 23 October 2017.

[16] Adelaide City Council, Council meeting, Agenda, Item 12.5, 'Helipad – Independent Review', 24 April 2018, pages 87–106. This quote: first page, paginated as page 87.

[17] Adelaide City Council, Council meeting, Agenda, Item 12.5, 'Helipad – Independent Review', 24 April 2018, pages 87–106. This quote: the fourth page, paginated as page 91.

32 | Western park lands development vision expands east

FEATURES	COMMENTS
What	Adelaide Convention Centre (west) – Adelaide Park Lands Authority approval May 2011; assessment 2013 and construction 2014, overlooking Torrens Lake. An early manifestation of the vast master plan for the Riverbank precinct, released on 29 September 2011.
Park land area	• Institutional District, Institutional (Riverbank) Zone, designated as park lands, adjacent to west park lands open space. • The zone was already occupied further east by various commercial operators, including SkyCity Casino and the Intercontinental Hotel.[1] • This area would several years later become subject to a major state government rezoning project, creating 'Riverbank', through a ministerial Health and Entertainment Areas development plan amendment, gazetted on 11 October 2013.
Beneficiaries	State government, pursuing economic development priorities.
Cost	$139.9m build, part of a multi-stage, $350m redevelopment in the zone. But the state government claimed that the 'urban renewal' to occur would more accurately cost $394m. It would embrace (among other things) the proposed construction of a new $40m footbridge across Torrens Lake to the redeveloped Adelaide Oval.
Historical relevance in the context of a 1998 to 2018 study	• An example of the government's activation of a post-2005 state-created legal loophole via a revised schedule of park lands development regulations. • At the proclamation of the *Adelaide Park Lands Act 2005*, the Rann state government had championed the virtues of its disabling of section 49 of the *Development Act 1993* to block exercising of government Crown development powers for development project proposals on certain park lands sites. • However, some time afterwards it quietly enabled an exemption to be made in a schedule of regulations under the *Development Act 1993* to avoid this commitment. It had been ready to be applied, should a major Crown development proposal for land designated as park lands be identified. Six years later, this was such a project. • The application of Crown development powers for this site enabled subsequent 2013 development assessment approval by the state's planning authority, the Development Assessment Commission.

1 Adelaide Park Lands Authority, Board meeting, Minutes, 13 October 2011, page 5.

FEATURES	COMMENTS
Historical relevance in the context of a 1998 to 2018 study *(continued)*	• In 2011 the Adelaide Park Lands Authority was told of this loophole, and prevailed upon to endorse it. It reluctantly did so, but also determined that the proposed development wasn't supported under the Statutory Principles of the *Adelaide Park Lands Act 2005*, or any of the key park lands statutory policy guidelines, including the *Adelaide Park Lands Management Strategy: Towards 2020* (2010). • None of these policy objections thwarted the government's intentions. The state's economic development objectives – park lands sites notwithstanding – overrode all hurdles. • This was an example of government hypocrisy in relation to its pledges only six years earlier that Labor-initiated disabling of Development Act section 49 Crown Development powers would forever block development projects on land designated as park lands. • It was also an example of 2011 government indifference to the Statutory Principles in the *Adelaide Park Lands Act 2005*, legislation created by Labor.
Park lands management features	• The Convention Centre (West) would in 2013 be classified as 'complying development' (Category 1) under the *Adelaide (City) Development Plan*, and therefore did not have to be subject to public consultation when the development application came up for assessment. • In May 2011 the state government initiated a six-week public consultation about the concept, but managed it as a superficial popularity contest, as opposed to a consultation about planning principles relating to projects proposed for park lands sites. There was no mention that the proposal was on land designated as park lands. • The building was (and remains) enormous, poorly designed, and with a bulk and scale grossly incompatible with the adjacent, open-space park lands landscape.[2] Moreover, its construction would trigger a need for additional 'temporary installations' for nearby construction works, and these would occupy another park lands zone section of Park 27 (adjacent to the site, due west) for the duration of the construction period.

[2] In mid-2013, when the development application was ready for assessment, it was viewed by the city council's Development Assessment Panel (as a government courtesy only; the DAP had no formal assessment role). Council DAP planning assessors heavily criticised its design elements and functional flaws.

FEATURES	COMMENTS
Park lands relevancies	• A major intrusion on the adjacent landscape of the last vacant western site of park lands open space remaining in the Institutional (Riverbank) Zone. • Park lands maintenance funding that could have been collected through a five-year lease fee ($2m over five years) for the nearby works compound was discounted to $500,000 by determination of the Adelaide Park Lands Authority, and later further discounted by the city council to only $100,000.[3]

The Convention Centre (West) proposal would mark the first stage of a new major park lands construction spree – featuring a massive new government raid on park lands sites on the southern banks of the river, between King William Road and Montefiore Road. It was already a high-density area, so dominated with high-rise built form that many South Australians did not realise that it had all once had been categorised as a park lands policy area. Most did not comprehend that the proposed new Convention Centre would be built on land still designated as park lands.

Government development raids on the western park lands did not cease at the site earmarked for the large new Royal Adelaide Hospital building. As if to underscore the long-held observation that the greatest threat to the integrity of Adelaide's park lands at this time was the same government that was setting the rules for their 'protection', the 2011 proposal to build an expansion of the existing Adelaide Convention Centre would illustrate it once again. This time it would be in the form of a huge new building, ultimately to be called Convention Centre (West).

Announced as an election sweetener by the Rann Labor government in March 2010, by the time the proposal reached the Adelaide Park Lands Authority for an in-principle response most strategic approvals details had already been foreshadowed within the government offices, and addressed. But the building concept remained vague and state cabinet had not yet signed off on it. None of these complications got in the way of the government's hinting that the Authority should not put up any resistance to it when it was sent some construction project details in mid-April 2011.

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[3] Source: Adelaide Park Lands Authority board member Gunta Groves, noted in her personal newsletter, *News from the Adelaide Park Lands Authority*, #22, 16 October 2011, page 2.

There were two reasons why the minister had approached the Authority. Firstly, the land was designated as park lands. Secondly, there was a provision in the *Adelaide Park Lands Act 2005* that called for a minister to "take reasonable steps to consult with the Adelaide Park Lands Authority" about such matters. It related to the fact that the *Adelaide Park Lands Act 2005* interacted with the *Development Act 1993*, and the April 2011 correspondence related to a Development Act matter. It quickly became obvious that the consultation was superfluous because the minister and his government were going to proceed anyway. Notwithstanding that, the Authority could have stalled for time, requesting details of the concept design, given that for most other park lands site proposals such matters were commonly scrutinised in order to pass on advice to the city council. But its May 2011 resolutions said nothing about that potential.

Two responses included:

- A recommendation from Authority administrators to board members to offer the state government a very generous 75 per cent discount on an adjacent park lands 'works construction' site five-year lease fee, jettisoning $1.5m in funding that could have been collected by the council for other park lands management administration and maintenance. This was endorsed by board members.
- An absence of board members' resolve to insist that the government pay the full lease fee, despite an attempt by one of them to trigger a minor resolution amendment that could have easily delivered this outcome.

However, behind these matters there was a much more politically contentious agenda. The government was proposing to capitalise on amendments to the Development Act's section 49 Crown development wording regarding regulations that it had quietly revised years earlier to effectively create an exemption from these development rules applying to land designated as park lands. While the identified site was described as an Institutional District of the City of Adelaide zone, it was still park lands. It was where the state government wished to construct a new Convention Centre building.

The year 2011 marked state Labor's second year of its third consecutive term of government, and there was high priority to pursue 'projects of state importance'. There was great political confidence that a loophole embedded some time after 2005 in the Development Act section 49 regulations schedule wording would be the means to enable safe passage of the Convention Centre development application when it eventually came up for assessment.[4] But first it needed Adelaide Park Lands Authority endorsement.

The 'toothless one'

Ordinarily, a park lands advisory body, established under statute to assume a responsibility to scrutinise major new park lands development concept proposals, ought to have invested much effort in critically examining the future consequences

[4] Adelaide Park Lands Authority, Agenda, Item 5, 'Adelaide Convention Centre, Regulation required to enable development', 12 May 2011, page 17.

of this audacious government proposal, resisted the urgency with which the state was pursuing it, and encouraged the city council to do the same. But the Authority's May 2011 draft recommendation crafted by an administrator – which was subsequently sent direct to the state government instead of the city council – was that it had "no objection" to the proposed new regulation. But one alert board member, Gunta Groves, at the time had taken issue with that, and instead had the wording amended (by majority board resolution) to merely have it '… noted'. There was a major difference between that response and the one the Authority's administrator had recommended. 'Noted' made it clear that the board may well have objected, had the matter been brought to its attention earlier. The most symbolic aspect of the moment was that it revealed a lack of will by the Authority's advisors to either challenge the use of this park lands legal technicality made to enable a big new construction project on land designated as park lands, or to at least demand specifics about the construction proposal.

The agenda of 12 May 2011 recorded an Authority administrator's enthusiasm to endorse the government's proposal. The apparent rationale was that, because the Rann government thought it had been a "reasonable compromise made during the development of the *Adelaide Park Lands Act 2005*"[5], the Authority should also agree six years later. Agenda administrators advised board members:

> "The ability to exclude certain parts of the Institutional District along North Terrace from the general provisions in the *Development Act 1993*, which prevent the Crown development powers from applying to the Adelaide park lands, is a reasonable measure to facilitate projects of state importance."[6]

It was a deeply revealing piece of advice. The Authority model that had been created in 2005 under the Adelaide Park Lands Act was not only proving to be the toothless subsidiary committee some feared it might be under that legislation, but also something worse – here demonstrating that it would be the vehicle used to endorse manipulative government tactics adopted to contradict its 2005 parliamentary pledges and to pursue a major development project on land still designated as park lands.

Later analysis

To be seen to be objective, however, the Authority did come back six weeks later, in July 2011, providing analysis and advice for the city council to send to the state government. It explored the planning context for the Riverbank precinct, noting that the government plan was at odds with the spirit and intent of the Statutory Principles of the *Adelaide Park Lands Act 2005*, the 2008 National Heritage listing of the park lands, the contents of the *Adelaide Park Lands Management Strategy* (APLMS, 2010), the *Adelaide Park Lands Landscape Master Plan* for the park lands (2011), and the *Adelaide (City) Development Plan*'s then provisions for the policy areas.

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5 Adelaide Park Lands Authority, Agenda, Item 5, 'Adelaide Convention Centre, Regulation required to enable development', 12 May 2011, point 9, page 10.

6 Adelaide Park Lands Authority, ibid., Summary, point 17, page 11.

"Neither the APLMS, Landscape Master Plan nor the Development Plan envisage any extension of the current built-form footprint in the precinct and as such the Authority may not support such a proposal," it meekly noted.[7] The use of the words 'may not' suggested that the Authority's board members felt free not to support it if they wished, or it might have been because they knew that Authority opinion carried no weight, and that its power or 'authority' was of no consequence to the state government. Among its five July 2011 recommendations, its strongest was the first, but was so general as to be ambiguous. It supported "A reinvigorated and enhanced River Torrens/Karrawirra Parri landscape for the benefit of the general public, without overdeveloping it, that is, achieving a balance between providing high quality facilities to attract people to the precinct and retaining the openness and accessibility to the public." What that meant in practice was unclear.

It did not help the Authority or the city council that both had been forced to respond to the government notice months before the draft master plan for the Riverbank precinct had even been released. It would be, on 29 September 2011, but the council would have to wait until 4 October, and the Authority until 13 October, before being given the courtesy of a briefing and presentation, as well as an opportunity to ask questions.[8] But by then, as far as the state government was concerned, the test of how the park lands 'custodian' might react was completed and concluded, and the Transport and Infrastructure Minister, Patrick Conlon, was moving on.

Winning hearts and minds

Minister Conlon's more pressing challenge was to win the hearts and minds of the people of South Australia with a six-week, token public consultation, announced one day ahead of the Authority's May board meeting, which had deliberated on the Convention Centre (West) proposal – such as it was.

The state's campaign was one of those faux consultations that asked questions based on the misleading assumption that all tests for legal and policy legitimacy had already been satisfied. "We're asking the community to help create a place that is memorable, vibrant and ultimately South Australian," a ministerial media release had chattered.[9] Its aim was to encourage "South Australians to help shape Adelaide's new heartbeat by contributing to the Riverbank Precinct Master Plan". Tellingly, a draft plan was not provided; it would not be publicly released until months later. Covering three government website pages, the consultation might have formed the template that others have since followed – even the city council itself – relying on minimal background and superficial queries that could only deliver superficial answers. "Tell us your vision for Adelaide's Riverbank precinct", it began, then followed with six questions, probing activities that might attract a person to the place, and how that person might like to arrive there. Questions remaining

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7 Adelaide Park Lands Authority, Board meeting, Agenda, Item 7, 'Riverbank Precinct – Submission to State Government', 14 July 2011, page 23.

8 As noted in: Adelaide City Council, Council meeting, Agenda, 25 October 2011, page 13.

9 Government of South Australia, Media Release, 11 May 2011, as duplicated in the Adelaide Park Lands Authority (APLA) Board meeting, Agenda, 14 July 2011, page 27.

were: "What do you like most [or least] about the current precinct?" "If you could do three things to improve the Riverbank precinct now, what would they be?" And finally, "What would you be most disappointed to see in the new precinct?"[10] There was no reference to the fact that some of the precinct was designated park lands; indeed, the news release did not contain any mention of the words 'park lands'. The final paragraph of the media release also contained a revealing Freudian slip, with the concluding words: "... and move the City's waterfront precinct towards a vibrant, hustling, cosmopolitan destination."[11] The minister's interpretation of the results in early July could only have informed him that, on the fundamental legal and policy matters, respondents had no firm view, and most certainly no opposition to the legal technicalities to be used to gain development access to the park lands site. This was accurate because no details had been provided.

Respondents may have held a different view about the precinct's next new building (of many subsequent redevelopments) had they waited until 2013 and read the city council Development Assessment Panel's views on the development application for the proposed new Convention Centre. It was a proposal not subject to any public consultation, and the DAP's participation allowed no capacity for it to make a determination, because the approval body was at state government level, not the city council's level. The DAP experts had been extended an opportunity to view it only as a courtesy. Its opinion was by that time irrelevant, as were the opinions of the public.

The historical 'marker'

The Convention Centre (West) proposal would mark the first stage of a new major park lands construction spree – a massive new government raid on a park lands site adjacent to North Terrace on the southern banks of Torrens Lake. Land between King William Road and Montefiore Road was already a high-density area facing Torrens Lake, so dominated with high-rise built form that many South Australians did not realise that it had all once been categorised as a park lands policy area. Most did not comprehend that the proposed new Convention Centre would be built on land still designated as park lands. In *Adelaide (City) Development Plan* context (2006 consolidated version), while the site desired for construction was identified as the Institutional (Riverbank) Zone under the care, control and management of the state government, it remained designated park lands.

The land east of that site would be subject to some of the most grandiose development proposals Labor had entertained since winning government two terms previously in 2002 (or otherwise considered via submissions from other private applicants, including a new SkyCity Casino tower and later an even larger high-rise for the Walker Corporation). A journalist in November 2011 noted: "The Riverbank Precinct Plan is less a statement of fact, more a menu of opportunities that includes multiple blank spaces set aside for unspecified

[10] Adelaide Park Lands Authority (APLA), Board meeting, Agenda, Item 7, 'Riverbank Precinct – Submission to State Government', 14 July 2011, pages 27–30; these being facsimiles of the website pages.

[11] APLA, ibid., 14 July 2011, page 27.

commercial development."[12] She might have been commenting on the potential of a revised city development plan, which, once completed, would do the same thing but had more planning clout. She also made a disturbingly accurate early observation. "A crude reading of the Riverbank plan is that up to $1b in private sector investment is being sought for what could be just a real estate sell-off of river frontage with some hoped-for community benefits."[13]

Big money tempted

Attention from city developers was quickly gained, as the *City North Messenger* claimed in December 2011. "Private investors are tipped to invest hundreds of millions of dollars into the state government's riverbank overhaul," it reported. "The draft master plan includes a new festival square, with cafes and restaurants, wetlands at Pinky Flat, a revamped Elder Park, multi-storey commercial buildings and a footbridge ... But the government needs $1b in private sector investment to turn its plans into a reality."[14]

The Riverbank precinct would become a symbol of everything that a new Rann state government in 2002 had claimed would not occur on park lands, especially at that site where a previous Bannon Labor administration in the 1980s had controversially enabled big development. But in 2011, nine years after a subsequent Labor administration had won government in 2002, Rann was on the way out, and in his place, in November, new Premier Jay Weatherill had a different view. Sections of Riverbank would become the focus of an orgy of park lands development similar to that which occurred in Premier Bannon's Labor years in the same place – enabling the Adelaide Station Environs Redevelopment – when the Adelaide railway station building had been redeveloped into a casino, construction of the high-rise Hyatt Hotel tower was approved, and several other major towers were constructed for government offices. But the passing of time bestows advantages. Few parliamentarians in state parliament in 2011 had played any role during the 1980s and didn't recall those controversial days. Moreover, of those Labor MPs that did, none wanted to publicly recall them. It went without saying that even fewer South Australians outside parliament wanted to remember the Bannon years of park lands exploitation at the city's edges.

The vision in hindsight

The vision for the Riverbank precinct was the most expansive construction-based concept considered for this part of the southern bank of the Torrens Lake at this time. Powerpoint visuals created by the Department for Transport, Energy and Infrastructure were shown at the Park Lands Authority's meeting of 13 October 2011. They described the Riverbank vision as 'a magnificent opportunity'. It built upon a 1999 concept, it claimed. If correct, it would have been entertained by the Olsen Liberal government (most of the period 1997–2002). The idea of the 'River as

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[12] Penelope Debelle, *The Advertiser Weekend*, 'Heartstarter', 26 November 2011, pages 12 and 17.

[13] Penelope Debelle, ibid., page 16.

[14] *City North Messenger*, 'Overhaul: Looking for riverbank investment', 12 December 2011.

[15] Adelaide Park Lands Authority (APLA), Minutes, Item 5, 'Adelaide Convention Centre', 13 October 2011, page 35.

centrepiece' prevailed.[15] In the presentation the precinct was billed as a 'redesigned river' with the idea that it would be "An urban river-edge promenade and a new park lands experience."[16] Subsequently, the hyperbole hyperventilated into architect-speak: "A new constructed edge acknowledges the threshold of the city and water."[17] Powerpoint screen words describing the Festival Square said: "A great new urban gathering place for Adelaide; a threshold to Riverbank."[18] Much more followed, but translated to plain English implied a looming spree of government-endorsed construction concepts. In terms of the expansion of the Convention Centre (West), the Powerpoint display claimed that it would: "Act as a catalyst within the Riverbank Precinct Development." Outcomes would be: "Additional $76m p.a. in economic benefits"; "Additional employment of 1,784 jobs on average p.a."; and "Increase[d] annual attendee days by 500,000 (2035)."[19] None of these metrics could be easily explored because the 'Ernst and Young analysis May 2011' from which they were apparently extracted was not publicly provided. The 2035 forecast allowed for more than two decades to pass before a result had to be tabled.

Short on detail

The hype was typical of government proposals for major, city-edge commercial development, and particularly typical among consultants well paid by the state to present a case. But the common casualty was detail and evidenced-based research. By the end of 2011, the city council was still unimpressed, recording a long list of observations noting a significant absence of information. On park lands matters, it was particularly concerned about "… the impacts of proposed additional buildings and structures in the park lands and associated commercial activity" that had not been revealed.[20] Put simply, the state's publicity campaign had by then thrown up something claiming to be a 'master plan' but was in reality a wishlist. And, ever the stickler for procedural detail, the council also called for the state to formally present the draft master plan to the commonwealth government in relation to the November 2008 National heritage listing for the Adelaide Park Lands and City Layout, for assessment against the listing's heritage values. Here again, a procedural flaw was evident. It was incumbent on the state to do this – but there was no commonwealth procedural duty requiring the state to report back to the city council. If the state did 'self assess' and notify Canberra, no evidence of commonwealth response was relayed to either the Authority or the council at this time.

Further reading

For a more detailed explanation of the legal steps taken to authorise construction of the Convention Centre at this site please refer to Appendix 18: 'How the 2011 Convention Centre development legals had been managed'.

16 APLA, ibid., page 39.
17 APLA, ibid., page 39.
18 APLA, ibid., page 45.
19 APLA, ibid., pages 95–96.
20 Adelaide City Council, City Design and Character Policy Committee meeting, Agenda, 6 December 2011, page 241.

33 | The 'Great Park' extravaganza

FEATURES	COMMENTS
What	• Greater Riverbank Precinct Implementation Plan. [June 2013] • Ministerial Riverbank Health and Entertainment Areas Development Plan Amendment (DPA), 17 July 2013, authorised on 11 October 2013. The announcement of these matters later led to confusion among casual observers. The DPA was for specific, largely known projects. The Implementation Plan for the 'Greater Riverbank Precinct' (a much larger area of the park lands) was not specific and not at the time subject to a master plan. It was merely a visionary concept.
Park land area	• **The Implementation Plan** – A 'Great Park' of 332 park lands hectares, both sides of River Torrens, from Gilberton in the east to Bowden in the west.[1] • Mostly within the City of Adelaide's boundaries (about half subject to council's care and control), with two exceptions. This included land that had never been seen as 'park lands'. The segmentation was done for planning reasons. • **The DPA** – A rezoning of southern river-edge land, changing from park lands zone to Riverbank zone: an area of about 65,000sq m, (about 38,000sq m of which was rail corridor).
Beneficiaries	• **DPA: State** hospital and medical research and teaching facilities west of Montefiore Road and, east of Montefiore Road: major redevelopment of the Convention Centre cluster. New car parking facilities for the Festival Centre in liaison with Walker Corporation. • **DPA: Private** commercial (east): Walker Corporation tower; SkyCity Casino redevelopment.
Cost	• More than $4b of government and private sector development.[2]
Historical relevance in the context of a 1998 to 2018 study	• An audacious ministerial development plan amendment. It had nothing to do with protecting the park lands, and everything to do with alienating land through the construction of formerly non-complying high-rise buildings. • Created two new river-edge policy areas (in development plan terms): west: *Health*; and east: *Entertainment* (north of North Terrace, between King William Street and Montefiore Road).

1 Council documents stated 332ha, but Renewal SA stated 380ha: Attachment A to Adelaide City Council special meeting, Agenda, 16 July 2013, page 11.

2 Capital City Committee, Annual report, 2012–13, page 23.

FEATURES	COMMENTS
Historical relevance in the context of a 1998 to 2018 study *(continued)*	• The June 2017 consolidated *Adelaide (City) Development Plan* records the 2013 intent of the new 'Riverbank' policy area: "The Zone will accommodate a range of land uses including parliamentary and administrative activities, cultural facilities, entertainment venues, conference facilities, offices, shops, hotels, serviced apartments, tourist accommodation, consulting rooms, public transport hubs, public open spaces, reserves and pedestrian and cycling networks." • The related concept of a 'Great Park', which appeared to link to the proposal for development on the river's southern edge, appeared visionary, but few observers in 2013 understood how it would be translated into definitive results. There was no funding. Government consultants would say that its concepts might only be realised well into the future. But development would be the focus. Its recreation concepts were very similar to those that emerged in the subsequent *Adelaide Park Lands Management Strategy*, created in 2015, signed off by the city council in 2016, and signed off by the state in August 2017. • The 'Great Park' contemplated land-use development across a vast area of river-edge park lands. Its long-term focus would be Precinct Plans that would have potential as substitutes for provisions in the *Adelaide (City) Development Plan*. But few comprehended the major consequences at the time. Development contemplation would be coordinated by a new Riverbank Authority established by the Weatherill Labor government in September 2013. Five years later, the new Marshall Liberal government replaced that model (announced on 4 September 2018) with a new body, the Riverbank Entertainment Precinct Advisory Committee (REPAC). Its functions and powers would differ markedly from the 2013 model, and would open potential for major development across the 'Great Park' Riverbank 332ha area lining the river edge. It is explored in Chapter 34 following this one, particularly with regard to the REPAC features.
Park lands management features	• The Health and Entertainment zones of the new Riverbank precinct were no longer conceived to be park lands in the same way as were other park lands policy areas under the *Adelaide (City) Development Plan*. • At year-end 2018 the North Terrace edges had been developed, south of the river, from the new Royal Adelaide Hospital in the west to King William Road/North Terrace intersection (the new Entertainment zone); the edges of which were rezoned for high-rise. Contemplation of an early phase (2013–18) vision for major redevelopment and new construction was well under way, both east and west of the Morphett Street bridge.

FEATURES	COMMENTS
Park lands relevancies	• The concept of multi-storey commercial development in the Entertainment policy area was significantly at odds with Statutory Principles of the *Adelaide Park Lands Act 2005*. • A new policy zone amended the allowable height of development in the Entertainment policy area (north of North Terrace) from six to more than 20 storeys. • It provided for built form, landscaping and car parking. • It removed some land uses from the non-complying list, such as serviced apartments and car parks, and deleted the non-complying trigger for demolition of artworks in the Southern (Festival) plaza (the Hajek sculpture) and a car park below. In other words, it allowed demolition. **Footnote:** The Greater Riverbank Implementation Plan included two areas outside the city council's boundaries: the Bowden Village redevelopment site (west) and the former Channel 7 site at Gilberton (east). Bowden Village was a government residential high-rise project, made possible by a development plan amendment in 2012. The Gilberton land featured commercial residential development plans encouraged by the government. High-rise plans adjacent to the park lands are further explored in Chapter 42: 'The new 'urban address' narrative'.

Riverbank was an even more audacious rezoning raid on a vast section of city edge former park lands, similar in scope to the concept for the new hospital further west, but also allowing other commercial development. And as to the highfalutin diversionary packaging about something called a 'Great Park', no-one really knew what that meant, or what development the state government specifically contemplated within the grand vision.

Although the purpose of the park lands as a tract of land surrounding Adelaide had been broadly comprehended by its inhabitants for 176 years, when a new idea of a 'Great Park and cultural precinct' was announced on 17 July 2013, it was curious that its chief salesman was not the park lands custodian, the city council, but a state development body, Renewal SA.

Formerly titled the Land Management Corporation, this agency's purpose was development of land that was available for development, in contrast to land in the park lands that was apparently quarantined from that purpose. That land comprised recreational open spaces, widely treasured for that reason by its users.

Behind the new concept of the Greater Riverbank Precinct Implementation Plan were at least two government intentions:

- A state urban development agency would be determined as the appropriate body to assume command of a river-edged park lands reconceptualisation campaign, based on the 2011 Riverbank Masterplan, behind which lurked a land-use rezoning vision.
- The 332ha of park lands identified in the 'Great Park' concept would be redefined by creating a new inner park lands boundary, beyond which existed the other 396ha of Adelaide's park lands, much of it managed under the care and control of the city council. But of those 332ha, very little information existed as to specific future land-use plans. This would become clearer only after a new state Liberal government was elected in early 2018.

The Riverbank Precinct Masterplan of September 2011 had revealed the first concepts in the state government's grand redevelopment plans. It envisaged substantial redevelopment of the state's convention centre buildings. But there was much more planned, and an agency was needed to drive it. In June 2012, state cabinet decided to have Renewal SA "... oversee planning, coordination, negotiation, development, management and marketing of the Riverbank Precinct".[3] This precinct was the smaller area, focused on the south bank of the river, described as a 'cultural precinct'. It was a large area of land that had been exempted from inclusion by the commonwealth government when the park lands had won National Heritage listing in 2008. This exemption may have been because the high-density site was perceived by some to have little merit in park lands Heritage listing terms. But it also may have been because the state had development ideas for it at the time of listing, so its exemption suited state purposes then, and most certainly once plans for more development arose in 2012.

Renewal SA's task had begun in earnest in early 2013. In retrospect, it was clear that one aspect of the brief was not written in any public document. The local government sector – the city council and its Park Lands Authority – was to be put under maximum stress to sign off on the rezoning bid as soon as possible. It helped that the state government would be adopting a *ministerial* development plan amendment (emphasis added). The alternative, a non-ministerial approach, would risk delay while the council explored the planning pros and cons. But there was no government appetite for that, and no time. The plan was to have everything signed off by year-end 2013.

The Ministerial Riverbank Health and Entertainment Areas Development Plan Amendment (DPA) documentation had landed on the council's table on 17 July 2013. Within three months government pressure would see it endorsed by the council and gazetted and consolidated into the (then) 2011 version of the *Adelaide (City) Development Plan*, and the plan's date amended accordingly. It would go down as one of the fastest processed DPAs in the city in the period. What was just as remarkable was the breadth of its consequences.

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[3] Adelaide City Council, Reconciliation Committee meeting, Agenda, 21 August 2013, page 25.

The big bang

The 'Great Park and cultural precinct' announcement of July 2013 might have been intended by Labor government planners to be the equivalent of 'the big bang'.[4] It might have been perceived as a process in which primordial park lands ideas nurtured in a development-obsessed, government-funded nutrient solution were expected to drive new, creative forms of park lands activity. Renewal SA had already conceived of some. The short-term plan was the highest priority. A government briefing observed that there were to be actions "which identify long-term and immediate opportunities for upgrading the public areas and for investment in specific sites. This takes into account those significant private and government investment activities already under way in the precinct".[5] In short, Riverbank was an even more audacious rezoning raid on a vast section of city edge former park lands, similar in scope to the concept for the new hospital further west, but also allowing other commercial development. And as to the highfalutin diversionary packaging about something called a 'Great Park', no-one really knew what that meant, or what development the state government specifically contemplated within the grand vision.

The substance of the plan amendment for the southern river edge drew on a range of design ideas. There would be an 'east-west connection'; an 'active edge' (whatever that meant); three precincts, one of which was for the new hospital, already rezoned; and all would become a 'vibrant destination' of civic pride and 'place making', enjoying 'north-south linkages', to be economically sustainable. Sustainable for whom? It wouldn't be for South Australian taxpayers. By 2017, when several high-rise state construction projects had been completed on the rezoned western land, the state would have spent billions and assumed huge, fresh debt. In other areas further east, private operators such as those running a casino in the Entertainment precinct were gearing up to spend millions on expansion of existing facilities, but their investments would be sustainable in the long run because gamblers always lost more than they won.

Planning begins in 2010

Early planning had begun in mid-2010, months after state Labor had won its third election. State cabinet discussion about the Great Park followed quietly in June 2012, and took form in early 2013. Like every other state asset, the management and operational approach to the park lands would be implied to be about responding to inexorable, evolutionary change, as if the park lands were some biological phenomenon, going through a natural metamorphosis. The government-contracted designers, landscape architects, informed the biological

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4 Renewal SA, 'State Government Greater Riverbank Precinct Implementation Plan', Powerpoint presentation, in: Adelaide City Council, Reconciliation Committee meeting, Minutes, 21 August 2013, pages 5–36.

5 Adelaide City Council, Reconciliation Committee meeting, Agenda, 21 August 2013, page 25.

analogy by observing that the first phase, under Colonel Light's 1837 park lands plan, had delivered primitive open space, minimal buildings and an emptiness of bush, mostly unfenced and accessible for any purpose. Later, in the 'grand Victorian era' Adelaide's park lands would morph into a metropolitan park with fences and formal, European-sourced gardens, all under a new framework of necessary by-laws to monitor behaviour on public land. In the 1950s they would emerge as a pretty 'suburban park', with expanded sports and recreation grounds, lakes and paths.[6] So by 2013, the designers suggested, the evolutionary park lands organism was ripe for mutating – but apparently only for that 332ha on the north and south banks of the River Torrens, from one edge of the city's boundaries to the other, east to west. It was the riverine environment that apparently gave the idea energy. The Great Park concept's boundaries stretched a vast distance, from Gilberton in the east to Bowden in the west. The designers noted that there were precedents to draw on from other places, too: St Kilda foreshore and Southbank, Melbourne; the Olympic site and Darling Harbour in Sydney; Clyde waterfront in Glasgow, Scotland; and Stanley Park in Vancouver, Canada. The implication was that these man-made sites also had been conceived in an evolutionary sort of way. But in Adelaide in 2013, no-one was certain what a concept of a Great Park would deliver, especially if it was to discount "... the importance of open space and natural values", which were the city council's fundamental preoccupations as custodian.[7]

Government-contracted designers had stressed that some of the upgrade concepts, especially for the nearby Bonython Park in relation to the Old Adelaide Gaol and other west park lands sites, could take years to materialise. It was not surprising that the Adelaide Park Lands Authority, when it scrutinised the Greater Riverbank Precinct Implementation Plan, resolved to withhold support, based on the lack of clarity in relation to:

- "The definition of what constitutes a Great Park, particularly in respect to the importance of open space and natural values.
- "The envisaged extent of any further built form on existing open space.
- "The detail of any specific development identified within the grand vision."[8]

Receipt in July 2013 of the Ministerial Riverbank Health and Entertainment Areas Development Plan Amendment by the Authority would have confirmed the city council's worst fears, initially triggered when it had received the Riverbank Masterplan in September 2011, and later, in early 2013, when it had received the

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6 Renewal SA, 'State Government Greater Riverbank Precinct Implementation Plan', Powerpoint presentation, in: Adelaide City Council Reconciliation Committee meeting, Minutes, 21 August 2013.

7 Adelaide City Council (ACC), City Planning and Development Committee Meeting, Agenda, Item 8, 'Council submission on Riverbank Health and Entertainment Areas Development Plan Amendment', 3 September 2013, page 76.

8 ACC, op cit; reference to APLA 25 July 2013 minutes. ACC, Item 8, 3 September 2013, ACC source: page 51, (7) (1); and page 76 (16), (16.1–3).

Greater Riverbank Precinct Implementation Plan. Deputy Lord Mayor David Plumridge had privately observed:

> "... it is more about building new hospitals, massive new sporting facilities with attendant car parking [the Adelaide Oval stadium], grand schemes for 15-storey office and apartment blocks on the 'wasted' Festival Plaza, bastardising the magnificent architecture of the Railway Station [for a casino]... All these projects ... are on the park lands. They will do nothing to activate these spaces for the public; they will undermine regulated developments in the central CBD and must surely be driven by a desire for short-term results."[9]

Full package arrives, ready to go

The government's procedural tactic, even in late 2011 with the Riverbank Masterplan, had been to minimise contact with the Authority and the city council and, when plans were revealed, to allow very little time to respond.[10] So instead of Renewal SA involving the Authority and the city council in the preliminaries in late 2012, the Great Park plan was presented in final form in August 2013. A Renewal SA drawing highlighted three 'key opportunities': the Bonython Park revitalisation (for the Great Park concept); the SA Health and Biomedical Precinct; and the Core Entertainment Precinct (north of North Terrace).[11] The latter two precincts rather gave the game away, because they highlighted sites tagged for major government construction projects, which by 2017 would feature a 'spine' of new, multi-storey, state built form running south of the river, from the new hospital in the west, to commercial building redevelopment nearing the Festival Plaza (the 'Core Entertainment Precinct') in the east. Within five years, an enormous construction project for the casino adjacent to the railway station and Parliament House would be under way. Another, by the Walker Corporation, was on hold but ready to go. Each was about private, multi-storey commercial investment, in contrast with the Statutory Principles in the *Adelaide Park Lands Act 2005* and contradicting the earlier intent of the park lands policy instruments' visions for use of that land.

The news is good

Once the state government was set to release information, it did not take long for city media to begin spruiking the benefits, but sometimes the headlines contradicted the reality. "Mayor backs vision", reported the *City Messenger* of 3 July 2013. It then led with a paraphrasing of words from the Lord Mayor: "The city council must accept the state government for taking the lead on planning for the

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[9] David Plumridge, Personal newsletter: *Notes from Councillor David Plumridge's desk,* Issue 94, 1 May 2013, page 1.

[10] *City Messenger,* 'Riverbank plan leaves Town Hall frustrated'; 'Council in the dark on riverbank precinct', 12 January 2012.

[11] Renewal SA, 'State Government Greater Riverbank Precinct Implementation Plan', Powerpoint presentation, in: Adelaide City Council, Reconciliation Committee meeting, Minutes, 21 August 2013, pages 5–36.

Riverbank Precinct because it holds the purse strings, Lord Mayor Stephen Yarwood says."[12] In the same press article, a sceptical city councillor was reported as saying: "... the government's Riverbank masterplan [sic], released on Monday, was the first step in a state takeover of the park lands from Bonython Park to Hackney". But the Capital City Committee, which had initiated the idea long before state cabinet considered it in 2012, would put it differently – and typically ambiguously. In November 2013 in its year-end 2013 annual report it reported: "Renewal SA is leading this project for the government, working collaboratively with the council ... to implement a long-term vision for the Greater Riverbank Precinct."[13] But the vision was the government's; the 'collaboration' would be all one-way.

Conflicts of interest also were evident. "We're talking about Riverbank as Adelaide's Grand Central Park and cultural precinct all in one," enthused one of the architectural designers whose firm had been contracted by Renewal SA to create the plan. He was reported in a magazine funded by, among others, Renewal SA and University of Adelaide, each of which either had Riverbank portfolio interests, or would become a Riverbank planning beneficiary in some way.[14] The university would later build a 12-level 'integrated clinical school' in the Health Precinct (Institutional (Metropolitan Hospital) Zone). So much for Central Park.

The big stick

Few non-lawyer park lands observers understood what sort of a 'stick' is a *ministerial* development plan amendment (DPA), in relation to the park lands. It was a planning procedure given effect under the *Development Act 1993*.[15] It aimed to amend the policy rules for planners and development plan assessors, applying to one or more park lands policy areas of the *Adelaide (City) Development Plan*. It was a powerful tool for a planning minister to use to drive park lands change. It was commonly used when a government was in a hurry, or anticipated local government resistance – or both. The alternative and less rigid approach was to have a DPA progressed by a council, albeit under ministerial guidance and approval. But given the Riverbank circumstances and controversies and the speed with which the government sought change, that option would have been risky. In park lands terms, over the period of study of this work, 'a ministerial' was favoured by the state government to achieve planning change that otherwise might not be easily achieved, at least not without political risk and complications. And there were complications. The city council, assuming that it had sufficient time to tease out the details, had identified at least six flaws in the DPA. Among them were unclear definitions and terminology. The most serious was that "... the height guideline for

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[12] *City Messenger*, 3 July 2013, page 3.

[13] Capital City Committee, *Annual Report*, 2012–13, November 2013, page 23.

[14] *City Mag*, 'A future as grand as the past', August 2013, page 37.

[15] This was accurate as at year-end 2018, the end of the period covered by this work, even though replacement legislation had been passed in 2016 in the form of the *Planning, Development and Infrastructure Act 2016*. However, the 2016 Act had not been fully enacted as at 2018 and, as such, the *Development Act 1993* remained procedurally in effect.

the Riverbank Zone is open-ended and the opportunity to achieve extra building height where a proposal 'demonstrates design excellence' in the Entertainment Policy Area is not adequately defined and should be deleted".[16]

The city council's 3 September 2013 analysis concluded that the DPA aimed to give a "more supportive policy framework for a variety of land uses", but that these land uses were already "supported by the current zoning and are supported by council as appropriate uses that align with desired outcomes". It added: "The DPA, however, also allows a range of other land uses, such as opportunity for general commercial offices and residential accommodation that are not considered to be uses that are consistent with the desired outcome of the area as a 'great park and cultural precinct at the heart of the city' or are necessarily needed in the Riverbank zone to 'support its vibrancy and activation'."[17] It recommended stalling matters until "the Park Lands Act implications are fully and transparently considered".[18] This was not what the state government wanted to hear, especially given that Renewal SA's schedule had aimed to have the final Implementation Plan endorsed a month earlier than the date of this observation. Pressure was brought to bear. On 10 September council rolled over. The Riverbank Health and Entertainment Areas DPA (*Ministerial*) was gazetted on 11 October, and consolidated in a fresh version of the *Adelaide (City) Development Plan* on 17 October 2013. A desultory Adelaide Park Lands Authority minute noted: "Council continues to monitor."[19] In other words: planning advisors at local government level had been outgunned and overwhelmed. The ministerial DPA preliminary enquiry procedure 'locomotive' had stopped at the station just long enough for council planners to identify its flaws. The choice had been to get on board, or revolt, and the city council in 2013 had no stomach for revolution.

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16 Adelaide City Council (ACC), City Planning and Development Committee Meeting, Agenda, Item 8, 'Council submission on Riverbank Health and Entertainment Areas Development Plan Amendment', 3 September 2013, page 55.

17 ACC, ibid., page 76.

18 ACC, ibid.

19 Adelaide Park Lands Authority, Board meeting, Minutes, 31 October 2013, 'Closed matters', page 15.

34 | New precinct Authority energises a 'Great Park' development vision

FEATURES	COMMENTS
What	A Riverbank Entertainment Precinct Advisory Committee (REPAC), announced on 4 September 2018 by the Marshall Liberal state government. This replaced the former 2013 Riverbank Authority, set up by the state Labor party.
Park land area	380ha of river-edged park lands, from the Adelaide suburb of Gilberton in the east, to Bowden in the west, conceived and zoned by the state government as a site for progressive development of a 'Great Park'. About half the area was under the care and control of the city council.
Beneficiaries	Commercial development industry (tourism), and possibly state government (institutions).
Cost	REPAC operations budget not publicly accessible. 2012–2018 Riverbank development, about $4b. Future: inestimable at 2018.
Historical relevance in the context of a 1998 to 2018 study	Future declaration of new precincts by a state planning minister could trigger new opportunities for development in the zone, and avoid the more complex and politically demanding alternative of project-orientated development legislation. This 'declaration' mechanism would also avoid the challenges of the 'development plan amendment' model more commonly used by the Labor government (2002–18) to authorise park lands built-form and infrastructure development in open-space areas.
Park lands management features	Revised state urban renewal law allowing for creation of a precinct authority that could create precinct plans as a substitute for existing city and park lands *Adelaide (City) Development Plan* provisions.
Park lands relevancies	Significant potential for major development across the park lands vast, Torrens-river-edged zone identified as the 'Greater Riverbank zone'.

The notion that development on the park lands would "put Adelaide on the map" harked back to earlier times when similar fears had been voiced, that unless development occurred, it wouldn't be 'on the map'. It highlighted the enduring pursuit of the old argument that unless such activity occurred on the park lands, 'progress' would be frustrated and the development investment would go interstate. Ironically, these claims were made by the same people who championed the unique open spaces of Adelaide's park lands for their tourism value, vast green open spaces that couldn't be found adjacent to any other Australian city.

The 2013 emergence of a model that could provide a new mechanism for authorisation of South Australian property development – including on the Adelaide park lands – illustrated the pressures on the South Australian Labor government leading up to that year. This pressure was applied by investors seeking property development allowances for the most desirable sites, and received enthusiastic support by both state Labor and the Liberal opposition to bend to that pressure.

However, when the legislative changes had been passed, there was no stated intention that the model would be applied to Adelaide's park lands zone policy areas. It would take more than four years before evidence appeared in public, initially provided by a Labor minister, and a year later made feasible by an announcement by the Marshall Liberal government which, after 16 years in opposition, had won the March 2018 state poll.

The Labor minister was Martin Hamilton-Smith, formerly a Liberal party opposition leader, who had later declared parliamentary independence from his party amid much controversy, and after a period on the cross benches became a cabinet minister in the state Labor party. Labor welcomed his skills and experience, giving him the Investment and Trade portfolio. In December 2017 he released a media statement.

> "A landmark six-star hotel proposed for the Adelaide Riverbank Precinct has already attracted international investor interest and is worthy of a global design competition. Investment and Trade Minister Martin Hamilton-Smith said his proposal for a luxury hotel and indigenous art gallery, west of the Morphett Street bridge, on land owned by the state government, would reinforce Adelaide as the southern gateway to the outback and provide much-needed high-end accommodation. The location is a unique opportunity for an international development within the Riverbank Precinct to address a shortfall, highlighted by the Ashes Test, in our high-end tourism and business offering."[1]

Some claims in the statement were wrong. On the basis of the image of the proposed concept and its siting on the river's edge, only a small portion of the land's title was under state tenure, subject to ministerial direction. Much of the site was park lands, recorded in the Adelaide Park Lands Plan, part of Bonython Park (Park 27, known as Helen Mayo Park) and subject of a *Community Land Management Plan*. Only five years earlier the sliver of water-edged land had been remediated under a $1.7m master plan by the city council to become a site for park lands events. For these reasons (among others) the proposal in the media statement was perceived by park lands observers as inconceivable under existing development procedures, and generally discounted. But within a year, it would become clear that projects such as this development proposal, despite being on land mostly designated as park lands, could be potentially facilitated under a new mechanism.

Minister Hamilton-Smith's 2017 confidence in releasing the statement would illustrate that, despite much feigned competition during election campaigns, both

1 Government of South Australia, Media Release, Labor Investment and Trade Minister Martin Hamilton-Smith, 'International design competition for landmark waterfront riverbank hotel', 6 December 2017.

South Australian political parties marched in lock-step when it came to planning matters and the potential for accessing more park lands for construction of new buildings. Each site was sensitive and vulnerable to commercial development pressures, in a sluggish South Australian economic environment. It was a vulnerability that encouraged commercial firms to seek government assistance – procedural, financial or 'in kind' – and both political parties competed with each other to see how much assistance they might deliver. For politicians, it would be all about 'jobs and growth'. For local and international developers, it would be all about surmounting decades of checks and balances built into the SA planning system, especially barriers to building on Adelaide's park lands.

New land-use development models

As is explored elsewhere in this work, the two procedural models activated over the period in relation to development on Adelaide's park lands were development plan amendments (the most common tool), or project-oriented development legislation (uncommon, and usually highly controversial). The new model, the precinct plan concept, emerged in 2013 as a result of Weatherill Labor government amendments to the *Urban Renewal Act 1995*. These had been among a suite of changes instigated by Planning Minister, John Rau. He had initiated major CBD and inner city council rezoning changes with controversial 2012 and 2013 city development plan amendments (DPAs). These reflected the government's long-term preoccupation, beginning in the late 1980s and sporadically applied in the decades that followed, to resist outer Adelaide north and south suburban development creep because of its major public infrastructure cost consequences. Each subsequent government administration (Labor and Liberal) adopted policy to work to consolidate higher density urban development to within established residential and commercial boundaries. On the ascension of Labor's Jay Weatherill as Premier in 2011, the allocation of the planning portfolio to John Rau, MP for Enfield, would result in significant and sudden major change in planning policy. Examples of Rau's March 2012 announcements included new, generous allowances for higher, and higher density, hotel and apartment development within the City of Adelaide, as well as within inner-city local government boundaries adjacent to the park lands. One site-specific example was a 2012 government DPA that allowed for major, high-density apartment development at a government 'urban consolidation' project, the Bowden Village, adjacent to the western boundary of the park lands. But the more general 'Main Street' policy areas DPA in the same year opened up major opportunities for owners of aggregated titles totalling 1500sq m or more in and near the city to capitalise on a new 'catalyst site' concept, overnight turning formerly non-complying development sites into complying sites for large scale, high-rise towers. Fresh overseas money began to flow into Adelaide. Over subsequent years it resulted in a random pattern of high-rise towers across the city, mostly significantly at odds with existing, adjacent low-scale built form. It also encouraged the hotel industry, and new hotel towers also began to mushroom throughout the CBD. But no part of the 2012 or 2013 DPA content, which related to provisions under the *Development Act 1993*, focused on policy area land within the park lands zone. That would fall to amendments of another Act.

Old model: new, more flexible version

The 2013 amendments to the *Urban Renewal Act 1995*, when stripped of the complicated explanatory material that accompanied the changes, would deliver a new and more flexible model similar in effect to project-oriented development legislation. In the post-1980 history of development on the park lands, two parliamentary bills that fitted this description between 1984 and 2011 had been passed in state parliament that overrode park lands development checks and balances. They had led to, respectively, the annual periodic occupation of Victoria Park (Park 16) for a car race (1984 legislation) and the demolition of historic cricket grounds and state-listed facilities for construction of a new Adelaide Oval stadium (2011), under a Park 26 lease term totalling 80 years.

Under the amendments to the *Urban Renewal Act 1995* the new 'precinct planning' concept's key advantages would be twofold. Firstly, a government did not need to enter parliament with a bill proposing to build on land including park lands, and argue its case in its two houses, with all the political risks it entailed. Secondly, the precinct plan concept allowed the trigger to be "a council, or other person, or body".[2] The amendments then put in place a number of rules and tools to make it happen. There remained only two checks. The first was a parliamentary check. The second was a late 2013 compromise amendment to the bill: that the city council subsidiary, the Adelaide Park Lands Authority, must consent to gazettal of a ministerial notice of establishment of a section of park lands as a precinct. But the provision was not as clear-cut as it sounded and, on past history, the Authority was unlikely to withhold consent.[3]

The tool that made all possible

The concept's fundamental tool was a precinct, the creation of which would be determined and authorised by one person: the minister administrating the legislation. He would then appoint a precinct authority. This would trigger a process that was predetermined under the post-2013 amendments, and avoided the need for a government to prosecute a case supporting the major development's features in parliament. As a government 'fact sheet' reproduced in a city council agenda in August 2014 noted:

> "The process is led by a declared precinct authority, which can take on the responsibilities of council and state government, including certification of development, collection of revenue and management of infrastructure,

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2 Government of South Australia, 'Precinct planning and the Urban Renewal Act, Fact Sheet 1, Overview' [no page numbers], as found in: Adelaide City Council, City Planning and Development Committee meeting, Agenda, Item 12, 'Urban Renewal Draft Regulations', 5 August 2014, pages 312–318; this page 315.

3 *Housing and Urban Development (Administrative Arrangements) (Urban Renewal) Amendment Act 2013. An Act to amend the Housing and Urban Development (Administrative Arrangements) Act 1995*; and to make related amendments to the *Development Act 1993*. Section 3, 7H, subsection (1) "The Minister may, at the request of a council or other person or body, by notice in the [Government] Gazette, establish a specified area of land as a precinct ..." [and] (4) "The Minister must not publish a notice under subsection (1) that relates to land that forms part of the Adelaide Park Lands within the meaning of the *Adelaide Park Lands Act 2005* unless the Adelaide Park Lands Authority has consented to the publication of the notice."

> among other matters. The power of the process is the capacity for the precinct authority to singularly manage all aspects of planning, design and infrastructure delivery of a major development project."[4]

It was not surprising to note that the 2014 explanatory leaflet *Precinct planning and the Urban Renewal Act, Fact Sheet 1* described this approach as a "powerful tool that offers far more than a traditional rezoning process".[5] It was not only powerful, but it also put in place a process that avoided the demanding procedures and political challenges faced by government when it triggered alternative, older procedures, such as development plan amendments. The key to the new procedure was that an approved master plan could override an existing development plan, resulting in the inversion of standard procedure. It would prompt revision of the development plan, such that the revision would become an endorsement of a proposal that the original development plan may have explicitly described as non-complying. As the Fact Sheet noted:

> "An approved master plan can lead to an amendment of a development plan. In the case of an approved implementation plan, a development plan must be amended by notice in the *[Government] Gazette* using the section 29 process under the *Development Act 1993*. This process ensures consistency between the relevant Development Plan and the approved master plan and implementation plan(s)."[6]

It was not difficult for observers to conclude that this was a canny adaptation of the 'tail-wags-dog' approach – a legal and political solution to a formerly challenging procedural hurdle. However, at year-end 2018 (the end of the study period of this work), while its potential to trigger construction of a major hotel tower in the park lands zone remained open to the Labor government, it had not been exercised. But this had not stopped the city council from implying in September 2018 that a park lands river-edge site was earmarked and ready for high-rise development.

Park lands hotel – first test case?

At the conclusion of the period of study of this work (1998–2018) it was too early to be definitive about the model's likely operation under the post-September 2018 revised Riverbank Authority management, and its planning consequences. But very clearly it highlighted the relentless pressures on governments to create the means to legitimise South Australian development opportunities through amended procedures, including across Adelaide's park lands. The ministerial media release by Minister Hamilton-Smith in December 2017 illustrated the nature of park lands development-focused thinking among government decision makers at the time. It was focused on opportunities in the Greater Riverbank precinct, a park lands site likely to be central to future park lands controversies. The remainder of the media release illustrated the optimism among ministers keen to see the park lands as sites for development.

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[4] Government of South Australia, '*Precinct planning and the Urban Renewal Act, Fact Sheet 1*, Overview' [no page numbers], as found in: Adelaide City Council (ACC), City Planning and Development Committee meeting, Agenda, Item 12, 'Urban Renewal Draft Regulations', 5 August 2014, pages 312–318; this reference page 310.

[5] Government of South Australia, as found in: ACC, op. cit., 5 August 2014, page 312.

[6] Government of South Australia, as found in: ACC, op. cit., 5 August 2014, page 314.

> "With momentum generated by the significant investments [already noted] and more in the pipeline, the precinct has become a significant public place in terms of its social, economic and cultural value as the city opens itself to the river and park lands. It attracts more than nine million visitors a year, offering a diverse range of experiences that are uniquely South Australian.
>
> This is a perfect location for a six-star hotel given [that] the new RAH [Royal Adelaide Hospital, nearby], the universities, SA Health and Medical Research Institute, Adelaide Oval and the redeveloped Adelaide Convention Centre are all located within the precinct. … With tourism to South Australia booming and new business growth and investment in the state, the one offering South Australia lacks is an ultra-luxury six-star hotel to meet the demands of these markets. This proposal addresses this shortfall. The vision is to build a luxury six-star hotel that creates a highly noticeable landmark destination in Adelaide, one that becomes an attraction in itself. The hotel building will be branded: • A striking skyscraper with breathtaking unrivalled views, a prominent feature of the Adelaide skyline; • A gateway to the outback;
> • An attraction in its own right, where people will travel just to stay there;
> • A building that will put Adelaide on the map and on par with hotels like the Shard in London and the Burj Al Arab in the United Arab Emirates; and
> • A focal point for the new central business district (Riverbank Precinct)."[7]

The notion that development on the park lands would "put Adelaide on the map" harked back to earlier times when similar fears had been voiced, that unless development occurred, it wouldn't be 'on the map'. In this example, it highlighted the enduring pursuit of the old argument that unless such activity occurred on the park lands, 'progress' would be frustrated and the development investment would go interstate. Ironically, these claims were made by the same people who championed the unique open spaces of Adelaide's park lands for their tourism value, vast green, open spaces that couldn't be found adjacent to any other Australian city.

Praise for 'big ideas'

The Hamilton-Smith media release fed a news article on the same day, with Adelaide's daily *The Advertiser* praising the minister's 'big ideas'. An editorial noted demand by Chinese tourists "who would want to stay in a luxury riverside hotel". It said: "But as with any proposal for building on the park lands, this is sure to attract vehement opposition from those who think the Riverbank should not be over-developed. ... As a litmus test for further Riverbank development, Mr Hamilton-Smith's vision deserves mature debate."[8]

The article did attract brief discussion, but faltered because it was not accompanied by any explanation of how existing or proposed mechanisms might have legitimised the proposal under park lands policy, or made the construction possible at the

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7 Government of South Australia, media release, Labor Investment and Trade Minister Martin Hamilton-Smith, 'International design competition for landmark waterfront riverbank hotel', 6 December 2017.

8 *The Advertiser*, Editorial, 'Riverbank vision worthy of debate', 6 December 2017, page 18.

nominated site. It was yet another example of Adelaide park lands debate which occurred in a facts vacuum, and obviously making impossible the newspaper's notion of "mature debate". It could only have been assisted by 'joining up the dots' – linking the city council's documentation of 2013 (which included state documentation) with the Hamilton-Smith December 2017 detail, then waiting until the subsequent Marshall Liberal government REPAC announcement of September 2018.

The missing piece

There was another September 2018 news matter that attracted only fleeting attention, that provided another link, but it appeared not to relate to Adelaide's park lands. This would comprise another critical piece of the puzzle as to what was occurring politically and administratively behind the scenes in regard to park lands development. On 7 September 2018 Adelaide's daily *The Advertiser* reported on CBD site development opportunities. They were sourced to a property development prospectus traced to Adelaide City Council. The undated *Adelaide Investment Prospectus* highlighted multiple Adelaide city sites available for sale and development.[9]

Buried in the detail, the Hamilton-Smith Riverbank hotel development concept was highlighted at the park lands site, Helen Mayo Park. The prospectus had been key to Singapore presentations of Adelaide's future development potential earlier in the year by the council and personally by Lord Mayor Martin Haese. Text in the document blurred Adelaide's long-held property development distinction between city land sites available for sale and development, and park lands sites that were not. One extract included: "Adelaide is the world's only city in a park, thoughtfully and purposefully designed with our citizens in mind from the start. People's wellbeing and quality of life is always in mind as we create a place [in which] we aspire to live, work and play." [10]

Only when all of the material could be assembled and consolidated could a general observer fully comprehend likely change being contemplated in the Greater Riverbank Zone in the years beyond 2018. One city councillor, appalled at the vision presented in the prospectus, noted:

> "[The] hotel, number 44 [marked on a map drawing in the prospectus], on the park lands is marked as 'proposed'. An overseas developer might well take this to mean [that] council has acknowledged or even supported it (which it has not). This has been included despite the well understood objections in the community to commercial activity on the park lands."[11]

It was clear that local government and state government were working together on a park lands vision that neither representative had bothered to describe to the South Australian public.

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[9] Adelaide City Council, Adelaide Investment Prospectus, 2018. https://investadelaide.com.au/assets/BROCHURE-Adelaide-Investment-Prospectus-english.pdf

[10] Adelaide City Council, Adelaide Investment Prospectus, May 2018, page 6. https://investadelaide.com.au/assets/BROCHURE-Adelaide-Investment-Prospectus-english.pdf

[11] North Ward City Councillor, Phillip Martin, email, personal communication, 7 September 2018.

PART 8

"Colonel Light's vision for our park lands was multi-use, his vision never excluded the park lands from developments and activities. Some people's views are that all of those sorts of activities and developments should be excluded but that was never part of the vision, never part of the intention..."

Hon Gail Gago, Labor MLC, April 2010.

Extract, Chapter 35:
'Towards the second *Park Lands Management Strategy*'.

Buried in the 2009 draft version of the *Adelaide Park Lands Management Strategy: Towards 2020* lay a rebelliously penned clause that some Adelaide City Council elected members (and perhaps some of its planners) hoped would not be noticed by the state government before the Strategy was ministerially approved. It was a bid to insert fresh potential to encourage the revisiting of a contentious proposal that had been blocked four years earlier by Labor in state parliament's Legislative Council, as the Adelaide Park Lands Bill 2005 was being debated. The clause took form as one of the Strategy's draft principles, and read: "Seeking a review of the development plan to eliminate exemptions from 'non-complying' development as applied to buildings in the park lands zone and to require all such development to be classified Category 3 – high priority." To an amateur reader, this meant nothing, but to the planning bureaucrat advising the state's Environment and Conservation Minister, Jay Weatherill, it represented dynamite with the fuse lit. If it remained unamended it could one day inject fresh energy into the way future assessment of some development applications for the park lands might procedurally change. The government had the statement replaced, using words of no consequence.

A 'Category 3' development regarding a proposal in the park lands zone related to its classification as 'non-complying' in the *Adelaide (City) Development Plan*. As such, and if approved, this category provided for legal appeal of the assessment to a court.

Four years earlier, during the 2005 Adelaide Park Lands bill debates, a proposal to have legislated all proposed development in the park lands as Category 3 had already been blocked in parliament. The government resistance in 2005, and repeat resistance in 2009, said much about the state's fear of the idea that development proposals for the park lands might one day be subject to court appeals by angry members of the public.

Two years later Weatherill would be Premier. Under his leadership, management of the park lands would see major infrastructure development across its pastures. Government bureaucrats always worked to ensure that state proposals, when reaching the assessment stage, would almost always be classified in ways that blocked any potential for court appeal.

PART 8 Retrospective phase 5: 2008–2016, the evolving policy pathway

Chapters

35 | Towards the second *Park Lands Management Strategy*
(How an enlightened, long-term park lands vision became overwhelmed by short-term political pragmatism.)

36 | The 2010 *Adelaide Park Lands Management Strategy*
(Why the state government quibbled over three apparently minor matters before authorising the 2010 version.)

37 | The 2011 *Adelaide Park Lands Landscape Master Plan*
(How the city council planned to unify the future character of Adelaide's park lands in a far-sighted landscape plan.)

38 | Private investment in the park lands
(How a creep of new recreational pavilions spread in a selective privatisation wave across the park lands' most desirable sites.)

39 | Public investment in the park lands
(How the state built a new park lands high school without public consultation, contradicting all of the original rules.)

40 | The 2016 revolution
(How the public responded to a radical new vision for future public use of the park lands.)

41 | The silent abandonment of a unique park lands master plan
(Why a 2011 landscape plan to 'unify' the park lands fell victim to a 2016 grand 'urban park' concept and was dumped within five years of its birth.)

42 | The new 'urban address' narrative
(How state planners reframed the future of Colonel Light's creation.)

Over the 20 years that followed 1999, the Strategy model would evolve from a very broad, long-term action plan approach to a politically directed approach focused on short-term accomplishments. The 2010 Strategy's sign-off coincided with an election win for Labor in that year. The 2016 version coincided with Labor safely in mid-term. That version's aggressive focus on myriad action plans for hubs and 'activation' consolidated the idea of short-term objectives based on modular plans.

Other links to chapters in PART 8

Chapter	Appendix link
38 | **'Private investment in the park lands'.**	**Appendix 19:** 'Eight pavilion case studies'.
39 | **'Public investment in the park lands'.**	**Appendix 10:** *'Adelaide (City) Development Plan'.*
40 | **'The 2016 revolution'.**	**Appendix 20:** 'One day it could become known as the great park lands hijack'.

35 | Towards the second *Park Lands Management Strategy*

The effect over 20 years would be to replace a late 20th century public land-use management vision with a new 21st century vision. The former had reflected a cautious and conservative approach to evolution of park lands policy, led by the 'custodian' of the park lands, the city council, which had until that time also entertained some goals that might take a long time to achieve. But fully revised subsequent Strategy versions, thick with ambiguous language, left open myriad interpretations, convenient opportunities for state bureaucrats.

The pressure to begin creating a replacement Strategy in 2007 had political impetus. In early 2006 the state Labor party had won a second term and began state cabinet discussions for major plans for a park lands development project. Given the park lands 'protection' pledges it had made in the lead-up to the election, had these plans been publicised there would have been community uproar. The project concept contradicted the spirit of the 1999 Strategy. Whether senior administrators at the city council knew of these plans is not on the public record. The Adelaide Park Lands Authority began sitting in early 2007. Administrators noted that, if the Authority's interpretation of the Act's provisions about a Strategy was correct, it had only two years to complete a task to 'review' the Strategy.

These themes applied during the Authority's work in 2007:

- There emerged a conclusion that a new Strategy needed to *replace* [emphasis added] the 1999 version as soon as possible.
- An audit of the accomplishments in relation to the 1999 version prompted a conclusion that elements of the 1999 Strategy were now redundant, which would justify a fresh version. But the audit results were misleading.
- There was confusion between the objectives of the Strategy and the objectives of the associated emerging *Community Land Management Plans*. That confusion originated from the minister's advisors.
- The Rann Labor government would refuse to fund the high cost of the Strategy's revision, on the grounds that Adelaide City Council had insisted that the Adelaide Park Lands Authority be a council subsidiary instead of a body outside the jurisdiction of the council.
- There would be a very short period allowed for consultation with the public about the revised draft of the Strategy.

The audit of 1999 Strategy outcomes

The Authority's 15 May 2007 audit of the 1999 Strategy claimed that significant results had been achieved against objectives, but as usual it was couched in bureaucratic terms, qualifying actual success. "Most of the actions, particularly those of high priority have either been implemented or are the subject of ongoing programs," it concluded in that month. "For example, important recommendations such as the land feature survey, a biodiversity survey and the indigenous naming of parks have been largely implemented." (The land feature survey had been a Cultural Landscape Assessment Study commissioned by the city council in 2004 to inform preparation of park lands *Community Land Management Plans*.)

In an Authority summary, the audit results noted: "Of the 140 actions, 98 (70 per cent) have either been fully *or partially implemented or are the subject of ongoing implementation* [emphasis added]; and of the 48 high priority actions, 38 (79 per cent) have been implemented."[1]

It is not difficult today to conclude that the Authority's percentage figures were highly misleading. But if it were to act on the original misapprehension, that a new Strategy version to fully replace the old one was a top priority, then it needed to mislead itself, as well as the city council, and the state government about achievements in relation to the first Strategy.

Analysis of the audit suggests that it was the easy-to-achieve actions and outcomes that had been most closely examined to assist compilation of this summary and to inform the conclusions.[2]

However, of the more controversial and challenging issues such as car parking, built-form footprint monitoring, event management or fencing, there had been mediocre progress. Given that the glowing report was not really an audit by an independent assessor, but a self-assessment using the usual assortment of bureaucratic verbs, this is perhaps understandable. Allowed a very generous benefit of the doubt, the results more realistically indicated that the Authority concluded that 30 per cent of the 140 actions had not been addressed, and of the high-priority actions, 21 per cent had not. Some of the actions and high-priority actions were significant. The Authority's percentage figures, of course, were based on those popular administrative euphemisms 'the subject of ongoing implementation' or 'fully or partially', and a public reading of the audit results highlighted a dominance of the words 'ongoing' or 'partial', but with an abundance of 'no' responses in many columns (meaning not addressed).

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1 Adelaide Park Lands Authority, Agenda, Item 5.2: 'Review of Park Lands Management Strategy (1999)', 'Strategies and Actions 1999–2009', Point 10, 15 May 2007, page 1068.

2 Attachment A, 'Review of Park Lands Management Strategy (1999)', 'Strategies and Actions 1999–2009', PDF, pages 1070–1100, as found in: Adelaide Park Lands Authority, Agenda, Item 5.2: 'Review of Park Lands Management Strategy (1999)', 'Strategies and Actions 1999–2009', Point 10, 15 May 2007, page 1070.

The audit summary and conclusions would have misled any members of the public who may have been paying attention. But there would not have been many. If the media noticed, no-one reported the administrative sleight of hand. A background paper to the new draft Strategy version in August 2008 failed to mention the results of the audit or the fact that important issues in the 1999 action plan had not been addressed. In effect, the Authority was quietly declaring the entire 1999 Strategy to be redundant, and that the outstanding matters, even after seven years, were being set aside. Moreover, the longer term 2037 vision, and any intention to look that far into the future, was being abandoned. It was a major contrast to the objectives behind the original Strategy published seven years earlier. But it was administratively convenient.

The minister misunderstands

The state government also would have been happy to have been misled. As the Authority worked through its first year of operation, the Labor administration was anticipating a fully revised Strategy, and was categorically refusing – in a 9 November 2007 ministerial letter to Authority chairman and Lord Mayor, Michael Harbison – to contribute one cent towards the work.[3]

It was in that letter that Minister Gago, writing on behalf of the government, had stressed a need "to focus on the high-level strategic goals and strategies, as intended by the Act, and to avoid focusing on small-scale projects and initiatives which are best left to the individual management plans". This explicit advice contrasted other advice in the same letter that stated: "I should remain at arm's length from the process until a Strategy is formally submitted for approval." Herein lay articulation of what would become a fundamental theme behind so many Authority-led park lands communication matters, where despite Act-specified indication that the state government had control of every element of park lands policy, an illusion had to be entertained that the minister remained always at "arm's length" from the process. A second theme was revealed in that letter. It was that the minister's advisors did not fully understand the *management* purpose of the Community Land Management Plans. They were not 'action plans', which were specifically the domain of the Strategy. For the minister to have written "... small-scale projects and initiatives which are best left to the individual management plans ..." illustrated the level of confusion that began at the top and filtered down to the Authority and the council. This theme was to endure for some years.

The politics of ambiguity

Notwithstanding the scope of the first Strategy and its breadth of detail, there was planted in the language of its Directions the seeds of future controversy. A fundamental source of endless debate and dispute about park lands matters over

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3 Government of South Australia, Letter to the Adelaide Park Lands Authority from Environment and Conservation Minister, Gail Gago, 9 November 2007, as found in: Adelaide Park Lands Authority, Agenda, 6 March 2008, page 2557.

the two-decade period of study of this work centred on words, and the ability – or not – of the words used in city council and state documentation to effectively convey meaning and clear intent. Spilled across this brief history are references to the park lands management complications arising from ambiguity, and the controversies that arise when meaning is unclear. From the smallest sub-committee at city council level to the largest assembly of parliamentarians in the houses of state parliament, the politics of ambiguity about the management intentions relating to the park lands have over the years frayed tempers and frustrated minds, as words and phrases on paper have meant different things to different readers. Writers of the 1999 *Park Lands Management Strategy Report* must have anticipated that the words they chose would be the source of future close scrutiny, analysis and intense debate. They sought to avoid ambiguity. They wrote: "The Vision and Directions aim to provide a long-term, holistic and sustainable framework for the management of the park lands, and to introduce community certainty about their future use and protection."[4]

But they failed. In fact, the words and phrases chosen to describe some Directions implanted significant uncertainty for some readers seeking park lands landscape 'protection', and simultaneously implanted a potential for greater certainty among others seeking greater access to the park lands, sometimes for exploitative reasons. Lawyers and planners in future years would exploit the unclear meanings, crafting their own interpretations in compelling arguments. And while the replacement of one Strategy version with another would occur over future years, the carrying over of some of those words and phrases into the next version would carry over the initial ambiguity. There was no requirement demanding that this 'carrying over' habit be conducted with such continuous application. It quickly became clear that some of the wording was controversially ambiguous, and would have wider effect. Moreover, the 1999 Strategy anticipated that its concepts and wording would be embraced in a pending General Development Plan Review Plan Amendment Report (PAR)[5] ; in particular, in its park lands policy areas relating to park lands description, in the form of council-wide Objectives and Principles of Development Control, instructing that certain Directions "... should be converted into Objectives".[6] The carrying over of Strategy wording and its merging into development plan phrases would be the source of future bureaucratic complication. Some of the 1999 Strategy's 'Directions' words and phrases would introduce not only ambiguity, but also would be accompanied by qualifying clauses that increased it.

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4 Hassell, *Park Lands Management Strategy Report: Directions for Adelaide's Park Lands 2000–2037*, (1999), Part B, 'Significance, vision, frameworks', section 6, 'Vision and Directions', page 43.

5 Hassell, *Park Lands Management Strategy Report: Directions for Adelaide's Park Lands 2000–2037*, section 10, page 77. Note that there was no legal requirement to include any 1999 Strategy content in future amendments of the development plan for the park lands zone. The Report's wording on that page was: "may necessitate amendments ..."

6 Hassell, op. cit., section 10, page 77.

For example, some excerpts (emphasised added in italics), included:

- *Enable enhancement* and redevelopment of existing buildings, which are used for sport and recreation or cultural purposes in *appropriate locations. New buildings for these purposes will be considered, providing the criteria of overall net reduction is met by removal of existing unsuitable or under-utilised facilities*.
- Classify the park lands according to landscape and environmental precincts to achieve biodiversity and habitat objectives, *while continuing to provide for a broad range of recreation and leisure pursuits*.
- Achieve a *significant reduction* in building floor areas and hard paved areas ...
- Support the *enhancement and redevelopment* for public use of certain buildings, or precincts containing buildings, of heritage significance ...
- *Establish a mechanism* for negotiation with the state government and other organisations for the return of alienated park lands for public purposes.
- Ensure that governance of the park lands is informed by the Park Lands Management Strategy *in conjunction with state and local government plans and strategies*.
- Develop more effective lease arrangements to reflect the characteristics of the activities being undertaken *and allow longer-term, effective management of such activities*.
- Ensure [that] a rich program of *cultural activities and events* occurs in the park lands.
- Actively promote *structured and semi-structured recreation and sporting uses* and regularly review longer-term viability, impacts and *appropriateness*.[7]

The 'implementation' convenience

Implied at the time of publication of the first Strategy (1999) was that its implementation would follow the directions of its action plan over the subsequent decade. But there steadily grew a view that some of its content was more generalist than specific 'action plan' content. The preference for 'aspirational' content would grow. For example, the second version, the 2010 Strategy, would be described in 2009 by the city council as an 'aspirational management framework'.[8] It also noted something of critical relevance that was poorly understood beyond the administrators' offices: "The *Adelaide Park Lands Act 2005* contains no specific provision as to how the Strategy, once adopted, is implemented."[9] The Act left the Authority (in reality, the city council) in full command of the application of the Strategy, ministerial directives notwithstanding. The Act also made no provision for funding. The 'selling' of each new Strategy version during early draft public consultation phases implied that it was rather like a budgetary procedure: a hierarchy of action plans attended by

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7 Hassell, op. cit., section 6, pages 45 and 46.

8 Adelaide City Council (ACC) meeting, Agenda, Item 12.5, 'Adoption of the proposed *Adelaide Park Lands Management Strategy*', 15 June 2009, page 11875.

9 ACC, op. cit., 15 June 2009, page 11875.

allocations of funds. But the lack of such funding allocations should have been a vital clue that the subsequent procedure would be erratically managed and unpredictable. External observers assumed that what appeared in a Strategy version would be a coherent plan with achievable goals because funding was in place. The 2010 Strategy would indicate that there were lists of projects tagged with high, medium or low priority status. But although 'achievement years' were tagged for those, it progressively became clear that the Authority, the city council and the Labor government saw the 2010 and 2016 versions less as specific action plans and more as sources of potential concepts, sugared with layers of generic 'protection' and 'celebration' statements. When proposals for action emerged – sometimes not actually listed in a Strategy version – the Strategy document's generic statements would be referenced as a supporting planning source to (if necessary) drive amendment of the *Adelaide (City) Development Plan*. Ultimately, it was a process entirely controlled by a government minister.

Public consultation procedures change

The increasing speed of change overwhelming aspects of the first 1999 Strategy not only highlighted the usual government urgency to set fresh political priorities, but also a desire not to have to repeat the extensive public consultation that had occurred during the city council's original approach, beginning in 1998 and leading to the first Strategy in 1999. But in later years it wasn't put that way. Nine years later there was bureaucratic convenience in carrying over some 1999 content:

> "[Authority] members recognised ... that the work done in developing the 1999 PLMS was very comprehensive and valuable and many of the issues raised were still relevant today. Members indicated ... a preference to not replicate the comprehensive consultation undertaken in developing the 1999 [Strategy]. Rather, it would be preferable to build on this document and any information gathered since, such as that gathered during the process of developing the *Community Land Management Plans* [CLMPs]."[10]

Consultation about these CLMPs, however, referred to material that was significantly different from the content of the Strategy. The CLMPs comprised management-direction content; the latter – the Strategy – action plan content.

The notion that the Authority would "build on this [1999] document" to create the 2010 version was creative, but not true. The new one would be a 'new model' replacement, reflecting a whole new game, albeit with the thematic repetition of content aiming to pursue achievement of the park lands management 'holy grail' – delivery of 'protection' and/or 'preservation'.[11]

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10 Adelaide City Council Park Lands and Sustainability Policy Unit on behalf of the Adelaide Park Lands Authority, 'Adelaide Park Lands Management Strategy', *Background Paper*, August 2008, page 6.

11 Adelaide City Council, Agenda, Item 12.5, 'Adoption of the proposed Adelaide Park Lands Management Strategy', 15 June 2009, page 11870.

A 2008 excuse to "… not replicate the comprehensive consultation" undertaken during the 1998–1999 phase obscured another administration problem. The Authority had simply run out of time. A Discussion Paper, replicating the 1998 approach that the city council had used with its Hassell-authored *Issues Report*, was deemed to be too complicated for public consultation, so it determined to fast-track the process by only releasing the draft Strategy to the general public, devoid of the discussion paper background analysis. The excuses were contained in the Adelaide Park Lands Authority agenda paper of 21 August 2008.[12] This collapse in procedural rigour revealed the *realpolitik* circumstances, by comparison to the slower, more contemplative approach that had applied 10 years earlier ahead of the release of the 1999 first Strategy version. The 1999 procedure had been driven by the park lands 'custodian', the city council, but the 2008 procedure was effectively driven by the state, and the state was always in a hurry.

The early pathway

Buried in the first version (1999) of the Strategy had been the source of the imperative for five-yearly reviews of policy documents determining future park lands management.[13] However, a review may have been useful, but major change was not required if it was not necessary. The view had recurred soon after the enactment, five years later, of the new *Adelaide Park Lands Act 2005*, which formally provided for five-yearly 'reviews' – which to some observers implied that a fresh document might, and perhaps must, replace a previous version. The 1999 document was a non-statutory work, but once the Act had been proclaimed in 2006, which required the existence of a Strategy, anything that followed might be assumed to have some statutory development assessment weight.

The 1999 version had subsequently informed changes to the *Adelaide (City) Development Plan*. Content would permeate future policy discussions at Authority and city council level, as well as planning activity at state level. The commonly held view was that there was a requirement under law that the contents of a Strategy should inform and dictate subsequent amendment of the park lands zone contents of the *Adelaide (City) Development Plan*. This instrument contained the rules for park lands development assessment. However, although amendments to the development plan occurred, accompanied at the same time by city council or state government references to the contents of a Strategy, the existence of the two were not co-dependent. The Strategy was not a lawfully prescribed instrument to define future planning directions, just as the development plan was not a prescribed instrument to define an action plan such as a Strategy, with priority goals and objectives. It was, of course, extremely convenient for the state government to cite

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[12] Adelaide Park Lands Authority, Item 5.2, '*Adelaide Park Lands Management Strategy* – revised consultation plan', 21 August 2008, page 3674.

[13] As found in: section 1, page 8: "… to tie in with the required reviews of development plans, council's five-year Capital Works Program and council's five-year environmental, economic and social profiles of the city."

statements in a Strategy when justifying aspects of a proposed development plan amendment to change development provisions in park lands policy areas. This was where this assumption was routinely reinforced.[14]

The political vision changes

Another basis for misapprehension was that the 1999 Strategy version applied only to council-managed areas of the park lands, but any revised version, following the proclamation of the Act, had to apply to state-managed areas as well. While correct, the real reason behind the 'total replacement' concept, which was revealed in August 2008 when the second version was in draft, was that the government's thinking about the park lands had significantly changed. Replacing a whole policy document was much easier than revising an earlier version. It wasn't put in that way, of course. It was far more bureaucratic. As an Adelaide Park Lands Authority *Background Paper* noted in August 2008:

> "The 1999 *Adelaide Park Lands Management Strategy* provided a much-needed source of direction and guidance for management of the park lands (under the care and control of council) which until then had occurred without any clear strategic direction. This project [a revision project for a 2010 outcome] will result in an enduring, aspirational vision for the park lands whilst clearly articulating the strategic direction and policy framework for management of the entire park lands network over the next 10 years [2009 to 2019]."[15]

But within a few years the government had begun pressuring the Adelaide Park Lands Authority to replace the 2010 version, too.

New third government term, new emphasis

In March 2010 the biggest state election upset occurred in the electorate of Adelaide – its boundaries embracing the whole of the park lands. The Minister for the City of Adelaide, Dr Jane Lomax-Smith, lost her seat as a result of a major swing against her. She had been, since 2002, the staunchest park lands 'protection'

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[14] It had been referred to by Planning Minister Paul Holloway in state parliament in 2005, when introducing the Adelaide Park Lands Bill 2005, but no draft provision explicitly required it. This assumption endured for the whole of the study period 2005 to year-end 2018. That there was no lawful basis for it was confirmed in 2018 in author communications with Adelaide Park Lands Authority executive officer, Martin Cook. He wrote: "The Strategy is there primarily for the joint ambitions of both Council, APLA [the Adelaide Park Lands Authority] and the state government to be agreed upon and publicly expressed. There has always been an understanding that this agreed upon position would inform things like the development plan. [But] This is not stated or required anywhere. So yes, it's an assumption. APLA doesn't have a position/policy on this or any aspect of the Strategy's application." Source: Martin Cook, personal communication, email, 21 August 2018.

[15] Adelaide City Council Park Lands and Sustainability Policy Unit on behalf of the Adelaide Park Lands Authority, *'Adelaide Park Lands Management Strategy'*, *Background Paper*, August 2008, page 6.

advocate in state cabinet. The timing, in terms of future park lands development under the direction of Deputy Premier, Kevin Foley, would be propitious for him, and catastrophic for Lomax-Smith. Foley's proposed plan for the redevelopment of the state-listed, historic grandstands at Adelaide Oval had been announced before the election, but South Australians were yet to learn how manipulative the state government would be, in passing 2011 project-oriented development legislation to exclude the oval and a plan for a huge new stadium from the provisions of the *Adelaide Park Lands Act 2005* and its interacting Development Act, and alienate the site from the park lands through an 80-year lease.

About four weeks after the election, in April 2010, Lomax-Smith's City of Adelaide ministerial replacement, Gail Gago, a member of state parliament's Legislative Council, was interviewed by Lauren Novak, a reporter on the city's daily, *The Advertiser*. To the time-poor readers on that autumnal day, the article appeared to be just more park lands chatter. The topic was the redevelopment of one of the park lands squares, Victoria Square. But the underlying theme was Gago's passing on of a new state message that, from that day, everything had changed. The reporter wrote: "She ... signalled a shift in attitude to the park lands, claiming that while they were a 'precious asset', Colonel Light's vision did not 'exclude' development."[16] Novak noted in her article Dr Lomax-Smith's 'infamous' (her words) opposition several years earlier "opposing the government's plans for a permanent grandstand in Victoria Park, and excusing herself from cabinet deliberations over the park lands". Novak: "[Gago's] comments open the door for a more progressive approach to development in the CBD and surrounds, which will be welcomed by business and developers and benefit the expected influx of residents and workers to the city in coming years. ... While Ms Gago agreed with her predecessor that park lands are 'an incredibly precious asset', which must be protected, she said they held untapped potential."

Gago: "Colonel Light's vision for our park lands was multi-use, his vision never excluded the park lands from developments and activities. Some people's views are that all of those sorts of activities and developments should be excluded but that was never part of the vision, never part of the intention. It was about involving people." Gago's conclusion signalled the decline in state political support of the notion of 'the park lands as contemplative space'. Novak: "She warned precautions must be taken so as not to 'destroy or over-use' the city's green belt." Gago: "It should be a park land for everyone, not just if you want to go and look at the trees," she said.

Seven months later, *The Advertiser* journalist, Rex Jory, published his own view. "South Australians seem to have lost the appetite to fight to preserve Adelaide's park lands. It's as if we have been worn down by the pernicious demands of governments and developers to nibble away at our unique city green belt. ... It must stop.

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16 Lauren Novak, *The Advertiser*, 'Why we must fix Victoria Square, Event hub part of Gago's plan for city development', 3 April 2010, page 15.

Yet the 944ha[17] of park lands that envelop Adelaide continue to sing like mythical Greek sirens, tempting governments with their near-city access, low purchase price, and easy development potential."[18] Jory also noted: "Nor do I believe that in his original plan for Adelaide, surveyor Colonel William Light said the park lands were sacrosanct. He advocated some park lands development." But Jory noted that 85ha of Adelaide's park lands – nine per cent – had been lost since Light's time and concluded: "It might not sound much, but that's twice the size of Vatican City, the 234th largest nation in the world. And what is too much? Ten per cent? Twelve per cent? Where do we stop?"[19]

Cultural heritage reference flaws

The overwhelming of the 1999 Strategy by subsequent versions would have significant implications as the years passed. But the 1999 Strategy was no flawless document. For example, one academic landscape architect noted an absence of sound analysis in that Strategy of how use of the park lands and squares had evolved and especially what was of cultural heritage merit and significance.[20] University of Adelaide Associate Professor Dr David Jones' well-informed and widely respected view, based on his three-year, six-volume scholarship work *Adelaide Park Lands & Squares Cultural Landscape Assessment Study*, should have been adopted as a bedrock source of background information to the evolving drafts of the 2010 Strategy, but it wasn't. By then, there were other political currents flowing. This was underscored when the Jones study that had been perceived in 2004 to be so vital to informing future park lands *Community Land Management Plans* (CLMPs) was effectively shelved within a few years of its 2007 publication year. The administrators at the time would have argued that it had served its purpose informing emerging drafts of those CLMPs from 2004 onwards. But while Jones' work should have been a core reference informing the 2009 draft of the second Strategy version, there remained in the Strategy only tacit reference to historical and cultural heritage, and the vast extent of his research cataloguing 170 years of the evolution of the park lands past. Instead, it was largely discounted.

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[17] It was formally acknowledged as 930ha.

[18] Rex Jory, *The Advertiser*, 'Comment', 29 November 2010, page 18.

[19] Jory had since 1999 developed a much better informed understanding of park lands issues by comparison to his other print media colleagues. In 1999, for example, he had been the only journalist on the Advisory Group informing the Project Team working to deliver the *Park Lands Management Strategy Report*, released in November of that year.

[20] Associate Professor, Dr David Jones, (through) Adelaide Research and Innovation Ltd, University of Adelaide, the *Adelaide Park Lands & Squares Cultural Landscape Assessment Study,* released in October 2007, 'Executive statement', page 3, 0.0 Contents.

For example:

- Instead of the Jones study deeply informing the new Strategy's subject 'focus areas' of people, places, environment and management', cultural landscape was merely referenced under one area: 'Heritage'.[21]
- Secondly, although one of the draft Strategy's five principles (number 3) was: 'Recognise and reinforce the cultural significance and uniqueness of the park lands', of its five sub-points only one linked to cultural heritage, potentially prompting what could have been extensive reference to the content of Jones' seminal, six-volume study. It read: "Considering features of natural or cultural heritage when changes are proposed."[22] Of the 'park lands themes' (landscape, recreation, natural systems, and heritage) one of the five, presumably desired, 'outcomes' was: "A strong and distinctive cultural landscape character with unique and diverse features."[23] It was not enough.

Ambiguity and managerial language

The reality for the emerging 2010 Strategy version was that aspects of its ambiguous, managerial language were loaded with code for the future. It had little connection with the extensively catalogued scope of previous scholarship. For example, under the heading 'Recreation', more managerial wording would follow: "Activated park lands, including cultural precinct, used by all." [24] Two outcomes appeared under the final theme, Heritage: "Recognition, conservation and celebration of Aboriginal, European and multi-cultural heritage", and "Increased community awareness of the natural and cultural heritage values of the park lands."[25] Bold, expanded type on the page shouted: "A rich heritage that is appropriately conserved and celebrated." One of the 'challenges' noted under the Heritage heading also appeared to confuse history (the heritage) with the complexities of pursuing state and local heritage listings across the park lands. It read: "Protecting Aboriginal, European and multi-cultural heritage while raising community awareness of the importance of heritage places."

In all of these clauses the extent of the change occurring was revealed. Strategy version evolution would not be about the past informing the immediate future, but the immediate future visions for park lands land use informing the evolution of each new Strategy. Key words would appear, but would not be accompanied by rich, explanatory content that might inform subsequent policy. Instead, the second and third Strategy versions would be written to fit evolving, present-tense government aspirations. But South Australians in 2010 had no way of interpreting the 'managerial-speak' to comprehend the extent of change that would later occur.

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[21] Adelaide City Council (ACC), Agenda, Item 12.5, 'Adoption of the proposed Adelaide Park Lands Strategy, under 'Trends and changes influencing the future of the park lands', 15 June 2009, page 11888.

[22] ACC, ibid., page 11897.

[23] ACC, ibid., page 11900.

[24] ACC, ibid., page 11905.

[25] ACC, ibid., page 11912.

The replacement consequences

Notwithstanding its flaws, the replacement of the 1999 Strategy with the new 2010 version and, five years later, a new 2016 version, would have major consequences. Of the objectives and 'priority actions' of the 1999 version – including a five-year program to write master plans to follow specific policy directions – there would be only remnants. The notion of adopting and monitoring key performance indicators would be abandoned. That notion otherwise would have assessed in a disciplined way achievements relating to key elements, including environment, buildings and land, accessibility, management/funding, and community/culture. That conceptual level of rigour would be weakened in later Strategies. Some long-term objectives, addressing issues apparent then and even more apparent 18 years later at year-end 2018, would be abandoned. For example: the objective to tackle costs. The 1999 Strategy had noted: "The intention is that the costs of managing and enhancing the park lands should not exceed current costs, and should be achieved through a refocussing on current expenditure." [26] Over the two decades to 2018 costs would significantly increase, and annual maintenance and operations budgets would continue to be funded only by the city's small number of ratepayers. The 2018–19 cost of park lands maintenance was $16.7m – a substantial sum for one local government corporation.[27] Spending, less grant monies, totalled $23.5m.

Multiple political purposes

The replacement of Strategy documents every five years, delivering different versions in 2010 and 2016, would serve many purposes. Firstly, it would suit the South Australian political culture, where short-term plans in short-lived Strategies were preferred. Secondly, priorities no longer favoured by senior council administrators could be deleted, or at least re-prioritised, by the arrival of new ones. Thirdly, as each new version was endorsed by the Authority and later the city council, the equivocal nature of state political management of public land as time passed would be conveniently obscured behind that Authority and council activity. The major park lands link between state administrations and the city council (and thus its subsidiary body the Authority) was the Capital City Committee. Determinations at this level were always obscured because the committee left no detailed, publicly accessible paper trail and its annual reports were so general in summaries as to be, at best, ambiguous indications of political influence.

In summary, each new version of the Strategy would mark the end of a previous era of state-favoured plans, and herald the arrival of new visions. The overall effect over 20 years would be to replace a late 20th century public land-use management vision with a new 21st century vision. The former had reflected a cautious and

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[26] Hassell, op. cit., section 10, Implementation, page 74.

[27] Non-capital spending totalled $17.4m (2017–18); $16.7m (2018–19) and $17m (2019–20). [2019–20 amounts were based on forecasts.] Total spending for these periods (including grants) was $37.5m, $26m and $33.1m respectively. Spending less grant monies totalled $25.8m, $23.5m, and $25.6m respectively. Source: Adelaide City Council, The Committee, Agenda, Item 5.3, 'Adelaide park lands expenditure and income', 12 November 2019, page 38.

conservative approach to evolution of park lands policy, led by the 'custodian' of much of the park lands, the city council, which had until that time also entertained some goals that might take a long time to achieve. But fully revised Strategy versions, thick with ambiguous language, left open myriad interpretations, convenient opportunities for state bureaucrats.

Post-2010 political imperatives

The evolution of the second (2010) and third (2016) versions of the *Adelaide Park Lands Management Strategy* would reveal much about the South Australian state government's post-2010 planning imperatives for land use across the open space estate. The second Strategy would be drafted in the period 2007 to 2009 in the second term of the Rann Labor government; the third under new Labor Premier, Jay Weatherill, who had taken the helm in 2011. New leadership delivered new priorities. Political motivations were most often obscured by the procedural complexities, the explanation of which were not conducive to Adelaide media's superficial approach to journalism. This was politically convenient. Amendments continued to be coordinated by the council's subsidiary, the Adelaide Park Lands Authority. In the early years, its lack of an authoritative voice had become increasingly obvious, although as the years passed its function as the core policy advisory body to the 'custodian' of the park lands, the city council, became so central to discussions that it was assumed that it did, in fact, have some authority. The real authority, of course, was the state government, acting on confidential contemplations, often originating from state cabinet or the Capital City Committee or simply advice or instruction from state ministers, the letters of whom were often subject to confidentiality orders. The Authority could not progress matters in the form of final policy documents without ministerial authority and this restriction also often applied to the city council. The council also could not instruct the Authority without ministerial approval.

Nonetheless, the illusion that the 2010 and 2016 Strategies needed to be authorised only by the Authority lingered in the minds of some South Australians. Moreover, the state government made clear that the Authority was a council creation and its output did not have to be funded by the state. In other words, while the state had full control over policy determinations and outcomes arising from the evolving Strategies, it evaded any responsibility to fund the body that endured demanding, expensive and high-pressure periods of Strategy amendment, as well as draft public consultation phases, following which the Authority had to deliver the Strategy to the council for sign-off, and then the minister for final authorisation. The extent of government control illustrated a classic type of 'government knot' that bureaucrat lawyers liked to tie to manage political risk. Until that final authorisation stage, no Strategy had teeth.

In summary, it was a convenient outcome for the state, but a costly and demanding outcome for the city council and its ratepayers, whose rates exclusively funded the maintenance and management work. It was also very convenient for other inner-metropolitan councils and their communities who used park lands facilities extensively, but paid nothing towards park lands maintenance fees or operational costs.

By the time of the arrival of the third Strategy, in 2016, it was becoming obvious that some of its wording was being written to fit proposed development concepts (built form and other) that had either not yet been formally announced, or at least not significantly progressed. Details appear later in Part 8 chapters of this work about the government influence over the evolution of the content of the 2016 version, and what South Australians thought of it. Thus, over a relatively brief period of 19 years (1999 to 2018) the policy reflected in the 1999 Strategy was greatly changed. Its replacement marked the beginning of this change. For a Strategy that in 1999 featured a 10-year plan and a 37-year plan, it had had a scandalously short life, and few would have attended the funeral – had one been announced. Even though a few of the former board members were still sitting at the Authority board table as the second draft Strategy was finalised in 2009, a new team would soon be taking charge.

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Many people hadn't liked what they read. That was the core finding about the draft Strategy in 2009. "A key theme in the feedback received," wrote a city council administrator, "was that the Strategy should be more prescriptive in terms of the types of activities and development which should be allowed/disallowed in the park lands. In other words, the Strategy should act as a definitive conflict resolution mechanism, clearly identifying what takes priority in terms of the preservation of open space and public access as opposed to the provision of facilities and allowance for diversity of use."

'Subject to a few minor changes'

It was perhaps not surprising that the state government in February 2010 quibbled only about three paragraphs in the city council's draft 2009 *Adelaide Park Lands Management Strategy: Towards 2020*. A political clairvoyant might have predicted that their subject matters would highlight the key park lands controversies that would be of political concern to the state in the years ahead.

The timing was important. Labor would face its third consecutive election a month later. There would be swings against a number of its MPs, including the Premier, Mike Rann, in his working class northern metropolitan electorate. But given his large margin, it was not enough to matter. Despite this, the Party would conclude that its win vindicated all that had led up to the March polling day, and set a reinvigorated course. Perhaps surprisingly, that would see, within about 21 months, replacement of Rann by a new Premier, Jay Weatherill.

The Strategy was the second produced by the city council in 10 years, but was the first version to follow the proclamation of the new *Adelaide Park Lands Act 2005* in early 2006, which specifically required it. The legislation also had made provision for a new Strategy to be 'reviewed' within two years, after which, every five years. Section 18 of the Act, which referred to the need for a Strategy, was fully enacted only in late 2006, meaning that the end-2008 deadline to 'review' had been tight. This had demanded ratepayers' funds to be spent producing a discussion paper, later renamed in July 2008 as a 'background' paper, which, despite the best of intentions, was determined to be too complicated to publicly consult with ordinary South Australians, and went only to 'stakeholders' – other bureaucrats, agencies and organisations with park lands interests. In the end the Authority delivered a mere 59 pages in a final draft Strategy. It was fine-tuned again in summer 2009, having been signed off by the Adelaide Park Lands Authority on 21 May 2009. The city council signed off in December 2009. The next stage was to seek approval by the state government.

One of the Labor government's February 2010 quibbles was apparently minor, seeking the minimising of park lands events impacts on 'adjoining residents'. This illustrated a political sensitivity to city edge communities who were already complaining about noise from major summer events, whose timing and duration illustrated the profits extractable by commercial operators in attracting big, late night crowds to liquor-licensed sites.

Alarm bells ring

The other two quibbles, despite focusing only on two brief paragraphs, had other political implications, and highlighted two aspects that rang government alarm bells. The first theme was that a choice of certain words can be critical in planning terms because planning is a political process. The second theme was that, despite pages of the Strategy's principles and strategies reflecting myriad motherhood statements about unified systems, diverse uses, and equitable access to the park lands, behind the government's apparent public agreement with them, it quietly held a rigid view when it came to development. It did not want the *Adelaide (City) Development Plan* and its reference to park lands zone policy areas to be the subject of city council scrutiny and potential amendment in terms of future buildings in the park lands zone. This potential resistance illustrated where the state's political nerve endings were most exposed. Precisely how the city council might have put into practice any desire to minimise future built-form development on the park lands estate that fell under its 'care and control' responsibility was not spelled out. But no government comfortably entertains a suggestion that lower government tiers might try something on, challenging the contents of the core policy instrument, the development plan, that would make lawfully feasible state government aspiration about the built-form future of the park lands. The state had long depended on the legitimacy of the development plan's role in assessment of development application approvals for community land such as the park lands. As with previous government administrations, the Labor Party since winning government in 2002 had accepted the traditional governance view that the development plan was an entirely separate planning instrument from any other policy document, such as the new Strategy, which was specifically referenced in the 2005 Park Lands Act. But there had been a suggestion in the original 1999 Strategy, and later in ministerial speeches during the 2005 parliamentary readings of the Adelaide Park Lands bill, that the Strategy might inform, and might perhaps drive, amendments to the *Adelaide (City) Development Plan*'s provisions for the park lands zone policy areas. That intention was ambiguous, and not subject to specific legislated requirement. But the political convenience of this assumption was obvious.

Given this, it was not surprising that bureaucrats in 2010 advising Environment and Conservation Minister, Jay Weatherill, reacted to some wording in several draft Strategy management principles and strategies that might have potential to allow the city council itself, through the 2010 Strategy, to influence the future contents of the development plan. A letter was promptly drafted and transmitted to a facsimile

machine adjacent to the King William Street palatial office of the city's Lord Mayor, Michael Harbison. "Endorsement," Weatherill wrote, would follow, "subject to a few minor changes."[1] But some were not minor.

Government sensitivity – with a twist

The letter illustrated the extreme sensitivity of the Rann Labor government to matters regarding the potential for construction of future buildings on the park lands. That sensitivity did not reflect sympathy for the city council's or the Authority's board members' preoccupation to minimise future development there. Rather, it was sensitivity about the need to leave open for the state such potential on the park lands, and the government's concern about the risk that this potential might be thwarted, if only through an in-principle position at local government level. It said everything about the state's desire to maintain its fine-grained control over every planning-related aspect relating to the park lands. The letter said: "The government recommends the replacement [in the Strategy draft] of principle 4, dot point 1 ...". Principle 4 had stated: "Ensure the park lands are distinctive and well maintained with minimal built development only necessary to support outdoor recreation ...".[2] It continued: "Seeking a review of the development plan to eliminate exemptions from 'non-complying' development as applied to buildings in the park lands zone and to require all such development to be classified Category 3 – high priority." In the eyes of the government, the inclusion of this wording highlighted two fatal errors.

Firstly, it referred explicitly to potential change to the development plan, which in park lands policy area terms always made the government nervous – unless it was in full control of the amendment content and procedure. The council had in place a development plan amendment review program, and on publication of a new Strategy it would be accepted practice to try to 'align it' (council's words) with the development plan. Secondly, it referred to the most contentious category (for the government, in regard to the park lands) relating to non-complying (Category 3) development proposals under that development plan. Of the three categories, only proposals determined as Category 3 could be appealed in a court at this time, which opened up legal opportunities for opponents of certain park lands development proposals to try to block them.

History repeats

Park lands historians who might have read the Weatherill letter in the council papers would have recalled the Legislative Council bid by Australian Democrats MLC, Ian Gilfillan, in November 2005, to amend the Adelaide Park Lands bill to

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[1] Government of South Australia, Letter: Jay Weatherill, Minister for Environment and Conservation, to the Adelaide City Council, 18 February 2010, page 1.

[2] *Adelaide Park Lands Management Strategy* draft June 2009, page 21, as found in: Adelaide City Council Meeting, Agenda, Item 12.5, 'Adoption of the proposed *Adelaide Park Lands Management Strategy*', 15 June 2009, page 11896.

ensure that the same Category 3 classification under the development plan would apply to all proposed future development in the park lands. But Labor's Legislative Council members had resisted, and the bid had failed.

But here it was again, buried mischievously in a council-endorsed draft principle, clear in its intent, and perhaps sufficient – in the inadvertent absence of rigorous government scrutiny – to trigger subsequent park lands zone policy area amendments of the development plan at local government level. Weatherill's February 2010 advisors instructed that substitute wording be adopted, crafted as a triumph of bureaucratic ambiguity: "Seeking a review of the development assessment process and associated consultation system for the park lands so as to achieve an appropriate balance between government planning reforms and ensuring public transparency in regard to building proposals which could affect the cultural values and integrity of the park lands." The council reluctantly swallowed the medicine, incorporating the entire paragraph as a replacement. It must have stuck in the craw of some Authority board members at the time. There was that foggy euphemism 'appropriate balance' introduced into the Strategy, whose ambiguity would plague future readers. Whatever did 'appropriate' mean? It would infect the clarity of language used by the Authority too, with random similar symptoms breaking out at the assessment of the next version in 2016. Three months later, council administrators devoted some discussion to it, a measure of their concern.[3]

The third government quibble

The third sentence about which Minister Weatherill quibbled related again to buildings. He highlighted another principle, which referred to an intention to consult widely 'on any new significant developments or changes (any building work) in the park lands.' Weatherill instructed that the words 'any building work' be replaced by '(particularly buildings)'. The council again agreed, but administrators' analysis of it at the time had mixed fact with quaint diplomacy, at the expense of their own common sense.[4] The Development Regulations 2008 already permitted certain exemptions for minor works. The 12 April 2010 agenda discussion revealed that the state's argument claimed to be that there might be "unnecessary delays ... for such development as: Internal works carried out in existing cafes on state-controlled park lands by lessees of the zoo, where they are not carried out by the state; and: Temporary depots constructed by state agencies in the park lands."[5] The zoo cafes matter was merely pedantic, but the 'temporary depots' matter was a sleeping loophole that left open myriad opportunities, including concepts such as ad hoc state works compounds associated with development projects in the park lands. Here was evidence suggesting that the state wanted these loopholes preserved. The compounds usually took up substantial area, and could stay in place for long periods.

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3 Adelaide City Council (ACC) meeting, Agenda, Item 12.1, 'Adelaide Park Lands Management Strategy – Response from the state government', 12 April 2010.

4 Adelaide City Council (ACC) meeting, ibid.

5 ACC, ibid., page 15812.

Further, in relation to Minister Weatherill's second quibble, rejecting the council's and its Strategy's original wording (which had read: "Seeking a review of the Development Plan to eliminate exemptions from 'non complying' development as applied to buildings in the park lands zone and to require all such development to be classified Category 3 – high priority") the council months earlier in April 2010 had made a diplomatic excuse which discounted its own level of concern: "Given that the only type of building development which should require public notification is that which could affect the cultural values and integrity of the park lands (those values expressed in the National Heritage listing), it is also reasonable to support the state government's amendment ..."[6] This rationale rang hollow. The National Heritage listing was less than two years old. Over the subsequent eight years the record would show that when the state had 'self-assessed' and referred matters to the commonwealth, no negative response had been received that might be sufficient to block a development proposal. Thus reference to the National Heritage listing was a red herring. The fact was that the types of buildings that 'should require public notification' would be ones such as a huge new Adelaide Oval stadium (whose development would follow two years later, in 2012), and a six-storey school (2016). Both would have been Category 3 proposals but for the fact that the state used project-oriented development legislation to avoid public notification on the stadium, and quietly managed a development plan amendment, exclusively for that park lands zone policy area 19, on Frome Road, preceding the school's construction. In this way, neither would be subject to any public notification under the Development Act. The fact was that state Labor simply wanted to avoid any potential for park lands development proposals to be defined as Category 3, classified for planning purposes as 'non-complying', and would always closely monitor any contemplation of it in relation to text revisions in new draft Strategy versions.

Strategy fails as a 'conflict resolution mechanism'

Many people hadn't liked what they read. That was the core finding about the draft Strategy in 2009. The summary, noted on 15 June at the city council, identified not only dissatisfaction with content, but also uneasiness about one of the fundamental themes that would endure during the entire post-1999 period of evolution of the Strategies. As a council administrator advised:

> "A key theme in the feedback received was that the Strategy should be more prescriptive in terms of the types of activities and development which should be allowed/disallowed in the park lands. In other words, the Strategy should act as a definitive conflict resolution mechanism, clearly identifying what takes priority in terms of the preservation of open space and public access as opposed to the provision of facilities and allowance for diversity of use."[7]

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6 ACC, ibid., page 15812.

7 Adelaide City Council (ACC) meeting, Agenda, Item 12.5, 'Adoption of the proposed Adelaide Park Lands Management Strategy', 15 June 2009, page 11873.

This identified something crucial, because conflict between views and priorities went to the heart of the tension that existed between the administrative and political management imperatives of Adelaide's park lands for many decades. In terms of the crafting of a Strategy, the way was open for contradictory concepts and ideas to be bundled up, often under a fog of managerial ambiguity, and the 2009 draft that became the 2010 Strategy was a good example. A council administrator, noting the public consultation feedback in June 2009, attempted to justify why conflict resolution was not part of the brief, including presenting a clear idea of "what takes priority in terms of the preservation of open space and public access as opposed to the provision of facilities and allowance for diversity of use". "However," the administrator wrote, "it is felt that a visionary Strategy is not the level at which to be prescriptive and that this is best provided through management plans."[8] This statement contradicted the contents of the draft, which, as an action plan, was prescriptive in its identification of projects – although vague as to precisely how and by when they should be achieved.

Council's 2010 review blind to deficits

The city council administrator then wrote a glowing winter 2009 summary of the contents of the new draft, noting that it provided for (among other things): "An increased range of community uses; preserved and where possible improved accessibility; protection of the integrity and National Heritage values of the park lands; [and] an improved quality of landscape and facilities ..." [9] This avoided confirmation that some mechanisms were not actually in place, ready to go. For example, administrators had agreed that there needed to be more work to deliver a 'single park lands management plan' and that a critical element would be a comprehensive Landscape Master Plan, to be created to address it. The master plan would be commissioned in 2010 but finalised only in late 2011 as a key blueprint to, in the council's words, 'unify' the park lands. The vast scope of work needed to deliver it illustrated how poor had been the planning for the revision of the 1999 Strategy, how poorly deficits of key information had been anticipated, and how slowly their contract commissioning would be managed. Other elements still outstanding were a play space action plan, a park lands interpretation plan, an events policy, a marketing action plan, a maintenance program and an access policy, including the perennially controversial matter of car parking. Each of these highlighted that while a Strategy was being tabled, it had many missing elements.

The *realpolitik* behind the government/council 'partnership'

In the high-pressure period leading up to the tabling of the Strategy draft, few noticed that its tabling also would be the first test of what the *Adelaide Park Lands Act 2005* had stipulated about Strategy draft administrative procedure. Government lawyers argued that the minister had complete control over its contents. Council

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[8] ACC, ibid, page 11873.

[9] ACC, ibid., page 11874.

advisors had agreed. “There is no obligation on the minister or council to refer back to the Authority for comment before adopting the Strategy with amendments,” the council noted of the advice.[10] Its adoption was not bound by any deadline. Moreover, if there were any dispute between the council and the government, there was “no process for dispute resolution”. It boiled down to nothing more than wholesome good intentions, as directed by one of the Act’s seven Statutory Principles: “the State Government, State agencies and authorities, and the Adelaide City Council, should actively seek to cooperate and collaborate with each other in order to protect and enhance the Adelaide Park Lands.”[11]

The legal advice highlighted something fundamental about the grand 2005 vision in the Act, in providing for a Strategy that would, as the Statutory Principle said, “protect and enhance the Adelaide park lands”. It would only become clear five years later in 2010 as the first, post-Act Strategy awaited ministerial sign-off. The brutal reality was that the Strategy would be signed off only if and when the minister felt entirely comfortable that he was controlling every word of its content.

Glowing summary

Despite this reality, the council ran the line that its new work was an outstanding achievement, a fine example of collaboration among multiple parties. “The proposed Strategy provides stronger, clearer directions based on the recent influences on the park lands ...” an administrator had noted as the draft awaited adoption by the city council. These ‘recent influences’ included: “social and environmental trends and influences, the *Adelaide Park Lands Act 2005*, and the National Heritage values”.[12] The conclusion confidently stated: “The proposed Strategy is an aspirational management framework.”

The year 2010 would prove to be as significant a turning point for Adelaide’s park lands as it would be for the state Labor government, commencing a term in which the park lands would be constantly under focus, often for development reasons. In retrospect, it would signal the dawn of the age of state ‘Aspiration’. The Concise Oxford dictionary definition is: ‘Drawing of breath. Desire.’ Aspire would be defined as: ‘Desire earnestly’.

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[10] ACC, ibid., page 11874.

[11] Principle (f).

[12] ACC, ibid., page 11874.

37 | The 2011 *Adelaide Park Lands Landscape Master Plan*

> *"Taken together, the guiding principles, zones and their strategies represent a significant refinement in the manner in which the park lands are viewed and managed. Through these avenues, the plan asserts the value of the park lands as a landscape which has tremendous potential to further enrich the lives of Adelaideans and visitors."*[1]
>
> Extract, *Adelaide Park Lands Landscape Master Plan*, 2011.

The late-2011 endorsement and 7 November publication of the *Adelaide Park Lands Landscape Master Plan* would prove to be much more than a belated follow-on and late companion to the release of the second (2010) version of the *Adelaide Park Lands Management Strategy: Towards 2020*. Firstly, it would be the only landscape master plan created for the whole of the park lands during the two-decade study period of this work. Secondly, it would be evidence that, despite the flaws and omissions of the new 2010 Strategy, the city council continued to influence park lands management concepts on the fundamental basis of the relevance of conserving its landscape character. This replicated a rich philosophical seam that had run through its first Strategy Report of 1999, and suggested that, 12 years later, there was some continuity of acknowledgement of many of the original Strategy's concepts.

Environment and heritage

The 134-page master plan featured a thorough analysis of the park lands 'complex environmental and heritage issues'. It had been informed through extensive research by a firm comprising some of Adelaide's best landscape architects. In November 2010, as it was being prepared for circulation as a draft, it had been described by the city council in a public notice as a document that "... provides direction for the future management of the park lands landscape."[2] That word 'landscape' would dominate the policy substance.

In April 2011, as the Adelaide Park Lands Authority (APLA) was collating and analysing public feedback about the draft plan, advisors reminded board members of its purpose. "The LMP is intended to be a high-level document, elaborating on the Landscape outcomes in the Strategy, being:

- Reinforcement of the 'City in a Park' concept.
- Recognition and interpretation of the park lands heritage and cultural landscape significance.
- A strong and distinctive cultural landscape character with unique and diverse features.

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1 Extract: Adelaide City Council, *Adelaide Park Lands Landscape Master Plan*, Taylor, Cullity, Lethlean, 7 November 2011, page 10.

2 Adelaide City Council, City of Adelaide public notice, *The Advertiser*, 'Planning the future landscape of the park lands', 18 November 2010.

- A unified park lands with strong linkages within and beyond, and community appreciation of them.
- A reinvigorated and enhanced River Torrens/Karrawirra Parri landscape."[3]

But APLA advisors also reminded board members what the plan was not about.

> "A landscape master plan visualises the design, organisation and use of spaces. While it takes into account the social, ecological and geological conditions and processes, it is not a management strategy. That is, it does not provide detailed policies and practices directing how a space or a facility is used."[4]

This clarification may have arisen because of the potentially confusing purpose description written by other city council administrators in the council's November 2010 public notice, encouraging public input, which had led to receipt of some feedback that had misunderstood its purpose. Board members were reminded that the master plan was only an adjunct to the key management directive, the 2010 Strategy.

Board members were prompted to note the context in which the plan had been crafted, listing eight "defining characteristics" of the Adelaide park lands landscape. They were: unique layout; remaining natural and semi-natural elements; important views and vistas; fragmented nature of the layout; prevalence of sport; barriers within and around the park lands, which sometimes make access difficult; central presence of the River Torrens; and ingrained cultural and heritage significance."[5]

Politically influenced change ahead

But the year of publication, 2011, would prove to be highly significant in political terms. It would see the elevation of Labor minister, Jay Weatherill, to Premier, and subsequent evolution of new Labor Party directions influencing park lands management policy. Moreover, there would be another future consequence, which would have been inconceivable to an observer in 2011. This was that the far-sighted master plan would be quietly dumped within five years.

A unique vision, with global parks reference

The writing of a master plan for the *whole* of the park lands was unique. There were other master plans, and there would be more in the future for individual park lands zone policy areas, but only this one had an aim to 'unify the park lands'. It explored some elements of the original 1999 Strategy and significantly expanded that document's original aspirational elements into a comprehensive vision for evolution of future park lands landscapes, referencing other parks management features in seven other world locations. This also was unique. It put the vision into a global context, allowing Australian readers to better comprehend how Adelaide's park lands landscapes compared with the work of other interstate and international community land managers.

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[3] Adelaide Park Lands Authority (APLA), Board meeting, Agenda, Item 6, 'Draft *Adelaide Park Lands Landscape Master Plan*', 14 April 2011, point 11, page 12.

[4] APLA, ibid., point 14, page 13.

[5] APLA, ibid., point 16, page 13.

References to sites beyond South Australia

The seven-chapter plan featured seven studies – explicit references to other interstate and international parks, exploring accessibility, events, user groups, and relevant characteristics. Sites included: Centennial Park Lands, Sydney, Australia (three parks); Princes Park, Melbourne, Australia; Pyrmont Park, Sydney, Australia; Waitangi Park, Wellington, New Zealand; Birrarung Marr, Melbourne, Australia; Bryant Park, New York, USA; and Hyde Park, Sydney, Australia. At the time, this overview was unique among other city council park-lands-related documents. No other publicly available Adelaide park lands policy document replicated this perspective in such detail.

Landscape preservation direction

The master plan was signed off in late 2011. Its complementary, fine-grained content carried over elements of the landscape preservation direction first envisaged in the seminal 1999 Strategy, but in a more comprehensive way. It reflected the philosophical essence of the 1999 Strategy, seeking "... to ensure that the park lands fundamental resources, its natural and cultural assets, are preserved, enhanced and celebrated as a critical part of the life of the city of Adelaide."[6]

But its contents were not exclusively reflective of the past. It also cautiously contemplated a wider, recreational urban park concept that was beginning to gain favour within Labor's ministerial ranks as the Rann era was coming to an end and the new Weatherill-led era commenced. This would have effect within the city council's park lands administrative teams, giving rise to pressures to revise management approaches.

Four landscape zones

The master plan divided the park lands into four landscape zones: open woodland/sports; structured park land/sports; civic, cultural and urban parks; and urban gardens. According to advice given to APLA board members in April 2011, these had been chosen because they had been "detected during the development of the plan as having developed over the past 170 years"[7].

The plan noted: "The description of these zones is the primary enunciation of the principles, strategies and directions which constitute the master plan."[8]
It adopted nine statements that aimed to "encapsulate the defining characteristics of the landscape".[9] They included: a unique and special place; a place of nature; views and vistas; fragmented islands of green; a park for sport; barriers within the park lands; the River Torrens; planting within the park lands; and cultural and heritage significance.

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6 Adelaide City Council (ACC), *Adelaide Park Lands Draft Landscape Master Plan*, Taylor, Cullity, Lethlean, page 8, as found in: Adelaide City Council, Council meeting, Agenda, Item 12.1, and Minutes, 25 October 2010, page 21909.

7 APLA, op. cit., 14 April 2011, point 17, page 13.

8 Adelaide City Council, op. cit., 25 October 2010, page 21909.

9 *Adelaide Park Lands Draft Landscape Master Plan*, Taylor, Cullity, Lethlean, October 2010, page 8.

Ten guiding principles

There were 10 guiding principles: "... to provide direction to future development of the park lands landscape". They focused on: city in a park; strong identity; variety of activities; natural and cultural heritage; beautiful spaces; vital green spaces; contemporary urban parks; sustainable landscapes; structures in the landscape; and regional context. Discussion was segmented under key headings, including: priorities; landscape character projects; recreation projects; natural systems projects, and heritage projects. The plan also referenced any other smaller master plans for particular parks.

The landscape focus

A contemporary reader's retrospective examination of the master plan would note its preoccupation with the paramount importance of conserving elements of the park lands *landscape*, referring to that word eight times in its concluding statement. On that page, it observed:

> "The [plan] complements the recently released *Adelaide Park Lands Management Strategy* [2010] in providing direction for the preservation and future development of the park lands.
>
> [It] focuses on the special qualities and opportunities of the landscape in all its manifestations throughout the park lands. It acknowledges the eclectic nature of the park lands, while at the same time recognising the broader characteristics which link those large areas which have been defined as landscape zones. The definition of these zones is based on landscape character, human activities and urban context.
>
> A key contribution of the master plan to the future of the park lands is in elucidating an approach to their appreciation and future development based on the landscape and its relationship to the contemporary city and community. The intention is to both reinforce the essential qualities of the landscape and open up new perspectives and opportunities based on bold thinking and creativity in the future. Each zone, from the broad open spaces of the Open Woodland/Sports zone, to the transitional landscapes of the Structured Park Land/Sports zone, and the urban parks of the riverside Civic, Cultural and Urban Parks zone and the more formal spaces of the Urban Gardens zone, has great potential to further enrich the lives of Adelaideans and visitors. The location, size and historic care and preservation of the park lands has provided present and future generations with a great landscape legacy and opportunity to work positively and creatively with the park lands.
>
> The future task is to elevate the diverse landscapes to places of great beauty and amenity which are fully integrated with the City and complement contemporary lifestyles and values."[10]

[10] *Adelaide Park Lands Landscape Master Plan*, 'Conclusion', Taylor, Cullity, Lethlean, 7 November 2011, page 84.

'A significant refinement'

A more thorough whole-of-park-lands master plan would never again be created for the Adelaide Park Lands Authority during the period of study of this work (to year-end 2018). "Taken together," the plan's introduction had said, "the guiding principles, zones and their strategies represent a significant refinement in the manner in which the park lands are viewed and managed. Through these avenues, the plan asserts the value of the park lands as a landscape which has tremendous potential to further enrich the lives of Adelaideans and visitors."[11]

[11] *Adelaide Park Lands Landscape Master Plan*, 'Conclusion', Taylor, Cullity, Lethlean, 7 November 2011, page 10.

38 | Private investment in the park lands

The presence of a large building badged with the club's name can often repel people from freely and openly accessing the park lands around it. This, combined with sub-lease arrangements that allow other groups exclusive access at certain times (but without any public notification warning about these exclusive sub-lease rights) also can contribute to a sense of alienation of the public from the site. It might be summed up (with apologies to George Orwell) by the saying: "All of Adelaide's public park lands are accessible, but some park lands are more accessible than others."

Between 2011 and 2018 Adelaide's park lands vistas were subject to a sustained wave of sports pavilion and playing fields development bids by a number of long-established and financially strong sports bodies. Some had held park lands leases for many years. The consequences altered for a long future time the open-space landscape character of some of the most prominent parks containing long-established ovals or playing grounds. Each new building was a symbol that something profound was occurring in the policy management of the park lands. Each would be a manifestation of the 'action plan' visions for future use of the park lands, driven by evolving versions of the *Adelaide Park Lands Management Strategy*.

Early pavilion completions established a pathway that could be followed by other lessees still using old facilities on park lands leases, a useful procedural roadmap as new campaigns were pursued for refreshed leases (or new leases under new terms) for extended long-term occupation. They were accompanied by new construction concepts highlighting a significant broadening of a park lands activity until then restricted to sport participation and observation using rudimentary facilities, but now expanded into associated recreational activities, sometimes intended to be conducted even when sports events were not occurring.

This focus on recreational facilities use was rationalised by both the city council and the applicants as an attempt to meet new 'standards and requirements'. The 'standards' rationale had a basis in fact, but the 'requirements' aspect was more in the eye of the lease-holder or proposed lease applicant, whose use of the park lands was seen during this period to be expanding well beyond the former sport-focused utilitarian requirements, instead pursuing a more contemporary requirement for community events facilities that would provide for club-based social and revenue-raising functions.

A feature of most of the pavilion proposals was a sequence of preliminary meetings with the city council and/or subsidiary bodies, many held behind closed doors because applicants had asked for confidentiality, mainly on the basis that, while

their park lands sport and recreational plans might be run as not-for-profit operations, some funding might come from other private sources. But 'not-for-profit' did not mean 'not-for-exclusive benefit'.

Some park lands facilities redevelopment expansion plans also depended on the resources of long-established incorporated sports bodies whose financial capacity was significantly less than those of the state-funded university or privately funded secondary colleges or associations. Their funds were unlikely to be sufficient to finance similar facilities without government assistance. In these cases, the city council (initially through its subsidiary, the Adelaide Park Lands Authority) assisted these bodies by paying for concept plans and advocating on their behalf for state funding, most often through the Office for Recreation and Sport or, less often, through the state's Planning and Development Fund. Disbursements depended wholly on ministerial discretion and there was much advance lobbying of MPs and ministers. Very little of it went on the public record.

The precise funding arrangements were not always clear. For example, master planning that emerged for some sections of the park lands suggested that the council had paid the costs to initiate the plans, and the arising park lands concept plans for certain parks would sometimes reflect specific existing or proposed lessee preferences for the sites, assuming that future funding might be found.

Secrecy a major feature

Preliminary discussions with lessees tended to occur behind closed doors. Even when concept plans were ready to be examined, at Adelaide Park Lands Authority stage, a desire for secrecy could allow applicants to ask board members to capitalise on the provisions in the *Local Government Act 1999* that allowed for continuing discussions to be held 'in confidence'. The fact that many of the proposed facilities were to be built on public land appeared immaterial to those determining the length of the confidentiality orders. These orders blocked public access to preliminary background documentation – and orders could stay in place for some time. One outcome of this long-established approach, most often at Park Lands Authority level, was that the public was not always made aware of plans for new buildings or other infrastructure on the park lands, or proposals to extend leases, or obtain fresh leases, until the applicant was ready to reveal them and formally apply. In fact, when many pavilion proposals emerged for 'first-time' public scrutiny at board meetings of the Park Lands Authority, it was clear that many of the potential policy complexities and lease application specifics already had been addressed via administrator assistance behind the scenes, smoothing the way for speedy in-principle approvals under the public glare. The agenda item could then move quickly to concept authorisation stage at the city council, and then to development application assessment stage at the council Development Assessment Panel whose planners assessed them. Key to the success of many plans that emerged beyond 2014 was reference to the contents of the emerging third version of the policy 'rule book', the document that would become the *Adelaide Park Lands Management Strategy 2015–2025*, which had reached draft form by early 2015. Although it

would not be endorsed by the city council until September 2016, or the state government until August 2017, there was a general assumption that its draft provisions could be safely extracted and quoted well ahead of these approvals stages, to smooth the planning assessment pathway.

Historical trends

The 2011–2018 period in some ways replicated a much earlier period which saw a wave of park lands sport-related facilities development in the late 19th and early 20th century, which included construction of several imposing Victorian buildings in what was once open space landscape. Examples included the grandstand at Park 16 (Victoria Park: SA Jockey Club), Adelaide Oval facilities at Park 26 (South Australian Cricket Association), and a grandstand at Park 12 (University of Adelaide). Future historians will note that the post-2011 period's pavilions will leave a similarly pronounced park lands character change, featuring their contemporary 21st century 'big block' style, wide overhanging roofs, and multi-storey features allowed because of a lack of height restriction provisions, as featured in the city's development plan for such buildings in the park lands zone policy areas. The upgraded developments underscored a public perception of the privatisation of public spaces across some of the park lands most desired sport and recreational sites. While the terms of new leases for the land on which the new pavilions stood allowed no such thing as 'privatisation', visitors to the newly developed sites sensed the 'ownership' of the space, including large areas of associated, upgraded playing fields, pitches or hard-stand courts and, in some cases, car parks. The big pavilions and the well-kept fields surrounding them authoritatively spoke: "We own this site." For the university, private schools and South Australian Cricket Association (SACA), they would – literally – own the buildings, but not the land. The subsequent lease particulars also spoke: "We can determine when others seek to use these playing fields and ovals, and the terms under which they do so." Other symbols of ownership would appear. One particularly confronting example was the full picket fencing of the oval in front of the new, three-storey SACA pavilion at Park 25, completed in 2018 west of the city. Visitors to the site when SACA was not using it could not access the oval unless they literally jumped the white picket fence. The original 21 November 2016 drawings assessed by the Council Assessment Panel had not shown full perimeter fencing.

Old structure footprints vital for new plans

An earlier sports-related, post-1950s park lands building period had seen some park lands clubs constructing rudimentary, single-storey change rooms and shelters at leased sites, with toilets and basic shower facilities. Some had been built without permission, and there was an inconsistent range of built-form styles. But their presence years later would prove to be crucial to lessees when replacement and expansion bids were mounted. It would be many decades before the most established and the most financially well resourced organisations, backed by skilful management teams, would capitalise on what was there. This comprised the

existing footprints of the old structures, as well as allowances made possible by changes in the park lands zone policy area provisions of the *Adelaide (City) Development Plan*, and multiple post-2010 changes to policy documents managed by the city council. This became especially evident as the *Adelaide Park Lands Management Strategy* (2010) made way for the third version (2016), which conceptually championed the paramount importance of sport activity in the park lands, a state desire to see it increased, and the concept of facilities and oval sharing by multiple groups. The 2016 Strategy's strategies, and subsequent action plans, accessible in early 2015 drafts, made it clear that what the government described as park lands 'activation' was strongly supported, encouraging upgrading of facilities, and for them to be shared. The revised wording in these and other documents, and statutory instruments determining development allowances, would prompt an increase in applications for new recreational built-form concept authorisation (commencing via the Adelaide Park Lands Authority), and subsequent authorisation of development applications (via the city council). The concept stage presentations would sometimes follow the signing of a new, long-term lease or, more commonly, be accompanied by simultaneous requests for extended or fresh, long-term leases, with generous terms, as well as grounds licences in a way that implied that there would be no investment without long-term lease tenure. A guarantee of tenure through the signing of a new lease became equity when negotiating finance arrangements for a new building proposal, just as multi-year licence approvals became equity when park lands event organisers developed their business plans. The long-term lease applicants' self-interest would be sometimes manifested as a proposal for park lands investment for 'the common good', as if the future of the park lands depended on investment in the form of new buildings for the common good. But the door keys to those buildings would be held by private, commercially based sport or education bodies, or less wealthy suburban incorporated sport bodies, whose daily use was similarly prescribed and allowed under the lease and licence terms. Most lease fees relating to these were modest, relative to the area of public land committed under the lease and the prescribed periods of occupation, sometimes 21 years but often 42 (as 21+21). Additionally, generous rent discounts of up to 80 per cent also applied if the applicant complied with council-specified criteria. But because of 'commercial-in-confidence' reasons, not all lease details (especially the annual fee) were publicly revealed. Even if they were, the special rent discount details did not necessarily accompany the lease particulars. If an observer did not follow the authorisation paper trail, or could not for reasons of confidentiality orders, all that remained when the pavilion was built was a reference on the council's website to the current version of the *Adelaide Park Lands Management Strategy* which published only the lessee name, the lease term, and the park lands site.

Public participation challenging

The 'big pavilion' trend began in 2011. An appendix to this chapter explores eight pavilion concepts that had been either approved, with construction completed by 2018, or at least favourably discussed in-principle, by year-end 2018. A rarely observed feature of the three authorisation phases (Adelaide Park Lands Authority,

city council, then council-based planning assessment panel) was that public objections carried no legal weight at the first two phases, even if the public were formally consulted and objected. Moreover, at the third phase, development assessment, the only objections that could carry weight would have to be on the basis of inconsistencies with the park lands zone policy area provisions of the *Adelaide (City) Development Plan*. But if the assessor at development assessment stage concluded ahead of assessment that the proposal was deemed to be 'complying development' under those provisions, and thus categorised Category 1, this meant that no public notification or consultation was required. Such determinations did not allow for court appeals. In most cases, pavilion concepts subject to development applications would be carefully crafted to fit the development plan's rules, and thus were mostly classified as Category 1. There was no legal requirement for public consultation during the first two phases (APLA or the council), although it did occasionally occur. However, even if objections to a concept or procedure arose, they could be ignored by administrators with impunity.

In terms of leases, park lands law stated that there needed to be public consultation and parliamentary notice if a proposed new lease were to be for more than five years, but if the lease application were lodged months or years before the tabling of any development concept or development application, contemplation of lease particulars did not have to consider these additional development complexities. Tactically, this was easier for the lessee.

In terms of approaches by long-term lessees to have lease terms refreshed, it was also wiser not to publicly foreshadow future facilities development. This occurred, for example, with Tennis SA, which managed substantial park lands buildings and court infrastructure near Pinky Flat, a park lands site (Park 26). For example, at the commencement in 2014 of discussions about refreshing Tennis SA's park lands lease, there was no public indication of any looming redevelopment. In that particular instance, major redevelopment of Tennis SA sites occurred in 2017, a year after a new lease had been signed. The lease particulars had been subject for three years ahead of that proposed development to multiple Authority and city council deliberations – all kept secret by confidentiality orders, before finally emerging for a public consultation phase – but only about the contents of the lease, not the deliberations or the lease fee. At year-end 2018 those orders remained in place, which meant that the public could not access details. This occasionally surprised observers, given that it related to the use and occupation of public land.

The 'pavilion criterion'

The consolidated version of the *Adelaide (City) Development Plan*'s principle of development control (PDC) that accompanied the first pavilion application in 2011 by the University of Adelaide was PDC 10, which read: "Buildings should: (a) where intended to be visible from a distance or to form termination of a view or vista, have a pavilion design character incorporating verandahs, pergolas, or colonnades on all sides ... (b) be designed to be as unobtrusive as possible,

complement and blend with their surrounds, and be suitably screened by landscaping ..." Despite the wording, observers today of the pavilions subsequently built will have no difficulty concluding that none complied with this. Each would be highly obtrusive, relative to its surrounding landscape. There would be very little 'screening'. Each would be a manifestation of the blunt application of concept theory by architects hired to create what they saw as beautiful built form on paper or computer screen, versus the confronting reality of practice, in which that form would appear in green open space as highly confronting, a brutal contrast to the space that surrounded it.

Elsewhere in the development plan's statements, and council's policy documents, would be reference to 'footprint', and an implied preference for 'like-for-like' footprint when existing buildings were to be replaced by something new, or at least 'minimal difference'. The wording was sometimes ambiguous, depending on the policy source. What mattered was that approaches to authorisation bodies needed to play what might be described as 'the footprint numbers game', which is explored in detail in Chapter 47 of this work. Key to understanding the complex procedural shenanigans that occurred in relation to this game was the fact that footprint was a measure taken most seriously at law only at the third assessment stage of the development application, when being assessed against the *Adelaide (City) Development Plan*, an instrument of the *Development Act 1993*. Only if the proposed pavilion's dimensions were to significantly exceed existing footprint might assessors be prompted to ask whether this reclassified the proposal as 'non-complying' under the planning assessment rules at the time. But if the proposal was judged 'like-for-like' (or near enough as was the case for the university in 2011) the category would be deemed 'complying' and thus 'Category 1', in which case no public consultation would be necessary. In the case of the university's pavilion, in this way development occurred quietly without a requirement for consultation. It was only when the new lease was subsequently negotiated that the public were asked to comment – but only about the lease. Objections arose about the building's scale and the site's close proximity to a residential area, but were ignored because they didn't focus on the lease. The park lands bureaucracy's 'tunnel vision' was legally driven.

The development trend spike

The first notable application (2011) came from the University of Adelaide Sports Association, resulting in construction of a large, obtrusive pavilion at Park 10, adjacent to MacKinnon Parade, North Adelaide. It was followed in 2015 by an intention to apply for something equally obtrusive in the adjacent Park 9, a kilometre east, by Prince Alfred Old Collegians Association.[1] Two more emerged in 2016. One related to a bid by the Adelaide Comets Football Club and Western Districts Athletics Club for Park 24 on West Terrace. The second notable

1 Despite multiple Park 9 concept plan discussions, which had begun in 2015, this development did not commence until late 2022.

application was from the South Australian Cricket Association, whose three-storey pavilion can now be seen dominating Park 25's open spaces near the new Royal Adelaide Hospital, west of the city. Next followed a 2017 approach by Tennis SA, for approvals to expand its existing War Memorial Drive site's facilities, as well as build a small (but historically significant) pavilion on existing tennis courts at Park 1 facing Montefiore Road – until then open space. It was significant because the new built form would accompany a relatively small hard-stand area which had previously never been deemed by Tennis SA to require a structure, given that the courts were simply a small extension of courts from across the road. Although apparently dated 2017, years of preliminary in-confidence discussions with the council had preceded the Tennis SA bid.

Two western park lands sport-related development concepts appeared to emerge in 2017, but one, at Park 22 adjacent to Goodwood Road (netball and hockey clubs), had originated several years earlier, beginning with an attempt to manage car parking complexities and ending with a council-funded concept plan for a major new pavilion and new sports grounds, with the building to be shared by clubs. It would be proposed to be twice the footprint area of existing buildings there, but at year-end 2022 only the concept plan existed, not the development plan drawings (at least not in the public domain). The second south-western site related to land adjacent, at Park 21 West, with a proposal to erect a two-storey pavilion about 20 per cent larger in footprint.

The last (in the series covered during the study period of this work) was a 2018 attempt by financially independent school Pulteney Grammar to obtain Adelaide Park Lands Authority and city council concept approval for construction of a large new pavilion significantly exceeding existing footprint on south park lands adjacent to the school site, at Park 20, on South Terrace. Architect's drawings were ready to approve when the concept was publicly revealed. There was clear evidence (elsewhere, commencing in 2014; more below) that there had been years of preliminary, confidential discussions with the Authority and council, but post-2014 documentation remained subject to confidentiality orders. The first (2018) attempt succeeded at publicly achieving 'in principle' approval, but not final approval. Public protest followed about its scale and footprint expansion. The school was asked to re-submit. At year-end 2018 it remained a 'live' proposal, but the school's second attempt had not been lodged or re-tested.

What appeared to be coincidental – that the school's approach featured duplication of many of the previous applicants' rationales and park lands documentation references – was not coincidental at all. Reference to the same *Adelaide Park Lands Management Strategy* extracts repeatedly appeared. The features of the city development plan's principle of development control number PDC 10 guided all. Bureaucratic assessments also capitalised on the implied, generous allowances in park lands policy for park lands development for sport purposes, as well as ambiguities that washed between policy and planning provisions.

"It's a lie", said one objector

In June 2018 a city council area resident responded to a public consultation about the city's 2018–19 Integrated Business Plan. He wrote: "The council must be firm in its rejection of all new building in the park lands. Elite, church-based, private schools seeking to build infrastructure 'dressed up' and sold as a benefit to the community is a lie, and needs to be called out for what it is: pure self-interest."[2]

The respondent had observed that, since 2011, a pride of pavilions, or proposals for them, had emerged, rather similar in design and scale, some of which would be funded by elite, church-based schools, but others of which were funded by long-established institutional (state educational) or private (commercially based) sport clubs. There was no doubting the 'self-interest', as well as requests for leases of up to 42 years, the longest term allowable (sometimes as back-to-back periods: 21+21) that accompanied some. Within the non-club-member communities visiting these park lands sites, there was uncertainty as to how open these facilities would be to people not associated with the organisations that proposed to build them or run events there. The city council vigorously responded to the June 2018 objector, defending its recent history of determinations leading to development approvals, noting also that it "... has firm principles in place that restrict any increase in footprint", and citing various practices including consolidation of buildings (demolitions) to make way for the new proposal; consolidation of purpose ("eg, can multiple sports/groups share the same facility to minimise the number of buildings in the park lands?"); community benefit ("eg, does the building facilitate participation in the park lands and does the community have access, ie, are you excluded if you are not a member?").[3] The council's claim about the firm principles on footprint expansion did not stand up to scrutiny, as case studies in Appendix 19 of this work illustrate. The observation about access was grandiose and difficult to sustain. Most commonly, the applicants' pledge related only to public access to toilets, but not necessarily during week-day business hours or after hours. But the council's comments were also in places difficult to assess, because over time public access to park lands buildings can be influenced by the often random number of annual events that the lessee occupier of the building held for the explicit benefit of its members, or for the benefit of its sub-lessees. Access is also influenced by public perception, a more difficult aspect to measure, where non-member visitors might have doubts about their right of entry to new buildings or surrounding playing areas on events days, or entry any other day, and therefore did not try to enter. The philosophical matter of the pavilion's occupation of a section of the park lands has always played a role in the public's perception (accurate or not) of its right of entry into the adjacent area. The presence of a large building badged with the club's name can often repel people from freely and openly accessing the park lands around it. This, combined with sub-lease arrangements that allow other groups exclusive access at certain times (but without any public notification warning about

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[2] Darren McMillan, as found in: Adelaide City Council, The Committee, Agenda, 'Submissions received from individuals on draft 2018–19 Integrated Business Plan', 5 June 2018, page 68.

[3] Adelaide City Council, ibid, 5 June 2018.

these exclusive sub-lease rights) also can contribute to a sense of alienation of the public from the site. It might be summed up (with apologies to George Orwell) by the saying: "All of Adelaide's public park lands are accessible, but some park lands are more accessible than others."

The silent philosophical dilemma

While access was and remains a touchy public issue, there was another issue about which the city council was even more sensitive. It would be so sensitive that despite a formal $30,000 council-commissioned inquiry into it, at year-end 2018 the subsequent report remained subject to a confidentiality order, and excluded from public access.

As this period of pavilion construction was progressing, no-one within the city council was keen to probe a fundamental philosophical public-assets dilemma that had been growing as the decades passed. It was how to craft policy addressing (and more particularly, justifying) the issue of private investment in a public park lands site that was under the custodianship of the council, and its consequences. It was common knowledge that some lessees and licence holders had poured significant money into park lands facilities over the years, but administrators tended to quietly ignore a need to address any consequential public policy position. In cases in which a facility was owned by the council, this was important. But as the years passed, and refurbishing efforts became complicated by the emergence of new standards and requirements applying to park lands sites and some buildings leased from the city council, a fundamentally revised policy approach was needed.

The spike in growth of proposals to build big pavilions beyond 2011, with some of the most publicly prominent park lands lease applicants proposing to spend millions on construction, put the issue into sharp relief. Management of the applicants' consequent demands was perhaps the easy part, and it was quietly occurring. Behind the scenes, administrators placated some of the more wealthy lessees by offering long-term leases on very generous terms, as well as accepting responsibility for ongoing maintenance of grounds immediately surrounding the pavilions, and car parks near them (the parking places of which would be mostly taken up by the lessees' club or association members). At the completed pavilions, these leased sites soon assumed the characteristics of essentially privatised space. In this way, sources of private money, or taxpayers' funds used for the exclusive benefit of particular lessees, were determining changes to park lands landscapes in ways that earlier park lands administrators had not often previously needed to contemplate.

A defining but controversial master plan

The council had also commissioned a policy paper, a 'monster' of its own creation, driven by demands after about 2010 from park lands lease holders who wished to significantly upgrade their facilities as well as the sites that they leased. The South Australian Cricket Association (Park 25) and Pulteney Grammar school (Park 20) were two influential lessees whose concepts appeared in the 'monster', years before they became reality. In collaboration with the Office for Recreation and Sport and

under the watchful eye of the Labor state government, the 'monster' was a new *Sports Infrastructure Master Plan – West and South Park Lands* (SIMP). Apart from pressure by wealthy lessees, its creation had been directed by a government-driven concept of 'multi-use community facilities', shared by sporting groups whose universal desire aligned with the idea first captured in the 2010 *Adelaide Park Lands Management Strategy: Towards 2020*. This introduced contemplation of increased access to, and expanded use of, sport grounds in the park lands. The idea would be significantly expanded in the third version (2016). Administrators examining draft concept proposals would be able to cherry-pick Strategy extracts to rationalise pavilion building and grounds expansion across the park lands. The SIMP became another useful source of extracts, used as 'proxy policy' by the city council when approving a pavilion concept or lease. For example, it had been referenced when the SACA Park 25 pavilion lease proposal arose. "This project is endorsed in-principle through the [SIMP]," the council noted in November 2016.[4]

But there was a problem. Although endorsed 'in-principle' in June 2014, the SIMP's full council endorsement as a policy document had not followed because many fundamental issues remained unaddressed. Four years later, it remained unendorsed.[5] The lack of endorsement meant that administrators were using the SIMP as a policy basis that had never been properly established or authorised. Its legitimacy as formal policy was administratively doubtful. But this was a subtlety fully understood only among administrators. To casual readers of agenda and minutes documents reference to it suggested valid policy based on a previous proper process of resolution of outstanding issues and formal council endorsement.

The 2014 in-principle SIMP approval's caveats had been substantial. They included that:

- "... appropriate governance and tenure arrangements will need to be determined in order to secure funding from external organisations (eg sport associations and educational institutions), as well as clearly identifying ongoing management and maintenance responsibilities.
- "The Chief Executive Officer [of the council] will explore funding options including potential financial contributions from third parties.
- "The results of these explorations will be presented to Council in the form of a business plan that includes consideration of any likely matching funding requirements or tenure arrangements to secure funding and commitment from third parties, including ongoing management and maintenance responsibilities." [6]

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[4] Adelaide City Council, Strategy, Planning and Partnerships Committee, Agenda, 'Consultation results, lease, Park 25', 8 November 2016, page 418.

[5] A fact check with the Adelaide Park Lands Authority's executive officer, Martin Cook, confirmed this: 4 November 2018, personal communication, email: Bridgland: "I note that it was adopted 'in principle' on 24 April 2014, but was it ever formally endorsed by a) the Authority, and b) the council, and if so when (for each)? Cook: "No – that was the extent of the endorsement."

[6] Adelaide City Council, Council meeting, Active City Program. Minutes, Item 9, '*Sports Infrastructure Master Plan – West and South Park Lands*', 10 June 2014.

The opaque way in which these caveats would be addressed as formal policy (if they ever were) underscored that the master plan (the SIMP) still required much work, but that the work would be done behind the scenes. This replicated the way that the Labor state government liked to work: expediency in a culture of opaque decision-making about park lands matters, in many cases leaving no public paper trail. The lack of formal endorsement also illustrated the high level of sensitivity within the administrative corridors. In the years that followed, the SIMP would be relied upon to legitimise at policy level concept development proposals for south and west park lands at Adelaide Park Lands Authority and council assessment levels as if the concepts had been fully resolved and formally signed off at the published date (June 2014) by those proposing them, and that the 'business plan' existed (and was publicly available, although it was not), and that all were the product of the council's fully endorsed policy. It was an example of administrative sleight of hand, which applied a veneer of legitimacy on the procedure.

Motion triggers inquiry

These policy matters slipped from public attention after 2014. But public disquiet about the pavilion trend was more difficult to manage. Public funding issues would be formally and publicly revisited only as a result of a November 2015 Motion on Notice by city North Ward councillor Phillip Martin. It would not have impressed administrators who may have hoped that public curiosity might quietly fade over time. The motion called for "… a review of the [council's] practice of accepting private investment to fund construction of buildings on long-term leases on the park lands as opposed to council funding construction on the park lands through long-term debt or any other model judged to be worthy of consideration …"[7] The motion became a formally endorsed resolution on 5 April 2016, with council approval to spend $30,000 "… to investigate and review alternative delivery models …"

The report of the investigation exists, but remained locked away at year-end 2018, and only the record of the administrative contemplation of the task ahead is publicly available. But the contemplation's key points were revealing. The scope of works included a proposed investigation of opportunities, which were already manifesting as council initiative temptations, and risks, which would in future emerge as likely management problems, especially following council's creation of the SIMP and the implied endorsements inherent in its expansive park lands upgrade concept plans. The scope sought to probe:

- "Opportunity to provide multi-tenanted buildings which can incorporate additional elements, such as public toilets.
- "Opportunity to plan development as [the] budget can be allocated from council on a prioritised basis, rather than waiting for investment or co-funding from the community.

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[7] Cr Phillip Martin, as found in: Adelaide City Council, Finance and Business Services Committee meeting, Agenda, Item 15, 'Other business, Cr Martin, Motion on Notice, Review of Private Investment', 17 November 2015, page 146.

- "Risk of not delivering other infrastructure upgrades through loss of partner resourcing or inability to obtain appropriate return on investment.
- "Risk of [the] State Government granting long-term leases over park lands to facilitate development (for example, the legislative requirement to grant a 50-years lease over the redeveloped Adelaide Oval) or removal of Council's care and control over parts of the park lands."[8]

The SIMP's purview came back into focus under the anticipated scope of works. A particularly revealing theme was that council's contemplation to allow private investment in a select few park lands sites could open a veritable Pandora's box in relation to the potential number of other lessees that might similarly demand extended lease periods under fresh agreements, using the financial leverage of promised part or full funding to redevelop facilities, and the consequential policy complications arising from that. The dimensions of the 'Pandora's box' were summed up in background to the scope, with mention of another 42 buildings buried in the text:

- "The *Sports Infrastructure Master Plan* concentrated on nine parks in the West and South Park Lands, specifically within the designated regional sports areas identified in the *Adelaide Park Lands Management Strategy*. This plan identified 18 (of the current 32) buildings to be replaced by seven new purpose-built, multi-use buildings.
- "A cost plan was prepared in 2014 for the *Sports Infrastructure Master Plan* which estimated approximately $42m would be required to deliver the buildings and associated works in Parks 17, 18, 19, 20, 21, 23, 24 and 25. The cost plan included landscaping, lighting and ancillary community facilities (such as barbecues, courts and shelters) valued at approximately $13m. These concepts were developed following consultation with existing and proposed user groups and may require updating following the outcome of any expression of interest process that may be required to be undertaken prior to proceeding to construct the new facility.
- "Apart from Pakapakanthi/Victoria Park (Park 16), master plans for the remaining parks have not been commissioned. There are currently approximately 42 community/sporting buildings including a number of heritage-listed buildings (which are either leased to commercial operators such as the Victoria Park Heritage Grandstand, [the] Kiosk and [adjacent] North Adelaide Railway Station buildings, or for community use such as the Adelaide University Grandstand)."[9]

The policy challenges that might arise from the completed report were also anticipated. Their extent illustrated the depth of management complexity inherent, not only when buildings were constructed on Adelaide's park lands, but also when these buildings were funded privately which could be associated with demands for

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[8] Adelaide City Council (ACC), Infrastructure and Public Space Committee, Agenda, Item 10, 'Private investment in the park lands', points 15.1–15.4, 5 April 2016, page 224.

[9] ACC, ibid.

long-term occupancy beyond that which the council might usually offer, contributing to a public perception of privatisation of a public site for the duration of the long lease: potentially up to 42 years. The numbering below is council's, and it is presumably in order of importance. These aspects highlighted the multi-layered complexity of the proposed research task:

- "10.1 Legislation relating to the park lands and its leasing and licensing; 10.2 Council's current strategies and policies; 10.3 Building asset data including assessments of condition, functionality and compliance to determine a prioritised construction schedule and estimated construction costs; 10.4 Analysis of possible funding options and models including the long-term financial sustainability of council; 10.5 Financial analysis of whole-of-life costs of asset ownership; 10.6 Analysis of the property market and willingness of the community to engage with council in a different way; 10.7 Fairness and equity to existing lessees; 10.8 Potential risks and benefits; and 10.9 Best practice within local government for the management of facilities on community land." [10]

The influence of the new Park Lands Management Strategy

Included in the April 2016 brief for the 'Private investment in the park lands' report was reproduction of strategies 1.4, 1.6 and 1.7 of the (then) draft of the emerging third version of the *Adelaide Park Lands Management Strategy*. It had not yet been signed off by the council, and would not be government-endorsed for another year after that (August 2017). But the purpose was important. The 'actions' (objectives) stipulated endorsement of many of the fundamental ideas reflected in the contemporary plans, and in the 2014 SIMP. They included (among others): 'Consolidate sporting facilities and relocating infrastructure to encourage shared services'; 'Upgrade playing areas ...'; 'Deliver a variety of facilities, including clubrooms and small-scale commercial operations to support community use and participation in sport and recreation'; and 'Deliver improved playing surfaces (natural and synthetic)'.

But there would be some irony in the nature of some of the other cited actions, the extent of which could only be noted in retrospect as at year-end 2018. In Strategy 1.4 of the Management Strategy, for example, the action to 'Reduce the total area given over to buildings, car parks and other impermeable surfaces ...' would more often than not be strongly contradicted, as is revealed in the pavilion case studies appearing in this work's Appendix 19, where almost all of the proposed pavilions would exceed prior footprint, and where new formalised car parks on park lands would be created where once there were none. The fact that the new car parks would not be hard-stand but gravel was really neither here nor there – they still devoured park lands open space and permanently restricted the land use to a car parking function.

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[10] ACC, ibid., 5 April 2016, page 223.

In another example, Strategy 1.6, the objective to 'Ensure that leasing and licensing of sporting and recreation areas in the park lands is undertaken in a transparent and equitable manner' would rarely be honoured, with most proposals for long-term leases being negotiated behind closed doors, and often linked to pledges of pavilion funding by the ongoing lessee. But eventually, as the law demanded, they would have to be publicly consulted – but only as a *fait accompli*. In those cases, transparency would be late in coming.

In a third example, in Strategy 1.7, the objective to 'Provide for unrestricted community access to sports fields and recreation areas outside of designated game and training times ...' would be honoured in theory, but rarely in practice in relation to the more active park lands pavilion and grounds lessees, whose sporting calendars were often so full that there was simply no time available to allow for unrestricted community access.

The theory in the *Adelaide Park Lands Management Strategy* sounded so much better than the subsequent practice. But when administrators gathered in city buildings, theory was all that mattered around the table.

Further reading

To further explore 2011–2018 pavilion development on the park lands, please refer to Appendix 19: 'Eight pavilion case studies'.

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Case study – Adelaide Botanic High School, eastern park lands

FEATURES	COMMENTS
What	New $100m high school for student population of 1,250. Construction commenced 2017.
Park land area	Botanic Park Policy Area 19 of the *Adelaide (City) Development Plan*. Land (1.7ha) east of the University of Adelaide, adjacent to Frome Road.
Beneficiaries	• University of South Australia, which sold its Reid building on that land to the state government for $30m to allow for the redevelopment. This building, after it had been emptied of asbestos and fully refurbished, would form one of two education-focused, multi-storey towers at the site. The second tower was new. • State secondary school students from various metropolitan school zones. • Education bureaucrats, whose task was to manage increasing demand for city based, state secondary education facilities.
Cost	Initially estimated at $85m, rose quickly to $100m; final cost never revealed.
Historical relevance in the context of a 1998 to 2018 study	The second school to be approved for construction on Adelaide's park lands, but 65 years after the first had been constructed in the west park lands in 1951 (Adelaide Boys High School).
Park lands management features	Policy Area 19 site was originally remediated from a car park back to park lands in 2010 by the Rann Labor state administration, and to much Party acclaim, as underscoring its commitment to rehabilitate former park lands sites previously lost to commercial purposes. New school construction plans conceived in 2014. Construction had been classified as 'non-complying' until the Labor state government modified the policy area provisions of the *Adelaide (City) Development Plan* (September 2015) and then ensured that the proposal was endorsed and prioritised in the subsequent third version of the *Adelaide Park Lands Management Strategy*. This was published after the school plan had been approved. Its endorsement implied a policy green light for the plan amendment even though the Strategy was not a development application assessment instrument. The former, second version (2010) Strategy had not contemplated a school for that policy area. Because the proposal was classified under planning rules as Category 1, no public consultation was required.

FEATURES	COMMENTS
Park lands relevancies	Symbolic of the post-2011 Weatherill Labor government administration's pursuit of major state development projects across the park lands. Clever state planning bureaucrats had manipulated the rules by modifying an instrument of the *Development Act 1993* (the development plan), without needing to amend the Development Act's section 49 provisions to allow what was effectively a 'Crown development public infrastructure project' on the park lands. These provisions for the park lands had been disabled 10 years earlier through state Labor's *Adelaide Park Lands Act 2005* (via its interacting *Development Act 1993*) to block that specific outcome. It meant that such project provisions could not be triggered for park lands proposals. The 2015 outcome signalled that major developments within the park lands during and after 2015 could be based on the same manipulative planning approach. It effectively meant that the intent of the 2005 Act with regard to government development projects on the park lands had been politically compromised. This was the same political party that wrote and steered the *Adelaide Park Lands Act 2005* through state parliament, pledging that, through that Act, big construction projects similar to those allowed by the former Olsen Liberal government on the park lands capitalising on the infrastructure projects provisions would never again occur.

The $100m Botanic High School construction project was not only audacious in terms of the state government's appetite for development on previously remediated park lands, but also was deeply symbolic. It highlighted how much had changed within the same Labor Party administration in only 10 years. It illustrated that, despite the intentions of the Adelaide Park Lands Act 2005*, its Statutory Principles and certain interacting but disabled Development Act provisions, none had effect if a government determined to pursue park lands development in direct contradiction to those intentions. Nothing spoke more profoundly of the Adelaide Park Lands Act's fundamental weaknesses, and those of the* Adelaide (City) Development Plan *provisions for the park lands zone policy areas, hitherto not tested in this way.*

New term, new plans

In 2014 the state Labor government won a third consecutive election and began a new term with new plans. Jay Weatherill was Premier. State cabinet soon began planning major infrastructure projects for the park lands. These objectives would trigger the commencement of a policy revision that would manifest two years later in the 2016 *Adelaide Park Lands Management Strategy*, using a ministerially nominated Project Advisory Group to influence the adoption of the new objectives.

It would also put in place the means to achieve one of the state's most audacious park lands construction projects for the period. To achieve that, park lands zone policy area provisions of the *Adelaide (City) Development Plan* would need to be modified – and quickly. This would allow for construction of a new, six-level, $100m school on park lands – without public consultation. Within 18 months of the 2014 election, and against heavy odds, the state government achieved its school project policy objective.

Historians in 2015 who recalled the rows that had followed Premier Thomas Playford's acquisition of park lands for construction of the Adelaide Boys High School (1947-1951) might have reflected that, 65 years later, with a park lands 'protection' Act in place, a repeat performance would be politically impossible. In fact, any bid to create a huge, multi-storey building on park lands would be political dynamite, and especially so at the site contemplated. It was in the Botanic Park Policy Area 19 on land that had been restored to park lands by the Rann Labor government in 2010, having been previously a University of South Australia car park for some years. It had been first nominated to be returned to park lands in the 1999 *Park Lands Management Strategy Report 2000–2037* and this objective remained a high priority during Labor's first two terms. In park lands terms, restoration of that site had been of great symbolic value, long pursued, and championed by the Rann Labor government, especially during its second consecutive government terms as clear evidence of its commitment to its political park lands 'protection' principles.

But by 2012, under new Labor Premier Jay Weatherill, the game had changed, the gesture forgotten. State bureaucrats briefed to act on decisions made in state cabinet sought government planner advice. They found a clever way to achieve the objective. It would operationally manifest in a slick operation of the traditional 'pea-and-thimble' carnival trick, in which attention would be drawn to one park lands construction project, while another highly contentious proposal nearby would remain effectively invisible until too late in the routine to matter. The method of prosecution would be a ministerial development plan amendment (DPA), whose publicly perceived immediate effect would be authorisation of a controversial proposal for a $160m O-Bahn City Access project, a public transport line to run along the eastern edge of Botanic Park and Botanic Gardens very near the proposed school site. It would significantly alter park lands topography as it reached Rymill Park to the south. The choice to adopt a *ministerial* Park Lands Zone DPA was central to the plan. A more commonly occurring DPA, which would be progressed by the city council (sometimes under ministerial instruction), risked being delayed and compromised. That risk was accurately assessed by the bureaucrats who advised use of a 'ministerial' because when the city council fully comprehended the tactic, it would vigorously oppose it in relation to the school concept. A 'ministerial' could progress quickly, despite legally defined procedures for public consultation about the O-Bahn city access project. That consultation, however, would focus more on the highly technical aspects of the proposed planning change, than the projects themselves.

This particular DPA procedure also featured a clever additional feature of the pea-and-thimble ruse. The publicly released map showing the 'Area affected park lands zone DPA', included the controversial site, 'Botanic Park Policy Area 19'. It illustrated the contentious O-Bahn line that would cut into the eastern edge of that site, but was ambiguous about the land secretly nominated for a school construction project. The ambiguity was deliberate and the state's tactical planning had begun early. Close observers would see that, despite a claim that the map was 'compiled in February 2015', it had been copyrighted in 2014.[1]

The city spots the scam

Public consultation about the planning technicalities of the DPA commenced in June 2015. But while the public were examining its complicated features, the state government announced something else. The city council noted it.

> "Since public consultation commenced on this DPA, there also has been an announcement by State Government of the location for a new City High School on the existing University of South Australia site (known as the Reid Building) located on Frome Road in Botanic Park Policy Area 19. The DPA investigations do not mention this proposal or provide any analysis of the suitability of a range of future public infrastructure uses ... by this DPA.
>
> "There is limited evidence of investigations into the full implications of the policy change in relation to the broader range of public infrastructure uses ... This makes it difficult for stakeholders, particularly the general public, to understand the full implications of the DPA."[2]

The difficulty was intentional. Development plan amendments for the park lands were traditionally difficult for non-planners to comprehend. They represented planning amendments to a park lands instrument (the development plan). They used legalese and planner jargon. Their complexity often forced public respondents to rely on ambiguous and sometimes misleading state government copywriting in explanatory documents about what was proposed. The city council noted on 7 July 2015 that the tactics being pursued by the state were particularly manipulative. While the O-Bahn City Access project had been previously flagged in multiple other strategies and plans, beginning with the *30 Year Plan for Greater Adelaide* years earlier, the proposal for the school was, in the council's opinion: "... not mentioned in the government's DPA executive summary and analysis, nor have the relevant policies been analysed".[3] Highly relevant to the issue at the time was the

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1 Figure 1a, 'Area affected Park Lands Zone DPA', page 40, as found in: Adelaide City Council, Strategy, Planning and Partnerships Committee meeting, Agenda, Item 9, Attachment B: '*Adelaide City Council Submission to: Park Lands Zone, Development Plan Amendment, July 2015*', 7 July 2015.

2 Adelaide City Council, (ACC), ibid., 7 July 2015, page 79.

3 ACC, ibid., page 88.

planning fact that, if the DPA process did succeed in modifying the development plan, certain non-complying infrastructure proposals for park lands zones would become 'complying' in the plan, and therefore be classified as Category 1. This meant that no public consultation about any arising development application would need to occur. This is precisely what the state government sought, and achieved, once the DPA had been gazetted on 17 September 2015, which brought it into legal effect from that day.

Historic bulwark collapses

The city council also noted something that had been of great historical importance, only 10 years earlier. The Weatherill government's 2015 initiative behind the DPA was to effectively abandon, for a number of park lands zones, the intent of a 2005 pledge made by previous Labor Premier Mike Rann, and ministers John Hill and Dr Jane Lomax-Smith in the lead-up to the proclamation of the *Adelaide Park Lands Act 2005*. They had pledged that sections of the *Development Act 1993* (with which the 2005 Act interacted) would be disabled via the 2005 Park Lands Act to block future attempts to develop park lands sites in the form of major infrastructure projects. In principle, the disabling meant that no subsequent amendments to the *Adelaide (City) Development Plan* policy applying to park lands policy areas could follow. But the intentions behind Labor Planning Minister John Rau's bid only 10 years later, in 2015, was to side-step that intent; in particular, in regard to section 49 of the Development Act (Crown development by State agencies). In the government's opinion, no change to the *Adelaide Park Lands Act 2005* or the *Development Act 1993* was necessary.[4] The minister was correct. The trick was as complicated (procedurally) as it was simple (in practice). It modified what was deemed to be infrastructure allowances in the development plan, and made complying what had previously been non-complying for that specific Policy Area 19 site – a school. This modified other consequential procedures; in particular, the procedure requiring public consultation about the huge project. Category 1 meant that there would be no need to consult the public about it.

'Inappropriate' park lands development 'exposed'

The city council noted: "The proposed use of the broad definition of 'public infrastructure' has the potential to expose the park lands to inappropriate land uses and built form without adequate strategic investigations into the potential implications on the National Heritage values, community values, attributes and character of the Adelaide park lands.[5] It also noted that the DPA was at odds with

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[4] Minister John Rau, letter to state parliament's Environment, Resources and Development (ERD) Committee presiding officer, see: 'DPA threatens the intent of the *Adelaide Park Lands Act 2005*', page 33, 14 April 2016, as found in: Adelaide Park Lands Authority, Board meeting, Minutes, Item 8, 'Submission to ERD Committee – Ministerial Park Lands Zone DPA', 23 June 2016, page 33.

[5] Adelaide City Council (ACC), Strategy, Planning and Partnerships Committee meeting, Agenda, Item 9, 'Submission to the Ministerial Park Lands Zone Development Plan Amendment', 7 July 2015, page 21.

the intent of the *Adelaide Park Lands Act 2005*, "... which was established to: • Provide a legislative framework that promotes the special status, attributes and character of the Adelaide Park Lands, and • Provide for the protection of those parklands and for their management as a world-class asset to be preserved as an urban park for the benefit of present and future generations".[6] The difference between the actual provisions, and the intent behind the provisions would become a focus of the dialogue at this time. The $100m Adelaide Botanic High School construction project was not only audacious in terms of the state government's appetite for development at previously remediated park lands sites, but also was deeply symbolic. It highlighted how much had changed within the same Labor Party administration in only 10 years. It illustrated that, despite the intentions of the *Adelaide Park Lands Act 2005*, its Statutory Principles and certain interacting but disabled Development Act provisions, none had effect if a government determined to pursue park lands development in direct contradiction to those intentions. Nothing spoke more profoundly of the Adelaide Park Lands Act's fundamental weaknesses, and those of the *Adelaide (City) Development Plan* provisions for the park lands zone policy areas, hitherto not tested in this way.

The 2016 Strategy endorses ... backwards

Endorsement of the school building development concept appeared in the 2015 draft and subsequently endorsed version of the new *Adelaide Park Lands Management Strategy 2015–2025*. That too symbolised something procedurally significant. State planning policies' 'assumed' protocols usually anticipated that changes to park lands policy area wording of the *Adelaide (City) Development Plan* would be first prompted by changes to iterations of the Strategy. But as was clearly evident, the changes to the development plan had been government-approved and gazetted well before the Strategy had been publicly consulted (which commenced many months later on 30 November 2015) or endorsed by any other body, in the usual sequence. It usually began with approval by the Adelaide Park Lands Authority (but that occurred in May 2016), or the city council (December 2016), or the minister (August 2017) – well after the school construction had begun. This illustrated that when critical government policy change demanded speed for tactical political purposes, the usual protocols would be jettisoned, and instead applied backwards. It would be implied to public observers that any procedural matters would be addressed in the future, but by the time the draft Strategy was being publicly consulted on, the outcomes were mere formalities. In the Strategy's Botanic Park Park Lands and Adelaide Zoo Precinct section, it was summarised thus: 'Drivers of change. The imminent redevelopment of the old RAH, together with the development of a new CBD School at the University of South Australia's Reid Building and the O-Bahn tunnel on Hackney Road, are the key initiatives generating change in this precinct. ... the old RAH and CBD School developments are likely to significantly increase visitation to and use of the precinct (as well as surrounding park lands areas) ...'[7] The highest priority identified was the

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[6] ACC, ibid., page 22.

[7] *Adelaide Park Lands Management Strategy 2015–2025*, endorsed by the city council, version: 15 November 2016, page 80.

school development. The singular reference to the Reid building was also misleading. When development assessment plans emerged, that building would form only half of the whole development. There would be a second tower constructed adjacent to the older building, to deliver one built form. There were plenty of signs that parties to the project had been carefully controlling explicit release of detail. The political sensitivity was palpable.

The city council retreats

The city council fought back, appealing in early 2016 to state parliament's Environment, Resources and Development (ERD) Committee. The council had originally described the school bid as an 'unknown project', and claimed that the project did not have 'complying' planning status under the development plan for that park lands policy area. The minister disagreed. The appeal procedure proved to be the traditional waste of time and effort that some parliamentarians historically had warned about, given that it was dominated by government members not motivated to challenge one of their ministers. Planning Minister John Rau's 14 April 2016 letter in response to ERD Committee probing was a master work of planning logic, which noted the wording of the new draft Strategy, which had endorsed it.[8] The council maintained its view that the proposal ought to continue to be defined as a Category 3 development – 'non-complying' and therefore open to third-party court appeal. But the council eventually conceded defeat, accepting technicalities to justify its collapse of resolve. The technicalities drew on council planner advice. They included the fact that the Reid building at the site had been previously used as an 'educational building' by the University of South Australia. The new school project thus capitalised on an 'existing use' technicality under planning law, and was therefore appropriate under the *Development Act 1993*, which interacted with the *Adelaide Park Lands Act 2005*. This meant that there had been no requirement for the Labor government to submit a section 23 report, consistent with the 2005 Act with regard to future plans for the use of the land because of that park lands technicality. This section 23 provision had been inserted into the 2005 draft Adelaide Park Lands bill as a check to prompt future state administrations to report to parliament about what they intended to do with a change in use of the land. The Labor government eventually confirmed its 'existing use' excuse, but only because of Legislative Council probing almost a year later.[9]

Adelaide Park Lands Authority administrators, almost certainly under political pressure, also noted in a June 2016 ERD Committee submission that the new draft Strategy endorsed it. "Such a position sits comfortably with the draft *Adelaide Park Lands Management Strategy 2015–2025*, which calls for the highest priority in the

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8 John Rau, letter to ERD Committee presiding officer, 14 April 2016, as found in: Adelaide Park Lands Authority, Board meeting, Minutes, Item 8, 'Submission to ERD Committee – Ministerial Park Lands Zone DPA', 23 June 2016, page 32.

9 Parliament of South Australia, *Hansard*, Legislative Council, Peter Malinauskas, Minister for the City of Adelaide, reply to question from Mark Parnell MLC, 9 May 2017: "A section 23 report for the proposed new CBD high school in the Reid building on Frome Street is not required as its existing use as an educational establishment will continue."

Botanic Park Park Lands and Adelaide Zoo Precinct to be given to: 'Integrate the new CBD High School and old RAH sites with their park lands context'."[10] It also fell for the tempting political assurance, contained in Minister Rau's ERD Committee response, that there would still be consultation with the public, even if it wasn't lawfully required.[11] But there was no statutory public consultation in the traditional form required under the provisions of the *Local Government Act 1999*. The public was told about the school project, accompanied by much online spin. The state publicists saw to that. The plan was to promote the concept of a new, state-constructed asset, only the second high school to be built on park lands in 65 years – against all historical odds. But the method used to achieve the goal meant that all future state governments could capitalise on a technically clever loophole that evaded a Labor government pledge made 10 years earlier to disable infrastructure development provisions for the park lands, and thus to 'protect' the park lands. But from this time, no part of the park lands would be quarantined, should a future government use the same procedure. Planning is, after all, a political process.

| EXTRACT |

From a later version of the *Adelaide (City) Development Plan*, dated June 2017, showing new, DPA-initiated wording that made the school's construction possible. The critical wording (in bold) is contained in the section describing what is 'complying':

Development for the purpose of public infrastructure within the Golf Links Policy Area 16, River Torrens East Policy Area 18, Botanic Park Policy Area 19, Rundle and Rymill Parks Policy Area 20 and River Torrens West Policy Area 24 including:

(a) the infrastructure, equipment, structures, works and other facilities used in or in connection with the supply of water or electricity, gas or other forms of energy, or the drainage of waste water or sewage;
(b) roads and their supporting structures and works;
(c) railways, tramways and busways;
(d) **schools and other education facilities (only within Botanic Park Policy Area 19);** and
(e) all other facilities that have traditionally been provided by the State (but not necessarily only by the State) as community or public facilities.

10 Adelaide Park Lands Authority, Board (APLA) meeting, Minutes, Item 8, 'Submission to ERD Committee – Ministerial Park Lands Zone DPA', 23 June 2016, Point 20, page 29.

11 APLA, op. cit., 23 June 2016, Point 21, page 29.

40 | The 2016 revolution

"*The Urban Address is a significant shift in the conceptualisation of the park lands. ... The medium/large/major nodes all identify the possibility of multi-use built form within the park lands. ...* [But] *the management of these nodes should avoid the privatisation of space within the park lands for commercial activities, without benefit to the park lands.*"

– May 2016 comment from a respondent to Adelaide City Council public consultation about the draft 2016 *Adelaide Park Lands Management Strategy 2015–2025*.

In 2014, a year before the next version of the *Adelaide Park Lands Management Strategy* had been finalised by the Adelaide Park Lands Authority, Capital City Committee (CCC) activity had seen to it that the revision process would be informed by the actions of a government-initiated Project Advisory Group (PAG), operating as a sub-committee of the Authority. The PAG had been particularly busy during 2014 prompting public feedback and influencing the views of the Authority's board members to get a result that the CCC wanted. That state committee was led by Deputy Premier and Planning Minister, John Rau, who at the time had said:

> "... nobody in this government is interested in destroying or desecrating the park lands or the city. That's not what we're on about. What we're on about is activation and engagement. For too long, the park lands have been a moat between the Central Business District and those South Australians who don't live within the CBD. It's got to become an engaged element, which joins the inner city with the CBD [central business district], that's the change that I'm talking about. It's nothing to do with desecration, it's to do with engagement and activation".[1]

New precinct plans

The new Strategy significantly contrasted with the 2010 version. It featured 11 precinct plans, and plans for the six city squares. Each described directions and, more radically, major projects ('key moves') for each, to illustrate "how the typologies for landscapes, hubs and connections will combine to create a diverse and integrated park system".[2] In effect, the park lands were conceptually perceived to be evolving into an adaptable site for the realisation of significantly increased recreational creativity, in a modular approach. The extent to which the 2015 draft of the Strategy presented a radically different park lands vision had not gone unnoticed by many who responded to its public consultation in February 2016.

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[1] Interview with Deputy Premier and Planning Minister, John Rau, as found in: newsletter of the Adelaide Park Lands Preservation Association (*Park Lands News*), April 2014, page 10.

[2] Draft version of the *Adelaide Park Lands Management Strategy 2015–2025*, Park Lands Precincts, 13 November 2015, page 38.

Some, especially those who responded via the city council's *YourSay* digital platform and were seduced by the 'travel brochure' design and the colour pictures of potential 'activation' concepts (as had featured in plans by other countries with recreational parks), concluded that its ideas appeared creative and potentially exciting. It may never have occurred to them that there was a contrasting historical as well as contemporary Adelaide view that the park lands were more widely valued for what many saw as their 'open and contemplative spaces of landscape character' and therefore that this enthusiasm for such change might be misplaced. This was later expressed succinctly in a media interview by Adelaide Park Lands Preservation Association President, Ian Gilfillan. "There is this thoughtless drive to cram more people and events into the park lands and as a result we are very likely going to end up with even more concrete and fenced-off areas," he had told a reporter from Adelaide's morning daily, *The Advertiser*.[3]

New concepts for pavilions and car parks for the principal benefit of private, commercially based sports clubs, associations or schools had begun to appear several years earlier than the media interview, sometimes accompanied by requests for fresh 21-year leases, as well as licences that would allow for exclusive use of the land. These were encouraged through the park lands 'activation' concepts, circulated in documents containing pages of sometimes ambiguous text, peppered with words such as 'enhancement' and 'reimagine'. The 2015 draft Strategy comprehensively embraced the language. The draft would not be endorsed by the council until well into 2016, but this technicality had not dampened the spirits of those, years earlier, seeking to capitalise on these 'activation' concepts.

Contrasts between plans

One matter was not obvious. The major contrast between the 2015 draft and the previous 2010 Strategy could not be easily observed, because respondents to the consultation were not offered that older version for a 'compare and contrast' exercise. Neither were they offered a copy of the contrasting *Adelaide Park Lands Landscape Master Plan*, which had been, and remained, a key element of the 2010 Strategy. But it would soon be quietly abandoned – not that this was foreshadowed in the public consultation phase. At least one other assumption silently accompanied the response to, and May 2016 assessment of, the February 2016 public feedback. It was the fact that the amendment of the 2010 Strategy to create the 2015 Strategy had been far more extensive than that which the *Adelaide Park Lands Act 2005* suggested *must* occur during a review. The Act left it open to administrators to interpret what 'review' meant. In the case of the draft 2015 document, that procedure had led to a full replacement, a major rewrite. Respondents, mostly unaware of this, accepted in good faith that the changes to the 2010 version were so critical that a total revision had been necessary. Only those whose scrutiny of the administrative pathway from whence this new version came would have been aware of a government-chosen Project Advisory Group whose influence on Authority board members' perceptions since 2014 had led to this new version. In November 2013, the state government

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[3] Source: *The Advertiser*, 'Turning over new leaf for the park lands', News, 23 November 2015.

had announced that it was taking control of the future of the park lands. "Adelaide needs a new vision for our park lands," Premier Jay Weatherill had said.[4] "As we move to a new way of living in and along the city's edge, the park lands will become the new backyards and meeting places for locals and visitors. Revitalising the park lands will attract more people to meet family and friends, play sport, exercise and visit playgrounds and cafes," his media release stated. The government announcement claimed that the Project Advisory Group to be formed would be 'an independent body', but the conflicts of interest would be multiple, given the participation of senior government bureaucrats as well as representatives of inner city-edge councils. Those council personnel would seek park lands outcomes of benefit to their communities, despite the fact that their corporations paid nothing towards park lands operations. Even before the group began to report to the Authority, a Department of Planning, Transport and Infrastructure website was spinning a story. "We have heard there is a real appetite in our community for a new approach to how we enjoy the park lands and a real sense that we need to explore different ways to realise their potential," one website page enthused.[5]

A "dreadful plan"

A total of 122 people responded to a February 2016 draft Strategy consultation, whose comments were reviewed three months later in May. A number of submissions noted that a peculiar vision was being presented, one that they did not like. But very little of the negative feedback made any difference to the Authority's subsequent advice to the city council to approve the draft Strategy with only minor amendment. This was behaviourally similar to long-standing city council administrative procedure, in which recommendations for endorsement of policy documents sometimes occurred following public consultation – despite significant public opposition to those documents' contents. It reinforced some respondents' sceptical views which observed that legally required consultation procedures under the *Local Government Act 1999* were little more than tokenism and that in many cases an administrative determination was ready to endorse, well ahead of responses illustrating what Adelaide's metropolitan community liked or didn't like.

The response to the draft Park Lands Strategy was mixed, and contained some perceptive views, illustrating the extent to which respondents perceived the significant change in policy direction.

"What the plan seems to envisage is a major redevelopment of the park lands, which will likely destroy, or prevent the achievement of what is so earnestly sought. ... Redevelopments proposed as major hubs and medium hubs are utterly wrong," one respondent had written, among the 122 that responded. "There are plenty of places outside the park lands for these kinds of developments and the intended

4 Government of South Australia, Media Release, Premier Jay Weatherill, 'Making the park lands a place for everyone', Sunday 3 November 2013.

5 Government of South Australia, DPTI website, 'Adelaide's urban park – revitalising, renewing and reconnecting with our park lands', as found in: Adelaide City Council, Minutes, Item 14, 'Tabled Urgent Business', 'Response to the state government announcement regarding the park lands', 12 November 2013, page 15.

destruction of our park lands for such ventures is a dreadful plan, a tragedy, which future citizens deprived of these lost places will bitterly regret."[6]

Other comments included:

- "There seems to be an over-emphasis on the urbanisation of the park lands ... the Strategy places a great emphasis on development ... [It] needs a plan that summarises the proposed land uses and landscape typologies to give an overview of the relationships between them, rather than having to dodge between precinct plans. ... Having gone through the individual precinct plans to piece together an overall picture, the impression is that there is a very large amount of land devoted to sporting and formal recreation activities and much less to natural woodland landscapes."[7]
- "The Strategy is a marked departure from previous versions. It is less about cautiously protecting the existing character of Adelaide's park lands and more about nominating various parks as sites for new and expanded recreation facilities and infrastructure development, much of which is poorly described."[8]
- "The Strategy is, in the main, an excellent and impressive document which incorporates many worthwhile proposals. However, over 60 high-priority 'key moves' and a multiplicity of medium and low priority proposals, many no doubt involving significant expenditure, with no mention of likely costings, or of funds being available, reduce the value of the Strategy to a 'wishlist'. ... There are repeated recommendations for opportunities for commercial activities located on the park lands ... repeated proposals involving the installation of impermeable surfaces (eg plazas, sports hubs, function centres, cafes, boulevards, footpaths, etc)."[9]
- "The Urban Address is a significant shift in the conceptualisation of the park lands. ... The medium/large/major nodes all identify the possibility of multi-use built form within the park lands. ... The management of these nodes should avoid the privatisation of space within the park lands for commercial activities, without benefit to the park lands."[10]
- "The Strategy wants seven new 'sports hubs'. There are already enough sports facilities in the park lands to satisfy the demand for sport ... Allowing more and more sporting groups to have 'function centres' on park lands is really just privatisation of public land ... [it also] envisages kiosks and cafes right through the park lands – as many as 19 of them ... private profit from public park lands? They will offer further aural and spatial intrusion into the essential 'green' nature of the park lands."[11]

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[6] Adelaide Park Lands Authority (APLA), Special meeting of the board, Agenda, Item 2, 'Consultation results, *Adelaide Park Lands Management Strategy*', 9 May 2016; this footnote source: Submission #38, page 110 and repeated at page 332.

[7] APLA, op. cit., Submission #30, pages 85–91.

[8] APLA, op. cit., Submission #32, page 93.

[9] APLA, op. cit., Submission #45, page 126.

[10] APLA, op. cit., Submission #55, page 208.

[11] APLA, op. cit., Submission #63, page 240.

- "I am amazed at how much of the originally nominated park lands has been designated by certain organisations – for their sole and private use."[12]
- "… the document does not identify either the drivers of change, including how this was initiated, and by whom; those involved in the input phase; or final owners of the document."[13]
- "There is also an absence of any articulated commitment to ongoing community, stakeholder or partner engagement in planning and decision-making for the future of the park lands, or any strategies or actions to enable effective partnership (apart from Strategy 1.4, action 7: 'Involve the community in the ongoing management of the biodiversity in the park lands).'"[14]
- "It is hard to argue with these very general aspirations, although perhaps the term 'iconic' should be given a rest. For many people the relatively natural green, undeveloped, non-urban, car-less characteristics of the park lands are their most distinctive and valuable attribute …"[15]
- "You defeat the entire point of park lands as places for escape from city life, peace and quiet, serene contemplation, but turning these wonderful places into potentially crowded and noisy city extensions, I am sure this is not what [Colonel] Light contemplated …" [16]
- "The park lands simply don't need activating. That word and the concepts it implies are totally inappropriate."[17]
- "… the 'drivers of change' statement is deficient in the manner in which undue emphasis is given to privatisation and commercialisation of our park lands, giving far too much weight to our park lands as (privatised) events space, privatised sports hubs and commercial outlets. … Repeatedly throughout the precinct statements the management Strategy calls for car parking to be increased on our park lands … fenced-off areas …"[18]
- "I am extremely concerned by the Strategy of excessive activation which appears to be driven by developers and development construction opportunities rather than appreciation of the park lands as park lands. … the park lands must not be regarded as development sites. … I am concerned that the original vision and purpose of the Adelaide park lands has been forgotten or lost."[19]

At the conclusion of the review of comments on 9 May 2016, and minutes before the Authority endorsed the draft, one Authority board member attempted a late amendment to various draft texts in an effort to blunt specifics aimed at increasing alienation of park lands by various means. But his motion failed. Proposed amendments had included "achieve least possible footprint and floor area whilst

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12 APLA, op. cit., Submission #65, page 244.
13 APLA, op. cit., Submission #67, page 247.
14 APLA, op. cit., Submission #71, page 259.
15 APLA, op. cit., Submission #97, page 316.
16 APLA, op. cit., Submission #38, page 317.
17 APLA, op. cit., Submission #95, page 326.
18 APLA, op. cit., Submission #112, page 373.
19 APLA, op. cit., Submission #113, page 375.

ensuring facilities are fit for purpose"; "deletion of 'clubroom' from Medium Hub"; "deletion of 'Pavilions or' and of 'car parking' from a Large Hub description"; as well as the addition of a new sentence "Phase out car parking by 2025".[20] But the board's majority mood was clear: the draft Strategy had come too far to be amended so late.

The Authority's summary of broad themes recorded that "Opposition to buildings, commercial activities and car parking were the most common."[21] It then discussed the trends in responses. "The submissions received reflect a diverse range of subject matter and points of view." In a flourish of concluding spin it noted: "This in itself is reflective of the diversity of the park lands as an open-space system, and what they support and offer from the perspective of: Values [and] Activities [and] Landscapes. Balancing these ... is the central planning challenge for the park lands in line with the Statutory Principle that the Adelaide park lands will reflect and support a diverse range of environmental, cultural, recreation and social values and activities that should be protected and enhanced."[22]

Tensions – and administrative humbug

The Authority in May 2016 acknowledged the tensions involved. "There are inherent opportunities, challenges and tensions between each of the values, activities and landscapes," it noted. "For example, events can impact on the use of parks for informal recreation, and formal landscapes generally preclude the playing of organised sport. However, at the highest level, there are challenges with striking a balance between protection and enhancement of the park lands. It is the role of the Strategy to provide a planning framework to support balanced outcomes."[23]

In light of the public consultation feedback, establishing a balance had not been comprehensively supported. But the Authority did not concede that.

However, perhaps as a compromise in light of the significantly negative feedback, it offered to provide a new statement to be included at the beginning of the Strategy draft. This would be a three-page editorial titled 'Striving for balance, managing tensions, creating the future'. One paragraph in it illustrated the extent of self-delusion that was being entertained by the Authority's administrators. "This Strategy envisages buildings and infrastructure that support the use of the park lands for outdoor recreation, but does not support residential, commercial or entertainment facilities. This objective is to retain the park lands as freely accessible public open space and minimise area covered by buildings."[24] This was not only evident at the time as humbug, but also within a few short years it would prove to be demonstrable humbug, as further exploitation and alienation of park sites continued. This would become evident when construction followed of two-storey privately funded pavilions, and in the South Australian Cricket Association's Park 25 case, a three-storey pavilion.

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[20] APLA, Special meeting of the board, Minutes, 9 May 2016, page 4.

[21] APLA, Special meeting of the board, Agenda, Item 2, 'Consultation results, *Adelaide Park Lands Management Strategy*', 9 May 2016, page 17.

[22] APLA, ibid., page 18.

[23] APLA, ibid., page 18.

[24] APLA, ibid., page 437.

In the case of Park 25 the new SACA pavilion would also be accompanied by a new car park. In other parks, there occurred other development in the form of hard-stand surfaces expanded in the form of new playing courts (Park 22).

Tellingly, an Authority text amendment followed a month later, in June 2016, to that paragraph, to allow for the concept of residential high-rise tower construction at the (former park lands) site of the old Royal Adelaide Hospital, east of the city. It illustrated how flexible the board members were to be – needed to be – in regard to changing the so-called 'final' texts associated with the Strategy after public consultation, to suit government imperatives. The amendment came, very quietly, to the clause that had featured the words "*but does not support residential, commercial or entertainment facilities*" by adding the qualifying words "*on areas of the park lands which have been retained as publicly accessible green open space*". It also added one little word to the opening sentence. "This Strategy envisages *appropriate* buildings and infrastructure ..."[25] It was a small adjective, but loaded with hidden meaning.

It was his fault

The Authority blamed the city council's chief executive officer for the editorial intervention at that late stage. This time the 'tension' would be between the city council, controlling its subsidiary (the Authority), and the state government. The Authority noted: "It has been identified that there is a tension between the Authority's general principle in respect to development ... in the park, and the future directions for the site of the current [old] Royal Adelaide Hospital."[26] The outcome was clear. The state, noting a clumsy intention to provide a motherhood statement at the beginning of the Strategy, already contemplated other park lands alienation plans for the benefit of commercial builders and likely future residents in concept proposals for apartments on 99-year leases at the [old] RAH site, which a long time ago had been park lands. The words had to change. Such a fine-grained matter. Such a profound consequence. Such a revealing illustration of how stressed was the Authority's capacity to work its way out of political trenches capitalising on the slippery, semantic capacity of the English language.

Placating the 'landscape typology' alarmists

While these challenges preoccupied the administrators, there was at least one other major challenge ahead. This was to finalise the transfer of the elements of the *Adelaide Park Lands Landscape Master Plan* to the new Strategy, but not indicate at the time that the master plan itself was to be 'rescinded' (the Authority's word, recorded in its Special Board Meeting minutes of 9 May 2016) – a bureaucratic euphemism for 'dumped'. This would be the major sleight of hand of the period, quietly actioned after public consultation had concluded, underlying the tumult as

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[25] APLA, Board meeting, Minutes, Item 8, 'Adelaide Park Lands Management Strategy', 23 June 2016, page 1.

[26] APLA, ibid., page 2. (The old hospital was sited at that time north-east of the CBD, on North Terrace.)

respondents had scrutinised the new draft Strategy in February 2016, ahead of its approval by the Authority in May. In the end, the master plan's elements would be stripped out, the four-zone concept abandoned, the references to 'existing character' and 'proposed character' dumped, and detailed references to other world parks simplified and only superficially acknowledged; in particular, how other parks were managed. In their place in the new Strategy would emerge a limited clutch of minimalist bullet points, their effect made more ambiguous by judicious use of meaningless verbs in such phrases as 'Plan for', 'Seek to achieve' and 'Minimise the impacts'. Biodiversity would be 'celebrated' as an outcome (as if it never was before), and 'enhanced' as a strategy.[27] The future held the key: "Plan for secure, continuous areas of native vegetation across the park lands."[28] To the potential for complaints about the paucity of detail and the fact that a landscape preservation focus was itemised fourth after three other higher priorities that focused on the 'activation' theme, the Authority's public consultation summary document pointed to various strategies, but they instead focused on sustainable water use, climate change and 'developing a carbon-neutral city'.

This stripping of the detailed landscape references of the master plan and their scattering across the new Strategy in fresh wording (capitalising on generic and sometimes ambiguous ideas) accompanied concerns about the heavy emphasis on 'enhancement' and 'activation' across most sections of the park lands. When the inevitable public complaint had arisen in the public consultation phase about the paucity of detail in relation to landscape typologies and protection of biodiversity, Authority response in May 2016 had drawn attention to several other objectives and strategies. They included retaining the values of National Heritage listing; 'considering' World Heritage listing and State Heritage listing; demonstrating best practice in managing heritage assets; recognising, promoting and protecting sites of Kaurna cultural heritage significance; and providing a positive visitor experience of sites of cultural significance. That these did not clearly address in significant detail the breadth and depth of the Landscape Master Plan's content and approach appeared to be of no consequence. Further, that no indication was made at the time of the consultation that this 2011 master plan would be scrapped would mislead some respondents who were familiar with it, and between 2011 and 2016 had taken some comfort and assurance from its existence. To the significant level of concern in public feedback about the need to ensure that the new Strategy's principal focus was 'protection' of landscape and biodiversity, the Authority administrators in recording some agenda feedback repeatedly simply duplicated one sentence: "A balanced approach to social, economic and environmental objectives has been pursued throughout the Strategy."[29] But, according to some respondents, the demonstrable lack of balance was one of the draft Strategy's major flaws.

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27 APLA, '*Adelaide Park Lands Management Strategy*', from: Meeting of the board, Agenda, 23 June 2016, page 25: Strategy 4.1 'Enhance biodiversity in the park lands'.

28 APLA, ibid., Strategy 4.1, action number 3.

29 APLA, Board meeting, Agenda, Item 2, 'Consultation results, *Adelaide Park Lands Management Strategy*', 9 May 2016, page 395.

Administrators also responded that a number of strategies in the document featured 'landscape typologies' which would focus on a requirement for biodiversity enhancement and recognition of heritage values (for future generations), rather than development. To a comment from a source titled 'Internal' (presumably administrative personnel within either the council or the Authority), which called for the addition of the statement "Throughout the park lands, biodiversity and sustainability will be protected and enhanced"[30], Authority administrators promised the addition of an 'APLA Statement' to be placed at the beginning of the Strategy. It proposed to include that sentence, and then added: "The Authority is committed to the protection and enhancement of the park lands as a globally recognised park system ..."[31] The problem with that was, given the looming but unforeshadowed abandonment of the Landscape Master Plan, which featured global context in its seven 'precedent studies', comparing exemplar city parks globally, any such future reference would occur in a parochial vacuum. In the Weatherill Labor state government's enthusiasm to revitalise the park lands to address the planning needs of anticipated inner city residential growth, Adelaide was casting off its context with other world-renowned parks. Some remnant words were still there, crafted by agile copywriters. But the intent was clear.

Further reading

Please refer to Appendix 20, 'One day it could become known as the great park lands hijack', to review how one city councillor perceived the procedure that drove the creation of the new *Adelaide Park Lands Management Strategy 2015–2025*, and the arising future outcome.

[30] APLA, ibid., page 397.
[31] APLA, ibid., page 438.

41 | The silent abandonment of a unique park lands master plan

The jettisoning of the 2011 Adelaide Park Lands Landscape Master Plan, with its global parks perspective, long-term vision and fine-grain policy rigour, symbolised the brutal end of the first great park lands policy revolution of 1999. But unlike so many historical phase conclusions, it didn't end with a bang, but with a whimper.

The most contentious outcome behind the 2016 adoption by the Adelaide Park Lands Authority of the draft *Adelaide Park Lands Management Strategy 2015–2025* was the sudden quiet abandonment of the *Adelaide Park Lands Landscape Master Plan*. This was a state and city council loss of long-term consequence, but for the Labor government's fourth-term bureaucrats, the dirty work left no MPs' fingerprints because the execution was carried out by board members of the city council's subsidiary, the Adelaide Park Lands Authority, merely by a show of hands.

The ritual execution

In a classic ruse in which bureaucrats excel, the 9 May 2016 determination to dump the master plan, once the new Strategy had been adopted by the council and endorsed by the minister, had not been revealed until after public feedback about the draft 2016 Strategy had been received and responded to by Adelaide Park Lands Authority board members. The last unchallenged motion of the night's special meeting of the board came in a brief and seemingly innocuous 13-word sentence: "The *Adelaide Park Lands Landscape Master Plan* adopted in 2011 will be rescinded."[1] There would be no media release explaining why a plan that put Adelaide's park lands into a global context had been suddenly discarded. It had taken much of 2009 to create, and at significant cost to the city council. Over 2010 there had followed much fine-tuning work, under the contracted cooperation of the highly regarded landscape architectural and urban design firm that created it. In 2016, there had been no forewarning early in that year, at the time of the public consultation on the draft Strategy, that the consequence of its eventual endorsement would be the abandonment of the detailed landscape character focus and of a visionary, long-term master plan to ensure the preservation of the park lands fundamental resources, and natural and cultural assets. In retrospect, it was evidence of an oft-practised bureaucratic tactic, in which a matter of great park lands significance would be progressed behind a brief period of concentrated public attention on something else – the receipt of public feedback and subsequent endorsement of a new *Park Lands Management Strategy* – without any attention drawn to the consequence of that endorsement.

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[1] Adelaide Park Lands Authority, Special meeting of the board, Minutes, Item 2, 'Adelaide Park Lands Management Strategy', point 7.3, 9 May 2016, page 3.

Won't work; must go

In 2014, as deliberations began about the looming new draft that would become the replacement of the 2010 Strategy, it would have been increasingly obvious to the state government and the city council park lands administrators that the master plan would no longer fit with the new vision. That vision was being encouraged by the Project Advisory Group chosen in that year by ministerial bureaucrats to guide Authority board members towards the great 'activation' concept that took form in the 2016 Strategy. There were two reasons.

Firstly, the 2011 master plan's overview was focused too much on landscape character and not enough on the 'urban park' activation concept, with that concept's new vision for facilities and infrastructure across multiple 'hubs'. But it was not as if the master plan had not acknowledged early concepts for increased recreational activity. In 2010, soon after ministerial endorsement of that year's *Adelaide Park Lands Management Strategy: Towards 2020* (the second version, replacing the original 1999 Strategy), publicity flyers about the master plan had noted that there needed to be some attention paid to increased recreational activity, addressing a new government emphasis on the 'urban park' concept, attracting increased visitation and better providing for recreation and sport activity. But the central, driving idea then had been the need for balance between the two ideals, avoiding erosion of the paramount focus on preservation and 'enhancement' of landscape character. The November 2010 advertisement seeking public feedback about the master plan had said: "The vision of the master plan is for the diverse landscapes of the park lands to be managed to provide rest and respite, places for active recreation and sports, greater biodiversity, and support for the evolving contemporary urban lifestyle for the people of Adelaide."[2] But as the government-appointed Project Advisory Group had learned, the master plan's concept of four zones across the park lands would be a problem because they were too limited and too focused on 'preservation' in their outlook. This limitation hindered rather than helped the group in its quest to divert from a contemplative landscape character focus to 'reimagine' (its word) the park lands as a place of multiple sites of, at times, concentrated recreational activation, with no overwhelming priority to 'protect' the unique aspects of the existing landscapes. Moreover, the master plan's nine statements, if maintained, would have frustrated realisation of the 2016 Strategy's recreational vision for activity across significant areas of the park lands.[3]

Those nine statements would have been determined under that Strategy as 'of the past', especially the cultural and heritage significance focus that was first perceived across the park lands in 2007 after that year's publication of a council-funded,

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[2] Adelaide City Council, Public Notice, *The Advertiser*, 'Planning the future landscape of the park lands', 18 November 2010.

[3] "... a unique and special place; a place of nature; views and vistas; fragmented islands of green; a park for sport; barriers within the park lands; the River Torrens; planting within the park lands; and cultural and heritage significance" – *Adelaide Park Lands Draft Landscape Master Plan*, Taylor, Cullity, Lethlean, October 2010, page 8.

six-volume park lands cultural and historical study. Five years later in the financial year 2012–13, that study (the 'David Jones study') also had been quietly shelved once amendments were made to the other defining park lands policy document, the *Community Land Management Plan* (CLMP) for parks or precincts. For the Project Advisory Group, the diminished reference to that major work would influence Authority board members' comprehension of future policy direction during 2014 and 2015. The new 2016 Strategy would be all about something else. Few South Australians who maintained an active interest in the future management of Adelaide's park lands had any idea of the extent of change that was coming.

Too much detail

The second reason was even more challenging for administrators. The master plan was so specific that it could not be easily revised under new, politically driven direction at Authority board or city council level without causing major damage to its entire fabric. Its appendix had contained a high-level study of the linkages between some of the key policy documents directing management decisions; in particular, the *Community Land Management Plans* (CLMPs) for parks or precincts. In late 2010, as the Landscape Master Plan reached 'draft' stage, there had been little hint that the Authority would subsequently direct a comprehensive revision of each of these CLMPs, simplifying and condensing their content.

The paperwork challenges

By late 2014, the complexities inherent in creating new park lands policy drafts and then attempting to mesh their content with others produced earlier were becoming obvious, and challenging to manage. They also were becoming complicated for users to access. For example, the 2012–13 revisions of the CLMPs that followed publication of the 2010 *Adelaide Park Lands Management Strategy: Towards 2020* had jettisoned extensive extracts of the *Adelaide Park Lands & Squares Cultural Landscape Assessment Study*[4] that had in the years leading to 2009 been perceived by the Authority and the council as so highly relevant that they should form appendices to each CLMP. Instead, for the post-2012–13 revisions, digital links had been provided, but it wasn't the same. This loss after 2013 would force readers to search for separate references elsewhere, where originally all key references had been in the one comprehensive document. Among a number of consequences, the removal of cultural and historical detail from these revised CLMPs represented just another step in the distancing of past park lands detail of significant relevance from the present. Such changes were the early manifestations of looming major change in management of park lands policy documentation whose 'big-bang' content would be most obvious with the finalisation of the 2016 version of the *Adelaide Park Lands Management Strategy 2015–2025*.

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[4] *The Adelaide Park Lands & Squares Cultural Landscape Assessment Study* [six volumes], Dr David Jones, (through) Adelaide Research and Innovation Ltd, University of Adelaide, publicly released in October 2007.

But in 2010, all this was yet to begin, and the contracted landscape architects and designers had begun drafting a unique master plan with a clear assumption – apparently – that it was intended to be a document with a long shelf life. At that time, the CLMPs were still comprehensive in content and widely consulted when park lands policy decisions arose for determination. The explicit master plan reference to 'land uses', 'vegetation', 'structures', and 'historical views and aesthetic qualities' – among other aspects – were not only appropriate, but also vital to the thorough contemplation of key policy matters, as implied under the *Adelaide Park Lands Act 2005*. That Act had directed that both the Strategy and the CLMPs would mutually form the basis of future park lands policy determinations – and that their contents should be 'consistent'. The master plan respected the Act's requirement about the dual roles of the Strategy and the CLMPs, and the master plan's appendix content was of fundamental relevance to park lands management challenges, especially towards the future contemplation of their *landscape character*. The plan said: "The items listed in the dot-point summaries are extracted from these documents for reference purposes. They relate specifically to the existing and possible future landscape character of the park lands as put forward in the [2010] Strategy and the CLMPs."[5]

The administrators decide

Political pragmatism in 2016 determined a simple solution. Dump the whole master plan. It must have occurred to someone within the city council that this represented not only a scandalous waste of council's ratepayer funds and represented the catastrophic loss of a unique and far-sighted vision, but also signalled the beginnings of a triumphant victory in which park lands policy application would be most directed by one major policy document: the Strategy. From this time, the 2016 Strategy would become the Authority's most dominant and defining policy reference, ambiguities and inconsistencies notwithstanding. The new (second) generation of CLMP versions existed (2012–13), but the 2016 Strategy dominated the policy vision. At a fundamental level this administrative position was also incontestable. This procedural dominance was backed by the Adelaide Park Lands Act's provision, established back in 2005, that the Strategy should be seen as the key 'action plan' reference at the top of the hierarchy.[6]

Fatal political miscalculation

The 2011 master plan had identified 10 precincts and – most significantly – listed the related recommendations of the 2010 version of the *Adelaide Park Lands Management Strategy*. In retrospect, this had been a fatal administrative judgement, given that when the 2010 Strategy version was determined to have reached the end of its shelf life and was about to be replaced by political decree – always obscured by Project Advisory Group and Authority activity – so too must the master plan.

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5 *Adelaide Park Lands Draft Landscape Master Plan*, Adelaide City Council, Taylor, Cullity, Lethlean, page 8, as found in: Adelaide City Council meeting, Agenda, Item 12.1, 25 October 2010, page 21990, and Minutes, same date.

6 The Management Strategy is referred to first in the *Adelaide Park Lands Act 2005*.

The problem for the administrators had been that such documentation was too thorough, its rationales too logical. It did not allow for administrative expediency, and a soon-to-emerge politically driven revolution in state park lands action plan direction. Nor did it cater for sudden ministerial whims as occurred during the period leading up to, and just after, Authority endorsement of the 2016 Strategy. The future policy pathway would see the segmentation of park lands policy concepts and ideas in documentation transmitted between administrative levels (Authority/city council/state government) as modular, discrete packages that didn't necessarily have to connect. For example, when future new master plans were to be contemplated, they would be only for particular precincts or parks. A classic example related to the release in April 2014 of the *Sports Infrastructure Master Plan – West and South Park Lands* (SIMP).[7] It would encourage the writing of subsequent master plans for specific parks. The construction of new pavilions and major changes to southern and western park lands landscapes via new ovals, pitches, hard-stand areas and car parks could be achieved and justified simply by reference to judiciously selected statements in the Strategy, whereas these would have sat uneasily with the natural and cultural assets identified in the 2011 *Adelaide Park Lands Landscape Master Plan*. Connection and/or cross referencing between documentation would have been seen as problematic, as was highlighted with the Landscape Master Plan which referenced not only the 2010 Strategy, but all of the pre-2012 *Community Land Management Plans*. Administrators introducing the draft SIMP in 2014 implied that there were no fundamental policy differences between the SIMP and the CLMPs, but that was through more good luck than anything else. Besides, all of the original CLMPs had been condensed and amended by 2013, and reference to the existing natural and cultural assets had been removed, available only through a URL link – which few readers accessed.

The rise of 'modular' government determinations

Although the 2016 Strategy was one large and comprehensive park lands document, the concepts it envisaged across the park lands – sometimes in a fog of semantic ambiguity and subject to easily manipulated interpretation – were also modular. They described 'hub' concepts and various 'big ideas' but lacked a dated or otherwise specific action plan, had no specific project funding allocations and no key performance indicators against which any notion of 'progress' could be judged. As the Adelaide Park Lands Authority acknowledged in May 2016 when formally adopting it, the board members' resolution had noted that it was "not costed and does not represent a financial commitment".[8] This allowed for random state identification of nominated potential recreational sites for increased 'activation' projects, attended by descriptions of what might be developed (new pavilions, kiosks, car parks or new hard-stand areas such as netball or basketball courts) at

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[7] This is explored in this work in Chapter 38: 'Private investment in the park lands', and also in Appendix 19, which presents case studies of construction histories of sports pavilions across the park lands after 2011.

[8] APLA, ibid., 9 May 2016, page 3.

some time in the future, with funding relying wholly on ministerial discretion about where the money would come from, when it might arrive, how much would be allocated and by when it must be spent. This approach was similar to that which had been contemplated a few years earlier in the *Sports Infrastructure Master Plan – West and South Park Lands* (SIMP), which also was unfunded, and prey to the whims of random government determinations or private proposals.

These features flagged the apparent maturity of park lands management-by-political-instruction or private influence, where everything was flexible, negotiable by lessees (or potential future lessees, some linking their pledges to build pavilions on park lands to a critical proviso that a fresh, long-term lease at an attractive lease fee should accompany the proposal). Most particularly, the approach was not saddled with the former focus on the paramount importance of preservation of landscape character, whose philosophical roots went back to the first Strategy of 1999.

The loss of the seven precinct studies' detailed global context references in the Landscape Master Plan also allowed convenient evasion of any potential global comparison that might have compromised a future South Australian state administration. This loss diminished the state's responsibility to acknowledge that the keepers of great world parks all shared a collective responsibility to manage their parks under high standards and policy competencies, with a particular passion to ensure the preservation of each of their unique landscape characteristics.

And one more bonus

An additional bonus was also inbuilt for Adelaide's park lands managers from 2016. The Labor minister who had introduced the Adelaide Park Lands Act in 2005 had ensured that the wording relating to potential for a five-year rolling 'review' of any *Park Lands Management Strategy* remained ambiguous. It could mean that 'review' meant full revision, to be determined without any specific constraints as to its content or vision. Or it could mean no revision at all. After 2005 this had left open a choice by future governments for versions of Strategies to remain unrevised over any length of time in the future, especially if the existing version was open to wide (and thus politically convenient) interpretation and had no time-specific action plan; in other words, politically highly flexible. It could mean that future ministers could cherry-pick 'activation' concepts at whim, using the Strategy's status under the Act to legitimise them at the pre-Development Plan assessment stage, and set aside the notion that preserving the landscape character of Adelaide's park lands in a 'unified' way was a matter of ongoing highest priority. Here lay the seeds of Labor's great 'urban park' concept whose whole-of-parklands application was set to revolutionise Adelaide's park lands management as the years edged closer to 2037, the 200th anniversary of Colonel Light's 1837 Adelaide City Plan. The seeds had been planted in a 2016 political environment that further weakened any chance of a return to a management framework of formerly interlinked, landscape-focused plans.

Not with a bang, but a whimper

The jettisoning of the 2011 *Adelaide Park Lands Landscape Master Plan*, with its global parks perspective, long-term vision and fine-grain policy rigour, symbolised the brutal end of the first great park lands policy revolution of 1999. But like so many historical phase conclusions, it didn't end with a bang, but with a whimper.

To those very few who heard the whimper, it would signal a major turning point. The first (1999) Strategy had noted:

> "The park lands today are a result of the past 163 years of management, considerations and uses. What started out as natural habitat, manipulated by the indigenous people, has become [at 1999] a reconstructed, managed landscape with little resemblance to the original form and structure. Historically, the park lands have been defined by uses and management considerations which have dictated the lands character. It is intended that the future management of the park lands will be a reversal of this process and that desired landscape character will guide management considerations and uses."[9]

In 1999 that Strategy had implied that there was an identified past, but more importantly, a clear future pathway. As 2016 gave way to 2017, that pathway would be allowed to grow over, as the state pursued another direction.

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9 *Park Lands Management Strategy Report, Directions for Adelaide Park Lands 2000–2037*, 10 November 1999, Section 7, page 47.

42 | The new 'urban address' narrative

Rather than contemplate the park lands as a discrete area, separate from the hustle and bustle of the city or inner-rim suburbs and valued for its unique open space landscape character, in the 2016 Adelaide Park Lands Management Strategy *the park lands were now to be perceived in state planning visions as land that must contribute in recreational terms to an economic outcome.*

In July 2018 a new Marshall Liberal state government released draft state planning policies. Given that the state election was only four months past, they were not really new; they were Labor's planning policies that its departmental administrators had been fine-tuning over 2016 and 2017. Perhaps curiously, they were announced by an Adelaide Park Lands Authority Board member, Sally Smith. In 2014 she had been suddenly appointed to the board by Labor Planning Minister, John Rau. Several other board members (two of whom were yet to complete their terms) had been told their appointments would not be renewed, thus creating three board vacancies, and Ms Smith, a staff member of Minister Rau's office, was one of three replacement appointments. But Ms Smith in 2018 was not announcing the policies as a board member. She was announcing as General Manager, Planning and Development, Development Division, of the state's Planning Division. On 16 July her cover letter read: "I am excited to announce that we have now released the draft State Planning Policies, which represent the highest level of policy in our new planning system."[1]

> "... The [policies] set out for the first time a state-wide vision for land use planning in South Australia that aims to improve the liveability, sustainability and prosperity of our state. Sixteen policies are laid out that address the economic, environmental and social planning priorities for South Australia. These policies consider changes to how and where South Australians live and work, as well as important issues such as housing supply and diversity; design quality; the adaptive re-use of buildings; climate change; and strategic transport infrastructure.
>
> "By bringing South Australia's planning interests together in a single, over-arching vision, the State Planning policies will generate greater clarity and efficiency in our planning system and give us the direction we need to respond to modern opportunities and challenges."[2]

There was only one reference to the park lands in the comprehensive details, in one paragraph under the topic 'State Planning Policy 1, Integrated planning'. But one paragraph was enough. Its introduction had read: "Objective: Integrated planning is

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1 Government of South Australia, Planning Division, 'State planning policies for South Australia', draft for consultation, 16 July 2018, no page number.

2 Government of South Australia, Planning Division, ibid.

an essential approach for liveability, growth and economic development, maximising the benefits and positive long-term impacts of development and infrastructure investment."[3]

The paragraph reference to the park lands came last in a list of eight bullet points. It read: "8. Support metropolitan Adelaide as a predominantly low- to medium-rise city, with high-rise focused in the CBD, parts of the Park Lands Frame, significant urban boulevards and other strategic locations where the interface with lower rise areas can be managed."[4] The 'frame' may have referred to the city's commercial and residential edges adjacent to the boundaries of Adelaide's park lands or it may have referred to the edges of the park lands themselves.

The paragraph underscored what government bureaucrats had assumed for some years, but many park lands observers had not, or at least had not accepted. In future, Adelaide's park lands were, in government policy terms, to play a new role as land use available to expanding inner city populations as a substitute for lost recreation space in the high-density apartments that the state government anticipated appearing along the park lands edges. However, given that the inner city population was growing much more slowly than the *30 Year Plan for Greater Adelaide* forecasts, the policy would apply more as a long-term objective. Nonetheless, in terms of how the city planners viewed the park lands, it was revolutionary. Put simply, it was that the park lands were perceived by state bureaucrats, more than any time in the previous two decades, to be a land repository critical to the government's state growth goals, capitalising on state urban consolidation plans for the inner-metropolitan suburban ring around the park lands.

In Ms Smith's summary, there was no reference to the *30 Year Plan for Greater Adelaide*, but the links were immediately obvious. A study of that plan and its anticipated consequences for the park lands appears elsewhere in this work, in Appendix 7.

The 2016 resistance

Analysis of the response to early 2016 drafts of the *Adelaide Park Lands Management Strategy* (as explored in a previous chapter in this section[5]) illustrated that there was some public resistance to the concept that the park lands purpose should be 'reimagined' (an Adelaide Park Lands Authority word) to reinforce state economic imperatives. The word 'activation' was dominating policy discussions. But there was resistance to its heavy focus across sections of the parks, the 11 precincts. One respondent to the public consultation succinctly summarised what was at stake:

> "The Urban Address is a significant shift in the conceptualisation of the park lands. ... The medium/large/major nodes all identify the possibility of multi-use built form within the park lands. ... The management of these

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[3] Government of South Australia, Planning Division, ibid. See: 'Priorities for planning and design in South Australia – draft State Planning Policies', 'State Planning Policy 1: Integrated planning'. No page number.

[4] Government of South Australia, ibid.

[5] See: Chapter 40, 'The 2016 revolution'.

> nodes should avoid the privatisation of space within the park lands for commercial activities, without benefit to the park lands."[6]

Park Lands Authority and city council sensitivity to criticism saw some late, minor revisions to the draft Strategy document's wording, especially to the introductory messages. The state's planning vision had been noted, but some did not like to see the park lands perceived in this context. The political response was to amend the 'message' and dilute the emphasis on planning priorities. The most telling text revision appeared to aim to dispel the concept that the park lands were now perceived as a place whose purpose would be economically related to the lives of those living in, or likely to be contemplating moving to, high-density accommodation on the park lands fringes.

Few non-professional observers would have understood related policy and procedure at a level understood by South Australian planners. Under the *Adelaide Park Lands Act 2005*, a Strategy document is the key park lands action plan policy paper, and for some years there had been a general assumption among park lands land managers that its contents could inform evolution of subsequent planning policy, as reflected in wording for the park lands zone policy areas in the *Adelaide (City) Development Plan*. Few public observers were aware of this assumption, and the implied nexus between the policy document and the planning instrument.

Text revision reflects state sensitivity

It was unlikely that observers of the evolving Strategy draft would have comprehended the extent to which the state had directed some text content revision (following its initial approval by the Adelaide Park Lands Authority in 2015) and as it approached the city council's 15 November 2016 sign-off. There were few fingerprints to indicate who directed whom, but some evidence was left in the paper trail during that year. Draft text focusing on planning imperatives was replaced, as copywriters were given a fresh brief to write more generically, using the usual palette of park lands Strategy buzzwords. One introductory text, headlined 'Drivers of change' that was later amended, was this:

> "Optimising the immense potential of the park lands as a major city destination is a key objective of the *Adelaide Park Lands Management Strategy*. As the revitalisation of the inner rim suburbs surrounding the park lands continues, we will see larger numbers of residents with less private open space seeking to use the park lands as their backyards. Providing facilities and connections which meet the recreational and lifestyle needs of these residents is crucial for the park lands to become a significant drawcard delivering beneficial spinoffs to businesses across the city."[7]

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[6] As found in: Adelaide Park Lands Authority (APLA), Special meeting of the board, Agenda, Item 2, 'Consultation results, *Adelaide Park Lands Management Strategy*', 9 May 2016, Submission #55, page 208.

[7] Adelaide City Council, as found in the draft *Adelaide Park Lands Management Strategy 2015–2025*, 'Draft for formal consideration published February 2016', page 4.

Copywriters' delight

But by June 2016, the wording had been changed. The final, pre-city-council-approved Strategy draft presented new wording, crafted to soften the planning emphasis. It would have been challenging for copywriters to replace specific detail with generic statements, but one succeeded to the satisfaction of the city administrators. For readers of the subsequent final document, the replaced wording was this:

> "As the heart of our vibrant state, Adelaide is consistently rated as one of the world's most liveable cities. The park lands are a significant contributor to liveability by showcasing all that the city has to offer, including its arts and music festivals, rich cultural heritage, major sporting and cultural events and picturesque landscapes of high biodiversity and heritage value. Much of what is beautiful about our city is attributable to the park lands that encircle it. And, as the venue for many of Adelaide's and South Australia's premier events and tourist attractions, the park lands are critical to promoting and enhancing the social and economic life of the city. Optimising the immense potential of the park lands as a major city destination is a key objective of the Strategy ..."[8]

It was not until sometime in 2017 that the state government finalised the minister's message and the whole document was ready to be signed off by the state later that year on 17 August. This was no token procedure. Under the *Adelaide Park Lands Act 2005*, no Strategy was regarded as formal state policy until the minister had authorised it. A planning emphasis re-emerged as the Minister for the City of Adelaide, John Rau, wrote in his introduction to the Strategy:

> "The State government's *30 Year Plan for Greater Adelaide* recognises the challenges of suburban sprawl and the importance of encouraging sustainable growth. This approach to more compact residential growth will enable new housing to occur in existing developed areas, including the city and the inner metropolitan suburbs where there is good access to services. These areas are becoming increasingly desirable and provide multiple economic, environmental and lifestyle benefits for residents."

Ms Smith's subsequent 16 July 2018 exhortation to the public to respond also sought endorsement of the planning policy, which, in terms of the park lands, would have drawn on the Strategy for direction.

> "Your input will ensure that the State Planning Policies reflect the aspirations of the planning and development community as well as everyday South Australians. I would like to thank all of those who worked collaboratively with us to lay a rigorous foundation for South Australia's planning vision and address the disparate policy positions that have

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[8] Adelaide City Council, draft *Adelaide Park Lands Management Strategy 2015–2025*, 'Drivers of change', page 7, Adelaide Park Lands Authority, Minutes, 23 June 2016, page 74.

> prevailed to date. Your insights and generosity have helped guide the way and will ultimately enable us to deliver a future-focused planning system of which we can be proud."[9]

There was no mention of the Strategy in this communication and there was no need. It had been signed off by the government well ahead of the March 2018 state election. It said everything that needed to be said to inform, and perhaps more importantly, legitimise subsequent state planning direction and interpretation in regard to Adelaide's park lands. Moreover, the election of a state Liberal government, ending four consecutive terms of Labor in March 2018, did not change this emphasis and direction.

Targets of 2015 not met three years later

There would be repercussions arising from the 2016 Strategy, but the one perhaps least anticipated was how few of the 'high priority' activation projects had commenced by year-end 2018, in contradiction to an Adelaide Park Lands Authority 2015 prediction that: "High priority projects will be completed within three years of the Strategy's endorsement (by 2018)."[10] Moreover, of the 20 transformative initiatives for park lands precincts, titled 'Big Moves', 10 related to 'places and spaces' of which very few had been the subject of any draft intentions to implement, let alone to be accomplished, by the anticipated deadline of year-end 2018. These ostensibly were to address the planning-related need to respond to "... growing and changing communities in the city and neighbouring suburbs ..."[11] The lack of action underscored a comment made by one 2016 objector to the draft Strategy, who had described its contents as nothing more than a 'wishlist'.[12] It didn't need to be stressed that the Strategy was unfunded – a hallmark of much government park lands policy aspiration reflected in various documents. "The draft Strategy is not costed and does not reflect a financial commitment," an Adelaide Park Lands Authority agenda paper had dryly noted in November 2015.[13]

It was a curious arrangement for a document that all agreed was the principal park lands 'action plan' and even casual readers at the time had interpreted it as reflecting a certain urgency to get things done.

However, at least two major state infrastructure projects for the park lands had been funded, one of which was a Strategy 'Key Move', and, by the time the Strategy had been signed off by the state in August 2017, was already well under way. Construction of the $100m new Adelaide Botanic High School in the Botanic Park policy area (the Key Move), and the $160m O-Bahn City Access project were proceeding quickly. Both spoke of public infrastructure deemed economically

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9 Government of South Australia, Planning Division, ibid.

10 Adelaide Park Lands Authority (APLA), Board meeting, Agenda, Item 6, '*Adelaide Park Lands Management Strategy*', 19 November 2015, page 13.

11 APLA, ibid.

12 APLA, Special meeting of the board, Agenda, Item 2, 'Consultation results, *Adelaide Park Lands Management Strategy*', 9 May 2016; this footnote source: Submission #45, page 126.

13 APLA, op. cit., 19 November 2015, page 13.

critical to the state. They had been made possible by a government *ministerial* development plan amendment (DPA) of the *Adelaide (City) Development Plan*, gazetted in September 2015, well ahead of the city council's November 2016 Strategy sign-off and almost two years ahead of its final state government endorsement in August 2017. If nothing else, the urgency to commence these two projects demonstrated that the state would use other means to legitimise under planning law major infrastructure development projects within the park lands, rather than wait for policy documents such as the Strategy to prompt them – as was usually the case.

The longer term view

The 2016 Strategy would constitute an ideological endorsement, in park lands policy document form, of government planning policy aspirations for the park lands, a reference to inform subsequent finer grain policy amendments to the *Adelaide (City) Development Plan*, should they be necessary.[14] But well before the 2010 Strategy's revision had begun in 2014, in anticipation of the new 2016 version, there had been early examples of state planning initiatives that would later significantly determine park lands development outcomes at several sites. Two examples follow.

The development of park lands recreational facilities (and a car park) adjacent to western residential development, in the adjoining City of Charles Sturt whose boundary abutted the park lands, had origins in Planning Minister John Rau's ministerial Bowden Urban Village & Environs development plan amendment (DPA) of 5 July 2012. This led to demolition of old industrial buildings and progressive construction of multi-level apartment clusters at the site, on the park lands boundary. It would be accompanied by state Labor's view at the time that the park lands would have to be adapted, in recreational and other terms, to the needs of residents and investors buying apartments there. It was to be an early example of a planning-led development initiative whose features would in 2014 contribute to the contents of the early drafts of the 2016 Strategy. Rather than contemplate the park lands as a discrete area, separate from the hustle and bustle of the city or inner-rim suburbs and valued for its unique open space landscape character, in the 2016 Strategy the park lands were now to be perceived by state planners as land that must contribute, in recreational terms, to an economic outcome. As the description of the 'urban address' in the Strategy had stated: "Provide an increased level of amenity and attraction along park lands frontages to both the city and inner-rim suburbs."[15]

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[14] This apparent 'protocol' was based on nothing but a generally held assumption. There was no legal basis to the view, in regard to the provisions of the *Adelaide Park Lands Act 2005*, that the ministerially endorsed contents of any *Adelaide Park Lands Management Strategy* version must require subsequent amendments to the park lands zone policy area wording of the *Adelaide (City) Development Plan*. The assumption was a matter of great convenience to state bureaucrats, and Adelaide Park Lands Authority administrators. The state could embed planning concepts in a council policy document, then adopt them in subsequent amendments to the Development Plan.

[15] *Adelaide Park Lands Management Strategy 2015–2025*, signed off by the city council on 16 November 2016, (version undated but published soon after sign-off), page 12.

The code word, by 2016 in heavy use, was ‘activation’. The intention and that use of code had gained rapid acceptance within the city council, and state planning thinking had been dominating administrators’ attention for some years. As a city council administrator had noted as early as June 2013: “The Adelaide park lands are managed under unique governance arrangements and it is considered that the 2015 scheduled review of the *Adelaide Park Lands Management Strategy* provides an opportunity to respond to inner rim growth and Riverbank opportunities.”[16]

A second example was the construction of the new high school in the east park lands. It had been under consideration by the state government for some years before it initiated a ministerial development plan amendment (DPA) in mid-2015. The provision of additional city based secondary education facilities was well overdue by this time and there were early hints that it would become a 2018 state election issue. The siting and construction of a new, multi-level school in the park lands, about a 15-minute walk from the CBD, would address urgent city edge state secondary education demands and, in particular, appeal to Labor’s north and north-east electorates. While there may have been protest about choosing park lands for the project, state bureaucrats had ensured that the development was not subject to public consultation.[17] In this way, much controversy was avoided. Many observers would not have realised that the University of South Australia site on which the school was built was park lands.

The DPA that made the school construction possible had been gazetted in September 2015, well before the Strategy had been signed off by the council in November 2016. The new building was highlighted in a November 2015 draft Strategy, and a subsequent update in February 2016, as a ‘highest priority’ project for the Botanic Park Lands and Adelaide Zoo Precinct, described as “integrate the new CBD school and old RAH sites with their park lands context ...”[18]

Both initiatives (Bowden: 2012, and the high school and O-Bahn project: 2015) were all about addressing the planning consequences of forecast inner-rim population growth and its effect on the park lands.

The money challenge

By late 2018, $14.6m of the of state’s $20m Planning and Development Fund, established by Labor’s Weatherill state government in 2013 for park lands open-space project purposes, had been spent.[19] Among these were two ‘Key Move’

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[16] Adelaide City Council, City Planning and Development Committee, Agenda, Item 13, ‘Urban Renewal Bill’, 4 June 2013, page 195.

[17] The matter is explored in detail in Chapter 39:‘Public investment in the park lands’ – ‘Case study – Adelaide Botanic High School, eastern park lands’.

[18] Adelaide City Council, as found in the draft *Adelaide Park Lands Management Strategy 2015–2025*, ‘Draft for formal consideration published February 2016’, page 78.

[19] This was summarised in November 2019: Adelaide City Council, The Committee meeting, Agenda, Item 5.3, ‘Adelaide Park Lands Expenditure and Income’, 12 November 2019, pages 36–40. See: unnumbered table: ‘Recent state government capital expenditure in the park lands’: Recreational facilities and playground, Pelzer Park (Park 19): $4.63m; landscaping for ‘Newmarket Urban Park’, opposite the new RAH at Gladys Elphick Park (Park 25): $6.73m; and Josie Agius Park (Park 22) netball courts resurfacing and expansion, $3.2m.

highest-priority projects, although the Strategy had not specified timelines for completion. The timelines were more probably driven by political imperatives. A state election was due in March 2018 and after some years of inaction state Labor wanted to quickly establish a contemporary park lands project-completion legacy whose fast results would be not only highly visible but also favorably perceived by multiple communities of interest across inner-metropolitan electorates.

A $6.73m Park 25 landscaping plan, adjacent to the very recently completed $2.4b Royal Adelaide Hospital, was an obvious project, turning a long-neglected landscape of the western park lands into something more attractive, not only to hospital visitors, but for anticipated tenants of new multi-storey residential developments beginning to appear west of the CBD, and workers likely to find employment there.[20] In a second example, a sudden government decision to spend $3.24m at Park 22 (south park lands) resurfacing and expanding the number of netball courts was favorably viewed by the large, multi-electorate sports constituency that used the site. While not a 'highest priority' Key Move, the political advantage was obvious. The determination to spend was so sudden that even the city council's elected members did not know the funding was coming until it was publicly announced. Council agendas noted that the government instruction demanded of the council (which became responsible to call for tenders) that the project must be completed by "March 2018" – the month of the state election. The third item, a Key Move 'highest priority' demonstration recreation and play space hub at Pelzer Park ('Marshmallow Park', Park 19, south park lands) was completed not only to demonstrate what the recently adopted *Adelaide Park Lands Management Strategy* envisioned across many precincts of the park lands but also to demonstrate to electorates south of the state seat of Adelaide that the state Labor government was paying attention to outlying families' social and recreational needs.

This had followed years of perception by communities in the inner southern Liberal-held state electorates that the south park lands had been long neglected because their parliamentary MPs did not sit on the government benches at the time.[21]

Park lands project imagery and branding

The Strategy's 'activation' concepts' imagery and branding were attractive to some observers responding after superficial examination. But beneath that, it was easy to conclude that the document's wording delivered a highly flexible policy blueprint

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[20] At the time, the South Australian Cricket Association had just finalised its $8m, three-storey pavilion construct in Park 25 and its new ovals there, but that project brief had ignored equally relevant and overdue landscaping demands for the perimeter edge of SACA's site, adjacent to the hospital.

[21] The important historical context was that this period occurred during the fourth consecutive term of a state Labor government, and it was preparing to win a fifth. It lost, but the new Marshall Liberal state administration embraced Labor planning policy as if it had authored it, and continued implementing it with little amendment. A key aspect would be a new *Planning and Design Code*, which would replace the existing provisions of the *Adelaide (City) Development Plan's* park lands zone policy areas. The code was not finalised and brought into metropolitan operation until 19 March 2021, after the conclusion of the 20-year study period of this work.

for planning purposes, capitalising on sufficient ambiguity in some sections to allow for flexible interpretation.[22]

Under a provision of the Adelaide Park Lands Act, the Adelaide Park Lands Authority was required to 'review' the Strategy every five years.[23] But as multiple years progressed beyond the state's August 2017 endorsement, and even to as late as year-end 2022, there did not appear to be any urgency to prompt Authority preparations for that 'review'. This may have been because the version may have been perceived by government planners to be the epitome of the ideal 'action plan', because it wasn't really an action plan. It was busy with colorful imagery and in parts featured ambiguous wording, but had no identified action-plan timelines, and no city council budget-allocated funding, and no guarantee of funding for the Key Moves 'highest priority' projects, unless funding could be found in the state's Planning and Development Fund. However, it did mean that identified project concepts could be quickly actioned, subject to state-initiated funding, if park-lands-edge high-density residential development proposals emerged near the sites identified in the Strategy for recreational facility 'activation' development purposes.

As a planning-related document, the 2016 Strategy addressed most of the state's park lands aspirations of the time. Meanwhile, the 2016–18 park lands project spending trend illustrated the *realpolitik* that applied at a time when the inner-city population growth trend was lagging well behind forecasts. Despite a number of other Key Move 'highest priority' projects waiting to be commenced, the balance of the Planning and Development Fund could alternatively be spent on politically driven initiatives, should the need arise. It was a manifestation of the view held by that long-experienced Adelaide city planner and administrator, Dr Michael Llewellyn Smith, who had observed in his seminal 2012 South Australian planning study *Behind the scenes, The politics of planning Adelaide:* "Planning is primarily a political not a technical process."[24]

Who will share the city's funding burden?

Apart from the funding silence embedded in the 2016 Strategy, there was a similar silence about who should share the financial burden of park lands future annual maintenance costs – about $15m at the time the council had signed off on the Strategy document. This was of particular relevance to the 2016 Strategy, because future construction of new recreational infrastructure, with associated new landscaping, would require increased annual council maintenance and therefore increased spending. In subsequent years the annual maintenance cost would continue to increase.[25] This funding burden had been discussed in many forums,

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[22] This is explored in detail in Chapter 54 in this work: 'Semantic alienation across the park lands pastures'; see especially the analysis in Table 1.

[23] *Adelaide Park Lands Act 2005*: "The Authority must undertake a comprehensive review of the management strategy at least once in every 5 years." (section 18 (14)).

[24] University of Adelaide Press, 2012, page 342.

[25] Operations and maintenance (non-capital spending): 2017–18: $17.4m; 2018–19: $16.7m; 2019–20 (forecast): $17m. As found in: Adelaide City Council, The Committee meeting, Agenda, Item 5.3, 'Adelaide Park Lands Expenditure and Income', 12 November 2019, Table 2, 'Non-capital expenditure ...', page 38.

despite the state's reluctance to formally acknowledge it, or address it. In a parliamentary inquiry into urban density four years earlier, in 2012, a highly credentialled designer and planner, Tim Horton, had commented on the issue.

> "The point is that everybody around Australia knows that we are planning our cities in a fragmented way through some old, if you like, political boundaries as they relate to, for example, councils or these artificial sectoral divides between the public and private sectors. How can we bridge that gap and how can we provide coordinated plans for our cities? ... If I can point to the inner metro DPA, for example [the 2012 development amendment plan that significantly revised and diminished former restrictions on Adelaide city high-rise development] … it is saying that the inner metro DPA means more people can live closer to our magnificent park lands. They will want to use them more because of the pattern of living, I guess, that will form part of that inner metro DPA – townhouses, apartments and so forth. Green space is important.
>
> "At the moment, the funding model in the administration of the park lands perhaps might not be well-suited to that future. We might need to find ways where the surrounding councils have a stake, play a role and, if you like, help finance the park lands. That might mean that, for a minute, we have to suspend the current management of the park lands – not because anybody is winning or losing out of it, not because this is hitting anybody over the head, but because, in fact, the situation and context has changed. If we take a design-led approach, we are interested in the problem: we are not interested in the ownership just yet."[26]

As this work's brief study span of the history of park lands management has explored, the state government planners were also always interested in 'the problem' from a planning perspective. In fact, some were obsessed with it; in particular, with the risk inherent when occasional public disputes broke out over attempts to influence the way park lands planning control might evolve in the future, with public demands for greater influence over policy. Many of these voices related to bids to better 'protect' the park lands from development outcomes that the 'protectors' believed were alien to the park lands landscapes and exploited the availability, and future character, of open space so close to the city. It was land that was never for sale but sites could be occupied under long-term lease, sometimes lasting multiple generations.[27] The state would generally agree with the 'preservation' sentiment, given that the *Adelaide Park Lands Act 2005* and its Statutory Principles stressed the need to 'protect' and 'enhance' the Adelaide park lands; however, the state would also occasionally prosecute a case for occupation of sections of the park lands for state economic development reasons in ways that starkly contradicted those verbs. Examples and studies of them appear in other chapters in this work. They include a 2007 250m-long, three-storey grandstand

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26 Parliament of South Australia, *Hansard*, Environment, Resources and Development Committee, 'Urban density', 5 December 2012, page 73.

27 The maximum lease period allowed under park lands legislation was 42 years (21+21); however, parliamentary exceptions saw some park lands sites leased for 80 years (the Adelaide Oval stadium) and even 99 years (medical research buildings, Biomedical Precinct, Riverbank zone).

concept for Victoria (Park 16; abandoned at the last minute); a 2011 huge sports stadium at Adelaide Oval (Park 26); a 2014 River Torrens footbridge (Park 26); and in 2017, a major new, multi-storey hospital (Riverbank zone).

With the exception of the Planning and Development Fund (only created in 2013 and only totalling $20m, of which more than half had been spent by year-end 2018), much of the park lands *funding* problem was perceived within the state bureaucracy to be an exclusive local government issue for the City of Adelaide – and only that corporation. The state did contribute a very small sum to city council park lands management, under a 2006 funding deed that linked back to 2005 and related to water. It commenced at about $1.3m, indexed to the CPI, so that the 2019 total was $1.6m.[28]

The professional culture among city local government planners and administrators accepted without serious challenge the consequences of council's 'ownership' of the problem, primarily as a result of its custodian role, held since 1849. Moreover, in policy terms, administrators also accepted more recent cost burdens. In April 2005, for example, when the city council was reviewing a new bill for park lands legislation (which resulted in the *Adelaide Park Lands Act 2005*), administrators acknowledged a silence in the draft wording which meant that funding demands for the creation and operation of a proposed new Adelaide Park Lands Authority would have to be met by the city council, not the state government. This would lead to associated and additional subsequent funding demands by the Authority once its board commenced sitting, given that it was required to create, under park lands legislation, key policy documentation – as well as subsequent updates.[29] Some content of the Strategy influenced planning-related deliberations at council level. There was irony here. The Authority played no part in determining development application assessments, but many applications drew on the content of documentation created by the Authority, including the *Adelaide Park Lands Management Strategy* (and especially the third version that the council approved in 2016). As the years passed, there would be many instances where the burden of planning and management costs regarding the park lands zone policy areas would have to be shouldered at local government level. Moreover, it would be accompanied by the obvious inequity of sole responsibility to pay, enduring without council administrative complaint, as if it were 'the ordained wisdom'. During a period of this work's study (especially 2007–2018) there was little evidence found in council documentation (that is, in the public domain and not subject to confidentiality orders) of any challenge by elected members or senior administrators to that ordained wisdom. Beyond the study period of this work, only one query arose. It came from a newly elected councillor who was also a Park Lands Authority board member – for a very brief period. Capitalising on his short, three-month term, in August 2019 he formally probed park lands costs and attempted to

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28 Adelaide City Council, The Committee meeting, Agenda, Item 5.3, 'Adelaide Park Lands Expenditure and Income', 12 November 2019. Paragraph 3, page 38. This amount had nothing to do with any acknowledgement about the funding inequity. It was a hangover of a 2005 deal struck with the Rann Labor government about future water supply availability for the park lands.

29 The costs of creating the 2010 and 2016 versions of the *Adelaide Park Lands Management Strategy* were significant, as was the 2012–13 cost to update versions of the *Community Land Management Plans* for almost all sections of the park lands.

explore the circumstances. His motion on notice asked what was, in hindsight, a very simple question, but one never before posed in the elected member public forum.

> "In order to facilitate best practice planning for the park lands, [could] administration provide at the earliest opportunity a report detailing as far as possible all costs and associated income for the park lands, including (but not limited to): • Capital projects; • Planning and design; • General improvements; • Maintenance; • Park lands properties and leasing; • Events; [and] • Car parking; • Staffing."[30]

The city council response is explored in detail in an appendix chapter to this work.[31] It was provided by the executive officer of the Adelaide Park Lands Authority.[32] Curiously, however, the subject matter 'Planning and design' was not specifically addressed. There may have been administrative reasons for this, but they were not explained. It might have been because the Authority played no role in determining development application assessments and the officer therefore saw no reason to address planning-related matters. But the question had been put to the council and not at an Authority board meeting, and so the formal response should have addressed matters at city council administrative level. Alternative potential explanations may have been that budgets may not have segmented into the employee planner costs or the cost of time invested in specific council planning-related activities and advice in relation to Adelaide's park lands zone policy areas (or Riverbank zone). Whatever the reason, the lack of detail appeared not to have been noticed by elected members, and no follow-up question seeking more information was recorded. At year-end 2019 (a year beyond the 20-year study period of this work), any attempt to put into context the city local government cost and contribution of park lands 'planning and design' work remained as ambiguous as were many aspects of the contents of the 2016 Strategy. At that time it remained the key park lands reference document when park lands planning-related matters arose in relation to proposed concepts for development projects. Proponents looked to favourable policy support in the Strategy before facing planning assessment in a later stage, assessment which drew on the *Adelaide (City) Development Plan* for determination.

Further reading

Please refer to Appendix 28: 'What does it cost to manage the Adelaide park lands?'

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[30] Adelaide City Council (ACC), Council meeting, Item 11.7, 'Understanding our most important public asset', Cr Hyde, Motion on Notice, 13 August 2019, page 18.

[31] Please refer to Appendix 28: 'What does it cost to manage the Adelaide park lands?'

[32] Adelaide City Council, The Committee meeting, Agenda, Item 5.3, 'Adelaide Park Lands Expenditure and Income', 12 November 2019, pages 36–40.

PART 9

"The history of the Adelaide park lands since the original plan of Colonel William Light is filled with the actions of successive governments who have alienated parts of it. Some of these actions have created cultural icons and historic buildings in their own right. However, in many cases the actions have been, on reflection, short-sighted and opportunistic land grabs, borne more out of convenience than providing any lasting public benefit in the context of the original purpose of the park lands."

Hon Paul Holloway MLC,
Parliament of South Australia, Legislative Council,
Hansard, second reading of the Adelaide Park Lands Bill 2005,
15 September 2005.

[Local Government Act 1999, section 90, sub section 3]
(3) The following information and matters are listed for the purposes of subsection (2):
(a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);
(b) information the disclosure of which—
(i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and
(ii) would, on balance, be contrary to the public interest;
(c) information the disclosure of which would reveal a trade secret;
(d) commercial information of a confidential nature (not being a trade secret) the disclosure of which—
(i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and
(ii) would, on balance, be contrary to the public interest;
(e) matters affecting the security of the council, members or employees of the council, or council property, or the safety of any person;
(f) information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;
(g) matters that must be considered in confidence in order to ensure that the council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;
(h) legal advice;
(i) information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place, involving the council or an employee of the council;
(j) information the disclosure of which—
(i) would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of the council, or a person engaged by the council); and
(ii) would, on balance, be contrary to the public interest;
(k) tenders for the supply of goods, the provision of services or the carrying out of works;
(m) information relating to a proposal to prepare or amend a designated instrument under Part 5 Division 2 of the *Planning, Development and Infrastructure Act 2016* before the draft instrument or amendment is released for public consultation under that Act;
(n) information relevant to the review of a determination of a council under the *Freedom of Information Act 1991*.

Extracts commonly found attached to Adelaide City Council agenda papers list the provisions of section 90(3) of the *Local Government Act 1999*.

These are the basis for much obfuscation in local government management of the Adelaide park lands. They list the range of parliamentary endorsed excuses that council administrators can draw on to trigger the application of confidentiality orders to keep secret certain agenda items and their contents. The sections highlighted above (but only for the purposes of this study) indicate the many options available to city council administrators that can be used as rationales to encourage elected members to agree to adopt confidentiality orders. These provisions are subject to exploration and discussion in Part 9 of this work (see Chapter 46, as well as Appendices 21, 22 and 23).

Perhaps the most ironic of all of the provisions appear at b (ii) and d (ii), which state: "... would, on balance, be contrary to the public interest." Over the two-decade period of study undertaken to create this work, when these provisions were invoked by city council administrators, especially relating to park lands matters, there was almost always a simultaneous strong public rationale to have the matter revealed *in the public interest*! But council administrators did not see it that way, and commonly successfully invited elected members to declare whole reports as official secrets, even if the contents may have contained only small sections that might reasonably have been defined as justifying confidential status.

This list of secrecy rationales highlights the many provisions that could be, and often were, invoked to restrict public access to discussions, resolutions and documentation about park lands subject matters.

PART 9 A critical analysis of the Adelaide park lands machine

Chapters

43 | A raids retrospective
(How Adelaide's unique open-space city asset has long been prey to site exploitation and occupation.)

44 | The ruse routine
(Why a study of the stratagem practice of the ruse is useful in understanding recent park lands history.)

45 | The category caper
(How obtaining the right planning assessment category classification became the key to avoiding public consultation.)

46 | The secrecy tradition
(How the procedural machinery about park lands deliberations and decisions has rested on a bedrock of secrecy provisions allowing confidentiality orders sometimes lasting for years.)

47 | The footprint numbers game
(How a footprint size cult defined and encouraged 'bigger means better' park lands development – all the while attempting to limit that very thing.)

48 | The consultation lark
(Why the city's park lands 'listening function' is deeply flawed and won't be improved under the present system.)

49 | The loopholes lurk (Part 1)
(How loopholes were identified in the 2005 park lands bill, but escaped amendment, and how multiple additional loopholes evolved and have been exploited ever since.)

50 | The loopholes lurk (Part 2)
(How post-2007 park lands management activity capitalised on creative excuses, amendments, special exemptions and other bureaucratic ruses to avoid accountable procedure, transparency, and equitable respect for due process.)

By the conclusion of the parliamentary 2005 debate over the park lands bill, at least four significant loopholes remained embedded in it. Had amendment occurred to the satisfaction of those that pursued them, each could have made the resulting Adelaide Park Lands Act significantly more effective in minimising the potential for exploitation and ruses that would follow. Revision of some sections at the time may have simply blocked exploitative opportunities before any damage was done.

Chapter 49: 'The loopholes lurk (Part 1)'.

A hallmark of all of these and other mechanisms was a long-term desire by government to achieve park lands development using methods that obscured the way proposals were made legally possible, despite the inevitable public scorn that has historically accompanied such activity – once it is explained. In other words, the political approach was, and remains, to make 'confusion a strategy'.

Chapter 50: 'The loopholes lurk (Part 2)'.

Other links to chapters in PART 9

Chapter	Appendix link
46 | 'The secrecy tradition'.	**Appendix 21:** 'Extract from the *Local Government Act 1999*, section 90 (3)'. **Appendix 22:** 'Case study: The park lands 'in-confidence' tradition'. **Appendix 23:** 'Council secrecy orders – park lands key data'.
47 | 'The footprint numbers game'.	**Appendix 24:** 'Extract from Strategy 1.4 of the *Adelaide Park Lands Management Strategy 2015–2025*'. **Appendix 19:** 'Eight pavilion case studies'.
48 | 'The consultation lark'.	**Appendix 25:** 'Case study: *YourSay*'.
49 and 50 | 'The loopholes lurk, Parts 1 and 2'.	**Appendix 8:** 'The *Adelaide Park Lands Act 2005*'. **Appendix 9:** '2018 observations on the minister's introduction to parts of the Adelaide Park Lands Bill 2005'. **Appendix 19:** 'Eight pavilion case studies'. **Appendix 26:** 'Political discounting erodes Adelaide's park lands funding'.

43 | A raids retrospective

In the following chapters the methods used to legitimise park lands raids are explored, as well as ways to obscure observation of the activity and procedure, and frustrate public access to information that might describe the tactics used to legitimise that procedure. Their variety highlights the creative ways that parliamentarians and state and local government bureaucrats, lawyers, planners and administrators have acted to get what the development applicant wanted.

The history of the Adelaide park lands is characterised by a record of raids. City edge land perceived to be free land is just too tempting.

These raids have not always been as the dictionary suggests: sudden, predatory incursion. Most commonly the raids have been incremental, but predatory nonetheless.

Since the state's settlement in 1836 generations have seen the park lands as open and 'available' for various uses and the consequences have most often been destructive of the original landscape character, prompting rows between the South Australian residential and parliamentary communities, as well as within them. The consequences could be significant. One of the most comprehensive sources of historical research into park lands raids that occurred over the period 1836 to the 1980s is contained in the book, *Decisions and disasters*, by South Australian Jim Daly.[1]

The earliest raids took as much firewood as could be cut and chopped up to support the early city settlement. Tanneries and dumps appeared. In the 19th century, people lived illegally across the park lands. In the 20th century, in the post-World War 1 Great Depression era (1930s), homeless men found sites along the River Torrens for places to camp, for long periods. But the really ambitious raids featured the construction of buildings and the occupation of areas of park lands for even longer periods. Many buildings were constructed by the state in the government reserves in the 19th and early 20th centuries.[2]

A notable post-World War 2 raid – leading up to the contemporary period of study of this work – was triggered by the state government when it built a new high school in the west park lands around 1950. Multiple other park lands raids, mostly

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1 Jim Daly, *Decisions and disasters, Alienation of the Adelaide Parklands*, Bland House, 1987. Jim Daly's book is explored in Chapter 8 of this work.

2 The extent of park lands development between 1836 and 1996 is succinctly catalogued in a five-page chronology in: Hassell, *Park Lands Management Strategy Issues Report*, 23 February 1998: Appendix: Rob Brookman, Steve Brown and Ian Scobie, (Arts Projects Australia), Parklands Management Strategy, 'The cultural heritage of the Adelaide Park Lands, A preliminary assessment', Donovan and Associates, History and Historic Preservation Consultants, February 1998, pages 6–10.

directed by the state, followed in the 1980s, and again in the 1990s. Similar others followed in the first new decade of the 21st century. The extent and scale of raids by the state significantly increased in the second decade, after 2010. Many chapters of this book explore details of those, the various causes, and the rationales that the state used to justify raiding the free land of Adelaide's park lands.

The notion of the 'tension of views', explored earlier in this work, arises in relation to the way South Australians have felt about raids on the park lands, especially the parks' vulnerability to a raid under legislation, and instruments of that legislation, open to exploitation by government ministers. The park lands at 2011 became even more vulnerable through the state's fresh realisation of the potential of new, project-oriented development legislation, if parliament could be prompted to agree.[3]

The history of the City of Adelaide's 'custodianship' of the park lands is crammed with records of raids – legal and illegal. Of course they were rarely described as raids, especially the raids that were legal. For the illegal ones, the descriptors were incursions, appropriation and alienation. For the legal ones, during the period of this work (1998–2018) the descriptor under planning law was 'complying development'.

In this contemporary history the concept of raids generally refers to development raids.

The incremental raid

Historically, some development crept up on the park lands. For example, many of the classic examples of park lands raids began with a park lands permit or licence period extended by the city council to recreational groups. After a period of use of a section of park lands, these groups would apply for a lease on which to base the construction of low-scale recreational facilities. This turned into *occupation*. Over many decades, the facilities expanded out, and up, and fencing sprang up to mark the lessee's boundaries. This led to exploitation, by occupation, of significant areas of the park lands. This phenomenon might be termed 'the creeping raid'.

An example of such raids was the occupation in the 1850s of Park 16 (Victoria Park) by the South Australian Jockey Club that would last for well over 150 years. What began as a bid to use park lands for an occasional horse-racing event on open space pasture ended as leased occupation of a large area of Victoria Park littered with SAJC buildings, car parks and fenced-off sites. After the lease ran out in 2006, it took several years to remove the evidence of the raiding party, and cost millions.

A second example, at Park 26, occurred where a cricket association in the 1860s applied to use park lands for occasional cricket matches. Over the 150 years that followed, many permanent facilities were constructed for players and club members.

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[3] The legislation (in terms of the period of study of this work) was the *Adelaide Oval Redevelopment and Management Act 2011*. This allowed the construction of a huge stadium in Park 26. In December 2018 the Adelaide Oval Stadium Management Authority announced a proposal to construct a hotel on the eastern wall of the stadium, capitalising on aspects of that 2011 legislation and a long-term lease. The hotel was completed in 2021.

Long leases underscored the reality: it was another example of *occupation*. That site now features a huge stadium, which in 2012 replaced a number of historic grandstands and other heritage buildings. The association expanded to other park lands sites as well, constructing new, dominating built form there in 2017. This example, of the South Australian Cricket Association's occupation of the park lands, is evidence of one of the city's longest-running and most prominent park lands raids. The association, of course, would never agree that its founders raided the park lands. It would also deny 19th century cultural claims of raids made by the Kaurna Aboriginal people of the Adelaide plains. The SACA site at Park 26 was an important ceremonial ground before Europeans settled Adelaide, and before the cricket players arrived.

The government raid

Some park lands raids progressed slowly, but other raids in the form of big development proposals could overwhelm the park lands at speed. In the 21st century, this has almost always been directed by government, employing its coteries of bureaucrats, expert in interpreting, exploiting or amending the rules to gain authorisation for state raids of public land. In the 20-year span of this book's study, the trend showed that the state learned that the faster the raid, the more chance it had of succeeding. A culture of confidentially about park lands proposals characterised the administrative pathway to enable this to occur. When it detected public resistance to the continuity of this practice using one method, if there was much at stake, it changed methods to frustrate the resistance. But it was still a raid; the state was still raiding a public asset whose purpose was commonly agreed to be many things, but not the construction of multi-storey bricks, mortar and glass, or major infrastructure that could easily be constructed elsewhere to achieve the state's objectives – but at significantly higher cost. While a raid could be for the benefit of private commercial bodies, most often it was government, and sometimes it was breathtaking in scope: in the case of the largest hospital ever built in South Australia (commenced 2011, opened 2017), or the tallest, multi-storey secondary school (begun 2016, opened 2019).

To non-expert observers, few of whom enjoyed a 'whole of park lands' comprehension, each raid appeared inconsequential to the sum of park lands area. But the systematic nature of park lands raids over time by year-end 2018 had resulted in some of the finest park lands vistas visually blighted, and free and open access compromised for many decades. Case studies in this work explore examples. Their variety highlights the creative ways that parliamentarians and state and local government bureaucrats, lawyers, planners and administrators have acted to get what the development applicant wanted.

44 | The ruse routine

Ruse – Oxford dictionary: 'a trick, a stratagem'.

Ruses are effectively a political or administrative seduction, often motivated by the convenience of opportunity. Some commence with enticing promises but, in Adelaide park lands terms, most have ended in betrayal of public trust. All ruses have a beginning, a middle and an end – a 'shelf life'. They are characterised by convincing narratives.

Is a ruse a trick? The concept of 'the trick' is here discussed in terms of how a South Australian might respond – by concluding that they've been tricked – in relation to park lands procedures or anlayses that are complicated and, for a reasonable person, challenging to fully comprehend. Moreover, these procedures or analyses are generally applied in places and under circumstances where that reasonable person is unlikely to be present. They don't loiter in, or aren't commonly invited to, the rooms where the rules are read, the provisions interpreted, the procedures practised or the analyses conducted. These are the rooms in administrative places at the local government tier, or administrative and legislative places at the state tier. All of this is to observe that a person visiting the park lands will not find a trace of the ruse among the woodlands and open pastures. The stratagems are all activated in local government or state government buildings.

Town Hall's park lands acreage analysis

Let us begin in the final year of the study period of this book, 2018, before exploring earlier periods. In this instance the focus commences on local government, the Adelaide City Council, and its subsidiary the Adelaide Park Lands Authority. In that year, there was significant temptation among park lands observers to conclude that a clever administrative ruse had been prosecuted. It might have been perceived as perhaps the grandest in the whole of the study period of this book. It had been prosecuted in relation to the wide public perception that a substantial area of the Adelaide park lands green open spaces had been lost over recent decades to a gradual creep of buildings, hard surfaces and other facilities. This wide belief had been supported by a comprehensive council study and analysis in June 2012. Results had not surprised observers.[1] However, six years later, in a subsequent Authority study and analysis, the opposite was claimed to be true.[2] This prompted much surprise and controversy. A detailed exploration of the data and its analysis, and the public response that followed, appears elsewhere in this book.[3]

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[1] Adelaide Park Lands Authority, Board meeting, Agenda, Item 7, 'Park lands – Extent of and occupation of building and hard surfaces', 7 June 2012.

[2] Adelaide Park Lands Authority, Board meeting, Agenda, Item 7.2, 'State of the park lands', 21 June 2018.

[3] Please refer to Appendix 1: 'The 'lost' park lands and the administrator's magic trick routine'.

Regressing into the past

The politics of state government park lands ruses were well manifested across its grasslands and playing fields in the two decades to 2018. Their features can be widely described. In fact, their history goes back to long before 1998, when the state Liberal government was contemplating triggering new draft legislative provisions to construct buildings on the park lands, or 2002, when state Labor won office after 13 years in opposition. Decades of volumes of *Hansard*, the record of state parliamentary debates, contain transcripts describing attempts to prosecute complicated park lands ruses, or observations of others having done so. At 2018, public trust was so damaged about political exploitation of park lands procedures over the preceding two-decade period that it will take some time for the generation that lived through it to forget how an enticing 2002 park lands narrative – a pledge to end the long history of park lands exploitation – tempted them into believing that it actually might be delivered. But it, too, became a long-running political ruse. After all, such ruses are effectively a political or administrative seduction, often motivated by the convenience of opportunity. Some commence with enticing promises but, in Adelaide park lands terms, most have ended in betrayal of public trust.

A study of the management and use of Crown land surrounding the city of Adelaide, a plan drawn by the city's 1837 surveyor and designer Colonel William Light and defined for public purpose as park lands, does well to consider the political players 180 years later, and of the operation of the state political machine.

Over the period of this study (1998–2018) there were practised a range of political ruses in relation to management of, access to, and exploitation and alienation of Adelaide's park lands. That many South Australians knew this was no surprise, but the precise nature of the ruses was often obscured, via complicated legislative or administrative procedures, and the complicated mechanisms that gave them effect. Moreover, few South Australians in 1998, or even two decades later, had an opportunity to observe themes with sufficient 'distanced' perspective to perceive the difference between the routine muddy puddles of park lands management squabbles, and the deeper clay bogs concealing the sharp edges of political stratagems – ruses covertly understood by experienced parliamentarians and their legal advisors but rarely publicly explained. Some might have said that the biggest ruse of all was that which permitted political philosophies and park lands management aspirations to be crafted into law in South Australian statutes, captured in provisions written by clever lawyers in association with parliamentary counsel. Of course, parliamentarians would argue that this was, and remains, no more than the manifestation of a stratagem for sound and stable government.

The two-tier activation

Park lands ruses were not only practised by the state, but also by the lower-tier local government (colloquially known as councils in South Australia). In Adelaide the central player was the city council, occupying a key role as the long-term custodian of much of Adelaide's park lands by virtue of 1849 legislation. But the ruses mostly benefited the state. Moreover, most of the big development projects on park lands

during the two-decade period covered by this book were initiated by the state. Ruses took many forms, and at both levels of government often manifested as procedures, taking legitimacy from instruments given effect by the laws, and further informed by the content of evolving strategic, policy or guidelines documents mainly (but not exclusively) produced at local government level as part of its park lands 'custodian' role.

An example was policy applying to the park lands zone (which featured policy areas) under the *Adelaide (City) Development Plan*, given effect by the *Development Act 1993* during the 1998–2018 period covered by this work.[4] Relevant procedures that arose included the planning assessment procedures that responded to the contents of the city development plan. To add a further layer of complexity, this plan over longer periods was informed, and amendments ostensibly driven by, the contents of the particular version of the *Park Lands Management Strategy* in circulation at the time. Such policy documents had to be authorised by a government minister. This meant that although local government might be pursuing a ruse, the state remained fully in control of it. Complicated? Yes, for non-legal minds, and non-planners. A trick? No, merely evidence of government procedure, a stratagem to legally achieve certain ends. Corrupt? Not at all. Open to compromise by government priorities that may override the priorities of a more cautious, less trusting public? Yes.

Early years – 2002 to 2006

In the early years of this work's study period, the state Labor Party in its first administrative term (2002–06) was feeling its way in public consultations, even though one element of its ruse was the pretence, during 2003, that it was following a defined pathway towards a tested and predictable outcome. Suggestions of this potential outcome appeared in superficial references to state explorations of public park management models elsewhere in the world.[5] The public consultations tapped into a long-held South Australian desire for practical change, after a long period of state Liberal government administration during which time several major, but unpopular, development projects in the park lands had been authorised. In retrospect, the Rann Labor park lands ruse encouraged a public delusion, and it took several years after Labor's election before signs emerged that its administration had no intention of adopting any of the alternative global models that directed parks management to independent, arm's length agencies – a core desire among many South Australians at the time of the 2002 poll. One element of Labor's proposed plan of action to, as it pledged, "protect Adelaide's park lands in the interest of all South Australians" was evidenced by a pre-election, 2001 leaflet signed by Labor opposition leader, Mike Rann. It contained a pledge to: "investigate the creation of

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[4] In 2016 the *Development Act 1993* was replaced by the *Planning, Development and Infrastructure Act 2016*. It was being slowly 'switched on' as the former Act was being slowly 'switched off'. However, the former 1993 legislation remained, to all intents and purposes, in place and in operation in regard to planning and development instruments relating to the park lands during the study period of this work.

[5] If detailed research occurred, and recommendations were drafted, the evidence was never publicly released.

an independent body to manage our city park lands with a charter to maintain, preserve and enhance the Adelaide park lands as green space, open and accessible to the public".[6] It was undeniably seductive.

A period of optimism followed Labor's win in 2002, in anticipation that the grand statements that had been made leading up to the election might lead to tangible results. Early procedures and consultations that followed also implied firm conviction to ensure that the previous unpopular record of park lands management would henceforth evolve into something better. It would feature legal 'protection' principles, pledges of continuity of access to open access, and delivery of accountable and equitable procedural play by government when deliberating on future directions.

The importance of procedure

Understanding the features of park lands determination *procedure* is crucial, but few South Australians then or since have had the time to scrutinise this mechanism. Much is revealed in the type of procedure chosen, the way it is guided via the documentation that legitimises it, the timing of the triggering of the procedure (including judiciously determined *delays* in triggering some procedures), and the outcome. The ruses practised during the Rann government's pre-2005 attempted conversion from park lands pledge to park lands practice are well documented in this work, as are the post-2005 outcomes arising from new legislation – or perhaps more accurately, arising *despite* the new legislation.

In chapters to follow in this section, other procedures are examined. The pre-assessment categorisation by planners of a proposed park lands development project using the *Adelaide (City) Development Plan* revealed much. The potential for a high level of secrecy under the provisions of the *Local Government Act 1999*, and procedures arising, highlighted the tactical relevance of controlling public access to preliminary information, especially at critical periods. More complicated park lands ruses at local government level after the 2006 proclamation of the *Adelaide Park Lands Act 2005* capitalised on the interacting Local Government Act's procedural provisions that might legally require public consultation about a certain park lands matter, but didn't specify the level of detail required, or the need for comprehensive and balanced backgrounding for likely respondents, or the need for rigorous analysis of the response sample and data arising, or objective internal administrative response to specific and (sometimes well informed) critical feedback. Moreover, in the case of significant public objection, despite the consultation mechanism required under that Act, it was silent about how the agency must respond if significant resistance arose to proposed change. There was, and remains, another common aspect: a misleading implication in the procedure that the proposed change might not progress if sufficient critical response were received. Both the *Local Government Act 1999* and the *Adelaide Park Lands Act 2005* were silent about

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[6] Labor SA, pre-election A4 leaflet signed by Labor opposition leader, Mike Rann: *Labor's plan to save the park lands*, September 2001.

whether government (of either tier) would be compelled to retreat from a proposal if there were significant resistance to it. The reality was that government could legally ignore any public response. More discussion about this appears in a later chapter in this section.[7]

Corroding public trust

Across the limited period of this study, such features littered the South Australian park lands administrative record, in a paper trail highlighting apparently procedurally sound practice, but its effect slowly corroding public trust and eating into the bank of goodwill that existed at the time Labor came to government in 2002. Labor's energy to pursue park lands matters drew on the contents of the 1999 publication by the city council, the *Park Lands Management Strategy Report 2000–2037*. It had featured many good intentions. It had been informed by an even more comprehensive prior audit, an *Issues Report*, completed in 1998. It explored all of the reasons why those intentions ought to be addressed. The 1999 Strategy directed how to make the change relevant not only over 10 years, but also over the 37 years leading up to South Australia's 200th anniversary, in 2037, of the 1837 creation of Colonel Light's Adelaide City Plan.

The record of post-2002 procedure, and an often ambiguously written paper trail, is found among the archives of both tiers – local and state – reflecting the close working relationship they shared, and still share, as well as the operation of mechanisms between state parliament, the state executive, the state administration, and the lower-order local government, charged under a wide range of state statutes to manage and deliver public realm outcomes. In terms of the analysis of ongoing ruses drawing on the store of the public's goodwill and its desire to see accountable and equitable procedure, no better parade ground existed in South Australia during this period of study than that on which its capital city's park lands matters were presented, debated and determined. Later chapters explore this further.

The new legislation

New laws lead to new procedures. On forming government in 2002, state Labor promised action, and three years later it materialised in a 2005 park lands bill. The legislation was passed, and later proclaimed in 2006 as the *Adelaide Park Lands Act 2005*. The pledge had featured the best of intentions but did not live up to expectations. It took some years for provisions to be tested and found not to have the 'teeth' that Labor's parliamentarians in 2005 had implied that the provisions would have. Perhaps the most revealing was the ruse that the Act's park lands Statutory Principles, newly written bulwarks to future shenanigans, would block land managers from exploiting the park lands open spaces. Unfortunately, the general nature of the principles did nothing to frustrate that exploitation when planning determinations were made. Over the next 10 years the 2005 Act's

7 Chapter 48: 'The consultation lark'.

provisions also prompted the creation of a library of fresh, local-government-created or amended (but government endorsed) instruments of park lands management, as well as policies and guidelines. The contents of many of these gave rise to multiple and continually evolving procedures, some of which would be manipulated to the benefit of those seeking park-lands-related commercial benefits.

Labor's 'us versus them' narrative

Labor's practise of its park lands ruse as it faced its first 'end-of-first-term' test – the 2006 election – resulted in the continuation of its cleverly contrived 'us versus them' point-of-difference narrative, which had its origins in opposition, leading up to the 2002 poll. Labor, and Mike Rann as opposition leader, had seduced voters into believing that park lands protection matters were, and continued to be, his party's rightful political domain. This was a considerable accomplishment. The ruse did not conclude at Rann's departure as Premier nine years later, followed by the November 2011 accession of Jay Weatherill as Premier. But after those long nine years, it was running out of puff, the 'shine' had tarnished, the goodwill exhausted. All ruses have a beginning, a middle and an end, a 'shelf life'. They are characterised by convincing narratives – for a period. Rann's park lands story telling had been passionate and aspirational but Premier Weatherill's merely sounded tired and repetitive. Voters sensed that he did not own the narrative. His post-2011 administration directives would later vividly demonstrate a vastly different narrative. Its early manifestations arrived in the form of a huge, government-funded Adelaide Oval stadium; a massive new hospital that took up 10ha of railyard land formerly earmarked to be returned to park lands green, open space; a landscape-dominating Torrens footbridge; and the annexation of hundreds of hectares of riverine land under a development plan amendment delivering a new Riverbank zone accompanied by a state and commercial high-rise development vision. The rezoning had taken 'care and control' from the city council and given it to a new government Authority, shared with another government land development corporation, Renewal SA. A few years later, Labor's fourth-term government delivered the means to construct a six-storey high school on an eastern park lands policy area – without public consultation.

The new Strategy delivers the goods

Premier Weatherill took Labor to its fourth consecutive election win in 2014. Park lands recreational development concepts arose in the form of the third version of the key park lands policy document in 2016, the *Adelaide Park Lands Management Strategy 2015–2025*. The Strategy vision for the park lands (signed off by the city council in 2016 and the state government in August 2017) introduced the notion of widespread recreational 'activation' hubs, contrasting with many of the more conservative, landscape-focused themes and policies of the past, especially in regard to future construction of buildings, infrastructure and recreational facilities. It put new emphasis on *sport-focused* 'activation'. It was a subtle but profound change. It crossed an ideological line that had previously existed between passive recreation

and the quiet contemplation of the open spaces, and provided an alternative, ramped up, 'fit-for-purpose' *facilities* construction vision attended by a desire to increase the number and range of events across the park lands zone.

The 2016 'vision' in the new Strategy also reflected one of the classical operational features of Labor's administrative ruse during its fourth (and last) term, because the grand plans for hubs and 'key moves' (prioritised objectives) were unfunded. The money would come from somewhere, in the usual way that governments can find money quickly when the political will exists. But the funding, the choice of site and type of facilities development would be determined only at a minister's discretion.

Test case reveals the ruse

Earlier, during the second term of the Rann state Labor government (2006–10) at least one proposed park lands development project had severely tested the authenticity of opposition leader Rann's pre-2002 aspirational pledges, as well as the pledges he made as Premier subsequently. It laid bare the fact that Labor's pledge to 'protect' the park lands had indeed been a gratuitous ruse. In the same year, as Rann had led Labor to its second consecutive win, state cabinet in 2006 had secretly contemplated a major project for one of the parks. It led to a 2007 knock-down-drag-out public tribal fight over the plan, to build a permanent, 'multi-purpose grandstand' (comprising mainly corporate boxes for select groups) on park lands at Victoria Park (Park 16). It illustrated to all that the just-enacted *Adelaide Park Lands Act 2005*, with its so-called checks and balances, was of little use in blocking the proposal and could not live up to the passionate narrative that Rann had delivered in opposition, before the 2002 election, and after it, in minority, first-term government.

Alarm bells within the metropolitan communities also should have rung in 2007 as the Minister for the City of Adelaide, Dr Jane Lomax-Smith, sought and obtained state cabinet approval to oppose that Victoria Park concept, and to do it publicly and loudly. Of course, the secret to a good ruse is that everyone needs to say the same thing, not divert from the Party line, and say it over extended periods. As a key test case of new law and new procedures, the grandstand plan failed the Party in the worst of ways. The Act's Statutory Principles had no effect, the new Authority was proven to be effectively toothless, and only a lease technicality finally blocked progression of the proposal. A determination by the city council to approve a lease application for the park lands to allow the subsequent permanent erection of the 'grandstand' was at the last minute rejected. The case proved to be as divisive as any previous ideological fight over park lands 'protection' principles. It led to a bitter tribal dispute that split the public voice into implacable for-and-against positions. It highlighted the destructive consequences of what had been a naive but grandiose political ruse pumped up in the years leading up to the 2002 election, and kept inflated well into Labor's second term.

More was to follow in 2009 in relation to a proposal to demolish Adelaide Oval's ageing heritage-listed cricket grandstands at Park 26 and replace them with a huge stadium. But this time Labor's ministers found a more brutal way to enforce the

change with controversial new 2011 legislation. It exempted the oval land from the provisions of the *Adelaide Park Lands Act 2005*, deemed any proposed development there to be complying under the *Development Act 1993*, and effectively discounted the provisions of the site's *Community Land Management Plan*, which did not contemplate such a large project. Despite State Heritage listings, each of the three heritage grandstands (appearing to comprise one single built form) were bulldozed, even though the listings remained recorded (and ostensibly still 'protected') in the development plan provisions for the policy area for some time afterwards.

A new Premier

Once Jay Weatherill assumed leadership in late 2011 he faced new pressures and new time constraints, given that, notwithstanding a change of cast, no government administration stays in power forever. The post-2010 state administration (term 3, and getting nervous given election swings in some electorates) faced fresh and pressing park lands challenges – among them a backlog of unfulfilled promises to influential and potentially noisy park lands lessees, as well as apparently overdue infrastructure policy issues needing to be addressed. As 2012 progressed, these matters continued piling up at state cabinet's door, demanding resolution.

Aspects of Labor's old ruse continued to be spun, but no spin was capable of delivering the original, simple narrative 'This time things will be different' as Rann had delivered 10 years earlier. By comparison to the 'public good' edifice implied with the 2005 Act and its creation of a park lands Authority – which was supposed to have authority but in fact operated under the tight grip of government ministerial control – prosecution of new, post-2010 park lands projects was instead swift, and almost clinically delivered. It capitalised on all of the legal procedures available to a planning minister. This was despite the usual siren song of government spin to obscure the reality and fool the inexperienced. Labor politicians promised that each park lands project would be for the greater good, that each would enhance the park lands estate with exciting benefits for all. In reality, the projects would highlight the availability of the cheapest inner-city land that the state could obtain, with the minimum of legal impediment about ownership, and able to be implemented as quickly as possible to satisfy state cabinet imperatives.

The post-2011 'story'

Labor's electoral successes at the state polls of 2010 and 2014 spoke more of electorate boundary and voting preferences matters (as well as highly skilled electioneering in vulnerable electorates) than the effect of public unease about proposed park lands alienations and park site assumptions. This unease might have provoked a pre-election riot years earlier, in the volatile lead-up to the 2002 poll, which had delivered Labor a minority government. Across the entire 2011–18 period big park lands development projects were prosecuted by the same Labor Party, but which was 'under new management' because of a new Premier. The hospital proposal, oval stadium, river footbridge, an O-Bahn park lands tunnel and

later, a new high school, all illustrated the Weatherill administration's development vision for the park lands over those years. His Party's narrative was aggressive and pro-development regarding the park lands. Added to this were other annexation mechanisms administered by the city council that put sections of the park lands under refreshed or new exclusion arrangements (generous licence periods and long-term leases) whose features were fundamentally alienating of public land, and would be for many years. Leases of up to 42 years (21+21 years) were not a new phenomenon, but a spate of applications between 2015 and 2017 indicated that sports groups (generally schools and tertiary institutions holding park lands leases) would spend money on upgrading or replacing facilities only if they could be guaranteed long-term tenure. This also was not a new phenomenon, but the multi-storey sports pavilions some planned, and succeeded in constructing on park lands, were far more grandiose than the change rooms and toilet blocks erected under leases concluded many decades earlier. The new, multi-storey pavilions and the vast adjacent ovals or playing fields, or expanded hard-stand sports courts, or car parks, symbolised the metaphorical privatisation of that land, and the lessees' control of other groups sub-leasing portions was absolute.

The 'grand gesture' ideology gives way to bricks and mortar

By comparison to the Weatherill era, the earlier park lands ruse as prosecuted by Premier Rann in Labor's first and second terms had been an era of 'grand gesture' ideology – but mainly only ideology.[8] Weatherill's era, however, occurred after relatively recent laws and instruments had been operating and tested for several years and their loopholes and weaknesses identified, and delivered grand gesture bricks and mortar. They included the oval stadium, a hospital, a bridge, an O-Bahn bus-thoroughfare, a new school, and a parade of new, multi-storey recreational pavilions occupying the most-desired park lands sites, with concept proposals for more to come. The legislative mechanisms and their arising procedures, with exception to the bridge and the O-Bahn proposal, mostly did not encourage consultation with an increasingly irritated public, and Labor avoided consultation at every opportunity. The bricks-and-mortar gestures were vigorously prosecuted, despite significant public objection to the 'ends justifying the means' rationales that Labor's ministers delivered, especially after 2014. While Rann's ruse slogan of the early 2000s might have been 'It's time we acted' (it was, in fact, 'Maintain our city in a park, not a city in a car park'[9]), the Weatherill government administration's slogan during this post-2010 period might have been simply: 'Because we can'.

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8 Premier Rann's state cabinet plans (driven by his deputy, Kevin Foley) to construct a 'multi-purpose grandstand' in Victoria Park (Park 16) in 2007 had been thwarted at the last minute, leaving the site free of proposals for permanent development projects. This result appeared (in retrospect) to deliver that desired Labor Party ideological outcome – 'protection' of the Adelaide park lands. There is much irony buried in Adelaide park lands history.

9 Throughout Premier Rann's incumbency the matter of car parking on the park lands remained publicly controversial, the source of much debate, and he often tapped into that public irritation during media interviews and parliamentary debates.

It also sought fresh legitimacy of the idea that the park lands ought to *contribute* to the social and economic development of the state. Interrogation of the mindset of ministers after 2014 may well have concluded that this idea, when the state's economy was struggling, was elementary, that it needed no further public explanation. Moreover, the *concept* of economic contribution to the state was not new. It had been explored years earlier in the 1998 *Issues Report* on the park lands, commissioned by the Adelaide City Council. But the prevailing sentiment in 1998 and well into Rann's tenure as Premier (2002–11), was that it would be limited to the potential contribution of the park lands via economic activity and tourism; natural resources; and arts, heritage and design matters.[10]

But Premier Weatherill's cabinet had other ideas and ministers prompted the creation of a different narrative. It would dominate the last term of state Labor (2014–18), not that its senior ministers proclaimed it with the same enthusiasm as new 2002 Premier Mike Rann had done during Labor's first term. It would feature less of his evangelical fervour, preaching a political gospel of forever 'protecting' the park lands, and more of the practical benefits of economic rationalism as applied to public spaces. A state asset, formerly a place of recreation and quiet contemplation surrounding the city, was to be pressed into the new duties of an 'urban address' function, to accompany and complement the infrastructure requirements of state, and address the social and sporting needs of a new, expanding residential community living at its edges.

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[10] Hassell, *Park Lands Management Strategy Issues Report*, 23 February 1998: see Appendix 13 in this work (*Pastures of plenty*): 'A 2018 author retrospective on the 1998 *Issues Report's* concerns', and the sub-heading: 'The statutory planning framework'.

45 | The category caper

The recent history of state development proposals for the Adelaide park lands shows that government bureaucrats always tried to ensure that the proposals would avoid being classified Category 3 (non-complying) in planning assessments because it could trigger heightened public awareness, stir up controversy, be very difficult to manage, and legally risky to control – should a court appeal follow. The secret was to ensure that a proposed project would be classified Category 1: 'complying'.

This chapter already has had some of its 1998–2018 specifics overwhelmed by history, given that a new *Planning and Design Code* replaced the use of development plans across South Australia's local government areas in March 2021. This was one outcome from the replacement of the *Development Act 1993* by a new planning statute that had been passed in 2016[1] but not brought fully into operation for some years. The delay highlighted the high level of complexity involved in bringing into operation a new planning instrument.

But despite the changes, an underlying theme evident today is that the same game that was played in the previous period would be played afterwards. A postscript at the end of this chapter notes what occurred after the code became operational.

It is instructive to examine the planning arrangement that applied before the new code came into operation and throughout this work's period of study, the two decades to 2018. During that time, the planning instrument was the *Adelaide (City) Development Plan*, a product of the planning legislation that applied not only over that two-decade period, but for another three years beyond 2018.

One of the many features about development application assessments during that period, and until 19 March 2021, was the concept of the planning assessment 'category'.

Avoiding the 'consultation' hurdle

Observers of park lands planning determination matters were sometimes perplexed at how major development proposals for the park lands could be assessed where no public consultation was required before development assessment approval was given and construction began. After all, the land was public land. This generally did not happen by accident.

Although construction of very minor developments, such as minor infrastructure works, was allowed to commence without consulting with, or at least notifying the public, many developments in the park lands were not minor, and required formal concept assessment, followed by public consultation, then planning assessment and approval.

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[1] The *Planning, Development and Infrastructure Act 2016*.

Historically, the state's approach to the potential of the risk that something might stir up public controversy was to ensure that public consultation was minimised – and ideally avoided. The way this occurred was through state manipulation of the assessment rules.

A 'Category 1' classification – which did not require public participation in a development assessment determination – arose from planning law and was a policy feature embedded in the *Adelaide (City) Development Plan*, an instrument of the *Development Act 1993*. A Category 1 classification applied to proposals that complied with the development plan. But many proposed state park lands zone projects did not comply, because of their excessive scale, height or footprint features, among other aspects, and were incompatible with the wording of the plan.

The government pursuit of a Category 1 classification for such development applications was common. Attainment was so polished with time that city planners and their legal advisors could not quite understand why outsiders were baffled by the ease with which it was practised.

How it was done

Despite a recent history of cavalier state park lands exploitation, the state has always been highly sensitive to criticism about it, especially given past governments' so-called deep commitment to 'protecting' the park lands from any such thing. So if there was concern by government planners to have approved a development project for the park lands that was deemed to be 'non-complying' in the development plan – that is, potentially classified as Category 3 – there were options to avoid the problem.

The process turned on the development plan's provisions and its provisions for the park lands zone policy areas. These provisions defined the rules determining approval for 'development'.[2] Exploration of the history and features of the development plan in relation to the park lands zone appears elsewhere in this work.

The most popular method was to write a development plan amendment, which was a planning procedure to revise the park lands policy area rules to fit the features of the proposed development. It took time, but was effective. In the two-decade history of the period covered by this work, this was the standard method.

The 'big stick'

The most extreme alternative option open to the state was to write and have passed new, project-oriented development legislation that could override existing park lands legislation (and its policy instruments), as well as any restrictions that might exist under the *Development Act 1993*, the precursor to the *Planning Development and Infrastructure Act 2016*. It would mean that the *Adelaide (City) Development Plan's* provisions became irrelevant. This created a very special category.

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2 'Development' had a complicated definition under the *Development Act 1993*, but for the purposes of this chapter it is not necessary to explore this here.

Project-oriented development legislation, and its deadly consequences for park lands open space and landscape character, is discussed elsewhere in this work. For example, Appendix 17 of this work explores 1984 SA legislation that allowed a car race to be held in Park 16 (the eastern park lands) using temporary infrastructure, fenced off for up to six months annually. There is also a Chapter 27 case study about 2011 legislation created to enable redevelopment of the Adelaide Oval to create a huge stadium that alienated from free public access a section of Park 26.

The political hazard for government was that such a legislative approach needed to survive debates in both houses of parliament and for the relevant bill to be passed before temporary or permanent construction could commence. This was risky. Governments don't like parliamentary debate if debate can be avoided. They don't like risk – or at least risk that state bureaucrats cannot manipulate to their advantage. For this reason amending the *Adelaide (City) Development Plan* in relation to the park lands zone has been the more common approach. It did not require parliamentary participation.

Day-to-day administration

Over the period of study of this work, in the ordinary run of administrative procedure, governments (with the aid of local government, as in the 'custodian' of the park lands, the Corporation of the City of Adelaide) also tried to ensure that the development plan rules were occasionally updated to anticipate likely future commercial or state development concepts for the park lands. This was to avoid the risk that something being considered for construction in the park lands might be otherwise classified as a Category 3 development (non-complying). State cabinet or the Capital City Committee would sometimes secretly discuss development projects for the park lands. Such discussions could trigger a bid to update the development plan. If the revised development plan envisaged such concepts, there would be a greater probability of approval at development assessment stage without the pesky problem of having to consult the public and hear any objections.

In the first decade of the 21st century the development plan amendment method was titled a 'plan amendment report' (PAR). Years later the planners retitled it to become a 'development plan amendment' (DPA). The planners' world was, and remains, characterised by complicated jargon that, to most lay readers, featured much ambiguity. The development plan amendment approach advanced a much replicated government procedure linked to the ministerial portfolio responsible for the park lands. The process was difficult for the public to comprehend, a matter of much political convenience. The caper was to choose words to envisage a likely future development, such that the development plan category that would apply, when tested, could not be other than Category 1. This meant that there would be no requirement for public participation and consultation.[3] Achieving classification to the appropriate category was, and remains, the key to the caper.

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[3] The postscript to this chapter notes that the same planner practice has endured under the post-March-2021 *Planning and Design Code*.

New school, new rule

The 2017 construction of the $100m park lands Botanic High School near the University of Adelaide was approved without public consultation. State government Planning Minister, John Rau, had in 2015 initiated a ministerial development plan amendment that, among other things, modified the 'complying development' wording in the plan for the Botanic policy area 19, the green, open space abutting Frome Road, the site identified for the proposed school. When the $100m proposal came to the assessment authority, the city council noted that the development plan had been recently amended and now allowed for the school project. It was as easy as that.[4] Only two years before the development plan amendment, the school project would have been classified Category 3 – 'non-complying' – appealable in a court by objectors. The proposal would have triggered a major public controversy, because there would have to have been public consultation and some members of the public would have been opposed to such a project on land that had been restored from a car park to park lands open space only seven years earlier. Had the assessment been based on a Category 3 classification, it is probable that there would have been a court appeal.[5]

The archival paper trail

Historians researching many of the most ill-fitting proposals for the park lands since the mid-2000s will find evidence of political temptation to adopt this planning approach many times. When they research the incremental changes made to the *Adelaide (City) Development Plan* for the park lands zone's policy areas, which are summarised in a type of code on the inside cover of the plan or in its preliminary pages, they can see a record of amendments over many years that appear to non-planners to make little sense. But when a subsequent proposal for land-use development arose, that might include public infrastructure, roads, tramways, busways, schools and 'state facilities' such as 'community or public facilities' including hospitals and bridges, the freshly amended rules gave an assessing planner an easy justification to accord the proposal a Category 1 classification. This smoothed the pathway through the planning assessment procedure and reduced the potential for public participation – and therefore objection. In fact, Category 1 classifications ruled out any public participation in assessment, unless the assessment body chose to hear submissions, which was rare. Why listen to them if they carried no legal weight? This is what made the category caper so administratively and politically convenient.

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4 Moreover, when a later query was raised about the approval, Labor's Minister for the City of Adelaide, Peter Malinauskas, rationalised it in state parliament on the planning grounds excuse of 'existing use' because the Reid building had previously been used for education purposes. This was a valid planning law response. It allowed his government to avoid submitting a report under section 23 of the *Adelaide Park Lands Act 2005* which ought to have been made about how a government could redefine green, open-space park lands as a development site for a multi-storey new building.

5 The Adelaide City Council did appeal – not to a court, but to state parliament's Environment, Resources and Development Committee. It lost. See Chapter 39 in this work, 'Public investment in the park lands'.

History's park lands paper trail

An older example of the caper had arisen during an Adelaide Park Lands Authority meeting in May 2007, in the fifth month of the first year of the Authority's operation. (Records of such discussions no longer appear in its minutes, which makes the following transcript extract all the more historically revealing.) The discussion occurred because some of its new members were still learning about planning law and its major complexities and its potential to lead to park lands ruses, as revealed in earlier park lands determinations. The subject at this meeting was a project proposal for 'development' in park lands, at Victoria Park (Park 16) a few kilometres south-east of Adelaide's city centre. Had it ever progressed to an assessment stage, it would have been classified Category 1. However, because of the way the saga later evolved, it never became subject of a development application so South Australians shall never know how it may have turned out. It related to a concept for a project that began as drawings describing a four-storey, 250m-long 'multi-purpose grandstand' in Victoria Park, predominantly comprising corporate boxes as well as motor racing pits and other facilities. At the time, this prompted great public controversy. The fact that it was likely to be classified Category 1 added to the uproar.[6]

The background

A little more background may be a useful precursor to the text that follows. Of the three assessment categories applying at the time (Categories 1, 2, 3) the Category 3 mentioned below defined a proposal as 'non-complying' in the plan, and if planning consent was given it was appealable in the state's Environment, Resources and Development Court. The recent history of state development proposals for the Adelaide park lands shows that government bureaucrats always tried to ensure that the proposals would avoid being classified Category 3 in planning assessments ('non-complying') because it could trigger heightened public awareness, stir up controversy, be very difficult to manage, and legally risky to control – should a court appeal follow. The secret was to ensure that a proposed project would be classified 'Category 1': 'complying'.

Mr Gilfillan enquires

The following text notes questions posed by new Adelaide Park Lands Authority member, Ian Gilfillan, formerly a member of the state's Legislative Council of state parliament. He was a staunch advocate for the 'protection' of the state's park lands from development projects such as this. The May 2007 query related to the likely category under which a state-initiated Victoria Park (Park 16) 'grandstand' proposal would be defined if and when it became subject of a development application.[7]

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6 The saga is described in detail in this work in Part 6, Chapters 25 and 26.

7 Adelaide Park Lands Authority, Board meeting, Minutes – 'Mr Ian Gilfillan – Redevelopment of Victoria Park/Bakkabakkandi Development Categorisation', 15 May 2007, pages 1528–1530; corrected – Board Meeting – Minutes – 19 June 2007, page 2028.

"Mr Ian Gilfillan

I'm sorry Chair that I didn't get this question in time for it to be on notice but it is in a written form and I hope all members of the Authority have got that in front of them and hopefully you have too Sir. If I can read it:

"Referring to point 10 in the Report of the ACC [Adelaide City Council] Staff to the meeting of the Authority on the 24th of April I quote: 'The proposal will most likely be submitted as a Category 1 form of development, which means that public consultation is not required. The City of Adelaide Development Assessment Panel will have the opportunity to provide advice to DAC [Development Assessment Commission] in relation to any proposal, which will be assessed against the *Adelaide (City) Development Plan*.'

"Question, why is it expected that the development will be submitted as a Category 1? Two, as it's intended to be used for motor sport, which is not a continuing use[8]*, what are the grounds for avoiding it to be submitted as Category 3? The third question, is the decision the prerogative of the State Government with the Adelaide City Council or is it that of the State Government alone? And finally, does the Adelaide City Council concur with the intention to submit the proposal as Category 1? If so why? If not why not?"*

"Presiding Member, the Lord Mayor [to CEO]: "Are you ready to have a go at that?"

"Chief Executive Officer – Stuart Moseley: 'Certainly. Through the Presiding Member, the way the *Development Act [1993]* works is that an application is received by the relevant authority and the relevant authority must then decide amongst other things what public notice category to assign, so if you look at the quote from the report where it has the word "submitted" it's probably more accurate to say "categorised by the DAC" [the Development Assessment Commission] so it's entirely a matter for the DAC therefore to answer your questions: 'Why is it expected that the development will be submitted' [or more accurately categorised by the Commission] 'as Category 1' [which is what we anticipate]? It's on the basis of legal advice given to Council staff, that is, the interpretation that they would place on the development plan. So the development plan specifies the public notice category and in this case the advice is that it's likely to be categorised as Category 1.'

"Second question: 'As it is intended to be used by motor sport which is not a continuing use': in planning terms that is an existing use of the park so that's how it's treated in planning terms according to the advice given to the council staff.'

[8] The correct planning term is 'existing use', and can be a critical determinant of subsequent planning approval. Mr Gilfillan's words 'continuing use' meant the same thing.

> "Three, it is entirely the prerogative of the relevant planning authority, in this case the State Government's Development Assessment Commission, entirely a matter for them.'
>
> "Fourthly, Council does not have a position on this matter and the Development Act does not require Council to have a position on this matter, it's entirely and solely up to the Development Assessment Commission.'"[9]

The changes that led to *Adelaide (City) Development Plan* category classification amendments for Victoria Park – which later embraced the concept of constructing a huge 'grandstand' to be erected in that park lands policy area, as well as future state assessment without public consultation – had been made before or during 2005, when the state government and council had worked together to create a 'General and Park Lands Plan Amendment Report' (PAR).[10] It was a coincidental procedure and many of the plan's changes had been contemplated as early as 2001 but also perhaps as late as 2005. The PAR procedure had taken five years to conclude. But some sceptics cynically believed that elements of it had anticipated a likely controversy at Victoria Park, and it attempted to avoid it. It would frustrate future public resistance to the Victoria Park grandstand proposal by legal means, by amending provisions in the development plan that categorised future contemplation of construction of a 250m-long 'grandstand' at Victoria park as 'complying development' (Category 1) well ahead of time. Other chapters in this work covering the years leading up to the 2007 Victoria Park 'grandstand' development proposal explore this further.

The secret to success

It was not critical to the category caper to have the *Adelaide (City) Development Plan* anticipate every likely development project proposal for the park lands zone as a Category 1 development. But it was very convenient if it anticipated the most likely ones. Government plans for park lands development projects could arise at state cabinet level years ahead of their public announcement and assessment.

An alternative was to delay assessment of the development application until the development plan had been amended, either by the city council (a slow, methodical process and, as a result, risky) or by the planning minister (a faster process[11]). Either way, the secret to achieving success in getting approvals for certain development projects in the park lands lay in establishing a Category 1

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[9] Adelaide Park Lands Authority, Board meeting, Minutes – 'Mr Ian Gilfillan', ibid.

[10] Gazetted on 5 January 2006; consolidated in the *Adelaide (City) Development Plan* on 12 January 2006.

[11] A *ministerial* plan amendment report (later retitled a *ministerial* development plan amendment) could be fast-tracked and brought into 'interim operation' as soon as the process was finalised. Submissions objecting to the proposal could be received by the planning minister, but in the meantime, given the 'interim' listing, the project could legally go ahead. This procedure quickly gave the green light to proponents of big park lands development projects.

classification pathway for them. That way, the public would be locked out of the subsequent assessment procedure. Moreover, in an ideal political world, the public would not even know about the proposal until evidence of construction works at a park lands site became visible.[12]

POSTSCRIPT

The *Planning and Design Code*, which was brought into metropolitan operation to replace the *Adelaide (City) Development Plan* on 19 March 2021, defines development types – land-use descriptors – that had originally been defined by the former plan; for example, shops, offices and residential built forms. This is similar to the way the former *Adelaide (City) Development Plan* worked.

State planners today ensure that land-use descriptors in the Assessment Provisions of the *Planning and Design Code* for park lands zones list every development concept they – or perhaps a commercial developer – might be contemplating for construction in the years ahead, even if there is no development application waiting for assessment at the time. This effectively classifies them as complying development 'Category 1' (a term no longer used) if they were to be subject to planning assessment some time in the future. Once classified in this way, there is no legal requirement to consult with the public, or even warn the public that a development will be soon under way. This repeats a pre-code state planning cultural tradition, and is an example of 'the more things change, the more things remain the same'.

By the way, the concept of a 'Category 3' assessment still exists, although that descriptor is no longer used. Today it is described as 'Restricted development'; however, the opportunity for the public to appeal approvals of developments classified as such has been removed under the provisions of the recent 2016 legislation. The long tradition of state frustration of opportunity for public participation in park-lands-related planning matters continues under the provisions of the *Planning, Development and Infrastructure Act 2016*.

[12] This occurred, for example, with the construction of a large sports pavilion in 2012 by the University of Adelaide in Park 10, near North Adelaide's MacKinnon Parade.

46 | The secrecy tradition

The law requires that city council elected members annually review confidentiality orders and contemplate releasing some related details. But it is largely an ad hoc, internal process. The recommendation to maintain the duration of a confidentiality order is subjective, initiated by administrators, and is not a conversation held in the public domain. Elected members only very rarely challenge administrators' recommendations. For a curious public and researchers, the matters that remain 'in confidence', and the practical reasons why, are like 'lost chapters' in the administrative history of Adelaide park lands management.

A central theme about South Australian dialogue about the 'protection' of Adelaide's park lands is an assumption that everything is discussed and resolved publicly. Unfortunately this is false – but few South Australians realise it. Behind a façade of apparent transparency and accountability operates a park lands management machine which makes and keeps many secrets. In this way, the estate most likely to warn the public about what is going on – the media – is gagged. On matters of controversy, an opaque procedural screen often obscures details about emerging park lands matters and subsequent determinations. Worse, park lands documentation likely to throw light on the matter months and sometimes years later often remains publicly inaccessible through a records mechanism that remains under the complete control of those who initially recommend the triggering of the secrecy clauses.

Although park lands matters comprised only about 20 per cent of the total, city council data records between 2011 and 2018 revealed that an average minimum of about two council matters were subject to 'exclusion from the public' and/or subsequent confidentiality orders per week per year (but not necessarily every week). Moreover, given that the council did not meet across all 52 weeks in any year, the actual weekly number could have been higher. The numbers regarding whether the item was discussed 'in confidence' indicated that almost all of the administration's recommendations for a resolution to make a confidentiality order had been endorsed by elected members. Moreover, a high number of those agenda items' discussion papers continued to remain secret for years. Appendices 21 and 22 in this work address this phenomenon, and Appendix 23 examines and discusses the data, especially in relation to park lands matters.

The 'public interest' test

Six months after the Rann Labor government was determined to be the Party to form government after the March 2002 state election, its new Minister for Local Government, Jay Weatherill, rose in parliament's House of Assembly to speak about a bill to amend an Act. "The government's commitments to improved

honesty and accountability in government will flow on to local government councils in two ways," he said.[1] One of the ways was to propose changes to the "accountability framework unique to local government". He was referring to sections of the *Local Government Act 1999* and those sections' provisions to "make orders to exclude the public to consider a particular matter and to override the automatic right the public would otherwise have under the Act to access the reports, resolutions or minutes relating to that matter".[2] Minister Weatherill noted that the bill he was introducing was "consistent with those behind the amendments introduced to the *Freedom of Information Act 1991*." He said: "The amendments proposed require the application of a public interest test in some cases, a concept familiar from freedom of information legislation." However, whatever good intentions existed behind the writing of the amendment bill for this 'public interest test', the subsequent history (to 2018, and even as late as 2022) in regard to Adelaide city council's management of Adelaide park lands matters would show that this local government's habit would more accurately be practised as a 'self-interest' test. The wording that would subsequently emerge when a park-lands-related confidentiality order was made would be that [the committee/council/board] "… is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances …"[3] Section 90(3) of the *Local Government Act 1999* lists the grounds.

One of the amendments discussed by Minister Weatherill on that day in 2002 was to put in place a type of review mechanism to: "… review, at least once a year, orders that meeting documents associated with a matter that has been dealt with in confidence not be made public …"[4] In theory, it was superficially attractive, a mechanism prompting a council to revisit records and test again the reasons why they remained inaccessible to the public. But in practice it was to prove to be ineffectual because it created no mechanism for the public to participate in that review, to probe any matter still under a confidentiality order, or call for the order's revocation. It left the entire process in the hands of administrators, making determinations away from public gaze. It could only come to public attention in the form of a city council agenda item containing an annual summary of existing orders presented to elected members, with a request that they continue for another year. For example, in October 2018, a '2018 Review of Confidentiality Orders' noted that 891 orders had been reviewed, of which 165 "will be released in part or full on a progressive basis from November 2018" but that another 145 orders would be extended, in other words, the reports related to them would be kept secret for another period.[5]

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1 Parliament of South Australia, *Hansard*, House of Assembly, 'Local Government (Access to Meetings and Documents) Amendment Bill', 24 October 2002, page 1774.

2 Parliament of South Australia, ibid.

3 *Local Government Act 1999*, s90(3) 'Grounds and basis for confidence'.

4 Parliament of South Australia, ibid.

5 Adelaide City Council, Council meeting, Agenda, Item 12.3, 'City of Adelaide Annual Report 2017–18', Appendix matters: 'Confidentiality provisions – Use of sections 90 (2) and 91(7) of the *Local Government Act 1999* (SA), by council and its council committees', 23 October 2018, page 9.

The legal provisions would see South Australian local government administrators, especially those working within the park lands custodian, the Adelaide City Council, triggering various section 90 provisions. The city council could determine whether or not to be accountable using a list of grounds under section 90, sub section 3, and the choosing of any one or more of the criteria would prevent what the Act said would otherwise be 'the unreasonable disclosure' of information. A case study contained in this work's appendix content, where one particular order was made but six months later revoked, provides an example of the Kafkaesque features that could arise under this Act, and illustrates that that particular order had been inappropriately applied.[6] However, this could not be confirmed until the revocation. Many other orders over the years resulted in the contents of whole reports and text discussions being made secret when the rationale of the order was only applicable to a few sections of the document, sometimes the contents of only one or two pages.

The traditional city council rationales for applying orders included:

- "Business matters with commercial-in-confidence considerations for a third party.
- Matters where the council competes and/or co-partners in the private marketplace.
- Strategic property matters.
- City/state matters for which cabinet in confidence considerations apply."[7]

The last item on the above list was misleading in practice, because as long as ministerial correspondence with the city council was prefaced by the word 'confidential' it would automatically trigger a confidentiality order at city council level. It did not matter whether the correspondence related to state cabinet deliberations or not. In this way, a minister could essentially control the procedure, well ahead of a determination by the council's administrators or elected members.

Over this work's period of study (in particular, the period 2011–18) the city council's use of the Act's provisions in relation to park lands management matters would prove to be the key mechanism used to frustrate transparency and avoid accountability, especially at times of controversy. The principal beneficiaries would be state ministers and bureaucrats; local government administrators and elected members; commercial or legal firms, some of which acted for park lands lessees, licence holders or applicants for leases or licences; as well as construction firms and their contractors.

The secrecy mechanisms

The Capital City Committee

In an appendix to this work the committee's operational features (its 'culture of confidence') are discussed in detail.[8] Exceptional features relating to the committee (over and above those applying to the city council) include provisions under its

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6 See Appendix 22: 'Case study: The Adelaide park lands 'in-confidence' tradition'.

7 Adelaide City Council (ACC), Council meeting, Agenda, Item 12.3, 'City of Adelaide Annual Report 2017–18', Appendix matters: 'Confidentiality provisions – Use of sections 90 (2) and 91 (7) of the *Local Government Act 1999* (SA), by council and its council committees', [and] 'Subject matter and basis within the ambit of s90 (3)', 23 October 2018, page 9.

8 See Appendix 5: 'The Capital City Committee'.

legislation, the *City of Adelaide Act 1998,* that block provisions of the *Freedom of Information Act 1991*, exempting committee documents or official records from public access. The *City of Adelaide Act 1998* also includes a provision that blocks any parliamentary committee from inquiring into any committee 'function and operation'.

The city council

There are four Local Government Act sections that allow confidentiality to be applied at city council level. Section 90 (1) directs that a meeting of the council or council committee should be conducted in a "place open to the public". But section 90 (2) allows for exclusion of the public "to receive or discuss or consider in confidence any information or matter listed in sub section 3".[9] Sub section 3 of section 90 (2) lists the matters that might fall under this description and allows for orders to be made to keep the matter secret. Sub section 4, which is rarely referred to publicly, is cause for ill-humoured public contemplation because it provides, when triggering sub sections 1, 2 and 3, that "... it is irrelevant that discussion of a matter in public may: (a) cause embarrassment to the council or council committee concerned, or to members or employees of the council; or (b) cause a loss of confidence in the council or the council committee".[10] In the past, often the closing of doors and the frustration of denied transparency left a residue of public suspicion that, in a bid to hide information, the motivation was to thwart informed public discussion, and possibly resistance to a park lands proposal, as well as to avoid criticism based on aspects ranging from the procedural to the political. In the study period of this work, very few elected members responded sympathetically to ratepayers' complaints about the secrecy provisions. Most concluded passively that secrecy provisions were aspects of the 'rules of the game', and fairly quickly after being elected they ceased disputing them. One that did continue to dispute, but was frustrated in his attempts to increase transparency, was city area councillor, David Plumridge. He had been a mayor of a northern metropolitan council and had more than three decades of local government experience. He was elected to the city council in 2007. In 2009, he wrote in his personal newsletter to city ratepayers:

> "To its credit, the Messenger Press [News Ltd] has waged a prolonged campaign to shine the spotlight on councils when it feels that they are unnecessarily using the confidentiality provisions of the L.G. Act to conceal their activities from their citizens. In the days before successive state governments decided to tell councils how to run their business, most council decisions were made in the open with only the most personal of items being decided behind closed doors. Now [2009] there are half a dozen or so 'reasons' (some may say 'excuses') why a council shall deal with

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[9] Section 90 (7) of the Act requires that an order to exclude the public fulfil several objectives, including: "(1) identify the information and matters [grounds] from s90 (3) used to request consideration in confidence; (2) identify the basis [ie, why it is necessary and appropriate to act in a meeting closed to the public]; and (3) identify the grounds under s90 (3) [ie, how information open to the public would be contrary to the public interest]." Source of wording: ACC, Council meeting, Agenda, Item 13.1, 'Exclusion of the public', 11 June 2019, 'Discussion', page 27.

[10] *Local Government Act 1999*, section 90 (3), sub section 4.

> a matter behind closed doors. I can think of very few reasons where confidentiality can be justified except in the most extreme cases where a person's privacy needs to be respected and protected. Indeed when dealing with public monies and assets, contracts and tenders where ratepayers' money is being used and in granting leases and licences where community-owned land is being encumbered, utmost transparency is essential. I will continue to oppose confidentiality wherever appropriate and to campaign for open doors at all times."[11]

The Adelaide Park Lands Authority

The Authority capitalised on two sources for triggers to establish and maintain secrecy – the *Local Government Act 1999* (sections 90 (2) and (3)) – as well as the provisions of its charter. The charter applied compulsion on board members. "All board members must keep confidential all documents and any information provided to them on a confidential basis for their consideration prior to a meeting of the board ..."[12]

There are a few minor exceptions listed under this clause. They relate to a section in the Adelaide Park Lands Act and the Local Government Act, but generally the clause leaves open opportunity for any minister, administrator or likely future attendee (including commercial lobby groups) to request for advice or documentation confidentiality, and thus allow the Authority to define the matter as requiring secrecy, and for it to stay a secret for an unregulated period, as long as the determination is subject to periodic review. The charter wording means that board members can be subject to this random compromising of their ability to divulge this information or subsequently discuss the content of such briefings in public if it involves discussion and/or documentation "provided to them on a confidential basis for their consideration prior to a meeting of the board".

When the board meets, the Authority's presiding officer also "may order that the public be excluded from attendance at any meeting", capitalising not only on the charter but also on section 90 of the Local Government Act criteria to close the doors.[13]

Locked doors, locked jaws

Meeting agendas are presented to city council elected members containing a widely varying mix of discussion papers and proposed resolutions, defined by item and subject matter. Some of them are already tagged confidential before the meeting commences by administrators or the CEO, but can be released from that restriction if the elected members resolve so when the meeting begins. Some superficial discussions about applying confidentiality orders occasionally occur in open session, without revealing the contents to the public, except by a subject description.

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[11] Newsletter: *Notes from Councillor David Plumridge's desk*, Issue 34, 15 September 2009, page 1.

[12] Adelaide Park Lands Management Authority (APLA), Charter 2018, 'Meetings of the board/Authority'. Source: Adelaide City Council, Agenda, 26 June 2018, part 4.8. clause 20, page 71. This is an amended clause number. The original 2006 charter references about meetings of the board appeared under part 4.5, clauses 19–24.

[13] APLA, Charter 2018, ibid.

The person recommending that a council meeting exclude the public from the discussion, or whether to go one step further and apply a confidentiality order, is usually the CEO or an administration delegate. If the elected members agree, this has two immediate effects. Firstly, documentation about the matter discussed at the time becomes legally secret. Secondly, any subsequent public revelation by the elected members of the content during the period of the order becomes (if detected and traced) a breach of the Act, subject to penalty. This destroys the implied 'compact' that members have with the constituencies that elected them, an assurance implied before they are elected that future matters discussed in council's operational realm during the elected member's term would be transparently revealed and discussed with those who voted for them. Over the period covered in this work (1998–2018) newly elected councillors sometimes expressed sensitivity and frustration about this suddenly evident 'breach of good faith' with their constituents, but had no way of legally circumventing the restriction.

'Commercial in confidence'

In park lands terms, the two most triggered provisions of section 90 (3) of the *Local Government Act 1999* during the study period of this work related to matters deemed 'commercial in confidence' or matters of 'inter-governmental communication'. However, there were others. (A list of s90 (3) sub sections, especially b, d, h and j, from an extract from the Act, is reproduced in this work's Appendix 21.) When applied to park lands matters, their application traditionally irritated the public, especially if the subject matter was likely to be controversial. Many South Australians believe that all decisions about management – and particularly of commercial development – of Adelaide's park lands ought to be openly discussed, transparently explained, resolved in open session and recorded in accessible archives. The evidence for this is the historical uproar that has traditionally followed when it is revealed that park lands matters have been kept secret by parties until a major announcement reveals the details, often too late for the public to participate in the determination. The gag is particularly effective in blocking media discussion and analysis about commercial proposals. Opportunity exists at administrative level to heighten the potential for the gag when making confidentiality orders by itemising the subject title so ambiguously as to render the subject matter impossible to determine. Administrators are masters at this game. More below.

The law requires that city council elected members annually review confidentiality orders and contemplate releasing some related details. But it is largely an ad hoc, internal process. The recommendation to maintain the duration of a confidentiality order is subjective, initiated by administrators, and is not a conversation held in the public domain. Elected members only very rarely challenge administrators' recommendations. For a curious public and researchers, the matters that remain 'in confidence', and the practical reasons why, are like 'lost chapters' in the administrative history of Adelaide park lands management. Over the period of this work's study there was a recurring pattern evident, reflecting a long-practised habit.

For example:

- An extract from a North Adelaide community newsletter illustrated an observed habit of secrecy between 2004 and 2007 that, in retrospect, can be seen to reflect a pattern that would follow all of the remaining years of the study period of this work. "Pledges by candidates in 2003 to be transparent and accountable through 'reports to ratepayers' were never delivered," the newsletter reported. "In 2004–05, council held 60 confidential meetings; 59 remain subject to confidentiality [orders]. In 2005–06 it held 59 and 58 remain [secret]. Between April and June 2007 council held 20 confidential briefings that were never minuted. Since 2003, council's annual reports [were] published at least six months late, some up to eight. Council's 2005–06 report, due in November 2006, had still not been published by April 2007 – effectively 10 months late."[14]
- In 2010, the pattern was again identified, this time by area city councillor and deputy Lord Mayor, David Plumridge, in his personal newsletter. "In all my 30-plus years of local government service I have worked for openness and transparency in dealing with the business of the community and I have fought against council decisions being made behind closed doors. The *City Messenger* article [in January 2010] revealed that the Adelaide City Council locked the public out of its deliberations 114 times last year compared with 'only' 65 the year before. I regularly move against confidentially [motions] but I have not been able to change the prevailing culture. Certainly the financial parts of a commercial deal may need to be kept confidential but that is no reason why the whole matter should be kept confidential. Over the past year there have been numerous occasions where the public had an absolute right to know what was being decided by the council, but that right was denied by resolution of the council. As a result, I have been unable to report on (among other things): Accepted tenders for major public works and prices accepted for untendered works; design processes and current state of Victoria Square Urban Renewal, one of this council's major projects [in park lands]; the terms on which the SA Jockey Club finalised its occupation of Victoria Park [park lands]; and the price being paid by council to purchase recycled water from SA Water [for park lands] … As a councillor I have a responsibility to be able to explain to those who elected me what the council is doing especially when it involves the purchase, disposal and leasing of community assets and the use of ratepayer funds. Confidentiality can lead to less accountability and possibly worse; it must be curbed at every opportunity."[15]

External potential for advantage

Secrecy's advantages make it very popular with some. Over the period of study there were many instances of persons attending city committee or council meetings to brief elected members about park lands matters who asked that confidentiality provisions apply. A minister or certain government officials have that right under one of the

[14] The North Adelaide Society Inc., *Newsletter*, No 148, September 2007, page 5. City council annual reports contained summaries of confidentiality orders, and itemised those revoked as well as those that continued to apply.

[15] Newsletter: *Notes from Councillor David Plumridge's desk*, Edition 40, 26 January 2010, page 1.

section 90 (3) excuses. Legal advice is almost always kept secret. Excuses about 'commercial information' or 'commercial advantage' often were and continue to be indulged by city council staff, who are not interested in public objections reasonably based on the concept that the assets are public so the information should be publicly accessible. This also occurred during Adelaide Park Lands Authority meetings over the years, at which visitors providing information attempted to capitalise on the in-confidence provisions to establish and maintain secrecy about their projects. Government agencies were notorious for their preference for secrecy. An example occurred in June 2010, when Authority members heard bids by Department for Transport, Energy and Infrastructure employees to have their park-lands-related briefing to the Authority declared secret. Board members disagreed, so the representative did not give a briefing. The clear message had been: We won't brief you unless it's kept a formal secret. Authority board member (2010–13), Gunta Groves, reported in her subsequent June 2010 newsletter: " My arguments against confidentiality are that the [DTEI] project is a public infrastructure project, paid for by the public, and involving public land."[16] Despite the logic of this argument, there were multiple instances during her term during which her colleagues disagreed and resolved that the matter be discussed 'in confidence'.

Internal administrative potential for advantage

The city council

An earlier section of the Local Government Act, section 87(10), requires local government CEOs to "... identify in a committee agenda and on a committee report that the document is submitted for consideration in confidence, provided that the basis on which an order to consider and determine the matter in confidence is presented at the same time". CEOs can wield significant power in keeping secret whole documents, withheld from public access, even though only a small portion of the content might trigger the rationales of some of the categories available under section 90 (3), as administrators at the time might claim. Given that public observers cannot scrutinise the document before the in-confidence recommendation is made, they are powerless to challenge it. In this way, significant general explanatory background to a matter can be locked away for years under a confidentiality order.

The Adelaide Park Lands Authority

In the case of the Park Lands Authority, its board, under its 2018 revised charter[17] "may order that the public be excluded" and consider a matter in confidence. The presiding officer or his/her deputy can make the suggestion, for endorsement by a majority of board members. In a way similar to the circumstances available to CEOs at city council level, this provision can be abused. Once a subject is nominated to become an 'in-confidence' item at the beginning of the board meeting, it can be difficult even for a board member to challenge that proposed status and argue that the matter be discussed in open session. For example, in December 2010, board

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[16] Gunta Groves, personal newsletter #5, *News from the Adelaide Park Lands Authority*, 25 June 2010, page 2.

[17] Part 4.8. clause 21.

member, Gunta Groves, tried to do this in relation to a workshop whose contents had been nominated in an agenda to be an in-confidence matter, but was told it couldn't be done in relation to workshops. "In my view, a matter that involves public land, public money and public interest should be discussed in public at whatever level of government it occurs," she later wrote in her public newsletter.[18] The use of workshops and other 'briefing' sessions to provide confidential background to elected members has a long history of abuse, in which elected members or board members are provided with comprehensive detail, but during which the event stops short of concluding with a resolution – even though it might become obvious as to what that resolution would be, and often becomes later. In that way, the comprehensive detail does not get an airing in a subsequent public forum, merely the resolution. The 'briefing' habit could be administratively useful, as the following examples reveal.

- Before the commencement of Authority meetings (2007) the city's administrative mechanism monitoring park lands matters was a park lands committee. It reported to councillors. A city councillor in June 2006 made observations about council 'briefings', telling a journalist: "The briefings are almost designed to make decisions; things are going back to council and presented as a *fait accompli*." [19]
- City area councillor, David Plumridge, noted three years later in 2009: "When I joined the Council I was critical of 'behind closed doors' briefing sessions and indeed I am still concerned that often major subjects are debated out in an informal way which means that when they come to the formal council meetings – which constitute the fundamental public forum of local government – they are often passed 'on the nod', with no public debate because it has all happened in an earlier briefing session. It is only one step better than councillors and staff having a friendly chat over a beer or a wine at the local pub!"[20]

As a result of Gunta Groves' February 2010 to February 2013 tenure as an Authority board member, some matters came to light about Authority use of in-confidence mechanisms. Her newsletter revelations during that period indicated that on about six occasions she disputed whether a matter nominated for in-confidence discussion ought to be discussed behind closed doors. Her experience paralleled that of city councillors, where at the commencement of a meeting there would otherwise be tacit, unquestioning acceptance of the CEO's or presiding officer's proposal (the Lord Mayor) that something ought to be kept secret. In the lead-up to a meeting, few elected member participants would fully comprehend the details of contents likely to be subsequently discussed until after they had agreed by a show of hands to tag it as a secret matter.

In some cases, establishing secrecy was simply a matter of bluff by parties seeking to brief board members. For example, in June 2010, Groves noted a request by the

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[18] Gunta Groves, personal newsletter #11, op. cit., 19 December, 2010, page 1.

[19] Cris Magasdi, city councillor, as extracted from a news article in *The Advertiser* article in April 2006, and reported in the *Newsletter* of the North Adelaide Society Inc., No 143, June 2006, page 3.

[20] Newsletter: *Notes from Councillor David Plumridge's desk*, Edition 34, 15 September 2009, page 1.

Adelaide Oval Stadium Management Authority (AOSMA) to have details of its briefing kept secret. Adelaide Park Lands Authority board members resisted and it was held in open session. The motivation for the AOSMA quickly became clear. Highly controversial issues were revealed: proposed excessive park lands car parking; an apparently 'essential' requirement to build a footbridge across the Torrens linking with the oval (unfunded at the time); a proposed expansion of the oval's core area footprint; and new areas of park lands to be covered by new hard surfaces. "As it happened, no 'confidential' issues were mentioned," reported Groves. But to AOSMA and its political tacticians, the bid for secrecy had been an attempt to avoid adding fuel to an already escalating fire of uproar and park lands controversy. Groves' commitment to transparency won. "This was all common sense as so much media coverage ... had already occurred. And again, this is a public project using the public's money and involving public land," she wrote.[21] Regrettably, few of her ministerially appointed colleagues felt the same way.

Other advantageous tactics

Perhaps the most tactical administrative and political method employed in managing controversial Adelaide park lands matters was to simply keep a matter away from contemplation by a committee or a board, such that the timing of any likely public controversy could be manipulated, even to the extent that no controversy arose at all because the matter was not discussed publicly. One Authority example was a procedure that relied on apparently stalled discussion until time ran out and as a consequence frustrated potential formal resolution on a matter, based on an excuse that, as some claimed, "there wasn't enough time to seek the board's advice". An example on 14 July 2012 arose where Authority board members were asked to 'note' a matter that had been addressed at council level weeks earlier. In other words, someone had made sure that it hadn't been first discussed at Authority level – which should have been normal procedure. It was a controversial subject, relating to a use of a contaminated park land site as a dumping ground for soil extracted during Adelaide Oval stadium construction preparations, and subject of a proposal to use the site, once capped with that soil, for oval event car parking. Two board members opposed the recommendation to 'note' and instead wrote an alternative, opposing motion. It was lost on the numbers. The use of retrospective 'noting a matter' that would imply endorsement, without opportunity for proper briefing, discussion and resolution, is an old ruse in the operation of boards and other committees. Governments specialise in it.

Another ruse can be comprehensively effective. In early 2011 there was considerable state government effort put into avoiding Authority involvement in deliberations about the looming $535m Adelaide Oval redevelopment (in park lands) and, after the new legislation making it possible had been passed in August 2011, avoiding Authority resistance to subsequent park lands landscaping proposals surrounding the oval. The oval is in Park 26 near North Adelaide, whose land management of surrounding park lands is lawfully defined under the *Local Government Act 1999* using the instrument of the *Community Land Management Plan* (CLMP). 'Procedural

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[21] Gunta Groves, personal newsletter #5, *News from the Adelaide Park Lands Authority*, 25 June 2010, page 2.

ownership' of this CLMP commonly fell to deliberations of the Adelaide Park Lands Authority. It wrote the 2009 version that applied to the oval and surrounds at that time. City council records show that 16 oval-related agenda items declared secret under confidentiality orders had been addressed at city council level during the critical oval pre-construction period between 19 April 2011 and 11 December 2012, but only one agenda item had arisen under Authority deliberation. In other words, a matter fundamental to park lands management, with which the Authority was charged to advise on and which it was anticipated to dialogue about its CLMP responsibility, had been kept from the Authority's purview. The government's excuse (if asked) might have been that the *Adelaide Oval Redevelopment and Management Act 2011* (passed in August 2011) overrode the *Adelaide Park Lands Act 2005*, the statute whose interacting statute (the *Local Government Act 1999*) referenced the Authority and defined its role and powers under a charter, as well as the CLMP. But the CLMP continued to define management of the land *outside* the oval, land that the AOSMA sought to use as a related car parking area and whose arising revenues it wanted to retain. Records show that, while the Authority board members were kept waiting, six detailed council 'in-confidence' briefings about the looming redevelopment had been held and had become subject to confidentiality orders *before* the legislation was passed and *before* sub-licence (external area) details had been resolved in late 2011. Seven years later, these remained subject to confidentiality orders, at year-end 2018.[22] In the lead-up to that time in 2011, the Authority had demanded AOSMA briefings, but many months had passed while board members waited.[23] It was evidence of a deliberate Authority snubbing, because the oval legislation was ready for presentation to state parliament but Labor Party tacticians did not want to allow the Authority to obstruct plans. The one item discussed and subject to advice at Authority level (Creswell and Pennington Gardens landscaping design) did not occur until 22 May 2012, well after the passing of the Oval Act. Of the 16 items exclusively discussed at council level, most had been tagged with the usual excuses: 'commercial information/advantage', 'legal advice' and 'advice from a minister'. All related to a public park lands site under lease, surrounded by open park lands but which had been procedurally treated during this time as if the land were subject to a private construction proposal on private title, with an implication that the surrounding land was also part of the title. The experience illustrated how relatively toothless the Authority was when a state government used various means to avoid collaborating with it. Secrecy, as usual, was the desired outcome.

Further reading

Please refer to these appendices:

- **21: 'Extract from the *Local Government Act 1999*, section 90 (3)'.**
- **22: 'Case study: The Adelaide park lands 'in confidence' tradition'.**
- **23: 'Council secrecy orders – park lands key data'.**

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[22] Adelaide City Council orders, January, February and April 2011, CO numbers 459, 566, 577, 584, 592 and 593.

[23] Gunta Groves, personal newsletter #17, op cit., 29 May 2011, page 1.

47 | The footprint numbers game

> *The footprint approach was (and remains) a type of 'currency' trading market, which conceives a park lands site's total building footprint as a value, which could be converted into a new footprint value – a new footprint area allowance – ready to be exploited once again.*

In November 2006 park lands 'protection' stalwart and Minister for the City of Adelaide, Dr Jane Lomax-Smith, spoke at the conclusion of an Adelaide park lands symposium. She discussed the range of excuses people had used to justify park lands exploitation and alienation over 20 years, time during which she had served as a city councillor and Lord Mayor. One of the excuses was the notion of 'footprint'. She observed:

> "[An] argument that I find quite bizarre is, 'It's replacing something ugly', or 'It's replacing something bigger' or, most insidious of all, 'It has a smaller footprint.' ... It's an absolutely spurious argument. It was used by the [former state Liberal] Olsen Government when they built the [National] Wine Centre [on park lands], and it was a fabulous argument that's worth re-living now because I think it actually gives you a good argument [not] for a whole range of developments. [Liberal Premier] John Olsen's argument was that he would demolish the [Botanic Gardens] Herbarium, which may have been ugly, but I could never see it, it was behind the bushes. Three potting sheds, a lawn mower shelter, a compost heap, and a few open lot car-parks, and they would build something smaller! Do you get that? The Wine Centre would be smaller than the three potting sheds, the Herbarium, and the things it replaced. [The argument] was: it had a smaller footprint. So you have to ask yourself when you hear those sorts of stories, 'What really does that mean?' And when you drive past the Wine Centre [corner North Terrace and Hackney Road, Hackney], I'd like you to recall that, and just remember that it's much smaller than the potting sheds, because that's the argument that was used."[1]

The origins of the footprint cult

'Footprint' is an architects' and planners' concept. For application in the park lands, it was articulated in the first version of the *Park Lands Management Strategy Report: Directions for Adelaide's Park Lands 2000–2037*, released in 1999. Just before its

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1 Adelaide Town Hall, final Q and A session of the Symposium, Transcript: 'The Bob Hawke Prime Ministerial Centre', 'Park lands forum: The Adelaide park lands threats, challenges and solutions', Hawpark, Auscript 2006, page 8 (of 29). Background to the three-day event: '*The Adelaide park lands threats, challenges and solutions*', Adelaide Parklands Symposium: A balancing act: past–present–future, 10 November 2006, co-presented by The Centre for Settlement Studies, Louis Laybourne Smith School of Architecture and Design, The Bob Hawke Prime Ministerial Centre, University of SA; and the Adelaide Parklands Preservation Association.

release, state Liberal Premier John Olsen had highlighted the footprint concept as he successfully pursued the construction of a $20m National Wine Centre on the eastern park lands.

As the 1999 Strategy had stressed:

> "The seemingly differing attitudes and expectations regarding protection of the park lands from development of new buildings and enclosures, while ensuring the continued viability and amenity of buildings and enclosures servicing recreation and cultural activities, can be facilitated through a strict management policy of overall reduction in building footprint and enclosures during the vision period, 2000–2037." [2]

But the seeds of future ambiguity were to be sown in this document. It began with the best of intentions. Of its 'Directions for buildings and land', it had stated: "Achieve a significant reduction in building floor areas and hard-paved areas in the park lands."[3]

The Strategy's 'Draft strategies and actions, Direction 1' did not focus on the 'like-for-like' concept, but simply aimed to achieve a 'net loss' outcome. "Establish a data base of building areas, car parking and paved areas to identify and verify net loss within the park lands."[4] Moreover, under its Direction 4, it stated: "Supports enhancement and redevelopment of existing buildings which are used for sport and recreation or cultural purposes in appropriate locations. New buildings for these purposes will be considered, providing the criteria for overall net reduction is met by removal of existing unsuitable or under-utilised facilities." The concept of 'overall net reduction' complemented the idea of reducing footprint, as well as the potential to replace existing buildings, structures and car park areas and deliver smaller total areas.

A 'currency' trading market

The footprint approach was (and remains) an exercise in calculating the footings area sum of buildings, structures or hard-stand areas, such as car parks, to be demolished and removed, to give rise to a footings area sum allowance for a proposed replacement structure or hard-stand area. It was, and remains, based on the idea of a type of 'currency' trading market, which conceives a park lands site's total building footprint as a value, which could be converted into a new value – a new footprint area allowance – ready to be exploited once again.

Some assumptions inherent in it were obviously dubious, such as whether the earlier buildings or hard-stand areas were ever a reasonable footprint in area for the

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2 Hassell, *Park lands Management Strategy Report, Directions for Adelaide's Park Lands, 2000–2037*, 10 November 1999, 'Park Lands: overall frameworks', section 8, page 52.

3 Hassell, op. cit., Section 6, 'Vision and Directions', 'Buildings and Land', 10 November 1999, page 44.

4 Hassell, op. cit., 'Draft strategies and actions', Buildings and land, 'Direction 1', Appendix A, 10 November 1999, page 4.

site in the first place. These contemplations were rarely scrutinised. Even the *Community Land Management Plans*, which were being written between 2004 and 2009, did not discuss that. They merely recorded what existed in a certain park, and delivered management direction. But politicians and their advising administrators sought to win Adelaide hearts and minds by playing the footprint numbers game, insisting on its legitimacy and backed by planners who said it was. The public had to go along with it for it to be a success, but the public at no time held any veto over the use or abuse of the method when early concepts for new buildings arose. It became embedded in park lands policy area provisions in the *Adelaide (City) Development Plan.* So it was that, when Premier John Olsen in 1998 proposed the construction of the $20m National Wine Centre in the east park lands, the 'footprint' game was played to justify it. Eight years later, the same game would be repeated in regard to another section of the park lands.

Victoria Park (Park 16)

This time it related to an August 2006 state cabinet submission coordinated by Labor Deputy Premier Kevin Foley. It proposed to have something large constructed at Victoria Park. It was put to state cabinet only five months after Labor's second consecutive election win, during which Premier Mike Rann and other ministers had stressed Labor's commitment to 'protecting' the park lands. Foley's bid was not only an exercise of brinkmanship, proposing to confront rising public and political opposition to his plans, but also a test of putting existing park lands policy theory into practice. On paper, at least, it made some sense. For a State Treasurer, a man who spent his days preoccupied with attempting to reduce dollar amounts to benefit a thrifty state, the practice of showing how big metrics could be reduced to smaller ones could be no better shown in relation to his proposal to have erected a large, permanent 'multi-purpose grandstand' in the park lands and, simultaneously, reduce the area of hard stand around the park. (Hard stand is artificially surfaced area. In the case of Park 16 it was a bitumenised and concrete-surfaced area, surrounding the old SA Jockey Club buildings, including a substantial car park area, and also including the existing car racing pit building slab that had been laid in time for the commencement of the first Formula 1 car race in 1985.)

Foley's advisors tapped into the theme buried in the seven-year-old *Adelaide Park Lands Management Strategy 2000–2037*, a theme also reinforced in the recent March 2006 update of the *Adelaide (City) Development Plan*. Under its Principles of Development Control for certain types of park lands buildings was a philosophical view that the footings dimensions of proposed new buildings should not increase the building 'footprint' of the sum of those which they were to replace. The plan reinforced how and why future construction of built form on the park lands should be reduced to a minimum so as to minimise the visual effect. The 'footprint' concept was a powerful visual idea, a notion to be easily grasped by park lands visitors keen on viewing vistas of turf, not towers, as well as the Tourism SA public relations bureaucrats who preferred to view imagery of trees and pasture, not bricks, steel and glass.

The contemporary buzzword

Of the two building metrics, total floor area and footprint, the concept of the footprint was to become the key park lands buzzword as 2006 progressed. However, in those early days the distinction between the two was poorly understood. The records of the time reveal many conversations illustrating the extent of the confusion. In the end, the major flaw was that, while some park lands building proposals recognised and adhered to the 'like-for-like' footprint concept, or a lesser footprint area for the new proposal, it would later end up encouraging the construction of multi-storey buildings, expanding up, not out, often in the form of sports pavilions, to satisfy the small-footprint objective. This could technically result in large total floor area sums, well exceeding floor areas of older buildings to be demolished, because those were mostly single-storey forms. The 2006 Victoria Park proposal made a classic case study. For a time the city council's original 'multi-purpose grandstand' concept envisaged four storeys, plus a 'Premier's suite' above that, but later it was reduced to three, as revealed in the government's Victoria Park Masterplan, but which wasn't publicly available at the time the 2006 cabinet submission was produced for cabinet authorisation. (The masterplan was only released five months later in January 2007.) In the cabinet submission, the grandstand's dimensions were to be 12m high, 245m long and 15m wide. This would deliver what the submission calculated would be a '3,930m^2 footprint'.[5] Curiously, when the masterplan was released in early 2007, it claimed that "... the overall ground footprint will be approximately 3,700sqm in area."[6] That was never explained. More importantly, its floor area dimensions would be tallied only after being multiplied by three, to account for each storey.

What the development plan said

The March 2006 *Adelaide (City) Development Plan* for the Eastern Park Lands Policy Area 34 did have something to say about floor area, and the total floor area equation would have been informed by the sum of the footings areas of ageing buildings that existed at Victoria Park at the time, which were tagged for demolition. The development plan's Principle of Development Control (PDC) 3 approved: "... the replacement of existing buildings by well designed pavilions and structures, which are sensitively sited and complementary to the park character and which do not result in an increase in total floor area is desirable." But a calculation of total floor area of existing buildings was not found in the cabinet submission, nor was it provided in the masterplan four-fold brochure. The development plan's PDC planner prose left unaddressed as a planning matter the issue of total floor area where other numerous buildings existed. (It also left paralysed an interpreter's

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[5] *Freedom of Information Act 1991*: Bridgland application to the Department of the Premier and Cabinet (DPC) under DPC Circular PC031, 'Disclosure of Cabinet documents 10 years or older': Government of South Australia: Cabinet cover sheet, 'Victoria Park Redevelopment', 14 August 2006, 3.9, 'Impact on the community and the environment', page 2, Minister Kevin Foley, Deputy Premier/Treasurer.

[6] Government of South Australia, 'Victoria Park Masterplan', four-fold green brochure, noted under 'Other features of the three-storey building are ...', January 2007, no page number.

ability to effectively translate the meanings of 'sensitively sited' or 'complementary to the park character', but that is an analysis for another time.) While such ambiguity riddled development plan clauses, few professional planners involved appeared to be concerned. In PDC 4, it got worse. It appeared to allow something – in policy area 34 at Victoria Park – that would be possibly in breach of the 1984 Motor Sport Act. The plan noted firstly that superfluous buildings should be removed, but secondly, "Additional *permanent* buildings [emphasis added] should not be developed unless enabling the removal of superfluous buildings". However, the 1984 Act specifically ruled out construction of *permanent* buildings in relation to the car-racing infrastructure. Administrators may have glossed over any politically uncomfortable distinction between the motor race activity and the horse racing activity, but Minister Foley's repetitive public references to the paramount importance of upgrading motor racing infrastructure over 2006 and most of 2007 left the cabinet submission's interaction with the March 2006 development plan with no reasonable excuse for the misunderstanding. Publicly, of course, it didn't matter – here was a good reason why cabinet submissions remained confidential documents for many years.

Minister's submission silent on the law

Minister Foley's state cabinet submission of 19 August 2006 remains to this day a document seen by very few South Australians, but a discussion arising from it might be useful, should any similar proposal arise in Victoria Park again. There is significant potential for this as a major events park lands site, given its identification in the *Adelaide Park Lands Management Strategy 2015–2025* (which remained a key policy source from 2016 to the end of 2022). The cabinet submission put a different spin on the 'multi-purpose building' proposal metrics, promising the state executive that Minister Foley's proposal would be $19m cheaper than another concept option created in 2004 by the Adelaide City Council, and would "occupy a 46 per cent smaller footprint in the park lands than the current structures".[7]

There was no discussion about the potential for a breach of the provisions of the 1984 Act – in proposing to construct a permanent building at the site of the car race – or the distinction between footprint and total floor area. The presence of 'current structures', their total footprint area, and a plan to have some structures demolished was the key to the Victoria Park footprint numbers game being proposed in the cabinet submission. The approach was simple. It was stripped of any discussion about the restrictions under other related legislation, and the mechanism appeared straightforward. The sum of the footprint area of all of the existing Victoria Park structures that were to be demolished would be contrasted with the proposed footprint area of the redevelopment. If the redevelopment footprint sum was less – bingo! The logic of the calculation of a lesser number, to

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[7] Government of South Australia: Cabinet cover sheet, 'Victoria Park Redevelopment', 14 August 2006, 3.1, 'Revised development proposal', 3.1.3, 'Key improvements', page 7, Minister Kevin Foley, Deputy Premier/Treasurer.

those who spent their time examining numbers, meant that it was open to government ministers to infer that a moral right therefore existed to pursue the project and to convince others of its validity and legitimacy. The submission pledged to: "Remove the dilapidated, illegal and unsightly SAJC facilities on Fullarton Road and Wakefield Road; return over 53,100m^2 of alienated land in Victoria Park to park lands; return over 14,000m^2 of hard stand in Victoria Park to park lands; and reduce the buildings in Victoria Park from 7,250m^2 to 3,930m^2 footprint."[8]

Simplistic analysis

Examined today, and solely on the basis of this cabinet submission, it might have made sense. But as previous chapters in this work illustrate, any public presentation of raw numbers would be dangerously simplistic. Moreover at the time the concept, which was being publicly discussed, did little to placate an angry public responding to a government minister prosecuting a case for construction of a large, permanent building adjacent to and complementary to a motor race site whose 1984 legislation stipulated, for those few who had closely examined the details, that only temporary racing infrastructure could be legally constructed there. At least Foley correctly sensed a likely response. The submission said: "The proposed redevelopment will be subject to significant community comment and debate due to the highly sensitive nature of Victoria Park Racecourse and the Adelaide park lands."[9]

It is history now that this project did not go ahead. It is also history that, despite the assurances implying that no change to the 2006 built-form landscape of Victoria Park could possibly occur unless the cabinet submission's objectives had been achieved, much of the alienated land was in fact returned to park lands. The ageing buildings were gradually demolished after 2007, and car park hard stand areas were returned to green, open space. Within a few years, the SA Jockey Club would be gone from the park, revealing Foley's concept of a 'multi-purpose' building to be what it really was – a single-purpose *permanent* development whose major purpose was to shore up the operational prestige of a motor race event and strengthen its chances of remaining in South Australia. Any benefit to the financially struggling SA Jockey Club's Victoria Park operations would have been a mere by-product of the big, state-sponsored, state-invested vision.

What did other policy documents say about footprint?

Within a few years two council-endorsed policy sources would emerge to give direction about park lands building footprint. Each would illustrate how the 'like-for-like' concept was quickly evolving into something less defined, something more easily manipulated. The first to emerge was the *Park Lands Building Design Guidelines*, endorsed by the city council on 24 November 2008. This featured 12 'key elements', one of which was 'Footprint, height and form'. It directed:

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8 Government of South Australia: Cabinet cover sheet, 'Victoria Park Redevelopment', 14 August 2006, 3.9, 'Impact on the community and the environment', page 7, Minister Kevin Foley, Deputy Premier/Treasurer.

9 Government of South Australia: Cabinet cover sheet, ibid.

"Buildings [should be] designed with the *least possible footprint*" [emphasis added].[10] Under this it noted: "Consolidated existing site rather than new site" and "Site footprint, building scale and heights *minimised*" [emphasis added].[11] Minimised by comparison to what? It didn't say. But its objectives included: "To promote a setting which is landscape rather than building dominated" and "To retain and upgrade existing facilities in preference to new buildings" and "To minimise footprint".[12] Regarding what would subsequently emerge at various park lands sites – multi-storey pavilion development – the 2008 policy specifically directed against it. "Control building scale: (i) Generally create only one-storey development." But it then equivocated: "In appropriate locations first floor construction may be acceptable if less than 75 per cent of the ground floor area ..."[13] It went further: "Only in particular site circumstances, or in the instance of major projects, third storey and lookouts and services towers and the like may be considered." That left little to the imagination and provided all that an aspiring architect might require to seek approval of some future development application, and would include all that an assessor required to approve it – as long as someone might define what "particular site circumstances" meant. This would be left to less formalised direction in the future, which would allow for maximum interpretation flexibility. By 2017 these 2008 guidelines had been apparently quietly abandoned, and may have been abandoned for some years without formal notice. Advice to this work's author from the Adelaide Park Lands Authority executive officer on 29 August 2017 was: "These [guidelines] are nine years old now and have become quite outdated. We also now have our own internal design team and a review process, with architectural input as required, for any building proposals, so we don't actually use them any more."[14]

New Strategy allows 'each-way' bet

Seven months after the 2008 Design Guidelines were released, in early 2009 the emergence of the draft 2009 *Adelaide Park Lands Management Strategy: Towards 2020*[15] also provided generous footprint interpretation material. Its Principle 4 was a masterpiece of an each-way bet: "Ensure the park lands are distinctive and well maintained with minimal built development only necessary to support outdoor recreation by ... Undertaking a program of building consolidation and upgrade with an emphasis on ... *least possible footprint* and site-appropriate height and form to minimise impact on the landscape" [emphasis added].[16]

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10 *Park Lands Building Design Guidelines*, 24 November 2008, reference as found in: Adelaide City Council (ACC), City Strategy Committee, Agenda, Item 5.1, 24 November 2008, page 3547.

11 ACC, op. cit., 24 November 2008, Criteria 3, page 3554.

12 ACC, op. cit., 24 November 2008, 3: 'Footprint, height, form', page 3565.

13 ACC, op. cit., 24 November 2008, 3.7, page 3567.

14 Personal communication, email, Martin Cook to John Bridgland, 29 August 2017.

15 A replacement of the original 1999 version, endorsed by council that year and within a year endorsed and authorised by the government to become the 2010 version.

16 *Adelaide Park Lands Management Strategy,* draft June 2009, page 21, as found in: Adelaide City Council Meeting, Agenda, Item 12.5, 'Adoption of the proposed *Adelaide Park Lands Management Strategy*', 15 June 2009, page 11897.

Subsequent footprint proposals

In 2011, four years after the 2007 Victoria Park 'grandstand' attempt (Park 16), the University of Adelaide proposed to construct a new sports pavilion at Park 10, adjacent to a Frome Road oval over which it had held a licence for many years. It bordered MacKinnon Parade. The licence had lapsed in 2007 and was overdue for renewal, but this did not appear to be relevant at the time the Adelaide Park Lands Authority (APLA) assessed the proposal, and subsequently approved it in principle. A council approval followed.

The Authority summed up an apparent sensitivity to the footprint matter on behalf of the university: "The University and Sports Association are very conscious of the need to reduce/limit building footprints on the park lands and their proposal to demolish the Women's and the Lacrosse Change Rooms would result in a comparable footprint for the proposed new building to that which currently exists for the combined, separate buildings," it said.[17] These sympathetic tones were misleading.

Bring in the bulldozer

The university attempted to meet the footprint demand by proposing to have four adjacent small buildings demolished, including the two change rooms. However, there was no mention in the APLA agenda paper of the fact that the sports women using that building claimed they had not been consulted and never wanted theirs to be demolished. This emerged only some time after the pavilion had been constructed. It resulted in such protest that the building was never demolished. This fact became combined with another curious matter – that the old buildings had a total footprint of 352sq m, while the proposed new building would have a footprint of 378sq m. This was very clearly an insufficient basis for the proposal. Further, no-one commented several years later, when plans to demolish the women's change room were rescinded, that this footprint deficit would therefore turn out to be even larger (given that the women's building remained at the site). In other words, the university succeeded in constructing a large new pavilion on park lands whose footprint grossly exceeded the total existing site footprint, contrary to the development plan's provisions.

A second issue also arose, but again, no-one appeared to be concerned. This time it was in relation to the floor area. The Authority's 'Building Consolidation Proposal' said:

> "... the proposed building, which is described as simple and slender in form, is divided into two rectangular pavilions separated by a central spine. It measures 18m across the glass frontage and 22m deep. ... The proposed building has two levels, the lower of which is approximately 70 per cent below ground in order to reduce the scale of the building. The two levels have a combined floor area of 687sq m. The building's footprint would be 378sq m (excluding publicly accessible areas and eaves)."[18]

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[17] APLA, Special meeting, Agenda, Item 1, 'University of Adelaide Park Lands Sporting Licence – Building Consolidation Proposal', 26 May 2011, page 13.

[18] Adelaide Park Lands Authority (APLA), Special Agenda, Item 1, 'University of Adelaide Park Lands Sporting Licence – Building Consolidation Proposal', 26 May 2011.

This should have triggered further inquiry at the first examination stage, at the Authority, but did not. It was a proposal for a large pavilion of significant total floor area – and significant height, dominating the landscape – but under the Authority's policy examination it was approved for subsequent contemplation by the council. Given the contradictions, the Authority failed in its duty. On the basis of the Authority's advice, the matter was subsequently endorsed at council level, then within four months arrived at the Development Assessment Panel for final planning assessment authorisation. Remember that this related to *public land*.

The Development Assessment Panel determines

At the DAP assessment meeting there was once again no scrutiny into whether a claim relating to a proposal to demolish the women's change room building had been subject to consultation and agreement, which would have been critical, in proposed footprint terms, to achieving consent. Further, although there was by this stage a clearer understanding of the deficit in footprint calculations, for the panel members it did not appear to be an issue.

"The applicant seeks to consolidate the number of buildings within the Park Lands Zone with the demolition of four individual freestanding buildings to allow for the construction of the new facility," the DAP noted. "Whilst the overall building footprint of those buildings removed is 26m² less than the proposed building, the reduction in the number of buildings in the park lands, and the associated reduction of the visual impact that these buildings have on the open playing field character of Parks 10 and 12 is considered to outweigh the minor increase in building area," the DAP summary stated.[19] It concluded by stating:

> "The applicant seeks to consolidate a number of existing park lands sporting buildings into a single multi-user facility. This approach is supported…Whilst a minor increase in the overall building footprint (inclusive of verandahs and raised viewing area/stairs) is proposed, the net reduction in the number of individual park land buildings is sufficient to provide an offset to the additional 26m² proposed."

The DAP summary also concluded with what in retrospect might be determined as one of the stellar examples of park lands planning jargon published during the period:

> "The overall design of the building, whilst elevated, is such that the bulk and scale of the building is sufficiently reduced with an appropriate level of articulation and interest in the facades. The external finishes provide for a balance between robustness and low maintenance whilst allowing the building to sufficiently recede into the existing landscaping that surrounds the building on three sides."[20]

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[19] City of Adelaide Development Assessment Panel, Agenda, Item 3.7, Warnpangga Park, MacKinnon Parade, North Adelaide SA 5006, 'Demolish four buildings, remove two significant trees, construct new clubrooms, install underground rainwater tanks and site works', 5 September 2011, DA/1026/2010.

[20] City of Adelaide Development Assessment Panel, Agenda, Item 3.7, 5 September 2011, DA/1026/2010, page 449.

At least one problem with that statement was that the only landscaping was a large Moreton Bay fig tree to the building's west, given that two other large trees had been chainsawed to allow space for the building. The Moreton Bay fig very conveniently hid the building's bulk from sight from busy Frome Road. Any visitor to the site today cannot but be overwhelmed with the scale of the building and its gross domination of the flat landscape.

The university pavilion (the first of eight proposals for similar built form in the park lands to emerge in the period up to 2018) remains today a classic illustration of an early example of post-2007 'pavilion principality on the park lands'. It is a glass and mortar eruption of contrasting built form adjacent to a vista of wide and open playing fields otherwise uninterrupted by anything other than large eucalypts bordering the field. Its form very much makes clear to visitors that, while the site may be public land, it is 'owned' by the university for university purposes. A subsequently approved 42-year lease gave this 'principality' teeth, and access by other non-university sports practitioners would be tightly controlled.

Ultimately only three of the four ageing buildings at Park 10 would be demolished, each of them comprising, by comparison, low-scale built form – sheds and a concrete-brick change room. But the DAP assessors considered it a triumph at the time of assessment. "The proposal is not considered to be seriously at variance with the provisions of the Development Plan because it seeks to continue, and consolidate, an existing land use with a form of development that is desired in the zone and policy area.[21] It has been determined that, on balance, the proposal warrants Development Plan Consent."[22]

Footprint versus floor area

The University of Adelaide's pavilion Park 10 proposal was an example of something that clearly exceeded existing footprint but was approved and, in light of the fact that the women's change room building was never subsequently demolished, illustrated how the approvals procedures could be effectively compromised (whether intentionally or inadvertently) after the fact. The manipulation cannot be said to have been deliberate given that there was no public record at the time of any communications between the university and the users of the women's change room building. However, the fact that the users of that building were never consulted by the Authority or the council as to whether they approved of the demolition proposal illustrated that much could be procedurally progressed while the cult of the footprint dominated assessors' minds.

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[21] Technically, the reference to 'existing land use' was correct in terms of providing a replacement building to be used as a club changing room for sports participants. However, upon completion of the replacement it was clear that a new use had also been made feasible – its spacious front room had facilities that could be used for the serving of food and drink, and the space could be (and was) filled with tables, fulfilling a new recreational/entertainment purpose that could be monetised. Local residents quickly described the university's post-construction purpose, when it capitalised on a limited liquor licence, as a 'pub in the park'. Subsequent other sports group's applications to construct replacement 'pavilion' buildings on the park lands replicated the university model.

[22] City of Adelaide Development Assessment Panel, Agenda, Item 3.7, 5 September 2011, DA/1026/2010, page 450.

It also highlighted something else, and equally profound. Park lands development application assessments relied on the park lands policy area provisions of the *Adelaide (City) Development Plan*, a document dense with planning jargon, open to subjective interpretation. It was one which allowed assessment bodies (both the then council's Development Assessment Panel and the state's Development Assessment Commission) much 'wriggle room' to progress and approve developments pursued by influential institutions whose ability to fund legal challenges was well known.

What the 2016 (third) Strategy said

In terms of built form on the park lands, the third *Adelaide Park Lands Management Strategy* version (2016) did not indicate a profound change from the directions exhibited in the 2010 Strategy, although the wording became significantly more ambiguous.[23] For example, the concepts of 'upgrading and enhancement' of buildings were wide open to interpretation. So was the notion that "buildings and structures are critical to making open space functional".[24] This introduced a very new conceptualisation of Adelaide's park lands: that open space could be only functionally realised – perhaps characterised – through its buildings and structures. The fact that this statement needed to be made vividly illustrated the extent of change contemplated by the new 2016 Strategy.

The concept of 'minimising the footprint' had survived the evolution of Strategy versions, from the 2010 version to the 2016 version. So had other concepts, including the proposed action to 'Undertake a program of building consolidation'. However, added to it was that highly ambiguous verb 'enhance', as in '... enhancement and development to ensure that all buildings in the park lands ...'. In that section (Strategy 1.4) there followed a list of actions. For the purpose of this chapter, the key action was to: "Achieve least possible footprint and floor area whilst ensuring facilities are fit for purpose." The addition of 'whilst' appears to be a qualifier, suggesting that 'fit-for-purpose' concepts occupy equal status in the intention. Moreover, the concept of 'least possible' leaves open the most generous of interpretations. The most notable aspect of the 2016 Strategy's wording is how ambiguous it was. But one aspect was clear by 2016 – the notion of 'like-for-like' footprint replacement was long gone.

Further reading

Two appendices follow on from this chapter:

- **Appendix 19: 'Eight pavilion case studies'.**
- **Appendix 24: 'Extract from Strategy 1.4 of the *Adelaide Park Lands Management Strategy 2015–2025*'.**

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[23] Extract: *Adelaide Park Lands Management Strategy 2015–2025*, Strategy 1.4: "Support activation of the park lands by upgrading and enhancing buildings and structures responsive to their park setting," page 19.

[24] Extract: *Adelaide Park Lands Management Strategy 2015–2025*, ibid.

48 | The consultation lark

Participants in consultations are often asked to process complicated details and read associated documentation that demands a high-level understanding of park lands complexities – the multitude of laws interacting with the Adelaide Park Lands Act 2005*, its instruments* (Strategy *and* Community Land Management Plan) *as well as many policies and guidelines. But the public consultation model question that ought to be addressed by the Adelaide Park Lands Authority is this – How reasonable is that expectation, and how significantly does that expectation result in feedback that is either naive or misleading?*

In 2010, city councillor David Plumridge provided a glimpse of a game that was played by city council administrators.

"In many cases councillors will have been given extensive briefings of all the technical, legal and risk factors affecting a proposal as well as costings of the various available options," he said. "This level of detail is hard to convey to the public and the council often holds public meetings to help people to understand all the issues. All too often documents offered for consultation lack sufficient information." [1]

In an appendix to this chapter there is a case study on the use since 2011 of the city council's consultation mechanism *YourSay* to capture feedback about park lands management proposals and future directions.[2] That study illustrates how, despite the rigour of the law that directs public consultation, the outcome of some consultations has been, at best, less that satisfactory, and at worst, open to manipulation.

A historical theme evident across all the years of the period of this study, from 1998 to 2018, has been the occasional public frustration with park lands consultation procedures exercised by the Corporation of the City of Adelaide (the city council), or by the Adelaide Park Lands Authority, a subsidiary of the council, whose board began sitting in 2007. In terms of its duty to advise the council, since 2007 it has mainly fallen to the Authority to first consult, although the city council does sometimes coordinate its own consultations.

The public frustration has arisen, sometimes from a poor public understanding about a particular proposal, or of procedural steps that need to be followed, or poor knowledge about possible legal complications. The challenge for the agency conducting the consultation has been to conduct it in a way that reasonably informs the public, even though the public may not have the time to pursue and scrutinise the sometimes complicated background information and so come to a well-informed view.

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1 David Plumridge, Newsletter: *Notes from Councillor David Plumridge's desk*, Edition 53, 11 August 2010, page 1.

2 Appendix 25: 'Case study: *YourSay*'.

The great park lands delusion

Most South Australians live under the delusion that all major decisions about matters affecting Adelaide's park lands will be explicitly foreshadowed, widely advertised using a variety of analogue and digital media, and open to detailed and balanced briefings. Some also naively assume that, in terms of controversial matters, the feedback results will go all the way to parliament to be debated between government and opposition in open forum. This is a major misunderstanding. The only parliamentary members who might be notified are the minister in whose portfolio the *Adelaide Park Lands Act 2005* resides, or the planning minister, or the Minister for the City of Adelaide. Moreover, this would sometimes occur *after* the results of the consultation had been analysed and a draft determination was crafted by the council, ready to become a resolution by the elected members. The exception to this, of course, relates to major park lands planning decisions, which the state can often implement without any consultation, thanks to planning law that allows it.

A useful perspective from the local government viewpoint is to observe the process 'from the inside'.

Some legal mechanisms

Under the *Local Government Act 1999*, section 50 says:

> "(2) A public consultation policy—(a) must set out steps that the council will follow in cases where this Act requires that a council must follow its public consultation policy; and (b) may set out steps that the council will follow in other cases involving council decision-making … (3)(a) Part 5, Public consultation policies … in a case referred to in subsection (2)(a)—must provide interested persons with a reasonable opportunity to make submissions in the relevant circumstances; ..."

The wording leaves open what 'a reasonable opportunity' means, but it is arguable that if a poorly informed document (including a poor explanation of the likely consequences) is used as a basis to encourage a public response, then the procedure is compromised and so are its conclusions. But in many years of consultations (not only about park lands matters) the city council has been unsympathetic to this view. Further, when 'consultation facts' are disputed by the public and the proposal behind the consultation is rejected by the public, the council can either ignore it or, more commonly, may diplomatically discount comments, merely recording them in feedback summaries as 'Noted'.

As councillor David Plumridge wrote in 2010:

> "[A] problem with public consultation is that it sets up expectations that well prepared and presented submissions will actually be effective. In my observation since becoming a member of the city council [2007], very few submissions make any real difference. To its credit, council requires that

> all formal submissions are reproduced for all councillors (and the public) to see, but the same people who prepare the proposals also review the submissions and report to council. Thus the objectivity of the reports is often queried by disgruntled consultees." [3]

Beyond 2010, the means used to consult changed significantly, relying on the use of digital media. Perhaps the most extreme example of the flawed operation of the digital consultation process, in the context of a highly controversial pathway pursued by both the Authority and subsequently the council, was a 2017 park lands example. The Authority sought views about a proposal to amend a *Community Land Management Plan* to formally contemplate allowing a lease for the commercial operation of a helicopter landing facility in Bonython Park (Park 27; Helen Mayo Park) and, in a second stage, a proposal to construct that facility at the site. In a topical response since digital consultation commenced using the *YourSay* consultation model (in 2011), the 2017 procedure investigating the first stage prompted overwhelming public rejection (a 43 for and 7 against response) but this overwhelming level of rejection was discounted and set aside. In the second stage the sample was found to have been corrupted and thus irreversibly compromised, and the outcome became cause for a special council inquiry.[4]

The older model

Although the consultation model commonly relied on the Adelaide Park Lands Authority (which commenced operating in 2007) to conduct the consultation, seven years before that the model had relied exclusively on the city council to seek views. Revised year-2000 policy related to changes to the *Local Government Act 1999* which introduced steps for the council to follow. They are of particular interest in regard to park lands matters. Revisions related to communication and consultation provisions about access to meetings and documents; exclusion and revocation of land classified as community land; granting of leases and licences for community land; and management plans for community land (among other things).[5] The Act also interacted with the *City of Adelaide Act 1998* (section 29) which stated that the council must: "Provide open, responsive and accountable government; Be sensitive to the needs, interests and aspirations of individuals and groups within the city community; [and] Seek to ensure a proper balance within the community between economic, social, environmental and cultural considerations."

The council's definition of 'consultation' concluded with the statement: "Consultation … is not shared decision making."[6] It went on: "Consultation complements, but does not replace, the decision making role of council. Whether community or stakeholder opinion is divided or overwhelming in one direction, it still rests with council to

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3 David Plumridge, Newsletter: ibid., 11 August 2010, page 1.

4 This is discussed in Chapter 31: 'Hot air and helicopter plans' and also in the case study on *YourSay* that appears in Appendix 25 of this work.

5 Adelaide City Council, 'Public communication and consultation policy', 'Draft revised', July 2000.

6 Adelaide City Council (ACC), 'Public communication and consultation policy', 'Draft revised', 'Definitions', July 2000, page 2.

make the decision."[7] In writing this policy, the council may have been reflecting on the real difficulties in managing the balance between the lofty aspirations of parliamentarians and the *realpolitik* of putting arising policy into practice.

Ten years later, Councillor David Plumridge's 2010 in-hindsight view provided a useful perspective:

> "Consultation often results in diametrically opposed views being expressed with councillors having to decide which course of action is in the best public interest, within the law and politically safe thus alienating those with different views, views sometimes driven by strong emotions and/or sectoral and vested interests. For these and other reasons I believe that consultation can lead to mediocre, lowest common denominator decisions being made."[8]

However, Cr Plumridge noted the historical trend that had led to this, with another wry observation:

> "For years people complained that councils took decisions that had a major impact on their way of life and their services, without a word of consultation. So councils were required to adopt consultation policies and actions, which mandated consultation on many aspects of their decision-making. Decisions that used to be routinely made by councils as an elected government are now subjected to long-winded and often tokenistic processes of public scrutiny; business slows down and bold decision-making often suffers."[9]

In a 2011 observation, he recorded the extent to which his council was consulting about park lands matters: "New Royal Adelaide Hospital Park Lands Lease Agreement; Bonython Park Activity Hub; ... and Park Lands Landscape Master Plan. Altogether in 2010 some 29 consultations were undertaken," he noted.[10] Of course, not all were specifically focused on park lands matters.

'Engaging' with the public

An Engagement Framework document on council's website in September 2017 had originated in 2011 and featured laudatory principles. But it too reflected the challenge in addressing the tension between the law's demands and the reality of how consultation policy in practice was to be implemented. The most telling extract was:

> "Empower is Council's promise to 'implement what you decide'. Empower is selected when our community and stakeholders are provided with the skills, information, authority and resources in order to make the

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[7] ACC, ibid., page 3.

[8] David Plumridge, Newsletter, ibid.

[9] David Plumridge, ibid.

[10] David Plumridge, op. cit., Edition 63, 23 March 2011, page 1.

> final decision. Under the *Local Government Act 1999*, the only decision-making power which is entirely placed in the hands of the public is that of electing council members every four years." [11]

There had been early scepticism about the Engagement Framework, here articulated in 2011 by Deputy Lord Mayor, David Plumridge:

> "Council is revamping its consultation policy and the first step is to adopt some new jargon. Recognising that the word 'consultation' implies that a two-way exchange of ideas is going to occur – which very seldom actually occurs – the experts have dreamt up a more nebulous term for the process which is now to be called 'Engagement' which actually is a quite meaningless term, unless of course you're in the business of engagement." [12]

Do the public want to get engaged?

Of course, even at the close of the period of study of this work (year-end 2018), any 'engagement' function was only as good as the extent to which the public wished to do its part in 'engaging', to exercise a voice about park lands matters. Administrators would invariably point to times when consultation either failed to elicit a significant response, or elicited a large number of similar views voiced vigorously. More challenging were the instances where a 'no clear view' trend was identified because of a dominance of 'broadly agree' mid-point views. However, there was no evidence on the public record to indicate that the Adelaide Park Lands Authority or the council was prompted to interrogate their procedures and ask whether a mediocre sample and ambiguous responses might have arisen out of the procedures themselves. For example, with a heavy dependence on digital processes, they might assume that everyone knows that a consultation phase is active and that everyone is also highly literate in the use of digital media. In 2018, the city council conducted consultation about its consultation guidelines and, as a result, concluded that, to save money, it would cease using state-wide newspaper advertising to notify the public about looming consultation in relation to a significant matter relating to park lands – aspects of *Community Land Management Plans.* That determination may well increase the council's future challenge in publicising the fact that it is seeking public feedback and obtaining responses. It is further discussed in the *YourSay* case study in Appendix 25 of this work.

Other legislation

The *Adelaide Park Lands Act 2005* also features provisions for public consultation by a state authority. In this case it is the city council that has responsibility for the 'care, control and management' of the park lands, referencing park lands *Community*

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[11] Adelaide City Council, *Community Engagement Strategy*, 13 pages, undated (it is signed off by former CEO, Peter Smith, who resigned from council in early 2016.

[12] David Plumridge, Newsletter: op. cit., 23 March 2011, page 1.

Land Management Plans. For example, the Act's section 20(3)(c) states: "at a time determined to be appropriate by the State authority, by public advertisement, invite any interested person to make written submissions to the State authority within a period specified by the State authority (being not less than 1 month from the date of publication of the advertisement) and to attend a public meeting to be held in relation to the proposal".

"(4) Subsection (3)(c) does not apply if the proposal relates to a variation of a management plan that is, in the opinion of the State authority, of minor significance."

Sub section (3)(c) says nothing specific about the extent of background information to be provided and (4) allows the authority sole determination about whether it is necessary to consult. There are no provisions for appeals mechanisms. It remains for the city council to decide whether it might conduct its own consultation on the matter – or not.

When no means yes – some examples

Changes to the *Adelaide Park Lands Management Strategy*

Even in cases where respondents suggest that they are broadly contented with a matter that is subject to a proposal for amendment, and therefore challenge the need for the proposal, the Adelaide Park Lands Authority is on record for nonetheless pursuing proposals for change. A case occurred in 2014 when the state government capitalised on an *Adelaide Park Lands Act 2005* provision allowing for a committee to be created under the Authority, described then as a Project Advisory Group (PAG), largely comprising non-council participants. Through this means emerged the beginnings of what would prove to be a substantially different *Adelaide Park Lands Management Strategy* compared to the 2010 version. The new draft version emerged in 2015. Early 2015 digital consultations about its content and consequential feedback delivered evidence that, among the South Australians who responded, most had been content with the 2010 vision reflected in the older 2010 Strategy, as well as park lands management activities encouraged by the 2010 version. However, this feedback appeared to be discounted by the Authority's Project Advisory Group, and a range of 'creative ideas' was presented during the consultation period, advocating for change towards the government-endorsed 'activation' concept, as reflected in the new draft. The superficial raft of ideas presented in the consultation encouraged other respondents to endorse the new ideas emerging through the PAG, overwhelming the initial level of satisfaction with the older 2010 Strategy. Manipulative? More exploration appears in a chapter discussing the emergence of the (2016) *Adelaide Park Lands Management Strategy 2015–2025*.[13]

Changes to *Community Land Management Plans*

Some park lands consultation procedures required under law do not evince significant response, simply because it is not feasible that they can. This can then be taken to mean 'endorsement', implying satisfaction, even in cases where critical

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13 See Chapter 40: 'The 2016 revolution'.

background rationales are not clear in the consultation. An example (actually three, but on the same topic) occurred between the years 2012 and late 2013 when substantial revisions of park lands *Community Land Management Plans* were being finalised by the Adelaide Park Lands Authority and released for public consultation, in three phases. Presented with bundles of multi-page CLMPs, each stating what the law required that they contain, the public response was neither hot nor cold, and response numbers were low. However, the Authority could have very clearly indicated – and responders might have closely noted – something important. The changes were a result of a 2011 Authority policy determination in which much previous biodiversity and landscape detail had been removed, as well as reference to other policy documents such as action, asset and transport-related policy plans. As a result, the content of each original plan, created between 2004 and 2009, had been reduced substantially, giving rise to new plans that appeared much less comprehensive, especially about certain park lands park sites. Had this major policy change been better perceived, the public may have responded differently. One example (of many) of the changes evident between pre-2009 and post-2012 CLMPs may be found by comparing the Park 27 CLMPs. The original 2006 Park 27 CLMP is a large document with explicit and comprehensive text about a range of sites within that park. However, the post-2012 document can, by comparison, be seen to have jettisoned significant material, relying instead on links to be opened to access that information, which were tedious to follow. In fact, a comparison of the post-2004 library of *Community Land Management Plans* (finalised at 2009) and of the post-2012 library (the substantial revisions) illustrates how profound were the Authority's changes to these plans.

Explicit November 2011 opinion about this came from an Authority member herself, Gunta Groves, the Adelaide Park Lands Preservation Association nominee:

> "I was less concerned with the contents of these chapters as with the new format. From my reading of the information in the agenda papers, I got the impression that I would need to not only read the individual chapter on a park, but also then go to several electronic links or get hard copy of other documents in order to achieve the same level of information as [provided] in the old CLMPs. Instead of having only one document to read, I would need to refer to at least five, including: the CLMP itself; the Cultural Landscape Assessment Study [the six-volume David Jones 2007 study]; the Park Lands 10 Year Action Plan; Asset Management Plans; [and] the Integrated Movement Strategy. ... For me this would not be an improvement in 'useability and relevance'."[14]

Regrettably, her view was not supported by other Authority colleagues and the CLMP revisions went ahead and were consulted in the new format.

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14 Gunta Groves, personal newsletter, *News from the Adelaide Park Lands Authority* #24, 4 December 2011, page 2.

One original CLMP remnant survives

The only exception to this observation was in relation to the CLMP for Park 26, which included Adelaide Oval and surrounds. It remained (at 2018 and as recently as 2022) in its original iteration (dated 2009), comprising extensive detail, and content whose contemplations indicated lawful guideline content given authority under the *Local Government Act 1999* – all in the one document. Significant disputes that arose five years later in 2017 and 2018 in relation to the land use contemplated by this plan illustrated how relevant that content was, and continued to be, at year-end 2018 (and as late as 2022). But, for the other CLMPs, for all of the other park lands policy areas, it is now too late, because they have been diminished, and public interpreters need to chase links contained in other policy sources, which as separate 'cells' of information, can mutate at the determination of the Authority advising the council over time. The administrators, of course, would probably argue that the outcome of a wholesale revision of the CLMPs was never intended to frustrate well-informed inquiry or future determinations about the parks in the Park Lands Act's Adelaide Park Lands Plan.

The 'consistency' dilemma

In the Authority's 2012 and 2013 public consultations about proposed changes to the CLMPs, South Australians also might have responded to discussion about the Adelaide Park Lands Act's requirements that the CLMPs be 'consistent' with the then-current 2010 *Adelaide Park Lands Management Strategy: Towards 2020*. It is an important feature of the law relating to the park lands. This would have consequently demanded that the Authority provide in substantial detail a background paper exploring issues of consistency (or not), but there was no evidence that it did. The process would have depended on respondents quickly developing a highly detailed understanding of the role, history and status of CLMPs in the machinery of park lands management, and an understanding of likely complicated management issues arising from each plan for each park or precinct of parks. This was a tall order and it was not subject to consultation. Almost certainly the Authority would have argued that this matter was internally addressed (and it was; see more below), but the public did not know that. The Authority simply spilled documents containing complex CLMP-only detail into the public domain, and when a non-definitive response resulted, assumed that it meant endorsement that the changes to the CLMPs were appropriate. At least one Authority member, Gunta Groves, didn't agree.

'Implementation' flaw arising from the Park Lands Act

The matter of 'consistency' between the two legal instruments directing park lands policy (the CLMPs, containing the management directions, and the *Adelaide Park Lands Management Strategy*, containing the action plan aspirations) remains one of the unresolved issues arising from the writing of the *Adelaide Park Lands Act 2005*. It is silent on the matter of implementation. It is a philosophical conundrum arising from the words in the Act. This is explored elsewhere in this work.

From a public consultation point of view, there would always come a time when this matter would become apparent and demand some sort of public response.

Of all of the subjects of public consultation, such policy complexity would be the most difficult about which to get a response. This probably explained why, when the Authority had the chance in September 2012 to explore it with the public, it avoided it. The matter was noted in Authority board member Gunta Groves' October and November personal newsletters.[15] She had observed and had confirmed by the Authority that the CLMP drafts that went to public consultation in September 2012 were not the same as those viewed previously by the board. In October she noted that: "... the issue will not go away because it questions the integrity of the whole process of public consultation." The topic of dispute was management directions for biodiversity. Groves had Authority confirmation that "there had indeed been changes to the CLMP before it went to council".[16] "[They] had been made to make the content more congruent with the [Adelaide] *Park Lands Management Strategy* and to reflect more accurately what the ACC [the city council] was currently doing to manage biodiversity in the park lands. The problem with this explanation was that the maps and accompanying text most affected by the changes did not cover what exists but *what is desired to exist* [in the future, emphasis added], in a section titled 'Directions', with sub-sections titled 'Desired Character' and 'Management Directions'. Some of the removed text was about re-establishment, protection and interpretation of biodiversity areas."[17]

When an opportunity is overwhelmed by parliament

Elsewhere in this work is a case study of the way new project-oriented development legislation was created to authorise the construction of a huge sports stadium in the park lands to replace the former South Australian Cricket Association heritage cricket ground facilities at Adelaide Oval.[18] As a result of the 2011 law, there was no requirement for public consultation on any of the major works, nor any need for formal authorisation involvement of the park lands 'landlord', the city council. The case study reveals the ruses used to avoid any requirement for formal authorisation power to be retained on this development by the city council. There were plenty of 'in-confidence' briefings, but none of them was needed to seek approval because, as the case study reveals, legally it was unnecessary. With major and controversial park lands propositions, there is plenty of evidence to show that governments avoid the need to publicly consult if they can.

As city council Deputy Lord Mayor David Plumridge had presciently noted a year before the new 2011 oval legislation made it all possible: "Now of course many key decisions, especially in the planning area, are made with absolutely no consultation, thanks to the policies of the state government pandering to the 'build-at-any cost' lobby which can now evade the need to consult."[19]

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[15] Gunta Groves, personal newsletter, *News from the Adelaide Park Lands Authority*, #34, 14 October 2012; and #35, 11 November 2012.

[16] Gunta Groves, op. cit., #35, 11 November 2012, page 1.

[17] Gunta Groves, ibid., page 1.

[18] Please refer to Chapter 27: 'Case study – Adelaide Oval 2011, and a stadium in Park 26'.

[19] David Plumridge, Newsletter: *Notes from Councillor David Plumridge's desk*, Edition 53, 11 August 2010, page 1.

When an opportunity is overwhelmed by government

Even in cases of a public consultation with a large sample revealing majority opposition to a council park lands proposal, the city council has determined such a result as insufficient to prompt an amended management determination. An example in 2016 occurred when public consultation took place about the use to which land should be subject surrounding the site of the proposed new $100m Adelaide Botanic High School. The consultation topic proposed that a construction works compound be approved, accompanied by an application for a two-year licence to allow builders to operate there, adjacent to Frome Road, on green, open-space park lands. It attracted only six responses, each of which vehemently opposed the land-use proposal to allow for an ancillary construction site, including fencing and prefabricated buildings. The council ignored the response. The sample was undeniably small but the trend was 100 per cent clear. There was a reason behind the council's discounting of the response. Previous to that time, the council had endorsed government approval of a development application to commence construction of the school in park lands. Neither the government nor the Adelaide Park Lands Authority had bothered to publicly consult before this determination was made.[20] The reason was simple. The state government had by means of a 2015 development plan amendment revised the *Adelaide (City) Development Plan* such that the school development application for the park lands policy area became classified as a Category 1 development, which did not require public consultation under the provisions of the *Development Act 1993*. By the time the park lands licence application to formalise permission for the ancillary construction works compound site arrived, it made no difference whether public respondents to consultation said yes or no – this major development had been already approved, by the Development Assessment Commission.

The state view

Inevitably, the city council has always arrived at park lands determinations whose features are consistent with the state government's implied or instructed view – regardless even of elected member opposition, or Authority opposition (if board members' opposition was not the majority view; and even when it was, as occurred in relation to the redevelopment of the Adelaide Oval facilities, it was ignored). Back-room, pre-meeting councillor and administrator discussions were and remain popular for diffusing any risk that there might be majority elected member resistance to state plans. The use of confidentiality orders to maintain silence about certain matters, gagging board or elected members from discussing items with the public (and thus blocking community awareness about some items), was and remains common. Elected members' voting patterns over many years have indicated that government-determined, not-negotiable park lands development proposals

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[20] No record appears in the list of annual post-2011 *YourSay* consultations to indicate that public consultation occurred about this proposal. A city council summary of annual *YourSay* consultation topics (covering the period 2011 to 2017) was released on or about 8 December 2017 and can be found at: https://yoursay.cityofadelaide.com.au/past-consultations.

cannot reasonably be resisted by a majority show of hands within the council chamber without a consequent prompt response by the government administration pursuing the development. The options open to the state to overrule are broad. Such behaviour and responses are fundamental aspects of the South Australian political process, even though the city council enjoys some potential for resistance – if all stand united. All rarely do.

The public view

Few South Australians monitor in detail the outcomes of public consultations about the park lands unless they are about highly controversial matters. Participants in consultations are often asked to process complicated details and read associated documentation that demands a high level understanding of park lands complexities – the multitude of laws interacting with the *Adelaide Park Lands Act 2005*, its instruments (Strategy and *Community Land Management Plan*) as well as many policies and guidelines. But the public consultation model question that ought to be addressed by the Adelaide Park Lands Authority is this – How reasonable is that expectation, and how often does that expectation result in feedback that is either naive or misleading?

Further reading

Further exploration of the complexities of city council consultation approaches appears in Appendix 25: 'Case study: *YourSay*'.

49 | The loopholes lurk (PART 1 of 2)

- **Part 1** examines the historical origins of some of the classic loopholes that were contained in the Adelaide Park Lands Bill 2005 and were later used to exploit park lands proposals and management directions. It explores various flaws, identifies who noted them during the parliamentary debates in that year, and how they attempted to have them addressed. Some of the loopholes that survived those debates have had consequences ever since.
- **Part 2** examines the myriad year-to-year loopholes and administrative ruses applying to park lands, both many years before the 2005 Act, and in the years that followed, between 2007 and 2018.

PART 1: Loopholes in the 2005 park lands legislation

By the conclusion of the 2005 parliamentary debate over the Adelaide Park Lands bill, at least four significant loopholes remained embedded in it. Had amendment occurred to the satisfaction of those that pursued them, each could have made the resulting Adelaide Park Lands Act 2005 *significantly more effective in minimising the potential for exploitation and ruses that would follow. Revision of some draft provisions at the time may have simply blocked exploitative opportunities before any damage was done after the Act came into operation in late 2006.*

All legislation has weaknesses. Parliamentary counsel are not magicians. Moreover, no matter how good their writing skills are, when bills traverse the twin-house system of South Australia's state parliament, parliamentary members try to change some wording. It is the role of the person chosen to 'hold the line' during the debate session to try to stop this, because the initial wording of most bills is usually carefully crafted, guided by the advice of knowledgeable others. This applied especially to the draft wording of the Adelaide Park Lands Bill 2005, whose debate reached a particularly sensitive stage on 22 November 2005 at a reading in the Legislative Council, commonly known as the upper house or the 'LegCo'. It is in this place that the intent of much South Australian legislation has been frustrated, with the metaphorical sun-bleached bones of old bills' words and clauses littering the red carpet of that place, a reminder to parliamentarians of the potential risks involved in shepherding a new piece of legislation back to the House of Assembly for assent. Holding the line on this park lands bill on behalf of the state Labor government was Carmel Zollo, MLC.

Hindsight's 20:20 vision

This work's analysis is informed with the convenient hindsight of many years' reflection, during which time many of the matters identified during this Legislative Council session were indeed revealed to be loopholes, either not allowing for fair and reasonable procedures under disputed circumstances, or open to abuse by politicians, planners and, in particular, developers. All played roles at various times that capitalised on loopholes buried in the legislation's Statutory Principles or other clauses to encourage park lands proposals that would exploit the landscape character of sections of parks, or otherwise alienate access to them. As at year-end 2018 (and as late as 2022) many of these loopholes remained open to exploitation. Other aspects of the Act would also give rise to unforeseen consequences – allowing for creation of fresh loopholes in other park lands policy documentation at a later time.

1. The worm in the apple of one new Statutory Principle

A feature of the 2005 bill was a list of Statutory Principles, which the parliamentarians and administrators of the day championed as evidence of its fresh new spirit, a spirit that sought to stymie the raids and ruses of the park lands past. It did not take long for some parliamentarians to identify what appeared to be a major loophole in the wording of the second Statutory Principle (section 4(1)(b)). It had been highlighted in an earlier Legislative Council session and was again pounced on by two members of the Legislative Council, Ian Gilfillan and Terry Cameron. The *Hansard* record suggests that few others present at the time showed interest in participating. The clause was:

> "(b) the Adelaide Park Lands should be held for the public benefit of the people of South Australia, and should be generally available to them for their use and enjoyment (recognising that certain uses of the Park Lands may restrict or prevent access to particular parts of the Park Lands)".

The dialogue that followed remains eerily perceptive and relevant at the end of the study period of this work. This paragraph has been one of the most exploited of the Act, with that second clause (in parentheses) repetitively used to justify exceptions through fencing or locked gates or doors or other allowances for periodical exclusive access, or to justify proposals for development concepts based on rationales in the Act that its wording never intended. But the new bill's intention was that Adelaide's park lands would be enduringly open and accessible for public use and enjoyment.

The Legislative Council debate of 22 November 2005 was timely and prescient. It was led by Australian Democrats member, Ian Gilfillan, who was also the President of the Adelaide Parklands Preservation Association. He said: "The problem with this sort of phrase is that it makes an acceptable practice that there will be restricted access to particular parts of the park lands. ... This just encourages an activity, which, in our view, ought not to be encouraged."[1] He moved that the wording in parentheses be deleted – and it could have been that simple. But Labor's Carmel Zollo resisted, using

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1 Parliament of South Australia, *Hansard*, Legislative Council, 'Adelaide Park Lands Bill', 22 November 2005, page 3155.

the commonly heard excuses such as a need for restrictions on public access for 'public safety' and that its deletion might cause "confusion and unrealistic expectations". "There will always perhaps be some application for temporary use from the city council," she argued. "In relation to any development, there are always planning processes. Let us look at expansion of the hospital or the universities. I cannot guarantee that will not happen in the future. That is the reality."[2] Liberal MLC, Caroline Shaeffer agreed with the government, adding that she did not see public parks within a metropolitan area as being the same as conservation parks. In hindsight, Minister Zollo's explanation was actually a sound justification for the endorsement of Gilfillan's proposed amendment, because the proposed wording did cause confusion and did encourage "unrealistic expectations", especially among those who would subsequently seek to exploit some sections of the park lands. But house support was clearly lacking for Gilfillan's proposal, and the proposed amendment failed.

It fell to the Environment Minister whose portfolio directed the introduction of the bill into parliament, John Hill, to make a related and significant comment seven days later in the House of Assembly, which in a way underscored Carmel Zollo's comments in the upper house. "Despite what some people want, this bill is not about stopping development in the park lands," he said. "It is about putting so many constraints on development that only developments for which there is broad community acceptance will succeed."[3]

Minister Hill's explanation was another sound rationale for the deletion of that small clause in parentheses. In hindsight, however, it was clear that the government was nervous about making late changes to any part of the bill, although it did concede, on the numbers, a few minor concessions. But in relation to that little clause, it may have been quietly advised that such 'get out' clauses (as Terry Cameron MLC described them) could be important in the future. They would be, but for many South Australians seeking 'protection' of Adelaide's park lands, for all the wrong reasons, because they were used to justify many exploitative proposals in the years that followed.

Existing wording in park lands policy documents

It is important, while reflecting on this November 2005 debate, to understand the context of the contemporary park lands documentation and its view about park lands 'development' in place at the time. Discussion below examines the contents of the *Adelaide Park Lands Management Strategy* versions, but at the time of this parliamentary debate the first (1999) version, the city-council-commissioned *Park Lands Management Strategy Report: Directions for Adelaide's Park Lands 2000–2037* was already six years old and critical to guiding the determination of park lands policy in relation to development proposals. It featured 'Directions' content that encouraged some development. For example, in one section it stated: "Ensure any new building or redevelopment in the park lands is in a nominated location and delivers public benefit, responds with sensitivity to the surroundings and

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[2] Parliament of South Australia, op. cit., 22 November 2005, page 3157.

[3] Parliament of South Australia, *Hansard*, House of Assembly, 'Adelaide Park Lands Bill', 29 November 2005, page 4232.

incorporates the highest quality design and materials."[4] Reference to this Strategy wording would commonly occur in Authority and council discussions between 2007 and 2009 when park lands development was contemplated. It would be sometimes accompanied by another Strategy paragraph, which immediately followed; a cautionary warning about the need for the park lands to be protected from further 'buildings and enclosures'. It stated:

> "However, because of the complexity of activities undertaken and the number of heritage buildings in the park lands, there will be valid requests for enhancement of existing buildings or facilities. These may require extensions to building or enclosure 'footprints' where particular benefit to the community can be justified. Some new buildings will be required to replace existing buildings in poor condition or of unattractive appearance."[5]

It is in the context of such wording, published in 1999, that one needs to look further at the parliamentary debates on 22 November 2005.

2. Strategy to be 'laid before both houses'

Another Strategy matter, which may have had significant effect in the future, also arose in state parliament on 22 November as the bill was being debated. This related to an attempt by Ian Gilfillan in the Legislative Council to have wording changed to ensure that any future version of the *Park Lands Management Strategy* should have to be 'laid before both houses of parliament' for parliamentary endorsement and, during that process, possibly further amendment, in contrast to the bill's draft provisions that left its endorsement solely to a minister. He lost his bid. It was later taken up by Kris Hanna MP in the House of Assembly on 29 November, but that bid failed, too. Both bids highlighted prescient moments. This is because exclusive ministerial control of the contents of this key policy document has meant, with the benefit of hindsight over subsequent years' Strategy versions (2010 and 2016), that major park lands policy advice leading to determinations have arisen through a form of a closed-loop administrative and political routine. (The Act required a Strategy 'review' every five years but any specific amendment of content was not mandated. However, major amendment did occur, in very substantial ways, and manifested in each of the 2010 and 2016 versions, given ultimate authorisation by one minister.)

The routine worked like this. Government desires were communicated via unofficial advice or suggestion to the Authority or via the ministerially appointed Adelaide Park Lands Authority board members. The Act's provisions required the drafting of each version by the Adelaide Park Lands Authority.[6] Subsequently, the city council

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4 *Park Lands Management Strategy Report: Directions for Adelaide's Park Lands 2000–2037,* 'Vision and Directions', 'Buildings and Land', section 6, page 44.

5 *Park Lands Management Strategy Report: Directions for Adelaide's Park Lands 2000–2037*, 'Extent of Development', section 8, page 51.

6 But, for the 2015 draft, which became the 2016 version, there also had been leading advice and direction from a government endorsed Project Advisory Group set up in 2014 under Capital City Committee influence. Whether that influence constituted 'direction' cannot be explored, because all committee agendas and minutes have always been subject to its 'culture of confidence' under the *City of Adelaide Act 1998*. In other words, it was publicly inaccessible.

would endorse each draft Strategy version, perhaps with minor amendments, but to a large extent a version that it knew the minister wanted. It has been unsurprising (again with the hindsight of many years) that, when the Strategy was subsequently submitted for approval to the minister administering the *Adelaide Park Lands Act 2005*, there was little public evidence of significant ministerial resistance or major revision. This was because its contents turned out to be very close to that which was sought by the minister in the first place. The resulting Strategy would become the basis for fresh policy output by the Authority, and subsequently the city council, for park lands management. Each Strategy would be referred to during determination about various matters, including development concepts and applications. However, this development-related feature was not a legislatively required procedure. It was merely based on an informal procedural assumption that if a Strategy's words encouraged the development, then it was appropriate to refer to it when a development concept arose.

Adelaide Park Lands Authority public records provide no evidence that any significant tension existed between the minister and the city council over the draft Strategy versions submitted. On the contrary, the minister and the government administration at the time were generally full of praise for its contents, apart from an occasional few minor quibbles. Should observers be surprised? Perhaps there ought to have been public surprise over the compatibility that existed between an acquiescent local government corporation and a controlling state government about each version (2010 and 2016) of the Strategy. The only paper trail that might have suggested otherwise would have been the public feedback responding to the draft versions, but the agendas and minutes evidence suggests that while some comprehensive commentary was received, many of the public's objections and critiques were ignored by the Authority.

A mechanism for Strategy disallowance

The November 2005 Legislative Council debate may have sensed the potential for ministerial abuse when Ian Gilfillan MLC sought to have endorsed a mechanism to impose a third-party option for scrutiny of any draft Strategy. He sought an amendment that would insert fresh wording: "A house of parliament may resolve to disallow a proposal pursuant to a notice of motion given in the house within 14 sitting days after a copy of the management strategy (with any amendments) is laid before the house" ... [and would insert another clause:] "The minister must, within six sitting days after a proposal is adopted ... cause copies of the management strategy (with any amendments) to be laid before both houses of parliament."[7]

Gilfillan followed his recommendations with the comment that:

> "At least the management strategy would be laid before both houses of parliament, but our amendment allows those houses of parliament to have some scrutiny of and influence on that management strategy. I am not in the least concerned about that, because we are bringing parliament into

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7 Parliament of South Australia, *Hansard*, Legislative Council, 'Adelaide Park Lands Bill', 22 November 2005, page 3162.

> the involvement with this in a way that is much more specific than it has been in the past. So, the fact that this management plan [he meant Strategy] comes before both houses of parliament [and, as with a regulation, could be subject to a disallowance motion] means that the scrutiny is much more specific to that management strategy and that there is capacity for either house of parliament to disallow. I believe this is a constructive step."[8]

The response from the government was not encouraging. Minister Carmel Zollo:

> "I indicate that the government opposes this amendment. ... It may be appropriate for parliament to have some sort of approval role if the management strategy were some sort of statutory instrument, such as the [Adelaide (City)] development plan, against which planning approvals are assessed, or trigger[ing] the raising of a levy, such as certain classes of plans are under the NRM Act [Natural Resources Management Act]. However, as its name suggests, the management strategy is only a strategic document developed within the context of and pursuant to the principles of the park lands legislation. ... If there is community concern, people can take their concern to the minister."[9]

Appealing to the minister

Minister Zollo's comments were typical of government members in many earlier and subsequent parliaments. A parliamentary career very quickly embraces state elected members in a 'simplified-procedure zone' in which administrative teams surrounding ministers make everything appear easy. All the answers are provided, quickly and effortlessly. Explanations are simplified. Nothing is too difficult for the administrators. Minister Zollo's response reflected a highly misleading assumption that 'the people' had access to the same resources and had plenty of free time to follow the evolution of park lands legislation and other documentation, to identify and deliberate with some expertise on the pros and cons, and call on a minister to respond promptly and relevantly to enquiries. The opposite could be true. Moreover, many South Australians during this period sought approaches to ministers that resulted in silence – no response to complaints or requests for action. Long periods would pass while the people waited. While a minister was expected to listen to constituents, there was no legal requirement for a minister to respond in depth if he or she didn't want to or was too busy. This is common to many parliaments. The prevailing South Australian culture at this time and later was that voters put up with it, cynically noting that it was often only their pre-election correspondence that elicited a prompt reply.

Minister Zollo's Legislative Council response also misleadingly implied that a minister in the future ought to be in a position to quickly publicly participate in, or urgently advocate for, changes to the drafting of a future Strategy. But there quickly grew, after 2007 when the Authority board members first began to meet, a city

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[8] Parliament of South Australia, ibid.

[9] Parliament of South Australia, ibid.

council administrative cultural view that a minister would never openly participate in the drafting of a future Strategy; after all, that would imply that the minister was directing the writing of its contents. The myth was that a minister might even be surprised at the revelation of the new contents of a revised Strategy when it was finally sent to the minister's office for authorisation. But it was all a sham, and a good sham. The potential for parliamentary scrutiny of the Strategy by both houses of parliament was more than 'constructive' as Gilfillan had suggested – it was a sound and practicable proposal, encouraging accountability and transparency within state parliament about park lands management and policy, with a real sting in the tail: potential amendment if sufficient public noise by sufficiently concerned constituents triggered sufficient anxiety among MPs across South Australia's electorates. But on 22 November 2005, it became a lost opportunity. Instead, the only scrutiny mechanism would be that managed by the Authority, or the council, subject of course to final ministerial authorisation. Public consultation mechanisms would be used to allow for public scrutiny of draft new Strategies over subsequent years, but neither the Authority nor the council was under any legal obligation under the *Local Government Act 1999* or the *Adelaide Park Lands Act 2005* to endorse any critique or objection, or accept any recommendation for amendment. This was one of the many manifestations of the 'closed-loop' administrative culture in which park lands policy was generated and concluded.

Unanticipated consequences

Another critical aspect arose out of that unsuccessful bid in parliament on 22 November 2005. Perhaps no-one at the time comprehended it. What followed later with the 2010 version of the *Adelaide Park Lands Management Strategy: Towards 2020*, and more particularly with the 2015–2025 third version (signed off by the council in 2016), was Authority led creation of wording that would quickly take on significant policy determining weight or status, from which the Authority would later draw when policy matters were being explored, and on the basis of which the Authority would make its recommendations to the city council. In other words, while the Strategy was not a 'statutory instrument' in the view of Carmel Zollo MLC, its presence as prescribed under the 2005 Act, and its use as one of the Authority's key policy references, fairly quickly took on many of the characteristics of a statutory instrument when references to it were made. This happened not only at Authority level but also at subsequent city council level (after all, the Authority was merely a subsidiary committee of the council). Very often these references related to development-linked proposals, matters that could give rise to park lands exploitative or alienating outcomes. In this way, the 2010 and 2016 Strategy versions quickly assumed significant policy determining status. An examination of many of the agenda papers of the Authority over the years following 2007 illustrates how fundamentally much of its evidence drew on the wording, concepts and priorities in a Strategy. It was a convenient arrangement – the Authority wrote the 2010 and 2016 versions (incorporating informally communicated government imperatives for future actions), largely ignored public critiques of both versions, and then, in session, drew on Strategy contents for its advice to the council or others.

However, had the November 2005 parliamentary debate succeeded in requiring wider parliamentary scrutiny – in both houses – subsequent outcomes may have been different. After the passing of the *Adelaide Park Lands Act 2005*, there was an implied city council administrative cultural assumption that a minister should not publicly participate in the drafting of a future Strategy at Authority and/or council level. Another assumption was that its draft content would be strongly informed by public feedback collected by the Authority over proposals for each Strategy revision, in terms of its vision, aspirations, values and short-, medium- and long-term priorities. However, this is not how it really worked.[10]

3. A committee, or a committee with teeth – or a court?

There was one Park Lands bill matter about which there was no discussion at Legislative Council level on 22 November 2005, but there had been debate earlier, in the House of Assembly on 29 September 2005. In fact, the procedural issue had originated in a parliamentary debate six years earlier, in August 1999. It related to the party balance of members forming a standing parliamentary committee to address the motivation (or not) to explore and resolve any future dispute about a park lands matter.

The 2005 matter related to the Park Lands bill's reference to "land within the Adelaide Park Lands occupied by the Crown or a State authority [that is] no longer required for any of its existing uses", and what a minister was required to do if a change of land use were contemplated. If the minister failed to prepare a report, and a council dispute arose, the minister or the city council could refer the matter to the Environment, Resources and Development Committee of the Parliament.[11]

The issue, with a clear illustration of the problem, had first emerged in previous House of Assembly parliamentary debates regarding park lands matters six years earlier in August 1999. That was when House of Assembly MP, Liberal Peter Lewis, was debating the merits of a bill he put to parliament for better protection of Adelaide's park lands. Lewis, who was chairman of the Public Works Committee, had noted that this committee had made recommendations for park-lands-related legal change, to try to ensure that a proposed building could be approved for construction on the park lands only if both houses as well as the city council agreed to it. Although he had sent the committee's recommendations to the Local Government minister, nothing had resulted.

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[10] Analysis in Chapter 48 ('The consultation lark') discussed how the consultation model really worked. A deeper analysis of the evolution of the 2010 and 2016 versions of the Strategy appears in other chapters of this work, commencing with Chapter 35: 'Towards the second Park Lands Management Strategy'. Additionally, Chapter 40: 'The 2016 revolution' illustrates that even if the public did not like draft content, the Authority would largely ignore the feedback.

[11] It discussed whether, as part 6: section 23 of the bill said: "Steps regarding change in intended use of land', (5) If— (a) the Adelaide City Council considers that the Minister has failed to prepare a report in accordance with subsection (1); or (b) a dispute arises between the Minister and the Adelaide City Council in connection with the operation of subsection (4), the Minister or the Council may refer the matter to the Environment, Resources and Development Committee of the Parliament."

In 1999 it prompted him to reflect on what he saw as the toothless features of the committee, and he returned to the same theme six years later, in state parliament in late 2005, when discussing how ‘instruments of the parliament’ such as standing committees, can not only be manipulated to act, but also not to act on a matter that comes to the committee.

Lewis:

> “[Minister Hill] said that the reviews of the Public Works Committee could be relied upon as an agency of the parliament. I am not convinced of that because [for] the majority of the time I have been here [as a member of the House of Assembly], the Public Works Committee has been dominated by members of the government party. If the government decides that it thinks it is a good idea, then members of the Public Works Committee argue and vote for it, and the Chairman, of course, does the things which enable that committee to get past the embarrassing things that otherwise might be asked. ... We cannot rely on the Public Works Committee ... It is not a safeguard, nor is the process to which the minister [Hill] refers anything like an adequate safeguard to protect the park lands.[12]

I agree, says another MLC

Eight years later, in 2013, South Australian Greens Legislative Councillor, Mark Parnell, also reflected on the enduring political bias of another standing committee, its lack of political will and the timing of the scrutinising of planning matters arising out of legislation.[13] His focus had fallen on that ‘instrument of parliament’, and the status and powers of parliament’s Environment, Resources and Development Committee. He essentially concurred with the view of Peter Lewis. More exploratory reference to this appears elsewhere in this work.

There have been other discussions within the SA parliament about this. Some parliamentarians have gone as far as recommending that *non-planning* park lands issues and disputes should instead be subject to appeal in state courts. However, legislators would hardly recommend that parliament be subject to determinations about the contents of statutes by the judiciary.

4. Category 3 classification in the development plan – a bid for appeals powers

So much for non-planning issues, but what of specific planning issues, with respect to the park lands? Planning law is at the heart of park lands development applications – and particularly the development plan amendments that encouraged these applications during the study period of this work (1998–2018). Moreover, it is the law’s instruments that played a key role behind the disputes and uproars. Planning legislation (the *Development Act 1993*, which was at 2018 still the effective park lands statute, despite the Act’s replacement in 2016 in the form of another

12 Peter Lewis, Parliament of South Australia, *Hansard*, House of Assembly, ‘Adelaide Park Lands Bill’, 29 November 2005, page 4232.

13 Mark Parnell, [a summary of the flaws in South Australia’s planning system] ‘*The Dirty Dozen: 12 things wrong with the planning system in South Australia and how to fix them*’. Pamphlet: July 2013.

statute slowly being brought into operation[14]) allowed the *Adelaide (City) Development Plan* to be written in a certain way. In it, development could be classified as 'complying', resulting in Category 1 planning status – no public notification or public consultation necessary. If classified as Category 2, determinations could not be appealed in a court. However, a Category 3 classification (a term still in use as at year-end 2018) meant that a proposal was classified as 'non-complying', must be publicly advertised, and therefore had the potential to encourage all sorts of public protest by all sorts of people and – most importantly – could be subject to third party appeals in a court.[15]

Gilfillan pursues a critical amendment

At the 29 November 2005 Legislative Council session, elected member Ian Gilfillan once again led the debate. Gilfillan professed pessimism at getting a proposed bill amendment passed, and was proven to be right. But he might have pushed harder, given that the excuses made by his colleagues boiled down to 'It's all too difficult'. But in reality it would not have been as difficult as they claimed. The proposed amendment could have had profound effect on future development on Adelaide's park lands and in retrospect would have provided a very significant advantage to those who would genuinely seek over the years to 2018 to 'protect' the open spaces.

Gilfillan had been earlier advised that his proposal would be unworkable because it might embrace very minor development matters on the park lands and therefore be complicated and administratively tedious to address. But, subsequent to 2006, new Adelaide Park Lands Act regulations were to be written that adequately addressed this so-called complication. That would, however, be in the future. Gilfillan on 29 November 2005 proposed a bill amendment to the assembled parliamentarians that: "A development within the Adelaide park lands is, by force of this (proposed) section, a Category 3 development." He followed up: "I think it is important to argue for it on the basis that any development in the park lands, just in essence of the principles and ethics of it, ought to be a Category 3. Category 3 means that the public would know what is proposed to be developed and have the opportunity to have a say."[16] He noted that planners and departmental advisors had warned him this would be "too cumbersome and that a lot of minor works ought to be able to proceed without going through the tedious process of Category 3", but he then said to the house: "Those who care for the park lands make no apology for it. Anything that goes on the park lands should be treated in the same way as a development on someone's front garden, or any area to which a person holds some proprietary right and ownership. Even if it is somewhat tedious ... we make no apology for that."[17] The proposition was criticised by Labor's Terry Roberts who was leading the debate. He pointed out the risk of frivolous and vexatious representations against

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[14] The *Planning, Development and Infrastructure Act 2016*.

[15] This term, (Category 3) and this arrangement, ceased when the new *Planning and Design Code* came into metropolitan operation on 19 March 2021.

[16] Parliament of South Australia, *Hansard*, Legislative Council, 'Adelaide Park Lands Bill', 29 November 2005, page 3223.

[17] Parliament of South Australia, ibid.

minor developments, but he was pushing the debate onto a misleading track, and Gilfillan missed an opportunity to confront it. Roberts: "The appropriate system is to have development categorised as either complying or non-complying and, consequently, consultation and appeal rights spelled out by the Development Act."[18] This was fundamentally correct, but Gilfillan's proposal was that the future Adelaide Park Lands Act could direct subsequent amendments to the Development Act (as it would do, subsequently, during 2006 to nine other interacting state Acts). Gilfillan's proposition was that, in relation to park lands, all proposed development applications should be classified Category 3, and therefore appealable in a court. Roberts went on: "A review of this arrangement is a role for the new [Adelaide Park Lands] Authority to take on, as set out in its functions." But he erred. It would never be a function of the Authority to prescribe planning policy and procedure under the Development Act during the study period of this work. Moreover, it also would never play any formal procedural role in relation to development application assessment determinations. Roberts: "It is important to establish a system which balances park lands protection against public administration of the development of the planning system, rather than make arbitrary and draconian judgements that all developments, no matter how small, should be Category 3."[19]

In retrospect, it is the inadequacy of a regime that attempts to balance park lands 'protection' mechanisms against state executive administration and control of the planning system that lies at the heart of the 'tension' between the park lands planning machine and the aspirations of South Australians to prevent exploitation of their park lands.

Park lands 'not a conservation park'

Gilfillan once again pointed to a need to ensure that 'minor works' could be excluded from the Category 3 classification, but was assailed by the Liberal's Caroline Shaeffer MLC who also pointed out the difficulties of Category 3. "If that were not enough," she warned, "they (objectors) would have third party appeal rights to the ERD Court [the Environment, Resources and Development Court]. It would be a recipe for nothing to happen in the park lands. The park lands are park lands and not a conservation park."[20] But she was not supported by Family First Pastor Andrew Evans MLC, who said, "I support the Hon Mr Gilfillan's amendment. The park lands at all cost must have maximum protections. Having been through Category 3 issues from time to time, it may take a bit longer, but you generally get what you want through, if you have a reasonable case."[21] The solution might have been to have inserted into the bill a mechanism similar to one the government was pursuing to amend the interacting *Development Act 1993* by effectively disabling the section 46 'major development' provision for the park lands that had been so exploited by various governments, as well as clauses in sections 49 and 49a of that Act (Crown developments and Crown infrastructure developments).

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[18] Parliament of South Australia, ibid.

[19] Parliament of South Australia, ibid.

[20] Parliament of South Australia, ibid.

[21] Parliament of South Australia, ibid.

Seven months later, in June 2006, a government explanatory note was circulated, explaining to state departments the sections 49 and 49a amendments. "The impact of these amendments, once brought into operation, is that developments ... by state authorities ... will have to be submitted as if they were a private development and be considered against the development plan. Consequently, depending on the circumstances, some developments may be subject to third party appeals."[22]

Gilfillan's bid would have seen similar further provision amending the Development Act such that park lands development proposals – not just Crown proposals – would be deemed to be non-complying, classified as Category 3, and open to third party appeals, except those 'minor works', which would be subject to new and additional regulations exempting them. If subsequent regulations were to be deemed by opposition parties to be too excessive, they could be subject to disallowance in parliament. Could such regulations have been written? Yes. They were in relation to sections 49 and 49a (allowing only "minor works ... [of which:] None involve construction of new buildings or equipment unless underground.")[23]

There is nothing that parliamentary counsel cannot do if the political will is there. But it clearly wasn't there and Gilfillan's bid had to be abandoned for lack of opposition interest in pursuing it. *Hansard* recorded: "Amendment negatived." The failure of the Category 3 bid would have significant consequences 10 years later, when the Labor state government, in its third consecutive term, would capitalise on this and easily modifiy aspects of the *Adelaide (City) Development Plan* to amend to 'complying' status the construction of a six-storey school building on park lands, so that no public consultation procedure about the proposed development would be required – and most certainly no opportunity for a court appeal.

History repeats – Category 3 review

Five years after that parliamentary discussion, another meek attempt would be made to consider the 'protection' potential of a Category 3 classification for development across the whole of the park lands. It was buried in a 2009 draft version of the city council's second *Adelaide Park Lands Management Strategy: Towards 2020*, which had been sent in 2010 to the state government for final sign-off. Alarmed state bureaucrats had discovered it, and the Environment Minister, Jay Weatherill, highlighted the concern in a warning letter to the city council. The clause to which his bureaucrats objected read: "Seeking a review of the development plan to eliminate exemptions from 'non-complying' development as applied to buildings in the park lands zone and to require all such development to be classified Category 3 – high priority." This was no aggressive confrontational tactic; it merely sought a review. But the prompt ministerial response illustrated the

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[22] Government of South Australia, 'Background to proposed amendments in the Development Regulations 1993', addendum to Minutes 06EC1872, Adelaide Park Lands Regulations, received Minister for Education and Children's Services, 15 June 2006, page 1.

[23] Government of South Australia, Minutes to Minister for the City of Adelaide, 'Changes to development controls in the Adelaide park lands', 6DEC4214, Hon Gail Gago, 10 December 2006, 'Change in application of development powers and procedures in park lands', page 2.

extreme government sensitivity to any suggestion that park lands development proposals might become subject to court appeals.[24]

5. The undetectable loophole opportunities buried in the new bill

There is no evidence that parliamentarians who examined the bill's wording in 2005 found cause for concern about the future interaction proposed between it and the *Local Government Act 1999*. When new legislation is proposed, if it is to interact with pre-existing statutes, the contemplation of 'what if' consequential scenarios is tempting, but if there was any speculation at this time, it was not recorded in *Hansard*. Despite that, there would be hints of at least three potential loopholes buried in the bill's wording in relation to interaction with another Act. One was more obvious than the other two.

Community Land Management Plan (CLMP) revocation potential

A proposed amendment of section 194 of the Local Government Act that would be triggered by the new Park Lands bill when it became an Act contained a clause that would six years later prove to be fateful, and of significant park lands consequence. In the second reading of the bill in the South Australian Parliament's Legislative Council, on 15 September 2005, Planning Minister Paul Holloway had stated:

> "Section 194 of the *Local Government Act 1999* prescribes procedures relating to the revocation of the classification of land as community land. The section provides that the classification of the Adelaide park lands as community land cannot be revoked. This clause amends the section by adding the words, 'unless the revocation is by force of a provision of another Act'. The clause also inserts a new subsection that provides that the Adelaide park lands will, for the purposes of subsection (1)(a), be taken to be any local government land within the Adelaide park lands, as defined under the *Adelaide Park Lands Act 2005*."[25]

This appeared to be nothing more than common sense at the time, but in 2011 a new statute progressed through parliament whose effect would be to set aside the community land status within what was described as a 'core area' of the Adelaide Oval, allowing the construction of a huge new sports stadium on that land. It also meant that, under that statute, the *Adelaide Oval Redevelopment and Management Act 2011*, the provisions of the *Adelaide Park Lands Act 2005* and those of the *Local Government Act 1999*, which provided for the CLMP relating to this core area, would be rendered toothless. It wasn't revocation, but it had the same effect.[26]

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[24] Detailed source matter and discussion appears in Chapter 36 of this work: 'The 2010 *Adelaide Park Lands Management Strategy*'.

[25] Parliament of South Australia, *Hansard*, Legislative Council, 'Adelaide Park Lands Bill', 15 September 2005, page 2561.

[26] More discussion about this appears in Chapter 27 in this work: 'Case study – Adelaide Oval 2011, and a stadium in Park 26'.

The secrecy tradition

A second matter was far less likely to have prompted anticipatory curiosity among those scrutinising the draft wording of the 2005 Adelaide Park Lands bill. But perhaps it should have, because it would in subsequent years deliver an easy mechanism to avoid transparency and accountability about park lands decision-making within city council and state government administrative domains.

It related to provisions in the *Local Government Act 1999* for the making of confidentiality orders (section 90). Had a proposal been put during the 2005 debate to disable many of the orders' criteria under the *Local Government Act 1999*, it would have gone a long way towards opening up to public scrutiny discussions about park lands matters. The orders had been routinely imposed from time to time by local government administrators and elected members. They allowed for in-confidence deliberation, and the making of confidentiality orders – orders to keep matters secret – capitalising on a range of criteria under section 90(2) and (3), including any park lands matters.[27] Beyond 2005, they would form the basis on which confidential park lands exploitation deliberations often would depend. A review of the extent of the confidentiality orders applied to park lands matters since 2005, and especially between the years 2007 and 2018, highlights a long subsequent tradition in which controversial park-lands-related deliberations would be held behind closed doors (under orders to exclude the public from a meeting (section 90 (7) of the Act), and often continued under ongoing confidentiality orders (section 90(2) and (3)), beyond that time. Some orders could be imposed at the request of those seeking to exploit the park lands for development purposes, especially on a commercial basis. Other orders more commonly would be at the request of council park lands administrators or state government ministers, well knowing that keeping such deliberations out of the public domain and away from scrutiny for as long as possible meant that there would be less public pressure on senior elected members and their administrators and, more particularly, state politicians. Highly sensitive to park-lands-related criticism, they would be keen to capitalise on the in-confidence deliberations to smooth the pathway towards the making of exploitative determinations free of transparency and therefore immediate accountability.[28]

The control tradition

A third matter would at the time have been similarly challenging to anticipate, but there were clues, and they had been identified outside of parliament many months before the debate on the bill commenced. The clues related to the proposed writing of a charter for the Adelaide Park Lands Authority, something that did not occur until after the proclamation of the *Adelaide Park Lands Act 2005* in early 2006. The charter's content could not be known during the 2005 debates, but the proposed extent of government control over the proposed Authority would have been understood ahead of the debates. It had been discussed at the city council on

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[27] The criteria in section 90(3) are reproduced in Appendix 21 of this work.

[28] Chapter 46 of this work explores the details: 'The secrecy tradition'. Several appendices also explore further. They are Appendix 22: 'Case study: The Adelaide park lands 'in confidence' tradition' and Appendix 23: 'Council secrecy orders – park lands key data'.

11 April 2005.[29] The council had noted the extent of ministerial control that would take effect, noting that clause 13 of the bill "... contains additional provisions that modify the operation of the *Local Government Act 1999* so as to constrain council's ability to control the subsidiary [the Authority]. The most significant of these were that: council must not adopt or amend the charter of the Authority without first obtaining the approval of both the minister responsible for the LG Act [the *Local Government Act 1999*] and the minister responsible for the Adelaide City Park Lands Act [sic]; and, council must not give direction to the Authority without consulting the minister."[30] This dashed any hope in city councillors' or state parliamentarians' minds that the proposed Authority might inject any stand-alone 'independence' substance into the writing of its charter. The extent of the state government's control would have made it abundantly clear that the state would hold complete power over the body likely to occupy 'first procedural base' in the contemplation of future park lands matters.

The first charter was written in 2006. It would be comprehensively updated in 2018. The minister controlling the contents of the charter would see to it that it directed board members to operate under a significant procedural level of confidentiality. For example, this clause appeared in the 2006 charter: "All Board Members must keep confidential all documents and any information provided to them on a confidential basis for their consideration prior to a meeting of the Board ..." [31] The clause made it clear that board members would be operating under an all-encompassing culture of confidentiality, should the provider of the document or other information claim 'a confidential basis'. Under section 90 (3) of the *Local Government Act 1999* there is a specific provision allowing for confidentiality relating to anything provided by a state minister, but the charter's wording was even broader and less specifically related to the legislation. Parliamentarians in 2005 could not have anticipated such charter wording, but the notion of complete ministerial control over the wording of a future charter ought to have prompted some contemplation. A detailed exploration of the contents and evolution of the charter appears in this work's Appendix 6: 'The *Adelaide Park Lands Authority*'.

Conclusion – PART 1

By the conclusion of the 2005 parliamentary debate over the Adelaide Park Lands bill, at least four significant loopholes remained embedded in it. Had amendments occurred to the satisfaction of those that pursued them, each could have made the resulting *Adelaide Park Lands Act 2005* significantly more effective in minimising the potential for exploitation and ruses that would follow. Revision of some draft provisions at the time may have simply blocked exploitative opportunities before any damage was done after the Act came into operation in late 2006.

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[29] Adelaide City Council (ACC), Agenda, Item 12.3, 'Response to the Minister for Environment and Conservation regarding the draft Adelaide City Park Lands bill 2005', 11 April 2005, page 8538.

[30] ACC, ibid., page 8539. Note: in early 2005 the original wording of the proposed bill had included the word 'City'.

[31] Adelaide Park Lands Authority Charter, 2006, section 4.5.18.

50 | The loopholes lurk (PART 2 of 2)

PART 2: Loopholes and administrative ruses applying to the Adelaide park lands

While the history of Adelaide's park lands stretches back more than 180 years it is clear that today's bids to ensure their protection from exploitation and alienation cling to a flimsy tissue of pledges and political 'intentions of the moment'. They often have only a brief shelf life before someone within government conjures up another clever way to evade them. And there are many clever ways. It is as if South Australia's little southern capital, so blessed with a unique belt of encircling, open pasture, is a victim of a split-personality affliction affecting the government administrative mood between state elections. Whatever aspect of 'protection' is pledged as a polling day looms, it is historically unlikely to be delivered in the term that follows.

This chapter examines the myriad year-to-year loopholes and administrative ruses applying to park lands, both many years before the 2005 Adelaide Park Lands Act, and in the years that followed, between 2007 and the end of the study period of this work.

Managers monitoring the local-government-level park lands administrative documents must continue to monitor changes to laws affecting them. If changes occur, then the documentation must change. As noted in an earlier chapter[1], apart from the *Adelaide Park Lands Act 2005* there are many other Acts whose provisions influence matters about the park lands and, to achieve consistency when change occurs, some have to be amended. But this notion of parliamentary order does not necessarily have to embrace fair play. In fact, whenever the spirit and intent of certain park-lands-related Acts was deliberately thwarted through an overriding of its provisions by other legislation, it was commonly a symptom of a scheme to exploit park lands land-use principles that otherwise aimed to 'protect' them. Someone, somewhere, was usually benefiting unfairly. Most often, it was government – and others working in association with government.

One historical example, well before the study period of this work, was the suspension of certain liquor law provisions, disabled under the *Australian Formula One Grand Prix Act 1984* to allow a three-day Formula 1 Grand Prix party to be held around the inaugural 1985 park lands race track at and surrounding a section of Victoria Park (Park 16), where liquor flowed well outside the usual restricted times and under less rigorous conditions. The subsequent *South Australian Motor*

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[1] See Chapter 4: 'The park land rules – a vast web of complexity'.

Sport Act 1984 was passed to allow a government board to gain annual exclusive, short-term access to a large slice of that usually serene park lands site, via a declared area and period. The Act suspended the provisions of at least five other Acts during that declared period, which statutes otherwise would have regulated park lands activities there. These (under their 2007 titles and iterations) included the *Environment Protection Act 1993* (including the former *Noise Control Act 1977*), the *Local Government Act 1999*, the *Road Traffic Act 1961*, the *Development Act 1993* and the *Liquor Licensing Act 1997*. In other words, while the declared period applied, there were to be no regulated noise controls, many road traffic rules would not apply, and suspension of many other rules in that section of Victoria Park. Locally, the effect would be that, while erection of temporary race facilities and subsequent dismantling of them occurred, a large area of the park lands would remain fenced, blocking public access. This would last for up to six months every year.

An even earlier example

Another example had been the passing of the *Recreation Grounds Rates and Taxes Exemption Act 1981* to allow discounts or exemptions from park lands fees for certain lessees of park lands sites. This delivered significant cost savings for major park lands lessees, most of whom could afford the rates but simply didn't want to pay them. The city council lost revenues that it could otherwise have collected and spent on park lands maintenance, the cost of which drew heavily on its annual budget. Worse, it continued to retain a financial responsibility to maintain some sites at which these lessees operated.

These organisations were among a group that capitalised on legal arrangements that allowed – and still allow – access to the park lands without paying a fair fee. Few South Australians realise that inequitable use of the park lands for beneficial and sometimes profitable outcome has been extensive. Although lessees might pay lease and licence fees (but often discounted), other monies not paid to the city stayed in the pockets of commercial operators. This was noted in 2014 by city councillor (and former Deputy Lord Mayor) David Plumridge:

> "There are many 'freeloaders' on the system; organisations that for one reason or another are not required to make a contribution to the city's coffers. These 'freeloaders' just don't pay anything towards the running of the city. For example … all schools (yes, even those well-heeled ones that conduct much of their money-making business on the park lands) don't pay a cent in property rating towards the upkeep of the city, many of which appear to be very profitable. The [Adelaide Oval] Stadium Management Authority which is set to make a mint out of its tax-payer funded property [a new Adelaide Oval stadium at Park 26, completed in 2014] which not only includes the structures it leases from the government but also the park lands it uses as a money-making business [for revenue-earning events and car parking] makes absolutely no contribution to the city's coffers … [as well as] all sporting organisations, which comply with the *Recreation Grounds Rates and Taxes Exemption Act 1981.* Universities and all tertiary

educational institutions [also make] huge demands on the city's resources. ... My guess is that [all of the] 'freeloaders' on the system cost Adelaide city ratepayers about $20m per year." [2]

$27.98m jettisoned in favour of special groups

The guesswork in relation to the park lands ceased in 2018 when a city councillor called for a summary of the "entity groups excluded from paying rates in the City of Adelaide, and an estimate of the building areas occupied".[3] The city council's answer was delivered in an 'e-news' email to elected members, a method not usually accessible to ratepayers or others, but some details were subsequently reported in Adelaide's daily, *The Advertiser*. It revealed that the total money lost in the recent period to council was $33m, but in park lands terms the amount was not made clear. It turned out to be less, but still a large amount – $27.98m. Exclusions at the time applied to 43.24ha of the park lands, because of occupancy by the Crown or a university established by statute, or occupancy capitalising on the *Recreation Grounds Rates and Taxes Exemption Act 1981*, or another Act.[4]

The funding challenge

The making of special arrangements for parties using sections of the park lands has been a long-term habit of the city council. In 2002 when the new Rann Labor administration formed government, council administrators pressured the state to consider options to ease its cost burden of maintaining park lands. Nothing substantial eventuated. But with the hindsight of many years, it is clear that the

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2 Newsletter: *Notes from Councillor David Plumridge's desk*, Edition 105, 12 February 2014, page 1.

3 Adelaide City Council meeting, Agenda, Item 15.4, Motion on Notice, Cr Abiad, 'Properties with Rate Exclusion', 24 July 2018, page 121.

4 Adelaide City Council: *E-News* 26 July 2018, 'Properties with rate exclusion' Response to Motion on Notice [24 July 2018] from Councillor Houssam Abiad. (Council meeting, Agenda, Item 15.4, Motion on Notice, Cr Abiad, 'Properties with Rate Exclusion', 24 July 2018, page 121.)

E-news, Table 1: Showing those entities exempt under a relevant section of the *Local Government Act (1999)* or another Act, the total building area and the estimated forgone rates. (Acreage and dollar figures here added by this work's author John Bridgland, from source.) Totals 43.24ha; $27.98m. (Extracts from the *Local Government Act 1999* also added here by author of the work in which this footnote appears.)

- Crown Land – Local Government Act [LG Act] sections 147(2) (a), (b) and 302(2). The following is not rateable: (a) unalienated Crown land; (b) land used or held by the Crown or an instrumentality of the Crown for a public purpose (including an educational purpose), except any such land – (i) that is held or occupied by the Crown or instrumentality under a lease or licence; or (ii) that constitutes domestic premises; (c) land (not including domestic or residential premises) occupied by a university established by statute. 23.4ha ($18.7m).
- By virtue of another Act – section 147(2) (h). [(h) land that is exempt from council rates under or by virtue of another Act. 1.29ha ($0.91m).]
- Recreation Grounds Rates and Taxes Act – section 147(2)(d). ((d) land that is exempt from rates or taxes by virtue of the *Recreation Grounds Rates and Taxes Exemption Act 1981*. 6.85ha ($0.49m)
- Occupied by University – LG Act section 147(2) (c). ((2) The following is not rateable: (c) land (not including domestic or residential premises) occupied by a university established by statute. 11.7ha ($7.8m.)

council has been its own worst enemy when it comes to disciplined collection of potential park lands revenues. An example arose in 2011 when it became clear that state political pressure had forced the city council to jettison vast sums of lease-fee revenues that should have been collected to help pay for park lands maintenance. City councillors had been arguing about demands by the state government to significantly discount lease fees on new government properties constructed on the park lands. The council came up with a rationale to justify the discounts, based on an imaginative criterion: it claimed to refer to state government projects that were of state/city significance and of 'strategic value', and considered to result in 'an increase in visitation, workforce, education or residents'. An example of the consequent losses was abandonment of $1.9m in lease fees in relation to the state government redevelopment of the Adelaide Convention Centre (West), abutting Montefiore Road, west of the CBD. Park lands maintenance funding that could have been captured through a five-year lease fee, $2m, for a nearby works compound was discounted to $500,000 by the Authority, and later *further* discounted by the city council to only $100,000. The deal was described in 2011 by Adelaide Park Lands Authority board member, Gunta Groves: "... the council decided it would be happy with $20k per annum and will receive, over the five years, a total of $100k instead ..."[5] This was at a time when annual park lands maintenance was costing the city council about $12m.

A year later, the author of this work recorded progress of the policy in an article in *The Adelaide Review*:

> "At a time when the council is facing more financial pressures than ever before to manage its share of Adelaide's park lands, the discounting bid inserts a new 80 per cent discount category for the highest potential lease fee developments. ...
>
> The council's December [2011] adoption of the discounting formula carried a curious final recommendation: 'Community consultation is not required as the fee schedule relates specifically to State Government projects.' Future spin is likely to focus not on the discounting (which will be difficult to identify because the new schedule will automatically apply) but on the allocation of the (now minimal) fees charged. Council's very recent history illustrates that large amounts of money [had] been thrown away in ad hoc decisions before the new formula was adopted. In 2010, $118,000 was waived on a government project for bus access to parking during the Gawler-to-Adelaide rail line upgrade (a 100 per cent discount). Nearby, at Adelaide Oval, a $500,000 adjacent oval lease fee was discounted to only $167,000. None of this discounting assisted in the challenge to boost park lands maintenance budgets. Council took its biggest hit in 2011 when the state government nominated for itself a $10 per annum fee – for [each 20-year term over] 80 years – for the new

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[5] Gunta Groves, personal newsletter, *News from the Adelaide Park Lands Authority #22*, 16 October 2011, page 2.

Adelaide Oval licence area [surrounding the oval proper] created under a new Act.[6] Council's park lands budgets lost more than $300,000 in annual [oval] lease fees, which until then [the council] had been anticipating another 33 years of indexed annual revenues from the former lessee, the SA Cricket Association. Despite the loss, the council will remain responsible for park lands upkeep on the oval's eastern frontage."[7]

The really sneaky ruses

Few South Australians comprehend the extent of the powers open to a state planning minister. Even fewer understand the mechanism through which he or she can exercise this power across the park lands. Moreover, few South Australians understand the jargon used in planning procedures, such that even if public consultation occurred about the content and intent of a proposed development plan amendment (DPA), it would still be difficult to interpret. Planning jargon is one of the most challenging languages of park lands communications but the *Development Act 1993* and its planning instrument, the *Adelaide (City) Development Plan* at year-end 2018 (the end of the study period of this work) were central to what could occur in the park lands zone. No-one at state or local level of government showed any interest in translating this jargon to ease taxpayer confusion, or explaining the highly complicated technical concepts that could be used to, in effect, change the rules.[8]

In the 31 years between 1988 and 2018 there had been a number of amendments to the *Planning Act* of 1982, which later became the *Development Act 1993*. Beyond 1998, more challenging for the public was comprehension of the complexities of development plan amendments (DPAs), or of the more powerful influence of *ministerial* DPAs. It was a ministerial device that, if necessary, could be used without city council cooperation, and was not required to be scrutinised by parliament before coming into effect because it was already legal under the Development Act. In terms of the Adelaide park lands zone, *The Adelaide (City) Development Plan* defined the rules determining the handling of development applications across its policy areas. Some ministerial devices were highly challenging for non-lawyers to understand, and so were politically convenient for governments to use. Examples follow.

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6 The *Adelaide Oval Redevelopment and Management Act 2011*.

7 John Bridgland, *The Adelaide Review*, 'Political discounting erodes Adelaide's park lands funding', May 2012, page 10. The full article is reproduced in Appendix 26: 'Political discounting erodes Adelaide's park lands funding'.

8 Although the *Development Act 1993* has now been superseded by new 2016 planning legislation, some aspects of it were not brought into operation until after the conclusion of the study period of this work (year-end 2018). This is why the *Adelaide (City) Development Plan* was still the planning instrument five years after the 2016 legislation came into operation. The old development plan was finally superseded on 19 March 2021. The new instrument was the *Planning and Design Code*. Many themes relating to the former planning arrangement would be carried over under the 2016 Act and its planning instrument, the 2021 *Planning and Design Code*. The titles changed, but the intentions did not – and remained advantageous to a planning minister in influencing development outcomes.

- One was a 2011 ministerial development plan amendment introduced by the state government to access 10ha of rail yard land west of the Morphett Street bridge and to commence planning preparations for the construction of the new Royal Adelaide Hospital. The state Labor government began secretly planning the hospital concept in 2006 despite knowing that its plan contradicted a clear priority in the 1999 *Park Lands Management Strategy Report 2000–2037* that the alienated land instead ought to be remediated and properly zoned at some future time as park lands open space. It was part of a broad vision in that Strategy Report to reintegrate 'lost' sections of Colonel Light's original 1837 Adelaide City Plan, and it informed and drove many of Labor's pre-2002 election pledges to reflect its apparently strong commitment to 'protect' the park lands. The 2011 ministerial development plan amendment, once processed and gazetted and consolidated in the *Adelaide (City) Development Plan* enabled the construction of the huge hospital on that land.
- Another ministerial tactic used after Labor's post-2010 election win (its third consecutive victory) was to amend regulations under the *Development Act 1993*. This would make possible something that was previously not allowed. (The jargon at the time was 'non-complying'.) This was a 2012 government bid to vary regulations of the Act in relation to a proposal to construct a $40m footbridge across the River Torrens adjacent to, and as infrastructure support for, the new Adelaide Oval stadium. The footbridge would connect the oval to the edge of the CBD and was seen by oval managers as vital to the future success of events at the oval, which would bring rivers of revenue to the two sports shareholders of the Adelaide Oval Stadium Management Authority. At the time Adelaide Park Lands Authority board member, Gunta Groves, noted the alacrity with which bureaucrats and parliamentarians moved to get this done: "... the government, through the *Subordinate Legislation Act 1978*, brought in with immediate effect a variation of Development Regulations 2008 so that the building of the footbridge [did] not require development plan consent. This was signed off by the Governor on 12 July 2012. Such speed and expediency must have impressed the development lobby whose members [were] always complaining that there is too much red tape for them to make a healthy profit."[9] But, in a rare instance, in State Parliament's Legislative Council, the state opposition, supported by independent MPs and Greens independents saw to it that the proposed regulation amendment was disallowed. A December media report noted: "The tight Upper House vote came after Adelaide MP, Rachel Sanderson, (Liberal) accused the government of dodging planning authorities by equating the bridge [with] minor home improvements that do not need planning approvals. The regulation grouped the bridge with developments such as solar panels and gardening sheds. It [would have] allowed the project to bypass the Development Assessment Commission, which was charged with scrutinising all developments over $10m."[10] The matter was highly controversial; the $40m expense was publicly deemed to be grossly excessive, especially in light of the spending of $535m of taxpayers' funds on the

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[9] Gunta Groves, personal newsletter, *News from the Adelaide Park Lands Authority #32*, 13 August 2012, page 1.

[10] *City Messenger*, 'City chatter', 'Oval bridge faces scrutiny', 12 December 2012.

new stadium – $85m of which was simply to pay off the South Australian Cricket Association's debt, about which many taxpayers also remained angry.

- On the same theme, the state Labor government had initiated a *Development Act 1999* regulations schedule amendment to enable approval for construction of the $139.9m Adelaide Convention Centre (West), on a site facing Montefiore Road, south of (but adjacent to) Torrens Lake. The variation of the schedule had been made some time between the proclamation of the *Adelaide Park Lands Act 2005* (in 2006) and 2011 scrutiny of the proposal by the Adelaide Park Lands Authority. It had been predicated on the fact that, although the land was designated as park lands, the zoning was Institutional Riverbank, and the state believed it reserved the right to pursue projects of economic state significance there.[11]
- In 2013 the state government created a development plan amendment to annex a vast area of land either side of the River Torrens, from Gilberton in the east to Thebarton in the west. The land was described as 'Greater Riverbank'. Newly amended legislation delivered the *Urban Renewal Act 2013*, which prescribed the setting up of a new body: the Riverbank Authority. It would guide the activation of planning decisions on that 380ha of park lands. Grand plans emerged for major recreational and commercial building concepts. But within five years, major change flagged in mid-2018 by the new Marshall Liberal government meant that assumptions about decision-making were to change. The original 2013 Authority was made redundant and replaced. New mechanisms to drive change to the *Adelaide (City) Development Plan* for the zone policy areas were created. But they had nothing to do with protecting the park lands from big development projects.[12]
- In 2015 a *ministerial* development plan amendment (DPA) emerged, titled the 'Park Lands Zone' DPA, which sought to subtly modify 'non-complying' classifications in the rules applying to about five park lands zone policy areas of the *Adelaide (City) Development Plan* to allow 'infrastructure' construction projects in the park lands. This ostensibly aimed to smooth the way for the construction of a $160m O-Bahn track and tunnel adjacent to sections of the east park lands and through Rymill Park. However, at one site, Botanic policy area 19, a government planning amendment made lawfully complying the construction of a $100m, six-storey high school on park lands adjacent to the University of Adelaide on Frome Road. The planning changes also rendered unnecessary the need for public consultation. This was because a 'complying' development was classified as Category 1, which did not require public consultation. The school would be built on a 1.7ha section of land that had been returned to park lands, amid much Labor party hoopla, five years earlier in 2010, after years of University of SA negotiation. Before then, most of the land had been used as a car park. The overall effect of the 2015 DPA was that it left open myriad future infrastructure development opportunities in a number of other policy areas of the park lands, and delivered a large, multi-storey twin-building school tower adjacent to Frome Road.

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[11] See Chapter 32, a case study of the Adelaide Convention Centre (West) project: 'Western park lands development vision expands east'. It is further explored in Appendix 18: 'How the 2011 Convention Centre development legals had been managed'.

[12] A detailed exploration of this period is explored in this work's Chapters 33 and 34.

> The tactics behind the planning complexities in relation to the authorisation of the construction of the Botanic High School were especially telling, underscoring expert planner acknowledgement that 'planning is a political process'.[13]

A hallmark of all of these and other mechanisms was a long-term desire by government to achieve park lands development using methods that obscured the way in which proposals were made legally possible, despite the inevitable public scorn that historically accompanied such activity – once it was explained. In other words, the political approach capitalised on a principle to allow 'confusion to become a strategy'.

The pavilion era and multiple loopholes

Public confusion about assessment contemplation of park lands building concepts by the Adelaide Park Lands Authority and the city council especially characterised the period 2011 to 2018, during which eight park lands sports pavilion concept proposals emerged. At year-end 2018, four had been approved for construction by the formal assessment bodies, attended at times by clever use of various loopholes. The remaining four were at year-end 2018 well advanced in the concept approvals stage, but not yet authorised at development assessment stage.[14]

The 'content' loopholes

In content terms, a number of loopholes were exploited relating to the pavilion concepts:

- **No specified pavilion height limits**. During this boom period of pavilion proposals, there were no explicit quantitative height limits set for this form of development in park lands zone policy areas under the *Adelaide (City) Development Plan* or the council-authored *Adelaide Park Lands Building Design Guidelines* (2008). Moreover, applicants compensated for a requirement to 'minimise' footprint expansion by instead constructing multi-storey buildings. Several of the four single-storey clubrooms that had been demolished to year-end 2018 to make way for new developments were replaced by two-storey buildings. An exception applied to the pavilion for the South Australian Cricket Association at Park 25 west of the city, which comprised three storeys. The main impediment limiting the number of levels was simply cost. The SACA's pavilion building height was cleverly obscured by mounding surrounding the front and sides of the building, presenting a façade indicating only two storeys.
- **Changes to policy wording**. As greater interest in park lands facilities redevelopment was being expressed by some park lands lessees, city council administrators began to adjust policy to make it easier for larger footprint proposals to be approved. In November 2015, for example, significant changes were introduced to city council lease and licensing policy. The changes were more favourable to future park lands pavilion development proponents. Moreover, within the city council administration there had been for some time subtle changes in its so-called discipline about footprint limitations for new proposals. The changes appeared minor, but were tactically important for applicants.

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[13] See Chapter 39: 'Public investment in the park lands'.

[14] See Appendix 19 for a detailed exploration of each: 'Eight pavilion case studies'.

For example, where once park lands policy demanded that a proposed pavilion footprint must not exceed the existing footprint area, by 2015 council policy and planning policy documentation was beginning to hint at semantic loopholes. One clear indication appeared in late 2016, after the council had signed off the *Adelaide Park Lands Management Strategy 2015–2025*. In an 'out of session' paper reflecting on park lands pavilion development – past and future – the council wrote: "The sports building proposal for Tidlangga (Park 9) [Prince Alfred Old Collegians] aligns generally and specifically with the Active City Strategy in relation to: (10.5) Seeking to establish a new fit-for-purpose facility to improve public amenities that service the playing field and adjacent activity hub, whilst also recognising that the footprint should be kept to a reasonably minimal level (*noting that sometimes this may be greater than the footprint of the pre-existing building*)."[15] [emphasis added]. That italicised text in parentheses said everything. The rigour was collapsing. In fact, it had been collapsing since 2008 in city council policy documentation, and lack of clarity could be sourced as early as 1999.[16]

- **The 'exceptional circumstances' loophole**. In relation to a 2017 pavilion proposal for Park 24 (west park lands, adjacent to West Terrace), a policy loophole allowed the existing users (two clubs) to retain use of the site without needing to participate in a new and ostensibly rigorous expressions-of-interest policy procedure that had been recently adopted by the city council. The recent amendments to the council's Park Lands Leasing and Licensing Policy had demanded a call for expressions of interest for a new lease from other parties "where vacant land or buildings are involved".[17] The new policy had arisen in 2015 as an equity matter, allowing for the breaking of long periods of park lands occupation by one exclusive club or group of clubs. But there was a loophole. The new policy did "allow for deviation from this principle in exceptional circumstances".[18] The 'exceptional circumstances' (loopholes) were identified by the Authority. They included that the two clubs using Park 24 had already spent $20,000 developing the proposal and concept over the previous year. A second rationale was that: "The proposal demonstrates the opportunity for external investment and shared funding models deemed vital in the *Sports Infrastructure Master Plan* to fill the gap that government partners are unlikely to provide."[19] Unlikely? The irony was that within months the state government granted the clubs $3.5m to build the pavilion. An additional Park Lands Authority justification had been that the clubs indicated satisfaction with an access condition that future use would be open to multiple other groups. On 28 March 2017 the council agreed with a proposed concept, and agreed to negotiate a lease.[20]

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[15] Adelaide City Council, Strategy, Planning and Partnerships Committee, 'Park 10 findings and their application', Out of Session paper, point 10, 8 November 2016, page 534.

[16] See Chapter 47: 'The footprint numbers game'.

[17] Adelaide Park Lands Authority (APLA), Agenda, Item 6.1, 'Park 24 Community Activity and Sports building, Lease details', point 28, 16 February 2017, page 11.

[18] APLA, ibid.

[19] APLA, op. cit., point 28.2, page 11.

[20] A detailed discussion appears in Appendix 19: 'Eight pavilion case studies'; in particular, 'Park 24, west park lands, Adelaide Comets Football Club and Western Districts Athletics Club, pavilion 2016'.

The procedural loopholes

Even more difficult for the public to comprehend have been procedural loopholes. The most abused one was the 'not our responsibility' loophole.

Of the three levels of assessment, only at the third and final stage (the Development Assessment Panel – DAP, renamed in 2017 as the Council Assessment Panel: CAP) was there a legal requirement to address the planning assessment provisions of the *Adelaide (City) Development Plan* in terms of what it contemplated for a relevant park lands policy area. During some pavilion concept or other construction assessments, Adelaide Park Lands Authority (first stage) discussions sometimes commented on development plan aspects, but they did not need to be formally addressed, or satisfied, at Authority level because it was not a planning assessment body. Similarly, subsequent discussion at the city council (the second stage) sometimes included planning-assessment-related discussions, such as footprint and building scale matters, but it was not up to the city council's elected members to manage the planning assessment determination function either. This function only occurred last (the third stage) at the Development Assessment Panel. In this way, proposals that might have been inconsistent with the development plan could pass through the first two stages without consequential comment and, most importantly, without legal requirement for formal public consultation. A case study illustrates the ruse. A proposal for major park lands facilities redevelopment by Tennis SA (Parks 26 and 1) was accompanied by identical statements at both first and second assessment stages. In the first stage: "The project will be subject to any consultation that may be required as part of the development approval process." [21] The city council assessment agenda recommendation (second stage, five days later) was: "Consultation – The project will be subject to any consultation that may be required as part of the development approval process."[22] This made it clear that there would be no public consultation until the proposal reached the Development Assessment Panel. But if it were classified as Category 1 (as complying development under the *Adelaide (City) Development Plan*), there was no requirement for public consultation at all. The Tennis SA application was classified Category 1.

The 'neglect to act' loophole

Beyond the confines of the pavilion case studies in this work, some other potential loopholes remained buried in the *Development Act 1993* and carried over to contents of its planning instrument, the *Adelaide (City) Development Plan*. For example, while the *Adelaide Park Lands Act 2005* contained Statutory Principles, there was no requirement to ensure that any development plan amendment specifically comply with the principles' intent. Under the *Adelaide Park Lands Act 2005*, one might have to "have regard to and seek to apply" the principles under, say, sub section (2) in section 4, where the principles were listed, but that is as far as it went. When the

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[21] Adelaide Park Lands Authority, Agenda, Item 6.2, 'Tennis Australia Anchor Project', 21 September 2017, page 63.

[22] Adelaide City Council, Council, Agenda, Item 12.7, 'Tennis Australia Anchor Project', 26 September 2017.

state government released its draft 2013 Ministerial Riverbank Health and Entertainment Areas Development Plan Amendment, the city council noted that it hadn't addressed the Act satisfactorily, noting that 'multi-storey commercial development' for the 'Entertainment Area' conflicted with those Statutory Principles.[23] The state government ignored the comments and the DPA was gazetted in October 2013. Gazettal made it legal and operational from the publication date.

The council also called for the state to formally refer details to the commonwealth government in relation to the November 2008 National Heritage listing for the Adelaide Park Lands and City Layout. It noted that the National Heritage listing values would be impacted. The council observed: "As the DPA proposes a policy framework that removes land from the park lands zone, and provides opportunity for additional buildings in the park lands, referral [under the commonwealth Environment Protection and Biodiversity Conservation Act] should occur to ensure the values are protected."[24] Council administrators added: "As Commonwealth legislation takes precedence over state legislation, it is in the interests of all stakeholders that the potential impact of the envisaged land use and built form for the Riverbank area not be inconsistent with the National Heritage values."[25] But the council appeared to have neglected to properly read the commonwealth law. It featured a major loophole. It was well described by the Adelaide Park Lands Authority executive officer in 2018 as a result of research enquiries for this work:

> "Under the provisions of the EPBC [Environment Protection and Biodiversity Conservation] Act it is the responsibility of a project proponent to undertake a self-assessment regarding any project which may affect the National Heritage legislation values. The aim of the self-assessment is to determine whether a referral is necessary. In other words, unless [the Authority] is considering undertaking a project [that] it believes may affect the values, then it would not be required to take any action. Likewise [the] council. Usually such projects which may affect the NHL [National Heritage listing] values are undertaken by the state government, in which case the responsibility for self-assessment/referral lies with them." [26]

Significant capital works projects followed on park lands after 2008, including a huge sports stadium at Adelaide Oval, a river footbridge, an O-Bahn tunnel and a six-storey high school – not to mention a seven-storey hospital on 10ha of alienated land originally tagged to be returned to park lands years earlier. It is one of the features of Adelaide park lands management that related state documentation is not often shared with lower government tiers unless the state is compelled to do so.

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[23] Adelaide City Council, City Planning and Development Committee, Agenda, Item 8, 'Council submission on Riverbank Health and Entertainment Areas Development Plan Amendment', 3 September 2013, page 54. The 'conflict' comments appear on page 75.

[24] Adelaide City Council, ibid., page 55.

[25] Adelaide City Council, ibid., page 76.

[26] Martin Cook, executive officer, Adelaide Park Lands Authority, personal communication to John Bridgland, email, 24 August 2018.

The lack of public-domain-accessible National Heritage legislation correspondence with the council in relation to these developments suggests that the state did not feel compelled to share it.

The takeover approach

So much for loopholes. But if parliamentarians want certainty about achieving development change in the park lands, recent history shows that they simply create new legislation. This is probably the biggest loophole of them all. There's a history behind it. In 1984 the Labor state government sought exclusive and relatively unregulated temporary access to the park lands Park 16 (Victoria Park) site for Grand Prix car racing. To achieve this, parliament created a new statute. Ostensibly it aimed to get five days' rules-free, park lands access for a major event, but the period between bump-in and bump-out extended decades later up to six months. It blocked public access, exploiting former rules that regulated access to the park lands, and alienated that section of the park lands from South Australians in a way not contemplated before 1984.

Twenty-seven years later, in 2011 the Labor state government installed something permanent and far more destructive – with a chutzpah that previous generations of parliamentarians never might have imagined. In 2011 a site-specific new statute, the *Adelaide Oval Redevelopment and Management Act 2011*, was passed. This was to make possible the building of a huge sports stadium to replace a clutch of old, heritage-listed grandstands at a historic park lands cricket ground. The Act overrode the provisions of the *Adelaide Park Lands Act 2005*, and future development within the Adelaide Oval Core Area was taken to be complying development under section 35 of the *Development Act 1993*. In this way, the 2011 Act also trashed the spirit of the Statutory Principles of the 2005 Act (the 'protection' intent of that Act), and bypassed the regulatory effect of provisions of the *Development Act 1993*, which would never have allowed the construction of such a large scale stadium on park lands. The new Act also authorised a ministerial lease that gave the new tenant, the Adelaide Oval Stadium Management Authority, 80 years' tenure (20 years, plus three additional terms of 20 years), long enough to quarantine the arrangement from the interference of at least three subsequent generations of South Australian parliamentarians – unless one of those generations might one day work up the courage to amend that draconian 2011 legislation. In late 2018, the provisions of this Act (and a related lease) were exercised again, with the Stadium Management Authority's announcement that it would build a 128-room hotel attached to the stadium's eastern wall. The intentions in 2011 had never been to allow a commercial hospitality venture on park lands, but that is what was proposed. Development approval took only nine days, from lodgement of the development application to authorisation by the State Commission Assessment Panel. The Adelaide Park Lands Authority was not included in deliberations, and there was no public consultation using the traditional planning procedures.

While the late 2018 public uproar about the hotel proposal became mired in protests about technicalities, the Adelaide Oval chapter highlighted the highly destructive effects of what is known as project-oriented development legislation. Once passed, its effects can overwhelm the intentions of the previous legislative landscape relating to

Adelaide's park lands zone, and potentially turn any section of the *Adelaide Park Lands Act 2005* Adelaide Park Lands Plan into a development site, should state parliament allow it.

Dependency on a 'tissue of pledges'

While the history of Adelaide's park lands stretched back more than 180 years, it is clear that today's bids to ensure their protection from exploitation and alienation cling to a flimsy tissue of pledges and political 'intentions of the moment'. They often have only a brief shelf life before someone within government conjures up another clever way to evade them. And there are many clever ways. It is as if South Australia's little southern capital, so blessed with a unique belt of encircling, open pasture, is a victim of a split-personality affliction affecting the government administrative mood between state elections. Whatever aspect of 'protection' is pledged as a polling day looms, it's historically unlikely to be delivered in the term that follows. No amount of patient medication can address these behavioural symptoms that can be perceived as odd by other observing Australian states and territories whose capitals lack a similar globally admired city edged asset and thus for whom the invention of such ruses is unnecessary.

Change is endless

That change is endless is an enduring theme of history. That there is an ever-changing variety of complexities attaching to the management and operations of Adelaide's park lands is also obvious. But while the paper content mutates, there is a continuity of complication in the links across that paper trail, as well as a continuity of something else beyond the corridors of parliament, government departments and the city council. It is not so orderly and certainly not so principled. It was well summed up by an independent House of Assembly parliamentarian, Dr Bob Such, in February 2007, the same year that a newly operational Adelaide Park Lands Authority board had begun meeting. The contextual circumstances don't matter here; they are well covered elsewhere in this work. It is the pertinence of the observation and the passion with which it was delivered that is worth recording. To an assembly of parliamentarians who mostly believed that the park lands were too precious to exploit, but were contemplating that very thing, he said:

> "The park lands have been bastardised for years; they have been used as a cheap way out for every group that wants to avoid paying the full cost for a sporting facility in the suburbs. The park lands have become just the easy way out, so that, if you want to put a sporting facility somewhere, you put it in the park lands; you do not pay the full economic cost of it by putting it where it should be, and where many of these facilities should have gone ... The park lands have become a dumping ground, or the repository, for everyone's personal and group activities. ... We hear a lot of claptrap about our park lands being the best in the world ... they could be the best in the world but they are not."[27]

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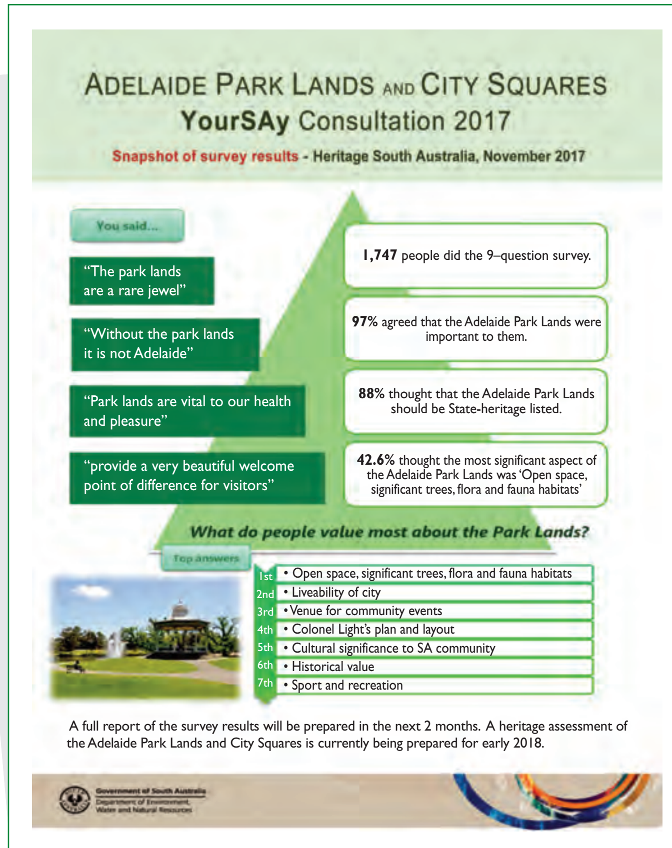
[27] Parliament of South Australia, *Hansard*, House of Assembly, 'Victoria Park Racecourse', 22 February 2007, page 1874.

PART 10

Approach from any point of the compass, and the evidence of the particulars of planners and the aspirations of urban and landscape architects is everywhere ... a choke of complicated park lands terms requires breathing apparatus – and there is where the administrators will be delighted to interpret as the staff stand ready with the oxygen. But it is not oxygen; it is a gas wholly different from that which comes from any park lands photosynthesis. It is the stuffy air of the corridors of government bureaucrats; the fluorescent-lit offices of city planners, the fug of legal chambers' rooms.

Extract, Chapter 54:
'Semantic alienation across the park lands pastures'.



Internet flyer publicly released by the state Labor government in November 2017. The motivation to explore South Australians' views about heritage listing of the park lands was probably because there was a state election looming. Ministers advised by political tacticians would have been keen to remind voters that Labor still occupied the moral high ground about protecting the park lands, even though Labor had not delivered heritage listing during its four consecutive terms over 16 years.

The fascinating aspect revealed in this flyer is not the obvious public passion to have the park lands listed and better protected. It is the results revealed in response to the question "What do people value most about the park lands?" Of the seven 'top answers', 'Sport and recreation' came last. This highlighted how fundamentally misjudged had been years of Labor influence on the park lands custodian, Adelaide City Council, requiring evolution of statutory policy documents heavily focused on sport and recreation 'activation' concepts encouraging associated facilities development across the green open spaces.

Labor lost the 2018 state election. A new Marshall Liberal government did not actively pursue heritage listing of the park lands. However, enquiries in 2021 of government officers pursuing park lands heritage matters revealed that the most appropriate next step was to create a Heritage Standard, an authorising tool or instrument under the new *Planning and Design Code*.

It would be used by state planning bureaucrats concerned that heritage listing might compromise state and/or commercial agencies' or private recreation bodies' ability to get approval of built-form development applications on land within the Adelaide Park Lands Act's Adelaide Park Lands Plan.

In light of that, it was not surprising that the state was insisting in 2021 that the planning tool be created well ahead of activating steps to list the Adelaide park lands as a state heritage area.

Full details appear in this Part 10's Chapter 53: 'A frustration of listings leverage'.

PART 10 More critical analysis – the Adelaide park lands management superstructure

Chapters

51 | The park lands policy system that struggles to work
(How the difficulties in aligning park lands policy contained in numerous, competing sources contribute to a dysfunctional administrative system, and how a critical uncontested assumption never was confronted.)

52 | A quagmire of policy connection and coherence
(How one apparently simple question in 2017 exposed the myriad complexity of park lands rules, and the way their multiple policies impact on decision-making.)

53 | A frustration of listings leverage
(Why the quest for park lands World Heritage and State Heritage listing has been so difficult to achieve, despite many years of trying.)

54 | Semantic alienation across the park lands pastures
(Why two little verbs and one vague adjective remain the most enunciated but the least defined words in Adelaide's park lands policy library.)

When the state determined that a new park lands construction priority needed to be activated, the planning minister simply initiated a ministerial development plan amendment, regardless of Adelaide Park Lands Authority or city council policy at the time. This at times caused even greater 'misalignment' among policy documents for Authority or council managers. But in the parliamentary offices, that was someone else's problem.

Extract, Chapter 51: 'The park lands policy system that struggles to work'.

Other links to chapters in PART 10

Chapter	Appendix link
51 | 'The park lands policy system that struggles to work'. 52 | 'A quagmire of policy connection and coherence'. 54 | 'Semantic alienation across the park lands pastures'.	**Appendices 8, 10, 11:** • 'The *Adelaide Park Lands Act 2005*'. • *'Adelaide (City) Development Plan'.* • *'Community Land Management Plan'.*

51 | The park lands policy system that struggles to work

While every fresh version of the Strategy *said only what the government wanted it to say, and often in significantly ambiguous terms, the importation of its concepts into future versions of the* Adelaide (City) Development Plan *was based on an uncontested assumption about the Strategy's role to initiate it. The* Adelaide Park Lands Act 2005 *had not directed that assumption – a 1999 idea had germinated it, and a politician had reinforced it six years later in 2005. Worse, the planning instrument was expected to provide a level of unambiguous certainty for planners, but the Strategy was littered with ambiguity for the benefit of politicians.*

There is an Adelaide Park Lands Authority operating in South Australia, but nowhere in its public documents over the years 2007 to the end of the period of study of this work (2018) was it revealed that the system for application of policy for park lands was significantly handicapped. "In theory working, but in practice fundamentally flawed" might be a better way of describing it. The board members would probably never have agreed with this description – at least not publicly. Moreover, notwithstanding the system's flaws, they were in a position to progress determinations about park lands matters regardless – as long as the state government, which controlled the entire system, agreed. Flaws or no flaws, determinations could be made and the Authority's advice given to the city council, implying that the system worked, at least in principle, to the practical benefit of the council, the custodian of much of Adelaide's park lands.

Governments rarely admit that a system of great complexity might be dysfunctional to the extent that its administrators struggle to manage. Specialist park lands managers with years of accumulated, fine-grained knowledge, whose salaries were usually higher in local or state government than in middle-level management in the private sector, were not tempted to publicly concede anything.

Policy evolution

In the study period of this work the policy evolution of the contemporary Adelaide park lands management regime began in 1998 with the publication of an Issues Report[1] as a precursor to the first *Park Lands Management Strategy Report 2000–2037*.[2]

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1 Hassell, *Park Lands Management Strategy Issues Report, prepared for the City of Adelaide*, 23 February 1998.

2 Hassell. The full title is: *Park Lands Management Strategy Report: Directions for Adelaide's Park Lands 2000–2037, prepared for the City of Adelaide*, 10 November 1999.

New park lands legislation emerged in 2005, was proclaimed in 2006 and brought into full operation by year-end 2006. The *Adelaide Park Lands Act 2005* prescribed that two policy instruments would form the core sources directing future park lands management. They were the *Community Land Management Plan*s for each park, as required under the *Local Government Act 1999*, and an *Adelaide Park Lands Management Strategy*, described at the time of the second reading of the Park Lands Bill as a key planning document. As the planning Minister, Paul Holloway, had stated in late 2005 during the second reading of the bill: “It is intended that the management strategy in turn will also become a defining document with respect to the planning system. With the passage of this bill, the opportunity presents itself for the Park Lands Management Strategy to be incorporated into the Planning Strategy or the development plan.”[3] One reason informing the Minister’s opinion was that the city council’s original, pre-legislation,1999 Strategy Report had suggested this idea. Six years later, his statement would subsequently feed a string of other assumptions about the link between the 1999 Strategy and the *Adelaide (City) Development Plan* relating to the park lands zone that would not be based on any clear requirement in the Act, but would remain virtually uncontested between 2007 and the end of the study period of this work (2018).

Future Strategy reviews

The 2005 Act did not indicate whether the Strategy would continue to be the relevant document, or whether a revision would replace it. It merely stated that, after a first ‘review’ it had to be ‘reviewed’ every five years. The Act did not define that word. Ultimately, the Adelaide Park Lands Authority did review the 1999 Strategy – by significantly amending it. It was signed off by the state government in 2010 and the subsequent version 3 – another significant revision – was signed off by the government in August 2017. The Act stated that the *Community Land Management Plans* (whose legal existence stemmed from the *Local Government Act 1999*) must be ‘consistent’ with the Strategy. In the years that followed, administrative interpretation took its cue from the *Adelaide Park Lands Act 2005* and concluded that the Strategy was the top-order ‘vision’ document (notably, it was referred to first in the Act), and the CLMPs (which were referred to second) needed to be consistent with it. In 2005 the Planning Minister, Paul Holloway, in the second reading of the park lands bill in the Legislative Council, had made that clear. In his ministerial explanatory statement on 15 September 2005, he had stated: “This clause [Division 2—Management plans –19—Adelaide City Council] requires the Adelaide City Council to ensure that its management plan for community land within the Adelaide Park Lands under Chapter 11 of the *Local Government Act 1999* is consistent with the *Adelaide Park Lands Management Strategy*.”[4] This carried the seeds of future administrative complexity, high potential for what administrators called ‘misalignment’ which could – and for some time did – lead to administrative confusion.

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3 Parliament of South Australia, *Hansard*, Legislative Council, ‘Adelaide Park Lands Management Bill’, 15 September 2005, page 2557.

4 Parliament of South Australia, ibid., page 2560.

The new 'tension'

Researchers reviewing Authority and city council park lands agendas and minutes can occasionally detect a suggestion of the 'tension' between the CLMPs and the Strategy, as well as the *Adelaide (City) Development Plan* versions as they subsequently evolved. This sequence is key to understanding the 'misalignment' problem because unless all were amended at the same time, informing reviews of each at the same time – which never occurred – then there emerges a recipe for administrative disorder and confusion.

In the years following the proclamation of the Act, some park lands administrators tagged the CLMPs as 'management' policy documents, and the Strategy as an 'action plan' document. This was accurate. But sometimes some administrators became confused and inverted the descriptions. The elected members they advised also sometimes became confused. It did not help that the requirement for consistency between CLMPs and the Strategy was almost impossible to deliver. One served one purpose under one statute; another served another purpose under another statute, and neither would be updated at the same time as the other. In reality, neither could be, because doing both at the same time was, in practice, very difficult. Moreover, the revisions of the Strategy in 2010 and 2016 were made for administrative purposes, responding to political imperatives, capitalising on all of the potential ambiguities of the English language, seeking maximum 'flexibility' in interpretation. But the CLMPs were more rigid, containing elements not anticipated to be subject to sudden change, such as objectives, statements of community values, performance targets and indicators, descriptions of each, and identification, discussion and resolution of issues and processes to implement actions. They also acted as a static record of what existed in a particular park lands place at the time of their writing, taking into consideration each park's patterns of landscape spatial organisation, land uses, response to natural features, circulation networks, boundary demarcations, vegetation, structures, small-scale elements, and historical views and aesthetic qualities. These latter elements had been identified by University of Adelaide landscape architect Associate Professor Dr David Jones, whose fine-grained scholarship had informed the contents of the first generation of CLMPs, written between 2004 and 2009.[5]

Too complicated to comprehend

Fortunately for the Authority (and the city council), the increasing number of park lands policy documents and their relational complexity prompted some observers to naively conclude that their breadth and depth illustrated the many parts of a well-oiled, orderly synchronised machine. It prevented many time-poor members of the public from detecting that the system did not work very well, nor detecting how easily the documents' ambiguities could be manipulated by government. For the public, there was also the politics of bluff to be surmounted. All administration

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5 Dr David Jones, *Adelaide Park Lands & Squares Cultural Landscape Assessment Study*, (through) Adelaide Research and Innovation Ltd, University of Adelaide, publicly released in October 2007. This six-volume work had been commissioned by the city council to assist with the writing of the CLMPs, which had begun in 2004.

systems at one time or another simply bluff the public into believing that they work methodically, rationally and equitably as a result of sound assumptions that had defined the foundations on which subsequent policy had been established. This is common to many organisations.

It was not in the interests of the Adelaide Park Lands Authority board advisors to reveal the true state of administrative affairs. Indeed, successive Authority annual reports indicated year-end outcomes of forward thinking, dynamic management, and responsible, innovative and creative policy administration of Adelaide's major recreational public asset. Ten years after the Authority board first began sitting, there was no public mention of known problems, despite a 2013 city council planning assessment that catalogued fundamental systemic and legislative flaws behind the management of the park lands. But it did not emerge from the Authority. Instead, it came from council planners, who usually do not dwell on, or participate in, month-by-month, year-by-year park lands management determinations.

The revelation about the handicapped system had only been prompted because of commencement of a comprehensive government review of the entire South Australian planning system, of which park lands ('parks and public realms') were but a small aspect. The revealing summary appeared in an October 2013 council agenda about the flaws in South Australia's planning system, in the form of a local government – a city council – contribution to the review. Put simply, it described a park lands administrative system whose statutory policy machinery required major legislative change to be made properly workable and more effective. But as at year-end 2018 there remained no public indication that this advice had even been noted, let alone any indication that action had been taken to address and resolve the problem.

'Misalignment' management

The review implied that the system was handicapped because of multiple plans that were never reviewed simultaneously, leading to 'misalignment' – a bureaucratic euphemism for confusion arising from multiple and sometimes different advice from different documents, and the significant difficulty in interpreting each to form one consistent policy view to inform decisions. The October 2013 city council 'parks and public realms' observations[6] revealed the details:

> "Issue 8: Parks and public realms. 8.1 Multiple Plans for Park Lands.
>
> "For council, key topics involve the Adelaide Park Lands [Management] Strategy, Community Land Management Plans, the Development Plan … [the *Adelaide (City) Development Plan*].
>
> "The preparation of the *Adelaide Park Lands Management Strategy* is a requirement under the *Adelaide Park Lands Act 2005*. The current [as at 1 October 2013] Strategy prepared by council and the state government was endorsed in 2010.

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6 Source: Adelaide City Council, City Planning and Development Committee, Agenda, Item 6, 'Planning Reform', 1 October 2013, page 50.

"Given that the park lands are defined as community land, council is required in line with section 196 of the *Local Government Act 1999* to prepare a 'management plan' for the park lands, with this requirement being satisfied by preparation of 'Community Land Management Plans' (CLMPs). The review of the park lands CLMPs is scheduled for completion in September 2013.

"The review of the CLMPs has been undertaken to ensure alignment with the Strategy, whilst trying to minimise duplication. However, it is evident that the roles of the two documents are very similar and potentially could be achieved by one document.[7] In addition, there is no legislative mechanism in place to ensure that the [*Adelaide (City)*] *Development Plan* under the *Development Act 1993* is reviewed in a timely manner to align with the *Adelaide Park Lands Management Strategy*. This results in potential or real misalignment between the Strategy and the development plan.

"For example, the last park lands Plan Amendment Report (PAR) commenced in 2001 and was gazetted into the development plan in 2006, seven years after the 1999 *Park Lands Management Strategy* was published and five years after the plan amendment report (PAR) process commenced. The current Strategy was endorsed in 2010, and although identified via the ministerially received 2009 Section 30 [Review], a park lands PAR [but by then titled a DPA, a 'development plan amendment'] is yet to be initiated.

"It is acknowledged that the Strategic Direction Report (Section 30 Review) process has the potential to identify required park lands policy changes. However the timing of this process (required every five years, but with ministerial discretion for variation) does not always align with the *Park Lands* [*Management*] *Strategy* review/development cycle. Where a park lands DPA has been identified as part of the Section 30 process, it has been deferred due to competing priorities.

"Given the importance of the park lands as an open space of metropolitan significance, and its increasing role in the context of city and inner-metro population growth, it is suggested that a park lands DPA occur more regularly and that this be facilitated through specific legislation. Relevant legislation related to the Planning System: • Section 18 *Adelaide Park Lands Act 2005*; • Section 199 *Local Government Act 1999*; • Sections 25 and 26 *Development Act 1993*."[8]

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[7] How the administrator came to this view is unclear. There were few similarities. A CLMP was, and remains, a long-term park lands management-direction guideline. A Strategy was, and at year-end 2018 remained, an action plan, which focused on "future enhancement of the park lands". These words appear in the introduction of the second version, approved in 2010, under the heading 'About the Management Strategy', page 4.

[8] Source: Adelaide City Council, ibid.

Senior planning bureaucrats serving state Labor would have known all about this legislative issue, but would have felt confident that their enduring meddling in park lands matters was not constrained by it. Meanwhile, the system the state Labor government had set up via the *Adelaide Park Lands Act 2005* continued to be handicapped through competing priorities and sometimes contradictory complexities. The provision in the 2005 Act that required the Strategy to be the 'top order' policy meant that as long as each version either clearly supported, or at least implied support for, government priorities at the time, then the lower-order council park lands policy documents[9] were nothing more than an administrative, back-of-house problem. Moreover, the state had a way around problems if they emerged. When the state determined that a new park lands construction priority needed to be activated, the planning minister simply initiated a ministerial development plan amendment, regardless of Adelaide Park Lands Authority or city council policy at the time. This at times caused even greater 'misalignment' among policy documents for Authority or council managers. But in the parliamentary offices, that was someone else's problem.

Nothing to see here

Labor went into the 2014 state election with no public indication that there was a problem, and no public plan to improve matters for policy managers. Moreover, it did nothing in practical terms during the entire 2014–18 term, except to ensure that the third version of the Strategy, finalised by the Authority in 2015, signed off by the city council in May 2016 and signed off by a minister in August 2017, said all the right things. The wording encouraged significant 'activation' across the park lands policy areas, introducing modular facility concepts indifferent to landscape typologies, creating potential for small commercial operations, and embracing an 'urban address' narrative – a vision of long-term, open-space 'activation' infrastructure to compensate for the unmet recreational needs of occupants of high-rise apartments beginning to appear on the park lands boundaries.

But there was a more fundamental problem that was never articulated in the public domain. It was that, while every fresh version of the Strategy said only what the government wanted it to say, and often in significantly ambiguous terms, the importation of its concepts into future versions of the *Adelaide (City) Development Plan* was based on an uncontested assumption about the Strategy's role to initiate it. The *Adelaide Park Lands Act 2005* had not directed that assumption – a 1999 idea had germinated it, and a politician had reinforced it six years later in 2005. Worse, the planning instrument was expected to provide a level of unambiguous certainty for planners, but the Strategy was littered with ambiguity for the benefit of politicians.

[9] All 24 of them in 2010, as identified in this work's Chapter 4: 'The park lands rules – a vast web of complexity'.

52 | A quagmire of policy connection and coherence

"Currently there is a lack of connection and coherence between planning-related documents and the public works and management responsibility of the Adelaide City Council. The establishment of an integrated approach to rules and regulations as they relate to the Adelaide park lands would assist in creating certainty for the community regarding the future use of the Adelaide park lands."

– Hassell,
Park Lands Management Strategy Issues Report,
23 February 1998: Part 2, Section 1, Page 1.

At year-end 2018, why was there continuity of system flaws in Adelaide park lands management, despite two decades of effort, and the spending of millions in public money? It is a matter about which Adelaide politicians, city councillors and administrators ought to be embarrassed, but for one thing – South Australians don't comprehend it, so there is no pressure to change. People assume park lands management is a well-oiled regime machine, an exemplar of public land management, from which other states could take their cue – if they had the luxury of such an asset. Within South Australia's government tourism body, Tourism SA, the accompanying illusion of pastoral frolic and summer events delight is frozen in myriad digital images. None of those images features a machine handicapped and compromised, such that it functions poorly and clumsily. None highlights an administrative trend that, towards 2018, was adopting a novel approach to the approvals process for public land access and exploitation – the revision of some community land policies to fit the terms of a potential future lease or a development application or other proposal. A lack of public awareness of this 'inversion' approach prompted many unaware of the protocols to observe that the machine still appeared to work as the manual suggested it should in the early 2000s.

Static 'progression'

The decision to begin the focus period of this work on 1998 was not only to capitalise on new park lands policy exploration emerging in that year, triggering a new and apparently all-encompassing Strategy a year later in 1999 on which so much would be built in subsequent years. But it was also because a comparison of that year's newly penned observations of the recent past (the 1990s) could be juxtaposed against plans for the park lands future almost 20 years later, in 2018. One year before, in 2017, comprehensive evidence had quietly emerged in city council documentation that showed that very little 'connection and coherence' progress had been made, despite many thousands of hours of meetings, workshops, background briefings, and project master planning, delivering a veritable mountain of fresh paper policy over those 19 years. In fact, the evidence showed that, 19 years later and notwithstanding that paper, there remained a "lack of connection and

coherence between planning-related documents" as that 1998 observation had noted all those years earlier.[1] This ought to have been a profound and sobering realisation. It should have immediately triggered a deeply introspective organisational review, given a looming 2018 state election was only nine months away, with a city council election to follow in October 2018. But no public review occurred, despite the quagmire almost certainly being fully comprehended at executive advisory and board level of the Adelaide Park Lands Authority in June 2017. The minutes recorded no comment by any board member – or any city councillor. The matter was never followed up with a plan to address the evident lack of connection and cohesion. 'Business as usual' continued.

The seminal question

At a meeting of the board of the Adelaide Park Lands Authority (APLA) on 20 April 2017 a Question on Notice was directed to its executive officer by the only board member who was neither a government employee nor a city council elected member, Stephanie Johnston.[2] Ms Johnston was an Adelaide Park Lands Preservation Association nominee, a planner, appointed by virtue of her long-standing preoccupation with, and knowledge of, park lands and land-use matters.

She asked:

> "Can you please highlight all existing policy references to:
>
> 1. Car parking policy for parking on the park lands (temporary and permanent).
> 2. Footprint of new built development on the park lands.
> 3. Fencing of areas of park lands to the exclusion of the public (temporary and permanent exclusion), including any references to the nature of the fencing and advertising material on the fencing.
>
> "I would like to use these three items to highlight how different policies may impact on decision-making. e.g.
>
> 1. Policy in the park lands legislation itself.
> 2. Policy/values under the National Heritage listing.
> 3. Policy in the *Park Lands Management Strategy*.
> 4. Adelaide Council Development Plan policy.
> 5. And other relevant policy documents that APLA should be taking into account – for example, how does the licensing of areas of the park lands for consumption of alcohol impact on fencing requirements?"

Whether by accident or design, the questions summarised the complexity of park lands management in terms of application of policy, a complexity that occasionally

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1 Hassell, *Park Lands Management Strategy Issues Report*, 23 February 1998: Part 2, Section 1, Page 1.

2 Adelaide Park Lands Authority, Minutes of the board, Questions on Notice, 3, Item 4.2, Ms Stephanie Johnston, Question on Notice – Policy References [APLA], 20 April 2017, pages 2 and 3.

was hinted at, not only by board members and council elected members, but also by the general public. It went to the fundamental issue confronting any person charged with oversight of the management of Adelaide's park lands – what *are* the rules, what *is* the hierarchy, *which* ones are at the top, and *how* are they to be applied? In the end, not all of those questions would be answered.

The delay in getting an answer

The answers to the Question on Notice took the executive officer two months to table. The response was contained in a 22 June 2017 Authority agenda paper (not the minutes, which was unusual), and was placed at the end of the agenda paper. The placement suggested that the way was open to board members to take further steps following receipt of the answers. But 'Responses for consideration of the board: 5.3: Responses to questions asked' on its page 64 gave no hint of the controversial nature of the topic, nor that this question had taken significant effort to answer (an early clue hinting at controversy). The details went to the heart of the complexity faced by an executive officer (or any board member, or any city council administrator or city council elected member) in juggling a vast number of policy balls – legislation, heritage listing protocols, multiple concepts in a highly detailed Strategy, and the significant planning complexities and planning language of the *Adelaide (City) Development Plan*, which contained planning provisions relating to policy areas of the park lands zone.

Curiously, policy arising from the relevant *Community Land Management Plans* (CLMPs) for each park was not probed. Had this been the case, the answer may have taken even longer to table and would have highlighted the policy tension (that administrators had previously described as 'misalignment') between the 2016 Strategy and the 2013 CLMP[3] in relation to certain parks policy areas.

The layers of complexity revealed

The executive officer's response comprised seven pages in table form and in fine print.[4] Readers could use an internet search engine to access it in the 22 June 2017 agenda.[5] The table comprised a matrix, cross-referencing the four policy aspects (car parking, built-form footprint, fencing, advertising and commercial operations), against six sources of policy: The *Adelaide Park Lands Management Strategy*; the *Adelaide Park Lands Act 2005*; National Heritage listing values; the *Adelaide (City) Development Plan*; the *Sports Infrastructure Master Plan*; and the *Park Lands Event Management Plan*. Of course, this was not an exhaustive list of policy sources, but they at least responded to the board member's list, and what the executive officer saw as potential additional sources of relevance.

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3 After the second revision of the CLMPs, the post-2013 outcome was a singular 'product', that is, one CLMP.

4 Adelaide Park Lands Authority, Agenda, digital hot link: 'Existing sources of policy for the park lands related to car parking, built form footprint, fencing, advertising and commercial operations', 22 June 2017.

5 Search: 'Adelaide City Council agendas'; find: 'Adelaide Park Lands Authority', find Agendas; search date 22 June 2017: the link appeared on page 64 of the agenda paper.

The analysis – a web of ambiguity

- In regard to the high level *Adelaide Park Lands Management Strategy*, much provision complexity was revealed. For example, in regard to the third version (2016), seven strategies gave direction in the form of multiple bullet-point lists. Many of the paragraphs were not easy-to-interpret directions but instead were fogged with ambiguity, using verbs such as 'facilitate', 'enhance' and 'pursue', bureaucratic jargon words that effectively frustrated policy implementation personnel, leaving them uncertain as to whether their interpretations of the verbs were correct. (A more detailed analysis of the proliferation of these aspects across the three versions of this major Strategy document since 1999 appears in multiple chapters earlier in this work.[6])
- In relation to the *Adelaide Park Lands Act 2005*, the executive officer noted that it offered 'no relevant policy' in regard to direction relating to footprint of newly-built development on the park lands. (This matter is one of the most controversial in contemporary park lands history, and is covered in more detail elsewhere this work.[7]) In relation to car parking, fencing of areas for exclusion of the public, or private commercial enterprise for exclusion of the public, the Authority officer drew attention to only one aspect of the Act: the Statutory Principles (but only principles (c) and (b), and (again) (b), respectively), clearly highlighting that the Act gave no joy and said very little about the more controversial matters, and further, that only two of its seven principles had any relevance. Perhaps more damning of the Act, he could not find any other provision of the Act that could give direction to policy writers of other future documentation on these matters. He didn't comment on the ambiguity of the two principles mentioned but a reader today will have no difficulty noting the almost comical extent of it. Statutory Principle (c) might be an appropriate example: "the Adelaide park lands reflect and support a diverse range of environmental, cultural, recreational and social values and activities that should be protected and enhanced". Did that mean sport, education and health in the form of major new stadiums or multi-level sports pavilions or billion-dollar hospitals or $100m high schools that have been constructed in the park lands since the Act was proclaimed in 2006?
- In relation to National Heritage listing values, he noted that there was 'no relevant policy'. On further enquiry in 2018 (for the purposes of this work), he said he was referring to "… what each policy source document (the *Adelaide Park Lands Management Strategy* or [National Heritage] listing or development plan or *Adelaide Park Lands Act 2005* provided for, in terms of different management issues (such as parking on the park lands or built-form development". He said the National Heritage listing values [NHL] did not make any reference to these particular management issues, such as car parking, built-form development,

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6 See: Part 8, 'Retrospective phase 5: 2008–2016, The evolving policy pathway' (multiple chapters).

7 In particular, Chapter 47: 'The footprint numbers game'.

fencing or commercial enterprises.[8] However, the National Heritage listing appeared to carry policy weight elsewhere. In 2013, when the city council had explored procedures for testing consequences of a ministerial development plan amendment for 'Riverbank', it had recommended that the state government formally approach the commonwealth government acting under the provisions of the commonwealth *Environment Protection and Biodiversity Conservation Act 1999* to ensure that proposed changes would not affect the heritage values of the National Heritage listing. But the state government did not do this – for two reasons. Firstly, the land comprising the vast Riverbank precinct aligning with North Terrace had not been included under the 2008 listing. Secondly, the commonwealth legislation provided that the agency pursuing the development should undergo self-assessment to determine whether a referral is necessary. Under this arrangement, there was no compulsion for the agency to refer. (More on this topic appears elsewhere in this work.[9])

- In relation to the *Adelaide (City) Development Plan*, the listed provisions appeared in only four pages of this planning instrument that had been, in 1999, significantly more detailed. The executive officer qualified his answer to Ms Johnston by claiming that his reference was to that very old version of the plan (1999), although it had been the subject of significant amendment and updating since. For example, major amendment to the plan had emerged in 2006, and there had been other changes since – especially in 2015. Moreover, the latest version at the time of the board member's query was consolidated in mid-2017. In his view, for policy guidance, "… the Development Plan should only be referred to when development is proposed". Behind that explanation was a rationale that, at Adelaide Park Lands Authority level, no-one was compelled to refer to the development plan, because planning assessment matters and planning determinations were not a function of the Authority. But APLA board member Stephanie Johnston's original question did prompt some discussion. What constituted 'development' and against what policy should proposed 'development' be assessed? Reference in this development plan matrix column responding to 'policy relating to private commercial enterprise to the exclusion of the general public in the park lands' appeared to relate to the 1999 development plan version, and correlated with content in the 1999 (first *Park Lands Management Strategy Report* version but by 2017 this was a redundant document). Verdict? Confusing.
- In relation to the 2014 *Sports Infrastructure Master Plan*, the Authority's executive officer noted advice appearing on only two of its pages, but did not comment on how to reconcile policy statements text about car access, park lands surfaces, landscaping, car parking, obsolete amenities, permanent fencing surrounding some infrastructure, or open sports fields with any other policy

8 Martin Cook, executive officer, Adelaide Park Lands Authority, personal communication to John Bridgland, email, 24 August 2018.

9 Please refer to Chapter 50: 'The loopholes lurk', (Part 2).

document listed in the matrix. He didn't comment on the confusing ambiguity reflected by one provision relating to fencing on the park lands: "Limit the amount of permanent fencing to promote open use and access and to support maximum flexibility, but consider provision to meet competition requirements and safety." What did that mean, in practice?

- In relation to the *Park Lands Event Management Plan* (2016 version) he claimed that there was 'no relevant policy' relating to temporary or permanent car parking on the park lands or footprint of new building development on the park lands. But a subsequent check by this work's author (*Pastures of plenty*) of that 2016 document indicated that there was policy, in regard to fencing or 'private commercial enterprise to the exclusion of the general public on the park lands'. For the fencing reference, three pages of text were highlighted (comprising 13 statements, mostly ambiguous). For 'private commercial enterprise' one statement appeared, keenly anticipating growth in the number of park lands events but with the qualifier: "... as well as adhering to council policy". What *was* council policy? This was not further explained in the Event Management Plan.

In all of these policy document references there was no mention of the fact that each would be amended over time. For example, within less than 12 months the *Park Lands Event Management Plan* would be superseded by an updated plan. Nor was there comment about a mechanism to be adopted to ensure that each document was complementary to each other, or of existence of a mechanism to ensure that arising contradictions would be firstly noted, and secondly, managed. Nor was there reference to how an interpreter of park lands policy at any one time was to reconcile potentially contradictory policy advice between documents, nor of how an interpreter could resolve the dilemma of high levels of ambiguity embedded in the texts of many documents. The lack of such management advice was probably because few formal mechanisms existed within the city council to address them. However, one mechanism did: its internal audit function.

Buried audit evidence reveals administration problems

Council Audit Committee agendas and minutes were, and remained to the end of the study period of this work, commonly subject to confidentiality orders, and explicit recommendations were rarely revealed in detail. But in May 2019, five months after the close of the study period of this work, one Audit Committee finding was not subject to secrecy and contained revealing findings relevant to the study period. It was buried in a council agenda digital hot link that few public observers would have explored. It highlighted a level of city council park-lands-related documentation management confusion and hinted at lack of competence and of poor park lands policy administration. Moreover, it confirmed that, despite many years of work, the council continued to struggle with the challenge.

> "The objective of this internal audit project was to independently assess the CoA's [City of Adelaide's] overall management framework in relation to community land on the park lands. The focus included understanding the overall end-to-end process from initial concept through to achievement of desired outcomes, in relation to the use of the park lands. This was a 'strategic' internal audit and the objective included indentifying opportunities to strengthen the overall management framework to ensure that the CoA manages community land in the park lands both effectively and efficiently, deriving optimum value for the community and managing risks to the organisation."[10]

One key recommendation was:

> "... that the CoA clearly articulates a hierarchy of park lands documents (ie overall management framework) in respect of the overall management of the park lands, to help understand which document takes precedence for decision-making purpose."

More audit observations can be found in the source document. It is not known whether, and how, city council administrators responded to the observations and recommendations, but they revealed a great deal about the City of Adelaide's "overall management framework in relation to community land on the park lands".

And what of the park lands legislation? Given that the *Adelaide Park Lands Act 2005* was in the hands of state parliament, any amendments to it or its 2008 regulations would not have had to factor in the wide range of other policy documents. Those documents would have to adapt to it – not that there were any provisions in the Act that gave policy implementation staff any relief, apart from ambiguous Statutory Principles, that read like motherhood statements, which were arrived at in the offices of parliamentary counsel, about a year before the 2006 state election. The gesture, more than the clear meaning of words or the clear understanding of intentions, was the main game then – much as it remained years later regarding the management of Adelaide's park lands.

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[10] Source: link doc from page 17 of the Adelaide City Council's Audit Committee meeting, Agenda, Item 5.2, 'Internal audit progress update', 3 May 2019. Extract from link doc found within Item 5.2 (link doc page numbers 14–15, of 27 pages). Title: 'Attachment B - Progress Summary of Recommendations Report'.

http://dmzweb.adelaidecitycouncil.com/agendasminutes/files08/Attachments/Audit_Committee_3_May_2019_Item_5.2_Link_2.pdf

Sub section: Management of community park lands.

53 | A frustration of listings leverage

The commonwealth government's National Heritage list website page in 2008 noted: "By law, no-one can take any action that has, will have, or is likely to have, a significant impact [on Adelaide's park lands] on any of these matters without approval." It may have appeared to those paying attention to be a critical moment in park lands history after which a new, irrevocable, not-negotiable standard had been established to block future exploitation. Sadly, this would prove to be an illusory assumption.

Nothing better illustrates the steely will of Adelaide's open-space park lands 'protection' lobbyists than the two-decade history of the pursuit of listings leverage in the form of either State, National or World Heritage listing to thwart future exploitation. Depending on the objective, it has been a record of unflagging struggle to crank slow bureaucratic machinery into action, stemming even further back to the 1980s. The motivation, a potent mix of aesthetic desire and political tactics, boiled down to pursuit of objectives that would establish the means to exert leverage to block future park lands exploitation and alienation, both before the proclamation of the *Adelaide Park Lands Act 2005*, and long after.

The leverage strategy was intermittently coordinated, by various individuals and lobby groups, over many years and occasionally changed focus over time. World Heritage listing was pursued as early as 1996 by the Adelaide Parklands Preservation Association, as part of its explorations into how the park lands cultural heritage could be safeguarded. In-principle support by resolution of the city council followed in February 2000. It was pursued by members of the National Trust SA branch in 2001 when a parliamentary select committee into park lands matters inquired into its feasibility as one of its terms of reference. This is examined in another chapter of this work.[1]

The concept of State Heritage listing of the whole of the park lands landscapes was also explored. 'Expert advice' claimed that there was a hierarchy to follow, suggesting that State Heritage listing should be achieved first, before World Heritage listing could be contemplated. Then there spread a public belief that World Heritage listing could only occur after National Heritage listing had been achieved. That, at least, was accurate. For this reason the common experience to about 2007 was that no progress was made at all, despite occasional 'in-principle' support and calls for reports at city council level to explore one or more of the options. Until 2007, none was successful in motivating state bureaucrats. Pursuit of either World Heritage listing or State Heritage listing would also call on different procedures, under different laws, for different purposes. Plans to achieve any one of these objectives became easily bogged down under administrative complexities and insincere pledges, attended by long silences while city council elected members hesitated and administrators sought advice which was sometimes a long time in coming.

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[1] See Chapter 15: 'The parliamentary Select Committee 2001 that never concluded'.

NATIONAL Heritage listing

At year-end 2018, the end of the study period of this work, only National Heritage listing had been achieved for Adelaide's park lands – excepting a large area known as Riverbank. But that was more by fortunate alignment of political planets than anything else, as well as city and state bureaucrats' assessment that there was minimal risk that it might compromise the potential for future park lands built-form development. At the time of the 2008 listing, for a brief period there was a public assumption that it would quarantine the parks from exploitation and alienation. The listing had been announced in November of 2008, but in the decade that followed the Rann and Weatherill Labor state governments would initiate some of the park lands greatest alienations in the form of the largest scale buildings on park lands, in the most prominent places, in the most confronting forms. This was despite an apparent protocol under the listing legislation that required the state to assess the potential of proposed projects to compromise the National Heritage values, and refer to the commonwealth government if doubt remained. State 'self-assessment' and subsequent referrals by the state to the commonwealth government did occur, as required by the commonwealth *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act). But the values had very clearly presented no barrier to the authorisation and completion of these big state projects.

A flawed assumption was that these values would form the basis of a major new hurdle to authorisation of development projects on the park lands, based on the legislation. In other words, that the projects would be perceived as "... actions occurring where the minister responsible for the Act considers that there is likely to be significant impact on one or more of the National Heritage values – in that they will either be lost, degraded, damaged, notably altered, modified, obscured or diminished".[2]

The official values (here significantly condensed) included:

- Criterion A ... Events, processes: Signifies a turning point in the settlement of Australia. Significant for the longevity of park lands protection and conservation.
- Criterion B ... Rarity: Rare as the most complete example of 19th century colonial planning where planning and survey were undertaken prior to settlement.
- Criterion D ... Principal characteristics of a class of places: An exemplar of a nineteenth century planned urban centre.
- Criterion F ... Creative or technical achievement: Park lands and city layout is regarded throughout Australia and the world as a masterwork of urban design.
- Criterion G ... Social value: Park lands has outstanding social value to South Australians.
- Criterion H ... Significant people: Colonel William Light is most famously associated with the plan of Adelaide.[3]

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[2] Adelaide Park Lands Authority, Board meeting, Minutes, Item 3, 'Question on Notice, Interruption of views' [NH listing values: protection of] 30 May 2013, page 3.

[3] http://www.environment.gov.au/cgi-bin/ahdb/search.pl?mode=place_detail;place_id=105758. The home page leading to this link comprising detail listed above is: https://www.cityofadelaide.com.au/planning-development/city-heritage/national-listings/

History would show that the values presented no particular handicap to approval of development applications, particularly if the *Adelaide (City) Development Plan's* allowances in the park lands zone policy areas determined that they complied. This was despite occasional state referral to the commonwealth about some of its most prominent project proposals.[4] The record of post-2008 park lands construction projects included a huge sports stadium; a multi-storey new hospital extending over 10ha of land (later followed by construction of a number of other state, health-research-related research towers east of the hospital); a prominent, landscape-dominating Torrens Lake footbridge; an O-Bahn bus track extension adjacent to an eastern park lands policy area that ran through another policy area (Rymill Park) via extensive excavation works; and a towering, six-storey high school on Botanic-Gardens-edged park lands.

Given this, it is almost as if the 2008 National Heritage listing of the park lands today carries the status of a long forgotten recreational park lands sports event trophy, celebrating something of importance at the time, but gathering dust in some distant park lands clubroom cupboard.

The loophole on the map

There was a loophole, perhaps so obvious that many failed to comprehend it, especially in regard to the 10ha of land on which the new Royal Adelaide Hospital and medical research buildings were to be sited. This was land identified in the 1999 *Park Lands Management Strategy Report 2000–2037* to be returned to park lands, north of North Terrace, the boulevard running along the northern edge of the CBD. The Strategy remained current and applicable at the time of the National Heritage listing in 2008, but was in the process of being superseded in draft form in 2009, for sign-off in 2010. When the National Heritage listing was announced, in November 2008, the park lands map attaching to the listing featured an exclusion area in white, running the length of North Terrace from King William Road, along land south of the Torrens Lake and extending west to Port Road, Thebarton. It was explained at the time that some of this land was a state institutions precinct, occupied for many years with government buildings or, further west, rail yards, whose character warranted no place in a collection of the nation's heritage assets, as would be otherwise celebrated as Adelaide's park lands landscapes. There were also other excuses. The annexed area on the map implied that construction in this area would be quarantined from a need for referral to the commonwealth by the state under the listing protocols. Nineteen months after the listing, this was tested at a June 2010 meeting of the Adelaide Park Lands Authority. For a majority of park lands projects, the Authority managed early stage policy procedure of project assessment. The result in the hospital project's case highlighted the murky legislative edges of the listing, and procedures associated with it. One board member, Gunta Groves, noted the discussion in her newsletter of the same month.

4 Referrals, and outcomes, can be found at: http://epbcnotices.environment.gov.au/referralslist/. Filter the list using the word 'Adelaide'.

> "Previous advice in the May [2010] Monthly Report stated that, because the [proposed] hospital site was excluded from the National Heritage listing, the [hospital] project would not require referral to the Australian Government. However new advice from staff of the Dept of the Environment, Water, Heritage and the Arts (DEWH&A) indicates that because the *Environment Protection and Biodiversity Conservation Act 1999* is not limited to actions within a listed area, but also covers any external action that might impact on the values of a listed place, the project may require a formal referral. Discussions are occurring between the Project Managers and DEWH&A as to whether this referral will be required. The project may require referral for example if:
>
> - the hospital building was likely to result in significant and prolonged overshadowing of the park lands;
> - the works would necessitate new access roads through or encroachment into the park lands that may affect its use; or
> - the construction phase would render a significant part of the park lands unusable for some time."[5]

Groves was convinced of the appropriateness of the procedure that should have been followed. "In my mind," she wrote, "there is no doubt that the hospital project (and the medical research facility) require referral so that the park lands receive the protection they should be getting under the Federal Act."[6]

The political climate

The 2008 listing had been achieved during state Labor's second term (2006–10) led by Premier Mike Rann, towards the end of the term's third year. The original city council listing nomination had been made years earlier, on 2 March 2005, but had not triggered action. Reminders followed after a federal election in 2007, which Labor won. It was pursued by new Labor commonwealth Environment Minister, Peter Garrett. He was a young, first-time minister in a new Kevin Rudd cabinet that had swept into power in 2007 after a long incumbency by the federal Liberals, under PM John Howard. This was a 'good news' story for a keen Labor minister, and it was centred on the federal electorate of Adelaide, also held by Labor.[7] Adelaide's park lands National Heritage listing was the collaborative product of two political tribes in power: federal and state. Many Australian accomplishments occur under similar circumstances, underscoring the characteristics of Australian political tribal behaviour, combining with right-time, right-place politicians. Politically it also was timely for state Labor SA, some of whose senior ministers were still smarting from the late 2007 city council and community defeat of the Deputy Premier Kevin Foley-initiated ministerial 'grandstand' construction proposal for Victoria Park (Park 16).

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5 Gunta Groves, personal newsletter, *News from the Adelaide Park Lands Authority* #5, 25 June 2010, page 1. (Source doc: APLA board meeting agenda item 'Monthly Report', 'Update on the question of referral of the Hospital Project for assessment against the Values of the National Heritage listing', 24 June 2010, pages 7151–7152.)

6 Gunta Groves, ibid.

7 The state electorate of Adelaide was also held by Labor (Dr Jane Lomax-Smith).

There also was a mid-2007 matter about which inner city communities were becoming irritated – news of very early state plans to build a new hospital of undetermined size, bulk and scale west of the city on rail yard land originally tagged to be returned to park lands open space. The 2008 National Heritage listing hoopla gave Premier Rann and his team a mid-term opportunity to draw breath, and once again tap into Labor's 'grand gesture' goodwill, reflecting its apparently genuine and long-term commitment to the 'protection' of Adelaide's park lands. It was an opportunity to appear to once again be leading the way, in contrast to the Liberal opposition, which instead wanted to build a sports stadium at the rail yard site. Labor could highlight something less apparently frivolous – construction of critical new state health infrastructure for all South Australians – to the same people concerned about the future of the park lands. It would be ironic, then, that when the National Heritage listing was confirmed, the land on which that hospital was to be built was annexed from the National Heritage listing map.

Council liaises direct

The state's publicity machine at the time suggested that the Rann government was central to the pre-listing negotiations. But the city council was mostly liaising direct with the commonwealth government on the National Heritage listing proposal, and the state was more of a bystander. Of course, state bureaucracies would have been copied in to communications between the tiers, and this would have given state MPs and their tacticians access to the fine detail. This was important, for reasons not clear to disinterested observers on the fringe. There was bureaucratic concern that the listing might block development potential on the park lands, and the council went to some effort to explore the risk. Under the commonwealth EPBC Act, provision existed for a 'bilateral agreement' "for certain actions to not require approval under the EPBC Act, as there is a state-based management arrangement which has been accredited by the minister for the purposes of that agreement".[8] A matrix in a 25 August 2008 council committee agenda paper explored the risk relating to potential park lands developments and the need to discuss them ahead of time with the commonwealth. For example, to an infrastructure proposal such as 'Major road realignment in [city] squares', council administrators had noted a 'possibly' referral response. 'Sporting club – new buildings' was assessed as of 'minor' potential impact on National Heritage values, and got an 'unlikely' response. Not many examples were explored. But the state government would have further explored the risk, and council evidence suggested that the risk was perceived to be minimal. It was also articulated on the day the listing was announced, by state Labor Environment Minister, Jay Weatherill, who was reported as saying: "It gives an additional layer of protection, but won't prevent or provide barriers to any sensible development."[9] He didn't explain what 'sensible' meant. Commonwealth Minister Garrett was also reported as denying that listing would prevent development. "However," the reporter wrote, "... he [Garrett] said Canberra would intervene in the case of 'significant' proposals

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8 Adelaide City Council, City Strategy Committee meeting, Agenda, 'Progress of nomination of City of Adelaide layout and park lands to the National Heritage list', 25 August 2008, page 2247.

9 Adam Todd, *The City Messenger*, 'Parklands', 'Development not ruled out', 13 November 2008.

deemed to be at odds with the character of the park lands."[10] In reality, it was not the 'character' of the park lands that would be assessed. It was limited to a list of heritage values, which were not the same thing. On the day of the media event, there was no attempt to define what 'significant' development really meant. Nor was there reference to the potential for development such as major new multi-storey buildings, stadiums, bridges, O-Bahn bus tracks and tunnels, and new, multi-storey school towers, all of which would emerge in the years that followed. A year later, in 2009, the first project proposal would loom and state Labor would announce the redevelopment of the heritage grandstands owned by the historic Adelaide-Oval-based South Australian Cricket Association. But the Rann government would not reveal its precise built-form intentions for Adelaide Oval so close to the March 2010 election. They would turn out to be much more expansive – construction of a huge $535m stadium to replace the entire oval site's facilities – to be made possible by new, project-oriented development legislation that would override the *Adelaide Park Lands Act 2005*, and ensure that the proposed project would be deemed to be 'complying development' under the *Development Act 1993*. Contemplation about National Heritage listing and park lands values was neither here nor there. The only issue to arise was existing State Heritage listing of the three old cricket grounds' grandstands, and their listing was still recorded in the then gazetted version of the *Adelaide (City) Development Plan* after each had been turned to rubble and carted to a dump in 2012 to make way for new stadium grandstands on the western side.

Strong assurances

The assurances given in 2008 appear similar to those that many Australian politicians make today, well knowing that people forget so quickly that they cannot recall the substance even after a brief passing of time – unless someone reminds them. As the National Heritage listing application neared approval in August 2008, the city council had sowed the seeds of assurance that the listing would form an impregnable barrier to park lands exploitation. An agenda paper stated: "The legislation ensures that it is not possible to undertake, without approval, any activity which will have a significant impact, and penalties apply for those who do."[11] The council summary noted that six out of the nine criteria necessary for listing had been satisfied, compared to the statutory requirement for only one. This magnified Adelaide's comprehension of the precious value of its park lands. The commonwealth government had also sowed the same 'protection' seeds. Its National Heritage list website page at the time noted: "By law, no-one can take any action that has, will have, or is likely to have, a significant impact [on the park lands] on any of these matters without approval."[12] Of course, it would be significant impact on the values, not the park lands themselves, that would matter. There was a difference. It may have appeared to those paying attention to be a critical moment in park lands

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[10] Adam Todd, ibid.

[11] Adelaide City Council, City Strategy Committee meeting, Agenda, 'Progress of nomination of City of Adelaide layout and park lands to the National Heritage list', 25 August 2008, page 2244.

[12] http://www.environment.gov.au/cgi-bin/ahdb/search.pl?mode=place_detail;place_id=105758. The home page leading to this link comprising detail listed above is: https://www.cityofadelaide.com.au/planning-development/city-heritage/national-listings/

history – a special day, month and year after which the fundamental park lands protection rules had changed irrevocably, and after which a new, not-negotiable standard had been established to block future exploitation. Sadly, this would prove to be an illusory assumption.

Students of this listing (and the city council's assessment leading up to it) may find useful the 23-page, 25 August 2008 agenda of the Adelaide City Council, City Strategy Committee meeting. Its discussion 'Progress of nomination of City of Adelaide layout and park lands to the National Heritage list' is a useful summary of discussions and assumptions entertained at the time. Ironically, despite the analysis at Authority and city council level, there was no evidence available as late as year-end 2018 that the Authority or the council was to play any subsequent role in the assessment procedures or outcomes. As an Authority advisor had made clear in August 2018: "Neither Council or APLA has ever been asked to comment on such a [referral] proposal nor is even made aware of them." [13]

However, a little-known and poorly publicised late 2018 report threw major new light on matters prevailing at the time, but unknown to many observers. Titled *Adelaide Park Lands and City Layout: Issues and opportunities analysis for the National Heritage Listing*, by DASH Architects and planner Stephanie Johnston, it had been commissioned by Heritage SA and the SA Department of Environment and Water (DEW).[14] Ms Johnston was also a board member of the Adelaide Park Lands Authority. Jointly funded by the state government and city council, the report was completed on 17 December 2018. It is one of the most revealing council and state government park lands administrative analyses seen since for many years.[15] It was clear that, although a small number of proposed park lands developments had been properly reported for assessment to the commonwealth government under the legislation, these never resulted in rejection of construction proposals for major state infrastructures, despite arguably obvious negative likely consequences on the park lands landscapes 'views and vistas'. The details are discussed in Appendix 29 of this work.[16]

WORLD Heritage listing

The pursuit of World Heritage listing also has a long history. One inquiry into its feasibility emerged in the 2001 state Parliamentary Select Committee on Adelaide Parklands Protection, which never finalised its task.[17] It is briefly explored elsewhere in this work.[18] In the opinion of the city council at that time, there was resistance in 2001 to achieving World Heritage listing.

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[13] Martin Cook, executive officer, Adelaide Park Lands Authority, personal communication to John Bridgland, email, 27 August 2018.

[14] In Appendix 29 of this work referred to as 'the DASH report'.

[15] Something similarly analytical had appeared 20 years earlier in: Hassell, *Park Lands Management Strategy Issues Report,* 23 February 1998.

[16] Appendix 29: 'Riverbank rezoning bid unearths flawed National Heritage listing protection policies and procedures'.

[17] Parliament of South Australia, House of Assembly, 'Select Committee on Adelaide Park Lands Protection', July 2001.

[18] See Chapter 15: 'The parliamentary Select Committee 2001 that never concluded'.

Resistance or not, there was encouragement six years later in a 2007 recommendation by University of Adelaide landscape architect Associate Professor Dr David Jones, author of the seminal, council-commissioned, six-volume *Adelaide Park Lands & Squares Cultural Landscape Assessment Study*.[19] He concluded that there was 'merit and relevance in the Adelaide park lands and squares being considered for a World Heritage nomination'.[20] He also stressed an important distinction between World Heritage and National Heritage. "The former relies upon 'outstanding universal value' whereas the latter relies upon 'national values and attributes'."

On the definition of heritage he noted: "... heritage represents the tangible and intangible narratives and components of our past humanity. The 'cultural heritage' (Article 1 of the World Heritage Convention) includes monuments, groups of buildings, and sites, and fit three categories: the clearly defined landscape designed and created intentionally by man; the originally evolved landscape; and the associative cultural landscape".[21] The 'natural heritage' (Article 2 of the Convention) included natural features, formations and natural sites.

To qualify for World Heritage listing, four 'integrity' criteria must be met. In Dr Jones' opinion they were met as at the year of his study, 2007, and the park lands 'outstanding universal value' was clearly evident.

The matter reappeared in 2018 at an Adelaide Park Lands Authority board meeting in response to a board member's city council pre-election Motion on Notice to probe the feasibility of another pursuit of the listing. Triggered by support of Adelaide MP, Rachel Sanderson, the Adelaide Park Lands Preservation Association had supported the bid in April 2018, and it was again supported at a meeting of the Adelaide Park Lands Authority in May 2018. The Authority noted that support stemmed back to the year 2000 (city council), a referral had been made to the Capital City Committee in 2001, and a report had been called for by the city council in 2003.[22]

The Authority in October 2018 noted that support existed in the *Adelaide Park Lands Management Strategy 2015–2025* (under Strategy 5.2). The Authority resolved to form a 'City Layout World Heritage Nomination Committee', to allow non-Authority persons to join (subject to APLA approvals), and to endorse terms of reference. The principal term was to "secure a commitment from the state government to pursue listing". This was notwithstanding implied commitment already, based on the state's 2017 endorsement of the *Adelaide Park Lands Management Strategy 2015–2025* in which strategy number 5.2 sought it and committed to it. The Authority concluded its terms list with the statement: "If that commitment is forthcoming, the subsequent work of the committee will focus on developing the nomination in partnership with the South Australian and Australian governments."[23]

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[19] Dr David Jones, (through) Adelaide Research and Innovation Ltd, University of Adelaide, the *Adelaide Park Lands & Squares Cultural Landscape Assessment Study*, publicly released in October 2007.

[20] Dr David Jones, op. cit., 6.0 'Recommendations', page 1154.

[21] Dr David Jones, op. cit., page 1153.

[22] Adelaide Park Lands Authority (APLA), board meeting, Agenda, Item 7.3, 'World Heritage Nomination Committee – Adelaide Park Lands and City Layout', 18 October 2018, pages 39–40.

[23] APLA, ibid., page 42.

This appeared straightforward, but given evidence that had been provided to the Select Committee by the city council 17 years earlier in 2001[24] – indicating reluctance to support the bid then – it was not as simple as 2018 readers might have concluded. Moreover, it had been 10 years since National Heritage listing, and no-one had progressed the World Heritage bid during that time. Clearly, there was a challenging pathway ahead.

POSTSCRIPT Bid given fresh impetus

In financial year 2019–20 the Adelaide City Council allocated $100,000 to the Adelaide Park Lands Authority budget to enable it to pursue a bid for World Heritage nomination of the Adelaide park lands and city layout.

It was agreed that there would be a combined bid, bundling two related subject matters to form one research project. It would include park lands landscapes research with Mount Lofty Ranges rural settlement landscapes research. Perceived advantages convinced decision-makers to pursue the combined bid.

The council commissioned a report, which emerged in May 2021.[25] It noted the pros and cons of the combined project. First steps would be: "… to assess whether a nomination is justified, consider its scope, to review, revise or develop key aspects of a possible nomination, to identify gaps, and suggest a workplan to achieve a successful nomination."

The 'workplan' scoped the extent of work to be done. It summarised research gaps for developing the Tentative List submission and nomination. "… gaps … relate to the justification of Outstanding Universal Value … These research gaps relate largely to the Adelaide plan …"[26]

An 11 May 2021 *CityMag* (*InDaily* Adelaide) online news article reported on the challenge ahead.[27] It noted that there was much research to be done.

The city council then commissioned a follow-up study. It was published in December 2021.[28] The 26-page report, which was not widely disseminated at the time, found that the bid could potentially meet three World Heritage criteria. It aimed to deliver:

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24 Parliament of South Australia, ibid.

25 *Review and assessment of the status and feasibility of the City of Adelaide's World Heritage bid for the park lands and the city layout*. Duncan Marshall AM and Dr Jane Lennon AM, for the City of Adelaide, 89 pages, 2020. Referred to in: Adelaide City Council, Agenda, Item 5.6, The Committee, 4 May 2021, Link 2.

26 *4.2: Summary of research gaps*, pages 13 and 14. (Note that the 'Adelaide plan' refers to the Adelaide City Plan, as conceived by Colonel William Light in 1837.)

27 'The city council is seeking World Heritage status for Adelaide's Parklands and city plan'. https://citymag.indaily.com.au/commerce/the-city-council-is-seeking-world-heritage-status-for-adelaides-parklands-and-city-plan/

28 Marshall, D, *Adelaide and rural settlement landscapes World Heritage report*, Duncan Marshall AM, December 2021, page 1.

- "a single integrated and higher-level document based on the two expert reviews (for Adelaide and the rural settlement landscapes of the Mount Lofty Ranges). This is to address a single narrative for the combined bid and the possible name for the nominated property; and
- preparation of an integrated workplan covering both the Adelaide component and the associated rural settlement landscapes, based on the expert reviews." [29]

But it left no illusions that the work would be completed quickly. "... such nominations are the largest and most complex tasks in the heritage sector, usually taking many years, requiring resourcing and persistence, and resulting in a substantial document of many hundreds of pages."[30]

Its 'Preliminary World Heritage Nomination Workplan' underscored that message. The workplan occupied nine pages of tables listing tasks to be addressed.

STATE Heritage listing

A 2017 state government *YourSay* public consultation, which attracted 1747 responses, found that 88 per cent of respondents believed that the Adelaide park lands should be State Heritage listed. The large number of people who responded to the survey was atypical by comparison to many other *YourSay* consultations about the park lands. Implicit in the size of the response was that there was strong support for the contention that the park lands featured something highly valued, that some sort of 'protection' would be of benefit, and that state listing might be the appropriate mechanism.

Most of the respondents, however, would have not understood the technical and political complexities behind the simplistic objective described as 'listing'. Although the question as to whether the Adelaide park lands possessed *place* state heritage merit and values had been answered by at least 2007 (if not before), the more important question would relate to the political consequences of listing as an area, rather than land with many already identified *places* in it. These complexities were neither described nor discussed in the survey. There were already listed *places* in the park lands, but whole-of-area listing would be different. The most basic hurdle was that, according to Associate Professor David Jones, who had completed his six-volume *Adelaide Park Lands & Squares Cultural Landscape Assessment Study* in 2007, "there [were] no State Heritage Areas applicable for the Adelaide park lands and squares ..."[31] The belief appeared to be that there were no appropriate criteria for listing of a State Heritage Area in the *Heritage Places Act 1993*. Confusingly, however, Dr Jones noted that under section 16 of the Act, the criteria for listing were "applicable for both Heritage Places and State Heritage Areas." If nothing else, this illustrated a level of ambiguity.

Eleven years later, a 2018 study[32] confirmed that the park lands complied with the necessary listings criteria. It also explored the question of area versus place and

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[29] Marshall D, ibid., page 11.
[30] Marshall, D, ibid.
[31] Dr David Jones, op. cit., page 1135.
[32] *Heritage Assessment – Adelaide Park Lands and City Squares*, DASH Architects and Peter Bell, 17 May 2018. http://www.environment.sa.gov.au/files/sharedassets/public/heritage/her-gen-adelaide-park-lands-heritage-assessment.pdf.

whether area listing might be feasible one day. It would not be addressed or resolved in the public domain during the study period of this work, which concluded in December 2018. However, steps were being taken behind the scenes. It was not until a year later, in 2019, that the author of this work learned that the Heritage Council had determined on 8 December 2018 to recommend that the state Liberal government's Environment and Heritage Minister, David Speirs, contemplate area listing.

> "Heritage Council Chair, Keith Conlon, wrote to the Minister for Environment and Water (Hon David Speirs MP) asking him to seek the Minister for Planning's in-principle support for the Adelaide Park Lands State Heritage Area, as this option will require an amendment to the *Adelaide (City) Development Plan*. Minister Speirs has since written to the planning minister on this matter."[33]

The remainder of this chapter explores eight themes:

1. Heritage law interacting with development law
2. Heritage Places Act potential
3. Post-2007 bids to list under the *Heritage Places Act 1993*
4. Post-2012 city council bids to list
5. Post-2017 state bids to list
6. Post-2018: the pivot towards area listing
7. Post-2019: a looming new *Planning and Design Code* and the planning consequences
8. Postscript: pursuit of a 'Heritage Standard' for the Adelaide park lands.

1. Heritage law interacting with development law

In development terms, both place and area listing had potential to frustrate and perhaps block development proposals for the park lands because the development applicant would have to traverse the complexities of heritage protection law interacting with development law and regulations. In regard to area listing, the city council had noted this as early as August 2012:

> "If listing of the park lands as a State Heritage Area was to succeed, council's (and other parties') activities within the park lands would be subject to the development application process to ensure that development within the park lands does not impact upon the significance of the park lands. This would require comprehensive and collaborative consideration as the issue progresses. It is anticipated that a [Conservation Management Plan] would assist in management of the park lands and allow delegation of approval for some activities."[34]

The concept of a Conservation Management Plan (CMP) had been encouraged to advance the potential for area listing, but no evidence emerged to confirm the

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[33] Email advice 22 November 2019 to author John Bridgland from Hamish Angas, Senior Heritage Officer, Heritage South Australia, Environment, Heritage & Sustainability, (SA) Department for Environment and Water.

[34] Adelaide City Council (ACC), City Planning and Development Committee meeting, Agenda, Item 13, 'Park lands state and local heritage matters', point 14, 7 August 2012, page 232.

existence of one. As a conceptual tool such a plan would assist assessment of significance, and inform policy and operating guidelines 'to manage that significance'. It also would need to be, in the view of the city council's August 2012 advice, consistent with the park lands *Community Land Management Plan* (CLMP) to provide consistent management of the park lands. In summary, the CMP concept indicated that the introduction of new initiatives such as State Heritage area listing would have a 'knock-on' effect on other aspects of park lands policy documentation. The contents of at least two core park lands policy instruments would be affected: the *Adelaide (City) Development Plan*, and the CLMP for the park lands parks. As this work illustrates elsewhere, revisions of either could occur neither quickly nor easily. Each evolved from different statutes, featured different mechanisms, and were driven by different imperatives. However, CLMPs did have to be periodically reviewed, but in administrative terms a contemplative periodic review was easier to manage than a sudden trigger to review because of a sudden determination to list.

While some claimed that there were no specific criteria under the *Heritage Places Act 1993* for the listing of the park lands as an *area*, instead restricted only to a 'place', several other South Australian sites had by then been listed as *areas*. They included the mid-north SA township of Mintaro and the metropolitan suburb of Colonel Light Gardens (among others). That suburb's listing was instrumental in protecting significant fabric elements across the area, not just heritage-listed built form within its boundaries. All types of proposed development were required to be assessed against listed area criteria, except those identified in regulations to the *Development Act 1993* as acts or activities that were excluded from the definition of development. In this way, the state was able to protect the aspects of the site and, perhaps more importantly, maintain control via the regulations over the present and future character of the suburb.

2. Heritage Places Act potential

The potential for state listing of the park lands had been explored in 2007 by Associate Professor David Jones, author of a six-volume *Adelaide Park Lands & Squares Cultural Landscape Assessment Study*.[35] It is not clear whether the exploration was part of Dr Jones' city council remit, but he presented his research anyway. In the sixth volume he explored the Adelaide park lands 'state level heritage merit and values' and concluded that sections "per park land block and square" could be assessed. He observed: "Adelaide park lands and squares generally" warranted "inclusion as a state heritage place or as a state heritage area under the *Heritage Places Act 1993*."[36] The addition of the words 'or as a state heritage area' tempted questions, but they weren't being asked at the time. He recommended that listing could be justified under five criteria (of seven) under section 16 of the Act. These were criteria (a), (b), (e), (f) and (g). A much later 2018 report[37] would recommend one more:

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[35] Dr David Jones, (through) Adelaide Research and Innovation Ltd, University of Adelaide, *The Adelaide Park Lands & Squares Cultural Landscape Assessment Study*, publicly released in October 2007.

[36] Dr David Jones, ibid., page 1193.

[37] *Heritage Assessment – Adelaide Park Lands and City Squares*, DASH Architects and Peter Bell, 17 May 2018. http://www.environment.sa.gov.au/files/sharedassets/public/heritage/her-gen-adelaide-park-lands-heritage-assessment.pdf.

criterion (d), described as: 'It is an outstanding representative of a particular class of places of cultural significance.' Given Dr Jones' extensive expertise about cultural heritage matters, the omission of that criterion in 2007 was curious. Its inclusion 11 years later, was similarly curious, but inspiring to those pursuing park lands listing. More below.

3. Post-2007 bids to list under the *Heritage Places Act 1993*

Dr Jones' 2007 recommendation encouraged others. Aspects of his study (publicly released in October 2007) may have been circulated as drafts before publication, and this may have triggered fresh attempts by others. In January 2007, for example, the president of the Adelaide Parklands Preservation Association (APPA), Jim Daly, wrote to Heritage South Australia summarising the sources of previous APPA-related nominations, and formally requested listing again.[38] Daly's letter claimed that: "The Adelaide Parklands satisfy all the criteria for entry into the Register, namely criteria (a) to (g) inclusive in section 16 of the *Heritage Places Act 1993*." Two years later there were more attempts. An APPA member personally nominated listing on 28 July 2009, and months later the Association lodged another formal application, distinguishing that application by stressing a need for *area* listing, "as per William Light's plan of 1837".[39]

Two years earlier, an APPA December 2007 newsletter had courted speculation that there was covert government resistance to listing.[40] It made reference to a journalist's article in *The Australian*, dated 28 September 2007 and headlined "Heritage listing delay 'politically motivated'". But this had referred to a National Heritage listing application, and the newsletter clarified that the National Heritage application nomination had not been made by APPA but by a member of the public. The APPA newsletter article blended concerns about achieving all three potential listings: State, National and World Heritage. Regarding the State Heritage listing, it noted that the assessment body, the South Australian Heritage Council, was:

> "... appointed by government and reliant upon a government agency secretariat which is chronically under-resourced ... This may be considered an implicit refusal to include the park lands on the State Heritage Register. However, no explicit rejection has been made. One must wonder if this is a record for bureaucratic procrastination!"[41]

The 'record' of delay had only just commenced, but the formal government record of nominations, published years later in 2017, contained reference to only two:

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[38] Jim Daly, President, APPA, letter to Brian Samuels, Principal Heritage Officer, Heritage SA. 24 January 2007: "Previous nominations of the Parklands for State Heritage listing [included]: February 1986, by Kathleen Patitsas; November 1988, by Damien Mugavin, APPA President; May 1989, by David Morris, APPA President; January 1994, by Kathleen Patitsas; January 1996, by Joan Clark, APPA Secretary; June 2001, by National Trust."

[39] Lodged: 3 September 2009. Source: Project brief, 'Heritage assessment of the Adelaide Park Lands and City Squares', Adelaide, South Australia, SA Department of Environment, Water and Natural Resources, February 2017.

[40] APPA, *Park LANDS News*, 'Heritage listing delay', Kelly Henderson, December 2007, page 5.

[41] APPA, ibid.

those submitted by an APPA member, and by the Association itself, in 2009. The reference to the APPA member's and APPA president's respective July and September 2009 nominations appeared in a February 2017 'project brief' of the state Environment, Water and Natural Resources Department. This brief formally triggered an exploration into the potential for listing. No reason was given at the time for the eight-year delay between the 2009 nominations and the 2017 brief. But APPA had its suspicions, and they had been expressed as early as 2011, two years after the two 2009 nominations had been lodged, without apparent response. In 2011, APPA's president, Kelly Henderson, reflected on the lack of response, and noted existence of the first alleged nomination in 1986. "The denial of State Heritage recognition for South Australia's most significant site has made the State Heritage Register into a political list instead of a record of the community's valued heritage. The Register will not regain any credibility until it records the Adelaide park lands amongst its entries."[42]

4. Post-2012 city council bids to list

But there had been activity in the years following 2009, and aspects of it illustrated the complications, administrative and political, in pursuing State Heritage listing of the park lands, especially as an *area*. The city council explored listing in August 2012 (as noted above) and then returned to the topic in March 2013. Documents revealed two important facts. Firstly, nomination depended on the South Australian Heritage Council to trigger responsibility to "progress the designation of the Adelaide park lands as a State Heritage area".[43] Secondly, activity was under way, as confirmed by council administrators: "A representative of the Heritage Council was contacted in early January 2013 and confirmed that the designation of the park lands as a State Heritage area is being considered and it is the intention to progress this matter throughout 2013."[44] At the time there also was a preoccupation with the idea of Local Heritage listing of park lands places (under the *Development Act 1993*) and the council had created a draft Development Plan Review Report (a 'Section 30') to trigger this "... which includes, as a strategy and project, the review of listed and potential state and local heritage places."[45]

In May 2013 the Heritage Council representative had again been contacted. He confirmed that: "... the designation of the park lands as a State Heritage Area (SHA) remains on the agenda, but is not high on the priority list, and is being impacted on by the absence of appropriate criteria for listing of a SHA in the Heritage Places Act."[46] The sticking point was the challenge to identify "the need for separate and distinctive criteria capable of substantiating the difference between heritage place and areas ..."[47] One solution was to create "specific criteria to guide

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[42] APPA, *Park LANDS News*, June 2011, page 5.

[43] Adelaide City Council (ACC), City Planning and Development Committee meeting, Agenda, Item 6, 'Park lands state and local heritage matters', 5 March 2013, page 83.

[44] ACC, ibid.

[45] ACC, ibid., page 84.

[46] ACC, City Planning and Development Committee meeting, Agenda, Item 10, 'Park lands state and local heritage matters', 7 May 2013, page 154.

[47] ACC, ibid.

the designation of State Heritage Areas … to better resolve complex heritage matters such as the park lands."[48] A potential way forward followed:

> "If the park lands were listed as a State Heritage Area, a management agreement would be established and places within the area identified which need protection even if they didn't relate to the significance of the overall place (e.g. Water Police Station – significance only indirectly relates to the planning significance of the park lands.)"[49]

The Heritage Council's 2013 advice was to pursue local heritage listing of park lands places "… rather than wait for the preparation of the new SHA criteria." The city council accepted the advice, submitted a 'Section 30' Development Plan Review Report to the Planning Minister John Rau in April, but by August 2014 had received a ministerial rejection.[50] Minister Rau's letter foretold of a major looming roadblock: plans to form an 'Expert Panel on Planning Reform', which would review "how heritage is protected and managed in the planning system". This review would take several years to deliver findings about the entire SA planning system, and culminate in a replacement of the *Development Act 1993* with a new statute. This would turn out to be the *Planning, Development and Infrastructure Act 2016* (proclaimed in April 2016, but at year-end 2018 still not fully in operation, especially with regard to heritage matters). Provisions would be so slowly brought into operation that by year-end 2018 the original 1993 Development Act would still effectively direct determination of heritage matters (and development matters) in the planning system.

In the 1 August 2014 letter of rejection by Planning Minister, John Rau, he concluded with a curious paragraph that posed more questions than it delivered answers.

> "In reaching this decision I have given particular consideration to the level of protection already applicable to the Adelaide park lands through the park lands *Community Land Management Plan*, the public ownership of buildings in the park lands, the recognition of the park lands in the commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, and the pending consideration of the park lands as a State Heritage place."[51]

This paragraph contained political half-truths. The CLMPs afforded no heritage protection, other than that which was reflected by existing local or state heritage

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[48] ACC, ibid., page 155.

[49] ACC, ibid.

[50] John Rau, Deputy Premier, Minister for Planning, Government of South Australia, letter to Lord Mayor, City of Adelaide, 1 August 2014, Attachment A, 'Out of session paper – local heritage in the park lands Statement of Intent', as found in: Adelaide City Council, City Planning and Development Committee meeting, Agenda, 'Local Heritage in the park lands Statement of Intent', August 2014.

[51] John Rau, Deputy Premier, ibid., page 462.

listings of places within the park lands, as properly recorded in the CLMPs and in the park lands zone policy area references of the *Adelaide (City) Development Plan*. The 'public ownership of buildings' was unexplained. The reference to the EPBC Act presumably related to the National Heritage listing of the park lands that, by 2014 (six years after that listing) was already proving to be toothless in thwarting state pursuit of major development projects across the park lands. Lastly, the reference to the 'pending consideration of the park lands as a State Heritage Place' was similarly curious because the minister's advisors would have well known about the Heritage Council's difficulties in establishing the need for separate and distinctive criteria capable of substantiating the difference between heritage place and heritage area. In summary, the minister's rejection was not on technical grounds, but appeared to be on political grounds. For state Labor in 2014, heritage protection was less than a low priority, not only in the park lands but also in the residential and commercial zones of the city. Labor's stance throughout this period was to resist all bids for additional listings, local or state, in any zone or policy area. To consider them in the park lands as a seemingly exceptional place would have been curious given recent state development already there, and it would have been complicated on development grounds. Better to reject all and let the 'Expert Panel on Planning Reform' slowly work towards its findings, years into the future, after which the implementation of the new planning system, including a new *Planning and Design Code* to replace development plans across the state, would take several more years.

5. Post-2017 state bids to list

Despite the apparent political reluctance to further explore the potential for park lands heritage listings, the state Labor government suddenly announced a need for a report on State Heritage listing in early 2017. The motivation and the timing remained publicly unexplained, especially given that two formal listings requests had been filed six years earlier, without tangible result. It may have been coincidental, but at the time of the announcement a state election was due in 13 months. State Labor would be seeking a fourth consecutive term – a long shot in political terms. Was it just another of Labor's 'grand gestures', triggering public recollections about the continuing need to 'protect' Adelaide's park lands? The results from a *YourSay* consultation, in a snapshot summary released many months later in November 2017 (five months ahead of the poll), showed strong support. This was a public result that would have been politically beneficial in the months leading up to the March 2018 election.

Many months earlier, in February 2017, the State Heritage Unit of the Department of Environment, Water and Natural Resources had called for expressions of interest for the creation of a report on the feasibility of state listing of the park lands. Among other things, it told potential contractors that a report should cover: "… the definition/boundary of the place … comprehensive description of the place, a summary history of the place … assessment of the heritage significance of the place … [and] *assessment of the place as a possible State Heritage Area* …". [Emphasis added.][52]

[52] Project brief – 'Heritage Assessment of Adelaide Park Lands and City Squares', South Australian Department of Environment, Water and Natural Resources, February 2017, 'The Report', page 8.

In retrospect, this last requirement 'assessment of the place as a possible State Heritage Area' may have been challenging for a contractor. All that the successful tenderer, Adelaide-based DASH Architects, could reasonably have done was to refer to the existing legislative reality. But the department's February 2017 contractor brief had included potentially important additional information, under the heading 'Heritage assessment as a possible State Heritage Area'. It read: "The Report will document in detail the heritage assessment undertaken by the contractors and whether or not the place meets the criterion for designation as a State Heritage Area, noting that the following criterion needs to be fulfilled:

> "A State Heritage Area is a discrete area of land, which has identifiable spatial relationships or characteristics, historical fabric, built or natural form which collectively have cultural values important to the State. A State Heritage Area will have a high degree of integrity and will satisfy at least one of the criteria under section 16 (1) of the *Heritage Places Act 1993*."[53]

Released in May 2018, revealed in December

The DASH report was finalised in early 2018, claimed a publication date of 17 May 2018, and was later quietly made publicly available on a DASH Architects' website. Its existence wasn't subject to 'front-page' headlines, as one might have expected. The fact of its existence was belatedly referred to in a newspaper article in December 2018, but the report's contents and recommendations were not explored at the time.[54] Moreover, there was no government attempt at seeking broad public discussion. Of course, by then, a new government administration was in power – the Steven Marshall-led state Liberal government, having been elected in March 2018 after 16 years in opposition.

The DASH report recommended that: "... the 'Adelaide Park Lands, Squares and City Layout' is considered to be of State significance under criteria (a), (b), (d), (e), (f) and (g); [and] - the 'Adelaide Park Lands, Squares and City Layout' is considered for listing as a State Heritage Place under the Heritage Places Act ..."[55]

Intriguingly, the DASH findings endorsed one criterion that Associate Professor Jones' 2007 recommendations had omitted: Criterion (d) 'It is an outstanding representative of a particular class of places of cultural significance'. The recommendation is reproduced in a 'Criterion (d)' appendix at the end of this chapter.

Place or area?

A second findings matter was critical to any determination regarding the debate about 'place' or 'area'. It responded to the department's request about whether or not the site met the criterion of designation as a State Heritage Area. The DASH authors restricted its discussion to only one half of a page in its 91-page report.

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53 Project brief, op. cit., February 2017, paragraph 5.2.5, page 11.

54 Simeon Thomas-Wilson, *The Advertiser*, 10 December 2018, page 7: "A heritage assessment report by DASH architects and historian Peter Bell recommended that the park lands become a state heritage place."

55 *Heritage Assessment – Adelaide Park Lands and City Squares*, DASH Architects and Peter Bell, 17 May 2018, page 2.

> "State Heritage Place or State Heritage Area
>
> "One of the aims of this report was to determine if the 'Adelaide Park Lands, Squares and City Layout' should be considered as a State Heritage Place or a State Heritage Area.
>
> "A State Heritage Area is a clearly defined region with outstanding natural or cultural elements significant to South Australia's development and identity. A State Heritage Area is notable for its distinct character or 'sense of place', formed by: - buildings and structures; - spaces and allotments; - patterns of streets; and - natural features or the developed landscape.
>
> "Whereas a State Heritage Place is defined under s3 of the Heritage Places Act as: (a) a place entered, either as a provisional or confirmed entry, in the Register under Part 4; or (b) a place within an area established as a State Heritage Area; or (c) a place taken to be entered in the Register under Schedule 1 (as enacted on the commencement of this Act).
>
> "The heritage values of the Adelaide Park Lands, Squares and City Layout is [sic] considered to be more than a distinctive character that is inclusive of various physical elements. It includes social and cultural values that are intrinsic to the place as a whole, and is therefore considered to be a State Heritage Place.
>
> "As a separate note, the current uncertainty around heritage provisions under the *Planning Development and Infrastructure Act 2016* (SA) mean that from a listing and management point of view, listing as a State Heritage Place may provide better certainty."[56]

Notwithstanding the challenging explanations, this preference for 'place' over 'area' remained ambiguous in the context of a DASH statement that appeared on the first page of its report, which had stated:

> "There are many individual places that have already been identified as being of State Heritage significance in their own right within the study area of this report. The scope of this assessment is not to review these, encompass them in a single listing or identify potential additional places. Rather, the scope of this assessment is to consider the nominations 'as a whole of place', rather than a collection of elements."[57]

It would have been useful had this earlier paragraph been more fully explored in the later half-page discussion (and the only discussion) under the heading 'State Heritage Place or State Heritage Area'.

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[56] *Heritage Assessment*, ibid., page 53.

[57] *Heritage Assessment*, ibid., page 1.

Safe harbour in changing times

At the time, there was uncertainty about future heritage-protection matters as a result of the gradual enactment of a new development statute, the *Planning, Development and Infrastructure Act 2016*. (This would replace the *Development Act 1993*.) Although proclaimed, the 2016 statute did not at year-end 2018 give clear direction because not all of its provisions had been brought into operation. Moreover, even at year-end 2018, government planner indications had suggested that a new *Planning and Design Code*, which was to replace South Australia's metropolitan area development plans, would not be in place until early 2020.[58] This delay had prompted the DASH authors to recommend a more cautious (and more feasible) option.

6. Post-2018: the pivot towards 'area' listing

However, further 2018 exploration of the consequences of 'place' listing led to other Heritage Branch analysis of the procedural, and more particularly, the political benefits of 'area' listing. There emerged some compelling reasons for the State Heritage Council to contemplate recommending 'area' listing in preference to place listing. These are best summed up in the Heritage Council's own words, as extracted from a 6 December 2018 Heritage Council meeting agenda item, part contents of which were provided to this work's author in November 2019.[59] The words follow:

"State Heritage Place vs. State Heritage Area

"State Heritage Place:

"Following a heritage assessment, the Heritage Council can determine that a place meets the criteria, under section 16(1) of the *Heritage Places Act 1993*, to be listed as a State Heritage Place. The Heritage Council can then provisionally enter the place in the South Australian Heritage Register and then commence a public consultation process about the provisional entry, followed by it deciding whether or not to confirm the provisional entry. Therefore the Heritage Council has 'control' of the heritage listing process of places that fulfil the criteria, with the exception of a Ministerial intervention (in the public interest).

"However, following the entry of a place in the Register as a State Heritage Place, the definition of 'development' for State Heritage Places, under the provisions of the *Development Act 1993*, includes:

> 'the demolition, removal, conversion, alteration or painting of, or addition to, the place, or any other work that could materially affect the heritage value of the place;'

"This definition means, in practice, as would be the case [if] the park lands became a State Heritage Place, that virtually all of the activities associated with the on-going day-to-day management and/or development of the park lands would require

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[58] The code for the metropolitan area came into operation on 19 March 2021.

[59] Email personal communication, 22 November 2019, to author John Bridgland from Hamish Angas, Senior Heritage Officer, Heritage South Australia, Environment, Heritage & Sustainability, Department for Environment and Water. This extract is not recorded in the Heritage Council's minutes of 6 December 2018, in which only the recommendation to correspond with the heritage minister is recorded.

development approval and referral to the Minister responsible for the *Heritage Places Act 1993*.

"As a consequence of entering the park lands in the Register as a State Heritage Place, there would be an exponential increase in the number of development applications required (related to 'development' in the park lands) and the associated bureaucracy and red-tape at both a State and local government level, without the ability to manage the type of 'development' that should be approved and referred for advice."

"State Heritage Area:

"Under the provisions of the *Heritage Places Act 1993*, the Heritage Council can only identify areas of State heritage significance and promote the establishment of State Heritage Areas, currently under the provisions of the *Development Act 1993*. In practice this means that if the Heritage Council determines that an area be recognised as a State Heritage Area, it needs to ask the Heritage Minister to request the Planning Minister [to] amend the Development Plan, through a Development Plan Amendment (DPA).

"If the Heritage Council were to decide that the park lands should be designated a State Heritage Area, an appropriate regime of planning policies/principles would be then inserted in the Development Plan, via a DPA, to manage the heritage values of a possible Adelaide Park Lands State Heritage Area. In addition [to] the inserted planning policies/principles in the City of Adelaide Development Plan, certain types of 'development' in the park lands would be able to be excluded from requiring development approval and referral for advice. For example, Schedule 3A of the Development Regulations 2008 excludes certain types of 'development' within the Colonel Light Gardens State Heritage Area from requiring approval/referral.

"While creating a State Heritage Area for the park lands would not necessarily greatly assist in the day-to-day management of the park lands open spaces and vegetation, it would at least entail the State heritage value of the park lands being specified in the City of Adelaide Development Plan [the *Adelaide (City) Development Plan*] and translated into planning policies to guide the future development of the park lands, while acknowledging its State heritage value.

"In accordance with section 5A(2) of the *Heritage Places Act 1993*, the previous Heritage Council in December 2013 established criteria that are to be taken into account when determining whether an area should be established as a State Heritage Area, in particular:

> 'A State Heritage Area is a discrete area of land, which has identifiable spatial relationships or characteristics, historical fabric, built or natural form, which collectively have cultural values important to the State. A State Heritage Area will have a high degree of integrity and will satisfy at least one of the criteria under Section 16 of the *Heritage Places Act 1993*.'"[60]

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[60] Source: see preceding footnote.

7. Post-2019: a looming new *Planning and Design Code* and the planning consequences

The Heritage Council advice was sent to the Heritage minister in December 2018. Sometime in 2019 the minister corresponded on the matter with the planning minister. This was step 2 of four necessary steps. But complications lay ahead. The immediate consequences in terms of a potential endorsement for amendment of the development plan relating to the Adelaide park lands zone policy areas were that, in December 2019 (one year after the Heritage Council's recommendation) the state Liberal government had just commenced public consultation on its first draft of the new *Planning and Design Code* (a document comprising more than 3000 pages, which was still incomplete). This was a once-in-several-generations procedure to replace all 72 development plans in the state's planning library, and to significantly revise those relating to the park lands zone. The code was flagged to come into operation in early 2020. In fact, it did not occur until 19 March 2021.

It is possible that one reason why the Heritage Council made its recommendation to the minister in December 2018 was to capitalise on this looming event and have the state planning team incorporate "an appropriate regime of planning policies/principles" (to be inserted into the draft *Planning and Design Code*) "… to manage the heritage values of a possible Adelaide Park Lands State Heritage Area". Although the period of study of this work concluded at year-end 2018, even by year-end 2019 it was not possible to ascertain whether state planners had even contemplated this. It was unlikely. This is because, of the four-stage process to obtain government approval to list the park lands as an area, the final two stages were not concluded. They were:

- Incorporation of additional planning policies/guidelines regarding the park lands into the new *Planning and Design Code*.
- Additional amendment of the new Development Regulations of the *Planning, Development and Infrastructure Act 2016* to "exclude certain types of development within the new State Heritage area from requiring approval/referral."[61]

As at year end-2018 (technically the end of the study period of this work) an aspiration among some state experts to achieve State Heritage listing of the Adelaide park lands remained nothing more than that. While the signs were cause for optimism, given the long history of attempts to list that had never progressed this far, it was too early for any celebration. The outcome, as always, remained in the hands of the government of the day and especially the state's senior planning bureaucrats who would advise on any revision of regulations under the new 2016 Act in relation to any potential area listing of the park lands. Once again, the

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[61] This wording (but not an indication that there would or would not be 'additional amendment') extracted from email personal communication 22 November 2019 to author John Bridgland from Hamish Angas, Senior Heritage Officer, Heritage South Australia, Environment, Heritage & Sustainability, Department for Environment and Water. The extract is not recorded in the Heritage Council's minutes of 6 December 2018, in which only the recommendation to correspond with the heritage minister is recorded.

'protection' of Adelaide's park lands through this mechanism would depend on only a few persons, in procedures unlikely to be comprehended by many South Australians, let alone closely scrutinised. In this case, much would depend on planning bureaucrats' advice and, subsequently, on a mutual determination between only two parliamentarians – the state's heritage minister and the planning minister.

8. Postcript: pursuit of a new Heritage Standard for the Adelaide park lands

Facts that emerged in 2020 and later in 2021 provided compelling evidence to confirm that there continued to be very little political will to progress the listings bid. Letters sent by the Adelaide Park Lands Association (APA) president, Shane Sody, to the SA Heritage Council prompted a series of formal and revealing responses that confirmed that bureaucrats advising ministers kept changing their views as to the appropriate means to achieve the objective. The trove of correspondence was reproduced in a link in the APPA's February 2022 newsletter.[62] Comprehensive extracts are reproduced below to illustrate not only the complexity of procedure but also the extent to which planning bureaucrats were changing their minds. The first letter, dated 4 August 2020, began promoting the idea that writing a Conservation Management Plan for the Adelaide park lands – a step that had been recommended as long ago as 2012 – was still a necessary first step to the process.[63]

> "Dear Mr Sody
>
> Thank you for your email, dated 3 August 2020, regarding the next steps to recognise the heritage value of the Adelaide park lands at a state level. At the outset I am not at liberty to share with you any correspondence between the former Minister for Planning and the Minister for Environment and Water. In answer to your main question, there is no legislative basis for the view that a Conservation Management Plan (CMP) would be an 'appropriate first step'. It is purely a means to an end. It was, from what I understand, the process by which the last State Heritage Area was progressed for Mount Torrens, back in 2002. Heritage South Australia wishes to facilitate a streamlined process for the Adelaide park lands to be established as a State Heritage Area (SHA). Based on the response of the former Minister for Planning, who ultimately makes this decision, we accept that defining the planning policy considerations, prior to the SHA designation, is now a necessary 'first step'. As expressed in the minister's letter to you, in order to create a State Heritage Area for the Adelaide park lands the Planning Minister will need to alter the planning policy for the park lands, by undertaking a Code Amendment to the new *Planning and Design Code* (under the provisions of the *Planning, Development and Infrastructure Act 2016*). Though the State heritage

[62] Adelaide Park Lands Association, Newsletter #19, 14 February 2022, 'All parties now support state heritage listing' (see link in that source).

[63] Email letter 4 August 2020 emailed to Shane Sody from Beverley Voigt, Heritage SA, Department for Environment and Water.

values of the Adelaide Park Lands have been determined and agreed upon by the SA Heritage Council, there is no appropriate document that sets out how those values are going to be protected and managed into the future. In accordance with the Australia ICOMOS Charter for Places of Cultural Significance (The Burra Charter), a CMP is generally the document that describes the management of places/areas of heritage value. Whilst we acknowledge that a CMP normally follows the listing, in this case the CMP will be done prior and will inform to what extent the planning policy for the Adelaide Park Lands needs to be updated/revised, so as to protect and manage the State heritage values of the Adelaide park lands. As the State's principal heritage agency, Heritage South Australia, in partnership with the City of Adelaide, will take the responsibility for preparing such a CMP."[64]

But seven months later, on 2 March 2021, the government's view had changed. Ms Voigt's email advice to Shane Sody indicated that the need for a Conservation Management Plan had been abandoned.

> "Dear Shane
> Appreciate your follow-up and interest in the Adelaide park lands being made a SHA [State Heritage Area]. It is also an important outcome that we at Heritage SA and the SA Heritage Council wish to realise. With stretched resources the progression of the Adelaide Park Lands CMP [Conservation Management Plan] hasn't happened as quickly as originally anticipated with the priority for my team to develop and release (soon) the Heritage Standard for Colonel Light Gardens. This work has been pioneering around how a State Heritage Area (SHA) will be managed under the [Planning and Design] Code and the work will also be foundational in how we now proceed with the Adelaide park lands. So while much hasn't progressed specifically, a lot of work has happened that I anticipate will streamline things moving forward. The issue as I understand (but mostly my opinion) is that the management tool/policy of the Adelaide Park Lands if it becomes a SHA needs to be established to support the listing by the planning minister. Without it, the consideration for it as a SHA won't be progressed.
> Originally the instrument to support its management was understood to be the CMP; however, [a] Heritage Standard will now become the authorising tool under the Code. Hamish [Angas] has met with City of Adelaide recently to determine what policies exist already that can be used as a starting point. We expect that the development of what hopefully will be endorsed as the Heritage Standard for the Adelaide park lands will be delivered under a similar framework as [sic] what has occurred for Colonel Light Gardens. We are currently seeking the necessary approvals to proceed along these lines.
> Kind regards Bev."[65]

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[64] Email letter: SA Heritage Council to APPA President, Shane Sody, 4 August 2020.

[65] Email letter: SA Heritage Council to APPA President, Shane Sody, 2 March 2021.

On 15 July 2021 Beverley Voigt wrote again to Shane Sody of APPA. Readers of her letter in subsequent years would have to be reminded that there was a curious assumption reflected in the departmental advice on that date, and that a contradictory procedure was being exercised with respect to the park lands listing bid. The state listing of Colonel Light Gardens had occurred several decades previously, but only in July 2021 was a 'Heritage Statement' being pursued for that area. However, it was very clearly not critical to achieve the listing several decades previously, only for post-listing (and rather belated) development management and assessment reasons. But for the Adelaide park lands listing bid, the state government was insisting that a Heritage Statement had to be prepared before the listing went ahead. There was obviously a reason for this, but the author of the July 2021 letter did not explain why. She wrote:

> "After launching the Heritage Standards for Colonel Light Gardens State Heritage Area (SHA) in mid-March 2021, Heritage South Australia, DEW, in partnership with the City of Adelaide, has recently commissioned DASH Architects to do some early policy work in relation to the on-going management of the State heritage values of the park lands. It is proposed this work would then be incorporated into a Heritage Standards document for the proposed Adelaide Park Lands + City Layout SHA [State Heritage Area]. You will be aware that DASH Architects undertook the heritage assessment for the Adelaide Park Lands + City Layout.[66] For your information I have attached the Heritage Standards for Colonel Light Gardens SHA, which will give you an indication of the scope/content of a Heritage Standards document, bearing in mind the Adelaide Park Lands + City Layout is a very different SHA to the Colonel Light Gardens SHA. We are currently seeking support from the Minister that once we have a draft Heritage Standards document [then] Heritage South Australia, DEW will release it to a list of key stakeholders (including APPA) for initial comment/input, prior to broader public consultation, probably via the State Government's *YourSay* website. I appreciate that it has been a period of time since the SA Heritage Council determined that the Adelaide Park Lands + City Layout should be recognised at a State level; however, it is difficult to give you a timeline for completing this work. I would like to reassure APPA that Heritage South Australia, DEW and the Minister for Environment and Water regards the creation of a State Heritage Area for the Adelaide Park Lands + City Layout as a State Government important initiative to protect its heritage values. Kind Regards Bev."

As at March 2022, the end of the four-year term of the Marshall Liberal government (and the month of the state election) there had been no formal announcement relating to the completion of this work. Once again, evidence of very

[66] This study was publicly released on the internet on 17 May 2018.

slow progress illustrated that the Marshall Liberal government had little political will to pursue the listing. It replicated the lack of will that had been reflected by the Weatherill Labor government in its third and fourth consecutive terms.

The purpose of a Heritage Standard

Public explanatory material about Heritage Standards was limited in 2021 and early 2022, but it appeared that a Heritage Standard was a planning tool used to scope and "provide direction on future development ... when assessing applications for use by property owners planning to restore, *alter or develop* [emphasis added] their property".[67] In other words, it would be an instrument used by state planning bureaucrats concerned that heritage listing might compromise state and/or commercial agencies' or private bodies' ability to get approval of development applications for land within the Adelaide Park Lands Plan, as contained in the *Adelaide Park Lands Act 2005*. In light of that, it was not surprising that the state was insisting in 2021 that the planning tool be created well ahead of activating steps to list the Adelaide park lands as a state heritage area. It was all about risk – not of protection for the landscapes of the park lands, but of procedural protection for government and commercial bodies to continue to access land sites within the Adelaide Park Lands Plan for development project purposes.

APPENDIX

Criterion (d) under s16 of the *State Heritage Act 1993*, and 2018 discussion by DASH authors

Extract source: *Heritage Assessment – Adelaide Park Lands and City Squares*, DASH Architects and Peter Bell, 17 May 2018, page 47.

(d) it is an outstanding representative of a particular class of places of cultural significance.

"Guideline

"In considering this criterion, we have had regard to the *Guidelines for State Heritage Places*, that note:

> "The place should be capable of providing understanding of the category of places, which it represents. It should be typical of a wider range of such places, and in a good state of integrity, that is, still faithfully presenting its historical message.
>
> "Places will not be considered simply because they are members of a class, they must be both notable examples and well-preserved. Places will be excluded if their characteristics do not clearly typify the class, or if they were very like many other places, or if their representative qualities had been degraded or lost. However, places will not be excluded from the Register merely because other similar places are included.

[67] Internet site 2021: search: Heritage Standards (Colonel Light Gardens State Heritage Area).

“Assessment

“The Adelaide Park Lands, Squares and City Layout is an outstanding representation of a nineteenth century planned colonial settlement. Its principle [sic] characteristics are its outer ring of parklands; the six internal squares; the layout, width and grid pattern of streets; and the spacious rectangular blocks. This layout served both the economic and well being needs of early settlements.

“The ‘Adelaide plan’ [Colonel Light’s 1837 ‘Adelaide City Plan’] influenced the layout of rural towns in South Australia from the 1860s.

“George Goyder used the 1837 Adelaide plan as a model layout for government-designed rural towns in South Australia, until it was challenged by Charles Reade in the 1910s. The ‘Adelaide plan’ is the exemplar early planned colonial settlement in South Australia.

“Discussion

“The Adelaide Park Lands, Squares and City Layout are an outstanding representation of the following historical themes:

- Planning urban and rural settlements (4.1).

  Although rural South Australian towns were designed under different circumstances and without the same instructions as was provided for Adelaide, the ‘Adelaide plan’ was used as a model to create an ideal country town, with open spaces, and regular land parcels and streets. Maitland on the Yorke Peninsula is a particularly fine example of the application of planning principles for an ideal country town. The Adelaide plan is the best representation of an early planned colonial settlement in South Australia, and it has a high level of integrity, which has been diluted in the expansion of some rural towns.

  It is recommended that the nominated place **fulfils** criterion (d).”

"Managerial language may well be to the information age what the machine and the assembly line was to the industrial. It is mechanised language. Like a machine, it removes the need for thinking ... Yet every day we vandalise the language, which is the foundation, the frame and joinery of the culture, if not its greatest glory ..."

– Don Watson,
***Death sentence, the decay of public language*,**
Knopf, Random House Australia Pty Ltd, 2003, page 8.

54 | Semantic alienation across the park lands pastures

As everyone knows, the administrator is the master abuser of words. Black might be interpreted as a negotiable shade of grey; white can darken in hue when a planning lawyer contemplates. Over time, ambiguous phrases penned quickly in administrative drafts become formally endorsed, and then would slip smoothly into the pages of legal instruments. Look at Adelaide's park lands today. Each dominating edifice is there because of words that cloaked their planning assessment in legitimacy.

Across the pastures of plenty seeps a swamp of semantics, and that is how the administrators like it. There are various ways for South Australians to probe the machinery of the management of Adelaide's park lands. But probing the semantics is not without risk. Any approach risks quickly faltering as one attempts to climb the metaphorical perimeter fence that encloses a jargon precinct, a place defined by the tools of ambiguity whose pastures of prolixity inform every park lands deliberation and determination. Approach from any point of the compass, and the evidence of the particulars of planners and the aspirations of urban and landscape architects is everywhere. For some readers, a choke of complicated park lands terms requires breathing apparatus – and there is where the administrators will be delighted to interpret as the staff stand ready with the oxygen. But it is not oxygen; it is a gas wholly different from that which comes from any park lands photosynthesis. It is the stuffy air of the corridors of government bureaucrats; the flourescent-lit offices of city planners, the fug of legal chambers' rooms.

Your resuscitation will be accompanied by the primary sources – the multiple interacting statutes, then strategies, policies and guidelines arising from the statutes, which allow the policy makers to claim the legitimacy of their determinations. South Australia's park lands administration archives overflow with 'protection' humbug, dressed in the fine silk of honourable intentions. Those intentions are accompanied by a parade of policies that have legitimised park lands management over the 180 years that followed creation of Colonel William Light's Adelaide City Plan to 2018, the end of the period of study of this work, and especially since the 1990s. The cavity between the laws and the arising policy is filled by nothing much more than a creative

cant – words and phrases moulded by those in control at any one time, directed by parliament's legislative product, and guided by concepts and interpretations, salted in administrative phrases, shored up by sober, apparently time-aged conventions.

"The basic tool for the manipulation of reality is the manipulation of words."

– Philip K Dick,
'How to build a universe that doesn't fall apart two days later',
in *I hope I shall arrive soon*, 1986.[1]

A natural evolution

Many park lands observers assume that the way things are reflects the product of a natural evolution of a long-established management regime, demonstrably transparent, publicly accountable, equitable and self-evidently rational. The administrative tools distil to words and phrases, shaped into beautiful paragraphs, worn smooth by time. But as everyone knows, the administrator is the master abuser of words. Black might be interpreted as a negotiable shade of grey; white can darken in hue when a planning lawyer contemplates. Over time, ambiguous phrases penned quickly in administrative drafts become formally endorsed, and then slip smoothly into the pages of legal instruments. Look at Adelaide's park lands today. Each dominating edifice is there because of words that cloaked their planning assessment in legitimacy. They took their legitimacy from planners' redoubts, tagged 'desired future character' and 'principles of development control'. They met the criteria of 'complying development' because a bureaucrat planner determined that they complied.

No pasture under the city council's tenure of park lands custodianship is free of the ambiguous backbone that runs the length of the body of policies and procedures that have shaped the park lands character, especially since the 21st century dawned. It is only under constant reference to this backbone that park lands deliberations can endure at the lower government tier, safely quarantined from the risk that someone, somewhere, might one day jettison the ambiguity, inadvertently committing administrators to account for the rationales.

"When I use a word," Humpty Dumpty said, in a rather scornful tone,
"it means just what I choose it to mean – neither more nor less."
"The question is," said Alice, "whether you can make a word mean so many things."
"The question is," said Humpty Dumpty, "which is to be master – that's all."

– Extract: Lewis Carroll, *Through the looking-glass*, 1872,
Chapter 6, 'Humpty Dumpty', page 124.

The 'natural order'

Park lands determination procedures imply a natural order. They begin with contemplation, at first cautioned by caveats. As time passes, the process becomes emboldened, confident that its advisory policy is clear to those determining, its

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1 Source: *Words on words*, (Meaning and sense, Chapter 5) David Crystal and Hilary Crystal, Penguin, 2000, page 27.

interpretations mutually agreed. Occasionally, a contradictory concept assaults the public conscience and provokes criticism, not only because of the self-evident fog of ambiguity that might shore up its legitimacy, but also because of some unspoken imperative that might demand the political survival of a contradictory proposal. If disputes break out, accompanied by demands for revisions or revocation, lawyers are called in, but almost always under the cover of a shroud of confidentiality, tagged 'legal advice' about such matters as 'commercial information of a confidential nature'.[2] It would never do to reveal that a rationale could be found to be illegitimate. In extreme cases, administrators can declare a park land policy source redundant and, in one swift action, expunge all of its rationales. That this happened during the study period of this work illustrates that, in the domain of park lands policy interpretation, there's a culture of administrative ruthlessness active beneath a thin veneer of bureaucratic civility. The words and phrases mean what they want them to mean, and their application must be presented as certain and therefore safe, lest the public conclude that some park lands determinations rest on foundations of shifting administrative sand.

"A word has the meaning that someone has given it."

– Ludwig Wittgenstein,
The blue book, in *The brown and blue books*, 1965, page 28.[3]

The ambiguous 'Top 3'

Four tables in this chapter explore the core sources of ambiguity that inform Adelaide park lands management policy, and development policy under planning law.[4] Out of them emerge the 'Top 3' words that recur across the documentation. Apparently, not one can be simply and clearly defined. No document attempts it. They are: 'protect', 'enhance' and 'appropriate'. As you skim the tables, note how they repeat.

Recurring also has been the use of verbs that have such widely interpreted meaning that they cannot be commonly agreed to have any specific meaning at all. They are dead verbs, masquerading as living verbs. They are the bureaucrats' preferences; they encourage everything, they commit to nothing. The political will adores them: they do as their interpreter insists. The dead include: facilitate, support, manage, consider, identify, have regard to, seek, and promote. These are the most numerous miscreants, but there are many others.

A 'snapshot' analysis of the abuse of language

Table 1 explores the most contentious strategy (number 1.4) within the 2016-endorsed *Adelaide Park Lands Management Strategy 2015–2025*.[5] The table refers to construction of built form in the park lands, the most confronting and the most controversial activity in landscape terms; the most contradictory to that enduringly

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2 As allowed under section 90 (3) of the *Local Government Act 1999*.

3 Source: *Words on words*, (Meaning and sense, Chapter 5) David Crystal and Hilary Crystal, Penguin, 2000, page 31.

4 As at year-end 2018.

5 (Even at December 2022 this was the current operational policy reference, even though it was legally well overdue for 'review', a verb used in, but never defined in, the *Adelaide Park Lands Act 2005*.)

implied, plain-English pledge to 'protect' the park lands; the one riven with a long history of contention. It is worth exploring because the 2016 Strategy vision is riddled with developer jargon, whose meaning at times is baffling to others. This is the wellspring of the wording that tumbles from policy statements and, over time, seeps into the planning instruments[6], interpretations of which allow architects and planning lawyers to draw their fees, as they rationalise their clients' desires for long-term access to the cheapest land adjacent to the city of Adelaide.

Many of the comments in the tables below are further explored in other chapters in this work.

TABLE 1 JARGON STUDY

Extracts from Strategy 1.4 in the 2016 *Adelaide Park Lands Management Strategy 2015–2025*

THE STRATEGY JARGON	COMMENT
"Support activation of the park lands by upgrading and enhancing buildings and structures responsive to their park setting ...	• 'Activation' became the new buzz word in 2016. The park lands needed to become 'activated'. The word probably meant 'used more', but the motivation was not necessarily about encouraging more events. It was about linking the existence of the park lands to a state economic imperative about the consequences of future population growth at residential sites adjacent to the park lands boundaries. • *Enhancing* buildings? This verb has never been defined in relation to the park lands. • In what way could they be 'responsive'? • A park setting is, in plain English, open space landscape, sometimes featuring woodland. Can a structure be responsive to open space, when it dominates and overwhelms that space? The planning lawyers would support it, but only so long as a client was willing to keep paying for the advocacy.
"Buildings and structures are critical to making open space functional ...	This was a profoundly combative proposition to the way the Adelaide park lands have been perceived over time. It implies that the park lands cannot be 'functional' unless there is built form on them.
"However, it is important that these buildings and structures are designed to complement their park land setting ...	The proposition that any built form can 'complement their park land setting' challenges the imagination.

[6] Including the *Adelaide (City) Development Plan* that had effect throughout the study period of this work, to year-end 2018, and until it was replaced by the *Planning and Design Code* in March 2021.

TABLE 1 JARGON STUDY *(continued)*

THE STRATEGY JARGON	COMMENT
"... and minimise their footprint while ensuring they are fit for purpose.	Minimise – compared to what, and why the qualifier 'while ensuring they are fit for purpose'? This was a critical qualifier, which in plain English would be written as: 'only when a building is fit for purpose as defined by the client and the architect who designed it, should the footprint be taken into account, under a vague expectation that the footprint might not be too small or too large, but whose area is not defined.'[7]
"This will require a review and alignment of Development Plan policy and the Park Lands Building Design Guidelines.	This merely reinforces the assumed convention: that whatever scribble appears in the Strategy, if the political will is there, it shall be transferred to the provisions of a subsequent amendment to the *Adelaide (City) Development Plan*, or any future planning instrument that replaces it. Government authorised content was aligned with the planning instrument, which planning lawyers interpreted to suit their clients (most commonly, the state government).[8]
"Action 1. Undertake a program of building consolidation, enhancement and development to ensure that all buildings in the park lands ...	The words 'enhancement and development' had no clear or universally understood meaning in the Strategy; they were the choices of copywriters. Where was the 'program'? The original (but long redundant) building consolidation program of 1999[9] (a plan to rid the park lands of certain buildings and restore open space) at 2018 remained largely not implemented – with the exception of the buildings at Victoria Park (Park 16: SA Jockey Club facilities).
"Are fit-for-purpose and support multiple park lands activities (where appropriate) ...	Would any building constructed after 2016 in the park lands not be 'fit for purpose'? The Building Code would not allow it. The real question was – what was the purpose? Most new plans for pavilions in the park lands created between 2011 and 2018 featured additional social and recreational facilities in the expanded floor areas. Was the purpose recreational (including liquor-licensed facilities), or was it recreational sport-focused? Few posed the question; even fewer were interested in answering it.

7 The complex politics of the notion of 'footprint' of built form across Adelaide's park lands are explored in detail in this work in Chapter 47: 'The footprint numbers game'. Among other aspects, it is a study of the manipulation of language, relying on comprehensive and enduring policy ambiguity, exploited for development purposes over the entire study period of this work.

8 As explored elsewhere in this work, there was no legal requirement that content of any of the three Strategies published between the years 1999 and 2016 had to be aligned with *Adelaide (City) Development Plan* planning policy. But it was very convenient to do so.

9 In the first Strategy of the period (1999), titled the *Park Lands Management Strategy Report: Directions for Adelaide's Park Lands 2000–2037*. A 37-year program.

TABLE 1 JARGON STUDY *(continued)*

THE STRATEGY JARGON	COMMENT
"Enhance visitor experience at activity hubs ...	The notion that a visitor to the park lands required enhancement of the 'experience' was a curious one. What did it mean? A sure sign of ambiguity was the appearance of that verb 'enhance'. Meaning?
"Complement their park setting and minimise their visual impact ...	This was challenging to comprehend. What did it mean? Can any building or 'activity hub' 'complement a park setting' and simultaneously 'minimise their visual impact'?
Reinforce the overall identity of the park lands ...	Since when did Adelaide's park lands need reinforcement of their identity by virtue of a building or 'activity hub' program? That the park lands identity was apparently dependent on built form suggested that someone, somewhere, had a radically different view of the purpose of Adelaide's park lands, compared to folks who saw them simply as contemplative open spaces.
"Achieve creativity and boldness in design [and] Achieve universal design principles ...	Planner jargon; incomprehensible to non-architects.
"Manage building height and form to minimise impact on the landscape ...	The verb 'manage' is popular, but its meaning is vague. It was implied to be a synonym for 'restrict', but that word has been deliberately avoided. The issue was 'height and form', and on the evidence of park lands pavilions constructed since 2011, it was clear that the concern to 'minimise footprint' led to larger height and scale, as multi-storey forms emerged, with greater heights than those that came before. Self-evidently, there has been a colossal failure to 'manage ... to minimise impact'.
"Permit commercial services to operate where they provide community benefit and support outdoor recreational use of the park lands."	One small sentence; one major philosophical contemplation, fundamentally contradictory to earlier management principles for the park lands. The political imperative behind this is starkly evident – the verb 'permit' was unequivocally clear. Of course, 'community benefit' is impenetrable in meaning and is in the eye of the beholder. It would fall to the city council to implement in practice. And it would be very easy to conclude that commercial services 'provide community benefit'. The real question was – are the park lands there as a setting for commercial activity or not? The evidence from many public feedback surveys suggests that there is no strong support for this.

TABLE 2 JARGON STUDY

The seven Statutory Principles of the *Adelaide Park Lands Act 2005* (as extracted from the Act)

THE JARGON	COMMENT
"a) the land comprising the Adelaide park lands should, as far as is reasonably appropriate, correspond to the general intentions of Colonel William Light in establishing the first Plan of Adelaide in 1837[10];	Can anyone define what 'as far as reasonably appropriate' means? Park-lands-related debate in the South Australian parliament's Legislative Council in 2005 failed to establish a meaning. This clause was used by planning lawyers to argue that the wording allowed them to present proposals exceptional to the 'general intentions' of Light's 'Adelaide City Plan'. These exceptions, they argued, ought to be allowed for the benefit of their clients (most often, the state government).
"b) the Adelaide park lands should be held for the public benefit of the people of South Australia, and should be generally available to them for their use and enjoyment (recognising that certain uses of the park lands may restrict or prevent access to particular parts of the park lands);	• 'The public benefit' leaves much to be interpreted. It would have been better to have omitted this altogether, given that it deposited ambiguity for the benefit only of planning assessment panels, courts of law and parliamentary committees. • One little word – 'generally' – is all it takes to throw this principle into the hands of lawyers to argue against the clause's implied notion of 'public benefit'. It is one of those qualifiers that inserted doubt, sufficient doubt to support a legal equivocation. • Moreover, it is the second half of this sentence that further encourages interpretation equivocation. Why should this 'recognising' occur? The matter was disputed in state parliament in 2005 when the Adelaide Park Lands Bill was being debated. The state Labor party (the party in government) insisted on retaining this caveat. Objectors suggested that it created a major loophole. Even as late as 2022 it remains one of the great Adelaide park lands legal loopholes, through which the chariots of many planning lawyers have thundered, operating on quarter-hour billing increments.
"c) the park lands reflect and support a diverse range of environmental, cultural, recreational and social values and activities that should be protected and enhanced;	There they are – those undefined words from the *Adelaide Park Lands Act 2005* – 'protected and enhanced'. Can something be enhanced even if it is protected? If something is protected, would 'enhancement' threaten that protection? What do these words mean?

[10] Colonel William Light's 'Adelaide City Plan'.

TABLE 2 JARGON STUDY *(continued)*

THE JARGON	COMMENT
"d) the Adelaide park lands provide a defining feature to the City of Adelaide and contribute to the economic and social well-being of the City in a manner that should be recognised and enhanced;	• '... economic ... well-being' – the 2016 *Adelaide Park Lands Management Strategy 2015–2025* was all about this concept. From 2016 on, the state concept would be that the park lands must contribute. How fortunate to have based the 2016 Strategy on one of the Park Lands Act Statutory Principles. • Recognised? How should that manifest? • And once administrators have nailed the nature of 'recognition', what does that word 'enhanced' mean? That verb is everywhere!
"e) the contribution that the Adelaide park lands make to the natural heritage of the Adelaide Plains should be recognised, and consideration given to the extent to which initiatives involving the park lands can improve the biodiversity and sustainability of the Adelaide Plains;	Two fresh ambiguities – 'consideration' and 'initiatives'. Who knows what they really mean? Does that word 'consideration' mean casual contemplation, or does it demand action? No-one can be certain.
"f) the State Government, State agencies and authorities, and the Adelaide City Council, should actively seek to cooperate and collaborate with each other in order to protect and enhance the Adelaide park lands;	Park lands history observes that 'cooperate and collaborate' were verbs well understood. However, these verbs neatly sidestep the administrative reality at the time – the consolidation of determination power with parliament but, more particularly, operationally and on a day-to-day basis, with the minister administering the *Adelaide Park Lands Act 2005* and, in planning terms, the state Planning Minister. These two had significant powers to influence the outcomes of 'cooperate and collaborate'. And there, once again, are those ambiguous words: 'protect and enhance'. When does 'enhance' begin to threaten 'protect'? Won't anyone define them?

TABLE 2 JARGON STUDY *(continued)*

THE JARGON	COMMENT
"g) the interests of the South Australian community in ensuring the preservation of the Adelaide park lands are to be recognised, and activities that may affect the park lands should be consistent with maintaining or enhancing the environmental, cultural, recreational and social heritage status of the park lands for the benefit of the State."	• One would have thought that the notion of the 'interests' of South Australians was well understood, and well recognised. It was well evidenced when the Adelaide Park Lands Bill was being debated in 2005. It remains, 13 years later at year-end 2018, very clearly evidenced. • The concept of 'the preservation' of the park lands is clear. It implies the retention of what was there in 2006, when the Act was proclaimed, and what ought to be preserved. But the words that follow tip the intention into muddy ambiguity. • The trouble arises with those ambiguous verbs 'maintaining or enhancing'. Surely at year-end 2018 (the end of the study period of this work), and taking into account the previous long period of major built form encroachment into the park lands, this motherhood statement is not worth respecting, given the evidence of park lands exploitation, especially in the post-2011 terms of the Weatherill state Labor government.

TABLE 3 JARGON STUDY

Popular park lands management euphemisms

THE EUPHEMISM	THE SOURCE AND COMMENTS
'Improve the quality of their landscape'	This was apparently one of the aims of the 2016 *Adelaide Park Lands Management Strategy 2015–2025*.[11] What did that statement mean? Remove exotic flora and return it to native state? It is almost certain that it did not mean constructing buildings, bridges, fencing, wider pathways the width of roads, or car parks.
'Vibrant'	The Adelaide Park Lands Authority (APLA) said: "Parks that are vibrant."[12] It would appear that 'vibrancy' can only arise from installation of fresh recreational infrastructure across the park lands.
'Activation'	APLA said: "Parks with the things people need to stay longer and feel comfortable." Apparently, an attractive landscape and accessible open spaces were insufficient motivations in the 21st century to allow people to 'feel comfortable'.[13]

11 Adelaide Park Lands Authority (APLA), Special board meeting, Agenda, 9 May 2016, page 5.
12 APLA, ibid., page 15.
13 APLA, ibid., page 15.

TABLE 3 JARGON STUDY *(continued)*

THE EUPHEMISM	THE SOURCE AND COMMENTS
'Minimise footprint'[14]	In earlier policy documents this was once written as "Reduce the footprint".[15]
'Iconic'	Found across multiple city council and APLA documents. Usually 'iconic' is a euphemism for 'something big and globally recognised', and in Adelaide park lands terms, for large structures with grandiose architectural designs.
'Unrestricted community access'	Under a park lands licence, a licensee has first priority of access and use, but not exclusive use. However, the means by which a licensee had to make a licensed area available to the public were poorly prescribed, and many licensees behaved as if they had exclusive use, which frustrated public access.
'Sensitive to the environment'	Generally used in reference to building proposals (in park lands terms). How could 'sensitivity' be measured? No-one knew, but it was a popular term among the park lands architects and planning lawyers.
'Re-imagine'	This word appeared 20 times in the 2016 *Adelaide Park Lands Management Strategy 2015–2025*. Extracts appear later in this chapter.
The 'urban address'	This concept also appeared many times in the 2016 Strategy. Extracts also appear later in this chapter.

The 're-imagine' jargon

Is a euphemism jargon? The 're-imagine' verb challenges the linguists. See the list that follows for random extracts of this word in use. The numbers in parentheses refer to the page number of the 2018 online version of the 2016 *Adelaide Park Lands Management Strategy 2015–2025*.[16]

- "Woodland areas are often considered unattractive and unappealing areas of the park lands and this landscape type seeks to **re-imagine** them by providing access and engagement with the landscape through opportunities for interpretation to gain a deeper understanding of Adelaide's pre-European vegetation and ecosystems, as well as enabling them as areas for activity and recreation." (30)
- "**Re-imagined** car and bicycle parking facilities adjacent [to] the playing courts will free up the Greenhill Road edge for a more intense urban address treatment extending along the southern edge of Kurangga to Unley Road." (51)

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[14] APLA, ibid., page 11.

[15] The complex politics of the notion of 'footprint' of built form across Adelaide's park lands are explored in detail in this work in Chapter 47: 'The footprint numbers game'. Among other aspects, it is a study of the manipulation of language, relying on comprehensive and enduring policy ambiguity, exploited for development purposes over the entire study period of this work.

[16] A check in 2022 found that some of these page numbers had changed. For example, page 30 had changed to 31. Page 51 had become page 50.

- “The hub close to the river will incorporate **re-imagined** picnic grounds, BBQs, seating, shelters and play spaces, a redeveloped kiosk and café as well as boat hire facilities to activate the river frontage and provide a host of opportunities for social interaction.” (73)
- “**Re-imagine** the existing road access providing improved access and the potential for car parking to service activities and events within the park.” (74)
- “A **re-imagined** river frontage, incorporating a series of activity hubs on its northern and southern banks, will enable people to interact with the river and engage in many different on- and off-water activities ...” (76)
- “The existing trees and vegetation will be **re-imagined** to create ‘outdoor rooms’...” (93)

The ‘urban address’ jargon

The emergence of this concept in park lands policy documents provided an indicator of how planners and bureaucrats in 2016 took over the linguistic landscape of Adelaide’s park lands management, especially through multiple references in the *Adelaide Park Lands Management Strategy 2015–2025*. The numbers in parentheses refer to the page number of the 2018 online version.[17] The concept of the park lands as a state asset whose principal purpose was to be adapted to shore up the economic base of future high-density residential development at the park lands edges is also explored elsewhere in this work.[18]

- “The **Urban Address** provides a more structured, designed perimeter to the park lands with a level of amenity to attract and welcome people. The Urban Address is a transitional space designed to encourage and entice exploration deeper into the park lands through more legible entries and open views where appropriate, visually and physically connecting people to the opportunities within. It also provides comfort and amenity for use as a place in its own right. The **Urban Address** pays particular attention to major pedestrian and cycle links connecting to the suburbs and the city and plays an important wayfinding role. The Urban Address responds to anticipated urban growth to the inner rim suburbs surrounding the park lands and to the outer edges of the city. It provides a significant change where it interfaces with the inner rim suburbs, focused on the city.” (35)
- “The **Urban Address**. Description: Provide an increased level of amenity and attraction along park lands frontages to both the city and inner-rim suburbs. The approved appearance and functionality will encourage and entice further exploration deeper into the parks.” (12)
- “Ensuring that the **urban address** provides an attractive frontage to the park lands northern and southern edges will be critical in enticing more people into the precinct, especially in the south as these sections of the park lands are currently under-utilised with low visitation rates.”(46)

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[17] Later online versions indicated that some page numbers had changed.

[18] Please refer to Chapter 42: ‘The new ‘urban address’ narrative’.

- "Drivers of change ... Greenhill Cycling: Growing resident and worker populations in the south of the city and the north of Unley, Parkside and Eastwood provide the impetus for a re-imagined park lands environment that will enable more people to participate in a variety of recreational and sports activities. The **urban address** will again play an important role in drawing people into the precinct while access to the various amenities supporting recreation and sport will be enhanced to activate the parks, facilitate higher levels of social interaction and provide for casual surveillance." (50)
- "Key moves: Provide an **urban address** that includes a formal gateway into the park lands from the City of Prospect and enhances other major entry points." (64)

More jargon

The *Adelaide (City) Development Plan*

Readers should note that that this statutory planning instrument became redundant when the *Planning and Design Code* came into operation on 19 March 2021. Analysis of this new code for the purposes of this chapter was out of scope, given that the study period of this work effectively concluded at year-end 2018. However, it can be noted that many of the planning-related 'Desired Character' themes in the plan were carried over into the new code.

Below is an extract of the *Adelaide (City) Development Plan's* park lands zone policy wording. (Extract: Edition 20 June 2017 consolidated development plan.) Table 4 on the next page explores the wording of some of the clauses, here <u>underlined</u>.

> "PARK LANDS ZONE
>
> "Introduction
>
> The desired character, objectives and principles of development control that follow apply in the Park Lands Zone shown on Maps Adel/3 to 23, 26 to 33. They are additional to those expressed for the whole of the Council area and in cases of apparent conflict, take precedence over the more general provisions. In the assessment of development, the greatest weight is to be applied to satisfying the desired character for the Zone.
>
> "DESIRED CHARACTER
>
> "The desired character for the Zone is comprised of:
>
> (a) a unique open space system which is the most valued characteristic of the historic layout of the City providing a distinctive image for the City;
>
> (b) <u>conservation and enhancement</u> for the relaxation, enjoyment and leisure of the City's workers, residents and students, the metropolitan population and visitors;
>
> (c) <u>open publicly accessible landscaped park setting</u> for the built-form of South Adelaide and North Adelaide, which separates the built areas of the City from the surrounding suburban areas;

(d) a balance of both formal and informal recreational activities including sporting clubs, walking and cycling trails, formal gardens and passive recreation areas as well as providing a setting for a variety of special events such as festivals and sporting events;

(e) enhancement of the park lands through the reduction in building floor areas, fenced and hard paved areas;

(f) public infrastructure, including schools and other education facilities, roads, railways, tramways and busways, and their supporting structures and works in some parts of the zone; and

(g) a well connected pedestrian and cycle network throughout the Park Lands."

TABLE 4 PLANNER JARGON EXTRACTS from the park lands zone policy area wording of the *Adelaide (City) Development Plan* (*extract: 20 June 2017 version*)[19]

THE 'DESIRED CHARACTER' JARGON	COMMENT
"b) conservation and enhancement ...	Conservation is clear; it is similar to 'preservation' in meaning, but there in the same sentence is that other word 'enhancement'... Are the two mutually compatible? What does 'enhancement' really mean?
"c) open, publicly accessible landscaped park setting ...	Marvellous imagery, but this concept contradicts the second clause (clause (b)) of the second Park Lands Act Statutory Principle ("recognising that certain uses of the Park Lands may restrict or prevent access to particular parts of the Park Lands"). More work for planning lawyers seeking to get endorsed a development project that thwarts the notion of the park lands being always publicly accessible.
"d) a balance of both formal and informal recreational activities ...	Park lands managers have pursued that ideal concept of 'a balance' since the *Adelaide Park Lands Act 2005* was proclaimed in 2006. It has proven to be a concept whose pursuit guarantees endless debate.

[19] Please note the caveat appearing under the previous heading 'More jargon: the *Adelaide (City) Development Plan*'.

TABLE 4 PLANNER JARGON EXTRACTS *(continued)*

THE 'DESIRED CHARACTER' JARGON	COMMENT
"e) enhancement of the park lands through the reduction in building floor areas, fenced and hard paved areas ...	Here is a controversial statement, in many ways. Firstly, there is that curious word 'enhancement'. Secondly, there is that architectural concept of park lands built-form building floor areas, whose focus has been more commonly overshadowed by the concept of 'footprint'. As post-2011 park lands development projects emerged, architects' preoccupation with minimising footprint expansion increased, resulting in the *expansion* of building floor areas (as multi-storey pavilions replaced single-storey built forms). The record shows that hard-paved areas (including car parks) increased, elsewhere usually described as 'enhancement'.
"f) public infrastructure, including schools and other education facilities, roads, railways, tramways and busways, and their supporting structures and works in some parts of the zone ..."	This is very clear, and tangible evidence of a controversial 2015 ministerial development plan amendment, when the development plan for a particular park lands site (Botanic policy area 19) was modified – using this specific wording – to allow for the construction of a new, six-storey high school in park lands, as well as major works on the O-Bahn line (which included an earthworks culvert to form a 'tunnel' through park lands at Rymill Park). The interesting feature of this clause is how its clarity contrasts with the ambiguous nature of the other principles in this section. To legitimise a specific type of development, the clause had to be quite specific. No vague concepts here! But it is inserted under a list headed 'desired character'. The school and the O-Bahn developments are not really 'characters'. As their architect and engineering principals would have to agree, they are tangible built forms.

PART 11

Like all revolutions that envisaged much, the new park lands management framework has turned out to be more philosophically conflicted than before. Not only did it put in place flawed mechanisms but also it expanded the scope for system complexity. A core feature was continuity of total control by the state. The post-2007 exploitation has been at times at a scale much worse than existed before 1999, when the first Park Lands Management Strategy Report 2000–2037 *was released to so much acclaim and in anticipation that the exploitative habits of the past would cease.*

Chapter 57: 'What *can* be done?'

Figure:
Annual non-capital spending on the Adelaide park lands by Adelaide City Council and the South Australian State Government, financial year 2019–20

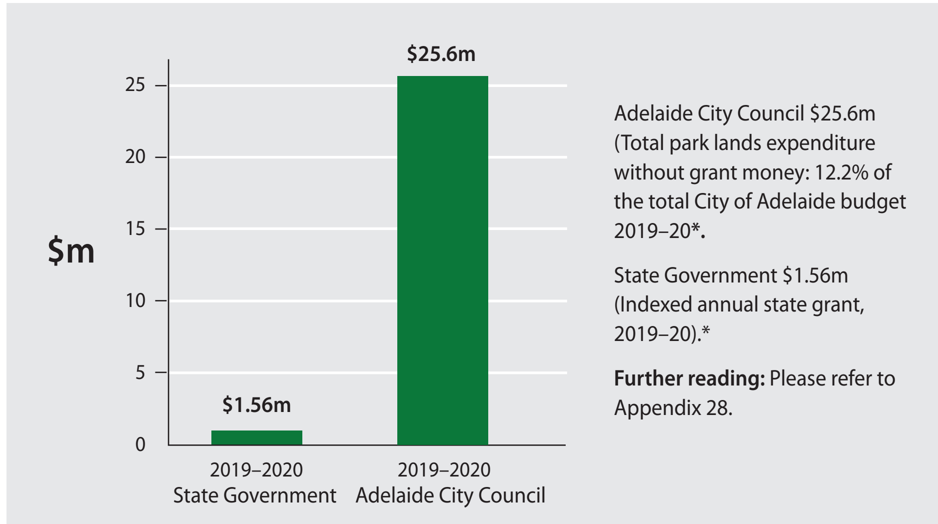
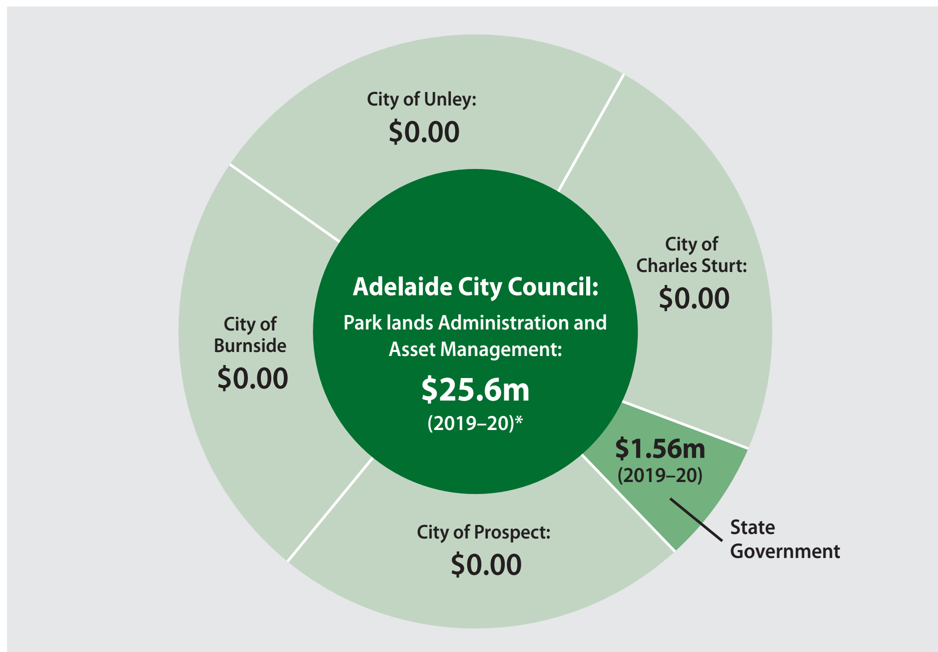


Figure:
Contribution of other inner-city local government corporations to Adelaide park lands administration and maintenance, 2019–20.
Note: Adelaide City Council claims to be the custodian of 690ha of the total area of park lands (930ha).



* Source for the 2019–20 data: Adelaide City Council, The Committee meeting, Agenda, Item 5.3, 'Adelaide Park Lands Expenditure and Income', 12 November 2019, pages 36–40. This is reproduced as a PDF document in Appendix 28.

PART 11 What is to be done?

Chapters

55 | What has been done? A historical perspective
(Reflections on one person's passion for park lands 'protection' against the enduring menu of clever rationales to exploit cheap land.)

56 | What ought to be done? A contemporary reflection
(An incomplete paper trail, a superficial digital era, and the struggle to maintain a meaningful, transparent public discourse.)

57 | What *can* be done?
(A lot ... but it will demand sufficient courage to survive a revolution.)

Over the years there have been so many political and administrative shenanigans, confidentialities and ambiguities, and so much chicanery practised within and without the park lands administrative bodies that people likely to have the time and the energy to devote to 'the chase after illumination' over time just tire out.

Extract, Chapter 56: 'What ought to be done?'

Other links to chapters in PART 11

Chapter	Appendix link
56 | **'What ought to be done? A contemporary reflection'.**	**Appendix 25:** 'Case study: *Your Say*'.

55 | What has been done? A historical perspective

"The other argument that is always a challenge, and has been a challenge for 20 years, and will be the biggest challenge for the new [Adelaide Park Lands] Authority, is that there are no proscriptions. There are no rules that say: 'You will not; something is proscribed'. So that whenever somebody has a good idea [for the park lands] – and they're always a good idea – it's hard for someone to say up front, 'Well, that's stupid, you shouldn't even progress it'."

– Dr Jane Lomax-Smith, 2006.[1]

In order to consolidate a view about 'What has been done', the 12 November 2006 words of the then Lord Mayor and then Minister for the City of Adelaide, Dr Jane Lomax-Smith, are useful to first focus on how 'the problem' has historically presented itself. The following words were spoken weeks before the full enactment of the *Adelaide Park Lands Act 2005* and two months before board members of a proposed new administrative statutory authority – the Adelaide Park Lands Authority – began meeting.

> "The arguments that are put to us will be the same, [so] the arguments against developments have to be finalised, shaped and improved, because we know what they will say about every development: 'It's always a good idea. It's always in a beautiful place. It will always go to Sydney if we don't put it here.' And it will always have, as the bottom line, 'It's cheap land.' But it's not cheap; it's priceless."[2]

The speech was given in an Adelaide Town Hall filled with park-lands-preoccupied South Australians who had spent a weekend attending an Adelaide symposium discussing the park lands future.

"However," she added, "[those excuses] don't stop me having a view, and they never will, because I'm passionate," she said. She continued:

"You've probably heard me say before many things about the park lands ... I acknowledge, of course, Kaurna land and recognise that the park lands are special, not just to Kaurna people, who owned and have walked on these lands for many thousands of years, but to us newcomers, who immediately see our park lands and know we see something special, something unique, something we want to preserve.

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1 Dr Jane Lomax-Smith, Adelaide Town Hall, Hawpark Auscript transcript, final Q and A session (12 November 2006), concluding a three-day Adelaide Parklands Symposium. Event reference: *The Adelaide park lands: threats, challenges and solutions*, Adelaide Parklands Symposium: A balancing act: past-present-future (10–12 November 2006), co-presented by The Centre for Settlement Studies, Louis Laybourne Smith School of Architecture and Design; The Bob Hawke Prime Ministerial Centre, University of SA; and the Adelaide Parklands Preservation Association.

2 Dr Jane Lomax-Smith, ibid.

"The phrase that I so often use when I meet a developer with a good idea is [that] these are not cheap lands, they are priceless. And if you keep that sentence in your mind, you can begin to understand why there is so much conflict, not just in the 20 years that I've been involved in the council, involved in living in the city, involved in arguing about the park lands, but there's been conflict for nearly 200 years about the use of this land, and always the underlying argument, that: it is limited, it is in a limited area; it's precious, and once it's gone, it's lost forever."

20 years in hindsight

Dr Lomax-Smith continued:

"What I want to do today is talk about the challenges I've seen over the last 20 years. There's a saying in German: 'The devil doesn't know everything because he's the devil, but because he's been around a long time'. And every time I hear a new idea, I think I've heard it before; in fact, there are very few new ideas that I haven't heard before, and they fall into a range of categories. One of the observations I'll first make is it's much harder for a croquet club to put up a shelter shed than it is for a major development to be built [on the park lands].

"The full force of the law seems much harder for small individuals and clubs than it does for major developers. And that's always worth bearing in mind when you look at the new proposals that come forward. The other argument that is always a challenge, and has been a challenge for 20 years, and will be the biggest challenge for the new [Adelaide Park Lands] Authority, is that there are no proscriptions. There are no rules that say: 'You will not; something is proscribed'.[3] So that whenever somebody has a good idea – and they're always a good idea – it's hard for someone to say up front, 'Well, that's stupid, you shouldn't even progress it.'

"I remember when the Olympic Stadium was proposed in the western park lands, the argument was: 'This is a sporting facility, and therefore should be allowed in the park lands'. It would have meant a whole stadium. It would have meant a ticket office. It would have meant changing rooms, car parks, and it looks beautiful on the other side of the railway lines where it now is as the Santos Stadium.[4] Apparently we needed a helipad, because it was a good idea, because it's too far to drive from the airport, and you should come out by helicopter. Can you believe that? You can't come from the airport except in a helicopter!

"Someone else thought it was a good idea because there was unused park lands in the south to have a museum of childhood, a re-created John Martin's Centre, where you could have a pageant termination and go through the Magic Cave and meet Father Christmas.[5] The most bizarre idea was a giant flora and fauna park that you entered

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3 The transcript records the words 'prescriptions' and 'prescribed', but it would appear that Dr Lomax-Smith really meant 'proscriptions' and 'proscribed'.

4 This exists on land that is not park lands.

5 John Martins was an Adelaide city department store and for many years organised a Christmas time pageant through the streets of the city. The Magic Cave was a children's facility in the store, attended by someone dressed as Father Christmas.

through a 40-foot wallaby pouch – I'm not joking – to the sounds of the didgeridoo and Aboriginal singing and chanting and bird noises. That's not made up; that's true, and we needed that because it gave people a taste of the Outback. These plans sound horrendous, but mysteriously, nowhere in the development plans [the *Adelaide (City) Development Plan* relating to park lands zone policy areas] does it say: 'You will not build a 40-foot wallaby pouch'. So people always think it might just be a good idea."

The three classical arguments

"The other problem with a good idea it that usually it's developed when you drive through and think, 'This is the most beautiful place in the City of Adelaide', which of course it is, but apparently that's why we got the Wine Centre where it was [eastern park lands], because someone drove through and thought it was the most beautiful place.[6] But very often, then the only good view that's left is the view from inside looking out, because otherwise when you're outside looking in, you see the size, the lighting, the alienation.

"Another argument that comes up time and time again is: 'We will be the only city in the world that has a road race through the CBD. We will be the only place that has four-wheel drives in the major park in the city, a four-wheel-drive festival'. And I feel like saying, 'Yes, but why is that?' No-one else is daft enough to think of shipping in tonnes of soil, and I might say that soil comes at a cost. The soil that [is necessary for] something like a four-wheel-drive show brings with it weight, dust, millipedes, and things that shouldn't be here. They land on top [and you need to be very careful] of native remnant species, and those sorts of activities should be in the [Wayville] Showgrounds [not park lands]. The reason no other capital city [does it] is [because] they're not daft enough. Why do we even think about it?

"Another issue that is so bizarre is the idea that we're not competitive unless we do it. And the reality is you have to ask who we're competing against, and what difference it will really make. And very often the argument is that if we don't do it, someone will take it somewhere else. But the truth of the matter is that something like the Memorial Drive Tennis Club [a gym] can't be dug up and taken to Sydney, because it's there. So any development has to be on that site, [which means] the argument that 'We will lose it' is spurious."

The footprint red herring

"The other argument that I find quite bizarre is, 'It's replacing something ugly', or 'It's replacing something bigger', or most insidious of all, 'It has a smaller footprint'. If I can just explain that: you can replace a one-storey shed with an open-lot car-park, and creative accounting will tell you that the new building is smaller. That's a very interesting argument, particularly because with the open-lot car-park it has the chance that one day it will turn back into grass. [But] a three-storey building will never turn back into grass. It's an absolutely spurious argument. It was used by the Olsen Government when they built the Wine Centre, and it was a fabulous

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6 The $24m National Wine Centre was constructed amid much controversy in the eastern park lands during the last term of the state Liberal government, which concluded in March 2002.

argument [not] that's worth re-living now because I think it actually gives you a good argument for a whole range of developments. [State Liberal Premier] John Olsen's argument was that he would demolish the [botanic gardens'] Herbarium, which may have been ugly, but I could never see it; it was behind the bushes. Three potting sheds, a lawn mower shelter, a compost heap, and a few open lot car-parks, and they would build something smaller! Do you get that? The Wine Centre would be smaller than the three potting sheds, the Herbarium, and the things it replaced. It was: 'it had a smaller footprint'.

"So you have to ask yourself when you hear those sorts of stories, 'What really does that mean?' And when you drive past the Wine Centre, I'd like you to recall that, and just remember that it's much smaller than the potting sheds, because that's the argument that was used."

The expense myth

"The same argument was used by [former state Liberal MP] Joan Hall, I must say, when she first showed me [year 2001 drawings of] the Clipsal stand [Clipsal 500 motor race concept for replacement of temporary grandstands in Park 16 of the park lands, Victoria Park]. And the argument then was very much: 'It's smaller, it's less expensive'. But my response to that was: Less expensive? People have to understand the cost of the park lands. The Lord Mayor [Michael Harbison, in office 2003–10] has spoken about it. And if we are prepared to let out, say, a four-wheel-drive extravaganza into the park lands and only charge, say, $5000, and they [Showgrounds management] have to charge $20,000 at the Showgrounds, where do you think they'll want to go? They will always want to go into the park lands. So we need to cost the use of our park lands, so that people understand it is not cheap land. And until we do that, people will always say, 'It's beautiful; it's nice', but underlying that, 'It's very cheap'."

The 'national interest' myth

"The other argument is a variant of the national interest, or the state interest, and I've spoken of the idea that they might move it [a park lands concept] to Sydney. But the more insidious argument is: 'You're not a good South Australian if you oppose this'. I first heard that argument when I was on [the city] council [as a councillor in the mid-1990s] more than a decade ago, when the then Labor government – because all political parties do the same thing; it's not one party or another – wanted to have the Commonwealth Games in Adelaide. And a Commonwealth Games needs a village, and a village takes 10,000 to 15,000 houses, and who do you think was the only person who opposed the Commonwealth Games bid, and why do you think that was? They [the facilities] were going to be in the park lands, and I was told I was un-South Australian [to oppose it]. What was so wonderful [not] was that they genuinely believed that a developer would put 12,000 houses in the park lands and they would be temporary. They genuinely believed they'd be pulled down. It is extraordinary, and I have to say I am the only person who is perhaps grateful that we didn't win that bid, because I know those temporary houses would still be there now."

The money advantage

"But if you look at the finances, the most interesting financial argument against development in the park lands is very much one for the developer. If you can think of a business plan for a commercial development in the park lands, line one will always be the cost of the land – zero. The building will always cost money and once an event space, a commercial property, is built, they need to keep it open and viable, of course, all the year. But the real issue is, every time you build something large in the park lands, whatever it is, whether it's the Next Generation Centre[7] or the Wine Centre, which are the most recent buildings, they compete, and they compete, if you like, on an uneven playing field, because the developers who develop in the CBD, in the suburbs and in Adelaide, have to buy land, and they're competing all the year round with those developers; they're competing for wedding receptions, school formals, conventions, Melbourne Cup events, a whole range of activities, where they have not had to pay the cost of the land.

"We have given them those pieces of land that they can then use. So the issue is a commercial one. The bottom line is always the dollars. And the issue that perhaps people don't remember is that that public land is our land. I said historically there have always been fights about it. I don't know if any of you remember the *Children's Hour* magazine – you're too young, of course, which went out through South Australia. Even in 1905, they were begging children to look after the park lands, and I have a copy here that says:

> 'To the boys and girls of South Australia. The park lands surrounding Adelaide and other towns and the trees and plants in the squares of all South Australian towns belong to the people. The parks are your playgrounds. You have the right to use them for your games, but you must look after them and never harm them. Think of them as your own property and protect them accordingly'.

"The message is the same, because the land is finite, and once we've given it away, we will never get it back. So the challenge for the future? Well, the [Rann Labor] government has done something truly incredible. They have given up the right to have major developments in the park lands. It was a pre-election commitment, which we [Labor] have delivered on.

"And now with our new era, we're on the brink of the [Adelaide Park Lands] Authority taking on the role to manage and develop strategy. We have the challenges of water, of course, which will have a significant impact, I think, on major events, and how we can use the park lands. But more importantly, we now have to get down to what those planning conditions will mean for the park lands, because whilst the government won't take the power away from [the city] council and the Development Assessment Commission, the most critical documents to

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7 A commercially run gym, formerly the David Lloyd Leisure Centre, adjacent to Pinky Flat near Torrens Lake, whose redevelopment in park lands was made possible through 'Major Development' provisions of the *Development Act 1993* during the Olsen government's last term, concluding in March 2002.

save the park lands now are the land management plans [*Community Land Management Plans* prescribed under the *Local Government Act 1999*] that have been dealt with on a fairly local level, but no-one knows what's in them, and when they find out they're often quite shocked, and they're being used to some extent as a development plan – and the fine print of the development plan itself."[8]

The next battle

"The next battle has to be, not in making decisions about development, but having a development plan which actually prevents developments occurring – actually prescribes what is a legitimate use, not just for permanent buildings, but for temporary activities as well – and which of those temporary activities should never be considered in our park lands, because that land is irreplaceable. So for me, we've come a long way. We [the government tiers, state and local] have no major developments [on the horizon], but I promise you the debates that I have run through will recur."

In summary

"The arguments that are put to us will be the same, and the arguments against developments have to be finalised, shaped and improved, because we know what they will say about every development: 'It's always a good idea. It's always in a beautiful place. It will always go to Sydney if we don't put it here'. And it will always have, as the bottom line: 'It's cheap land'. But it's not cheap; it's priceless. And the people in this room, I think, have come together because they have a common purpose, which will be to preserve our park lands, because it is finite; it is irreplaceable; it is priceless, but regrettably, not everyone in our community understands that, and we must be ever vigilant. Thank you."[9]

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[8] Community Land Management Plans were at the time new concepts, required under recent amendments to the *Local Government Act 1999*. Their purpose was to prescribe park lands management direction. The city council did not begin to write them for the park lands until 2004. The process took until 2009 to (almost) complete.

[9] Dr Jane Lomax-Smith, ibid.

56 | What ought to be done? A contemporary reflection

City of Adelaide property owner rates fund an ostensibly well-oiled machine to manage the park lands in the care and control of the city council. It's a machine whose managers if challenged would confidently attest that it delivers 'best practice' community land management, contributing to a South Australian culture of park lands decision-making perhaps as unique in Australia as are the Adelaide park lands themselves. But it's not best practice by any definition, and long before the state's 200th anniversary arrives, some things ought to change.

"Ultimately is does not matter what structures are devised, or what legislation is enacted to protect the park lands. There will always be those who will seek to find ways to alienate the park lands for their own purposes, if the people of Adelaide are not constantly vigilant and vocal in their determination to maintain them."

– Extract: Jim Daly, *Decisions and disasters, Alienation of the Adelaide Parklands*, Bland House, 1987, page 183.

The content of Jim Daly's extract is well polished by time. It deserves a fresh perspective.

Pastures of plenty has examined in close detail the legal, administrative and procedural superstructure of complexity that has grown to manage Adelaide's park lands over the two decades to 2018, the end of the study period of this work. It is now more complicated than ever, which might (falsely) suggest that administrators and politicians have learned from their mistakes and misunderstandings of the past and implemented vastly improved mechanisms. But the exploitation and alienation of sections of the park lands has continued. Those administrators, and especially politicians, have learned – and since 1998 adopted multiple ways to continue occupying the park lands for exploitative reasons in ways their career predecessors pledged should cease and would cease. Those pledges usually occurred around election periods but, after the poll, were quietly forgotten.

A lawyer might suggest that the reason why park lands matters are so complicated is because the law is complicated, and the apparatus that arises from the law for managing park lands is made up of many legal and administrative parts. A sceptic might suggest that this is a convenient excuse that does not address the game being played. The sceptic might observe that park lands matters are complicated because those legal and administrative mechanisms make it difficult for South Australians to comprehend – let alone participate in – the means to ensure protection from exploitation of the park lands open spaces.

The public discourse

Daly also recommended that there occur 'a continuing public discussion of issues that relate to development and control'. "A conscious effort to educate the public and to overcome any misguided complacency should be ongoing and well organised."[1]

The implication is that government at state and local government level should assume this responsibility, and undertake efforts at educating the public about park lands management and administrative (and legal) complexities, especially at times when the first hints of a change appear. However, neither the state nor local government appears to accept this responsibility. Although South Australians are sometimes aware of proposed changes in regard to the management of the park lands or new development projects, the public become aware of most of them only very close to the time or just after the changes are implemented. Given this, few fully understand how or why they came to be. Moreover, there is no user-friendly resource, accessible once a determination has been made, to fully and openly describe and explain all of the deliberations behind the determination that might explain the 'what, why and how' of park lands legal and administrative change. Moreover, as time goes by, the traces of contemporary information that may have been in circulation (for example in those superficial *YourSay* public consultations) are quickly overwhelmed and buried by more recent records. Of course, there are archives of records going back many years tracing the *formal* pathway of the determination, as long as discussions and background material were not subject to ubiquitous and sometimes long-lasting confidentiality orders. Unfortunately, these orders have been much more commonly applied than most observers realise, especially about park lands matters likely to be politically controversial. If such orders obscure aspects of the paper trail, the record is essentially compromised, and over the years there have been no administrative apologies for that. Furthermore, archives are not the same thing as objective explanations that a journalist pursuing simplicity and brevity might deliver.

The fourth estate

Members of Adelaide's communities seeking to find the answers to the what, why and how questions (among others) also have not been assisted much by the media, the estate that South Australians hope might fulfil the role of educating the public. This problem goes back to the analogue media dominant in the decades of the 1990s and the noughties, leading up to the period when digital media, for many, became the principal source of news. But in the older, formal news media domain, dominated by print media and informed by trained journalists well experienced in gathering and assessing information, there endured several problems. South Australian print journalists have rarely probed the background administrative, procedural and content terrain behind park lands land-use decisions, where answers to the what, why and how questions might be found. This is despite the fact that this terrain has often highlighted evidence of political participation and controversial,

[1] Jim Daly, *Decisions and disasters, Alienation of the Adelaide Parklands*, Bland House, 1987, page 183.

sometimes secret, procedures and directives, which media practitioners are usually keen to expose. Moreover, it is only print journalists who would seek to explore in depth topics buried in the administrative and procedural terrain. Electronic (radio and TV) news media's obsession with superficiality rules out detailed scrutiny. And social media's similar obsession with superficiality also rules it out.

The importance of print journalism to healthy democracies can't be underestimated. In 2017, Australian journalist Fergus Hanson of *The Weekend Australian* noted it well. "Journalists do not just transmit information. They decide what information to transmit. And herein lies their truly important function in democracies: stewardship. … Journalists traditionally have set the parameters of all political debate."[2]

Scrutinising the 'fine grain'

A second, and equally important principle applies. Examining the fine-grain mechanisms behind the complex document superstructure of park lands management has been something few print journalists had the skills to do or, more commonly, the time or the motivation to do. Furthermore, in the past there was doubt within many media outlets that such detailed information was of news value. This is a conscious executive journalistic decision, and highlights the style of print journalism dominant during the period of study (1998–2018) in South Australia. During the first half of that span of years, newspaper journalism in Adelaide was dominated by a monopoly run by News Ltd (in recent years retitled as News Corporation Australia). Much South Australian News Corporation journalism tended to be brief, superficial and park lands coverage was patchy. As the years moved toward the second decade of the 21st century, although other digital news outlets emerged, this superficiality endured. Park-lands-related news was undeniably covered, and regularly. However, it was most commonly a style of coverage that sought out and preferenced political alarms and uproars related to park lands matters, rarely with substantial explanatory background. There also was a dominating appetite for triviality and satire. It was a style that pursued a 'winners and losers' view of the world, using the standard 'he said/she said' model of reporting to deliver an illusion of balance. And, in the main, it was news coverage that reported outcomes that were, most commonly, when a matter was close to, or had reached, a conclusion. The background explanation was almost always missing. For many South Australians this presented a difficult challenge in terms of being well informed about park lands matters. At a time when many might have sought to explore and participate in a park lands decision, the media picture presented was, more often than not, a picture of a 'done deal'. That done deal (what and when) might be fascinating, but so could matters explaining who, how and why.

Some online digital media in the years leading up to 2018 did begin to publish reports of greater accuracy and better depth than the older print media. However, in the business of news (and it is a business), investigative journalism is time consuming and expensive. To compensate for this, digital models tended to

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[2] Fergus Hanson, *The Weekend Australian,* 'Undermine media and say goodbye democracy', 3–4 June 2017, page 20.

capitalise on 'opinion' journalism, supplied by contributors, often provided at no cost to the outlet. This business approach to journalism delivered an unpredictable, sometimes inconsistent narrative, compared to that which might have been delivered by a salaried, full-time reporter investigating and pursuing a park lands news story from inception to conclusion.

The paper trail

Administrators of park lands management machinery might argue that the fresh and detailed paper trails, in agendas and minutes, that emerged after the Adelaide Park Lands Authority began to meet in 2007, have allowed South Australians to access monthly material presenting thorough background to inform future park lands decisions. Others also would highlight the paper trail that followed, through city council agendas and minutes that informed, and helped deliver, final determinations. These to some extent did deliver a fine-grain record; however, it was a record that, in the main, more often than not covered only later-stage discussion. It also discounted the existence of legal provisions allowing for early stage multiple discussions, workshops and briefings – information analysis – whose records were often unavailable to the public because of confidentiality order provisions that could be triggered under the *Local Government Act 1999*. Data examined in an appendix to this work highlight a substantial record of park lands subjects, the discussion of which began their procedural lives under confidentiality orders that could remain in place for long periods.[3] These rules allowed the administrators, with the endorsement of elected members, to have a matter declared confidential using a wide range of excuses. Except for the law's proforma excuses themselves, no detailed explanatory rationale need be tabled. There was no appeal mechanism available to a frustrated public. It meant that no content detail about the matter declared confidential could be published during the period of the order. Subsequent researchers quickly discovered that the absence of certain records compromised what would otherwise be a full file of background to which South Australians ought to have access. This was especially frustrating when exploring matters subject to a public consultation phase, or when probing the background to a draft recommendation. Under this arrangement, both the Adelaide Park Lands Authority and the city council could pursue an extended discussion pathway, the contents of which could remain secret, even after the emergence of open-door subsequent discussion. Administrators and elected members also could move back into 'confidentiality' mode during this phase, and records of those discussions could also remain secret, sometimes for many years. The practice of excessively declaring matters 'confidential' had sinister overtones, as former area councillor (2007–2014) and Deputy Lord Mayor David Plumridge noted in 2018:

> "Adelaide City Council far too often makes its decisions behind closed doors using the excuse that the business is 'commercial in confidence'. My view as a former councillor invariably was that if the other party wasn't prepared to deal in public then there should be 'no deal'. More often than

[3] See Appendix 23: 'Council secrecy orders – park lands key data'. The use of these orders is explored in Chapter 46: 'The secrecy tradition'.

> not confidentiality was used by secretive councillors – led by the administration – to avoid possible later embarrassment [but] that reason [excuse] for confidentiality is specifically excluded in the Local Government Act."[4]

An exploration of the legal provisions under sections 90 (2) and (3) of the Local Government Act, and their allowances and consequences, appears elsewhere in this work.[5] Moreover, two appendices further explore the confidentiality culture that thrived during the period of this study.[6]

The digital trail

So much for the 'paper trail'. In regard to the digital trail, another procedure that was sometimes triggered before the Adelaide Park Lands Authority created final summary papers and recommended resolutions to the council was a public consultation, via the *YourSay* model, a city council digital consultation mechanism. A similar mechanism was used by the state government. An exploration of this procedure and its features appears elsewhere in this work.[7] It illustrates that not all is as it is claimed in terms of public access to detail, fair and objective analytical backgrounding of detail, subsequent response sampling, and analysis of the sample results. One classic case study, for example, presented 2017 evidence of a response sample that overwhelmingly said 'no' to a proposal (some comprising submissions of significant length), but which were followed by a confident 'yes' determination at both Authority and council level.[8] There was no rationale left in the paper trail. The same test case illustrated how easy it was for the sample to be corrupted by external commercial forces, to bias the result. There was no rationale left in the paper trail to explain the abandonment of the consultation; indeed, there was a resounding organisational silence driven by embarrassment at local government level. It illustrated something few notice – that park lands determination records are crafted by the very bureaucrats and administrators who would either leave an explanatory trail that reflects favourably on their advisory work – or none at all, encouraged by the very people who make the subsequent determination. The additional use of euphemism, jargon and plain humbug was but one sign of the advisors' ability to imbue that complimentary trail with language highlighting and justifying the apparently rational nature of their discussion, and the infinite wisdom of their recommendations.

The *YourSay* mechanism also illustrated a trend towards the end of the study period of this work of an increasing reliance on superficial 'agree/disagree' sampling. It has been relied on by city council elected members to justify what might be called 'the

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[4] David Plumridge, personal online response (as a form of 'letter to the editor') to report: *InDaily*, 'City council investigation fails to uncover media sources', 9 July 2018, https://indaily.com.au/news/2018/07/09/city-council-investigation-fails-to-uncover-media-sources/.

[5] See Chapter 46: 'The secrecy tradition'.

[6] See Appendices 22 and 23.

[7] See Appendix 25: 'Case study: *YourSay*'.

[8] The matter is explored in this work's Chapter 31: 'Hot air and helicopter plans'.

inherent wisdom' of park lands determinations. A strong 'agree' sample makes it possible for these members to avoid acknowledging the poverty of the background matter provided to potential respondents and the nature of the questions posed, and instead to focus on what is sometimes perceived to be not much more than an ideas popularity contest.

'Educate the public'

Jim Daly's recommendation in his 1987 book for a 'conscious effort to educate the public' also calls up considerable challenges. This work may be seen by some as one effort to deliver on this aim. But as this work's contents reveal, park lands matters have faced complicated hurdles to easy comprehension. The city council's park lands agendas reflected a false assumption that a curious reader understood a highly complex subject, whose determinations were informed by complicated other policies and statutory instruments of park lands management and planning. Non-lawyers often find it difficult to read and understand the provisions in a statute, or to rationalise how another statute with which it interacts informs and guides the provisions of the first statute. And then there are the administrative planning references. For example, over the study period of this work it was evident that most South Australians had difficulty in reading and interpreting aspects of a development plan, based on planning and development law – the manifestation of that interminably confusing and risky quicksand of language that one might call 'planner-speak'. It is very difficult to understand what some legal or planning jargon really means, let alone predict how experts might interpret it. Moreover, it is sometimes baffling to try to understand how and why an administrator has interpreted sentences and descriptions of concepts of park lands zone 'desired character', that appear to plain-speaking people to be, at best, ambiguous. And in terms of following the structure of development plans, for newcomers it was sometimes akin to arriving in a never-before-visited foreign city and finding one's way across a maze of streets, where all the signs are in a foreign language.[9]

'Overcome . . . complacency'

Jim Daly's call to 'overcome any misguided complacency [and ensure that it is] well organised' was, and remains, an ideal. The issue of complacency – a close cousin of apathy – was everywhere at year-end 2018.[10] Causes included the difficulties in probing park lands administrative complexities. Another was the way the media covered (or didn't cover) park lands complexities. A third was the way people lived very busy lives. But a fourth might be the most telling. It was that, over the years, there have been so many political and administrative shenanigans, confidentialities

9 At year-end 2018, the end of the period of this study, planners were anticipating the replacement of the *Adelaide (City) Development Plan* by a new *Planning and Design Code.* Signs emerging early in 2020 suggested that the code would be similarly difficult for the public to comprehend. It did not come into metropolitan operation until 19 March 2021. Its complexities and ambiguities prompted much controversy, much of which remained unresolved even as late as December 2022.

10 Nothing had improved as at December 2022.

and ambiguities, and so much chicanery practised within and without the park lands administrative bodies – state cabinet, Capital City Committee, state government departments, Adelaide Park Lands Authority and city council, as well as in state parliament and its committees – that people likely to have the time and the energy to devote to 'the chase after illumination' over time just tire out. They lose their enthusiasm. The enduring nature of the administrative apparatus, with its constant updates and revisions, requires of South Australians a significant, long-term stamina – as well as a superhuman capacity to 'second guess' what is going on behind the scenes.

Eight years before the end of the study period of this work, one of Adelaide's park-lands-aware senior journalists, Rex Jory, noticed early signs of this phenomenon. "South Australians seem to have lost the appetite to fight to preserve Adelaide's park lands. It's as if we have been worn down by the pernicious demands of governments and developers to nibble away at our unique city green belt. ... It must stop."[11] But the year in which he wrote that, 2010, would see the beginning of a significant new wave of park lands development projects, in the form of a new Adelaide Oval stadium, a Torrens footbridge, a huge hospital and six-storey high school (among others). These were all prosecuted, against public resistance, by a state government whose tireless energy contrasted with that of the energy of the people who objected to the alienation.

But these were not the people who, on large salaries at local and state government level, worked normal business hours tasked with park lands management challenges. These were not the people who had access to extensive facilities funded by generous state budget allocations at their park lands administrative workplaces. These were not the local government people who routinely (and often only after a few years) had their energies refreshed with replacement staff or new elected member teams, who enjoyed access to well resourced administrative and interpretive advice and support staff. These were not the lawyers and other experts who were called upon to deliver complex advice that, at local government level, was almost always immediately subject to confidentiality clauses which meant that the advice never accompanied the paper trail to assist the curious outside the machine. These were not the people of the machine. They were, in most cases, passive observers battling significant administrative odds, notwithstanding access to some online sources. They were mere ratepayers and taxpayers trying to make a living in a city that boasted of its unique 1837 design and exemplar open space estate surrounding it.

City of Adelaide property owner rates fund an ostensibly well-oiled machine to manage the park lands in the care and control of the city council. It's a machine whose managers if challenged would confidently attest that it delivers 'best practice' community land management, contributing to a South Australian culture of park lands decision-making perhaps as unique in Australia as are the Adelaide park lands themselves. But it's not best practice by any definition, and long before the state's 200th anniversary arrives, some things ought to change.

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[11] Rex Jory, *The Advertiser*, 'Comment', 29 November 2010, page 18.

57 | What *can* be done?

The observations and arguments contained in this chapter do not relate to circumstances where the South Australian state parliament can debate and pass project-oriented development legislation regarding specific land-use proposals within the boundaries of the Adelaide park lands. The passing of such legislation has been the exception rather than the rule.[1]

Excepting those circumstances, and regarding the period of study of this work (1998 to 2018), the park lands laws are at the heart of the challenge. There is more than one piece of legislation, but a priority needs to be amendment of the *Adelaide Park Lands Act 2005* to remove various flaws and loopholes.[2] A key problem manifests as an inability to balance two matters: the planning-related opportunities allowed to South Australia's executive government and/or the planning minister (control of land use for development purposes) versus the aspirations of South Australians to prevent further exploitation of and alienation from their park lands. The tension between these cannot be resolved until the legislation is addressed.

It is not argued here that the *Adelaide Park Lands Act 2005* become a substitute for the *Planning, Development and Infrastructure Act 2016*, only that the 2005 Act's park lands management overview play some role in influencing the spirit and intent of the 2016 development legislation with which it interacts. Clearly, the 2005 idea that including Statutory Principles in the 2005 Act as a means to influence the 'exploit or protect' tension can by now be seen to have spectacularly failed.[3]

The *Adelaide Park Lands Act 2005* also needs to be amended in other significant ways. There are some implied intentions in the Act that appeared theoretically appropriate in 2005, but have been challenging to put into practice. Of additional concern, there are silences that have allowed administrators to adopt and adapt their own management approaches that result in the creation of strategies, policies and practices that allow exploitative outcomes.

Until change occurs, the disputes, raids, ruses, larks and lurks that have characterised the management of Adelaide's park lands since the enactment of the *Adelaide Park Lands Act 2005* will continue. The Act was supposed to signal the end of the reign of alienation and exploitation of this great state asset. But, if nothing changes, South Australia will reach the 200th anniversary of Colonel Light's Adelaide City Plan in 2037 still shackled by a flawed system, suffocated by layers of multi-level, legal and administrative complexity and secrecy.

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[1] The *South Australian Motor Sport Act 1984*, and, during the period of study (1998–2018), the *Adelaide Oval Redevelopment and Management Act 2011*.

[2] To explore the loopholes left open in the Adelaide Park Lands bill during 2005 parliamentary debates, see: Chapter 49: 'The loopholes lurk, part 1 of 2'.

[3] The Statutory Principles are critiqued in Chapter 54: 'Semantic alienation across the park lands pastures' (see Table 2 of that chapter) and their year 2000 origins are explored in Appendix 15 of this work: 'The triumphal delusion: the pursuit of the park lands Statutory Principles'.

These features have benefited state bodies and commercial sport and other recreation cliques, and they highlight a development model that cannot wean itself of an enduring desire to capitalise on the existence of free, city edge land.

Adelaide is the only Australian capital city that has such a large area of public open space surrounding it, relatively intact after more than 180 years of settlement. A national ideological commitment to its 'protection' and preservation – the National Heritage listing of 2008 – ought to have diminished by now an appetite to exploit it further. But although the state was content to support the commonwealth listing, the state remains unwilling to curb the development appetite. This is because the listing is, in reality, toothless in thwarting economic development concepts and commercial propositions for development on the park lands.[4]

The park lands policy management system and procedures (the 'protection regime') is also too complicated for non-expert observers to comprehend, and even where deliberations are transparent, which is rare, the system's myriad policy and procedural complexities baffle most observers. This is unsatisfactory.

The *Adelaide Park Lands Act 2005*

Chapters in this work explore the way in which the Adelaide Park Lands Authority and the city council were operating at year-end 2018, and enduring even to 2022, 15 years after the Authority commenced operations.[5] It is worth looking at the symptoms of a system that grew over many years as a result of the *Adelaide Park Lands Act 2005*. The process issues distil to this:

- The Act said little about the administrative burden, and nothing about the funding burden, to be left at local government level, under one corporation.
- The Act was and remains unclear about the operational relationship between park lands management, strategy and policy; in other words, how administrative action should be guided and implemented. It was left to administrators to adapt to the new legislative requirements, not only to the Act's sometimes-ambiguous provisions, but also to the provisions of other interacting Acts, such as the Development Act (which has now become the *Planning, Development and Infrastructure Act 2016*) and the *Local Government Act 1999*. A convoluted local management framework resulted, characterised by myriad complexities, obese weight of policy documentation, and potential for policy contradiction as policy documents aged and required updating. This led to 'misalignment', a euphemism for conflicting (and sometimes contradictory) sources and subjects of policy over time. Moreover, this would occur in an administrative culture nurtured by the secrecy provisions allowed under interacting legislation. It meant that the public did not perceive how messy was the administrative terrain.

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4 See Appendix 30: '10 popular myths about the rules regarding Adelaide's park lands' – myths #9 and #10.

5 See Chapter 51: 'The park lands policy system that struggles to work' and Chapter 52: 'A quagmire of policy connection and coherence'.

The major symptoms

Until change occurs, these park lands management symptoms will continue to manifest:

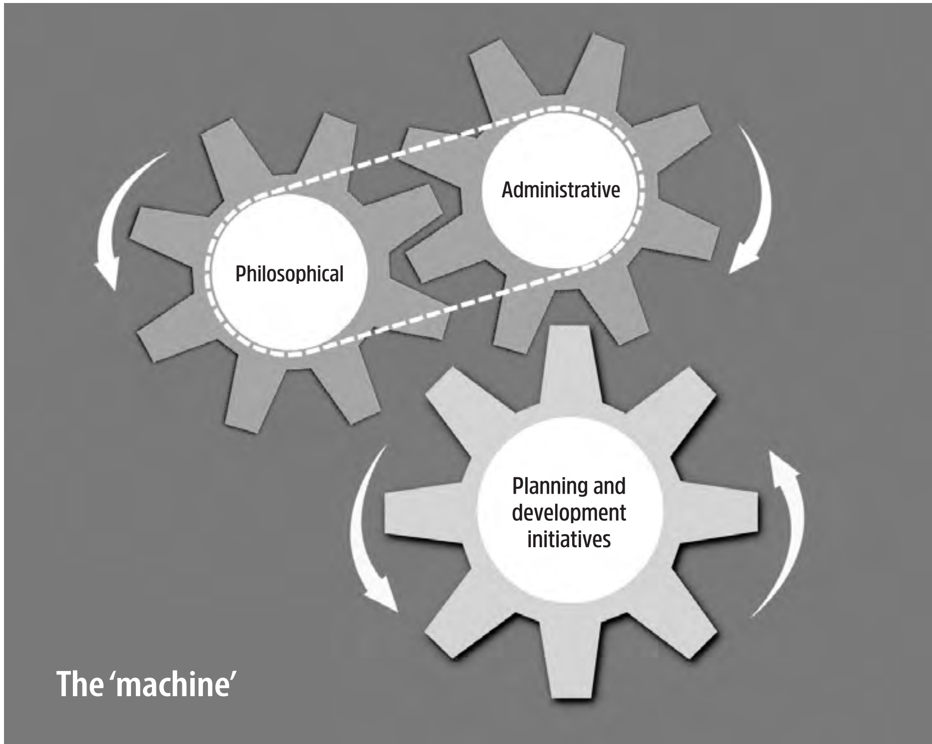
- No planning-related independence from the state executive or the planning minister.
- Ambiguous park lands strategic management planning, often subject to periodical political influence through an enduring ministerial control.
- Poor procedural transparency.
- Inadequate public participation in decision making and inadequate public consultation legislation and procedures.
- Inadequate equity in funding responsibility, burdening the park lands custodian, the Adelaide City Council, with most of the administrative and maintenance cost.

Most of the debates and disputes arising in the recent history of Adelaide's park lands can be traced to one or more of these aspects. This work contains a detailed historical exploration of the so-called legislative revolution that occurred between 2002 and 2006 and management intentions at the time to create a new approach. In 2006 a new law promised a wholesale redesign of the park lands management framework. Protagonists at the time suggested that a future culture of transparency and accountability would emerge. But like all revolutions that envisaged much, the new framework has turned out to be as flawed as the previous one because not only did it allow adoption of inadequate mechanisms, but it also expanded the scope for system complexity. A core feature was continuity of total control in planning terms by the state executive and planning minister, through government departments. The post-2007 exploitation of the park lands has been at times on a scale much worse than before 1999, when the first *Park Lands Management Strategy Report 2000–2037* was published to so much acclaim and in anticipation that the ad hoc exploitative habits of the past would cease.[6]

> The rationale for full transparency is simple. Adelaide's park lands are a public asset; they are publicly funded community lands, and any contemplations about access, future land-use development and arising potential exploitation ought to be 'an open book' at all stages of discussion.

6 For an overview of that ground-breaking study, please refer to Chapter 11: 'The first *Park Lands Management Strategy Report*'.

Figure: How the Adelaide park lands 'protection' machine is assumed to work



The park lands 'protection' machine is represented by the state government and the City of Adelaide as a methodical and highly functional administrative model, balancing application of the philosophical fundamentals in conjunction with an orderly administrative approach incorporating policy checks and balances to 'protect' the park lands. Curiously, this word is not defined in the *Adelaide Park Lands Act 2005*, and neither is the word 'enhance', which appears in the Act's list of Statutory Principles.

The seven principles are an enduring source of ambiguity. They feature statements open to wide interpretation, enabling park-lands-related procedural manipulation at policy and especially development assessment stages.

Nine features of the City of Adelaide's 'protection' regime

1. Although the City of Adelaide is the 'custodian' of a large portion of the park lands, its role is primarily administrative and operational (for maintenance purposes), and at its own high cost. Despite its 'care and control' role, any park lands administrative determinations it makes can be – and often have been – overruled by the state minister responsible for the Act.
2. The *Local Government Act 1999* allows park lands matters under contemplation to be declared secret by the Adelaide City Council, via confidentiality orders. Once formalised by elected members, such secrets can endure as long as city council administrators determine. An order cannot be appealed by a member of the public. Each year many administrative subject matters are declared secret, and many of those relate to the park lands.

3. Any park-lands-related communication to the City of Adelaide from the Capital City Committee or a government minister is defined as an 'in-confidence' matter (*Local Government Act 1999*, and *City of Adelaide Act 1998*) and blocked from public access.
4. The Adelaide Park Lands Authority ('Kadaltilla') is a subsidiary committee of the city council, whose role is to provide advice. Despite a public illusion that its board is the central repository of all post-2005 park lands administrative knowledge and experience, there is no legal requirement for the Authority to explore or comment on every park-lands-related matter. At times the Authority has been tactically excluded from exploring matters and giving advice to the council, depending on the political sensitivity involved, especially where issues relating to 'protection' arise.
5. The Authority's advice carries no determination authority unless a state minister agrees. Choice of government-elected board members is controlled by a state minister. Under the Authority's charter, board members must abide by a culture of confidence if imposed; in other words, to restrict matters from public access.
6. A requirement of the *Adelaide Park Lands Act 2005*, that the Adelaide Park Lands Authority, Adelaide City Council and the state government must reach agreement on a management strategy, is a political fantasy created by the Act's authors. In reality, the state government rules on the content of the management strategy, and the document, the *Adelaide Park Lands Management Strategy*, carries no authority until a state minister has endorsed it.
7. Evolution of the contents of the two key policy documents (*Adelaide Park Lands Management Strategy* and the *Community Land Management Plan*) is coordinated by the Adelaide City Council. But neither document has any authorised currency unless approved by the minister. Amendments also must be approved by the minister.
8. The Adelaide Park Lands Act's confusing requirement that a *Community Land Management Plan* (CLMP) for the park lands must be consistent with the management strategy has never been adequately addressed among City of Adelaide administrators. This is because the two have different purposes, each arises from separate statutes, and each evolved at different times. The Strategy is an action plan (but curiously, is unfunded and has no key performance indicators or action-plan timelines). Conversely, the CLMP is a management plan, designed to record existing land-use features and establish a future vision for parks or groups of parks to guide land manager (council) decisions. Version evolution of each since about 2009 has been influenced by the state, through the minister.
9. Exploitation of the park lands for economic purpose arises mostly through the state's control of land-use determinations, under the *Planning, Development and Infrastructure Act 2016* and its instrument, the *Planning and Design Code*.[7]

[7] This code came into metropolitan operation on 19 March 2021. It replaced the former *Adelaide (City) Development Plan*.

The City of Adelaide's priorities for park lands management have sometimes conflicted with state priorities, but under the park lands 2005 legislation, a state minister remains in full control. Almost all of the ministerial determinations since 2005 have been politically driven for the benefit of government (public infrastructure), or commercial operators (private infrastructure, sometimes financially assisted by commonwealth, state or local government).

These have been the principal sources of the progressive alienation from public access to the Adelaide park lands since the passing of the *Adelaide Park Lands Act 2005*.

The 'cogs and wheels' – elements of the machine

Philosophical

The seven Statutory Principles in the *Adelaide Park Lands Act 2005*.

Administrative

The City of Adelaide's 'protection' regime:[8]

- "Provisions of the *Local Government Act 1999*."
- "The establishment of the Adelaide Park Lands Authority ('Kadaltilla')."
- "The requirement for the Adelaide Park Lands Authority, the City of Adelaide and the state government to reach agreement on a management strategy which is to be subject to periodic review."
- "The obligation on the City of Adelaide to ensure there are community [land] management plans maintained in respect of the park lands which must be consistent with the management strategy."

State Planning and Development Initiatives

The tools – principal law, and instrument:

- The *Planning, Development and Infrastructure Act 2016*
- The *Planning and Design Code* for the park lands zones.

The statutory reference guidelines:

- *Adelaide Park Lands Management Strategy*
- The *Community Land Management Plan.*

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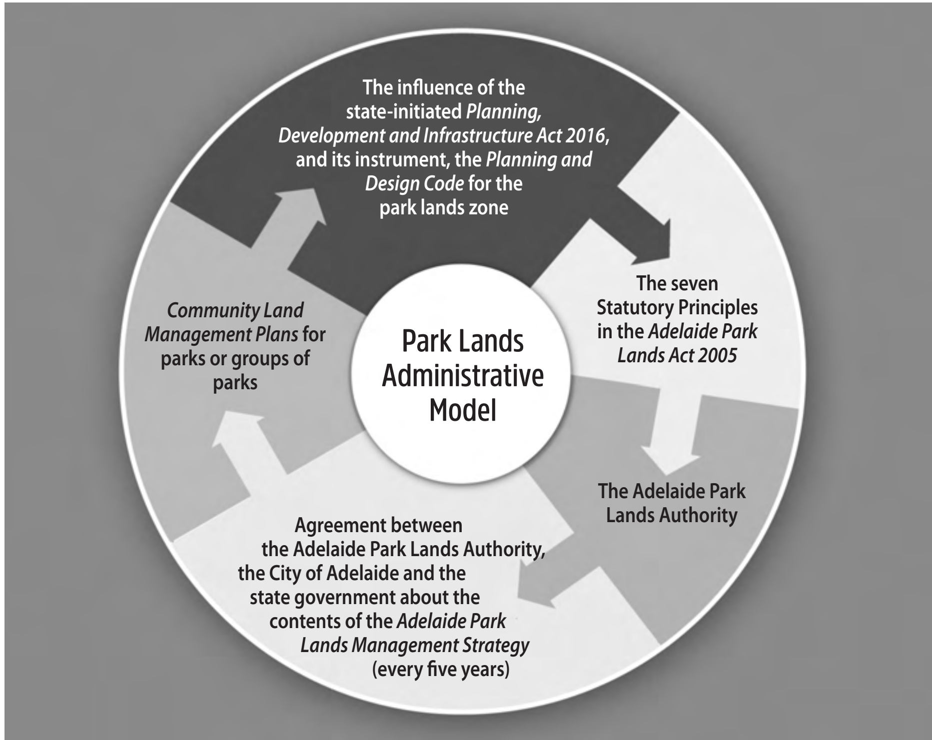
[8] This descriptor and the bullet list contents are an extract from the Adelaide City Council's submission to the [South Australian Parliament's] Select Committee on the 'Redevelopment of the Adelaide Oval', published on 30 January 2019, page 6.

Figure: How the Adelaide park lands 'protection' regime might be perceived by South Australians[9]



The park lands administrative model. It exhibits many of the elements required by the *Adelaide Park Lands Act 2005* and illustrates how its authors hoped it would operate. In practice, its features encourage an enduring tension between the objectives of state versus local government (Adelaide City Council as custodian). It is influenced by: ambiguous Statutory Principles; some interacting legislation unsympathetic to transparent park lands management; planning instruments that enable state-executive-initiated land-use exploitation; and periodically revised statutory policy instruments whose evolving contents are subject to politically driven initiatives influenced by the state government.

Recommendations

Each of the recommendations that follow call for the South Australian state parliament to revisit some legislative matters, and amend some responsibilities that it delegated when it passed the *Adelaide Park Lands Act 2005*. Delegation is what parliaments can do when passing legislation, especially regarding administrative matters to be addressed by other tiers of government – in this case by local government (the Adelaide City Council as custodian of much of the Adelaide park lands).

It is by now abundantly clear that, with regard to the management of these park lands, the 2005 legislation has not delivered an administrative model that many South Australians anticipated in 2005.

[9] This is a figure created to illustrate the elements of the machine by the author of this work. It is not a City of Adelaide or state government graphic.

Recommendations listed under Section B are less feasible politically. They call for state parliament to make an advance commitment about protecting the park lands from new development projects. A parliamentary commitment to deliver long-lasting protection from major, alienating developments on the green, open spaces could have profound consequences.

Section A

REVIEW the *Adelaide Park Lands Act 2005*

- **Review the *Adelaide Park Lands Act 2005* to enable it to influence interacting development legislation by limiting that legislation's scope to allow rezoning of, and alienating development on, land within the Act's Adelaide Park Lands Plan.**

  ACTION: Review the nexus between the *Adelaide Park Lands Act 2005*, and the *Urban Renewal Act 2013* and state development legislation (formerly the *Development Act 1993*, which is now the *Planning, Development and Infrastructure Act 2016*) in regard to development on the park lands.

ADDRESS transparency issues

- **End the secrecy relating to all park lands deliberations.**

  ACTION: Review the nexus between, and the contents of, the *Adelaide Park Lands Act 2005* and the *Local Government Act 1999* and the *City of Adelaide Act 1998*, in regard to the latter two Acts' confidentiality provisions.

- **Improve public consultation processes and end 'sham consultation' about park lands proposals.**

  ACTION: Review provisions under the *Local Government Act 1999* in regard to public consultation on park lands matters.

INITIATE wider administrative collaboration

- **Acknowledge the need for cooperation about park lands management decisions with other adjacent inner-city council corporations.**

  ACTION: Bring in surrounding, inner-metropolitan local government corporation participants, to collaborate with the city council in relation to the management of park lands decision-making.

BROADEN equity of funding

- **Legislate to ensure these participant corporations share the funding burden (currently limited to one city corporation: the Adelaide City Council).**

  ACTION: More equitably fund the management and maintenance role of Adelaide's park lands, via inner-metropolitan local government contributors to share the financial load, to remove the exclusive administrative burden that is currently quarantined to the Adelaide City Council and its small ratepayer base via the existing funding arrangement.

IMPROVE processes regarding Park Lands Management Strategy

- **Clarify the Adelaide Park Lands Act's intentions with regard to the content and implementation of the park lands key periodical action plan, the *Adelaide Park Lands Management Strategy*.**

  ACTION: Amend the *Adelaide Park Lands Act 2005* to address implementation 'silences' in regard to future versions of the *Adelaide Park Lands Management Strategy*.

- **Amend the *Adelaide Park Lands Act 2005* to ensure that the Strategy, while an action plan, must under law match aspiration with specific funding.**

  ACTION: To avoid creation of future uncosted and often ambiguous 'wishlists', amend legislation to require specific, approved allocation of funding for any particular 'activation aspiration'[10] before the minister can authorise future versions of the Strategy.

Section B

REVISIT the 1999 Lewis proposition for parliamentary park lands development proposal scrutiny

- **Remove from executive government and/or the planning minister the ability to trigger certain park lands rezoning or development proposals.**

  ACTION: Adopt legislative change through the *City of Adelaide Act 1998* to remove from executive government and/or the planning minister the ability to trigger certain rezoning or development proposals on land within the Adelaide Park Lands Plan[11] without prior parliamentary scrutiny.

- **In certain circumstances allow South Australians to have a say in a referendum.**

  ACTION: Create a new referendum function through an amendment to the *City of Adelaide Act 1998* to allow South Australians to have a say about proposals submitted to state parliament regarding development on land within the Adelaide Park Lands Plan.

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[10] What does 'activation aspiration' mean? The 2016 version of the *Adelaide Park Lands Management Strategy 2015–2025* (still operationally current as at late 2022) featured 10 'Big Moves', featuring mostly major recreational development projects across the Adelaide park lands. The government and the city council described these as 'activation' projects. However, the Strategy at 2016 was unfunded. Each project would depend on future council or state money. This reflected an action-plan model containing 'aspirations' but dependent on unpredictable future council budgets and, in particular, even less predictable discretionary state largesse.

[11] The plan created under the provisions of the *Adelaide Park Lands Act 2005*. This was a product of section 14 of the Act, clarifying the boundaries, the precise extent of the park lands, and registered proprietor or custodian (Corporation of the City of Adelaide, or state ministerial portfolio(s) or other agencies (universities, state authorities or the Australian commonwealth government)). The city squares are included in the plan.

Aspects at issue

1. Land-use planning
2. Transparency
3. Public consultation
4. Administrative equity
5. Strategic action planning

1. Land-use planning

Pursuit of greater independence from total ministerial control will always be a highly controversial topic because it explores and challenges the power of the state to control land-use planning matters. Long-term public opinion has held that decision-making about the Adelaide park lands needs a greater degree of independence from the state, and particularly the state executive.

The state occupies a central but conflicted role. When pursuing public land state planning outcomes it is motivated most often by the simple fact that the most of the open space land identified in the Adelaide Park Lands Plan under the *Adelaide Park Lands Act 2005* is free to be occupied in temporary or permanent built form. Given the long record of park lands exploitation by the state, many South Australians have good reason not to trust it to 'protect' the estate from alienation through development. Recent park lands history (since the 1990s) has illustrated the tenacity with which the state has maintained Adelaide park lands land-use control, despite periods during which South Australians expressed a clear desire for that control to be more independently and transparently managed, as well as land-use disputes arbitrated.[12] This view applied even among some elected members at city council local government level who were frustrated by the state's legislative and systemic grip that has thwarted potential for more transparent park lands management, especially transparency of decision-making.[13]

Planning law

Planning law is (among other things) about managing a complicated matter known as land-use 'development', which has a special legal definition. Development controversies and confrontations across the park lands zone policy areas litter recent history. The state has been, by a wide margin, the chief exploiter of Adelaide's park lands, capitalising on its open spaces as free land easily accessible to exploit and develop. The challenge is to temper its capacity to do this in the absence of adequate checks and balances.

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[12] The public bid to see created an independent management 'Trust' during the first term of the Rann Labor government underscored this, as did Labor's 2002–06 administration's short-term enthusiasm to deliver. It never did. This was a critical period in contemporary park lands history. See this work's Part 5, Chapters 17–22, beginning with Chapter 17: 'Regime change'.

[13] For example, research in this work describes the challenges that could face city Lord Mayors. See Appendix 3: 'Four common traps for newly elected Adelaide Lord Mayors who pledge to 'protect' the park lands'.

Under the planning system park lands dirt is perceived by state planners as similar in development terms to any other South Australian dirt. However, continuing a long tradition, the policy wording in the planning assessment instrument relating to the park lands zone policy areas had been traditionally written in a way that expressed a widely held view that the park lands were a special place, different from land in a city residential or commercial zone. Theoretically, the pursuit of infrastructure and other built-form development projects on the open spaces was assumed, perhaps naively, to be the exception rather than the rule.

The planning instrument that operated during the 1998–2018 period of research was the *Adelaide (City) Development Plan*. This was replaced on 19 March 2021 by the *Planning and Design Code*, featuring various park lands zones and sub-zones. The revision of the instrument ensured continuity of a means to inform planning determinations, as well as future rezoning.

Critical aspects to address:

- If the park lands are to be 'protected' from development that many observers claim is foreign to their landscape and cultural history, and alienating in public access terms, the planning instrument should be reviewed and significantly amended.
- The intention should be about making it very difficult for state executive decision-makers to contemplate and facilitate development and/or rezoning that compromises the park lands character and landscape. A research chapter in this work explores a 2001 parliamentary select committee in which a planning expert gave advice. He said: "I think that the best thing we can do – and this applies across the whole state, not just to the park lands – is to be clear about our development intentions. My view is that the clearer the document, the better for all, and the clearer the city development plan [is] the better for all concerned. People often ask, 'How do you have a planning system which gives certainty but which is flexible?' I would argue that we can deliver that under the Development Act through the amount of detail we put in policy documents, such as the City of Adelaide [Development] Plan. If we want absolute certainty in an area we write very clear and rigid policies."[14]

More than 20 years later, it is obvious that planning policy and the instrument are still not "clear and rigid" enough to stop park lands alienation and exploitation, especially through rezoning. Indeed, the new 2021 version of that instrument, the *Planning and Design Code*, and related procedures under the *Planning, Development and Infrastructure Act 2016*, were seen by some long experienced and highly qualified observers, including architects and planners, as worse than that which it replaced. This view arose from a parliamentary inquiry.[15]

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14 Phil Smith, Witness presentation to the Adelaide Park Lands Select Committee, 040 'Official Hansard Report', page 15, paragraph 37, Wednesday 3 October 2001, 4.30pm. This is fully explored in Chapter 15: 'The parliamentary Select Committee 2001 that never concluded'.

15 Parliament of South Australia, Legislative Review Committee, Report on: Legislative Council Petition No 2 of 2020: *Planning Reform*, second session, 54th parliament, Parliamentary Paper 398, 17 November 2021.

RECOMMENDATION: Land-use planning

- Revise the *Planning and Design Code* applying to land within the Adelaide Park Lands Plan that enables development and/or rezoning that compromises the park lands landscape character and green, open spaces.

Regrettably, the writers of the Adelaide Park Lands Bill 2005 did not choose to confront most of the park lands known planning-related flaws, dilemmas and controversies of the time. The 2005 draft legislation recognised the existing *Development Act 1993* as the planning statute that would continue to guide development in the park lands, revising only a few aspects in terms of that Act's future interaction with the new *Adelaide Park Lands Act 2005*.[16] Although there followed many amendments over subsequent years to the *Adelaide (City) Development Plan*, few of them were about tightening the rules to restrict alienating development. On the contrary, most of them were about amendments that better enabled fresh development to occur. The *Planning and Design Code's* provisions for the park lands, which came into effect on 19 March 2021, has delivered a similar result. In 2021 the new code was already held in low esteem by the public, delivering most benefit to state, industry and commercial development applicants.[17] Moreover, there was inadequate 'engagement' in the form of consultation about some September 2021 proposals for the park lands. This was despite the code's explicit public 'engagement' requirements under a new charter specified in the *Planning, Development and Infrastructure Act 2016*. Engagement was not perceived by some objectors – including the Adelaide City Council – to be fully transparent and, as the engagement charter prescribed, fit for purpose and respectful. In this way, an initiative that sought to address problems of the past was widely perceived to have failed at its first test.

In the years before the 2016 planning legislation was passed, the view about the development plan's evolving content in regard to the Adelaide park lands policy areas had been that it was all about encouraging what *could* be done, in development terms, across the park lands. Even those development types (built forms) proscribed as non-complying could fairly easily be re-categorised to complying types through a development plan amendment procedure.

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[16] These included the disabling of several 'Major Project' provisions in the *Development Act 1993* at the time, blocking future potential for big park lands development projects by future governments. But this remained easy to circumvent.

[17] Source: Parliament of South Australia, Legislative Review Committee, op. cit., 17 November 2021. The 2021 evidence presented to the committee was also damning of the government's planning activities, the habits and perceived competencies of some of its planning assessment agencies, and the community engagement process required under the *Planning, Development and Infrastructure Act 2016*.

> Ultimately, the question facing South Australian legislators is how a future amendment of the *Adelaide Park Lands Act 2005* could address some of the planning dilemmas regarding land within the Act's Adelaide Park Lands Plan. It would fall to amendment of the Act's interacting state planning legislation, the *Planning, Development and Infrastructure Act 2016*, to diminish opportunity for exploitative development whose construction alienates the public from accessing sections of the park lands.

The state is unlikely to contemplate restricting the capacity of its executive government to initiate development on Adelaide's park lands dirt unless sufficient numbers of South Australians demand it. Moreover, contemporary non-planner legislators and the public would firstly need significant assistance to better comprehend the features of the framework under which the park lands are exploited for development purposes. The city council, the local government corporation under whose management of much of the park lands struggles to deliver 'protection', also would have to play a major educative role. Unfortunately, neither the state nor the city council has historically shown interest in revealing and interpreting the planning system's features and flaws with respect to the park lands.

Flaws of the 'protection regime': the Adelaide Park Lands Authority

The Adelaide Park Lands Authority is a toothless creation of state parliament whose determinations carry no legitimacy until authorised by the state. It may as well be a de facto branch of a state department controlled by a minister.

Although the city council is a 'land manager' for a large portion of the park lands (74 per cent as at 2018), it has no power to challenge the state if the state has an alternative view. Moreover, the city council has no authority to reject directives from the state, often originating at Capital City Committee or executive government (state cabinet) level. Arising from that, the public has very little opportunity to observe the passage of, or reception to, these directives. Many are communicated under strict cultures of confidentiality.

2. Transparency

Multiple chapters in this work explore the fundamentally compromised nature of park lands management that occurs under provisions that allow for censorship of records of park lands deliberations that often lead to land-use exploitation and alienation. The lack of transparency, especially in regard to preliminary state executive, ministerial and/or commercial deliberations, frustrates the public's ability to comprehend what might be about to occur, so they cannot contribute their preliminary views about it, well before major decisions are formalised ahead of public debate.

Poor transparency also frustrates South Australians' inquiry into and comprehension of park lands development determinations of the past. It has been of state benefit for many years that the *Local Government Act 1999* – the legislation interacting with the *Adelaide Park Lands Act 2005* – allows for a high level of confidentiality, often

exploited for state (political) or commercial convenience, capitalising on sometimes ambiguous rationales.[18] To better identify the source of park lands project directives, the interaction between the *Adelaide Park Lands Act 2005* and the *Local Government Act 1999* and the *City of Adelaide Act 1998*, each of which enable this secrecy, should be revised.

At the park lands 'custodian' level (the Adelaide City Council), when a park lands matter emerges for discussion, there is also no legal opportunity for the public to contest the triggering of an exclusion-from-meeting order, and/or a subsequent document confidentiality order. At the very time that the public wish to observe the discussion, they can be locked out. This is an unhealthy practice, contrary to the ostensible open-source, 'best-practice' culture that South Australian local government claims to reflect in the 21st century. The future management of the park lands will only escape the manipulation that extensive, archived 'in confidence' documentation encourages if park-lands-related discussions and deliberations are no longer allowed to be censored under provisions of the *Local Government Act 1999*.[19]

RECOMMENDATION: Transparency at 'custodian' level

- Amend the *Adelaide Park Lands Act 2005* to disable its provisions enabling the Adelaide City Council and the Adelaide Park Lands Authority to apply the confidentiality provisions of the *Local Government Act 1999* in respect of matters directly or indirectly relating to the land within the 2005 Act's Adelaide Park Lands Plan.

> The rationale for full transparency is simple. Adelaide's park lands are a public asset, they are publicly funded community lands, and any contemplations about access, future land-use development and arising potential exploitation ought to be 'an open book' at all stages of discussion.

The Capital City Committee

The transparency topic also prompts discussion about the role, privileges and membership of Adelaide's Capital City Committee (CCC), whose features have also been scrutinised in this work's research and in an appendix.[20]

Matters contemplated under the CCC's culture of confidentiality have at times forced the City of Adelaide's committees and full Council, as well as the council's subsidiary, the Adelaide Park Lands Authority, to adopt and maintain a confidentiality regime relating to their own administrative procedures, so as to align

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18 A list of legislated excuses, in provisions of the *Local Government Act 1999*, has allowed administrators to choose from a range of rationales when triggering this secrecy option. These appear at section 90 (3).

19 See Chapter 46: 'The secrecy tradition'; as well as Appendix 21: 'Extract from the *Local Government Act 1999,* section 90(3)'.

20 See Appendix 5: 'The Capital City Committee'.

and comply with that CCC culture and the legislation under which it operates. At the Capital City Committee level, one of the state's sources of preliminary deliberations about many park lands matters, an obsession with secrecy is recognised as a cultural norm under its legislation. Its enduring culture of confidentiality has obscured the origins and preliminary deliberations behind many controversial Adelaide park lands development project proposals.

RECOMMENDATIONS: Transparency at Capital City Committee level

- Amend the *Adelaide Park Lands Act 2005* to disable the provisions of its interacting *City of Adelaide Act 1998* that exempt the Capital City Committee from provisions of the *Freedom of Information Act 1991*, blocking opportunity for public searches for committee documents or other official records relating to land within the Park Lands Act's Adelaide Park Lands Plan.
- Amend the *Adelaide Park Lands Act 2005* to disable the provisions of its interacting *City of Adelaide Act 1998* that exempt the Capital City Committee (CCC) from scrutiny by any parliamentary committee inquiring into any CCC 'function and operation' relating to land within the Adelaide Park Lands Plan.

South Australia's decision makers may continue to use the CCC forum to contemplate park lands management, access and land-use development matters, but not behind closed doors or in confidential correspondence with state ministers. The committee's current (2022) 'duty of confidentiality' is a practice wholly at odds with the state's apparent (but fictitious) commitment to transparent 'open government'.

> It is not as if the park lands is defined as a collection of state or city council managed land titles awaiting land-use investment expressions of interest and therefore requiring 'commercial-in-confidence' provisions to frustrate gazumping and land speculation. But this is the implication under the current regime.

3. Public consultation

The *Local Government Act 1999* stipulates procedures for public consultation on park lands subject matters (among many other non-park lands subjects). However, there is no legislative clarity about how the agency conducting the consultation – state or local government – should be required to respond to public comment, especially critical comment, even if it is consistently and articulately expressed, in significant numbers, by respondents. Indeed, there is no provision requiring any particular response from the Adelaide Park Lands Authority or the city council. This can lead to consultation procedures that are in reality a sham. The

fundamental problem is that the 1999 Act is silent about local government or state response to consultation results. While that silence persists, neither level of government need do anything more than 'go through the motions'.

Most park-lands-related consultations are conducted using the digital *YourSay* consultation mechanism, but the 1999 Act does not specifically require this. Unfortunately, the *YourSay* model has significant flaws.[21]

RECOMMENDATION: Public consultation

- Initiate a parliamentary inquiry into the widely perceived inadequacy of the Local Government Act's public consultation provisions, and public perceptions about the inadequacy of the park lands custodian's use of the *YourSay* model, in relation to its management of park lands matters.

4. Administrative equity

The Adelaide Park Lands Act's creation of the city council subsidiary body, the Adelaide Park Lands Authority, was a consequence of a pre-Act agreement quarantining the park lands administrative funding responsibility to one Adelaide council: the Corporation of the City of Adelaide. This was done largely for political reasons.[22]

Funding

The 2005 Act left unchanged the city council's responsibility as trustee for 'care and control' of Adelaide park lands management operations and maintenance. It meant that the council continued its solo role as the park lands custodian. But new requirements of the Act led to a major new burden of work, as well as a new financial burden, because the creation of the Authority in the 2005 Act necessitated a new budget line and the budget increased substantially in subsequent years.

The 2005 Act also formalised a major new administrative burden on the council. It became responsible for the creation of and periodical updating of two new, costly and ongoing statutory instruments required under the new Act – the *Adelaide Park Lands Management Strategy* as well as the *Community Land Management Plans*. There also arose a need for myriad new policy and guideline documents, which had to be continually updated. The council increasingly had to respond to state government directives and priorities for various park lands developments, whether it supported them in principle or not. Many featured infrastructure and facilities development projects. While the state funded many big projects, the council had to continue to fund park lands administrative functions and related parks maintenance

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21 See Appendix 25: 'Case study: *YourSay*'.

22 See Chapter 5: 'A brief introduction to Adelaide's park lands administrative machinery', and Appendix 6: 'The Adelaide Park Lands Authority'.

operations. It was costly. For example, in the financial year 2019–20, the council's total park lands spending on this function (without grant money) was $25.6m, comprising 12.2 per cent of its total budget.[23]

Discussions dating as far back as 2012 about broader park lands administrative and funding models contained some compelling evidence for change. Even then, the Labor state government was aware of the problem of the increasing park lands policy management and maintenance costs burdening one local government body, the city council, the sole source of funding.[24]

If, in the future, administrative funding and maintenance funding of Adelaide's park lands is shared, through a mix of inner and outer metropolitan local government corporations, the city council would be able to escape this exclusive financial burden silently imposed on it under the *Adelaide Park Lands Act 2005*.[25] The obvious rationale for sharing the funding burden is that the Adelaide park lands are a state asset, and facilities and sites are accessed by many thousands of ratepayers from many local government areas (LGAs) surrounding the city – as well as some LGAs well beyond. At the publication date of this work, these corporations did not share any 'care and control' costs. Unlike city ratepayers, those corporations' ratepayers paid nothing towards administration. It is obvious that, as a matter of equity, other neighbouring local government corporations should accept a shared park lands operations funding responsibility.

RECOMMENDATION: The funding burden

- Amend the *Adelaide Park Lands Act 2005* so that it ceases implying that the funding burden must fall exclusively on the City of Adelaide, Adelaide City Council.

RECOMMENDATION: Wider collaboration

- Amend the *Adelaide Park Lands Act 2005* to require broader equity beyond the City of Adelaide in funding the Adelaide park lands annual administrative and maintenance operations.

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[23] Source: Adelaide City Council, The Committee meeting, Agenda, Item 5.3, 'Adelaide park lands expenditure and income', 12 November 2019, pages 36–40.

[24] Chapter 42 of this work ('The new 'urban address' narrative') explores it in relation to expert comment at the time (Tim Horton) suggesting a need to expand the administrative 'spread' to widen local government administration support, and sources of funding. It had been presented to state parliament's Environment, Resources and Development Committee, 'Urban density', on 5 December 2012.

[25] See Appendix 28: 'What does it cost to manage the Adelaide park lands?' (It also presents a council summary of state government capital expenditure over the period 2013–18, as found in the same source.)

There are at least three reasons why there is a political upside to these recommendations:

1. A broader administrative funding base supported by a spread of local government corporations in electorates at times not necessarily held by the government of the day has potential to give rise to a healthier, more democratic forum.
2. As financial contributors, they would be more likely to be motivated to better scrutinise and monitor what occurs in relation to management of this state asset, and to contribute a broader voice about the appropriateness or not of the state's directives and priorities for the park lands. This especially relates to proposed planning (development/land-use planning) initiatives and the ambiguity and secrecy under which they have been traditionally contemplated and initiated.
3. Broader equity may weaken the leverage (as at 2022) exercised over the city council by the state in the determination of allocations of monies, including from the state's planning and development fund. More participants around the table may have the potential to better critique and challenge the state's long established pattern of 'cherry picking' park lands sites and determining development priorities for them, especially through allocations of funding in the lead-up to state elections. The development priorities and timing have always been politically driven because, as noted earlier, planning is a political function.

5. Strategic action planning

It is instructive to scrutinise the *Adelaide Park Lands Act 2005*, especially with regard to its reference to the *Adelaide Park Lands Management Strategy*.[26] The Act features some content that has led to practical administrative difficulty, some aspects about which the Adelaide Park Lands Authority and city council since 2007 have struggled to address. This highlights a fundamental flaw in the way parliamentarians assumed that park lands management might occur once the Act came into operation.

The Strategy is the state's 10-year action plan for the park lands, required under the Act. The 2016 version was signed off by a minister in August 2017, and was still current in December 2022, although it was overdue for a 'review'. Its aspirational objectives were vast. It did not feature an action plan accompanied by specific allocations of funding that had been approved (or at least forecast, with funds set aside) in a budget process. Nor were any of its objectives accompanied by specific 'achieve-by' dates. A local government corporation that does not explicitly commit to delivering specific park lands outcomes under approved (or at least forecast) funding in accordance with specific timelines presents a lamentable model – it cannot be accountable for much. The fact that the Strategy must be authorised by a government minister also says much about the rigour of the approach – or lack of it. The political convenience is obvious.

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[26] Several sections in this work explore this aspect of the Act; in particular, Chapter 5: 'A brief introduction to Adelaide's park lands administrative machinery', and Appendix 9, which explores the *Adelaide Park Lands Act 2005* by looking at how the original bill was written and debated before becoming law: '2018 observations on the minister's introduction to parts of the Adelaide Park Lands Bill 2005'.

The content issues distil to this:

- A 'Park Lands Management Strategy' may be a useful administrative and state public relations prop, but it could never be simultaneously an action plan and a management plan. (The Act implied this.)[27]
- A *Community Land Management Plan* (CLMP) may be a well-intentioned statutory park lands management instrument, but it would be frustrated in effect if an Act of parliament provided for the *Adelaide Park Lands Management Strategy* to have higher policy and operational status in park lands administrative terms. The CLMP also would be dangerously vulnerable to a 'review' of the Strategy, which the Act requires every five years, and which after 2016 was informed mainly by political imperatives and aspirations but lacked guaranteed, allocated funding. (The Act allowed this.)
- Administrative agencies (the city council) or subsidiary committees (the Adelaide Park Lands Authority) might assume responsibility for guiding future park lands management, but the way in which they did this would not be clearly defined under the *Adelaide Park Lands Act 2005*, because it lacked clarity about the implementation of some of its provisions (see more below). Moreover, only a state minister had any real power to determine when a major policy direction needed to be followed. (The Act specified this.)

The concept of an *Adelaide Park Lands Management Strategy* appeared in the Act as if everyone agreed what a post-2005 version would contain and what activities it would direct. But they did not. Those writing the bill that became the Act also did not make clear how the Strategy should be implemented and, in particular, managed and funded. Implementation was left to subsequent Adelaide Park Lands Authority and city council administrators, and the 2010 and 2016 Strategy versions (versions 2 and 3) became captive to state political imperatives, often ambiguously implied, with no explicit requirement for cost estimates, funding, or for application of key performance indicators. The 2016 version (version 3, still in operation in late 2022) contained multiple ideas and aspirational concepts, but some sat uneasily with the spirit of the Act's Statutory Principles.[28] It was then, and remained at 2022, a politically compromised policy document.

Of even more concern, each of the two Strategies created since the 2005 Act came into operation has been anticipated, in some vague way, to act as vehicles to inform revisions of the Development Act's instrument, the *Adelaide (City) Development Plan* and, by implication after 19 March 2021, the replacement instrument, the *Planning and Design Code*. However, there was and remains no legislative requirement or formal policy basis for this assumption. Administrators and planners simply 'made it up'. This has potential for much operational confusion, especially in relation to the

[27] Discussion begins at Chapter 5: 'A brief introduction to Adelaide's park lands administrative machinery'. However, multiple other chapters (especially across Parts 3 and 8) are devoted to exploring the political and administrative history and evolution of this key park lands policy document.

[28] See Appendix 15: 'The triumphal delusion: the pursuit of the park lands Statutory Principles'.

third Strategy version (2016), which featured many 'activation' projects. This is likely to carry over to any subsequent version that replicates that approach.

Section 18 of the *Adelaide Park Lands Act 2005* provides for the existence of the Strategy, but the wording, describing it as a management strategy, implies that it is a management plan. This confuses its role with the *Community Land Management Plans* (CLMPs), which are only referred to in a later section of the Act, implying subsidiary status to the Strategy. The implication slowly took effect in practice.[29]

The Strategy was supposed to be all about action plans. The *Community Land Management Plans* (CLMPs) were all about *management-direction* plans. Confronted with obvious confusion, the Adelaide Park Lands Authority in its first year of operation (2007) invented a rationale to try to deal with it:

> "It is proposed that the [soon to be] revised Strategy will establish an enduring aspirational vision for the park lands and articulate a strategic direction and policy framework for the next 10 years ... However, it is intended that the Strategy will rely on CLMPs and other Plans of Management, which are to be developed by the State for land they manage, for more detailed actions [sic] plans."[30]

This would not assist with the challenge experienced by local government administrators in reconciling the intentions of the two documents, which under the *Adelaide Park Lands Act 2005* were anticipated to be used together when reaching determinations. But each had been written under the requirements of different legislation, and at different times, and for different purposes. This dilemma, and the tension that arose from it, has never been satisfactorily resolved.[31] One way to achieve greater clarity about the specific intentions of each Strategy version is to amend the *Adelaide Park Lands Act 2005*.

RECOMMENDATION: Strategic action planning

- Amend the *Adelaide Park Lands Act 2005* to require that managers of the *Adelaide Park Lands Management Strategy*, as an action plan, must under law match aspiration with specific funding, and have that funding allocated in a specific budget and approved – before the minister can authorise the Strategy to legitimise it as a 'live' operational City of Adelaide policy document.

This recommendation would address the implementation 'silence' that has existed under the Act since 2005. A mechanism that required allocated funding before authorisation would mean that a future Strategy would have to be crafted as a real action plan, not just a 'wishlist' of aspirations – as applied to the third (2016) version.

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[29] After about 2013 the 'plans' became one large plan (singular).

[30] Adelaide Park Lands Authority, Board Meeting Agenda, Project Brief, 'Adelaide Park Lands Management Strategy', Discussion, point 12, 21 August 2007, page 2125.

[31] Several sections in this work explore this administrative incompatibility, beginning with Chapter 5: 'A brief introduction to Adelaide's park lands administrative machinery', and continuing in finer detail with Chapter 35: 'Towards the second Park Lands Management Strategy', and Chapter 36: 'The 2010 Adelaide Park Lands Management Strategy' (each focuses on the Strategy evolution), as well as Appendix 11: '*Community Land Management Plan*'.

It would diminish the potential for a future Strategy version to be littered with ambiguous concepts, some of which could be simply cherry picked and funded by a state government, sometimes for blatant, pre-election purposes, at a timing of its choosing. It would limit the opportunity for maintaining what is effectively an ad hoc action-plan approach, as was evident in the 2016 version, whose aspirations were estimated to require as much as $100m to fully realise, even though it was not costed and, at the time of its endorsement, had no allocated funding. The cost estimate for the 2016 Strategy's 'aspirations' was calculated by city councillor Phillip Martin.[32] As he noted in December 2016: "And the pinnacle of the Strategy is a series of larger projects labelled 'Key Moves'... None of these moves has been costed, but my speculation is the price tag is somewhere well over $100m."[33]

This brings the discussion back to the topic of *land-use planning*.

Studies of land-use planning processes

At least three key process issues have historically led to park lands exploitation and alienation. Each of these needs to be addressed.

- Firstly, the ability of the state to capitalise on development legislation that allowed development plan amendments (DPAs; and, since March 2021, now known as *Planning and Design Code* amendments) for the park lands zone policy areas.
- Secondly, the freedom by executive government to initiate and approve without seeking parliamentary endorsement for those development proposals.
- Thirdly, the ability of state parliamentarians to create and pass project-oriented development legislation initiated by executive government. This legislation can override real or implied checks and balances under the *Adelaide Park Lands Act 2005*, as well as the checks and balances of other interacting park-lands-related legislation.[34]

How the authors of the 2005 Park Lands bill perceived the challenge

Although the Adelaide Park Lands Bill 2005 resulted in a definition of the park lands in the *Development Act 1993*, it made no attempt to interpret or influence the consequences of the Development Act's link (by 'giving effect') to the planning instrument of the time, the *Adelaide (City) Development Plan*, when contemplating development within the park lands.

It is clear that the authors of the 2005 bill did not want to fundamentally alter the status quo, including the planning provisions and procedures at the time, and the

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[32] Phillip Martin, councillor, City of Adelaide, *InDaily*, 'The great park lands heist', 4 November 2016, https://indaily.com.au/opinion/2016/11/04/the-great-park-lands-heist/ and [slightly revised version]: Phillip Martin, 'One day it will become known as the great park lands hijack', opinion insert article, as published in the Newsletter of the North Adelaide Society Inc., December 2016. This appears as Appendix 20: 'One day it could become known as the great park lands hijack'.

[33] Cr Phillip Martin, op. cit., 4 November 2016.

[34] The option to have passed in state parliament new project-oriented development legislation for the park lands zone remains an enduring threat to the green, open spaces. More discussion appears later in this chapter.

right of executive government to trigger rezoning and/or approval of development proposals for the park lands.[35] Park lands development matters were already prescribed under the *Development Act 1993*, and its instrument was the development plan relating to the park lands zone policy areas. The 'rules' and procedures in them were intended to endure.[36]

After 2005, arrangements continued where park lands dirt was perceived as (relatively) similar in planning terms as any other South Australian dirt – with the exception of a policy area having a particular 'desired character' (a term used in the *Adelaide (City) Development Plan*) or a 'desired outcome' (a new term used in the 2021 replacement instrument, the *Planning and Design Code*). Planners reasoned that these planning instrument features, written for the park lands zone policy areas, were sufficient compromise to address the planning-related differences between the park lands zone and others, such as city commercial or residential zones.

However, the development plan's wording for the zones was not always unequivocally clear, and not helped by multiple government-driven gazetted amendments to it since 2006. Left open to interpretation were sometimes ambiguous planning provisions vulnerable to exploitation by executive government and/or the planning minister.

For example, while the *Adelaide (City) Development Plan* was current, some flaws were as basic as allowing use of an amendment process to modify a development plan's 'complying' and 'non-complying' statements, opening up development opportunity never contemplated by authors of earlier versions of the plan in regard to those park lands policy areas.

CASE STUDY: NEW $100m SCHOOL

An example was the 2017–18 construction of the Adelaide Botanic High School in an eastern park lands policy area. It highlighted how the way remained open in 2016 for Labor's executive government to modify the then development plan, through a ministerial development plan amendment, as one (of several) planning tactics to allow construction of large scale, multi-storey built-form in a section of the park lands that had not for some years been contemplated for that policy area (and was not at the time zoned for such development). The fact that the government's action also allowed the state to avoid public consultation about it, because of the consequent 'Category 1' classification, illustrated a tactical political bonus arising from the approach.[37]

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[35] This is further explored in Appendix 8: 'The *Adelaide Park Lands Act 2005*'.

[36] After the passing of the *Planning, Development and Infrastructure Act 2016* the 2005 Act was amended to acknowledge the revised legislation. Provisions before 2016 for the park lands had been defined under the *Adelaide (City) Development Plan's* park lands zone policy areas' desired character statements, objectives, and principles of development control, among other elements. After 2016 these features were revised, using different terms, for inclusion into an anticipated new *Planning and Design Code*. But the process and intent remained similar. (There was a long delay; the new code was not brought into metropolitan operation until 19 March 2021.)

[37] See Chapter 39: 'Public investment in the park lands'.

The 19 March 2021 replacement instrument, the new *Planning and Design Code*, could be similarly exploited. And it was – only six months after it came into effect.

CASE STUDY: Riverbank rezoning

The state Liberal government's September 2021 rezoning bid for the Riverbank precinct was an example of how a desire to amend the code, sought by the planning minister (through the Attorney-General's Department), could trigger the process. There was public opposition to it, resulting in detailed criticism from a large sample of respondents. Public feedback revealed that large numbers of South Australians rejected the bid. For example, 577 (87 per cent) of the 661 public submissions reflected concern about development on park lands generally. A total of 410 submissions (62 per cent) reflected concerns about environmental impacts on the park lands. By comparison, positive comment, support for the state proposal, attracted tiny percentage responses (two per cent or less). The message was clear. The South Australian public had emphatically said no, but there were no appeals processes in place to resist it. It took effect on 20 January 2022.

Planning bureaucrats coordinating the Riverbank rezoning procedure disingenuously argued that the process did not breach any section of the *Adelaide Park Lands Act 2005* and did not remove land from the Adelaide Park Lands Plan.[38] They did, however, acknowledge that the bid would require "… a subsequent amendment to the relevant management plan(s) for land that council and/or state agencies are responsible for".[39] This was a classic 'tail wags dog' policy application suggestion, in which a planning minister's initiative prompted a recommendation that statutory park lands policy documentation needed to be amended as a result. This documentation had been earlier specifically created by city council land managers, arising from requirements of the 2005 legislation.[40] A minister had approved it. The rezoning, which had depended on the provisions of the *Planning, Development and Infrastructure Act 2016*, illustrated that while the *Adelaide Park Lands Act 2005* acknowledged the state's key interacting development legislation, at 2021 neither it nor the Statutory Principles presented any hurdle to initiation of fresh park lands development proposals by the planning minister.

Clearly, this needs to be addressed. Options include revising the Statutory Principles in the *Adelaide Park Lands Act 2005*, and requiring in that Act an amendment to its interacting statute, the *Planning, Development and Infrastructure Act 2016* with regard to land within the Park Lands Act's Adelaide Park Lands Plan.

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[38] That claim was a red herring. No development on the park lands 'removed land from the Plan'. The key point was that new, permanent built form would alienate the public from *access* to those sections of the park lands. State planners maintained a discreet silence about that.

[39] *Engagement Report, Section 73(7) of the* Planning, Development and Infrastructure Act 2016, *Riverbank Precinct Code Amendment, by the Chief Executive, Attorney General's Department*, approved 16 November 2021 – extract: section 6.3: 'Concern about impacts on sites of European heritage value', page 40.

[40] Including the *Community Land Management Plan*, relating to Park 27 (the Riverbank Precinct site) within the Adelaide Park Lands Act's Adelaide Park Lands Plan.

Development plan amendments

In process terms the state in the past could initiate ministerial development plan amendments. The same applied to the *Planning and Design Code* after it came into metropolitan effect in March 2021. In park lands terms such action has been very often politically controversial. The 2021 Riverbank rezoning initiative made for an instructive case study.

The purpose of the *Planning and Design Code*, created under the new 2016 planning legislation, is similar in many ways to the purpose of the former *Adelaide (City) Development Plan*. But there is a problem with the 2016 legislation. Public appeal rights have been substantially diminished. Remedies should be pursued. The restoration of third party rights to make representations to a court are the most obvious. But at the publication date of this work this option is heavily restricted as a result of the 2016 Act.[41] A future amendment to the 2016 Act could deliver this, but there would be major government resistance to it, because the intent behind the 2016 legislation was to frustrate public participation in future development application assessment for the park lands. Incidentally, the appeals process concept is not new. A parliamentarian in 2005, during debate of the Adelaide Park Lands bill, recommended that all development proposals for the park lands be automatically categorised in that way to allow for public appeals in a court.[42] The government of the day (Labor) was quick to oppose that suggestion. But it would have allowed for a very simple, optional appeals trigger mechanism to temper state executive appetites to initiate rezoning and built-form development on sections of the park lands. Of course, in socio-economic terms it wasn't equitable. It assumed that objectors had, or could obtain, sufficient funds for the appeal. Costs could be significant.

Project-oriented development legislation

There has already been some reference in this work to another state planning matter that would be challenging to address because it would rely on political will, and the political will is unpredictable. Members of parliament have several times written and received parliamentary assent for project-oriented development legislation for the park lands. The effect has been exploitative and long lasting. One 1984 statute made possible an annual car race at Victoria Park (Park 16).[43] Its periodic effect on the park lands landscape character was profound.[44]

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[41] See explicit discussion on page 86 of: Legislative Review Committee, Report on: Legislative Council Petition No 2 of 2020: *Planning Reform*, second session, 54th parliament, 17 November 2021 (Section 4.2.3: Third party appeal rights).

[42] See Chapter 49: 'The loopholes lurk, (Part 1)'. The parliamentarian was Ian Gilfillan, MLC. He argued that all development proposals for park lands should be classified as 'Category 3' under the then *Development Act 1993*, which would allow appeals to the South Australian Environment, Resources and Development Court.

[43] *South Australian Motor Sport Act 1984* (formerly the *Australian Formula One Grand Prix Act 1984*).

[44] The car race was not held in 2021, but returned in 2022 as a result of a state Labor pledge at the March 2022 election to bring it back. Some of its park lands infrastructure (a concrete race track at Victoria Park) was still in place.

It also had considerable effect because it alienated from public access a large area of the park for up to six months annually. Another Act in 2011[45] made possible construction of a huge sports stadium at Adelaide Oval (Park 26) whose grandiose scale's effect on the park lands landscape endures under an 80-year lease signed in that year. Each of those Acts disabled existing legislation, effectively sweeping aside all checks and balances relating to large development concepts for the park lands. The 2011 oval legislation achieved a state development objective significantly at odds with public sentiment about such development bulk and scale on the park lands landscapes. This legislative option remains open to any future state parliament, should a future government administration have the parliamentary numbers to pursue it. But there is one mechanism that may have the potential to block this government park lands 'knock-out' approach.

The 1999 Lewis proposition

One option could be to revisit the 1999 Lewis proposition for parliamentary scrutiny of park lands development project proposals.

RECOMMENDATION: Executive government or the planning minister's ability to trigger rezoning or development on the park lands

- Remove from executive government or the planning minister the ability to trigger certain rezoning or development projects on the park lands without parliamentary scrutiny.
- Adopt legislative amendment that, in certain circumstances, would allow state parliament to put in place a referendum mechanism to allow the people's voice to be heard about certain development project proposals for the park lands.

Please refer to the two recommendations that appear earlier in this chapter under Section B on page 536.

In 1999, a state Liberal party MP, Hon Peter Lewis, put forward some proposals in a bill, but it died a quick death. (In those days they called him a maverick.)

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[45] The *Adelaide Oval Redevelopment and Management Act 2011*.

Historic bid to end exploitative habits, still possible today

Peter Lewis

Peter Lewis, MP, elected as a Liberal Party MP in 1979.

In July 2000 he was expelled from the party. He ran as an independent candidate in the lead-up to the 2002 state poll and won. Neither party won a majority, and Lewis's support of Labor allowed the party to form government. Several years later state parliament elected him as Speaker of the House.

Lewis's most controversial hour, captured in state parliament's record, *Hansard*, had occurred several years earlier, in October 1999, when he proposed a legislative means that would have blocked the state executive's freedom to alienate and exploit the park lands through initiation and endorsement of major development projects in those park lands. His bill was mocked and discounted as the product of a disorderly and reckless mind. The particulars essentially called the parliamentarians' bluff, proposing that MPs take steps to come to a group legislative agreement. If passed, it would have at last ceased the never-ending parliamentary debates in which many routinely pledged to cease old exploitative habits but never got around to doing something about it. Lewis's bill would have been revolutionary because it would have thrown a legislative onus onto state parliament to formally debate every development proposal, estimated to cost above a certain amount, ahead of approval. It was designed to capture the big developments that historically had prompted public concerns. Had the proposal been adopted, the state executive would have lost exclusive control of what could be constructed on park lands. Lewis's bill confronted both sides of parliament, daring MPs to adopt his radical new approach. It would have resulted in a legislative mechanism that would have guaranteed a more disciplined level of park lands debate than existed at the time, through the adoption of a transparent land-use development proposal scrutiny procedure. The confrontation was courageous; the parliamentarians' response was indifference. The bill failed. The moment passed into history.

The Lewis concept

In 1999 Lewis as an MP proposed three ideas to state parliament based on the addition of a new schedule to the *City of Adelaide Act 1998*, titled 'Special provisions relating to development within the Adelaide park lands'. In his bill were three proposals. Firstly, the extent of the park lands would be precisely defined, a matter of contention at the time.[46] Secondly, the schedule would state that certain major proposals affecting the park lands could not be activated unless both houses of parliament as well as the city council agreed. Thirdly was an idea for a state referendum.

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46 It wasn't until six years later and the passing of the *Adelaide Park Lands Act 2005* that a precise measurement of the extent of the Adelaide park lands and its boundaries emerged, manifesting as the Adelaide Park Lands Plan. (Lewis was ahead of his time on this.)

On the controversial matter of agreement between both houses *as well* as the city council, Lewis directed attention to the contents of his proposed schedule. He said: "Under clause 2 [of the proposed schedule] certain activities require parliamentary and council approval, and those activities are to make a change to an existing structure or to build any new structure [on the park lands] which would cost $100,000 as at 27 October 1999, that amount to be indexed so that there is no necessity for us to revisit it in 10, 15 or 20 years."[47] What he was effectively proposing was conceptually freezing the built-form state of the park lands as at that date using a new, descriptive schedule, and forcing future development aspirants to signal very clearly *to parliament* that if they wanted to "construct, enlarge or expand" any structure within the park lands boundaries that exceeded that relatively low capital value, they would have to reveal all. Moreover, they would also face the risk of a city council veto.[48] The veto idea was radical and confrontational, and few parliamentarians would have supported that. But the great strength of his bill was that it proposed to remove executive government's ability to trigger at whim development proposals for the park lands, often traditionally beginning in secret deliberations of the Capital City Committee and/or state cabinet. By proposing to attach the schedule as an amendment to the 1998 legislation, any bid to initiate big construction projects would have to be first processed by *parliament*. This bypassed the traditional 'first-stage' assessment bodies at local government or state government levels, whose assessment reference traditionally needed only to draw on what the *Development Act 1993* said as well as the provisions of the *Adelaide (City) Development Plan* for the park lands zone policy areas. This development plan was commonly supportive of big, high-cost developments but, if not, it could be easily amended by either a minister, usually the planning minister, or the city council itself, with the support of the planning minister.[49]

Lewis said:

> "So, regardless of whatever other measure any government may take, including the present government, to protect park land in some form or other, it would be for all time put beyond the power of executive government to make decisions about the alienation of the park lands unless the parliament approved of it – both houses – and the Adelaide City Council approved of it. That would [address] the kind of disquiet which has grown up over recent time (and I mean in the past couple of years or so) about these developments which have been undertaken by executive government, where executive government has overridden the city council for better or for worse ..."[50]

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47 Parliament of South Australia, *Hansard*, House of Assembly, 'City of Adelaide (Development within park lands) Amendment Bill: 'A bill for: 'An Act to amend the *City of Adelaide Act 1998*', 28 October 1999, page 314.

48 This is earlier discussed in Chapter 13: 'Seismic rumblings – park lands dialogue as the new century arrives'.

49 The 'development plan' today is the *Planning and Design Code*, an instrument of the *Planning, Development and Infrastructure Act 2016*.

50 Parliament of South Australia, op. cit., 28 October 1999, page 313.

Lewis's bill also contained the idea of a mechanism for a state referendum "of electors for the House of Assembly", should his proposed new schedule to the Act be endorsed by parliamentary assent but later come under new parliamentary pressure to have it "repealed, suspended or brought to an end by expiry". As Lewis had noted earlier in 1999 about the schedule:

> "No future government would dare rip up that piece of legislation without there being an enormous furore, because clearly there would be an intention, stated or otherwise, that by repealing that piece [the contents of the proposed schedule] such a government would have had intentions of alienating open space in the park land for some undisclosed purpose."[51]

Except for the council veto idea, it was otherwise a cleverly conceived proposal. Blocking the ability of executive government to trigger a park lands development proposal and its assessment using an instrument likely to have been already influenced by, and in favour of, the executive's park lands development aspirations was central to the idea. And should parliament later pursue other steps that sought to change, suspend or abandon the schedule (by expiry), a referendum option was available. Hence the recommendation to adopt legislative amendment that would allow state parliament to put in place a referendum mechanism to allow the people's voice to be heard.

Referendum powers are serious matters, but so is the 'protection' of the state's park lands from development likely to alienate the public from its green, open spaces. Senior Australian legal practitioners are generally wary about the use of referendums, but observe that they are more common in Australia because they are the only means to amend the Australian Constitution. In mid-2019, University of NSW Dean of Law, George Williams, wrote in a newspaper about the complex politics of referendums, advising that parliamentary debate was "a better forum to test ideas and public support, and lend themselves to compromise rather than conflict".[52] However, should a referendum mechanism be contemplated, Williams advised that one key rule was that "referendums must be about specific questions". "In Australia [when determining Constitutional change] the people vote knowing the exact words of the change proposed ..." He followed on: "This detail is needed lest there be doubt about what the people have decided. The alternative is a referendum verdict left open to interpretation."

The strength of the Lewis proposal was that this is precisely what was proposed. Should state parliament wish to repeal, suspend or bring to an end by expiry this Lewis-proposed schedule to the *City of Adelaide Act 1998*, the people would be asked to vote, as George Williams suggested, "knowing the exact words of the change proposed".

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51 Parliament of South Australia, *Hansard*, House of Assembly, 'The Local Government Bill', [Armitage amendments], 4 August 1999, page 2020.

52 George Williams, *The Australian*, 'In any vote you must be careful what you wish for', 1 April 2019, page 12.

It is a measure of the vulnerability of Adelaide's park lands to politically destructive development pressures that, more than 20 years after Peter Lewis presented his doomed bill, at 2022 there was still a need for better checks and balances.

The exploitative developments achieved over the years to 2018 – and indeed the four years that followed to 2022 – underscore the enduring political will to use the park lands as the state thinks fit, capitalising on the state's central role in planning law, and the state executive's and the planning minister's central role in initiating procedure – despite the so-called 'revolutionary' framework created after the proclamation and implementation of the *Adelaide Park Lands Act 2005*.

Public land and public spaces:

Management and exploitation of the
Adelaide park lands in the new century

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APPENDIX 1

The 'lost' park lands and the administrator's magic trick routine

The use of numbers and 'net gain/net loss' concepts, as well as contestable definitions, does not deliver a practicable manifestation of the bricks-and-mortar reality for people walking the pastures of the park lands who assume that, as public land, it should be accessible to all, at all times. The definition of 'alienated' remains particularly ambiguous.

This appendix further explores 'A 'snapshot' of Adelaide's park lands' at the beginning of this work.

The perceived loss of green, publicly accessible park lands is a matter of great sensitivity to both the South Australian state government and the City of Adelaide. Both have made determinations that have led to alienation of the park lands. There has been an enduring culture of public protest about this. The routine call to 'protect' the park lands is often interpreted as a bid to cease further 'loss', but of all the verbs applying to management of Adelaide's park lands, while 'protect' may be the most used, it is the least clear.

Two definitive city council analyses examined this controversial topic, one in 2012 and a second in 2018. Each was created by the council's subsidiary, the Adelaide Park Lands Authority. Perhaps reflecting the land manager's sensitivity about the topic, the 2018 analysis arose only because of a specific request by a city councillor. It was intended to be updated annually.[1]

It is widely perceived in Adelaide that there has been substantial loss of access to park lands over the past 40 years, especially in the decades leading up to 2018, as major construction projects and other land-assumption development had increasingly left their mark. This loss was confirmed in the first study in 2012[2] but six years later the second analysis, using a different method, claimed the opposite.[3]

The second (2018) study noted that 138ha of the park lands was "occupied predominantly by built form and/or not normally publicly accessible".[4] Some of that built form was historic, some was on what was termed 'government reserve' land built on in the 19th century, and some on other land which had been built on

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1 If it was, no record of updates appeared in publicly accessible city council documents in the subsequent years to 2022.

2 Adelaide Park Lands Authority, Board meeting, Agenda, Item 7, 'Park lands – extent of an occupation by buildings and hard surfaces', 7 June 2012.

3 Adelaide Park Lands Authority, Board meeting, Agenda, Item 7.2, 'State of the park lands', 21 June 2018.

4 Adelaide Park Lands Authority, Board meeting, Agenda, Item 7.2, 'State of the park lands', 21 June 2018, Link 3: unnumbered table, 'Areas of park lands occupied predominantly by built form and/or not normally publicly accessible', page 6 of that link.

in the early years of the 20th century. Those categories totalled 94.2ha, leaving a balance (from 138ha) of 43.8ha of land 'lost' to post-World War 2 buildings and other structures. Many had been built after 1980. This became a decade benchmark for the 2018 study, which chose 1983 as the base year. The challenge was to address the complicated task of assessing which land had been 'lost', and which land had been resumed as open space, as the years progressed and developments or land assumptions commenced or concluded.

'Net gain' claimed

Surprisingly, the Adelaide Park Lands Authority concluded in its 2018 analysis that, between 1983 and 2018 there had been a "net gain in park lands of 21.1ha".[5] The 'net gain' figure illustrated that the Authority had adopted a new method by comparison to the 2012 analysis, but it would prove to be misleading.

What did 'loss' mean?

The matter turned on the meaning of the word 'loss'. For the Authority analyst: "... loss or alienation of park lands is defined as a loss of publicly accessible space, including, generally, permanent car parks". He then added a significant qualifier: "Sports buildings, courts and other sporting facilities, restaurants, kiosks and paths are not considered as a loss of park lands."[6] This distinction was crucial, and would have skewed the 2018 result significantly. Regular users of Adelaide's park lands – especially continuously over decades such that they can observe the trend – have observed a gradual creep of buildings, other structures and hard surfaces, as well as temporary infrastructures. Users and visitors also experienced the very real sense of 'alienation' that occurs when sites leased by various park lands lessees make access difficult, because buildings are locked or hours of access are at least restricted, or because access to playing fields is restricted only to the sub-lessee, or when sites licensed to various parties for summer events are fenced off for months, restricting the usual 'open space' freedoms that otherwise existed. Open park lands?

The community view

It is generally agreed among the Adelaide community that any loss of green space to other forms of space is perceived as a loss. But Colonel William Light, who in 1837 created the concept and plan of the park lands surrounding the city, did envisage certain sections to be altered from pasture to sites on which construction of a structure would occur. Some structures that were inconceivable in 1837 have also since come to pass. They include rail lines, rail line buildings and infrastructure; sealed, permanent roads; car parks; hard-stand areas for everything from parade grounds to netball courts; fenced cricket grounds and associated buildings, sports pavilions and associated fencing, and so on.

Then there have been all of the buildings related to a growing settlement that became a city. These include hospitals and schools and government or council

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5 Adelaide Park Lands Authority (APLA), Board meeting, Item 7.2, op. cit., 21 June 2018, page 31.

6 APLA, ibid.

buildings, including a university, convention centre, community swimming pool and other recreational structures, plus commercial gym and sports areas, as well as a casino, among others. Park lands historians have noted periods when the alienation of 'open space' land through these means progressed quickly. The contemporary assault on park lands is generally agreed to have commenced under the Dunstan (state Labor) government in the mid-1970s, followed by the Bannon (state Labor) government in the early 1980s, and ebbed and flowed from that time. This work covers the construction periods after the late 1990s and beyond. A subsequent period beginning in about 2008 and ramping up after 2013 also saw substantial development and alienation of some sections of the park lands.

'Not losses'

The Park Lands Authority's 2018 analysis conceived some large projects (which included hard-stand areas including car parks) as recent changes to the park lands, but not as losses. The analyst noted: "In other words, much of the increased hard surface is still public open space." On this basis, in the 2018 study, a footbridge, an expansion of a cycling path, and expansion of numbers of netball courts were "not considered a loss of park lands because [each] is a publicly accessible recreational facility".[7]

Other aspects observable in the park lands also had potential to prompt disputes about what constituted lost park lands space. For example:

- A vast section of the east park lands area of Victoria Park (Park 16) was taken up with hard-stand area (a racetrack, laid down in 1984 as permanent track). But it is not determined as a 'loss' of park land. Neither is the annual annexation of many hectares of that land when motor race organisers capitalised on a 1984 statute and ensured that, within the 'declared area', there was legal, formalised restriction of access to sections of the site for up to six months of the year while temporary race and grandstand infrastructure was erected and fenced, and later dismantled.
- There have been instances where lessees of sports buildings and ovals or licensees of park sites excluded general public access to them during major seasonal fixtures. There also have been multiple instances of temporary loss, such as areas of park lands taken up by liquor-licensed events, in which case law-enforced fencing would surround the site for up to three months annually.

Such instances were ignored by the analyst because they did not fit his definition of 'alienated areas'. His study said: "[This 2018] report updates an earlier report from 2012 but takes a different approach. The 2012 report measured and added up all the various individual parcels and exclusions. This report uses historic baseline data and identifies what has been alienated, re-included, in some cases lost again, and is currently included/excluded."[8]

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7 Adelaide Park Lands Authority, Board meeting, Agenda, Item 7.2, 'State of the park lands', 21 June 2018, Link 3: unnumbered table, 'Park lands projects since 2005', page 5 of that link.

8 Adelaide Park Lands Authority, Board meeting, ibid., page 31.

Some observers may have claimed that this 'net gain' method significantly distorted the reality. For example:

- The area of former park lands taken up by significant, multi-storey development in the form of the new new Royal Adelaide Hospital and associated biomedical and educational facilities north of North Terrace is recorded as 9.87ha, but in the 2018 study's tables noting 'park lands projects since 2005', it is recorded only as a 'loss of publicly accessible park lands' of 6210m² – or a fraction of that total area. The 2011 occupation of almost 10ha of formerly alienated land, for construction of a collection of adjacent high-rise towers, remains a loss of potentially accessible park lands comprising that area. The same observation applies to the seven hectares of Adelaide Oval accessed for its stadium redevelopment, 0.7ha of Adelaide Botanic High School, and 10.4ha for the 1980s Festival Centre/ Convention Centre precinct. And so on.

The use of numbers and 'net gain/net loss' concepts, as well as contestable definitions, does not deliver a practicable manifestation of the bricks-and-mortar reality for people walking the pastures of the park lands who assume that, as public land, it should be accessible to all, at all times. The definition of 'alienated' remains ambiguous.

The media enquires

Some of the arising numbers could have been discounted as academic matters not having a significant effect on final calculations using the approach noted above. But the key flaw was the assumption the analyst had used. This became substance for an Adelaide news article on 11 July 2018.[9] Responding to the assumption, North Ward city councillor Phillip Martin argued in the article that sports facilities and restaurants were "no longer available to the public" and should be counted as losses of park lands. He pinpointed the assumption that even if buildings or other facilities were at times accessible to the public, they nevertheless remained essentially alienating to the public; they exploited and contradicted the concept of open space. For example, they could include a fenced area or a locked building or an expanded hard-stand area reserved for specific sports activity or other infrastructure (tunnels, bridges, etc). They all exploited public space. They existed on park lands that once was open space, enduringly accessible. In the same media article, Adelaide Park Lands Preservation Association secretary, Damien Mugavin, responded: "If the council thinks they're not losing parklands since 1983 they're in dream land. Our calculations suggest there's about seven tennis courts [worth of former park lands space] a year being lost since the parklands were established."[10]

The culture of assessment

Those who wish to highlight the considerable extent of built form and other structures on Adelaide's park lands can simply use a camera and record the evidence. The state's and city council's sensitivity has for many years prompted analyses that

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9 Bension Siebert, *InDaily*, 'Report tracks park lands losses, gains', 11 July 2018, https://indaily.com.au/news/local/2018/07/11/report-tracks-park-lands-losses-gains/.

10 Bension Siebert, *InDaily*, ibid., 11 July 2018.

prefer to focus on numbers, calculating footprint area in park sections and, since 2018 when assessing the whole of the park lands, the 'net gain' method. For the public, with new building proposals examined during Authority or city council or government pre-assessment approval stages, the imagery is reserved to park lands project concept drawings, some of which obscure the real scale in the landscape. A common drawing technique is to present the proposal from high above, minimising potential for readers or assessors to comprehend its ground-level height or scale.

The June 2018 Park Lands Authority 'State of the park lands' report aimed to "... identify what has been alienated, re-included, in some cases lost again, and is currently included/excluded."[11] This approach prompts further exploration of another 'numbers' approach popular with planners and architects – the 'cult of the footprint', which is more widely explored in this work's Chapter 47: 'The footprint numbers game'.

Confronting evidence

The fundamental feature that remains confrontingly evident, after all of the area numbers are crunched to the satisfaction of assessors who interpret the relevant development plan instrument to arrive at a determination, is that new built form can be approved to be constructed where significantly less prominent built form once stood. Two examples cited early in the period of study in this work were the construction of the $24m National Wine Centre in the east park lands, and the 'Next Generation' gym and tennis centre, near Pinky Flat (Park 26). Examples evident at year-end 2018 included the sports pavilions constructed by the University of Adelaide in Park 10 (2011, north park lands) and the South Australian Cricket Association's pavilion and refurbished ovals at Park 25 (2018, west park lands). Other proposals at 2018 were at assessment stage, but in time will prove to illustrate the same phenomenon.

The residue is that, despite clever adaptations based on area calculations, built form continues to creep across the park lands not only of excessive bulk and scale, but also wholly insensitive to the landscape in which it is constructed. Forms are grossly confronting, and permanent. In building on public land, the net gain for developers would be a guarantee of nominally exclusive use (under the terms of long-term leases, often up to 42 years), and the right to sub-lease to others and therefore collect revenues from that right.

Further reading

Chapter 47: 'The footprint numbers game'.
Appendix 19: 'Eight pavilion case studies'.

[11] Adelaide Park Lands Authority, Board meeting, ibid., page 31.

APPENDIX 2

Eighteen other laws relating to activity on the park lands

This is a consolidated list comprising 2015 and 2016 Adelaide City Council sources of Australian and South Australian legislation that formed the legislative framework relating to Adelaide park lands management and operations; in particular, activities pursued by the city council in managing its park lands asset.[1]

This list records statutes *other than* the more commonly known statutes, such as the *Adelaide Park Lands Act 2005* and the state statutes that predominantly interact with it, such as the *Development Act 1993*[2], the *Local Government Act 1999* and the *City of Adelaide Act 1998*.

1. *Water Resources Act 1997*: Sets out requirements for any tree planting including relevant setback from any water supply infrastructure.
2. *Environmental Protection Act 1993*: Provides for responsibility not to cause environmental harm (such as noise pollution, contamination of water etc); protection of the environment; establishment of the Environment Protection Authority and definition of its functions and powers; and for other purposes.
3. *SA Sewerage Act 1929*: Sets out requirements to identify tree species classification and relevant setback from sewer infrastructure.
4. *Electricity Act 1996*: Constraint: control of vegetation conflict in vicinity of power lines.
5. *Occupational Health, Safety and Welfare Act 1986*: Being proactive in occupational health, safety and welfare practices in all undertakings of the council.
6. *Aboriginal Heritage Act 1988*: Constraint: Provides for the protection and preservation of Aboriginal heritage and includes legislation for the discovery, acquisition, damage or sale of sites, objects or remains of Aboriginal significance.
7. *Heritage Places Act (SA) 1993*: Constraint: An Act to make provision for the identification, recording and conservation of places and objects of non-Aboriginal heritage significance; to establish the South Australian Heritage Council, and for other purposes.

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[1] Consolidated from: Adelaide City Council, 'Buildings, Asset Management Plan', version 0.3, 2015; (and) 'City Park Lands and Open Space, Asset Management Plan, version 0.5, May 2015'. Source: Adelaide City Council, Infrastructure and Public Space Committee Meeting, Agenda, 5 May 2015, taken from two tables*: pages 267–268* and 329 of the 'Buildings, Asset Management Plan'; (and) Finance and Business Services Committee meeting, Agenda, 18 October 2016**, 'Park Lands and Open Space Asset Management Plan', page 435 of that plan.**

[2] This appendix was current as at year-end 2018, the end of the study period of this work. Note, however, that the *Development Act 1993* was slowly being superseded by the *Planning, Development and Infrastructure Act 2016*, which was gradually being brought into operation. However, at year-end 2018, the *Development Act 1993* was still relevant to many park lands matters, especially in terms of its planning instrument, the *Adelaide (City) Development Plan* regarding the park lands zone's policy areas.

8. [Commonwealth] *Environment Protection and Biodiversity Conservation Act 1999*: Constraint: An Act to protect the environment and includes national environmental assessment and approval processes. (The National Heritage listing relating to some of Adelaide's park lands takes effect under this legislation.)
9. *National Parks and Wildlife Act 1972*: Provides for the establishment and management of reserves for public benefit and enjoyment; to provide for the conservation of wildlife in a natural environment; and for other purposes.
10. *Animal and Plant Control Act 1986*: Provides for the control of animals and plants for the protection of agriculture and the environment and for the safety of the public; and for other purposes.
11. *Native Title Act (South Australia) 1994*: Constraint: Protects native title and ensures that it cannot be extinguished contrary to the Act.
12. [Commonwealth] *Disability Discrimination Act 1992*: Ensures persons with disabilities have access to the buildings and facilities.
13. *Public Health Act 2011*: Provides for maintenance of cooling towers etc.
14. *Food Act 2001*: Sets out standards for food handling.
15. *Retail and Commercial Leases Act 1995*: Regulates the leasing of certain properties.
16. *Work Health and Safety Act 2012*: Provides for a safe work environment for workers on a site.
17. *Linear Parks Act 2006*: Provides for the protection of the River Torrens Linear Park, as a world-class asset to be preserved as a public park for the benefit of present and future generations.
18. *State Records Act 1997*: Ensures that the City of Adelaide records and stores all relevant information as set out by the State Government of SA.

Structures: the *Building Code of Australia*: Meets requirements for occupation under the approved building class.

Events management[3] occurs under a framework comprising at least nine statutes and associated regulations, including:

1. *Adelaide Park Lands Act 2005*.
2. *Development Act 1993* and regulations (and, when fully enacted, its replacement will be the *Planning, Development and Infrastructure Act 2016* and regulations).
3. *Disability Discrimination Act 1992*.
4. *Environmental Protection Act 1993*.
5. *Local Government Act 1999*.
6. *Liquor Licensing Act 1997*.
7. *Major Events Act 2013*.
8. *Tobacco Products Regulation Act 1997*.
9. *Work Health and Safety Act 2012*.

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[3] Source for information about events management at 2018: Adelaide City Council, *Adelaide Park Lands Events Management Plan 2016–2020*.

APPENDIX 3

Four common traps for newly elected Adelaide Lord Mayors who pledge to 'protect' the park lands

Major hurdles confront an incoming Adelaide Lord Mayor who may be genuinely committed to protecting the city's park lands from exploitation during his or her term. As soon as they are elected the system embraces, then engulfs them, often handicapping the incumbent and compromising the commitment.

An Adelaide Lord Mayor genuinely committed to 'protecting' the city's park lands has some power to deliver on this laudable objective, but there are many traps that can frustrate the best of intentions. The most obvious is self-imposed. It takes courage to stand up to a bullying, manipulative South Australian state government and its occasionally aggressive ministers. Some have it, some don't. It can't be tested until a Lord Mayor has been in the job for a while. And the test is usually conducted in private, so the community may never know about early policy concessions.

Over the period of study (1998 to 2018), Adelaide's more notable Lord Mayors all claimed a desire to see transparent deliberations about controversial proposals for the park lands – but they have had to fight long and hard to maintain the conditions under which that can occur. Some just give up under the political pressure. In a one-newspaper town committed to 'development at all costs', this can be unrelenting.

Many Lord Mayors have been councillors before getting the top job. They have a better understanding about the likely traps. But candidates new to the game sometimes can't comprehend pre-election warnings about the legislative and systemic procedural hurdles that exist at local government level.

The provisions of at least four state statutes allow avoidance of transparency. These, when triggered, corner, compromise – and often silence – elected members when determining the decision-making pathway for park lands proposals. Moreover, given that a Lord Mayor has only one vote (and sometimes is not in a position to exercise it), he or she can discover that a majority councillor vote in the city council chamber can end up gagging his or her intention to speak against a park lands raid plainly and forcefully. The state controls park lands outcomes with an iron grip, even though many South Australians assume that the city council makes all the big decisions. This misapprehension arises because the city council not only has 'care and control' of much of the park lands but also because many procedural mechanisms are actioned at city council level. A Lord Mayor with canny political judgement can do some things to exercise what little 'control' the city really has over its care and control share of Adelaide's park lands.

A common cultural/administrative feature during any council term is the close, apparently collegiate relationship that tends to be initiated by state politicians and senior state bureaucrats as soon as a Lord Mayor is elected. The implication is that 'we're all in this together'. But this is a political myth. History shows that the state's politicians have exploited the park lands for reasons of political expediency (the land is the cheapest in town), and it is only because of historical circumstances about council 'custodianship', arising from original 1849 legislation, that certain park lands deliberations and procedures are placed at the lowest tier, local government.

The four statutes include: the *City of Adelaide Act 1998*; the *Local Government Act 1999*; the *Development Act 1993*; and the *Adelaide Park Lands Act 2005*. (The Development Act at the end of the study period (year-end 2018) was being progressively replaced by the *Planning, Development and Infrastructure Act 2016*, but the replacement of the Development Act's instrument, the *Adelaide (City) Development Plan*, which stipulates development rules for park lands zone policy areas, had not yet occurred.[1])

Details of each statute follow:

- The *City of Adelaide Act 1998* requires that a 'culture of confidentiality' apply to any deliberations of the secretive Capital City Committee, of which the Lord Mayor is usually a member. It is, in effect, a sub-committee of state cabinet. A Lord Mayor can vigorously reject state proposals for future exploitative park lands development described and deliberated on at those meetings, but the Act forbids him or her from publicly saying so, or tabling evidence. It also blocks media Freedom of Information Act searches. It's a 'closed shop'. That's Trap #1. So … Lesson #1 is: Avoid these forums as often as possible because active participation risks being publicly gagged. A Lord Mayor is not legally required to attend and usually learns what's going on from other sources not bound by the Act's strict confidentiality rules. But few Lord Mayors have the courage to avoid such committees and thus, when politicians reveal their plans for the park lands at meetings of that committee, Lord Mayors are gagged from that moment on.
- The *Local Government Act 1999* features section 90 (2) and (3), and subsection (3) provides a list of excuses that the city council administrators can draw on to trigger a confidentiality pathway down which deliberations follow about future park lands developments. City councillors often naively trust administrators' recommendations for secrecy, but their trust is commonly misplaced. The provisions, once triggered and endorsed by a simple majority vote at the commencement of deliberations, have been used widely for many years to limit public awareness of looming park lands proposals, often on commercial-in-confidence grounds, or ministerial advice grounds or legal advice grounds (or myriad other grounds). All of them trap a Lord Mayor and city elected members into agreeing to keep secret all subsequent deliberations on the same subject matter for what can be years. They cannot reveal to their constituents any detail

[1] The replacement would be the *Planning and Design Code*, which became operational (metropolitan) on 19 March 2021.

without breaching the Act, unless the order is lifted and the contents are publicly released. This imposes a grossly unfair burden on elected members and a Lord Mayor. It represents a major hurdle to transparency during a deliberation phase when the public most deserves to know about what is being discussed. That's Trap #2. Lesson #2: Resist the siren call of the administrators and say no to adopting confidentiality orders at meetings, or at least limit the extent of documentation subject to orders. If a park lands matter cannot be discussed under 'open door' circumstances, it shouldn't be progressed. The land is, after all, a public asset. The commercial-in-confidence excuses are particularly offensive.

- Development legislation was covered during the period of study by either the 1993 Act or its 2016 Act replacement. The key development instrument under the 1993 legislation was the *Adelaide (City) Development Plan*, which contained the rules about what could be developed on park lands.[2] Under the development plan a government planning minister could ask that a council change the rules to suit a government or commercial agenda, or he or she could push through the whole procedure without council participation. Either way, if a development plan amendment trigger was pulled, a city council administration and its Lord Mayor and councillors became burdened by a complex planning procedure that cannot under law be interfered with, even if the Lord Mayor and councillors learn that the amendment will deliver something exploitative of the park lands that is contrary to the Park Lands Act's Statutory Principles. Trap #3. Lesson #3: Resist ministerial pressure for the council to do a minister's dirty work, and when that minister exclusively pursues it, call it out for what it was – a political raid on the park lands for manipulative and exploitative political purposes. This is where true courage is required. Most Lord Mayors in the recent past failed this test.
- The *Adelaide Park Lands Act 2005*. This provides for two policy instruments (an action plan and a management-direction plan) whose contents can be interpreted (manipulated) over time to suit government imperatives for park lands exploitation and alienation. They are the *Adelaide Park Lands Management Strategy*, and the *Community Land Management Plan* for the park lands parks. It can take some time to amend these (especially the Strategy), and a Lord Mayor's term is only four years. In 2010 and 2014 a newly elected Lord Mayor arrived after amendments to these statutory policy instruments had been well progressed, and he was therefore stuck with contents that contemplated some controversial development outcomes for the park lands. But a Lord Mayor can at least influence interpretation of the contents and is in a position to closely monitor government influence that might trigger sudden amendments to either document, almost always of benefit to the government. The Act also makes provision for the operation of the Adelaide Park Lands Authority (but is vague on how it should operate in day-to-day terms which leaves open other manipulative opportunities). As the Act provides for a Lord Mayor to chair the Authority, if a Lord Mayor chooses to accept the role he or she can to some

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[2] This was in place during the study period of this work (1998–2018). It was replaced by the *Planning and Design Code* on 19 March 2021.

extent guide the Authority's recommendations. At year-end 2018, all Adelaide Lord Mayors had accepted the role since the Authority's board commenced sitting in 2007. But in doing so, he or she could sometimes be compromised if a board member majority approves a government-influenced direction that fails to consider the long-term interests of preserving the landscape integrity of the park lands and, in particular, honouring the Act's Statutory Principles. A conceivably smarter tactic for a Lord Mayor is to not chair the Authority but instead assume a board member role. This would allow him or her more freedom to speak publicly on park lands matters without compromising the chair's mentor role that is implied under the Act. However, endless council administration requests for the imposition of confidentiality orders remain a problem. Because the Authority is a subsidiary committee of the council it also can draw on the confidentiality provisions of the *Local Government Act 1999*. In the history of the Authority many matters have been subject to 'secret session' orders, such that all members of the Authority are then bound to silence regarding looming controversial park lands plans. All documentation on the matter also becomes secret – and can stay that way for years. If this occurs, often under private commercial or government ministerial pressure, a Lord Mayor's voice also is silenced. But when the Authority is pressured at the beginning of a meeting to adopt confidentiality orders, a Lord Mayor as board member is in a better position to advocate to other board members to not agree to make the matter secret. In this way, he or she can preserve, or at least be seen to preserve, independence from the administratively driven desire to keep secrets about manipulative and politically motivated deliberations leading to park lands exploitation. Journalists attending these meetings are free to note those comments, and it can be of advantage to maintaining a Lord Mayor's park lands 'protection' reputation. An alert Lord Mayor can also mount a media campaign before the shutters are closed, and this can be of long-term reputational benefit, especially for first-term mayors who might be contemplating running for a second term and, in so doing, campaign on a sound park lands record.

So much for the legislative traps. The systemic traps are easier to summarise. The city council is a public corporation, but historically many of its senior managers have behaved as if it were a private corporation and, therefore, that its operational matters and key decisions should be kept confidential. One way for administrators to achieve this is to have elected members delegate decisions about big financial matters to the council's chief executive, where transparency cannot be publicly monitored. If a Lord Mayor supports this approach (and there is often internal pressure to do so), the corporation can be rapidly engulfed in a culture of secrecy about what it is doing and why, especially regarding park lands matters, with records of many decisions kept from the public domain. Administrative habits include triggering as often as possible the legal confidentiality provisions of the *Local Government Act 1999*, or simply finding a pathway around them to achieve the same ends. Tactics include holding private briefings for elected members (including the Lord Mayor) away from the public chamber, and/or running

workshops for which no agendas or minutes need to be kept. Chief executives can also initiate other confidential email communications, which are not usually publicly accessible. All of these aspects can be used to frustrate public access to information, and if it is about a public asset such as the Adelaide park lands, it is almost always unhealthy for the reputation of the Lord Mayor when the details of the non-transparency finally emerge. A competent and responsible Lord Mayor can direct his or her administrators away from these bad habits in the interests of transparency and accountability. Lord Mayors who favour this approach usually benefit substantially from increasing public trust and goodwill. However, unfortunately in the recent history of the corporation most Lord Mayors haven't resisted the post-election growth of this administrative secrecy culture, and it has cost them dearly when the product of his or her park lands silence and apparent government collaboration over the four-year term comes to light. This is especially in terms of what he or she knew and when, but didn't share with the communities on whose vote every four years an elected member depends. The common result is a reputation for secrecy, a disinterest in addressing poor corporate culture, and perceptions of unhealthily close collegiate relationships with government ministers – who almost always pursue no other interest but their own. Such a legacy often starkly contrasts the candidate's original pre-poll pledges such as "This time, the park lands really will be protected."

The Office of the Lord Mayor historically has claimed the moral high ground for ethical behaviour, and this should include the incumbent's respect for the people's right to know about looming park lands raids at a stage when it is important to know – not when it is politically convenient, too late for South Australians to have an influence in determining the outcome.

APPENDIX 4

Published: 3 September 2018 edition of *The Adelaide Review*, pages 8–9.[1]
CITY ELECTION LOOMS: THE RACE HEATS UP TO WEAR THE LORD MAYOR'S ROBE

Haese's park lands legacy blots his report card

John Bridgland

Historians judging the legacies of Adelaide Lord Mayors can draw on many variables. Each leaves a trail of social and economic outcomes, deliberate or accidental. Previous public works and budget tussles are quickly forgotten as a new mayor stamps his[2] authority. But one category stands out – the legacy left in relation to Adelaide's unique park lands.

Every Lord Mayor in recent history has occupied a powerful and determining role about park lands development, given that he not only chairs the Adelaide Park Lands Authority, but also the city council when that Authority's advice arrives for a decision. He is in a strong position to advance or retard park lands development.

In the past 15 years, each of the three, Michael Harbison, Stephen Yarwood and Martin Haese, has left a legacy. The record is not flattering for any of them in terms of the difference between what they said and what happened – underscoring their commitment – or not – often under heavy state pressures, to honour the spirit and intent of the landscape legacy that Colonel Light left the city. Each had a choice to resist some of the more confronting and ill-fitting propositions put before him privately, and then publicly to the Authority, followed by his council for final sign-off. It can take courage to challenge and resist. But if his council can be pushed to endorse, then he and his councillors assume the political risk. More necessity for courage.

Lord Mayor Harbison's defining moment occurred during a 2007 government attempt to get support to build a $33m, 200m-long, three-storey grandstand at Victoria Park. The bid failed, even though a stuck council vote got Harbison's casting vote for an in-principle 'yes' that allowed it to progress further, against major public opposition. But a fresh influx of councillors late in 2007 killed it off.

Lord Mayor Yarwood's 2010–14 period saw major development, mainly big government projects – a huge $535m stadium replacing a historic, state-listed cricket ground; a $40m Torrens footbridge; the beginnings of a $2.4b, 10ha hospital; and a three-storey extension of Adelaide High School. Further, the government's 380ha 'Riverbank' rezoning defined a vast land-use control grab of former park lands, from Gilberton to Bowden. It was not for nothing that Premier Jay Weatherill strongly endorsed Yarwood's candidacy for a second term. But preference flows to Haese, ironically from a strong park lands protection advocate candidate, ensured that it was not to be.

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1 https://www.adelaidereview.com.au/features/general/protect-or-plunder-the-lord-mayors-park-lands-legacy/

2 All of the Lord Mayors in the four terms between 2001 and 2018 were men.

Candidate Martin Haese had plenty of opportunity to observe how things worked. But what does the council's 166-year old 'custodianship' of the park lands really mean when the state wields the big stick? His pre-election 2014 pledge to protect the park lands gave some assurance to voters that he might resist, underscoring council's responsibility to maintain 'care and control'. It remains a pledge to which he still believes he remains committed. But his first-term 2014–18 record has not been good. As a chairman, substantial proposals were progressed under his watch for land uses across the park lands. Of course, no Lord Mayor begins his term with an in-tray empty of park lands matters. There are previous Lord Mayoral residues that each must manage; previous pledges made to or implied to the (then) Labor state government, especially to premier Weatherill whose state cabinet's appetite for easy access to cheap park lands became insatiable after 2011, when he became leader.

Development during Haese's time, which would have tested all the judgements open to him via his [Adelaide Park Lands] Authority and council chair influence, has occurred in two ways: procedural and actual.

The procedural came in the form of a new, Authority authored version (the third, since 1999) of the 2016 *Adelaide Park Lands Management Strategy*. It's a radical departure from previous versions and champions the 'activation' of many sections of the park lands. This is to occur at recreation and event-oriented 'hubs' of future facilities development. The Labor government last year [2017] threw $5m at one southern site, and before the March 2014 election quietly allocated another $3m for major new facilities at a northern site used by Blackfriars Priory near the [Adelaide] aquatic centre. If all of the 'aspirations' of the Strategy are fulfilled, they will lead to profound change across the park lands' landscapes. Its council adoption, in May 2016, immediately triggered the quiet abandonment of the visionary 2011 *Adelaide Park Lands Landscape Master Plan*, a unique, whole-of-park-lands, long-term blueprint commissioned by the council under Lord Mayor Yarwood [2010–14] to 'unify' the park lands. Its 2016 scuttling, after only five years, was deeply symbolic, but few comprehended the consequences of the loss. Many others remain unaware of the scuttling.

One of the Strategy's less obvious features is that it further exacerbates the tension between the parks' long-established *management* guidelines in *Community Land Management Plans* (CLMPs), that originated earlier under a provision in the *Local Government Act 1999*, with which the *Adelaide Park Lands Act 2005* interacts. It required that plans be 'consistent' with the Strategy, but it's doubtful that the Act's authors ever envisaged a Strategy like the current version. Evidence of change during 2017 included attempts to suddenly amend some of these long-standing *management* plans, to fit new park lands proposals or developments, some even beyond those envisaged in the Strategy. The idea that new concepts might now prompt change to the CLMPs – the tail wagging the dog – is a disturbing harbinger of things to come. Especially if park lands managers are to respect the park lands cultural history of each park, restrain growth in lease numbers and retain the low-scale infrastructure that most CLMPs reflect. During 2017 the

Haese media slogan became 'Public land for public benefit', words implying that major change to the park lands character is fine, as long as 'the public benefits'. Long-term park lands observers see straight through this slogan.

Development during the Lord Mayor's term (since 2014) has included government-driven massive landscape alteration for a $160m O-Bahn line east of the park lands, tunnelling across Rymill Park; and the $100m, six-storey government high school being built on park lands near Frome Road's former medical school. To be opened in 2019, it highlights a breathtaking government grab of park lands, as audacious as Tom Playford's 1950s park lands grab that led to the first high school, west of the city. The new school proposal, which was not subject to public consultation, was supported in July 2016 by the Park Lands Authority, chaired by Haese. Then there was the council-approved, new $8m South Australian Cricket Association three-level sport pavilion erected under a 42-year lease in a park near the new RAH, including an $800,000 council-funded road rebuild and a car park featuring expanded spaces for SACA, with allowances to restrict public access on some game days. There's also a multi-million dollar Park 9 (MacKinnon Parade-edge park lands) sports pavilion on the way for Prince Alfred College Old Scholars. Then there's the Riverbank commercial concept plans along the Torrens Lake edges, with potential for 16,000sq m of retail or dining space. Under the new Liberal state administration, reviews announced recently look likely to ramp up changes to this park lands site, and associated legislation. Haese says the city will be watching, but resistance to the usual excesses that occur when developers get near water will be difficult, and Haese is no confrontationist.

Another notorious development subject to Haese's support, in several phases, was a 2017 proposal to lease a park lands site for construction of a helicopter landing facility which would have alienated a Torrens Lake-edged park for which the city council had invested $1.7m only five years earlier under a master plan to restore it to park lands. Fortunately for him, complications scuttled the plan. Then there was his council's enthusiasm to resist opposition to an expansion of the Adelaide Oval Stadium Management Authority's entertainment-linked, liquor licence agreement into park lands, north of the oval. Council's intention to give unqualified landlord approval late in 2017 was only withdrawn after major residential protest. Other matters of expansion of park lands buildings also were endorsed under his Authority chairmanship: expanded footprint on new, 42-year lease (Tennis SA: Parks 26 and 1 near the golf course) and expansion of paved courts area (Park 22: south west park lands). Still more parks development concepts elsewhere await, in tune with the 2016 *Adelaide Park Lands Management Strategy* signed off during his term. It drips with a state enthusiasm for a 'build it and they will come' recreation ideology, linked to government planning policy encouraging new high-rise residential development on the park lands edges. Each park site 'aspiration' is expansionary, encouraging built form and hard-surface sites with new facilities and expanded car parking. Some concepts align with long-term secondary school or sports club bids for fresh leases of up to 42 years. Some redevelopment proposals envisage big new 'pavilions' exceeding existing footprints and desiring expanded

building floor areas. The June 2018 Pulteney Grammar pavilion proposal in the south park lands is a confronting example.

South Australia's 1.5m population whittles down to only 26,083[†] voters who get to participate in this year's city council poll, but only about 35 per cent bother. It means that the next mayor, who will have major input into future directions of park lands development, need only face scrutiny by about 9,000 voters and capture significantly fewer primary votes or preferences to win.

Perhaps the only question not yet addressed about the Haese park lands 2014–18 term record relates to what part of his 2014 pledge to 'protect' the park lands was negotiable. But for more than a million other metropolitan South Australians concerned about the future direction of park lands management and development, there is no negotiable postal vote opportunity to register a view.

† Voters on the City of Adelaide roll as at 2018.

† Voters on the City of Adelaide roll as at 2018.

APPENDIX 5

The Capital City Committee

> *It would take a gradual process of influence. But the city council's collaboration in the confidential, post-2012 deliberations of the Capital City Committee, involving the participation of the city's Lord Mayor with other Labor ministers keen on what they described as the 'activation' of the park lands, would prove to be vital to the contents of the 2016* Adelaide Park Lands Management Strategy. *Of the notion that the outcome would arise from contributions on equal terms, with 'intentions' clearly and publicly documented, it would be impossible for the public to conclude – given the secrecy provisions.*

Most influential – and most secret

Some Adelaide park lands observers have claimed that the Capital City Committee (CCC) is the most influential – and the most secret – body directing park lands decisions in the state. Of course, that would omit reference to state cabinet, whose decisions – always taken in confidence – carry the biggest consequences, and drive subsequent government directives to the city council. The council's role as the custodian of much of the park lands is sometimes mistakenly assumed to be pursued independently of government. But few are aware of the committee, or the extent to which it sometimes informs park-lands-related determinations made in state cabinet. It might be described as a sub-committee to state cabinet, testing preliminary concepts with local government and exploring the willingness or otherwise of the city council to collaborate with state draft plans and other aspirations. A city councillor member of the CCC in 2001 observed: "We are the handshake between the government and the council."[1] That remained accurate at 2018, the end of the study period of this work.[2]

There is no public paper trail of committee deliberations, and that is enforced under the Act that created the committee. In its two-decade history (to year-end 2018) the secrecy of its deliberations frustrated parliamentarians, city councillors, researchers and the media. There is plenty of evidence of the secrecy under which it operates, and the small size of its membership contributes to a perception that it is an elite body. Its annual report of 2014–15 noted that it comprised "... some of South Australia's most senior political figures."[3]

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1 Cr Michael Harbison, Messenger *City News*, 'Gilfillan blasts 'secret' Capital City Committee', 21 February 2001.

2 It was also still accurate as at December 2022.

3 Capital City Committee, *Annual Report*, 2014–15, page 3.

It is chaired by the Premier (alternatively, a nominated minister, sometimes the Deputy Premier), and at times includes the Minister for Transport and Infrastructure, the Minister for the City of Adelaide, the city Lord Mayor and deputy, and a city councillor. Its deliberations can lead to major determinations administrated elsewhere, without it being obvious that they originated at the CCC table, regarding myriad matters affecting the state electorate of Adelaide, which includes the whole of the park lands.

An example was the committee's 2012–13 role in influencing the contents of the 2016 *Adelaide Park Lands Management Strategy 2015–2025*. Pre-publication deliberations reflected a controversial new government-inspired approach, which would have effect on the likely future landscape character of Adelaide's park lands. The fact that this Strategy was a key policy instrument of the *Adelaide Park Lands Act 2005*, which gave it significant legal status, highlighted the importance to the committee in having the Strategy revised to meet new state government aspirations. Some observers were tempted to conclude that, with regard to the city council's subsequent activities, this might have been the committee's most intriguing, park-lands-related chapter – compromising the Adelaide Park Lands Authority's role, and keeping city councillors distant from the draft Strategy's concepts and content until it was too late to influence the direction that it was taking. While the contents of the previous 2010 Strategy had been directed by a team of council-sourced people, its replacement, the 2016 Strategy, was in its crucial early revision stages directed by a majority of people who were not members of the council. More below.

The law defines the secrecy

The extent of the secrecy under which the committee operates is defined in the *City of Adelaide Act 1998* that makes provision for it. Those seeking to explore and scrutinise committee deliberations, documents and advices will learn that even the provisions of the *Freedom of Information Act 1991* cannot be triggered to achieve this, because under the City of Adelaide Act documents or official records of the CCC are exempt from FOI searches. The extent of secrecy includes restrictions on accessing:

> "(a) a document that has been specifically prepared for submission to the Capital City Committee (whether or not it has been so submitted); (b) a preliminary draft of a document referred to in paragraph (a); (c) a document that is a copy of a part of, or contains an extract from, a document referred to in paragraph (a) or (b); (d) an official record of the committee; (e) a document that contains matter the disclosure of which would disclose information concerning any deliberation or decision of the committee."[4]

[4] *City of Adelaide Act 1998*, section 18, parts 1–4.

The city council is an exception to these restrictions; however, the Act specifies that council staff and elected members share the same 'duty of confidence' as applies to CCC members, which effectively blocks public dissemination of any CCC-related information or reports through the city council. The Act also has a provision that blocks any parliamentary committee from inquiring into any CCC 'function and operation'.

Such provisions effectively quarantine from public access evidence that would confirm that the committee had contemplated any city council matter, especially major park lands management matters, or confirm that these matters were being discussed at senior levels of the council, long before the matter might surface in discussions open to the public. After 2007, when the Adelaide Park Lands Authority commenced meetings, such arrangements also had the potential to compromise public access to preliminary discussions at Authority level for the same 'duty of confidence' reasons. When this occurred, this 'duty' commonly led to the imposition of a confidentiality order. In many cases the order would not even mention the CCC in the order's subject matter description. In this way the committee's presence would be largely kept invisible. Authority and city council agendas and minutes would also rarely cite specific reference to discussions with the CCC. Moreover, in comparison to state cabinet decisions which would eventually be made public and widely explored if a government administration acted on them, matters concluded at CCC level would be only very rarely revealed.

The common defences against transparency

When criticism of the committee's secrecy occurred, state government or committee defences featured a range of themes:

- 'The committee never demands voting procedures, so the deliberations do not commit the city council to anything and may be of no consequence.' – This is as unconvincing as it is irrelevant.
- 'The committee is transparent; it publicly releases an annual program and an annual report.' – The programs are very brief, lack particulars, and often obscure the fact that key discussions have already taken place in confidence, and may have resulted in commitments at local government level. The annual reports, which are usually released many months after the period on which they report, contain very general summaries and no detail is usually provided about the procedural intentions, agreements or commitments that may have arisen that may influence determinations in other places, including the Adelaide Park Lands Authority and city council.
- 'The Capital City Forum, a consultative and advisory body to the committee, is an annual event, open (by invitation) to the public.' – This annual event has nothing to do with the rigour or focus of normal committee meetings in confidence. The committee legislation contemplated a sharing of views about committee outcomes via a 'forum', but beyond 2012 the forum became a publicity vehicle for the state. The Act allows the committee to choose participants (section 10) to give advice 'or share information with, members of

the forum'. An invitee to the forum in 2017 found that it delivered nothing more than state government chest-beating about its accomplishments or plans. There was no information provided about specific committee deliberations, conclusions or advice to state cabinet. Beyond a sharing of very general themes, the forum delivered no tangible outcomes.[5] Years earlier, in 2001, a committee publication quoted then Lord Mayor, Alfred Huang, about committee activity, and the forum. He was enthusiastic. "The forum gives us a series of starting points," he said. "It provides us with consensus on where we are going, and it provides a sounding board on which the Capital City Committee can test their strategies for the city."[6] By 2017, it was clear that the 'sounding board' concept had been frustrated by government formality and a desire to promote concepts rather than listen to public views, and questions, about its operations.

- 'It is only a committee – it has no legal power to direct the city council or the Adelaide Park Lands Authority.' – This is a strong defence, in theory, but the *realpolitik* behind the 1998–2018 history of park lands management illustrates the power of the state to influence administrative outcomes at local government level. It appears almost disingenuous that a *City of Adelaide Act 1998* provision (section 11) says: "11—Programs (1) The Capital City Committee must prepare a Capital City Development Program for consideration by the State Government and the Adelaide City Council. (2) The Committee may prepare or adopt other programs. (3) A program prepared or adopted by the Committee—(a) is subject to endorsement or adoption by the State Government and the Adelaide City Council (unless already so endorsed); and (b) is to be taken to be an expression of policy that does not derogate from the ability or power of the State Government or the Adelaide City Council to act in any matter itself, and that does not affect rights or liabilities (whether of a substantive, procedural or other nature)." [7]
- 'The secrecy is justified because no-one apart from the government of the day (members of the state executive) and senior members of the city council has a right to participate in discussion of matters that may inform state cabinet.' – This rationale came under fire in 2014 when the state member for Adelaide, Rachel Sanderson (Liberal), attempted to have passed a bill to allow her to be a committee member. "The point has been made that I am not part of government or cabinet and my being on the committee would open up the committee's deliberations to public scrutiny," she told state parliament.[8] "This is a weak argument. The members from Adelaide City Council are not part of

5 John Bridgland, function invitee and attendee, Convention Centre, 11 December 2017.

6 Alfred Huang, Capital City Update, 'A shared vision for the city', Adelaide Capital City Committee, Autumn 2001, page 3.

7 *City of Adelaide Act 1998*, section 11.

8 Parliament of South Australia, *Hansard*, House of Assembly, 'Capital City Committee Amendment Bill', 22 May 2014. www.parliament.sa.gov.au/.../006%20Thursday%2022%20May%202014.pdf

government or cabinet and, as far as I am aware, none of them have signed any confidentiality agreements. Michael Harbison [former city Lord Mayor] does not recall signing anything during his 10-year tenure. Given this, the deliberations are already at risk of public scrutiny, and so they should be. My involvement in the committee would be for the benefit of the constituents of [the electorate of] Adelaide." But Ms Sanderson omitted to observe that the Act contained highly restrictive provisions about public access to committee discussions, documents or other official records. These applied what the legislation, and others later described, as a 'duty of confidence', which an MP conceivably could not properly respect in subsequent discussions with constituents. The bill failed.

Secrecy at city council level

On 26 April 2017 the following paragraph appeared in a city council agenda paper.

> "The disclosure of information in this report would breach 'cabinet in confidence' information presented to the Capital City Committee, and the *City of Adelaide Act 1998* which has provided for a State/Capital City intergovernmental forum (the Capital City Committee) to operate 'in confidence' and a breach of the associated duty of confidence and legal obligation or duty as a member of the inter-governmental forum. The disclosure of information in this report would be acting contrary to the Capital City Committee operational provisions and could prejudice the position of the State Government and/or Council in relation to current/future proposals prior to State Government and/or Adelaide City Council evaluation and deliberation.[9]

That paragraph was preceded by this sentence:

> "This item contains matters that must be considered in confidence in order to ensure that the Council does not breach any law, any duty of confidence, or other legal obligation or duty."

The city council order to abide by the provisions of the committee's legislation, and make secret 10 pages of information about the committee that had been prepared as a response to an elected member's motion, also made a preceding Question on Notice itself a secret. It had followed a 12-month period during which a number of other motions (questions) had been asked of council by an elected member about Capital City Committee activity in relation to the procedures regarding the creation, from early 2014, of the subsequent 2016 *Adelaide Park Lands Management Strategy 2015-2025*.

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[9] Adelaide City Council, Council meeting, Agenda, 'Exclusion of the public', 'Order to exclude for item 18.3.1', [Councillor Martin, Question on Notice, 'Capital City Committee', Section 90 (3) (g) of the *Local Government Act (SA) 1999*, 26 April 2017, pages 18 to 28], this agenda reference: page 335.

A central, secret role

In the two years before the government endorsement of that 2016 Strategy, the CCC had played a key role towards ensuring that the Strategy would become a blueprint for new, government-inspired policy change about the future of the park lands landscapes; in particular, land uses, but also vegetation, structures, small-scale elements, and historical views and aesthetic qualities. The resulting document so contrasted the previous Strategy version that many responding during the 2015 public consultation phase expressed alarm and were critical of the new version. But their views carried no weight.

In 2016 at least one councillor, Phillip Martin, began asking questions of the city council about the committee's influence behind Adelaide Park Lands Authority activities. The source of his curiosity was an extract from the Capital City Committee Annual Report 2014–15 (which was tabled in parliament on 23 February 2016 but emerged at the city council only on 8 March 2016), which noted:

> "The Committee's strategic focus has been on the review of the *Adelaide Park Lands Management Strategy*. The Adelaide Park Lands Authority and the newly created Project Advisory Group [PAG], which includes senior representatives from government and adjoining councils, have led this. As part of the review, consultation was undertaken, focusing on asking the public the question: 'How will you shape the park lands?'"[10]

Councillor Martin was particularly concerned about what he saw as subtle manipulation of procedures that saw the creation of a new sub-committee to the Authority – for the first time in the Authority's history – and the nomination of a majority of non-council people to attend to the task of preliminary work on the draft. The procedure also subsequently saw the city councillors effectively excluded from reviewing Strategy drafts until very late in the endorsement period. Cr Martin's view was that fundamental local government procedures for delivering new Strategy drafts had been politically compromised by the state, beginning with the committee's influence on the formation of the Project Advisory Group (PAG), and determination of who would play key PAG roles in 2014 to revise the 2010 version and to deliver a new draft for the ultimate 2016 Strategy. Frustratingly, there was no reference to the CCC in the Authority's agenda records. Moreover, any trace of CCC involvement in initiating the PAG, as well as its membership, had disappeared by the time the Adelaide Park Lands Authority proposed the formation of the group on 13 February 2014, to comprise a senior council manager, as well as "three Authority members, noting that a majority of state-government appointees are preferred" as well as three senior government officers, and three officers from adjoining council areas.[11] The first clue that a committee directive had

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[10] Capital City Committee, *Annual Report*, 2014–15, page 31.

[11] Adelaide Park Lands Authority (APLA), Special board meeting, Agenda, 13 February 2014, page 9.

been likely was the addition of those words: "... noting that a majority of state-government appointees are preferred". The other clues were even more obvious. The agenda paper noted: "The State Government's *30 Year Plan for Greater Adelaide* sees the park lands playing a greater role in meeting the recreational needs of the city and inner metropolitan area (as the population increases)."[12] Secondly, and surprisingly candidly for the Authority, it noted: "There has been a clear shift by the state government in its approach to the management of the park lands, particularly with the Riverbank precinct." The reality of this would become obvious on ministerial endorsement of the 2016 Strategy in August 2017.

Dissatisfied with city council answers to a series of March 2016 'Questions on Notice', Cr Martin pursued further, but was to discover on 26 April 2017 that his bid for transparency would be even more effectively frustrated. Even his Motion on Notice was determined to be confidential! He got some answers, but under the Local Government Act's confidentiality provisions, was unable to tell anyone without breaking the law. The mechanism to frustrate public scrutiny of the committee, put in place in the *City of Adelaide Act 1998*, remained highly effective 19 years after its enactment.[13]

A long history of criticism

The Capital City Committee's activities have long been subject to scrutiny attempts, especially with regard to park lands matters. In February 2001, several years after it was formed, it was described by Australian Democrats member of state parliament's Legislative Council (MLC), Ian Gilfillan, as "... a secret club of movers and shakers which makes decisions about Adelaide city without public scrutiny".[14] Gilfillan at the time was president of the Adelaide Parklands Preservation Association, and four years later would play a critical role in the Legislative Council, fine-tuning and clarifying draft provisions of the Adelaide Park Lands Bill 2005. "The state government is not the city council and neither is the council the state government," he said to a *City News* reporter in 2001. The reporter wrote: "A government spokesman said the committee met in camera "... to bounce off ideas without the publicity or individuals being pushed into corners or a public position which they might then have to get out of".

Six years later, in 2007, the committee was heavily criticised in a press report by a city councillor who had been a member since inception. Councillor Anne Moran was reported as saying participation was "a waste of time". A news reporter claimed she said: "... government ministers attending its meetings showed a 'sneering lack of respect' for city councillors, limiting any meaningful debate".[15]

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12 APLA, ibid.

13 Councillor Martin did, however, put on record later his view about what had occurred with respect to the CCC and the PAG. It is contained in Appendix 20 of this work: 'One day it could become known as the great park lands hijack'.

14 Ian Gilfillan, Messenger *City News*, 'Gilfillan blasts 'secret' Capital City Committee', 21 February 2001.

15 Chris Day, *City Messenger*, 'Not such a Capital idea', 7 June 2007.

Moran: "You can cut the air with a knife. It's either that, or there is sheer boredom and people can't wait to leave the room." The reporter claimed Cr Moran suggested that the committee should be an open forum between government and the council. She wanted the committee replaced with a monthly meeting between the city council's elected members and the then City of Adelaide Minister [and MP for Adelaide], Dr Jane Lomax-Smith, and with other relevant government ministers attending when needed.

However, this would have forced an amendment to the legislation, which action would have challenged the 'wisdom' of the parliamentarians who crafted the original bill, with its clear intention to have a very small group of senior state and local government people meeting under strict 'duty of confidence' provisions. Dr Lomax-Smith's response to Cr Moran in the *City Messenger* article harked back to the origins of the Act, which arose out of bitter 1996 disputes between local and state levels of government. The reporter claimed that Dr Lomax-Smith had said: "It is recognised and admired nationally as a way to overcome petty personal feelings, focus on what is best for the city and promote ongoing dialogue."[16]

New Labor Premier signals regime change

As soon as Labor Minister Jay Weatherill became Premier, in November 2011, he flagged increased activity for the committee. In retrospect, the history of park lands administration under his incumbency between 2012 and 2018 shows that late 2011 marked, in park lands terms, the beginning of major change to contemplation of all facets of park-lands-related activity – and change, literally, across sections of the park lands, especially in land-use and built-form structure terms.

On 29 November 2011, weeks after becoming South Australia's 45th Premier, in a media interview he noted the importance of revitalisation of the city and of open-air events that brought a city alive. "We want them more often, not just every couple of weeks or even every year, but every week," he said.[17] Although the focus was on the CBD, the events were predominantly envisioned for the space surrounding the city – the park lands. The role of the Capital City Committee would be crucial. The reporter wrote: "Mr Weatherill foreshadowed a much more influential role for the Capital City Committee ... to provide a forum for the state government and the Adelaide City Council to discuss and oversee shared priorities for the development of the city. ... Government sources said yesterday that for much of the past 10 years the role of the committee had been virtually ignored and its influence had waned."[18] There was no reference to the fact that the former Minister for the City of Adelaide, Dr Jane Lomax-Smith – a staunch opponent of park lands development expansion programs popular with other Labor ministers – had been ousted in a surprise electoral loss in the March 2010 election, and therefore had ceased playing her key role on the committee. The reporter went on:

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16 Chris Day, op. cit., 7 June 2007.

17 *The Advertiser*, 'Our city must shine', 29 November 2011, page 23.

18 *The Advertiser*, ibid.

"Mr Weatherill said more use would be made of the committee and senior cabinet ministers, such as Deputy Premier, John Rau and infrastructure Minister Patrick Conlon, would be deeply involved in its work."

"We want to build on the great promise of this city," Mr Weatherill was reported as saying. The reporter wrote that Premier Weatherill "... said among the changes that he could see revitalising the city was the Riverbank precinct." In the same month, but two weeks earlier, the new Adelaide Lord Mayor, Stephen Yarwood, had shown enthusiasm for the state government's approach in a newspaper column he wrote. "The Premier and I have monthly meetings planned and share ambitions for the Capital City Committee to be [a] frank and fearless forum focused on results in the best interests of both our city and our state."[19] The Yarwood editorial column had followed subtle criticism four days earlier in the city daily, *The Advertiser*, suggesting that the state government was ingratiating itself with the city council's senior people for manipulative reasons. "Mr Yarwood says ministers who would never have considered even talking to the council are now doing so regularly. He has a commitment from Premier Jay Weatherill to meet monthly and a pledge to revive the Capital City Committee," the reporter wrote.[20] To the suggestion that the government was in fact subjugating the council, Mr Yarwood was reported as saying: "It's not just subjugating on council's behalf. There is also culture change under way in cabinet and they want to work with us."

There was a clear reason for this. The retrospective view is that not only would the state implement profound planning change to the *Adelaide (City) Development Plan* in March 2012 under Planning Minister John Rau's portfolio (for city commercial and residential zones) but also would follow that up with major changes in its views on how the park lands would have to adapt to the visions of the *30 Year Plan for Greater Adelaide* and its preoccupation with apartment living on land only metres from park lands boundaries. The next step, which commenced two years later in 2014, would be to influence the contents of the next *Adelaide Park Lands Management Strategy* to reflect the Weatherill aspirations for the park lands. It would take a gradual process of influence. But the city council's collaboration in the confidential, post-2012 deliberations of the Capital City Committee, involving the participation of the city's Lord Mayor with other Labor ministers keen on what they described as the 'activation' of the park lands, would prove to be vital. Of the notion that the outcome would arise from contributions made on equal terms, with 'intentions' clearly and publicly documented, it would be impossible for the public to conclude – given the secrecy provisions. But intuition told them that the state had prevailed over the park lands 'custodian', and preservation of the landscape character of the park lands would not be a high priority on ministers' minds as the committee pursued a new vision for Adelaide's unique green estate.

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19 *City North Messenger*, First anniversary of Lord Mayoralty, Yarwood editorial column, 'The days have just flown by', 16 November 2011, page 18.

20 Daniel Wills, *The Advertiser*, 'It's time for the city to deliver the goods', 12 November 2011,

| EXTRACT |

relating to the Capital City Committee: *City of Adelaide Act 1998*

18—Access to information

(1) The following will be taken to be exempt documents for the purposes of the *Freedom of Information Act 1991*:

(a) a document that has been specifically prepared for submission to the Capital City Committee (whether or not it has been so submitted);

(b) a preliminary draft of a document referred to in paragraph (a);

(c) a document that is a copy of a part of, or contains an extract from, a document referred to in paragraph (a) or (b);

(d) an official record of the Committee;

(e) a document that contains matter the disclosure of which would disclose information concerning any deliberation or decision of the Committee.

(2) A document is not an exempt document under subsection (1) if—

(a) it merely consists of factual or statistical material that does not disclose information concerning any deliberation or decision of the Committee; or

(b) it is within a class of documents excluded from the operation of subsection (1) by the regulations.

(3) The Crown and the Adelaide City Council are entitled to access to—

(a) a document referred to in subsection (1); and

(b) any other document in the possession or control of the Committee under this Act.

(4) However—

(a) access to a document is not available under subsection (3) in breach of a duty of confidence; and

(b) access to a document under subsection (3) may be given on conditions determined by the Committee.

(5) In this section, a reference to the Committee includes a reference to a subcommittee or delegate of the Committee acting under this Act.

APPENDIX 6

The Adelaide Park Lands Authority

The creation of the Authority proved to be an excellent, long-term investment by the Rann state government in maintaining control over major park lands decision-making. It was a bargain, too. Only the city council through its ratepayers funded the Authority's entire annual administration budget. Over the years 2007 to 2018 and beyond, even though the board member total remained static, the Authority's budget increased substantially. This illustrated another universal theme about bureaucracies that serve a government well – their funding must be assured.

- **Introduction**
- **The Authority machinery**
- **Broader observations of Authority activity to 2018**

Introduction

The public motivation in 2004 by the Rann Labor government to create the Adelaide Park Lands Authority had been political pragmatism, but the private motivation had been fear. It was later articulated by Labor's Environment Minister, John Hill, on 29 November 2005, in state parliament's House of Assembly. "I believe that there was a risk that, if we were to set up a body over the top of the council without its consent, there was a very real risk that the council would say, 'You set this up. You pay for it.' I think that the council puts in $10m or thereabouts each year into the running of the park lands – a considerable investment – so it seemed totally reasonable to me that they should be actively involved ..."[1]

The surprising historical aspect about this was that when a provision for it emerged in the *Adelaide Park Lands Bill 2005*, no-one had any idea how or whether it would deliver on aspirations at the time, or how its role might evolve over time. In that year there was still a significant element of community regret that it had become the political alternative to the original park lands 'Trust' concept – an independent body – that the Rann Labor opposition promised to deliver in 2001, and continued to promise after the 2002 election, but never did deliver. The regret was articulated by Jim Daly, one of the three men asked by the state government in late 2002 to explore what might in the future emerge to guide management of the Adelaide park lands. He later noted that the Authority had been the child of an unofficial city council and Labor government agreement. It was that a subsidiary, titled an 'authority', would be the only acceptable option if the council was going to continue to devote significant funding to future park lands management. In 2017 he recalled: "I was on the Community Consultation Management Working Group in 2003 that produced a Community Consultation Booklet and then 'Options for the Management of

[1] South Australian Parliament, *Hansard*, House of Assembly, 'Adelaide Park Lands Bill 2005', 29 November 2005, page 4234.

Adelaide's Parklands'. These consultations eventually led to the formation of APLA [The Authority]. I might add that this was not my preferred option, but it was the only one that the ACC [city council] and state government could agree on."[2]

Functions 'broad in scope'

Parliamentary counsel took the brief, gathered up the conceptual ideas, and created the concept of an authority in the bill, as well as describing a 'board of management'. In retrospect, it was perhaps the first sign of how manipulative government park lands tactics were going to be in the years ahead. The Rann government depended on the city council to keep funding park lands management, created an Authority – that it would control – despite claiming that it would the equivalent of an independent Trust, and then simultaneously had council commit to its indefinite annual funding.

Early in 2005 council and government analyses of the draft bill indicated that advisors remained confused about the actual powers that a mere subsidiary might have. For example, on 11 April 2005 the city council in an agenda paper discussed clauses (functions) relating to the Authority's roles in terms of providing advice, promoting awareness, undertaking consultations and administering a fund. On that date the council noted: "These [functions] are sufficiently broad in their scope as to effectively give the Authority any role it chooses to undertake, but without giving it the express powers to do so. It remains for council (with approval of the minister(s)) to determine what powers will be delegated to the Authority. This may set up situations of confusion or conflict with existing statutory provisions and management roles." [3]

Council's powers hobbled

In the same 11 April 2005 agenda paper the council noted the extent of the ministerial control that would take effect, noting that clause 13 of the bill "... contains additional provisions that modify the operation of the *Local Government Act 1999* so as to constrain council's ability to control the subsidiary. The most significant of these are that: Council must not adopt or amend the charter of the Authority without first obtaining the approval of both the minister responsible for the Act and the minister responsible for the Adelaide City Park Lands Act [sic]; and, Council must not give direction to the Authority without consulting the minister".[4] To cap it off, the council noted that the bill "is silent on the operational costs of the Authority and therefore they will be borne by council".[5] Nothing better underscored the subservient role that the council was to play under the provisions of the bill. It was glaringly clear that, only a few months ahead of the bill's entering parliament, in Park Lands Authority terms the council would be fully under the control of the Rann Labor government. Moreover, the city council administrators still didn't fully comprehend much crucial detail, and that "the functions and powers of the Authority should be clarified, along with relationships to the powers of existing land managers ..." [6]

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[2] Jim Daly, email, personal communication to John Bridgland, 5 June 2017.

[3] Adelaide City Council (ACC), Agenda, Item 12.3, 'Response to the Minister for Environment and Conservation regarding the draft Adelaide City Park Lands Bill 2005', 11 April 2005, page 8538. (The early drafts of the bill included the word 'City', which later disappeared.)

[4] ACC, ibid., page 8539. (The title of the bill at the time featured the additional word 'City'.)

[5] ACC, ibid., page 8540.

[6] ACC, ibid., page 8540.

But what *is* 'an Authority' ?

Seven months later, in a House of Assembly reading of the Park Lands Bill on 24 November 2005, Minister John Hill had said:

> "A State Authority is a minister or an agency or instrumentality of the Crown. A State Authority may also be a body established for a public purpose, by or under an Act, or established or subject to control or direction by the governor, a minister of the Crown or an agency or instrumentality of the Crown ... The definition also refers to any other body or entity brought within the ambit of the definition by the regulations. The definition of State Authority explicitly excludes councils or other bodies established for local government purposes and bodies or entities excluded from the ambit of the definition by regulation." [7]

Given that the subsequent Act provided for an 'Authority', it would be a statutory board, but any suggestion that it sat at arm's length from the city council, or was funded independently, would be false.

An 'authority' in name only

The subsequent reality was that it would be an 'authority' in name only; a mere subsidiary that reported to the council, required specific annual council funding, and would need to draw on the high-level expertise of additional contracted council staff, but which was implied to be perceived as something separate from the council. Moreover, and most tellingly, when the government in subsequent years didn't like its advice, it simply ignored it, making clear that whatever authority it had, its determinations had little effect on the state government if it had other intentions. It got worse for board members in the years to follow, when the government would deliberately frustrate the activity of the Authority when significant park lands raids were under way. The proposal for a new Royal Adelaide Hospital (2007) and the Adelaide Oval redevelopment (2011) are but two examples explored in detail elsewhere in this work. There were also simpler manipulative methods, where the minister who approved nominations to the board simply didn't approve for periods of time, leaving the nominee or his or her proxy in limbo, and unable to take a place at the board table. This skewed the voting trend and, sometimes for critical months, silenced voices known to be noisy at times of controversy.

The residue of 2005 deliberations left evidence about government desire to maintain power – putting in place a new body but maintaining enduring future government control over the park lands in various ways. But in the lead-up to the March 2006 state election, just after the proclamation of the *Adelaide Park Lands Act 2005*, Labor's 'selling' of the concept of the Authority was attended by much government spin, as if to suggest that it had delivered on a 'Trust' promise for the people of South Australia, and that future park lands determinations could no longer be manipulated by future governments. Given that the Authority was yet to sit, who

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[7] South Australian Parliament, *Hansard*, House of Assembly, 'Adelaide Park Lands Bill', 24 November 2005, page 4152.

knew whether that was true? As often applied under an administration led by Labor Premier Mike Rann, it was an enticing illusion, superficially attractive. To a South Australian media always in a hurry, superficiality was all that mattered.

Early confusion

Despite the draft provisions in the 2005 bill, and its proclamation early in 2006, 10 months later some key participants remained unclear. As City of Adelaide Lord Mayor Michael Harbison had said at a November 2006 public park lands forum (and before the Authority had commenced sitting): "... its role really is to set policy and strategy. It won't be involved in hiring the gardeners. ... what it will do is set the rules under which council will spend whatever money it wants to spend in the park lands."[8]

But it wouldn't set the rules. It would only interpret them, and advise others.

The 'office junior' who grew up

On the basis of many years' observations, and remembering that its status is but a subsidiary of the council, it appears that the Authority evolved a little like the office junior who grew up to be the organisation's senior advisor, but without receiving any of the delegated powers that such an executive position might assume. The power to set rules remained in the government's hands. But the Authority's advice could, and did, have a capacity to smooth the way to the setting of rules when it was clear that the government sought a particular outcome. Over the years of study of the Authority's activities (2007 to 2018) it invested much energy in listening, interpreting and advising, and it did gradually occupy a position of some apparent influence because it was charged under the Act to create and subsequently amend key policy documents required under the Act (or other Acts with which the *Adelaide Park Lands Act 2005* interacted) such as the second and third versions of the *Adelaide Park Lands Management Strategy* and the second version of the *Community Land Management Plan* for most park lands parks. Tellingly, however, much that it produced regarding these key documents had to be endorsed by the city council and – critically – signed off by a minister before each might be seen as 'endorsed and authorised' policy. This illustrated the complete control imposed on it by the government of the day, in this case (during the period covered by this work), three consecutive terms of state Labor administrations that followed the Act's proclamation in 2006. Some analysis of how, why and to what extent it did these things is contained elsewhere in this work under chapters and accompanying appendices exploring the evolution of the *Adelaide Park Lands Management Strategy*, and the *Community Land Management Plan*, as well as the *Adelaide (City) Development Plan*.[9]

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[8] Lord Mayor Michael Harbison, Adelaide Town Hall, 'Park lands forum: The Adelaide park lands threats, challenges and solutions', Hawpark, Auscript 2006, page 22 (of 29). [10–12 November event reference: Adelaide Parklands Symposium: *A balancing act: past–present–future*, 10 November 2006, co-presented by The Centre for Settlement Studies, Louis Laybourne Smith School of Architecture and Design, UniSA; The Bob Hawke Prime Ministerial Centre, UniSA; and the Adelaide Parklands Preservation Association].

[9] Major operational features also are explored in other chapters in this work titled, respectively, 'The secrecy tradition' (46) and 'The consultation lark' (48). Note: the *Adelaide (City) Development Plan* was eventually superseded by the *Planning and Design Code* on 19 March 2021.

The Authority machinery

Three conceptual levels

Given the Adelaide Park Lands Authority's financial relationship with the city council, no observer should conclude that the Authority occupied a 'politics-free', arm's-length place within the machinery of Adelaide park lands management.

Like all political creations, the Authority has functioned on at least three conceptual operational levels. The observations below cover the period 2007 to year-end 2018.

1. The interpreter

Firstly, it has been principal explorer and 'chief interpreter' of the web of complexity defining and guiding Adelaide park lands management.[10] However, this was not an exclusive role. There were times when a controversial matter was not explored by the Authority because city council administrators determined that it would not.

2. The advisor

Secondly, it has been 'first port of call' when the government sought some (but not all) park-lands-related responses, and when the council sought interpretations to critique or support a proposal. Observers sometimes concluded that in this way the council would be seen to be at 'arm's length' from the Authority's advice, especially if subsequent determinations had the potential to become complicated, or worse, politically controversial. However, the suggestion of an arm's-length advisory role was contradicted by the fact that over the period 2007 (inception) to 2018 the Authority's presiding officer was the city council's Lord Mayor. The 'arm's length' notion was, like many aspects of the Authority, illusory.

The city council also resorted to Authority advice when it wanted to justify something relating to its tenure of most of the park lands about which South Australians might have had some objection – but only if they knew about it. The Authority, being a council sub-committee, enjoyed all of the benefits of the provisions of the *Local Government Act 1999*; in particular, the confidentiality provisions. These allowed any or all of its deliberations to be conducted in secret, and its advice to be subject to ongoing secrecy under section 90 (sub sections 1 to 3) in the form of confidentiality orders. But some of the secrecy would have to lapse or at least be compromised in cases where the Authority would be charged by the city council to conduct public consultations, and then analyse and deliver results back to the council. At times of significantly negative feedback, sometimes the council would pretend to be surprised, especially if the council wanted something to go ahead. At these times it exercised its power to ignore the Authority and its interpretations, as well as the public feedback, and do what it had planned to do all along. Often the government would be in on the game because often the final decision would be one that the government had premeditated earlier under the 'duty of confidentiality' deliberations of the Capital City Committee (chaired by the Premier or Deputy Premier and attended by the Lord Mayor) which met behind closed doors and advised state cabinet, whose

[10] This is already described in Chapter 4 in this work, titled: 'The park lands rules – a vast web of complexity'.

preliminary deliberations were always kept legally secret. With big government park lands development proposals, particularly beyond 2010, South Australian taxpayers could end up partly or wholly funding the outcome. A huge sports stadium, a multi-storey new hospital, several high-rise medical research towers, a redeveloped, multi-storey Festival Plaza car park, and a new, six-storey high school in the eastern park lands were some examples to 2018. The extent to which the Authority played a key advisory role in these outcomes – or not – revealed a great deal about it, as well as city council and government manipulation of its role over this period.

3. The Authority's 'authority'

At a third conceptual operational level, the Authority comprised a board whose members – apart from the presiding officer – were appointed on the basis of certain expertise and were assumed to collectively deliver some sort of 'authority'. That is not what the *Adelaide Park Lands Act 2005* explicitly said, but that was the reality.

Under the Act, the board's members were and still are required to have "a range of knowledge, skills and experience". The parliamentarians debating the bill in 2005 did not seek the word 'balance' as an alternative to 'range', which would have been a significantly different requirement, and might have been challenging for any future government administration to achieve. Moreover, 'range' leaves open an opportunity to have vast gaps in Authority board members' park lands management knowledge, and this was sometimes the case. There was a discreet silence about that.

The knowledge fields included: (a) biodiversity or environmental planning or management; (b) recreation or open space planning or management; (c) cultural heritage conservation or management; (d) landscape design or park management; (e) tourism or event management; (f) indigenous culture or reconciliation; (g) financial management; and (h) local government. A superficial analysis of 2007–18 membership suggests that some members were highly experienced in some of those fields, but others had almost none. Common themes evident were that some appointees had extensive state government employment records, as well as Labor Party backgrounds. Over the study period of this work, few opportunities arose to ask any park-lands-related minister about appointees, but one did arise in April 2014 when an Adelaide Park Lands Preservation Association question was posed of Planning Minister John Rau: "Are you concerned that the Adelaide City Council continues to self-appoint to the [Adelaide] Park Lands Authority ... for example, there's no expert on biodiversity or archaeology?" (The context was during a period where some inner city councils were pressuring the government to allow them to have an equal say on park lands management matters.) The minister replied:

> "... All I can say is that so far as I'm concerned it's a matter of by their actions I shall judge them, if they cooperate with the government and the councils like Prospect Council, I'm not really too agitated about whether they've got an archaeology degree or whether they've got a biodiversity qualification, that doesn't upset me at all. All I'm interested in is whether they play the game. If they don't play the game, then that's a problem. ... before I [would go] to the wall over having an archaeologist or a biodiversity specialist, I'd be going to the wall about having [the City of] Prospect at the

> table, or Unley at the table, or West Torrens at the table, because it is somewhat artificial and almost, sort of, Monty Pythonesque really, to be moving down the path of looking at all these academic qualifications sitting around the [Authority] table when the hundreds of thousands of people who live immediately around there have no direct voice at all." [11]

Despite the minister's comment – and the ambiguity about 'playing the game' – there was no subsequent bid to increase board member numbers at the Authority. Moreover, there was no publicly evidenced contemplation to bring to the board new members to represent local government areas adjacent to the city council's boundaries. Both initiatives would have required amendment to the *Adelaide Park Lands Act 2005*.

The board's vulnerability

Although constituted as a 'board of advice', with the implication that the board had real authority, after about 2010 evidence arose to show that it was easy for the government or the city council to frustrate the board's participation in contemplation of some park lands matters. This occurred at times when state cabinet deliberations aimed to exploit and/or alienate sections of the park lands in ways that might tempt board members to oppose them 'in principle'. This was a political outcome that state Labor tried to avoid as much as possible. The board meeting disablement took various forms. The simplest was for the minister to stall authorisation of a board appointment (or of a proxy), thus skewing the numbers able to attend board meetings and vote. This didn't occur often, and mostly related to the Act's allowance for one 'independent' member. During the period of study this turned out to be a nominee of the Adelaide Park Lands Preservation Association, whose nominees were the ones most likely to cause a fuss.

Another ruse was to stall delivery of information for the board, or briefings for the board, until very late in the timeline for a particular park lands project. This restricted the board from seeking more information, and sometimes forced it to make decisions under duress.

The most complex government ruse was to create new project-oriented development legislation, which had the effect of overwhelming the *Adelaide Park Lands Act 2005* (which included selected other Acts with which that Act interacted) and thus overwhelming the need for participation by the board.

In these ways (among others) the Authority's weak administrative position (being merely a subsidiary of the council) was laid bare. But overall, since commencement in 2007, the board was of political value to the government of the day. This was especially so when achieving a park lands outcome involving the collaboration of the city council.

One exception to political manipulation in the period of study of this work was seen in the Authority's first year of operation, 2007, in relation to a fight over a Rann government plan to build a huge corporate function centre claimed to be a

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[11] Adelaide Park Lands Preservation Association, 'Interview: the Hon Minister John Rau MP', *Park Lands News*, April 2014, page 10.

'multi-purpose grandstand' at Victoria Park (Park 16). This was when the Authority's potential influence was first tested and the state was unprepared for the way the Authority and city council resisted. But after 2007, the state saw to it that when controversial matters arose the Authority would be kept largely 'out of the loop', and its potential influence suppressed, and any attempt at revolt was either overwhelmed, or simply ignored. As referred to above, a good example after 2007 was the creation of new legislation to alienate park lands and build the new Adelaide Oval stadium in Park 26, in 2011. This was as brutal as it was symbolic – when the *Adelaide Park Lands Act 2005*, and its interacting *Development Act 1993*, were overwhelmed by new Labor government legislation regarding a particular site in the park lands. The extent to which the Authority was able to participate with effect in this determination was in reality nil. Moreover, an in-principle Authority resolution rejecting the bid was simply ignored. This occurred during Premier Jay Weatherill's state leadership (2011–18). Later (and more commonly) government park lands exploitation initiatives, such as prosecution of *ministerial* development plan amendments, bypassed the Authority's capacity to put in place recommendations for any alternative planning outcome. The construction of the new Royal Adelaide Hospital was one example because the Authority played no determination role in the state's planning functions. It could advise, on the basis of policy documentation content at city council level, but its advice carried no legal weight.

The origins of the board charter

When the board first met in early 2007, the Authority replaced a park lands committee of the council that had been set up in anticipation of the subsequent body. That committee sat for only three years, commencing in 2003. To effectively commence Authority operations, a charter had to be written – a set of rules for how the Authority would operate, and defining its roles, responsibilities and duties. The 2006 writing task fell to the Authority itself, before it officially began sitting in 2007. Of course, under the new *Adelaide Park Lands Act 2005*, the charter's words had to be authorised by the minister.

One matter confused public comprehension about this bureaucratic mechanism. The charter was actually provided for under an older statute, the *Local Government Act 1999* (with which the new *Adelaide Park Lands Act 2005* interacted). It couldn't be progressed unless it responded to the 1999 Act's provisions and was signed off by a separate minister, the one responsible for the administration of that 1999 Act. So the Authority is actually the child of two Acts, an example of one of a series of complexities faced by parliament to implement 2005 plans for a new body to advise on future park lands management. Moreover, a reading of the *Adelaide Park Lands Act 2005* made clear that the 'model' would operate at the discretion of the minister administering that Act, and it would therefore operate under a very tight government grip. This is something about which the South Australian public were, and at year-end 2018 remained, largely unaware. Many observers continued to assume that the Authority operated under some degree of independence and, given the convenience of this false assumption, the state government put no effort into dispelling it.

Both the 2006 and the revised 2018 board charters reveal much, not only about Authority self-perception, but also city council perception about what it assumed the Authority could do and, more importantly, should do. Of course, no charter could be activated until ministerial endorsement, so it also revealed much about the state government's assumption of what the Authority could do and, more importantly, should do – especially in 2018 when the charter was revised, after 11 years of operation. The most revealing 2018 aspect was an emergence of a new provision allowing the city council to sack the Authority's board and nominate fresh board members. More discussion appears below.

The power and the glory

The rapidly growing workload of the Authority over its first three years led to the creation in 2010 of a new job title, an executive officer. It was filled by a project officer, who already had extensive experience participating in Authority operations. That person would over subsequent years assume major responsibilities that would significantly empower him to play a central role in informing, and helping determine, park lands outcomes. As 2010 passed, the executive officer would have extensive opportunity to shape the future of park lands management through his advice to the board, and subsequent city council response to the board's advice. This would occur without any formal public scrutiny mechanism in place to monitor that opportunity or the way that person framed recommendations for endorsement by others, or responded to operational, legal or policy queries by Authority board members. His role was an internal administrative one. Of course, the meeting discussions and his advice (as summarised in agendas and minutes) could conceivably be scrutinised by all involved in the progression of a matter until a final recommendation was made. But the recommendations emerged in public very close to the time when board members would vote on them, so any public opposition to them faced little strategic opportunity to lobby board members to try to get them to explore alternative options.

Although very early (2007) Authority minutes contained detailed transcriptions of discussions between board members and council staff advising them, this ceased fairly quickly. Observers later would have to be present in the room to note them – except in cases where discussions were deemed to be confidential, in which case no record of discussions would be available to the public at all. At least one other reason for an apparent lack of opportunity for external scrutiny was the extensive complexity of park lands legislation, other legislation with which it interacted, and arising policy (manifesting in a large number of ever-evolving policy documents, strategies, guidelines and master plans). It made it very challenging for non-experts to fathom some recommendations, let alone interrogate the park lands management rationales.

Where necessary, the executive officer could, and did, consult the city council's lawyers to advise the Authority. That advice was commonly declared confidential under section 90 (sub sections 1 to 3) of the *Local Government Act 1999*, thus not revealed in the agendas or minutes of the Authority, except to record that legal advice had been sought. In this way, members of the public seeking paper trails containing explanatory information – especially about controversial park lands matters – were often frustrated. The lack of any public 'audit function' that might have been built into

the Act prescribing annual scrutiny of the role and activities of the Authority and its advisors was another illustration of the poverty of the transparency and accountability mechanisms, which the state government and parliament endorsed, in late 2005 as the Act was passed. The Act's provision for annual reporting was the main mechanism, but on the basis of analysis of more than 10 years' reports it was clear to the author of this work that the reports' authors – like many government department authors and editors – had wide scope to report and discuss matters in any way they chose, or not at all, and to summarise the record of annual outcomes as they sought fit. This freedom is similar to reporting that occurs in state government departments. Most state departments during the period used their annual reports to 'wash clean' any of the contentious matters of the year in focus. Ministerial staff ensured that their minister's departments reported in a way that was preferred by the minister.

The second charter

The first charter was signed off in late 2006. It would be another 12 years before it was replaced by a more expanded and significantly amended version. Readers can use an internet search engine to obtain and compare and contrast both charters. The 2018 version highlighted how the Authority in 2018 perceived its role and responsibilities 11 years after commencing operations in 2007. The extent of amendments illustrated that much had changed. The draft text replacement began to appear in an Authority agenda paper of 22 February 2018. There were some intriguing aspects. The recommendations, some of which arose from an Authority workshop and some of which arose from advice from lawyers, were summarised by the Executive Officer.

Who hires; who fires?

Major new wording appeared in a new section (Part 5) in relation to the executive officer: appointment, role, duties, responsibilities and potential delegations by that person. Part 5 conferred significant new powers via certain duties and responsibilities. These may have highlighted previous real or perceived deficits in the 2006 charter and the need in the 2018 charter to address significantly expanded operational demands on this person that had grown since 2007 – but especially after state Labor had won its third term, in 2010. The period 2010–14 was a time of significant workload for the Authority.

Potential for conflict of interest

There was no evidence in the February 2018 agenda paper discussing the new charter of any contemplation of the risk of conflict of interest and how to manage it after 2018. Neither was there any evidence in minutes indicating concern about this as the new charter was being discussed up to the 28 August 2018 resolution for adoption. A new clause in Part 5.1.1 said that: "The council CEO will appoint an Executive Officer ..." But there was no evidence that council elected members questioned why the Authority's board members could not have input or a deliberative say, sharing or contributing to the exclusive role of the CEO in determining who that person might be. Sharing that decision might have mitigated the risks of perception of conflict of interest. As long as any executive officer (or project officer advising on park lands matters) has been active within the Authority this potential has existed to the extent

that, if the council is paying the person's salary or contract fee and setting the conditions of employment or contract, there was potential for pressure to be exerted on that person to deliver advice that would support a likely subsequent view of the council administration and elected members who would rely on that advice to make final park lands determinations. This is not to imply that such pressure ever occurred, prompting the executive officer to work under conditions of conflicted interest, only that since endorsement of the 2018 charter there continued be a lack of any publicly transparent administrative mechanism to monitor the potential for perceived or actual conflict of interest. It highlighted yet another downside of parliament's 2005 decision to establish a key body for park lands advice as nothing more than a council subsidiary, effectively a sub-committee, and not an arm's length, separately funded park lands Trust, wholly independent of the city council.

Persons of 'influence'

Another new clause specifically enabled the Executive Officer to "... allow any person to attend at a meeting to act in an advisory capacity".[12] Superficially, this new clause appeared to ensure that board members would be presented with the richest, broadest and soundest sources of advice on matters for deliberation. But it also allowed the officer subjective scope to invite persons whose views might skew the balance of representations and submissions put before board members, by persons possibly with a perceived or material interest in the topic. Should the officer exercise the right to invite those persons, the clause did not demand that he or she provide explanatory advice to board members as to why those persons were asked to 'act in an advisory capacity' and whether there was any potential for conflict of interest. While the implied intention appeared honourable, it was and remains open to abuse. No city council elected member challenged it at the time the draft 2018 charter was being examined.

Interpreting 'silences'

Included in the revised charter were significant new functions that could be perceived to be politically related, not only in regard to giving advice, but also appearing to expand responsibilities in some way in relation to (among other things) a new clause, "(g) when existing strategies and policies are silent on the matter".[13] The main clause, numbered 3.2,'Powers and duties', mostly replicated the 2006 charter wording, and related to the Adelaide Park Lands Act and the Local Government Act. It said: "... and this charter, and to avoid any doubt, the Authority shall have those powers specifically conferred upon it by the Park Lands Act and otherwise as delegated to it by the council from time to time, which include ... [various duties] ...".

Here is one possible explanation of the above clause. While these words may have been written in 2006 to clarify untested assumptions about functions, the new 2018 functions clause (g) that followed suggested that the Authority had experienced

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12 2018 revised draft Charter, Part 5, APLA Executive Officer, clause 5.2.2, as found in: Adelaide City Council, Agenda, Item 12.4, 'Review of the Adelaide Park Lands Authority Charter and sitting fee payments', 26 June 2018, page 74.

13 Adelaide City Council, Agenda, Item 6.2, 'Review of the Adelaide Park Lands Authority Charter', 15 May 2018, page 44.

some administrative demand in relation to state-level political matters and sought more certainty in its role in 2018 and later. An Authority agenda introduction to these changes made it clear that there was an Authority need for "Greater clarity of the Authority's role through a more detailed set of 'powers and duties' section".[14] The new 'silence' clause was questioned by elected members in August, and to the question "Why is there an ability to make a determination on matters when policy is silent?" the formal – but ambiguous – Authority response was: "To allow for consideration of matters not contemplated by existing policy."[15] But 'consideration' was already allowed, by seeking legal advice.

The explanation may have been as simple as formally allowing the executive officer to provide an interpretation and thus avoid a previous imperative to always seek costly, and often delaying, legal advice. This new opportunity could be useful, and sometimes politically so, especially at times of controversy.

Whatever would eventuate after 2018, there was a political dimension to it. The matter might have prompted reflection among those parliamentary legislators who 13 years earlier had endorsed the Authority concept in 2005, and the minister who had endorsed the first 2006 charter. While the idea of the Authority was a *politically* popular concept in 2005, there wasn't broad agreement on what legislators thought it might be capable of when an administrative interpretation might be difficult to resolve because of what park lands administrators identified as a 'silence'.

Provision to sack the board

In the draft 2018 charter new provisions also appeared in relation to 'Performance and accountability of the Authority'. They sought to better inform interpretations of provisions in the *Local Government Act 1999*, almost certainly because the council considered that they were insufficient. There was also provision under the *Adelaide Park Lands Act 2005* (Part 7 'Conditions of membership') for removal of a board member, but procedural detail was perceived to be lacking, and the new charter appeared to seek to provide it in an improved way, by comparison to lesser provisions in the 2006 charter. New provisions (Part 8.11) allowed the council to 'review the performance of the Authority and the Board', a curious distinction. The fact that the Authority and the board were effectively indistinguishable was underscored by a city council claim in December 2016. At that time it had observed in an agenda: "The Authority is required to have a Board of Management. However, all meetings/decisions of the Authority are deemed meetings/decisions of the Board."[16]

The review of performance could be triggered if either the Authority or the board were "not performing its duties under this charter" (8.11.2). Procedural detail followed. The Minister was to be consulted while the procedures were being followed by the council. The section concluded with the provision:

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[14] Adelaide Park Lands Authority, Agenda, Item 8.1, 'Review of the Charter for the Adelaide Park Lands Authority', 15 May 2018, page 3.

[15] Adelaide City Council, Minutes, The Committee, Workshop summary, 'Review of the Adelaide Park Lands Authority's Charter', Program: Strategy and Design, author Martin Cook. Executive Officer, 21 August 2018, page 94.

[16] Adelaide City Council Meeting, Agenda, Item 15, 'Adelaide Park Lands Authority – Ministerial Nominations', December 2016, page 19.

> "8.11.6. The Council either:
>
> (a) following the meeting held pursuant to Clause 8.11.5, and having considered the matters discussed in that meeting and the matters contained in the Council Notice and in the Notice of Response; or
>
> (b) if the Board does not provide a Notice in Response, shall be entitled to take such further action (if any) as it determines, in consultation with the Minister, with respect to the matters raised in the Council Notice which action may include, but shall not be limited to, the removal of the Board and the appointment of a replacement Board in accordance with this Charter."[17]

During 2018 winter workshop meetings, some elected members questioned this, asking: "Why is there an ability to remove and replace the board?"[18] The response was: "The Authority operates as a subsidiary of Adelaide City Council and as such is accountable to and subject to the direction and control of council. As part of a performance accountability and dispute resolution process, council may legally and ultimately remove the board of a subsidiary in consultation with the minister."

There was no doubting the legal position, but the notion of 'performance accountability' was vague. There never had been specified measures for assessing performance of duties, year by year, from 2007. But this was implied in clause 8.11.2, which read (in part):

> "8.11.2. Without limiting the Council's powers under the LG [Local Government] Act, if at any time the Council is of the view that either the Authority and/or the Board is not performing its duties under this Charter the Council shall be entitled to provide a notice in writing to the Board (Council Notice) identifying:
>
> (a) those matters in respect of the performance by the Authority and/or the Board of its duties under this Charter which are not satisfactory to the Council; and ..."[19]

It would appear that judgement about 'not satisfactory' would be based on subjective criteria, because the remainder of the clause read: "(b) details of any corrective action which the Council requires the Authority and/or the Board to take in order to rectify the identified performance issues, and the Council will provide a copy of that Council Notice to the Minister; ..." Exactly who established and determined 'the identified performance issues' was left open to debate. It highlighted how philosophically tenuous was the basis of the operation of the Authority as a subsidiary, such that board members, or the whole board, could be sacked on grounds that could not be clearly specified in the new charter's wording.

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17 2018 revised Charter, clause 8.11.6.

18 Adelaide City Council, The Committee, Minutes, 'Review of Adelaide Park Lands Authority Charter, 'Further questions asked at Council, 26 June 2018', page 95.

19 2018 revised Charter, clause 8.11.2.

Minister's power to sack the board

Two years earlier, three board members had been subject in late 2016 to sudden notice by the planning minister that their appointments would not be renewed in 2017. Two still had parts of their terms to run so they were effectively sacked. There was no evidence produced that they had done anything wrong, nor were any allegations made. One of the three had completed her term, but the other two had not (having completed only the first year of their three-year terms). The notice arrived at the end of an operational year, in December 2016, and the minister, John Rau, announced that three of his departmental staff members would take the board members' places when the Authority recommenced sitting in 2017. It triggered controversy, with Lord Mayor Martin Haese reported in Adelaide print media as being very concerned at the replacement of "... independent members with a broad range of expertise [being] much better able to discharge the responsibilities of the APLA charter than departmental representatives".[20]

He was proven correct in 2017, when in September 2017 these new board members had to declare conflicts of interest about several matters being laid before the board for resolution. In one matter, they vacated their chairs. Each matter was related to government funding of park lands development proposals. But in one of those matters (a new sports pavilion proposal for Park 24 in the west park lands, being pursued by a football club and an athletics club) they declared only 'perceived' conflicts and stayed and voted.[21] More detail is explored in another appendix to this work.[22] The minister's action in placing his departmental officers into so-called independent, non-state-government advisory and determination roles tellingly dismantled any assumption that the Authority had any real independence from government.

The matter also exposed as false a number of other public assumptions about the Authority's board. They included that board members who diligently performed their duties had a guarantee under the *Adelaide Park Lands Act 2005* that they could serve out their three-year terms; or that the so-called range of expertise necessary to justify board member nominations, as demanded under the Act, was a matter that could impose rigid parameters on those with the power to hire and fire; or that the board must comprise members chosen for their 'independent' experience and background, to underscore an illusion that they were independent of government. This latter assumption had existed even in parliamentary circles. As Liberal Adelaide MP, Rachel Sanderson was reported in a newspaper as saying of Minister Rau after he placed his departmental officers into Authority board roles: "[He] has made a mockery of the Authority's independence."[23]

The board appointment decision illustrated the all-encompassing powers of the minister under the *Adelaide Park Lands Act 2005*. In this context, the new clauses added by the city council to the Park Lands Authority 2018 draft charter appeared

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[20] Adam Langenberg, *The Advertiser*, 'Rau in yet another row', 11 December 2016.

[21] Adelaide Park Lands Authority, Minutes, Item 6.1, 'Tampawardli (Park 24) Community Sports Hub', 21 September 2017, pages 2–3.

[22] See Appendix 19: 'Eight pavilion case studies', Case study 3.

[23] Adam Langenberg, op. cit., 11 December 2016.

to reflect similar extent of powers of the city council. They were very broad, and after September 2018 made clear that they allowed the removal of the board and the appointment of a replacement board in accordance with the charter. While the power could only be exercised in consultation with the minister, the new provision indicated that a new and expanded power to deal with a potential board revolt had been put in place, perhaps to allow a state minister to appear to stay at arm's length, should the council determine to sack the board and replace it. Exactly how this procedure would be exercised could only be fully understood when tested, but the requirement for the minister to participate in deliberations meant that the minister's influence would be critical, albeit to some extent invisible.

The lack of clarity about the city council's criteria for removal of the board may have been addressed in the Act. The key wording may turn on the words: "... will hold office *on conditions determined by the Adelaide City Council*" [emphasis added]. But this leaves unclear exactly what conditions they might be, and whether they replicated what might be determined "*after consultation with the Minister*" [emphasis added]. It might be similar to the matter of interpreting a 'silence' in the Act, open to interpretation by others, potentially at times of controversy, or more embarrassingly, revolt.

The extract from the Act says:

"(1) A member of the board of management will hold office on conditions determined by the Adelaide City Council after consultation with the Minister.

(2) An appointment as a member of the board of management will be for a term, not exceeding 3 years, determined by—
 (a) in the case of a member appointed under section 6(1)(a)—the Adelaide City Council after consultation with the Minister;
 (b) in the case of a member appointed under section 6(1)(b)—the Minister after consultation with the Council, (and a member is eligible for reappointment at the expiration of a term of office).

(3) A member of the board of management may be removed from office—
 (a) in the case of a member appointed under section 6(1)(a)—by the Adelaide City Council;
 (b) in the case of a member appointed under section 6(1)(b)—by the Minister, on any of the following grounds:
 (c) for breach of, or non-compliance with, a condition of appointment;
 (d) for mental or physical incapacity to carry out duties of office satisfactorily;
 (e) for neglect of duty;
 (f) for dishonourable conduct." [24]

Broader observations of Authority activity to 2018

Prompts for Authority action

Observers of city council procedures relating to park lands matters would note a long-term trend of matters flagged in Authority agendas seemingly 'out of nowhere',

[24] Section 7, 'Conditions of membership', subsections 1–3.

as if the Authority itself had triggered them. This was misleading. Some major park lands matters, especially ones likely to be controversial and feature development proposals, were triggered at Capital City Committee level. It filled the role of an advisory body to state cabinet whose secretariat was in the office of the Deputy Premier, and one of whose members was the city's Lord Mayor (and often included the Deputy Lord Mayor and at least one elected member). Its agendas and minutes were and remain confidential. At year-end 2018 its annual reports, such as they were, delivered consolidated and much reduced texts in relation to a range of state matters, and especially park lands matters. Specific references to park lands matters over the period were uncommon, perhaps because the state government liked to contribute to the myth that the Adelaide Park Lands Authority was the originating advisory source regarding all parks proposals. Evidence of a revealing exception, however, had appeared several years earlier in the Capital City Committee 2014–15 annual report, noting its high-level involvement in initiating the idea of a Project Advisory Group – a sub-committee ostensibly created by the Authority – whose members played a key role in revising the 2010 version of the *Adelaide Park Lands Management Strategy*[25] and consequently delivering a radically different 2016 version.

The 2010 version was significantly amended during the process of delivering the replacement 2016 Strategy. The new one featured a vast blueprint for creation of new 'hub' recreational facilities across the park lands. This aimed to 'activate' the park lands, highlighting Labor government plans to change the landscapes of many of its parks, expand car parking areas and construct various facilities. This contrasted with the content of these parks' *Community Land Management Plan*, which contemplated no such thing. Moreover, these hub plans were unfunded – clear fingerprints of state intervention – formalising major concepts in key documentation, but leaving the planning, funding and implementation for later. The annual report extract read: "The Committee's strategic focus for the park lands has been on the review of the *Adelaide Park Lands Management Strategy* [2010 version]. The Adelaide Park Lands Authority and the newly created Project Advisory Group, which includes senior representatives from government and adjoining councils, have led this."[26] However, the reality was that the advisory group had led it; the Authority merely rubber-stamped it.

Board influence a useful case study

The Capital City Committee's activities are almost invisible to most South Australians, but its major historical role behind the activities of the Authority during the period explored in this work should not be underestimated. The important theme is that while the Authority held no status higher than that of a council subsidiary, its advice could be influenced by other government bodies whose accountability to taxpayers or city council ratepayers was nil, and whose record of transparency of public reporting was very poor.

An exploration of the Project Advisory Group that began sitting in 2014 to influence the outcome of the looming revision of the *Adelaide Park Lands Management Strategy* makes a useful study. Set up by the Capital City Committee, it was adopted by the Authority under a provision in the *Adelaide Park Lands Act 2005* that allowed for

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[25] Capital City Committee (CCC) Annual Report 2014–15, page 12.

[26] CCC, ibid.

formation of committees by the Authority. The procedural tactics and the focus of those tactics would have been obscured to almost everyone outside the Authority or the city council. But one former Authority board member (2010–2013) did see the implications, and recorded her views in April 2014. Gunta Groves, a member of the Adelaide Park Lands Preservation Association, presented a very clear view:

> "The biggest challenge for the Adelaide Park Lands Preservation Association [APPA] has always been to retain open space and preserve habitat in the park lands. This challenge will become even greater when the Authority receives its advice from the advisory group made up chiefly of people who always cast greedy eyes on the development and exploitation potential of the park lands. Out of the ten people making up the [project] advisory group, and assuming it functions along the normal lines of majority votes rule, you can expect one or more of the Authority representatives, the Renewal SA representative, the DPTI representative, and the three inner rim council representatives, all to push for and vote for greater built form and development (such as special facilities, hard surfaces, access roads); that is, seven or more of the ten members would be pushing for things that APPA will find mostly repugnant."[27]

Two years later the Project Advisory Group arrangement was publicly commented on by a city councillor, Phillip Martin, after the council signed off on the 2016 Strategy:

> "One day it could become known as the great park lands hijack. This secret operation began in 2014 when a select group of representatives of the state government and the Adelaide City Council gathered. At one of its quarterly meetings ... the Capital City Committee resolved to target the 700-plus hectares of available open space that ring the City. This important sounding fraternity, once chaired by the Premier but now relegated to the Deputy Premier [the Planning Minister, John Rau], has a membership that includes two ministers of the Crown, the Lord Mayor and two councillors. ... the Capital City Committee had no mandate for this mission; curiously it got that when the job was done almost two years later when the parliament and the council agreed to retrospectively endorse the committee's actions. But the target was plain from the outset. In the committee's parlance, it wanted to 'activate' the park lands. And in the dying days of the Yarwood [Adelaide City] Council, the Capital City Committee resolved the best way to do that was to persuade the supreme park lands policy advisory group, the Adelaide Park Lands Authority, and the Adelaide City Council, to appoint yet another group to get things moving, noting, as they did, that the Minister preferred to nominate a majority of the members of that group. These people, unelected to the role, largely unknown to most South Australians and meeting behind closed doors ever since, have become known among insiders by the somewhat unattractive acronym of PAG – the Project Advisory Group. You won't forget their name or the way they've shaped what's planned for the park lands." [28]

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27 Adelaide Park Lands Preservation Association, *Park Lands News*, April 2014, page 3.

28 North Ward Adelaide City Council elected member, Phillip Martin, 'The great park lands heist', *InDaily*, 6 November 2016. The full transcript appears in Appendix 20 of this work.

Secrecy – the additional ingredient

In Chapter 46 of this work ('The secrecy tradition') there is substantial discussion about the Authority's power to adopt 'in-confidence' procedures via confidentiality orders and thus operate in a culture of secrecy. The machinery and several examples are detailed there.

Once a park lands matter had been informally discussed at city council executive level, if the resolution was likely to trigger matters related to the *Adelaide Park Lands Act 2005*, or any other statutes with which that Act interacted (especially the *Local Government Act 1999*), the matter was sometimes referred to the Presiding Officer (PO) and executive officer of the Authority. The PO between the years 2007 and 2018 was the same person as the chair of the council: the Lord Mayor. An agenda paper recommendation to use 'in-confidence' provisions under the Act, endorsed by a show of hands, subsequently triggered the secrecy. Observers might perceive the process as a circular procedure where the chair person of both the council and the Authority (the same person) is briefed and may give procedural direction well before the matter comes to the Authority formally and is then passed on to a Council meeting. Under the *Adelaide Park Lands Act 2005*, a Lord Mayor may choose to preside over the Authority, and all of them did.

Unlike the city council, there was no compulsion for the Authority to separately and annually record the number of times that it determined to adopt in-confidence provisions and therefore make secret the topic and the deliberations about a park-lands-related matter. However, a diligent (and time-rich) observer may deduce this number by examining the agendas and minutes of the Authority. The number, depending on the year, while not substantial, sometimes obscured very significant discussions and resolutions. The subject matter description of topics was sometimes ambiguously worded, a mechanism also used by city council administrators to make it even more difficult to track records containing staff advice, discussions and resolutions about politically sensitive and often controversial park lands topics. Additionally, the Authority held workshops, many of which were off-limits to the public, during which matters of policy were often discussed. Subsequent resolution – in the absence of formal records of that content-rich discussion – could follow, leaving the public poorly informed and with no mechanism to access details. All of these features illustrated that, while the Authority between 2007 and 2018 was effectively a politically toothless body, it could capitalise on all of the negative operational habits of bureaucracies the world over. If the old saying is 'Information is power', there was no way that the administrators at the bottom of the park lands operational hierarchy were going to share that power equitably if there was a benefit to be had through the use of confidentiality provisions. The accountability was to a government minister, and no-one else.

Further reading

Appendix 28: 'What does it cost to manage the Adelaide park lands?'

APPENDIX 7

The *30 Year Plan for Greater Adelaide*

> "*The imposition of a 30 Year Plan after limited consultation* [was] *based on dubious population/growth targets and very little detail of the transport and infrastructure needed to support the plan. ... This flawed plan became the justification to impose on the City of Adelaide a development plan even more draconian and destructive of the character and heritage of the city than the 2006 Development Plan had been.*"
>
> – Adelaide City Council area councillor and Deputy Lord Mayor, David Plumridge, personal newsletter, December 2012.

Influence 'below the radar'

The *30 Year Plan for Greater Adelaide* was a state document of significance to the management of Adelaide's park lands policy, but it was and remains so rarely referenced in public discussions that most South Australians observing park lands matters would be forgiven if they claimed they knew nothing about it. It had and continues to have a major policy influence over the park lands, but like the Capital City Committee (CCC), exists 'below the radar' to most observers. The CCC meets in confidence and releases no publicly accessible minutes and its members collaborate under a 'duty of confidence'. The *30 Year Plan* exerts its influence via directives of senior state government planners who advise city council planners, who act on advice related to new versions of the *Adelaide Park Lands Management Strategy*, which informed updates of the *Adelaide (City) Development Plan* (or, after March 2021, the *Planning and Design Code*).

The 'devil in the detail'

The emergence of the first draft of the *30 Year Plan for Greater Adelaide* in September 2009 did not strike the few community observers who paid attention to it that it contained a major vision for future uses of, and activities on, Adelaide's park lands. It was supposed to focus on managing the consequences of anticipated state population growth of 560,000 over 30 years. It would have been concluded by some community observers that it was a planning policy document, but not one to have significant effect on Adelaide's park lands.

But buried in the first draft was a very clear government vision, summarised in plans and possible future options. An agenda of the Adelaide Park Lands Authority on 17 September 2009 succinctly described the extent of change contemplated by the state.[1]

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[1] Adelaide Park Lands Authority (APLA), Board meeting, Agenda, 'Response to draft *30 Year Plan for Greater Adelaide*', 17 September 2009, point 9, 'Section F1 – Regional Targets and Directions for the City of Adelaide. Map F1 – *Adelaide City directions*. This referred to several "... current plans and possible future options that relate to the Adelaide park lands", page 5976.

Most objectives would be achieved within seven years. The Authority had noted the directions:

- "… the major sporting facility hub at the Adelaide Oval/Memorial Drive Precinct;
- the Adelaide Gaol as a tourist precinct;
- the activation of the Torrens Riverbank and Elder Park;
- the proposed [new] Royal Adelaide Hospital (RAH) with links to the Riverbank precinct;
- the upgrading of the city squares;
- the improvement to cycle networks and links to metropolitan Adelaide;
- the development of the existing [old] RAH site;
- the completion of the North Terrace upgrade;
- the activation of the park lands and making them safer through improved facilities, increased activities (both active and passive), major events and by enhancing linkages (including the Park Lands Trail); and finally,
- developing medium-rise apartment buildings fronting onto the park lands to provide activity, safety and enclosure."

At the conclusion of the period of study, year-end 2018, only two remained unaddressed: the Adelaide Gaol as a tourist precinct, and the redevelopment of the old Royal Adelaide Hospital site, east of the city.[2]

The other directions indicated a significant new vision in 2009, laid down by government as policy instruction for the Authority and the city council to follow. At the time there was very little evidence that 'community needs and expectations' relating to the park lands were underscoring such major new demands, but the Authority diplomatically read between the lines and noted the government's expectations – especially relating to 'developing medium-rise apartment buildings fronting onto the park lands'.

The Authority noted: "The community's needs and expectations in relation to the park lands will become more significant in the future, particularly given the policy direction to 'focus medium-rise mixed development along the edges of the park lands, which provide space to support a growing high-density residential population."[3]

"It will be important therefore to ensure that management plans and master plans for particular park lands precincts reflect the recreational needs of adjacent residential communities as well as the broader South Australian community." [4]

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[2] By 2022 this site had been rezoned and redeveloped as Lot Fourteen, to become a space technology hub. In relation to an objective relating to the new RAH, the creation of 'links to the Riverbank precinct' there were none in place at year-end 2022. This related to a 2006 state cabinet plan to create pathways or roadways across the rail yards, which the Rann Labor government publicised, but never delivered.

[3] APLA, Board meeting, 'Response to draft *30 Year Plan for Greater Adelaide*', Section D2, Draft Policy No. 6, 17 September 2009.

[4] APLA Board meeting, 'Response to draft *30 Year Plan for Greater Adelaide*', point 15, 17 September 2009, page 5977.

This was a tacit acknowledgement that the park lands would have to be adapted to this new vision.[5]

Strategy influence

The *30 Year Plan* remains a key driver behind park lands management priorities. The 2009 draft was not seen by the Authority as contradicting a new draft version of the *Adelaide Park Lands Management Strategy*, which was also circulating in the same month, September 2009, and was being released for consultation. The Authority noted: "The Draft *30 Year Plan for Greater Adelaide* is generally consistent with the aims of the *Adelaide* [2009 draft of the] *Park Lands Management Strategy*."[6] The words 'generally consistent' was a commonly used Authority code, language deployed for reasons of diplomacy. That Strategy became the second version to follow the first version of 1999. It was approved by the minister in 2010. But it was fundamentally incomplete, and this also may have partly explained the need for diplomacy. The critical *Adelaide Park Lands Landscape Master Plan* – a key companion policy document to the 2010 Strategy, would not be completed for another 18 months. Had the 'generally consistent' comparison occurred against this subsequent landscape plan, that assessment would have been different. Moreover, other elements also were not yet completed, including a play space action plan, a park lands interpretation plan, an events policy, a marketing action plan, a maintenance program and an access policy, among others.

Greater park lands role envisaged

Changes that followed to 2014, five years later, as plans to replace that 2010 Strategy version gathered pace, signalled that Adelaide's park lands management would be influenced in significant ways under the *30 Year Plan* policy. "The state government's *30 Year Plan for Greater Adelaide* sees the park lands playing a far greater role in meeting the recreational needs of the city and inner-metropolitan area (as the population density increases)," noted a 'contextual setting' paragraph in an agenda of a February 2014 special meeting of the Adelaide Park Lands Authority.[7] A 'project plan' was anticipated, to "... also highlight the synergies and benefits of council's Adelaide 2030 plan development and the important and crucial role the park lands plays in community life."

The city council's original 2030 plan had been titled *Creating our future, 2008–2030*, but its 2008 iteration featured only park lands projects such as the Torrens footbridge, by comparison to a vastly expanded number of government aspirations that would emerge in the *30 Year Plan* several years later. This indicated that the government's thinking had changed significantly within the five years to 2014.

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5 This theme is explored in Chapter 42 of this work: 'The new 'urban address' narrative'.

6 APLA, Board meeting, 'Response to draft *30 Year Plan for Greater Adelaide*', point 20, 17 September 2009, page 5979.

7 APLA, Special board meeting, Item 1, 'Review of the Adelaide Park Lands Management Strategy', 13 February 2014, page 9.

Back in 2009, closer scrutiny would have revealed the early articulation of a core new concept that could be found in an Authority reproduction of the plan's Draft Policy 7: "Reinforce the role of the park lands as a major recreational, sporting, natural and open space asset servicing metropolitan Adelaide."[8] In government terms, the park lands were being seen as 'an open space asset', with a specific role to service the needs of metropolitan Adelaide. Here was evidence of state intention to articulate how the park lands could contribute to state priorities – a theoretical idea that had preoccupied state planners' minds as far back as the late 1990s. This 'contribution' would be tangible, even though the extent of this new, government-inspired 'reinforcement of the role of the park lands' was not scoped in 2009. But it would be, by 2015, in that year's new draft version of the *Adelaide Park Lands Management Strategy*.

Park lands visitation figures released by the Authority in a second monthly meeting in February 2014 noted that estimated annual visits totalled 8,872,000, with the top six categories being informal uses (21 per cent); organised sport (20 per cent); events (19 per cent); Botanic Gardens and West Terrace Cemetery (15 per cent); and the Aquatic Centre and golf links (nine per cent). Very little of this could be linked to major population increase five years after the drafting of the *30 Year Plan*, because there had been only a very small increase.

Park lands open spaces a key focus

The spectre of adapting the park lands in anticipation of a large increase in population had a practical basis. The state government's major planning changes in 2012 and 2013 to the *Adelaide (City) Development Plan*, allowed high-density high rise commercial and residential construction along the city council's main street zones not far from the park lands, as well as other inner-suburban arterial road zones, some of which lined park lands boundaries. Such future development was anticipated to encourage growth of an apartment culture; however, many apartments lacked any open space surrounding the buildings. It was thus convenient that many city and inner city residential zones were adjacent to park lands boundaries. An early example of the planning changes under way was a state development plan amendment that rezoned land west of the park lands, in conjunction with a 2011 master plan for high-density residential development, at Bowden Village, west of Park 1 and north-west of Bonython Park (Park 27). These initiatives factored in the existence of the park lands as the village's 'play space'. The broader perspective then was that the state was seeking to adapt public community land for 'activation' associated with residential growth. But there was a problem in terms of the growth objectives in the *30 Year Plan*. Apart from Bowden Village, which abutted the park lands western boundary, there was very little residential growth adjacent to other sites. Growth in permanent resident numbers, anticipated to be attracted to the influx of new apartment buildings in the CBD and around

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8 APLA, 'Response to draft *30 Year Plan for Greater Adelaide*', 17 September 2009, page 5975, noting the agenda's Attachment B, Section D 2: Draft policies.

the city's edges, was slow and well below forecasts. Except for Bowden Village, where construction expanded under significant state-funded-management and the influence of heavy state government promotion, the trend would remain that way, well past the 2010 publication of the *30 Year Plan*, and beyond publication of the 2016 Strategy.

Who's paying?

Despite the significance of the new vision reflected in the Park Lands Authority's 2009 papers, an old park lands conundrum endured long after that time, and in September 2009 the Authority summarised the way the state clumsily applied fresh policy:

> "The Draft Plan [2010] appears silent on how the process of delivering the planned infrastructure will be funded and managed. It calls for increased population growth and, in particular, higher densities of residential accommodation in the Adelaide City Centre and strategic locations in the inner urban areas around transport corridors. This implies a corresponding need for a growth in supporting open space and sporting infrastructure. It is important that, in implementing the Plan, funding for open space, sport and recreation is given increased importance in relation to the funding of other infrastructure elements of the Plan. The management and development of the park lands, in particular the areas under the care and control of the Adelaide City Council, are currently largely funded by the Council from its limited rate base. The full potential of the park lands for the benefit of all South Australians will not be achieved unless an ongoing and a secure source of funding is established." [9]

Other consequences

The infrastructure matter also linked to the apparent rigours of the *Adelaide (City) Development Plan*, and its provisions for the city zones, as well as park lands zone policy areas.

One insider observer with a deep understanding of planning was city area councillor and Deputy Lord Mayor, David Plumridge. He had initially welcomed the release of the *30 Year Plan* in 2010, but within two years the operational consequences were to become clear. His December 2012 newsletter summary addressed city planning matters. "Whilst I don't want to end the year on an entirely pessimistic note I must point out that we have been less than successful in dealing with our planning policy work, in spite of some very professional and dedicated input from our planning team," he wrote.[10]

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[9] APLA, Board meeting, 'Response to draft *30 Year Plan for Greater Adelaide*', point 17, 17 September 2009, page 5978.

[10] David Plumridge, *Notes from councillor David Plumridge's desk*, Planning – Park land – Precincts, page 1, Edition 88, 12 December 2012. An exploration of the history and development plan amendment politics behind the delivery of the 2006 *Adelaide (City) Development Plan* appears in this work in Chapter 20: 'Logjam politics – in the beginning'.

> "Historically the role of town planning has rested with local government. The reason for this is, in my opinion, quite simple. Town planning is the means by which we create the physical, social and environmental conditions in which we choose to live. Planners and politicians might help us by providing the tools that we need but the essential element is what the people – that is you and me – in our communities, decide we want and need to have a happy and fulfilling lifestyle. The government appears to see things differently, with the imposition of a 30 Year Plan after limited consultation, and based on dubious population/growth targets and very little detail of the transport and infrastructure needed to support the plan. (Apparently the most needed piece of infrastructure was the addition of 15,000 seats to the [Adelaide] Oval at [an oval stadium] cost of $535m!) This flawed plan became the justification to impose on the City of Adelaide a [revision of a] development plan [whose outcome was] even more draconian and destructive of the character and heritage of the city than the 2006 [revision of that] development plan had been." [11]

The influence of the *30 Year Plan* on the *Adelaide (City) Development Plan's* content in relation to the park lands would be significant. Setting aside a number of other unprecedented ministerial city development plan amendments, between 2012 and 2015 there would be at least five amendments affecting planning in the park lands. Each opened up development potential that had not before existed. The influence of the *30 Year Plan* can be seen to have had a major effect within a few short years and, with 19 years to go to 2037 (the 200th anniversary of the creation of Colonel William Light's 'Adelaide City Plan') at year-end 2018 it was assumed to have extended shelf life ahead.

The title will change, and so will the period, given the time already passed. The new draft *State Planning Policy* released in July 2018 will see to it that there will be some rebranding.[12]

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[11] David Plumridge, ibid., page 1.

[12] This is explored in Chapter 42: 'The new 'urban address' narrative'.

APPENDIX 8

The *Adelaide Park Lands Act 2005*

> *"Some of us put a lot of work into the new Park Lands Act and the establishment of the Park Lands Authority on the promise that this government was serious about protecting the park lands – so much for that promise!"*
>
> – Jim Daly, president,
> Adelaide Parklands Preservation Association,
> *Parklands News*, June 2007, page 2.

In November 2018, a month before the end of the study period of this work, an online news story recorded a plea by a prominent park lands preservation advocate.

> "The President of the Adelaide Park Lands Preservation Association has called for an independent review of the Park Lands Act in the wake of what he describes as 'the worst time in Adelaide's park lands history'.
>
> Association President, Shane Sody, said the legislation had 'spectacularly failed' to prevent the loss of sections of the park lands to private development. Sody estimated approximately seven tennis courts-worth of park lands were being lost to commercial development each year, adding [that] the number of developments had 'rapidly accelerated' since the [Adelaide] Park Lands Act was brought in by the Rann Government in 2005. The Act was designed to 'promote the special status, attributes and character of the Adelaide park lands' and to provide for the 'protection and management of the land as a world class asset'".[1]

Among other Adelaide park lands 'protection' advocates, this was a commonly held 2018 view, as had been a hope 13 years earlier that the 2005 Act, brought fully into operation in late 2006, would be the means to end well over a century's exploitation of the City of Adelaide's most valued landscape asset. But whenever a subsequent development project on the park lands provoked a public outcry, the call would go out: 'Why isn't the Act stopping this alienation?'

Sody told the *InDaily* reporter that the Act didn't set out a statutory limit on commercial development on the park lands. It had allowed past state governments to give private developers permission to encroach on what was public land. He also said that a review ought to consider whether to grant the Adelaide Park Lands Authority more power over development approvals.

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[1] Stephanie Richards, *InDaily*, 'Call to review 'failing' park lands Act', 8 November 2018. https://indaily.com.au/news/local/2018/11/08/call-to-review-failing-park-lands-act/

Unfortunately, however, the 2005 Act was not a statute that prescribed planning assessment procedures and checks and balances relating to development. That function in 2018 existed with the *Development Act 1993*, with which the 2005 Act interacted, giving effect to the *Adelaide (City) Development Plan* and its provisions for the park lands zone. The 2005 Act was also not a statute that prescribed compliance, with breach consequences (like the Road Traffic Act, for example) – especially in terms of park lands development – that could trigger prosecution action. There is another detailed appendix in this section that explores the 2005 introduction of this Act to state parliament, and after you have read it you might understand why.[2] There are also multiple references to the Act in this work's chapters, exploring many aspects.

The legal reality

The unfortunate reality for park lands 'protection' advocates is that the Act was not framed to explicitly identify what development was not allowed to occur on Adelaide's park lands, which explains why there is no reference in it to penalties for breaches. Upon enactment in late 2006 it formalised creation of mechanisms for park lands management, referring to two policy instruments to guide those management directions.[3] The Act left it up to future administrators to write them, and required that they 'review' them periodically. It also enabled the operation of instruments under other Acts to continue to operate. As noted above, the most important of those (at the time) was the *Adelaide (City) Development Plan* in regard to park lands zone development proposals, given effect by the *Development Act 1993*. In this way, the *Adelaide Park Lands Act 2005* enabled continuation of a park lands planning assessment and approvals function, via that interacting 1993 Act, that had been in operation many years before the 2005 Act was brought into operation.[4]

The *Adelaide Park Lands Act 2005* also provided for creation of an Adelaide Park Lands Authority, perhaps the most misunderstood product of the legislation, the source of so much misapprehension as the years passed. Sody's suggestion that a review ought to consider whether to grant the Authority more power over development approvals highlighted just one of the many issues of concern about that body. But as a reading of the *Adelaide Park Lands Act 2005* will illustrate, it had never been the Labor state government's intention in 2005 to give the Authority any statutory role in processing development application assessments for proposals in park lands zone policy areas. *Planning* control was not the same thing as a *policy* responsibility.

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2 See Appendix 9: '2018 observations on the minister's introduction to parts of the Adelaide Park Lands Bill 2005'.

3 In particular, the *Adelaide Park Lands Management Strategy* (the 'action plan') and the *Community Land Management Plan* (the CLMP 'management plan', which arose from the *Local Government Act 1999*, with which the 2005 Act also interacted).

4 Eleven years later, the 1993 legislation would be replaced by the *Planning, Development and Infrastructure Act 2016* and, after a five-year delay, the development plan would be replaced by the *Planning and Design Code* (March 2021).

The potential to influence policy content

After 2007 those who closely studied the policy superstructure made possible by the Act soon realised that, while the Act was a major disappointment, there may be a chance to influence the writing of those statutory policy instruments to ensure that they limit some of the more extravagant development concepts and proposals that the state and some private bodies were likely to put forward. The Act's key policy instrument would be the *Adelaide Park Lands Management Strategy*, versions 2 (2010) and 3 (2016). Unfortunately, this failed too. Elsewhere in this work appear discussions as to how and why this occurred.[5]

When sections of the park lands became subject to major construction project proposals, some 'protection' advocates looked to the Act to trigger conflict resolution mechanisms, perhaps by reference to the *Adelaide Park Lands Management Strategy*, but found little joy. The Act left that conflict resolution up to political leaders at state level, who sometimes delegated those difficult matters to Adelaide City Council administrators advising the Adelaide Park Lands Authority, which, under the Act, was only ever a subsidiary to the council. But the state always retained veto powers and this was clearly stated in various sections of the Act. A state minister was always the final arbiter. It is not surprising that South Australians keen to 'protect' the park lands are nowadays routinely disappointed that the Act doesn't deliver what they thought it ought to deliver.

Disassembling the Act

No-one has ever defined that glorious word 'protect' that appears in this Act. It connotes 'safety', but in park lands terms, its meaning is in the eye of the beholder.

When South Australians noted the arrival of new park lands legislation in late 2006 the most satisfied party was the state government. Did it satisfy the communities active in pursuing the passing of new legislation to make the park lands 'safe'? It appeared to, at the time, but people were to later discover that the new Act's fundamental feature was that it formalised continuation of government control over the park lands – as before – but with a few new elements that appealed to those who had played a role in its creation. It was rather like the arrival of a new model of car, with several new features that the old model didn't have, such as seat belts for added safety. But it was still a car, and seat belts notwithstanding, could be driven in all sorts of directions.

What could not be easily predicted in the early years that followed was how effectively the Act's provisions might guide process and content matters to deliver that utopian outcome, 'protection'. Much of the warm public glow that seeped across the suburbs immediately after the Act effectively came into operation in 2007 had been inspired by a reading of the new Statutory Principles, which many people assumed would, at last, act as a new 'high bar' that proponents of future development concepts leading to park lands exploitation would need to surmount. This would be an illusion, but like so many illusions, a popular one. It made some people feel 'safe'.

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5 Please refer to the multiple chapters in Part 8 of this work: 'Retrospective phase 5: 2008–2016, the evolving policy pathway'.

The years 2002 to 2004 – the period of preparation of the legislation – had been characterised by public enthusiasm and optimism about the potential of a new government administration's ability to inject the 'audacity of hope' into public debates about future park lands law. But unlike many narratives seeking 'once and for all time' outcomes, there wasn't a sudden, clear perception that it did, at last, present something radically different as sometimes occurs when new laws replace bad old laws and things are suddenly and irrevocably changed. For a start, the Act, proclaimed in January 2006, took most of the year to be fully brought into operation because of the complexities of amending the Act's interacting legislation. Early in 2007 the Adelaide Park Lands Authority board began meeting, but its early agendas illustrated that it was very clearly feeling its way. All the big tests were yet to come.

But back to a time before the new law was passed ...

In August 2003, the peak advocacy group for protection of Adelaide's park lands, the Adelaide Parklands Preservation Association, had made clear what new park lands legislation should deliver. APPA was not the only proponent of change to park-lands-related laws, but it was the noisiest and most articulate, and its views were broadly representative of the views of many South Australians. At the time, its President was Ian Gilfillan, a member of state parliament's Legislative Council. APPA's newsletter ran continuous, edition-by-edition comment as community consultation occurred. "Without legislation in a dedicated Act, control and management will always be at risk of being overridden by state governments and development interests," an August 2003 newsletter stated.[6] APPA was by no means the only community group to hold this view, but the Association spoke loudest for those people who had scrutinised ideas proposed for management of the park lands. In retrospect, that newsletter statement well illustrated the level of passion of the time – and of any time of public fervour – for delivering legislative 'change to end all change'. When the new law did emerge, however, perhaps the most widely held 'blind spot' among the South Australian populace was the fact that the Act would interact with a clutch of older Acts and, with a few minor technical exceptions, statutes like the *Development Act 1993* would continue to ensure that the park lands planning assessment machinery would allow the same development outcomes as before.

The Association's list

It may be useful to reflect on the more contentious demands tabled by APPA before the park lands bill was written, and what eventuated after the bill became law. They appeared in its August 2003 newsletter.

- **APPA:** "APPA's preferred management option is management by an independent trust which should have its own Act separate from the Parklands Act and with a five-year 'sunset' clause to allow its re-assessment. The trust should have the authority to seek tenders for all or part management of the Parklands and to enter agreements about management."

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6 Adelaide Parklands Preservation Association (APPA), *Parklands News*, '"Managing Light's Vision" – Where are we now?', August 2003, pages 4-5.

***2018 AUTHOR COMMENT**[7]**:** APPA's assessment was that 65 per cent of respondents to public consultation at the time sought a Trust 'or similar body' (with another 30 per cent seeking 'full ACC [city council] control of park lands management')[8] but neither eventuated. As is discussed elsewhere in this work, the state Labor government described a concept titled an 'Authority', but it was no substitute for an independent Trust and it continued to be controlled in a range of rigid ways (under provisions of the Act) by the minister administering the Act. There was no 'Act separate from the Parklands Act'. A public delusion arose beyond 2007 that park lands matters were being managed by a non-government body, but it was only a subsidiary of the city council – a mere sub-committee. Matters remained under the tight grip of ministerial control. In reality the Authority was effectively a government-authorised board, but funded exclusively by the city council. The council had the ability to make determinations based on Authority advice, but the operational history since the enactment of the Act showed that they had to be consistent with what the minister was prepared to endorse, and most of them were consistent with government policy direction at the time (real or implied).[9] The complicated mechanisms that made this possible are discussed elsewhere in this work.*

- **APPA:** "Members of the trust should be nominated by the responsible government minister and approved by both Houses of Parliament."

  ***2018 AUTHOR COMMENT:** Authority membership comprised the chair (usually the Lord Mayor), five members appointed by the minister, and four appointed by the city council (the Lord Mayor bringing the total to five). Nominations to the Authority had to be authorised by ministerial determination, but no additional authorisation mechanism eventuated, such as state parliament or a parliamentary standing committee. The minister's word about nominations would be final and not-negotiable – and certainly not subject to parliamentary debate. The nomination authorisation mechanism put into place a loophole – of significant manipulative potential in the procedure – because a minister could delay authorising nominations for periods, and this allowed the trend of board voting to be skewed. This potential endures.*

- **APPA:** "The trust should comprise seven members: one representative from each of the ACC [Adelaide City Council], the Local Government Association, the state government, and relevant incorporated organisations supportive of the objectives of the Parklands Act; and three members from respondents to an invitation to the general public of South Australia to participate."

  ***2018 AUTHOR COMMENT:** The Authority board outcome was different. The range of members meant that the government was strongly represented (five members), and all members including the five non-government members (mainly city councillors during the period 2007–18) had to be approved by the minister. But provision in the Act did allow for nominations for one board position by an incorporated body with a track record of park lands advocacy. The nominees put forward did not have to be members of that incorporated body. The minister generally called for three names. This was a useful caveat because it gave the minister 'wriggle room' to keep out people likely to cause controversy as a board member. History shows that, between 2007 and 2018, the board place was commonly filled by an APPA member.*

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[7] The author of this work, John Bridgland.

[8] APPA, op. cit., August 2003, page 5.

[9] This remained accurate as late as at mid-2022.

- **APPA:** "The trust should have guaranteed adequate funding, independent of lease revenue, to manage the Parklands."

  2018 AUTHOR COMMENT: *Adequate Authority funding was guaranteed because it was a council subsidiary and the city council had no alternative but to pay. The city council's 2005 negotiation demand on the state was that it would continue to fund park lands operations and maintenance only if it ran an 'Authority'. The state was happy with that – the Authority was toothless. It saved the state significant sums annually. The funding was independent of park lands lease revenue. Links with lease revenue were neither here nor there. The big problem was that the state did not pay anything towards the annual operations of the Authority, but demanded significant procedural work of it, via the city council. Its existence created a public illusion that 'a separate body' was guiding key park lands decisions. This illusion lasted a long time.*

- **APPA:** "All leases, licences and permits affecting the Parklands should be public documents."

  2018 AUTHOR COMMENT: *This was, and remains, controversial. APPA failed to achieve this. The Act allowed for the publication of lease summaries, but in very limited form only (it said: 'identify land' subject to a lease). The details would include only lessee, site, and duration. Details were printed at the back pages of the 2010 and 2016 Adelaide Park Lands Management Strategies. However, in many cases the full contents of lease agreements and licences often remained a secret, often described as commercial-in-confidence information only accessible by the lessor (mostly the city council) and the lessee. Years of evidence in city council agendas indicated that pre-lease negotiations and subsequent agreements often occurred under the confidentiality provisions of the* Local Government Act 1999. *Lawyers argue that this detail should remain private, but the land is public land – community land – and when lease detail did escape into the public domain, often the evidence showed that the city council had been generous with the terms, and lease fees were relatively low compared to the conditions and extent of access allowed. Some, especially government leases, were also subject to generous lease fee discounts at times. A lease is a right of occupation. Some lessees, especially those that constructed large sports pavilions on their sites after 2011, saw this right as an informal authorisation of the privatisation of public land. That is certainly what visiting observers often perceived.*

- **APPA:** "The Parklands Act should describe the legal status of the park lands and define the Parklands and the six squares."

  2018 AUTHOR COMMENT: *This occurred, under the creation and lodgement at the General Registry Office of the* Adelaide Park Lands Plan*, as required by the legislation. It addressed a matter of significant concern leading up to the writing of the bill – that the explicit definition of the boundaries and registered tenure of land parcels of park lands be addressed. However, as is discussed in a longer appendix in this work that examines the legislation, the wording in the Act did allow a 'get-out' clause to have the Plan altered.*[10]

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[10] See: the *italicised* author notes in Appendix 9: '2018 observations of the minister's introduction to parts of the Adelaide Park Lands Bill 2005'. You will find them at: Author Notes 26 and 27.

- **APPA:** "The Parklands should always retain the title 'City of Adelaide Parklands'. In recognition of this and because the [city council] is the prime beneficiary of the Parklands, it should continue to make a financial contribution to their upkeep. As well, the state government, on behalf of all South Australians, should provide from general revenue the cost of Parklands maintenance, restoration and rehabilitation."

  2018 AUTHOR COMMENT: *This was a bundle of requests! The city council continued to be the principal source of maintenance and operational funding. A very small amount of government funding was also made available (an annual grant to cover water costs). When the third, unfunded version of the* Adelaide Park Lands Management Strategy *was finalised, the state announced the creation of a $20m 'planning and development fund' whose monies would be directed – but only by the state – to some of the 'activation' recreational concepts described in the Strategy. For the whole of the period 2007 to 2018, the South Australian government effectively avoided funding operation and maintenance costs of the park lands. (This arrangement still applied in 2022.) The matter remains highly sensitive in the government offices. But not as sensitive as it was to the 26,083 people on the city electoral roll at 2018, whose rates effectively funded the city council costs associated with Adelaide park lands, a state recreational asset accessible to all South Australians. The costs were significant.*[11]

- **APPA:** "APPA believes that the Parklands are a prime candidate for World Heritage listing. The requirements for World Heritage listing should be acknowledged in the framing of the Parklands Act to avoid any potentially adverse outcomes."

  2018 AUTHOR COMMENT: *No such outcome arose. During the whole of the 2007–2018 period various parties, especially those within APPA, continued to call for this listing, but it was resisted by the state because it feared that such listing would prompt fresh management responsibilities determined by the commonwealth government, and weaken the SA state government's administrative and legislative control of Adelaide's park lands.*[12]

- **APPA:** "APPA requests that the state government places the Parklands on the State Heritage Register immediately."

  2018 AUTHOR COMMENT: *Between 2007 and 2016 the state government resisted this demand. However, in early 2017, without warning and without logical explanation, it chose a heritage assessment contractor and briefed them to undertake the work necessary to determine whether there was a case for listing. The 'trigger', it claimed, had been two requests for listing, lodged in 2009 – eight years earlier. There were strong government reasons to avoid committing to this or to anything that might legally or otherwise thwart the application or amendment of planning policy applying to the park lands as found under provisions of the* Development Act 1993. *A possible (but unstated) reason for the listing gesture was a looming state election in March 2018, with the listing bid as a manipulative gesture to be seen to at last deliver this long-awaited outcome. However, after the election a new Liberal state government announced that the bid had stalled because much*

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[11] The financial consequences are examined in Appendix 28.

[12] The matter is explored in several chapters of this work, including Chapter 15: 'The parliamentary Select Committee 2001 that never concluded', and Chapter 53: 'A frustration of listings leverage'.

deliberation needed to occur with the Kaurna Aboriginal community of the Adelaide Plains. As at year-end 2018 no listing on the State Heritage Register was evident. However, between 2018 and 2022 the situation continued to evolve, but by late 2022 still without result.[13]

Key themes

A retrospective analysis at the end of the study period of this work prompts the following thematic observations about the ministerial presentation of the 2005 bill to parliament that became the *Adelaide Park Lands Act 2005*.

- Firstly, there were provisions that made clear that the Act would allow for continued state administration of the park lands under the control of a minister.
- Secondly, there were 'tricks and traps' in some wording, which encouraged later interpretations and outcomes that were contrary to 'protection' assumptions.
- Thirdly, there were ambiguities that closer parliamentary scrutiny should have clarified because they left open the possibility of subsequent government actions that were to prove exploitative. Some of these flaws were highlighted, without successful remedy, in the Legislative Council debates about the bill in late 2005.[14]
- Fourthly, there were implied sincerities that were later to prove insincere.

Such are the features of many statutes.

Alarm bells should have rung loudly in late 2005 in terms of the number of provisions in the Adelaide Park Lands Bill 2005 that effectively maintained control by a minister, despite the illusion at the time that future determination power over park lands matters would be shared via a new city council mechanism – the operation of an 'Authority'. Provisions clearly stating that the minister retained control over park lands issues – and the city council – should have made obvious that the bill did not represent what its government authors implied at the time. The bill did provide for a few legislative allowances to address matters historically overdue for resolution; for example, the Adelaide Park Lands Plan, which included the city and North Adelaide squares.[15] Other provisions merely indicated that planning control would continue to reside with the state government through the *Development Act 1993*, and that amendments to multiple other statutes, with which the bill would interact, would occur because these either upheld a legislative framework that the state government did not want to significantly change, or were put in place in the bill as compromises by the government. For example, there were

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[13] Detailed discussion appears in Chapter 53 of this work: 'A frustration of listings leverage'.

[14] Please refer to Chapter 49: 'The loopholes lurk, Part 1'.

[15] Under section 14 of the Act the plan clarified the park lands boundaries and precise extent, and recorded registered proprietors of land parcels, predominantly the city council and the state government. The inclusion of the squares addressed a major APPA demand at the time of the writing of the park lands bill.

a few minor changes responding to political controversies at the time, such as disablement of sections 46, 49 and 49a of the interacting *Development Act 1993*.[16] But that was all – and this gesture ultimately made little difference in later years, because the state found other ways to prosecute some park lands infrastructure development projects that would have been well described as 'major projects' or 'Crown infrastructure developments'.

The enthusiastic proponents celebrating a new law to 'protect' the park lands would realise years later that, in essence, the new Act maintained the government's right and power to determine park lands outcomes as it thought fit – regardless of determinations arising from any future 'Authority' or even a future city council administration. Moreover, should either the Authority board members revolt, or should the city council elected members refuse to cooperate, both would be revealed to have very limited legal opportunities to resist. That was true then, and remains so.

Further reading

More detailed discussion appears in Appendix 9: '2018 observations on the minister's introduction to parts of the Adelaide Park Lands Bill 2005'.

[16] Major Project, Crown Development or Electricity Infrastructure. These sections were disabled by Labor to appease park lands 'protection' advocates. The provisions had been used by the state Liberal government to authorise several major developments in the park lands in the late 1990s. The projects led to much public consternation at the time.

APPENDIX 9

2018 observations on the minister's introduction to parts of the Adelaide Park Lands Bill 2005

PART 1

This appendix contains a transcript of a reading of the bill in the South Australian Parliament's Legislative Council on 15 September 2005. (In the House of Assembly it had met with broad support, but it would be a different matter in the Legislative Council, where, when it reappeared in November, it was subject to a number of attempts to amend. These matters are recorded and discussed elsewhere in this work.[1]*)*

Text here is reproduced to illustrate not only the intentions of legislators at the time, but also this work's author's observations, highlighting aspects within the bill that would later reveal ambiguities and loopholes, as well as future government attitudes towards the general philosophical and legislative framework and the management intentions optimism that prevailed in 2005. Please note that some aspects of this bill as reproduced here were amended before the Act was proclaimed. (Note also that certain other Acts referenced below have been amended and/or replaced. The one most likely to have greatest post-2018 effect is the replacement of the Development Act 1993 *by the* Planning, Development and Infrastructure Act 2016. *However, at year-end 2018, the end of the study period of this work, while aspects of the new 2016 Act were being very slowly phased in, the older Development Act's provisions still effectively guided park lands planning assessment determinations through the* Adelaide (City) Development Plan's *provisions for the park lands zone policy areas. Hence the observations in this appendix.)*

Adelaide Park Lands Bill

The Hon. P. HOLLOWAY, for the Hon. T.G. ROBERTS (Minister for Aboriginal Affairs and Reconciliation), obtained leave and introduced a bill for an act to establish a legislative framework that promotes the special status, attributes and character of the Adelaide park lands; to provide for the protection of those park lands and for their management as a world-class asset to be preserved as an urban park for the benefit of present and future generations; ...

AUTHOR NOTE 1

This was the broad promise in the years leading up to 2005, with emphasis on that phrase "promotes the special status, attributes and character". Over subsequent years the park lands were to see major change determined over its 'attributes and character'. A second and more ambiguous phrase was "to provide for the protection of those park lands". This had a wide range of meanings to South Australians and, as in previous decades, was to give rise to disputes as to what it really meant. The common response was often 'Protection from what?'

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[1] Please refer to Chapter 49: 'The loopholes lurk (Part 1)'.

[The ministerial explanatory statement:] ... to amend the *City of Adelaide Act 1998*, the *Development Act 1993,* the *Highways Act 1926,* the *Local Government Act 1934*, the *Local Government Act 1999,* the *National Wine Centre (Restructuring and Leasing Arrangements) Act 2002,* the *Roads (Opening and Closing) Act 1991*, the *South Australian Motor Sport Act 1984* and the *Waterworks Act 1932*; and for other purposes. Read a first time.

AUTHOR NOTE 2

This number of statutes illustrated how the new Act was to operate in context with existing legislation, under amendments to them if necessary, to allow the new Act to operate in the way legislators intended. A fundamental error of assumption by many was that the new Act would separate management and control of park lands from the provisions of some statutes on the grounds of their "special status, attributes and character". Not so. Two statutes that especially were to continue to have major effect on the mechanisms of park lands management were the Local Government Act 1999*, and the* Development Act 1993. *This latter Act's provisions were to have significant effect over future years, notwithstanding the aspirational tone of other sections of the proposed new Park Lands Act. With one or two exceptions (discussed later in this appendix) there was never to be any 'quarantining' from the planning and development provisions of the Development Act. The lawmakers would have quite rightly asked: there must be a law providing for development project planning assessment matters across the park lands; what alternative are you proposing?*

The Hon. P. HOLLOWAY: "I move: That this bill be now read a second time. The Adelaide Park Lands Bill 2005 is a major step in an on-going process to protect and enhance the Adelaide park lands as a major identifying cultural icon and community asset of this city. The protection of the park lands is also part of a broader government program to preserve and enhance open space in the metropolitan area generally. The history of the Adelaide park lands since the original plan of Colonel William Light is filled with the actions of successive governments who have alienated parts of it. Some of these actions have created cultural icons and historic buildings in their own right. However, in many cases the actions have been, on reflection, short-sighted and opportunistic land grabs, borne more out of convenience than providing any lasting public benefit in the context of the original purpose of the park lands.

"In response to previous attempts to create legislation governing the park lands, this Labor government developed a 10-point plan of action in order to progress a holistic and inclusive approach to its protection. As a consequence, the government has to date undertaken a biodiversity survey of the Adelaide park lands in collaboration with the Adelaide City Council, identified potential alienated sites for their return to park lands, and initiated discussions with the council on the transfer of their care and control, worked collaboratively with the council in the upgrade of the North Terrace precinct and an exploration of ways to improve community access, amenity, heritage interpretation and public usage for the Adelaide Gaol precinct, announced its intention to investigate the merit of establishing the Adelaide park lands as a state heritage area in consultation with the council, and undertaken public consultation on potential options for the management of the park lands."

AUTHOR NOTE 3

The notion that the park lands might become a state heritage area illustrates a political ruse that began in the years leading up to the bill (2005) and endured for many years, without result (even as late as at 2022). One speculated reason was that inclusion as a state heritage area could frustrate state government or commercial plans for future exploitation of the park lands. It would do this by prompting a revision of the contents and application of the Adelaide (City) Development Plan *(park lands zone – policy areas) or any likely future plan instrument. Even in the absence of this, development plan amendments (DPAs) initiated by Labor state planning ministers between the years 2009 and 2015 enabled the new Royal Adelaide Hospital to be built on rail yards tagged to be returned to park lands open space (ministerial DPA 2009), and a new high school (ministerial DPA 2015) on land that only five years earlier had been restored from car park use to green, open-space park lands. Each of the projects had been classified non-complying developments before these amendments were authorised. Both matters are discussed in chapters elsewhere in this work.*

[The ministerial explanatory statement:] "This last action [options for the management of the park lands] was undertaken by the Adelaide park lands management working group which consisted of a representative from both the council and the Department for Environment and Heritage, as well as a community representative, Mr Jim Daly. Its option paper was released in January 2003, and a consultation report prepared in June 2003. Subsequently the working group reported to the council and government with recommendations, which have led to the legislation before the council today. It is acknowledged that there was a trend amongst those who contributed to the consultation toward a preference for an independent Trust model for managing the park lands. However, the consultations also revealed that there was general community recognition of the significant contribution, investment and expertise of the council to park lands management, which needed to be acknowledged and factored into any model for the future."

AUTHOR NOTE 4

*There was more than a 'trend' towards a Trust. A majority wanted it. Moreover, the 'independence' bid had been encouraged by the Rann Labor government in the lead-up to the 2002 state election, and after it. A September 2001 (pre-election) leaflet (titled '*Labor's plan to save the park lands*') stated: "investigate the creation of an independent body to manage our city park lands ..." But by 2003, this idea was quietly being shelved, even though there was a majority view, arising from the public consultation at the time, that the Trust model was preferred. A popular concept was that the Trust would independently determine the policy matters, and the city council would continue its management 'custodianship' role (ostensibly independent of government). But the state government had no intention of delivering on this because there was major risk that it might have lost substantial control over park lands management matters.*

A man who was there at the time, Jim Daly, later recalled: "I was on the Community Consultation Management Working Group in 2003 that produced a Community Consultation Booklet, and then,'Options for the Management of Adelaide's Parklands'. These consultations eventually led to the formation of APLA [the Adelaide Park Lands Authority]. I might add that this was not my preferred option; but it was the only one that the ACC [city council] and State Government could agree on."[2]

[2] Jim Daly, personal communication to author John Bridgland, email, 5 June 2017.

[The ministerial explanatory statement:] "As a consequence, the working group recommended a management model which made a distinction between land management by the council and state agencies on the one hand, and the need for a strategic policy setting and monitoring body on the other, with broad representation."

AUTHOR NOTE 5

The fiction in the above statement is 'broad representation'. All members of the 10-member Authority board, except for the Lord Mayor, had to be via appointments authorised by the minister. This gave him complete control. (More detail on this level of control appears elsewhere in this work.) The broad representation matter is discussed later in this appendix. The government's concept for this 'body' was really a ruse to create a board (in a form misleadingly termed an Authority) that it could control, not only by controlling appointment of nominated members, but also in ways that only later became clear. A case emerged in 2014 when the state government decided to significantly amend the existing second version of the Adelaide Park Lands Management Strategy *(the 2010 version). To do this it had to take control of the updating and amendment process, separate from the routine monthly activities of the Authority. It used an* Adelaide Park Lands Act 2005 *provision for formation of Authority committees, creating a Project Advisory Group (effectively a sub-committee), which ostensibly worked within the Authority but had sub-committee meetings separate from those of the Authority. The government also chose the members (including appointing a number of senior government bureaucrats) and several years later a radically different version of the Strategy emerged (the 2016 version). The detail is comprehensively revealed in the Adelaide Park Lands Authority minutes dated between 2014 and 2016 and discussed at length elsewhere in this work. In 2016 another example arose when the minister announced that three Authority members would not have their terms continued (several were only half way through their terms) and be replaced by three of the minister's departmental staff. Major controversial park lands recommendations arose from the Authority during 2017.*

[The ministerial explanatory statement:] "Following discussions and negotiations with Adelaide City Council, a draft Park Lands bill was released for public consultation in March this year [2005], which sought to implement the management model as well as address other key initiatives from the 10-point plan and recommendations from the working group. Negotiations with the Adelaide Parklands Preservation Association and other key stakeholders during its development and subsequent to its release, as well as public feedback, have resulted in a number of changes, which have shaped the bill, which is now before us. In this context the government wishes to acknowledge and thank members and staff of Adelaide City Council and members of the executive at the Adelaide Parklands Preservation Association for the positive and constructive approach to the negotiations.

"As a consequence the bill contains the following key features. As set out in the Statutory Principles for the bill, the Adelaide park lands are to be defined so as to correspond to the original general intentions of Colonel Light in 1837, where appropriate, but recognising contemporary boundary arrangements. Consequently, the legislation relates to not only council-controlled land but also land previously alienated that is now managed by various state institutions and authorities."

AUTHOR NOTE 6

The minister's use of the words "where appropriate" appeared to suggest that some aspects of Colonel Light's original general intentions may by 2005 have been determined to be no longer "appropriate". The use of this phrase by politicians and bureaucrats often only introduced ambiguity.

[The ministerial explanatory statement:] "There are specific exemptions; in particular, commonwealth land and land associated with our parliamentary institutions. In addition, there is a capacity to include the road system through the park lands. This definition provides a basis for the development of a single management strategy for the whole park land area within the Adelaide City Council, whether state or council controlled roadway, which binds the government and council, rather than public institutions operating independently and possibly in conflict.

"There is no intention of the government to shy away from listing all the alienated land, including those controlled by universities and the zoo, other than the exemptions previously mentioned. In addition, the legislation creates a requirement for state authorities to prepare, for the first time, publicly available management plans for areas under their care and control ..."

AUTHOR NOTE 7

These were Community Land Management Plans *(CLMPs) to be created under provisions of the* Local Government Act 1999*, with which the new bill, when it was enacted, would interact. A key reference was a new Strategy requirement: a policy relationship between it and the CLMPs. The 'management strategy' concept, for the purposes of the Act, was new.*

[The ministerial explanatory statement:] "... which need to be consistent with the management strategy."

AUTHOR NOTE 8

The bill was structured to refer to the Adelaide Park Lands [Management] Strategy *first, followed by provision for the Community Land Management Plans. The Act actually said that both should be consistent, but a closer reading, in which the Strategy provisions appear first, implies that this takes 'consistency' priority over the CLMPs. In other words, this Strategy is to be the 'lead' policy document. Procedurally, this matter was to plague park lands managers over the subsequent years. It became not only a process matter (which comes first in the updating process?) but a content matter (how can both documents, one being an action plan and the other being a management-direction plan, be made to be 'consistent'?).*

[The ministerial explanatory statement:] "It is intended that the management strategy in turn will also become a defining document with respect to the planning system. With the passage of this bill, the opportunity presents itself for the Park Lands Management Strategy to be incorporated into the planning strategy or the development plan."

AUTHOR NOTE 9

It might have been 'intended', but the Act was silent on the practical implementation of this idea. Neither did any other Act require it to be "incorporated into the planning strategy or the development plan". It left that matter to government bureaucrats advising council administrators, and it became the source of a false assumption after the second Strategy was

authorised in 2010. The assumption was that the contents of a Strategy were not only to inform amendments to the Adelaide (City) Development Plan*, but also **direct** them. As noted in this work's Chapter 35, 'Towards the second Park Lands Management Strategy', the basis of the assumption was made clear during the author's research on this work, by the executive officer of the Adelaide Park Lands Authority (APLA), Martin Cook. He said: "The Strategy is there primarily for the joint ambitions of both Council, APLA and the state government to be agreed upon and publicly expressed. There has always been an understanding that this agreed upon position would inform things like the Development Plan. [But] This is not stated or required anywhere. So yes, it's an assumption. APLA doesn't have a position/policy on this or any aspect of the Strategy's application."*[3]

The Strategy did become 'defining' in terms of the Authority's and council's constant reference to it in regard to matters arising in the park lands zone policy areas. But when the political will desired, planning determinations were more commonly directed under ministerial development plan amendments (DPAs) – with or without the existence of the Strategy. For example, a 2015 ministerial DPA that made possible the construction of major infrastructure on park lands (O-Bahn tunnel and a six-storey high school, among other things) only got formal Strategy endorsement more than a year later after the DPA when the revised 2016 draft Strategy was signed off by the state minister in August 2017. A more brutal earlier planning determination, in 2011, occurred in regard to the construction of the Adelaide Oval stadium. It was made possible by the passing of project-oriented development legislation that overwhelmed the provisions of the Adelaide Park Lands Act 2005 *and was deemed to be complying with the Development Act, as well as, within the oval's core area, the provisions of the CLMP for that particular park. The contents of the Strategy had no critical defining role.*

[The ministerial explanatory statement:] "The responsibility for developing the management strategy will rest with the new Adelaide Park Lands Authority created as a subsidiary of the Adelaide City Council, but with nomination shared between the council and the government. This authority has primarily a policy and oversight role. It is not charged with managing any part of the park lands."

AUTHOR NOTE 10

That might have been the theory, but as the years passed, the Authority to all intents and purposes did comment on the big park lands matters to the extent that it was sometimes the first to publicly receive details of many proposals, examine the policy ramifications, and determine what needed to be further explored. It then later presented advice to the city council for decision. While the final decision about management recommendations rested with council, with monotonous regularity the council would either simply rubber-stamp the Authority's recommendations or tweak minor matters to suit the political environment at the time. This suggested that the Authority's 'policy and oversight' role also embraced elements of an unofficial management role, but importantly, under the political direction (unofficially and rarely with any evidentiary paper trail) via confidential Capital City Committee or state government influence.

[The ministerial explanatory statement:] "The council and state authorities will retain their responsibilities for day-to-day management of areas under their care and control. The council will have responsibility for servicing the authority. Consequently, the authority will, as for all council subsidiaries pursuant to the *Local*

[3] Martin Cook, Executive Officer, Adelaide Park Lands Authority, personal communication to John Bridgland, email, 21 August 2018.

Government Act 1999, develop a business plan and budget and submit these to the council to ensure its operation. It will be subject to auditing, annual reporting and public meeting requirements as set out in the *Local Government Act 1999*. In addition, the council will not be able to direct the authority without first consulting with the government."

AUTHOR NOTE 11

Here we observe evidence that the government is firmly in control of the entire process, notwithstanding the fact that the Authority is a subsidiary of the council – a sub-committee. But remember, the government also controls all board appointment approvals, and can determine to remove board members before their term is concluded without explanation, and without need to inform parliament. In effect, these features describe a government board whose operational costs are paid by the city council.

[The ministerial explanatory statement:] "In this context, given the broad definition of the park lands, it needs to be recognised that it currently includes such areas as research laboratories and rail lines, which are not freely accessible, and nor should they be. In addition, the provision of recreational, sporting and event facilities involves the ancillary provision of landscaping works, maintenance facilities, change rooms and other arrangements, which necessitate controls on public access. However, despite the need for this acknowledgment, and in recognition of the intent of the Statutory Principle[s], the management strategy is required to explore options for increasing public access for recreational usage."

AUTHOR NOTE 12

Here appear the seeds of what led to changes to version 2 of the Strategy (2010, which was significantly different from the original 1999 version) and the 'grand activation' blueprint of version 3 (2016) which is well described for its strategies to 'increase public access for recreational usage'. Note also the juxtaposition of ideas: 'controls on public access' versus 'options for increasing public access'. The 'controls' manifested in public and private lease terms, which gave the owners of new park lands buildings some control over public access. Council park lands managers would describe this as a 'tension' of policy. It certainly was. A major theme evident at the time – and still evident as late as 2022 – was the theoretical acknowledgement of the contrasting ideas versus the practical resolution of them. Case studies have demonstrated, time after time, that the latter idea ('increase access') is overwhelmed by allowances that 'control [or inhibit] public access' in one way or another.

[The ministerial explanatory statement:] "The legislation reinforces the current government's policy of transferring alienated land back to park lands usage in two ways. First, the management strategy must report on the suitability of transferring alienated land to council's care and control and converting it to park land. Secondly, the bill sets out a requirement for future governments to report on and consult with the council when alienated land is no longer required for its existing use by the occupying authority. Any subsequent transfer can then be implemented through amendment to the Adelaide Park Lands Plan."[4]

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4 The plan clarified the park lands boundaries and precise extent, and recorded registered proprietors of land parcels, predominantly the city council and the state government.

AUTHOR NOTE 13

The minister referred to this later in his parliamentary speech, when discussing a much later Part of the bill, and to a proposed 'Section 23':

Part 6—Miscellaneous

23—Steps regarding change in intended use of land

[The ministerial explanatory statement:] "Under clause 23, if land within the Adelaide park lands occupied by the Crown or a State authority is no longer required for any of its existing uses, the Minister is required to ensure that a report concerning the State Government's position on the future use and status of the land is prepared within the prescribed period.

The clause also contains a number of provisions dealing with requirements and procedures in relation to the following:

- the contents of the report;
- laying a copy of the report before both Houses of Parliament;
- provision of a copy of the report to the Adelaide City Council;
- discussions with the Council about whether the land should be placed under the care, control and management of the Council."

*The rail yards west of the city represented a good example of land that had been tagged in the first (1999) Strategy for return to park lands. In 2007 a practical test arose as to how the state government might avoid that transfer. The Adelaide Park Lands Authority explored the options and noted a loophole. An APLA agenda noted at the time that: "Section 23 of the Act does not state that land within the park lands occupied by the Crown or a state authority that is no longer required for its existing uses **must be returned to park lands**."*[5] [Emphasis added.]

Two years later, in 2009, the Rann Labor government initiated a ministerial development plan amendment to rezone it for the construction of a huge new hospital and associated health infrastructure. The attractive notion of the 'return of alienated land to park lands' continued to be the subject of government ruses over subsequent years. Very little land was actually returned or, if it was, it comprised very small parcels. The first related to the return to park lands of a corner (a few hectares) of Park 25 park lands (west of the rail corridor on Port Road, near Thebarton) that had been alienated for years by a government water utility. A second related to a University of SA car park near Frome Road, which had been restored by a Rann Labor administration as green, open-space park lands. However, years later this action was reversed by a Weatherill Labor administration when the state Labor government determined to construct a new high school on this land. State bureaucrats also found a planning loophole to this 'transfer' provision, based on the notion of 'existing use' under planning law. This rationale was lawfully sound and it enabled the Minister for the City of Adelaide to avoid submitting any report. It is explored in detail in this work's Chapter 39: 'Public investment in the park lands'.

The minister's reference to a requirement for future governments to report on "when alienated land is no longer required for its existing use" appeared to be philosophically reasonable at the time. But the subsequent process (section 23, 'Steps regarding change in intended use of land') would prove to be easily manipulated. Where a minister could not identify a loophole to avoid

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[5] Adelaide Park Lands Authority, Board meeting, Agenda, 17 July 2007, page 2100.

section 23, he or she had to write a "report concerning the state government's position on the future use and status of the land". (This hinted at the real game: it usually related to a proposed new use that had little to do with returning the land to green, open space.) He or she then had to lay it before both houses of parliament and also "furnish [it] to the Adelaide City Council". Subsequently, the minister would have to "enter into discussions with the Adelaide City Council about whether the land should be placed under the care, control and management of the Council". This related to tenure, but tenure was not necessarily the issue. It was usually the future land-use proposal and often that proposal was about a development project. If the council contested the process or the content of a report, under the Act the dispute could be directed to state parliament's Environment, Resources and Development Committee. The committee was then free under this section to either: "(a) inquire into the matter as it thinks fit; (b) make any determination or recommendation that it thinks appropriate with a view to resolving the matter; (c) make any report to parliament that it thinks appropriate in the circumstances of the particular case". Public observers of instruments of parliament such as this committee knew that these committees commonly featured a majority of government MPs or MLCs, who – unless there was a pressing political reason to act – would commonly resolve to do nothing, or to recommend that a minister do nothing if the government of the day saw no political advantage. In reality there would be very little procedural fairness inherent in this section's provision. And so it came to pass regarding section 23 reports about various sites over subsequent years.

[The ministerial explanatory statement:] "The history of the park lands has not only led to areas being alienated but also has created a number of administrative issues associated with the delineation and status of the number of road, tramway and park land areas. Consequently, the bill has, by necessity, had to include a number of legislative mechanisms and transitional arrangements to do with these issues. In addition, to avoid similar issues occurring in future, specific powers have been included to authorise alterations to roads that run through or abut the Adelaide park lands. This is by way of consequential amendments to the *Roads (Opening and Closing) Act 1991*. However, this is not a power to create new roads to dissect the park lands."

AUTHOR NOTE 14

It isn't, but ... A provision appearing later in this discussion allows the government to significantly despoil park lands landscapes. See: Part 8—Amendment of Roads (Opening and Closing) Act 1991*, which is also examined in Author Note 36 of this appendix.*

"20—Insertion of section 6B – This clause inserts a new provision into the Roads (Opening and Closing) Act 1991. *Under proposed section 6B, a road within, or adjacent to, the Adelaide park lands, may be made wider, narrower, longer or shorter by the Minister in accordance with Part 7B. (Part 7B is inserted by clause 21.)" This was a provision later exercised to the benefit of some big lessees: the South Australian Cricket Association benefited in 2016 at Park 25, near the new Royal Adelaide Hospital. A narrow track became a wider, sealed road, extended in length. Roadworks cost the city council $800,000. Later, the SACA was allowed to widen a Park 26 walking track (adjacent to Montefiore Road) on the boundary of Oval No 2 and west of the Adelaide Oval stadium to create a road for vehicles departing oval sports or other events. A year beyond that SACA had bitumenised the road, creating a formal carriageway, connecting the oval's western entrance car parks to Montefiore Road.*

[The ministerial explanatory statement:] "The bill also provides key consequential amendments to a range of other Acts; in particular, the *Development Act 1993* and the *South Australian Motor Sport Act 1984*. The changes to the former legislation will prevent future governments using either the Major Project, Crown Development or Electricity Infrastructure development powers to provide ministerial development approval within the park lands."

AUTHOR NOTE 15

This was further explained by Labor minister John Hill later in 2005, in the House of Assembly.

[The ministerial explanatory statement:] "Clause 5 amends section 49 of the *Development Act 1993* by inserting two new subsections. Proposed subsection (18) provides that section 49, which deals with Crown development, does not apply to development within the park lands. However, proposed subsection (19) allows for the making of regulations under subsection (3) of section 49 with respect to development within park lands that, in the opinion of the Governor, constitutes minor works."[6]

But only 10 years later, in 2015, the state government reneged on the spirit of this pledge, by modifying (in a development plan amendment (DPA)) the list of exemptions in the 2015 Adelaide (City) Development Plan*, to change the classification from non-complying to complying development for some infrastructure construction, including major works to the O-Bahn line (adding a new earth-covered culvert through park lands), and construction of a new six-storey high school in the Botanic policy area 19 of the park lands (Frome Road frontage). The changes also meant that there was subsequently no requirement for public consultation about the new projects. This was evidence of disingenuous technical manipulation of complicated planning protocols that, before that time, had not been publicly contemplated.*

Few South Australians at the time recalled the earlier period and the section 49 pledges of 2005, and even fewer understood the ramifications of the 2015 DPA. One of the many features favouring subsequent government and council administrations has been the high level of procedural and legal complexity behind park lands matters, and the inability of the public to recall the 2005 pledges or comprehend the consequences of changes that occurred years later.

[The ministerial explanatory statement:] "The intent is to have the Development Regulations 1993 subsequently amended, where necessary, to clarify the assessment of such [section 49] projects in future by either the Development Assessment Commission or the council, as appropriate, against the development plan. The amendments for the *South Australian Motor Sport Act 1984* include a requirement for the setting of prescribed works periods within which the Motor Sport Board may occupy the park lands in connection with setting up for a motor sport event and in subsequent dismantling. This and other amendments are designed to clarify and limit the capacity of the board to occupy the park lands."

AUTHOR NOTE 16

The Motor Sport Act allowed a minister to create a 'declared' area in the park lands for car racing (Park 16, Victoria Park). This was a very early use of the 'toolbox of mechanisms' that allowed government to step in and take full legal control of a section of park lands in a way that was

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6 South Australian Parliament, *Hansard*, House of Assembly, 24 November 2005, page 4155.

wholly in conflict with the ideals and principles that both sides of parliament had championed about 'protecting' the park lands. It arose in 1984 ahead of the arrival of the Adelaide Grand Prix in 1985. After the Grand Prix moved to Melbourne the F1 brand was replaced by the Adelaide 500 brand at the same place. In effect, the 1984 Act's provisions overwhelmed all relevant laws relating to park lands at the time (including the myriad statutes that would later interact with the subsequent Adelaide Park Lands Act 2005, *as well as that Act) that applied to that part of the park lands. It enabled ministerial rights to determine the period of that park lands site's exploitation. It allowed government to define what would occur there, regardless of the fact that it was park lands. Many people did not realise that, when the pledges about the 2005 Act were being made, the government had no intention of undoing the 'declared' area legislation. The provision in the 2005 bill for the "setting of prescribed works periods" was a sop to those dissatisfied at the time with the whole arrangement, but it had little effect on the bump-in and bump-out periods that the organisers of the race demanded. These lasted many months, and kept the public alienated from that part of the park lands.*

In terms of the 2005 legislators' attempt to clarify and limit the capacity of the (motor sport) board to occupy the park lands, nothing effective arose to prevent what occurred over the subsequent years – the continuation of rights to occupy a section of the park lands in ways not open to any other potential licence or lease holders.

[The ministerial explanatory statement:] "This bill was born from a spirit of cooperation, with the objective of fostering a collaborative approach to the future protection and enhancement of the Adelaide park lands. I commend the bill to members and seek leave to have the explanation of clauses inserted in *Hansard* without my reading it."

PART 2

Explanation of clauses

3—Interpretation

[The ministerial explanatory statement:] "This clause provides definitions for a number of terms used in the measure. Adelaide park lands means the Adelaide park lands as defined by the [bill's] Adelaide Park Lands Plan. The Minister is required under Part 3 to define the Adelaide Park Lands Plan by depositing a plan in the GRO (the General Registry Office, Adelaide).

"The Adelaide Park Lands Authority (or the Authority) is the Adelaide Park Lands Authority that is established under Part 2.

"A State Authority is a Minister or an agency or instrumentality of the Crown. A State authority may also be a body established for a public purpose by or under an Act or established or subject to control or direction by the Governor, a Minister of the Crown or an agency or instrumentality of the Crown (whether or not established by or under an Act or enactment). The definition also refers to any other body or entity brought within the ambit of the definition by the regulations. The definition of State Authority explicitly excludes councils or other bodies established for local government purposes and bodies or entities excluded from the ambit of the definition by regulation.

Under subclause (2), the principles that are to be applied under the *Adelaide Park Lands Act 2005* ('The Act') with respect to the concept of use of land are to be the same as the principles that apply with respect to that concept under the *Development Act 1993*."

AUTHOR NOTE 17

Early park lands community group discussions shared major concerns about development across the park lands and legislation that provided for it. Those that understood the law about planning knew that the Development Act 1993 *was the key statute, giving effect to the* Adelaide (City) Development Plan *and its objectives, its desired future character, and its principles of development control policy affecting its park lands zone policy areas. There may have been naive hope that the Development Act (or at least some of its provisions) might have been disabled with regard to the* Adelaide (City) Development Plan's *park lands zone but, with one exception*, the government was having none of it, and the minister's statement above made it very clear that, however the Park Lands bill was written, the Development Act remained a central statute in relation to the future life of the proposed Adelaide Park Lands Act. The key phrase is "the concept of use of land" (to be the same as ... under the Development Act). This standard land-use planning approach would be fundamental to assessment and authorisation of development projects across the park lands in subsequent years.*

* *The exception related to sections 46, 49 and 49a in the interacting* Development Act 1993.[7] *(Section 49 is discussed in this appendix in Part 1, in Author Note 15, and in Part 3, in Author Note 33.)*

4—Statutory Principles

[The ministerial explanatory statement:] "Clause 4 expresses a number of principles relevant to the operation of the Act. A person or body involved in the administration of the Act, or performing a function under the Act, or responsible for the care, control or management of a part of the Park, must have regard to, and seek to apply, the principles. Those principles are as follows:

- the land comprising the Adelaide park lands should, as far as is reasonably appropriate, correspond to the general intentions of Colonel William Light in establishing the first Plan of Adelaide in 1837;
- the Adelaide park lands should be held for the public benefit of the people of South Australia, and should be generally available to them for their use and enjoyment (recognising that certain uses of the park lands may restrict or prevent access to particular parts of the park lands); ...

AUTHOR NOTE 18

The second half of the second bullet point principle – in parentheses – would be referred to many times over future years in early-phase Authority or city council procedures exploring the appropriateness in policy terms of proposals that, when approved, would exploit and alienate sections of park lands either temporarily or under long-term leases. The wording has all the hallmarks of clever legal advice, and its widespread use since suggests that the wording had

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[7] Major Project, Crown Development or Electricity Infrastructure. These sections were disabled to appease park lands 'protection' advocates. The provisions had been used by the state Liberal government to enable several major developments in the park lands in the late 1990s. The projects led to much public consternation at the time.

been calculated to provide proponents whose plans might result in alienation (everything from temporary fencing to permanent infrastructure) with a justification to take an opposite position to that which is suggested in the first half of the sentence. Only a lawyer would write a sentence that can be read two ways – a 'principle' that offers an each-way bet. This was challenged late in 2005 in the Legislative Council as the bill was being debated, but Labor MLCs would not budge. That wording was clearly vitally important.

[The ministerial explanatory statement:]

- the Adelaide park lands reflect and support a diverse range of environmental, cultural, recreational and social values and activities that should be protected and enhanced; ...

AUTHOR NOTE 19

Protected from what? And how 'enhanced'? That little verb 'enhanced' has also been used to legitimise various park lands development proposals. It also infested the 2010 and 2016 versions of the Adelaide Park Lands Management Strategy, *but no-one could agree about what it really meant – except proponents of development concepts that almost always compromised park lands landscapes and exploited its open-spaces ambience. As such, it is a lawyer's delight (and a planner's plaything). Note also that it appears in the next paragraph, too.*

[The ministerial explanatory statement:]

- the Adelaide park lands provide a defining feature to the City of Adelaide and contribute to the economic and social well being of the City in a manner that should be recognised and enhanced;
- the contribution that the Adelaide park lands make to the natural heritage of the Adelaide Plains should be recognised, and consideration given to the extent to which initiatives involving the park lands can improve the biodiversity and sustainability of the Adelaide Plains;
- the State Government, State agencies and authorities, and the Adelaide City Council, should actively seek to cooperate and collaborate with each other in order to protect and enhance the Adelaide park lands; ...

AUTHOR NOTE 20

These six (of seven) principles were attractive in theory. The history of park lands management between 2007 and 2018 highlighted a period where much of the 'cooperation and collaboration' idea was directed by the city council towards the state government's state agencies and other authorities' proposals, regardless of how reluctantly some council elected members, or city ratepayers, wished to cooperate or collaborate because some didn't like what they were presented with. There is abundant evidence to show that government could ride roughshod over the council when it wanted something done in the park lands. But, perhaps obviously, it always preferred the more subtle approach of embedding its directions and priorities in policy documents ahead of time. The Adelaide Park Lands Management Strategies *of 2010 and 2016 are good examples. It meant that policy assessment at Authority level could draw on these in preliminary analysis.*

Each version (both of which had to be authorised by the minister before they could effectively direct policy) only needed to feature the government vision of what the state ultimately wanted to prompt the Authority (and subsequently the council) to inexorably show enthusiasm for it.

Below, in the seventh principle, we can see, once again, that marvellously ambiguous verb: enhance.

[The ministerial explanatory statement:]

- the interests of the South Australian community in ensuring the preservation of the Adelaide park lands are to be recognised, and activities that may affect the park lands should be consistent with maintaining or enhancing the environmental, cultural, recreational and social heritage status of the park lands for the benefit of the State."

Adelaide Park Lands Authority

Division 1—Establishment of Authority

5—Establishment of Authority

[The ministerial explanatory statement:]

"This clause establishes the Adelaide Park Lands Authority ('the Authority')."

Division 2—Board of management

6—Board of management

[The ministerial explanatory statement:]

"The Authority will have a board of management comprised of the Lord Mayor (or a person appointed by the Adelaide City Council), four other members appointed by the Council and five members appointed by the Minister.

"The Council and the Minister are required to consult with each other in making appointments to the board in order to endeavour to achieve a range of knowledge, skills and experience in the membership of the board across the following areas:

- biodiversity or environmental planning or management;
- recreation or open space planning or management;
- cultural heritage conservation or management;
- landscape design or park management;
- tourism or event management;
- indigenous culture or reconciliation;
- financial management;
- local government."

AITHOR NOTE 21

The wording ('range of knowledge, skills and experience') prompts a question as to whether the word 'range' should have been more appropriately qualified by a clause such as: 'balance in relation to the eight criteria'. Over the years 2007 to 2018 the board appointments were seen not to have represented much balance in terms of knowledge and skills and experience of these eight criteria and, politically, this also would have been challenging to implement. 'Range' is therefore a safer word.

The biggest challenge to the need for appointments to address at least one of the criteria occurred in December 2016 when Minister John Rau announced he would not renew (for year 2017) appointments of three board members (two with incomplete terms). Moreover, he would replace them with three of his departmental staff. The city council took legal advice about this, but kept that advice confidential. It refused a 2017 request by an elected member to release it, but did acknowledge that the appointments led to the need for conflict-of-interest declarations when some decisions were being made, related to the allocation of government monies to park lands developments by the minister's department. At one meeting these three members did

declare their conflicts and left the room when such a money matter arose. The council advised that it might occur again, but kept its view about the appointments to itself.

The history since the Authority commenced (2007) highlights a rigid, 'top-down' ministerial model of control over park lands matters where government approvals of council nominations to the board did not always occur in a timely way in line with Authority meeting schedules. Of political relevance (a matter that the public rarely knew about) was the way the relevant minister occasionally delayed authorising appointments of board members – especially those representing independent park lands voices – sometimes for multiple months, thus blocking the participation of potential appointees. This also obviously affected the patiently waiting future board member's ability to raise queries or lodge Motions on Notice, as well as contribute to any voting outcome. This is evidence of a classical political ruse – a minister using procedure to subtly influence potential determination outcomes, in a setting not visible to most South Australians.

[The ministerial explanatory statement:] "Specific provision is made so that an incorporated body that has demonstrated an interest in the preservation and management of Adelaide park lands for the benefit of the community may nominate a panel of 3 persons, from which the Minister must select 1 person for appointment to the board."

AUTHOR NOTE 22

This is evidence of a political bargain struck in the lead-up to the bill's writing, where Adelaide's principal independent park lands advocacy body at the time, the Adelaide Parklands Preservation Association, might get that seat at the table. At December 2006, APPA was chaired by Ian Gilfillan, MLC, a prominent parliamentary advocate for park lands 'protection'. He (and other APPA advisors) knew how to strike arrangements and well sensed that this particular time was potentially the only opportunity during which this bargain might be struck. He would be the first Authority 'independent' board member. Other APPA members were appointed in later years. In multiple instances, their voices sometimes were the only ones challenging 'the accepted order of things' within the board.

And why did the Act require the minister to be offered three nominations by that 'incorporated body'? The answer is almost certainly to allow the minister to hedge the risk that he might otherwise be presented with only one nomination – featuring someone that the minister didn't want anywhere near the Authority board room with a capacity as a board member.

7—Conditions of membership

[The ministerial explanatory statement:] "A member of the board of management is to hold office on conditions determined by the Adelaide City Council after consultation with the Minister. An appointment to the board will be for a period not exceeding three years.

The office of a member becomes vacant if the member—

- dies; or
- completes a term of office and is not reappointed; or
- resigns by written notice to the Adelaide City Council or the Minister (depending on who made the appointment); or
- becomes bankrupt or applies to take the benefit of a law for the relief of insolvent debtors; or
- is removed from office under subclause (3).

Subclause (3) provides that a member may be removed from office—

- for breach of, or non-compliance with, a condition of appointment;
- for mental or physical incapacity to carry out duties of office satisfactorily;
- for neglect of duty;
- for dishonourable conduct."

8—Validity of acts

[The ministerial explanatory statement:] "An act or proceeding of the Authority is not invalid by reason of a vacancy in the membership of the board of management or a defect in the appointment of a member."

Division 3—Functions

9—Functions

[The ministerial explanatory statement:] "The Authority's functions are as follows:

- to undertake a key policy role with respect to the management and protection of the Adelaide park lands;
- to prepare and, as appropriate, to revise, the *Adelaide Park Lands Management Strategy* in accordance with the requirements of the Act;
- to provide comments and advice on any management plan prepared by the Adelaide City Council or a State authority under the Act or the *Local Government Act 1999* that relates to any part of the Adelaide park lands, and to monitor and, as appropriate, to provide comments, advice or reports in relation to, the implementation or operation of any such plan;
- to provide comments or advice in relation to the operation of any lease, licence or other form of grant of occupation of land within the Adelaide park lands;
- on the basis of any request or on its own initiative, to provide advice to the Adelaide City Council or to the Minister on policy, development, heritage or management issues affecting the Adelaide park lands;
- to promote public awareness of the importance of the Adelaide park lands and the need to ensure that they are managed and used responsibly;
- to ensure that the interests of South Australians are taken into account, and that community consultation processes are established, in relation to the strategic management of the Adelaide park lands;
- to administer the Adelaide Park Lands Fund;
- to undertake or support other activities that will protect or enhance the Adelaide park lands, or in any other way promote or advance the objects of this Act."

Division 4—Related matters

10—Proceedings

[The ministerial explanatory statement:] "The presiding member of the board will be the Lord Mayor or, if the Mayor is not a member of the board, a member nominated by the Adelaide City Council. The deputy presiding member of the board will be a member nominated by the Minister.

"This clause also includes a number of provisions relating to the procedures and quorum of the board."

11—Committees

[The ministerial explanatory statement:] "This clause provides that the board may establish such committees as the board thinks fit to advise or assist the board. A committee may (but need not) consist of or include members of the board of management."

AUTHOR NOTE 23

It was this committee provision that the Weatherill Labor government used in 2014 to create a separate group to deliver the substantial amendment of the second version of the Adelaide Park Lands Management Strategy (2016) *and to embrace the government's 'activation' vision. This vision was a recreational manifestation of a broader, less obvious, theme: the preparation of plans to make the park lands adapt to the forecast increase in residential population living adjacent to the park lands edges. It included new concepts (precincts and hubs, etc) that would, if funded, profoundly reshape the landscapes of certain sections. Some evidence, in a Capital City Committee (CCC) annual report, emerged towards the end of the period that the government's highly secretive CCC had initiated the approach and driven the outcomes. This committee's minutes are – and always have been – confidential, so more detailed evidence, beyond the contents of the annual report, could not be publicly accessed. The Project Advisory Group (PAG) approach compromised the government's (and the public's) original vision for one body with one board of appointees to give policy advice to council – ideally in open session. But clauses like this aren't there by accident. Parliamentary counsel like to allow for mechanisms such as this to fulfil needs that at the time might not be easily apparent. This PAG sub-committee proved to be extremely useful to the state government at a time when, otherwise, drafts of a radical new Strategy might well have failed to progress, being too philosophically at odds with the version 2 (2010) Strategy. More importantly, some council-appointed members of the Authority would have been uneasy prosecuting and fine-tuning a version that so went against council park lands priorities of the recent past, and was opposed by some subsequent public consultation respondents. It was proven to be a much easier procedure to have the PAG do the work.*

12—Reports

[The ministerial explanatory statement:] "If a member of the board reports a matter relating to the affairs of the Authority to the Minister, the member does not commit a breach of a duty of confidence. The Authority is required to furnish a copy of its annual report to the Minister at the time it furnishes the report to the Adelaide City Council."

13—Interaction with *Local Government Act 1999*

[The ministerial explanatory statement:] "This clause lists some additional provisions that apply in connection with the operation of Schedule 2 of the *Local Government Act 1999*. Those provisions are:

- the Adelaide City Council must not adopt or amend the charter of the Authority without first consulting the Minister responsible for the administration of the Act and then obtaining the approval of the Minister responsible for the administration of the *Local Government Act 1999*.

AUTHOR NOTE 24

This only goes to highlight the high level of control applied by not one but two ministers about Authority matters at any given time.

[The ministerial explanatory statement:]

- the charter of the Authority must be consistent with the objects of the Act;
- the charter of the Authority must not exclude the operation of Chapter 6 Part 3 of the *Local Government Act 1999* in relation to the proceedings of the Authority;
- the Adelaide City Council must not give a direction to the Authority unless or until the Council has consulted with the Minister; ..."

AUTHOR NOTE 25

This reinforces a view about the government's obsession with controlling the relationship between the council and the Authority. Remember that the Authority is merely a subsidiary of the council. This clause leaves open some obvious allowances for council. It may pose questions; it may even ask the Authority in doing so to undertake research, although whether that is an 'instruction' is unclear. And it may reject Authority advice (most obviously by amending it) when a matter progresses to council for contemplation and determination.

[The ministerial explanatory statement:] "... the Authority cannot be wound up under the provisions of the *Local Government Act 1999*."

Part 3—Designation of Adelaide Park Lands

Division 1—Definition of park lands

14—Definition of park lands by plan

[The ministerial explanatory statement:] "Clause 14 requires the Minister to define the Adelaide park lands by depositing a plan (to be known as the Adelaide Park Lands Plan) in the GRO." [General Registry Office, Adelaide.]

[The ministerial explanatory statement:] "The Adelaide park lands are to include—

- the land commonly known as the Adelaide park lands; and
- Victoria Square, Light Square, Hindmarsh Square, Hurtle Square, Whitmore Square and Wellington Square; and
- Brougham Gardens and Palmer Gardens, as determined after taking into account the principles set out in clause 4 and the operation of any other relevant Act.

"Any road (or part of a road) running through, or bordering, any part of the park lands, or any part of any square, may be included as part of the park lands.

"The park lands are not to include Parliament House, Old Parliament House, Government House or land vested in the Commonwealth, or an agency or instrumentality of the Commonwealth.

"The park lands are to include any other land vested in, or under the care, control or management of, the Crown, a State authority or a local government body that is relevant in view of the principles set out in clause 4."

[The ministerial explanatory statement:] "The Adelaide Park Lands Plan may be varied by the Minister by instrument deposited in the GRO. This is subject to the following qualifications:

- a variation must not be made by virtue of which land would cease to be included in the park lands except in pursuance of a resolution passed by both Houses of Parliament; and ...

AUTHOR NOTE 26

This clause is one of the major 'checks and balances' that the Labor government wished to put in place to manage the risk that a future minister might attempt this variation. Other consequences of a variation are spelled out under 16 below: 'Related matters'.

[The ministerial explanatory statement:]

- a variation must not be made by virtue of which land would be placed under the care, control and management of the Adelaide City Council except at the request, or with the concurrence, of the Council; and
- a variation must not be made by virtue of which land would continue to be included in the Adelaide park lands but would cease to be under the care, control and management of the Adelaide City Council except at the request, or with the concurrence, of the Council."

15—Interaction with other Acts

[The ministerial explanatory statement:] "This clause provides that the Minister may vary the Adelaide Park Lands Plan to ensure consistency with the operation of another Act or the operation of a proclamation under Chapter 3 of the *Local Government Act 1999*, or to ensure consistency with any action being undertaken with respect to the construction or operation of a tramline in Victoria Square. The Minister may do this by instrument deposited in the GRO. (General Registry Office.)

"In addition, the Minister will be able, by instrument deposited in the GRO, on the recommendation of the Surveyor-General, to vary the Adelaide Park Lands Plan to ensure consistency with any road process under the *Roads (Opening and Closing) Act 1991* that takes effect after the commencement of this Act."

16—Related matters

[The ministerial explanatory statement:] "The Adelaide Park Lands Plan may, for the purposes of Part 3 Division 1 of the Act, be varied by the substitution of a new plan. The Minister may not deposit or vary a plan in the GRO without first consulting the Surveyor-General and the Adelaide City Council.

"For the purposes of any other Act or law, land designated in the Adelaide Park Lands Plan as being park lands under the care, control and management of the Adelaide City Council will, insofar as is not already the case, be placed under the care, control and management of the Adelaide City Council. Such land will also, other than in relation to land held in fee simple, be taken to be dedicated for park land.

"A variation to the Adelaide Park Lands Plan that has effect pursuant to the Act will, to the extent that the variation removes land from the Adelaide park lands, revoke any dedication of relevant land as park lands (including a dedication that has effect under another Act or has had effect under this Act) and revoke any classification of relevant land as community land under the *Local Government Act 1999*. The Minister will, in taking action under these provisions, be able to deal with any other related issue concerning the status, vesting or management of the land."

AUTHOR NOTE 27

This appears to extend significant powers to a minister in relation to what is, or might be in the future, park lands as defined under a future Adelaide Park Lands Plan. As a minimum, it could give rise to significant potential conflict with the spirit and intent of other provisions of the Act, especially the Statutory Principles. The authors of the bill that became the Act aimed to provide more certainty about what was, and what was not, park lands. However, the checks provided by concurrence of both houses of parliament and the city council at least put into place mechanisms to temper a minister's powers. Moreover, the subsequent history of park lands exploitation (to 2018) would illustrate that varying the Adelaide Park Lands Plan in pursuit of development projects or other exploitative opportunity was unnecessary. Development of land captured in the Plan could occur via development plan amendments (ministerial or council-initiated), or via project-oriented development legislation that overwhelmed the provisions of the Adelaide Park Lands Act 2005 *and defined the proposal as complying with the interacting* Development Act 1993*, or, after 2016, subsequent development legislation. There remained the bureaucratic problem of the intent of a* Community Land Management Plan's *specifics in relation to any section of park lands (this being specified under the* Local Government Act 1999*). But at least one legal test later would indicate that this was not as difficult as administrators might have assumed. For example, subsequent to the 2011 Adelaide Oval Redevelopment and Management Act's enactment, a challenge regarding oval liquor licence allowances ancillary to events within the oval's core area in 2018 in the SA Licensing Court found that CLMP contemplations for the relevant site (Park 26) were irrelevant.*

[The ministerial explanatory statement:] "This clause also provides that the Governor may, by proclamation, transfer, apportion, settle or adjust property, assets, rights, liabilities or expenses as between 2 or more parties in connection with the depositing or variation of the Adelaide Park Lands Plan."

AUTHOR NOTE 28

There is nothing ambiguous about this provision! This vests significant powers in the state governor to sort out and settle the potentially complex bureaucratic detritus matters arising from such a variation, simply 'by proclamation'.

[The ministerial explanatory statement:] "Finally, the Minister will be required to give public notice of the fact that he or she has deposited an instrument in the GRO; and the Minister and the Adelaide City Council will be required to ensure that copies of the Adelaide City Park Lands Plan are available for public inspection."

Division 2—Identification of tenure

17—Identification of tenure

[The ministerial explanatory statement:] "This clause requires the Minister to attach a schedule to the plan deposited in the GRO under section 14 that identifies all land (other than public roads) within the park lands owned, occupied or under the care, control or management of the Crown or a State Authority, or the Adelaide City Council."

PART 3

Part 4—Management of Adelaide Park Lands
Division 1—Adelaide Park Lands Management Strategy
18—Adelaide Park Lands Management Strategy

[The ministerial explanatory statement:] "Clause 18 provides that there will be an Adelaide Park Lands Strategy, to be prepared and maintained by the Authority. The strategy must—

- include certain specified information in relation to each piece of land within the Adelaide park lands owned, occupied or under the care, control or management of the Crown, a State authority or the Adelaide City Council; and
- identify land within the Adelaide park lands that is, or that is proposed to be (according to information in the possession of the Authority), subject to a lease or licence with a term exceeding 5 years (including any right of extension), other than a lease or licence that falls within any prescribed exception; and
- identify goals, set priorities and identify strategies with respect to the management of the Adelaide park lands; and include other information or material prescribed by the regulations; and
- be consistent (insofar as is reasonably practicable) with any plan, policy or statement prepared by or on behalf of the State Government and identified by the regulations for the purposes of the section."

AUTHOR NOTE 29

The third bullet point ('identify goals, set priorities and identify strategies') would not be delivered, except in very general terms. Despite its description as a 'management' document, each Strategy was in reality an action plan – but in some places an ambiguous one. The Act's requirement for it to 'identify goals' was for the second and third versions never adequately addressed, because neither version featured a clear action-plan structure, with specific objectives and goals, to be assessed against any deadlines. There were no deadlines, nor were there any funding allocations.[8] *The Strategy versions would turn out to be ambiguous 'wishlists', with uncosted 'activation' concepts ('aspirations') open to be cherry picked by the government of the day. (Most commonly, the state would pay, and the cherry picking would mostly occur in the lead-up periods to state elections.)*

The provision to "include other information or material prescribed by the regulations" was also wide open to interpretation, both in 2005 and later. It enabled parliamentary personnel such as advisors to a minister or a minister to influence future managers of an existing Strategy, or of a proposed new, updated draft.

The fourth bullet point is very clear. It gives the state government of the day powers to ensure that any version of the Strategy will contain material as the government thinks fit. It highlights the strict and comprehensive control that the state sought over the contents of a Strategy in

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[8] This was made clear in the 2016 Strategy (at the end of the document on page 100) with the words: "The Strategy is not costed and does not represent a financial commitment." This Strategy was still current as at December 2022.

terms of "any plan, policy or statement", even though the provisions of the Act implied that the control role was to be delegated to the Authority. The high level of control made a mockery of the notion of delegation. Moreover, the city council could not under this Act give instructions to the Authority unless it first consulted with the minister under section 13 (Interaction with the Local Government Act) which says: "the Adelaide City Council must not give a direction to the Authority unless or until the Council has consulted with the Minister" and such an action would likely bring it into conflict with the minister, a conflict in which local government can never prevail.

[The ministerial explanatory statement:] "This clause also prescribes a number of procedures and requirements relating to the establishment or variation of the management plan."

Division 2—Management plans

19—Adelaide City Council

[The ministerial explanatory statement:] "This clause requires the Adelaide City Council to ensure that its management plan for community land within the Adelaide park lands under Chapter 11 of the *Local Government Act 1999* is consistent with the *Adelaide Park Lands Management Strategy*. The clause also includes provisions relating to public consultation with respect to a proposed management plan (or proposed amendments to such a plan) and comprehensive review of the Adelaide City Council's management plan for community land within the Adelaide park lands."

AUTHOR NOTE 30

This Division 2 reference suggests that the Community Land Management Plans *for each park (retitled by council in about 2014 as one Plan, but still a book of parks plans) are subsidiary to the Strategy – firstly, because of the placement of section 19 (where CLMP reference appears after section 18 discussing the Strategy), and secondly, because of the wording above. This meant that the prescriptive CLMPs with their management directions and other detail were open to be influenced and potentially overwhelmed by other alternative prescriptive text in the Strategy (if it was created as such – and it is evident in the 2016 version). In broad terms, it meant that a Strategy, that could feature ambiguous text open to wide interpretation, had greater policy status than the CLMPs, which follow a prescribed Local Government Act specification of contents. CLMPs had to contain objectives, statements of community values, performance targets and indicators, descriptions of each, and identification, discussion and resolution of issues and processes to implement actions. What did this mean in practice? Remember that the Strategy was seen by city administrators as an 'action plan' (without explicitly using that term), but a CLMP was defined as a 'management plan'. Over the period 2007 (when the* Adelaide Park Lands Act 2005 *came fully into operation) to the end of the study period of this work (2018), in practice this manifested in what the administrators described euphemistically as a 'tension' between the documents. In practice, where administrators found implied enthusiasm for a project in the Strategy, to approve it in principle they would have to contemplate amendment of a CLMP. In practice, this highlighted that the two key documents were not very complementary or 'consistent'. The Act created this dilemma. It was never adequately resolved during the period of study of this work.*

20—State authorities

[The ministerial explanatory statement:] "Clause 20 applies to a State authority that owns or occupies land within the Adelaide park lands, or that has land within the Adelaide park lands under its care, control or management (other than land constituting a road or land excluded from the operation of the section by the regulations). A State authority to which the section applies is required to prepare and adopt a management plan for the part of the park lands that it owns or occupies or which is under its care, control or management. The proposed section also prescribes various requirements relating to contents of the plan, public consultation and review."

AUTHOR NOTE 31

The 'care, control and management' words usually relate to the Adelaide City Council and its park lands 'custodianship' role. But in this case they applied to state authorities, often holding tenure (registered proprietorship) of and occupying park lands sites in association with large buildings and other infrastructure. Over the years following 2007 there were occasionally rows over public claims that state Authorities had not prepared plans regarding park land sections they occupied. For example, the government administrators of the old Royal Adelaide Hospital site were accused of failing to write and adopt a plan in a timely way after the hospital was vacated and replaced by the new RAH, on former rail yards, north-west of the city. For some years the state government equivocated on plans for the former site's future use. While it did so, there appeared to be no city council appetite to act on what appeared to be a breach of the Act.

Division 3—Grants of occupancy

21—Leases and licences granted by Council

[The ministerial explanatory statement:] "This clause provides that the maximum term for which the Adelaide City Council may grant or renew a lease or licence over land in the park lands is 42 years. Before the Council grants (or renews) a lease or licence over land in the park lands for a term of 21 years or more, the Council must submit copies of the lease or licence to the Presiding Members of both Houses of Parliament. A House of Parliament may resolve to disallow the grant or renewal of a lease or licence."

AUTHOR NOTE 32

This 21-year provision was tightened after this parliamentary second reading to restrict terms. A subsequent provision was this:

[The ministerial explanatory statement:] "However, before the Council grants (or renews) a lease or licence over land in the park lands for a term of 10 years or more (taking into account any right of renewal), the Council must submit copies of the lease or licence to the Presiding Members of both Houses of Parliament."

This provision prompted the state government, in 2011 when seeking its initial lease to prepare for construction of the new Royal Adelaide Hospital, to apply for a term that fell short of the 10-year term by a few days. It was deliberate.

Part 5—Adelaide Park Lands Fund

22—Adelaide Park Lands Fund

[The ministerial explanatory statement:] "Clause 22 establishes the Adelaide Park Lands Fund. The Fund is to consist of—

- any money paid to the credit of the Fund by the Crown, a State authority or the Adelaide City Council; and
- grants, gifts and loans made to the Adelaide City Council or to the Authority for payment into the Fund; and
- any income arising from the investment of the Fund; and
- all other money required to be paid into the Fund under any other Act or law.
- Subclause (3) provides that money in the Fund that is not for the time being required for the purposes of the Fund may be invested by the Authority after consultation with the Adelaide City Council.
- Under subclause (4), the Authority is authorised to apply the Fund—
- towards increasing or improving the use or enjoyment of the Adelaide park lands for the public benefit; or
- towards increasing or achieving the beautification or rehabilitation of any part of the Adelaide park lands; or
- towards promoting or increasing the status of the Adelaide park lands; or
- in providing for, or supporting, research into any matter relevant to status, use or management of the Adelaide park lands; or
- in supporting the improved management of the Adelaide park lands; or
- in providing for any other matter that will further the objects of this Act; or
- in providing for the operational costs or expenses of the Authority; or
- in making any payment required or authorised by or under this or any other Act or law."

Part 6—Miscellaneous

23—Steps regarding change in intended use of land

[The ministerial explanatory statement:] "Under clause 23, if land within the Adelaide park lands occupied by the Crown or a State authority is no longer required for any of its existing uses, the Minister is required to ensure that a report concerning the State Government's position on the future use and status of the land is prepared within the prescribed period.

"The clause also contains a number of provisions dealing with requirements and procedures in relation to the following:

- the contents of the report;
- laying a copy of the report before both Houses of Parliament;
- provision of a copy of the report to the Adelaide City Council;
- discussions with the Council about whether the land should be placed under the care, control and management of the Council."

24—Duties of Registrar-General and other persons

[The ministerial explanatory statement:] "This clause imposes a duty on the Registrar-General, and any other persons required or authorised under an Act or law to record instruments or transactions relating to land to take action necessary to give effect to actions under the measure."

25—Provisions relating to specific land

[The ministerial explanatory statement:] "Under clause 25, the Council continues to have the care, control and management of the dam erected pursuant to powers conferred by the *River Torrens Improvement Act 1869*, and of the water held by that dam.

"By virtue of subclause (3), the waters held by the dam will be taken to constitute part of the Adelaide park lands."

26—Regulations

[The ministerial explanatory statement:] "This clause provides that the Governor may make regulations contemplated by the Act or necessary or expedient for the purposes of the Act and includes other provisions relevant to the Governor's power to make regulations."

Schedule 1—Related amendments and transitional provisions

Part 1—Preliminary

1—Amendment provisions

This clause is formal.

Part 2—Amendment of *City of Adelaide Act 1998*

2—Substitution of section 37C

Section 37C of the *City of Adelaide Act 1998* is deleted by this provision and a new section substituted. New section 37C provides that the land known as 'The Corporation Acre' within the City of Adelaide is vested in the Adelaide City Council.[9]

Part 3—Amendment of *Development Act 1993*

3—Amendment of section 4—Definitions

[The ministerial explanatory statement:] "Section 4 of the *Development Act 1993* is amended by the insertion of a definition of Adelaide Park Lands."

4—Amendment of section 46—Declaration by Minister

[The ministerial explanatory statement:] "This clause inserts a new subsection into section 46 of the *Development Act 1993*. Section 46 provides for the making of a declaration by the Minister if the Minister is of the opinion that such a declaration is necessary or appropriate for the proper assessment of development or a project of major environmental, social or economic importance. Under the new subsection, a declaration under section 46 cannot apply with respect to a development or project within the Adelaide park lands."

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[9] This is the site of the city council's administration building.

AUTHOR NOTE 33

Provisions 4 (and 5 below) of Part 3 featured an important 2005 political gesture to disable several provisions in the Development Act 1993 *to block plans for large construction works on the park lands, especially (under section 46) 'Major Projects'. This reflected the 'Lomax-Smith' pledge made in the years after the 2002 state election and it was widely publicised during the late 2005 debate period of the bill, as well as months later, in the lead-up to the March 2006 election. It addressed deep-seated public concerns that, unless this was done, a future government would continue to use these Development Act provisions to alienate, via big development projects, sections of the park lands.*

5—Amendment of section 49—Crown development

[The ministerial explanatory statement:] "Clause 5 amends section 49 of the *Development Act 1993* by inserting two new subsections. Proposed subsection (18) provides that section 49, which deals with Crown development, does not apply to development within the Adelaide park lands. However, proposed subsection (19) allows for the making of regulations under subsection (3) of section 49 with respect to development within the park lands that, in the opinion of the Governor, constitutes minor works."

But only 10 years later, in 2015 the Labor state government reneged on the spirit of this pledge, by modifying (in a ministerial development plan amendment) a list of exemptions in the 2015 Adelaide (City) Development Plan*, resulting in an amendment from non-complying to complying, in regard to some allowances in a select number of park lands policy areas. This enabled construction of a new six-storey high school in the Botanic policy area 19. The changes also meant that there would be no requirement for public consultation about the controversial, new $100m project.*

6—Amendment of section 49A—Development involving electricity infrastructure

[The ministerial explanatory statement:] "Proposed new subsection (22) of section 49A of the Development Act provides that the section, which deals with development involving electricity infrastructure, does not apply to development within the park lands. However, proposed subsection (23) allows for the making of regulations under subsection (3) of section 49A with respect to development within the park lands that, in the opinion of the Governor, constitutes minor works."

AUTHOR NOTE 34

These amendments originally aimed at creating development assessment hurdles that made it more difficult for future governments to manipulate park lands development project rules. A 2006 state government minute explained the details. The changes meant that: "Proposals previously considered under section 49 considered by DAC, the Development Assessment Commission[10]*, must be assessed against the* Adelaide (City) Development Plan. *Council must be consulted. Third party appeal rights may apply ..."* [11]

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[10] Now the State Planning Commission via its State Commission Assessment Panel.

[11] Government of South Australia, Minute, for Minister for the City of Adelaide, Re: 'Changes to Development Controls in the Adelaide Park Lands', Hon Gail Gago, 10 December 2006, 3 pages, not numbered.

Changes in relation to section 49A attracted a more rigorous approach, noted in the 2006 advice (see footnote source). In relation to both sections 49 and 49A, in the case of proposals "where not considered development – Schedule 14A of Development Regulations 1993" the advice was: "Restricted number of minor works eligible for being undertaken without development approval. None involve construction of new buildings or equipment unless underground."[12]

But, as discussed above, only nine years later in 2015 the state government reneged on the spirit of this pledge, by modifying (in a ministerial development plan amendment) a list of exemptions in the 2015 Adelaide (City) Development Plan*, resulting in an amendment from non-complying to complying, in regard to some construction project allowances in a select number of park lands zone policy areas. They were at the time unlikely to fit into that original description of 'minor works'.*

Part 4—Amendment of *Highways Act 1926*

7—Amendment of section 2—Act not to apply to City of Adelaide

[The ministerial explanatory statement:] "Section 2 of the Highways Act provides that the Act does not apply to or in relation to the City of Adelaide. As a consequence of the amendments made by clause 7, the Act will apply, or a specified provision or provisions of this Act will apply, to a road or road work that is within the ambit of a proclamation made by the Governor for the purposes of new subsection (1a). The Minister is required to consult with the Adelaide City Council before a proclamation is made under subsection (1a)."

Part 5—Amendment of *Local Government Act 1934*

8—Repeal of Part 16

[The ministerial explanatory statement:] "Part 16 of the *Local Government Act 1934* is repealed. This Part comprises only one section. Section 300A provides that the Governor may direct that an amount not exceeding $40 000 be paid out of the Highways Fund to the council of the City of Adelaide."

Part 6—Amendment of *Local Government Act 1999*

9—Amendment of section 4—Interpretation

[The ministerial explanatory statement:] "This clause amends the *Local Government Act 1999* by the insertion of a definition of Adelaide City Council."

10—Amendment of section 194—Revocation of classification of land as community land

[The ministerial explanatory statement:] "Section 194 of the *Local Government Act 1999* prescribes procedures relating to the revocation of the classification of land as community land. The section provides that the classification of the Adelaide park lands as community land cannot be revoked. This clause amends the section by adding the words, 'unless the revocation is by force of a provision of another Act'. The clause also inserts a new subsection that provides that the Adelaide park lands will, for the purposes of subsection (1)(a), be taken to be any local government land within the Adelaide park lands, as defined under the *Adelaide Park Lands Act 2005*."

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[12] Government of South Australia, ibid., second unnumbered page.

AUTHOR NOTE 35

Revocation did occur, in 2011, in relation to community land inside the perimeter walls of Adelaide Oval, influenced by the provisions of a new Adelaide Oval Redevelopment and Management Act 2011. *It created a 'core area', within which the contents of a subsequent Community Land Management Plan for Park 26 (a 2009 version) had no policy effect.*

The amendment of section 194 in the Local Government Act 1999 *highlighted the need for SA parliamentarians in 2005 to 'hedge their bets'. At the time of the progression of the 2005 bill, there was no public domain evidence of government contemplation to create future 'project-oriented development legislation' relating to Park 26 of the park lands. But when the Labor state government sought to build a sports stadium in that park, it would use the 2011 Act to enable this CLMP outcome. (The 2011 legislation also overwhelmed the provisions of the* Adelaide Park Lands Act 2005 *in regard to the oval stadium project, and deemed the project to be complying under the* Development Act 1993.*)*

A major theme over the period 2006 to 2018 was the relevance of park lands being classified as community land. A provision that made feasible the revocation of such classification was (and remains) at odds with other provisions in the Act. They include, for example, the provision for the Community Land Management Plans to be read as 'management guidelines' and their relationship with the Adelaide Park Lands Management Strategy, *which is to be read as the 'action plan'. However, the Act makes it clear that there is a possibility of "revocation of the classification of land as community land" via another Act. CLMPs are important instruments recording (among other things) the management-direction intentions, embracing overall patterns of landscape spatial organisation, land uses, response to natural features, circulation networks, boundary demarcations, vegetation, structures, small-scale elements, and historical views and aesthetic qualities.*

A provision to revoke (via another Act) a classification of community land remains a manipulative piece of political insurance – for future government administrations seeking a way to set aside the rigour of a CLMP in management terms. The outcome would almost certainly be exploitative. It was for Park 26 in relation to the new 2011 Oval Act, the means by which the huge stadium was approved for construction. The scale of the new stadium was, at the time, incomparable to any other development in the park lands. It would be equalled only when the new Royal Adelaide Hospital was completed, in 2017.

11—Amendment of section 196—Management plans

[The ministerial explanatory statement:] "Section 196 of the *Local Government Act 1999* requires the preparation of management plans for community land. Clause 11 amends the section by inserting new provisions that prescribe requirements in relation to the preparation and adoption of a management plan for the Adelaide park lands by the Adelaide City Council."

12—Amendment of section 202—Alienation of community land by lease or licence

[The ministerial explanatory statement:] "The amendments made by this clause are consequential."

13—Repeal of Chapter 11 Part 1 Division 7

[The ministerial explanatory statement:] "This amendment, which repeals provisions in the *Local Government Act 1999* relating to the Adelaide park lands, is consequential."

14—Amendment of Schedule 8

[The ministerial explanatory statement:] "Part 1 of Schedule 8 of the *Local Government Act 1999* is repealed."

Part 7—Amendment of *National Wine Centre (Restructuring and Leasing Arrangements) Act 2002*

15—Amendment of section 3—Interpretation

[The ministerial explanatory statement:] "Section 3 of the *National Wine Centre (Restructuring and Leasing Arrangements) Act 2002* is amended by the substitution of a new definition of Centre land. The definition refers to proposed new section 3A."

16—Insertion of section 3A

[The ministerial explanatory statement:] "This clause inserts a new section. Section 3A defines the Centre land and provides that the Minister may, by instrument deposited in the Lands Titles Registration Office, vary the Centre land. Under subsection (3), a variation cannot be made by virtue of which land would be added to the Centre land except in pursuance of a resolution passed by both Houses of Parliament. A variation must not be made by virtue of which any land would be placed under the control of the Board of the Botanic Gardens and State Herbarium except with the concurrence of that board.

"The Minister is required to consult with the Surveyor-General, and any lessee or other person who may be directly affected, before the Minister deposits an instrument at the Lands Titles Registration Office for the purpose of varying the Centre land."

17—Variation of section 5—Continuation of dedication of Centre land

[The ministerial explanatory statement:] "The amendment made by this clause is consequential."

18—Variation of section 6—Minister may lease Centre land

[The ministerial explanatory statement:] "Section 6 of the *National Wine Centre (Restructuring and Leasing Arrangements) Act 2002* provides that the Minister may grant a lease over any part of the Centre land. Under proposed new section 6 (9), inserted by this clause, if a variation to the Centre land under section 3A affects land subject to a lease under section 6, the lease, and any related interest or instrument, are varied to take into account the variation to the Centre land."

19—Repeal of Schedule 1

[The ministerial explanatory statement:] "Schedule 1, consisting of a plan of the Centre land, is repealed."

Part 8—Amendment of *Roads (Opening and Closing) Act 1991*

20—Insertion of section 6B

[The ministerial explanatory statement:] "This clause inserts a new provision into the *Roads (Opening and Closing) Act 1991*. Under proposed section 6B, a road within, or adjacent to, the Adelaide park lands, may be made wider, narrower, longer or shorter by the Minister in accordance with Part 7B. (Part 7B is inserted by clause 21.)"

AUTHOR NOTE 36

This gave the minister powers to create new roads (by extending existing ones) within the park lands and introduced an aspect of alienation contrary to other relevant provisions of the 2005 bill. There are various pathways across the park lands, sometimes unofficially created by lessees. Some fall into disuse over time. Others become longer, wider sealed roads. For example, after the Adelaide Oval stadium was built in 2014, the foot pathway leading from its north-western wall was gradually extended, widened and sealed, effectively creating a new carriageway for use by vehicles as an egress from the oval's rear car parks to Montefiore Road. The minister had the power.

21—Insertion of Part 7B

[The ministerial explanatory statement:] "Under proposed new section 34G, a person may apply to the Minister to make a road wider, narrower, longer or shorter pursuant to section 6B. The application may be made by the Commissioner of Highways, the Adelaide City Council or a council whose area adjoins the City of Adelaide. Section 6B applies only in respect of roads within, or adjacent to, the Adelaide park lands.

"On receiving an application, the Minister (that is, the Minister to whom administration of the *Roads (Opening and Closing) Act 1991* is committed) is required to consult with the Minister for the time being administering the *Adelaide Park Lands Act 2005*.

"The section also prescribes various procedures in relation to public notice of an application, representations, the preparation of a report by the Surveyor-General, and orders that may be made under the section."

Part 9—Amendment of *South Australian Motor Sport Act 1984*

22—Amendment of section 3—Interpretation

[The ministerial explanatory statement:] "This clause amends section 3 of the *South Australian Motor Sport Act 1984* by removing the definition of parkland."

23—Amendment of section 20—Minister may declare area and period

[The ministerial explanatory statement:] "As a consequence of this amendment to section 20 of the Act, the Minister may declare a specified period or periods (prescribed works periods) during which the South Australian Motor Sport Board may have access to land within a declared area for the purposes of carrying out works in the manner contemplated by section 22(1a) (which is inserted by clause 24)."

24—Amendment of section 22—Board to have power to enter and carry out works, etc, on declared area

[The ministerial explanatory statement:] "Under proposed new section 22(1a), the access that the Board may have to land comprising a declared area for a motor sport event during a prescribed works period is, with respect to any relevant category of work, free and unrestricted. This is subject to subsection (2), which provides that the Board must comply with terms and conditions agreed with a relevant council or person having a right of occupation or, in the event of a failure to reach such agreement, terms and conditions determined by the Minister.

"Proposed new subsection (2a) provides that the Board must, in exercising its powers under section 22 with respect to a matter that is outside the ambit of subsection (1a), comply with—

- any conditions determined by a relevant council or a person having a right of occupation of the land or any part of the land; or
- if the Minister considers, on application by the Board, that such a condition is unreasonable—any conditions determined by the Minister."

25—Amendment of section 24—Certain land taken to be lawfully occupied by Board

[The ministerial explanatory statement:] "Section 24(2) provides that the Board may, in certain circumstances, fence or cordon off a part of a declared area for a period not falling within the relevant declared period. Proposed new subsection (4), inserted by this clause, provides that the Board must, with respect to the operation of subsection (2), comply with any requirement that applies under section 22."

Part 10—Amendment of *Waterworks Act 1932*

26—Amendment of section 27—Free supply for public purposes within Port Adelaide

[The ministerial explanatory statement:] "Section 27 of the *Waterworks Act 1932* provides that the South Australian Water Corporation must, unless there is a drought or other unavoidable cause, supply to the Corporations of the City of Adelaide and the City of Port Adelaide sufficient water for various purposes within the City of Adelaide and the township of Port Adelaide. This clause amends section 27 by removing references to the City of Adelaide and providing for expiry of the section on a day to be fixed by proclamation."

Part 11—Transitional provisions

27—Boundaries of the City of Adelaide

[The ministerial explanatory statement:] "This transitional provision provides that the boundaries of the City of Adelaide (and, accordingly, the boundaries of any adjoining council) may be delineated by a plan filed or deposited in the Lands Titles Registration Office by the Surveyor-General. The Surveyor-General is required to consult with the Adelaide City Council, and any other relevant council, before he or she files or deposits a plan."

28—Special provisions relating to roads and Adelaide/Glenelg tramline

[The ministerial explanatory statement:] "This clause provides that the Minister may, in the plan deposited in the GRO under clause 14 (the Adelaide Park Lands Plan), on the recommendation of the Surveyor-General—

- designate land forming, or previously forming, part of a public road and that is, immediately before the commencement of the clause, being used by the public as park land as being incorporated into the Adelaide park lands as park land; or
- designate land that was, immediately before the commencement of the clause, being used by the public as a road (or as part of a road) as being a public road or a part of a public road.

"The Minister may also, in conjunction with depositing the Adelaide Park Lands Plan in the GRO under clause 14, or at a later time, by plan filed or deposited in the Lands Titles Registration Office on the recommendation of the Surveyor-General—

- determine the location of the boundary of any road in existence immediately before the commencement of the clause where the Surveyor-General has certified that there is a degree of uncertainty as to the location of such a boundary;
- determine the location of the boundary of the land that should, in the opinion of the Surveyor-General, be regarded as being reserved for the purposes of the transport corridor containing the Adelaide/Glenelg tramline (as that tramline exists immediately before the commencement of the clause).

"The Minister will, in taking action under these provisions, be able to deal with any other related issue concerning the status, vesting or management of any relevant land."

The Hon. IAN GILFILLAN secured the adjournment of the debate.

The extracts that appear in this appendix are from Parliament of South Australia, *Hansard*, Legislative Council, 15 September 2005. The Government of South Australia copyright noted: "All legislation herein is reproduced by permission but does not purport to be the official or authorised version. The Copyright Act, 1968 (Cwth) permits certain reproduction and publication of South Australian legislation. In particular, section 182A of the Act enables a complete copy to be made by or on behalf of a particular person."[13]

[13] Readers are directed to use an internet search engine to obtain an 'as amended' present-day copy of the Act. Some of the author comments in this appendix may in the post-2018 future be no longer accurate or appropriate.

APPENDIX 10

Adelaide (City) Development Plan

Understanding this plan is the key to understanding the instrument referred to by the state government, or any other party lodging a development application, seeking approval for a development project across Adelaide's park lands during the study period of this work (1998–2018). It was a plan very few South Australians knew about or saw, and even fewer had the luxury of a professional planner's explanation as to how those interpreting it determined how development proposals might be assessed and approved as a result of reference to it.

This plan has now been superseded by a *Planning and Design Code*. In early 2019 the new state Liberal government had begun progressing the plan's replacement, in a procedure that the city council had noted several years earlier in 2017 would "involve the complex transformation of the current 72 development plans across the state into one single state planning rulebook".[1]

The new code was a product of 2016 development legislation being slowly brought into operation. The legislation, the *Planning, Development and Infrastructure Act 2016*, which replaced the *Development Act 1993*, did not come fully into operation until mid-2020, and the code for the metropolitan areas came into operation on 19 March 2021.

For the purposes of this work's study period (1998–2018), observations in this chapter focus on the former plan, the *Adelaide (City) Development Plan*. It remains not only relevant, but also important as a study of a statutory planning instrument application that lasted for many years under the old *Development Act 1993* and was still in operation at the conclusion of the period of study. It is not the purpose of this appendix to explore the new code. Suffice to say that the plan, and the new code, had the same purpose.

Themes about statutory planning instruments such as the *Adelaide (City) Development Plan* include:

- The rules applied to a specific place – for the purpose of this appendix (and broader study), the Adelaide park lands – described in the plan as the park lands zone.
- For the purposes of assessment, the park lands zone under the plan was segmented into sections. These were titled 'policy areas'.
- The instrument was a document whose particulars had to be referenced to assess a development application.
- There were procedures that allowed for revision (updating) of the instrument. Often the revisions affected criteria only in particular sections of the park lands zone.
- There were procedures that allowed the public – in specific circumstances – to comment on a park lands development proposal before it was assessed. However, not all circumstances allowed public comment.

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[1] Source: Adelaide City Council, The Committee meeting, Agenda, 'Planning reform update', December 2017, page 65.

- The circumstances were defined by the classification of the category of development. Under the *Adelaide (City) Development Plan* there were three categories: 1, 2 and 3. No public comment was required to be sought under Category 1. Appeals to a court could occur in regard to a Category 3 classification.
- A favourable planning consent and later development consent assessment allowed the proponent to lawfully commence.
- Development applications were not all assessed by the same agency. The major assessment determinants under the development plan were the category and capital value of the proposal. Other determinants could apply.

The policy areas

For the purposes of this analysis, a June 2017 version of the *Adelaide (City) Development Plan* is explored. Under the heading 'Park Lands Zone', the park lands were segmented into policy areas. The 2017 plan contained a useful map of these park lands zone policy areas, segmented thus: Golf Links; Northern Park Lands; River Torrens East; Botanic Park; Rundle and Rymill Parks; Eastern Park Lands; Southern Park Lands; Western Park Lands; River Torrens West; Adelaide Oval; and Brougham and Palmer Gardens. A separate Riverbank zone, created after 2013, covered park lands that once included sections of those other policy areas.

For brevity, only the introduction to the plan is reproduced later in this appendix. But it is enough to hint at the state and city council planning imperatives behind the continual evolution of the plan. The more one examines the planning superstructure behind the park lands the more it becomes evident that the legislation that was supposed to 'protect' the park lands did not anticipate some future park lands outcomes as a result of the cyclical evolution of the content of the plan. Some amendments gave rise to development projects unsympathetic to earlier park lands 'protection' ideals, as existed around the mid-2000s (circa 2005, when the *Adelaide Park Lands Act 2005* was proclaimed, and late 2006 when it became operational).

Planning assumptions

Planners worked under a range of assumptions, which some observers assumed were rigid rules. But many were not. Some were what someone at some time thought was a good idea, to achieve a particular objective. The reality was that planning rules could be changed – and quickly if the political will was there. This fundamental theme was noted by Dr Michael Llewellyn-Smith, an expert, a former city council City Planner, later council CEO and, later again, a council elected member. In 2010 he completed a PhD thesis, which became the basis for a 2012 book. In it he reflected on four decades of city planning experience. He wrote: "… planning is primarily a political, not a technical process."[2] He noted: "Planning is also a continuous process, with cycles of information, investigation, decision, action and review leading to a new cycle."[3]

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2 Michael Llewellyn-Smith, *Behind the scenes*, 'The politics of planning Adelaide', The University of Adelaide Press, December 2012, page 342.

3 Michael Llewellyn-Smith, ibid.

Many amateur observers who had read the development plan relating to the park lands assumed that it was the only iteration, but in reality it had been evolving for many years, especially since first coming into electronic use in 1996.

What informed the plan?

One of the key park lands policy documents likely to inform changes to the development plan was the *Adelaide Park Lands Management Strategy*.[4] This was an action plan. However, there was no law that required this. It was merely a procedural assumption, but one that had been embraced by city council and state government bureaucrats for years. This was because the Strategy was a political document (despite what the city council might say), a subjective action plan describing what someone wanted to manifest in the park lands in the future. In relation to the original Strategy, in 1999, that 'someone' was the city council, because it had commissioned the writing of that version, and published it. But in relation to the 2010 and 2016 Strategies, the state government was effectively in control, because the *Adelaide Park Lands Act 2005* required a Strategy and the state saw to it that the versions that emerged after the Act came into operation contained state imperatives and priorities. The council had to continue paying for the research and writing and cost of publishing the versions, but the state directed the revisions through the work of the Adelaide Park Lands Authority, which was effectively under control of a government minister. Moreover, for a Strategy to be fully authorised, a government minister had to sign off on it. This was not widely understood. The Adelaide Park Lands Authority did the procedural work, and many people today still believe that the Authority dictated the outcome. It did not; it only managed the outcome. In retrospect, the *Development Act 1993* was silent as to how statutory planning instruments such as the *Adelaide (City) Development Plan* would be specifically informed by documents such as the Strategy about park lands development matters.

Amendments to the plan

The second key to comprehending the evolution of content and use of the development plan was to understand that the government had to adopt a legal procedure to amend it, to approve new development concepts to construct new buildings, facilities and infrastructure in the park lands that might otherwise have been non-complying under the plan. In other words, when it wished to do something that the existing plan did not contemplate, it had to adopt a means to ensure that a development proposal, which may have been initially classified non-complying, became classified as complying development. The changes were sometimes complicated and generally occurred in ways that baffled the public because planning is a function that embraces some complicated concepts and demanding procedures. Amendment of a development plan was a legal process under the *Development Act 1993*.

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[4] There were three Strategies during the study period of this work: versions 1999 (titled the *Park Lands Management Strategy Report*), and the 2010 and 2016 versions prefaced with the word 'Adelaide'.

Amendment occurred in ways only planners, planning lawyers and government bureaucrats (who are often lawyers) easily understand. It occurred through a procedure formally described as a development plan amendment (DPA). In regard to development project proposals for the park lands zone policy areas, a planning minister could ask the city council to drive a DPA or, if a matter was politically controversial, by using a 'big stick' approach – by driving it himself.[5] This was called a *ministerial* DPA. This procedure could not be opposed by the Adelaide Park Lands Authority or the city council, although both could object. But even if they did, unless the objection turned on a compelling legal technicality, a planning minister could ignore the objection. (A list at the end of this appendix highlights a number of these ministerial DPAs made between 2006 and 2015. Each was topical at the time. These are listed under the heading 'The controversial park lands matters'.) If the planning minister ignored the objection, there was no guaranteed court appeals mechanism in the *Development Act 1993* through which to pursue that objection. There was only a parliamentary mechanism, through a standing committee, but the traditional committee that oversaw such complaints[6] has historically been shown to be toothless if the government did not want to create a remedy to that objection. And why would it, especially if that government's planning minister was pursuing the amendment?

Now you see it, now you don't

At the conclusion of these processes, new revisions of the plan appeared to give the government what it wanted. They looked like they were always there because the old plan was immediately replaced, and unless you were familiar with the previous version's content, you'd never know it had been there. The newly revised plan (described as the 'consolidated' version) was then released and available on the internet, and the old one was archived.

Here is an example of wording, extracted from the *Adelaide (City) Development Plan*, that applied when the government wanted the development rules changed to legally authorise the assumption of 10ha of former park lands (city rail yards) and to allow the construction of a $2.4b Royal Adelaide Hospital:

> "Consolidated: 21 May 2009 09 Royal Adelaide Hospital DPA (*Ministerial*) – [Amendment: Gazetted: 14 May 2009]
>
> Consolidated: 7 Jan 2010 Section 29(2(b)(ii) Amendment – [23 December 2009] Section 27(5)(a) Amendment - Royal Adelaide Hospital DPA – [Amendment: Gazetted: 23 December 2009]
>
> *Consolidated: The date of which an authorised amendment to a Development Plan was consolidated (incorporated into the published Development Plan) pursuant to section 31 of the* Development Act 1993.
>
> *Gazetted: The date of which an authorised amendment was authorised through the publication of a notice in the Government Gazette pursuant to Part 3 of the* Development Act 1993."

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[5] There were no female planning ministers during this work's period of study.

[6] The Environment, Resources and Development Committee of state parliament.

Notification in the *Government Gazette* was the final stage necessary to declare that changes to the old plan had been incorporated into the plan. In this way, park lands observers who thought they understood all of the rules and limitations of the *Adelaide (City) Development Plan* could not be complacent, because there was constant potential that a government might make amendments at any time and have the new plan's legitimacy noted in the *Gazette*.

There were some provisions for public notification (occasionally), and public consultation. But the day one read about it in the *Government Gazette* – which only parliamentarians and planning lawyers tended to scrutinise – meant it was already a 'done deal'. Most House of Assembly MPs are also baffled by the laws and procedures relating to changing the development plan, so if you complain to your local member, expect a blank look. Chapter 15 in this work,'The parliamentary Select Committee 2001 that never concluded' records how parliamentarians with many years' experience of the legislative process had great difficulty in understanding how the South Australian planning system worked, or the role of the city development plan, or the means to amend it. They were investigating park lands development matters. It was a telling revelation of the complexity of the rules about park lands development.

What did the plan look like?

Readers are urged to use an internet search engine to access the final version of the *Adelaide (City) Development Plan* before it was replaced by the *Planning and Design Code*. Here is an extract from the June 2017 version of the plan, with reference to the park lands zone, in which park lands matters are referenced.

> **"Extract: 20 June 2017 development plan**
>
> **PARK LANDS ZONE**
>
> **Introduction**
>
> The desired character, objectives and principles of development control that follow apply in the Park Lands Zone shown on Maps Adel/3 to 23, 26 to 33. They are additional to those expressed for the whole of the Council area and in cases of apparent conflict, take precedence over the more general provisions. In the assessment of development, the greatest weight is to be applied to satisfying the desired character for the Zone.
>
> **DESIRED CHARACTER**
>
> The desired character for the Zone is comprised of:
>
> (a) a unique open space system which is the most valued characteristic of the historic layout of the City providing a distinctive image for the City;
>
> (b) conservation and enhancement for the relaxation, enjoyment and leisure of the City's workers, residents and students, the metropolitan population and visitors;
>
> (c) open publicly accessible landscaped park setting for the built-form of South Adelaide and North Adelaide, which separates the built areas of the City from the surrounding suburban areas;

(d) a balance of both formal and informal recreational activities including sporting clubs, walking and cycling trails, formal gardens and passive recreation areas as well as providing a setting for a variety of special events such as festivals and sporting events;
(e) enhancement of the park lands through the reduction in building floor areas, fenced and hard paved areas;
(f) public infrastructure, including schools and other education facilities, roads, railways, tramways and busways, and their supporting structures and works in some parts of the zone; and
(g) a well connected pedestrian and cycle network throughout the Park Lands."

Note the use of that ambiguous word 'enhancement'. No-one in Adelaide has ever agreed that this word has clear meaning in regard to the city's park lands, but in other documents it is generally used as a euphemism for park lands *development*: construction of something – pavilions, community sports buildings, car parks, play grounds, roads, fencing, bridges, pipes and wires and other infrastructure.

But in this plan at clause (e) the use of this word implies something different: "the reduction in building floor areas, fenced and hard paved areas". This links to a long-held concept, captured in the first (1999) *Park Lands Management Strategy Report*, regarding an intention to reduce building 'footprint' when replacing one building with another. But the next clause at (f) contradicts it: "public infrastructure, *including schools and other education facilities*". Those who had not read previous versions of the plan would not have known that this line of text was an amendment, a new addition to the development plan, capturing a park lands zone planning tactic adopted by the state Labor government (Premier Weatherill) when it successfully pursued a development plan amendment in 2015 to change the non-complying rules that otherwise blocked construction of new schools on the park lands. When the changes were authorised by the politician who wanted the amendment (Planning Minister John Rau) the writers of the plan had to amend the 'Desired Character' wording to acknowledge and enable the change. In doing so they added the words at (f) that contradicted (e), because the new, six-storey school, Adelaide Botanic High, introduced a new large footprint, and a new and significant total floor area because of its multiple levels, into the park lands.

Over the period of study, it was clear that most government planners discreetly ignored contradictions and ambiguities in the development plan. Moreover, planning lawyers and architects capitalised on them to deliver planning assessment approvals for their clients. One thing is certain – you won't find reference to the development plan (or the subsequent *Planning and Design Code* after March 2021) in any of the glossy tourist brochures and websites extolling the landscape virtues of Adelaide's glorious park lands. In fact, while the Development Plan was the instrument whose contents over the study period of this work had the most effect on the potential (or not) for future park lands 'protection', it was the least referred-to document in public discourse about retaining and 'protecting' the future landscape integrity of the park lands.[7]

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[7] This feature endured after March 2021 when the *Planning and Design Code* replaced the development plan. It was not necessarily about protecting the landscape integrity; it was about enabling development across the park lands zone.

The city council's view of development plans

Below is a reflection of what the Adelaide City Council thought of the *Adelaide (City) Development Plan* in about 2013.[8] The council extracts are in *italics*.

> A city council assessment in 2013 noted: "*A fundamental constraint with development plans is that they contain a large number and range of policy provisions to be worked through to undertake an assessment, impacting efficiency and ease of assessment*."[9]
>
> Other aspects, which also contributed to confusion and suspicion of dark, developer-led conspiracies by park lands 'protection' advocates, arose from how planners and determining bodies (the Adelaide Park Lands Authority, advising the next-stage Adelaide City Council) arrived at recommendations for final decisions.
>
> For example, as the city council noted in 2013:
>
> "*A fundamental constraint with the Development Plan … is that it puts forward a benchmark of 'outstanding' development but allows in practice a much lower test of 'reasonableness'*."[10] One reason for this arose from a government change in plan statutory policy during the 10 years to 2013 from a 'prescriptive' to a 'performance-based' approach. "*A prescriptive policy approach is where the development plan describes in an easily measureable term (often with numerical standards) the 'standard* [that] *new development is to meet*."[11] But, "*A performance-based approach is where the development plan is written to describe the outcomes to be achieved by 'development', but the plan leaves it open to the developer to determine how to satisfy the outcome*."[12]
>
> Importantly, two other approaches applied to the *Adelaide (City) Development Plan*, and therefore to planning assessment of proposals for the park lands zone. "*The city council has been a leader in the use of desired character statements since prior to the* Development Act 1993 *and its experience supports the value of having desired character statements.* [But] *It is also the experience that the relationship between Desired Character Statements and Principles of Development Control can lead to lack of user friendliness*."[13]
>
> Put more bluntly, what the planner who recorded those comments said was that, for most non-planners and objectors to development proposals in the park lands, the language used in the statements and the principles was often at best ambiguous and at worst significantly confusing, and there were philosophical inconsistencies between the statements and principles.

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8 This draws on content from one of this work's early chapters (Chapter 12: 'The governance of public space and the politics of planning').

9 Adelaide City Council (ACC), City Planning and Development Committee, Agenda, Item 13, 'Planning reform: experiences, questions and suggestions', 6 August 2013, page 332.

10 ACC, op. cit., 6 August 2013, page 331.

11 ACC, ibid.

12 ACC, ibid.

13 ACC, ibid., page 322.

Historically over the two-decade period of study of this work to year-end 2018, these features allowed assessors plenty of interpretation wriggle room to justify recommendations for approvals relating to development projects for the park lands zone. The determining bodies rarely took issue with those interpretations.

The controversial park lands matters

A list appears below showing a record of amendments to the plan, made between 2006 and 2015, which had been pursued by the state Labor government under the *Development Act 1993*. The amendments enabled significant change to some policy areas of the Adelaide park lands zone through the construction of new built form. (The acronym PAR means 'plan amendment report'. The state planners changed this in about 2008 to DPA – 'development plan amendment'. They are the same thing.) Here is a June 2017 extract from the *Adelaide (City) Development Plan*.

> "The following table is a [selective, and edited for the purposes of this work] record of authorised amendments for the *Adelaide (City) Development Plan* since the inception of the electronic Development Plan on 12 December 1996 for Metropolitan Adelaide Development Plans. Further information on authorised amendments prior to this date may be researched through the relevant Council, Department of Planning, Transport and Infrastructure or by viewing *Gazette* records."
>
> Amendment – [Gazetted date]
>
> - General and Park Lands PAR – [5 January 2006]
> - Section 29(2)(b)(ii) Amendment – [30 August 2007]
> - Royal Adelaide Hospital DPA (*Ministerial*) – [14 May 2009]
> - Section 29(2(b)(ii) Amendment – [23 December 2009] Section 27(5)(a) Amendment - Royal Adelaide Hospital DPA – [23 December 2009]
> - Section 29(4) Amendment – [23 June 2011]
> - Section 29(2)(b)(ii) Amendment – [5 April 2012]
> - Bowden Urban Village & Environs DPA (*Ministerial*) – [5 July 2012]
> - Adelaide Oval Footbridge DPA (Interim) (*Ministerial*) – [24 January 2013]
> - Adelaide Oval Footbridge DPA (*Ministerial*) – [18 July 2013]
> - Riverbank Health and Entertainment Areas DPA (*Ministerial*) – [11 October 2013]
> - Section 29(2)(b)(i) Amendment – [20 November 2014] Section 29(3)(a) Amendment – [19 March 2015] Section 29(2)(b)(ii) Amendment – [26 March 2015] Section 29(2)(a), 29(2)(b)(i), 29(2)(b)(ii), 29(3)(a) and 29(3)(c)(i) Amendments – [2 April 2015]
> - Park Lands Zone DPA (*Ministerial*) – [17 September 2015]
>
> "Gazetted:
>
> The date on which an authorised amendment was authorised through the publication of a notice in the *Government Gazette* pursuant to Part 3 of the *Development Act 1993*."

Readers of this work can use an internet search engine to obtain an updated list in respect of the last versions of the plan (concluding when the *Planning and Design Code* came into operation in March 2021). Note (in the list above) the number of *ministerial* DPAs [emphases added]. Each was controversial, leading to planning authorisation of development concepts that were formerly non-complying.

They included the new Royal Adelaide Hospital (2009); Bowden Village on the park lands boundary (2012) which later triggered changes to government policy about the 'new urban address' of the park lands; the River Torrens footbridge (2013), the Riverbank rezoning spree (2013) and the new Adelaide Botanic High School (17 September 2015).

City changes linking to park lands policy change

Between the years 1998 and 2018 (and until March 2021) the development plan was often amended. An important note applies to the list above. Other changes to the development plan, that were not made specifically relating to the park lands policy areas, also had park lands effects. For example, major city policy zone plan amendments in 2012 and 2013 (Main Street zones), and other similar amendments for other inner-metropolitan local government areas surrounding the park lands boundaries, allowed significant height, bulk and scale increases of buildings adjacent to the park lands boundaries. These had effect on evolving park lands policy. The development plan amendments of 2012 and 2013 led to construction of new high-rise, high-density apartment buildings adjacent to the park lands boundaries. In turn, this led to new policy adaptation expectations by the state. These were that the land manager of park lands (mostly the park lands 'custodian', the City of Adelaide) should compensate for these buildings' lack of open space by providing new adjacent facilities in the park lands open spaces. In other words: adapt the park lands to residential planning priorities. This theme is explored in other parts of this work.[14]

[14] Please refer to Chapter 42: 'The new 'urban address' narrative'.

APPENDIX 11

Community Land Management Plan

The notion of balancing the ideas of retention of character, and identifying how a park could be improved, implied a blending of management direction plan and action plan, and this would be the core administrative challenge.

This appendix follows on from Chapter 5, 'A brief introduction to Adelaide's park lands administrative machinery' and its reference to the *Community Land Management Plan*. In this appendix, a test case and two case studies appear.

Before exploring the post-1999 history of the emergence of the concept of the *Community Land Management Plan* (CLMP) for the Adelaide park lands, it is useful to first note what happened five years after the 2007 full enactment of the *Adelaide Park Lands Act 2005*. Adelaide City Council administrators in 2012–13 amended park lands CLMPs so that their perceived content and status would conflict less with the rise and rise of action plan policy content in other park lands documentation evolving under politically driven requirements. The key policy driver would be the second and third (2010 and 2016) versions of the *Adelaide Park Lands Management Strategy*, as required under the 2005 legislation.

Given that the concept of a CLMP originated from a pre-existing statute years before the Adelaide Park Lands Bill 2005 came into being, there was always going to be an uneasy fit between it and other policy documentation proposed under the park lands bill. At the time of the crafting of the bill, bureaucrats underestimated how much this would be a problem. They accepted that the new park lands legislation would have to interact with the *Local Government Act 1999*, and thus its various instruments – including CLMPs for the park lands. But it would fall to subsequent city council administrators to make the arrangement work.

Within five years of the 2006 enactment of the *Adelaide Park Lands Act 2005*, policy application perceptions about the content and status of the CLMPs for the park lands had substantially changed. The extent of this change was one trigger, among several, for a determination to revise the entire suite of CLMPs for almost every park or clusters of parks.

The city council summary of 6 December 2011 summed it up, when it described the objectives of proposed new revisions of the parks' CLMPs as being to create "a *management* document giving guidance to park users, lessees/licencees, asset managers, horticulture staff, event managers and other council staff, as well as the general public."[1]

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1 Adelaide City Council (ACC), City Design and Character Policy Committee, Item 6, 'Park Lands Community Land Management Plan', 6 December 2011, pages 7–62; this extract: page 9.

Management or *action*?

The important distinction was between *management direction* documents and *action plan* documents. But the notion of balancing the ideas of retention of character, and identifying how a park could be improved, implied a blending of management direction plan and action plan, and this would be the core administrative challenge.

The key park lands action plan documentation at the time began with the *Park Lands Management Strategy Report* of 1999, a city council policy instrument whose evolution would be increasingly politically driven, as evidenced in the emergence of the 2010 version and, even more particularly, the 2016 version.[2] In effect, the change as each Strategy was revised would occur at a faster rate, and in more profound ways, by comparison to the evolution of the CLMPs. Yet under the *Adelaide Park Lands Act 2005*, these two sources of policy had to be 'consistent'. It became increasingly challenging to manage.

Reducing the friction

The friction caused by this uneasy fit was noted by those observing Adelaide Park Lands Authority meetings, listening to discussions by board members and city councillors in the early years following full enactment of the Act in 2006. Five years later, in 2011 the Authority determined to condense each CLMP booklet for each precinct, reducing content. In the resulting new versions, some text that existed in the earlier, longer and more detailed versions was referred to only in links, such that, without delving into those links, a reader would be tempted to form a more simplified view of the extent and complexity of the original CLMP documentation. This process was summarised in managerial language. Council park lands administrators wrote that the revision procedure would "*restrict unnecessary detail* of the park lands CLMP [in order] to improve community understanding and council decision-making; reduce duplication which is no longer required due to a *more-developed policy environment* (emphases added); [and] ensure consistency with the new *Adelaide Park Lands Management Strategy*, as well as with other new policy and other requirements ... without duplication..."[3] It was clear that the existence of a "more-developed policy environment" was overwhelming the CLMP content requirement (for each park) for explicit *management direction* material. But these were specific requirements of the *Local Government Act 1999* and they avoided ambiguous policy statements that might allow multiple interpretations. By the end of the period of this study (year-end 2018), the CLMPs had become diminished references by comparison to other policy documents and occupied an uncomfortable place in the policy document hierarchy determining park lands management decisions.

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[2] The original 1999 Strategy was not a statutory policy instrument, but the 2010 and 2016 Strategies were, because the *Adelaide Park Lands Act 2005* specifically required them.

[3] Adelaide City Council, City Design and Character Policy Committee, Item 6, 'Park Lands Community Land Management Plan', 6 December 2011, pages 7–62; this extract: page 9.

Sourced from a different Act, at a different time

State bureaucrats contributing to the writing of the Adelaide park lands bill drafts in late 2004 may have researched the concept of the CLMP. Reference to CLMPs appears in the *Local Government Act 1999* in Division 4, section 196: Management Plans, which defined what they should cover, for councils responsible for managing community land within their boundaries. Originally, this land did not explicitly refer to the Adelaide park lands, but a 1999 amendment to the Act revised wording, and section 196 (1a) stated that the city council "must prepare and adopt a management plan for the Adelaide park lands". Such a plan would provide a set of principles to guide land management, containing objectives, statements of community values, performance targets and indicators, descriptions of each, identification, discussion and resolution of issues and processes to implement actions.[4]

Interpretation hurdles arrive early

Importantly, in regard to subsequent document hierarchy terms, a later section 196 (6) states: "In the event of an inconsistency between the provisions of an official plan or policy under another Act and the provisions of a management plan under this Act, the provisions of the *official plan or policy* [emphasis added] prevail to the extent of the inconsistency." That clause may have been added to anticipate management of later problems, not just related to the *Adelaide Park Lands Management Strategy*.

For example, that clause had relevance in reference to the provisions of the *Development Act 1993* and its planning instrument, the *Adelaide (City) Development Plan* (park lands zone). Years earlier, obtaining a clear interpretation for planning purposes would demand a challenging bifocal approach, which, while perhaps not immediately apparent in the early years following the enactment of the *Adelaide Park Lands Act 2005*, became increasingly obvious later. An example in 2011 prompted council introspection. The council advice, contained in a 2011 draft 'test' CLMP, stated that the Development Plan "... contains Objectives to achieve the Desired Character and Principles of Development Control for the Park Lands Zone and *should be read in conjunction* with the park lands CLMP." [emphasis added].[5] Administrators were faced with the challenging task of attempting to simultaneously compare and contrast more than one policy instrument provided for in the *Adelaide Park Lands Act 2005* to form a coherent and, more importantly, workable view.

Park Lands Act carries on the tradition

The view about the need for consistency between two policy instruments was carried over to the new *Adelaide Park Lands Act 2005*. This Act stated: "The Adelaide City Council must ensure that its management plan for community land within the Adelaide park lands ... is consistent with the *Adelaide Park Lands Management Strategy*."[6]

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4 *Local Government Act 1999*, s196, (3), a to e. (An extract of section 196 appears earlier in this work, in Chapter 5, 'A brief introduction to Adelaide's park lands administrative machinery', at the conclusion of the section discussing the *Community Land Management Plan*.)

5 Adelaide City Council, op. cit., 6 December 2011, page 28.

6 Division 2, section 19 (1).

The provision described (but didn't well address) a policy interpretation challenge. As subsequent amended versions of the *Adelaide Park Lands Management Strategy* (APLMS) emerged (in 2010 and 2016 respectively), observations would emerge of proposed park lands concepts inconsistent with those in the (older) CLMPs. In the beginning (the early 2000s), park lands policy had been largely defined by the existence of one key document – the original (1999) *Park Lands Management Strategy Report 2000–2037*. It had been written and released at about the same time as amendments to the Local Government Act, creating the 1999 'as amended' legislation. But the timing of subsequent Strategy version revisions was not complementary. It did not follow the 'ideal' envisaged by parliamentary counsel at the time of amendment of the Local Government Act and, six years later in early 2005, when writing the park lands bill. The inherent assumption was that as soon as one policy document was revised the other complementary policy documents also would be – and rapidly. That was naive. It would lead to future problems. As much as they might have liked to, administrators couldn't simply 'stop the clock' while they re-aligned the contents of policy documents.

The new Authority deliberates

The Adelaide Park Lands Authority board members in 2007 (the first year of operation) had accepted that the CLMPs had to be 'consistent' with the *Adelaide Park Lands Management Strategy* of the day, as required by the *Adelaide Park Lands Act 2005*. But this would be the source of future administration problems as later versions emerged.

CLMP planning begins in 2004

Observers with a superficial understanding of park lands policy documentation sometimes begin reference to park lands CLMPs as if they emerged with the writing of the *Adelaide Park Lands Act 2005*, enacted in late 2006. However, the relevance of these CLMPs to park lands management had been recognised by the city council well before the emergence of the park lands bill of 2005. The council in about 2003 had commissioned a significant academic work on the park lands. It was publicly released in 2007. Titled *Adelaide Park Lands & Squares Cultural Landscape Assessment Study*, it was written by Associate Professor Dr David Jones, from the School of Architecture, Landscape Architecture and Urban Design, at the University of Adelaide.[7] The objective for commissioning the Jones Assessment Study was to assist in the management of the community land that made up each park of the park lands. The intention was that the CLMPs would draw from it to reflect all aspects of 'cultural heritage merit and significance', and guide park lands managers in their decisions. Its city council commissioning addressed a perceived deficiency of information in the council's *Park Lands Management Strategy Report* of 1999. The belief at the time was that the Jones study, and the resulting CLMPs, would be central to future park lands management. But in relation to the CLMPs, this view would change in future years.[8]

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[7] Dr David Jones, (through) Adelaide Research and Innovation Ltd, University of Adelaide, the *Adelaide Park Lands & Squares Cultural Landscape Assessment Study*, publicly released in October 2007.

[8] This is explored in Chapter 9: 'Why is David Jones' work relegated to the archives?' and in Appendix 12: 'Exploring the David Jones' study mystery'.

Which park first?

The idea of a land management plan for the park lands was poorly understood by Adelaide's communities. To address this, in early 2004 the city council publicly circulated a brochure to explain the concept of CLMPs, indicating in a figure which plan would be written first as well as the consultation order. It was titled *Proposed Community Land Management Planning Areas and their Sequencing*.[9] The brochure was signed by Lord Mayor, Michael Harbison. Council, he said, "... is committed to protecting the park lands, starting with the development of Community Land Management Plans (CLMPs) to ensure consistent and coherent management of the park lands."[10]

"Investigations for each park will include:

- A cultural landscape assessment;
- An assessment of physical elements;
- The identification and assessment of existing uses; and
- Consultation with the community on their needs and preferences." [11]

Regarding the likely contents, the brochure said: "All plans will include a set of principles to guide management across the park lands. In addition to these principles each CLMP will include:

- Objectives, statement of community values, performance targets and indicators;
- A description of each park in relation to its cultural, physical and recreational context;
- Identification, discussion and resolution of issues; and
- Processes to implement actions arising out of the preceding sections."[12]

Objectives would "reflect community values and wishes and result in:

- Enhancement and preservation of cultural, recreational and environmental values;
- Forward planning for capital works and maintenance;
- Better decision making;
- Anticipation of future community needs; and
- Sustainable land uses and management practices."[13]

Within a year, a March 2005 city council draft CLMP for a Frome Road park lands site (east park lands, adjacent to and west of the Botanic Gardens) was publicly circulated for comment. "This CLMP has been prepared within the context of, and giving effect to, the *Park Lands Management Strategy [Report] 1999*."

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9 Adelaide City Council (ACC), 'Community Land Management Plans', undated brochure, print code 27256_12_03, circulated early 2004. DL size brochure; no page numbers.

10 ACC, ibid.

11 ACC, ibid.

12 ACC, ibid.

13 ACC, ibid.

It: "... establishes a vision for the park; prepares its management context; explains the existing status of the park; provides an assessment of issues relating to the park; develops its future policy directions and implementation strategy; and considers the context of adjoining areas of the park lands as a whole."[14]

The draft referenced the Adelaide City Council *Strategic Management Plan 2004–07*, which featured a primary strategy to "enhance the park lands as a unique open space".[15] In a sign that the very early management contemplation of the likely future contents of CLMPs was overly optimistic, the draft claimed: "The CLMPs form the basis for future park lands expenditure on a park-by-park basis." But then it qualified that objective: "However, actual budget allocations will depend on broader park lands strategies and overall council priorities and funding partnerships."[16] This was perhaps the first indication of potential confusion about the CLMPs' purpose, because future spending on a park-by-park basis would also be informed by the contents of the 1999 Strategy and later, the 2010 and the 2016 versions.

The broader picture – in retrospect

In retrospect, these themes are evident about the development and use of the park lands CLMPs (between 2005 and 2018):

- Before the progressive enactment of the *Adelaide Park Lands Act 2005* (throughout 2006), because CLMPs for park lands sections were seen to be "prepared within the context of, and giving effect to, the *Park Lands Management Strategy [Report] 1999*,"[17] there was an implication that the CLMP would be the key policy driver behind the Strategy; indeed, that it filled a crucial policy detail vacuum.
- By the time that provisions of the *Adelaide Park Lands Act 2005* were beginning to be enacted in 2006, early interpretations led to an emerging new view, which was that the status of the CLMPs might be subservient to that of the status of any version of the *Adelaide Park Lands Management Strategy* current at the time. A reading of the Act supports this view, with reference to the Strategy appearing first.
- However, for some time this view remained in a state of flux. As late as August 2007, for example, the city council administration's view was that the CLMPs for each park (with some still to be written at that time) would still take policy priority. "It is proposed that [a future] revised [Park Lands Management] Strategy will establish an enduring aspirational vision for the park lands and articulate a strategic direction and policy framework for the next 10 years ... However, it is intended that the Strategy will rely on CLMPs and other Plans of Management, which are to be developed by the State for land they manage, for more detailed actions [sic] plans."[18]

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14 Adelaide City Council, draft *Community Land Management Plan for the former RAH car park site* (undated, but accompanied by a letter from ACC dated 4 March 2005), unnumbered pages.

15 ACC, ibid., (4 March 2005).

16 ACC, ibid., (4 March 2005).

17 ACC ibid., (4 March 2005).

18 Adelaide Park Lands Authority, Board Meeting, Agenda, Project Brief, 'Adelaide Park Lands Management Strategy', Discussion, point 12, 21 August 2007, page 2125.

- The policy guiding content of the six-volume academic work by Dr Jones, which was publicly released in October 2007, was already in practice being overtaken by changing administrative perceptions, such that, however well that study informed and reinforced the relevance of each CLMP, those CLMPs needed to be consistent with the emerging second iteration of the *Park Lands Management Strategy* (which was in early draft in late 2008, approved by the council in 2009 and ministerially endorsed in 2010). When that occurred it would make the original 1999 Strategy redundant.
- In keeping with the interpretation of the Park Lands Act's provisions, the subsequent 2010 Strategy was determined to be the 'lead policy' document such that CLMP drafts might need to be revised to satisfy the legislation's requirement to be 'consistent'.
- This meant that the Jones study, which in 2004 had been assumed to be a 'lead policy' source for much of the content of the CLMPs, had by October 2007 arrived too late to endure as a key, ongoing influential 'foundation' document. As time passed, it was relegated to the status of one of those documents to which park lands policy makers might refer only as a secondary source to inform evolution of policy and procedure – which was evolving rapidly. To others, it may have been seen as already redundant (in policy terms) soon after it was publicly released, suitable only as a historical reference for landscape architects, historians and other academics. The comparative lack of reference to it in administrative paperwork from 2008 onward supports this view.

Car parking test case

The Adelaide Park Lands Authority first met in early 2007. Views changed fairly quickly about the status of CLMPs. Within two years, the new 2009 draft of the *Adelaide Park Lands Management Strategy* appeared to be taking administrative precedence over CLMP directions. (The Strategy was adopted by the city council on 15 June 2009.) One example was telling. CLMPs for many sections of the park lands informed management policy on car parking, a hotly contested park lands matter historically, and particularly at this time. At an Authority board meeting on 16 July 2009 the matter was discussed.[19] The key messages of the board paper mentioned only the *Park Lands Management Strategy*, although later in the paper a detailed list of CLMPs and their policies relating to every park appeared. They illustrated some specific management guidelines for many parks, but many were widely varying, with significant inconsistencies between parks. Some parks had no CLMP policy statement on car parking conditions and restrictions. The key message of the 2009 board paper was: "The recently adopted *Adelaide Park Lands Management Strategy* provides direction on managing access to the park lands and will form the basis for development of a Parks Access Policy, incorporating car parking." The suggestion was that CLMP direction, although expected to be specific and unequivocal within each park under the *Local Government Act 1999*,

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[19] Adelaide Park Lands Authority, Agenda, Item 5.2, 'Policies and practices regarding car parking in the park lands and surrounding roads', 16 July 2009, pages 5769–84.

was too inconsistent, and that a broad policy direction, perhaps backed by yet another separate policy paper or papers, would do better. This was confirmed with a suggestion for creating a new Access Policy: "This will then inform the development of a new Management Plan for the park lands, applying the policy across [a] range of access situations throughout the park lands."[20] This example illustrates the difficulties in managing policy across a diverse range of park sites, where the Local Government Act implied, but didn't specifically require, the appropriateness of separate CLMPs for each, if: "… the land is, or is to be, occupied under a lease or licence;" (section 196, (1) (b)) or if "… the land has been or is to be specifically modified or adapted for the benefit of enjoyment of the community." (section 196 (1) (c)).

A potential solution

By September 2011 the move away from acknowledgement of the critical policy relevance – and operational status – of CLMPs was further confirmed with examination by the council of a new 10-year action plan for the park lands. It noted that the new version of the *Adelaide Park Lands Management Strategy* had been endorsed by government in 2010, which "identifies a comprehensive list of strategies and projects for implementation over the next 10 years".[21] It also confirmed in writing what had been evident to policy observers for some time: "The Action Plan excludes projects listed in the current Community Land Management Plans. The CLMPs are currently being reviewed in line with legislative requirements to ensure that they align with the *Adelaide Park Lands Management Strategy*."[22]

What did the Act intend?

In retrospect, this 'alignment' issue prompts an examination of precisely what the Park Lands Act meant when it stated that both Strategy and CLMPs must be 'consistent'. It had been made clear by Planning Minister, Paul Holloway MLC, at the second parliamentary reading of the park lands bill back in 2005: "… the legislation creates a requirement for state authorities to prepare, for the first time, publicly available management plans for areas under their care and control which *need to be consistent* with the management strategy [emphasis added]. It is intended that the management strategy in turn will also become a defining document with respect to the planning system."[23] Holloway's wording was clumsy. In referring to the 'management strategy' he was referring to the *Adelaide Park Lands Management Strategy*, which would be an action plan, not a management plan focusing on *management direction* matters.

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[20] Adelaide Park Lands Authority, Agenda, Item 5.2, 'Policies and practices regarding car parking in the park lands and surrounding roads', Extract: Point 19, 16 July 2009, page 5772.

[21] Adelaide City Council (ACC), City Design and Character Policy Committee, Item 7, 'Park Lands 10-Year Action Plan', 6 September 2011, page 49.

[22] ACC, op. cit., 6 September 2011, page 51.

[23] Parliament of South Australia, *Hansard*, Legislative Council, 'The Adelaide Park Lands Bill', 15 September 2005, page 2557.

But the original wording in the 2005 Act implied something important.

"Division 2—Management plans 19—Adelaide City Council. (1) The Adelaide City Council must ensure that its management plan for community land within the Adelaide Park Lands under Chapter 11 of the *Local Government Act 1999* is consistent with the *Adelaide Park Lands Management Strategy*." This wording implied a subservient status of the CLMPs, but arguably could be interpreted to mean merely that both had the same status. It led (and still leads) to questions relating to 'which comes first?' chicken-and-egg questions, following an update of one or the other. Under the Park Lands Act, both the CLMPs and the Strategy needed to be reviewed every five years (after the initial period immediately following proclamation, which was two years). The verb 'reviewed' is vague. Did it mean 'significantly amended' or 'replaced'? The record shows that, while an update of the Strategy was under way (for example, taking about three years after the enactment of the *Adelaide Park Lands Act 2005*) the CLMPs were not being updated in the same way at the same time, and thus their contents could be said to be inconsistent with the new Strategy when it emerged, as a government endorsed policy, in 2010. Further complicating the matter, the CLMPs were written in a prescriptive style, focusing on fine-grain, practical detail at times (including "arrangements or restrictions on public use of any part of the park lands or on movement through the park lands" (section 196 (3) (e) (i), or "specific information on the council's policies for the granting of leases or licences over any part of the park lands" (ii). But the Strategy was written in a more general way – as a record of aspirations, with statements often open to multiple interpretations.

In broad terms, however, the big question (which no-one addressed then, and which had not been fully addressed as at year-end 2018, the end of this work's period of study) was: Does 'consistent' mean 'complementary'? This is implied in both the Local Government Act and the Adelaide Park Lands Act, as well as in parliamentary speeches, but there is very significant challenge in expecting widely different park lands policy documents arising from different Acts to be consistent to the point of being 'complementary'. This word does not appear.

The 2011 decision to revise all CLMPs

The decision to revise the content of the park lands CLMPs was based on a safe excuse: "… noting the requirement on council under the [2005 Act] to review the [CLMPs] every 5 years and under the *Local Government Act 1999*, to review the CLMPs within 2 years of adoption of the *Adelaide Park Lands Management Strategy*."[24] The aim was to cluster them under a singular title, noting that: "This approach is consistent with management of the park lands as a single park system."[25] It was also consistent with the 1999 Act, under section 196, sub section 2: "A single management plan may apply to one or more separate holdings of community land."

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[24] Adelaide City Council (ACC), City Design and Character Policy Committee, Item 6, 'Park Lands Community Land Management Plan', 6 December 2011, pages 7–62; this extract: page 7.

[25] ACC, ibid., page 9.

However, while it might have been a single park system, land use, structure, vegetation and other subject matters and policy contemplations differed significantly between sections (policy areas) of park lands. Each CLMP featured its own "principles to guide land management, containing objectives, statements of community values, performance targets and indicators". Other administrative justifications included ease of procedure, presenting revisions "in groups, rather than individually" and to "simplify the consultation process."[26] It obviously allowed administrators to manage revisions more easily, perhaps to avoid past occurrences that delivered inconsistent interpretation between parks, but allowed amendment of more explicit aspects for certain parks, by comparison to others, thus delivering that elusive legislative ideal – 'consistency' – with the *Adelaide Park Lands Management Strategy*.

2010 Strategy prompts CLMP changes

The key prompt for a proposal to table several draft CLMP revisions as 'test' examples was the existence of the new *Adelaide Park Lands Management Strategy: Towards 2020*, endorsed by the state government in April 2010, which thus prompted an implied requirement to revise the CLMPs by 2012. The revisions would be not just informed, but *driven*, by other documents, listed as seven 'new policies and plans' that had been developed during the period of creation of the original CLMP versions. Some of these policies and plans were further described, noting that they now prescribed matters existing in the current CLMP iterations. They were landscape elements (by 2011 captured in the *Adelaide Park Lands Landscape Master Plan*); proposed projects with targeted completion dates (captured in the 2010 *Park Lands Management Strategy* – but in that document not identifying specific dates, but merely target years, which was less clear); the Park Lands 10-year action plan; and the asset lists and replacement programs (at 2018 addressed in asset registers and *Asset Management Plans*).

Reinterpreting the legal definition

One view is that what was occurring was a fundamental re-interpretation of the original Local Government Act requirement for a CLMP, which aimed to not only provide a set of principles to guide land management, containing objectives, statements of community values, performance targets and indicators, but also to prescribe them in other policy documents at the same time. Other council park lands policy documents had replaced those cited or implied in the original CLMPs, which had been richly informed by the David Jones cultural assessment study of 2007 (access to which council administrators probably had well before that publishing year). But that approach, five years later by 2011, was passing quickly. What also was occurring was that the CLMPs' defining of *management direction* guidelines was being overtaken by the contents of the (2010) Strategy, whose more general aspirational statements were delivered (often ambiguously) in a form similar to action plans, but without allocated funding. This allowed much wider interpretation to the benefit of the assessors of park lands development project

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[26] ACC, ibid., Points 32–34, page 13.

proposals, in *Adelaide (City) Development Plan* terms. However, it contributed to a poorer understanding of, and respect for, the original intent of the CLMPs. This had been noted during the first year of operation of the Park Lands Authority, in September 2007, when an advisor had written:

> "With the development of CLMPs since the Strategy was adopted in 1999, *there is now a crossover in actions for management of the park lands* [emphasis added]. It is proposed that the revised Strategy [that is, the eventual 2010 version] will establish an enduring aspirational vision for the park lands and articulate a strategic direction and policy framework for the next 10 years. The Strategy will also set priorities for implementation of key initiatives."[27]

But the advisor hedged his bets: "However, it is intended that the Strategy will rely on CLMPs and other plans of management, which are to be developed by the state for land they manage, for more detailed actions [sic] plans."[28] '*Crossover in actions for management*' might well have been code for 'confusion'.

In a similar way, seven years later, in early 2014, an executive officer note confessed: "There continues to be confusion around the role of the Strategy and that of the [CLMP], a separate requirement of the *Local Government Act 1999* (and applied to all community land across the State.)"[29] Of course, by 2014, a thorough revision of almost all of the CLMPs had occurred, in three phases, and executive staff were by then referring to the book of CLMPs for each park as one document, described in the singular as 'the CLMP'. That revision process had considerably condensed and simplified the CLMP and its reference to single parks or clusters of parks. That may have been the reason when he added:

> "This confusion is unnecessary given the similar, complementary purposes of the documents. Both the Strategy and the CLMP are intended to provide transparent and accountable plans for an important public resource and often the specific requirements of each are the same. For ease of reference these requirements could easily be provided for in the one document without limiting the envisaged, expanded scope of the [upcoming 2016] Strategy."[30]

That might have been the theory in 2014, but it would become more impractical within a few years. In retrospect, even had that 'one document' concept been legislatively possible, the philosophical gulf between the contents of the CLMP and the next (2016) Strategy was to grow wider. By 2016, with the third version of the Strategy endorsed by the city council, there would be real tension between the CLMP and the Strategy. Two case studies are useful in spelling out why.

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[27] Adelaide Park Lands Authority (APLA), Agenda, Special board meeting, 4 September 2007, page 2216.

[28] APLA, ibid.

[29] Adelaide Park Lands Authority (APLA), Agenda, Special board meeting, 'SWOT analysis of the (2010) Strategy', 13 February 2014, page 25.

[30] APLA, ibid., page 24.

CASE STUDY: Proposed helicopter landing site in the park lands

In July 2017 the Corporation of the City of Adelaide resolved to revise Community Land Management Plan content for a section of the Adelaide park lands to allow the council to enter into a lease agreement with an unnamed developer and/or operator of a proposed new helipad (helicopter landing site). The site was on a sliver of park lands adjacent to the southern bank of Torrens Lake, west of Montefiore Road. This was part of Park 27, now known as Helen Mayo Park. Although the council appeared to believe (on a vote of 5 to 4) that a helipad in the park lands was a reasonable proposition, it was highly controversial. In policy terms, the proposed process put the cart before the horse. Instead of declining to enter into a lease because the CLMP did not contemplate it, the council took the view that the CLMP could be revised to suit the proposal. This was because it also took the view that the *Adelaide Park Lands Management Strategy* contemplated the use of park lands for this commercial purpose.

Months later, the council attempted to take the next step: proposing to amend the CLMP for Park 27 to make allowance for construction of the helipad and associated facilities on park lands, such as buildings and fencing. The lease matter would have been less complicated: merely the addition of the existence of this new lease to a pre-existing list in the CLMP for the park. However, the development proposal – a land use and structure component matter (one of the nine component types reflected in the CLMP) – would have been more complicated. Both proposals challenged the status of what was assumed to be the well-established administrative model – that a CLMP defines the future management direction contemplations for any given park, especially in relation to buildings and structures. A much earlier council-commissioned policy document had advised: "The CLMPs that have been designed for all parks within the Adelaide park lands outline the landscape and heritage context of each park and provide direction on a set of desirable characteristics that will inform the detailed design and location of buildings and structures."[31] But they were not substitutes for the *Adelaide (City) Development Plan* or development assessment mechanisms and procedures.

Actions highlight plans' 'negotiability'

This 2017 case study was a public illustration of the way in which city council park lands advisors viewed the policy status of a CLMP at this time. It also illustrated administrative comprehension within the Adelaide Park Lands Authority (a subsidiary committee of the city council), which advised the council. Both the Authority and the council were chaired by the same person, the Lord Mayor. Ultimately, the park proposal faltered for various complicated reasons, covered elsewhere in this work. But the saga vividly illustrated that the prevailing 2017 city council view was that CLMPs could be revised relatively easily to fit a new concept, compared to the *Adelaide Park Lands Management Strategy*, whose revision process sometimes took years, and required ministerial approval. The CLMP amendments

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31 *Park lands building design guidelines*, 24 November 2008, as found in Adelaide City Council, City Strategy Committee, Agenda, Item 5.1, 24 November 2008.

could be significant, especially in terms of land use and structures contemplations. The ease with which this was anticipated to occur during the 2017 episode highlighted how 'negotiable' the administrators perceived the CLMPs to be.[32]

CASE STUDY: Liquor licensed premises in the park lands

This study explores how the consequences of project-oriented development legislation for the Adelaide Oval (2011) affected the standing and interpretation of the CLMP for the site, Park 26. This CLMP was the only one not amended during the 2012–13 extensive revisionary phase, despite efforts to have a Park 26 amended version signed off by a state minister in 2014. (A draft amendment was created, but the minister never signed off.) It meant that the 2009 version applied and remained in circulation. Thus it was that, in 2017 when the Adelaide Oval Stadium Management Authority (AOSMA) sought to amend its liquor licence to allow consumption of alcohol outside the 'core area' (the oval), the legal standing and policy efficacy of the last remaining 'old' version (2009) of the CLMP came under scrutiny.

Determinations about park lands matters were most often made at Park Lands Authority level, based on CLMP content. Legal disputes were rare. In August 2018 the Licensing Court of South Australia determined approval of a 2017 application by the Adelaide Oval Stadium Management Authority for redefinition of its licensed premises to include the areas external to the south, east and north gates of the Adelaide Oval. There was acceptance that the project-oriented development legislation making possible the construction and operation of the Adelaide Oval stadium made null and void – for the oval and facilities inside its walls – the provisions of the *Adelaide Park Lands Act 2005*, the *Development Act 1993* and the *Local Government Act 1999* (among others). The Local Government Act contained the provisions for Community Land Management Plans (CLMPs).

Two objectors claimed that the CLMP for Park 26 restricted activities external to the oval's core area (that is, outside the walls) exclusively to car parking. Further, they claimed that the CLMP did not contemplate a permanent liquor licence for temporary use of park lands *outside* the oval's east and north gates. Their principal focus was on the north gate. They claimed that the only CLMP use contemplated adjacent to the north gate was car parking and, because that use was the only reference in the CLMP, all other land uses should not be authorised because of the perceived standing of the CLMP's provisions. The judge disagreed. He concurred with counsel for the AOSMA that, just because a CLMP does not contemplate certain uses, it was not fatal to an application. He said:

> "I think it is telling that the council supports the revised proposal. As to the Community Management Plan, I note that amongst other things, it contemplates that the Oval and surrounding areas will be used as a major events venue, hosting large sporting and community events, international concerts, and multiple private functions. I regard the activities of social

[32] A significantly more detailed exploration of the 2016–17 helicopter landing site proposal, and how the city council drew on park lands policy sources (the CLMP among them) to attempt to make it reality appears in Chapter 31: 'Hot air and helicopter plans'.

> drinking before events and during breaks in a game in limited numbers in outside bars immediately adjacent to the Oval as activities broadly consistent with these stipulated uses. As such, I think that the activities contemplated by the application are consistent with the Community Management Plan."[33]

Counsel for the AOSMA had drawn on city council advice to its elected members in late 2017 when contemplating giving landlord approval to the AOSMA to pursue the application. That advice was of relevance to the contents of the CLMP (as well as the fact that it had not been revised after 2009, two years before the oval facilities were redeveloped), and might in the future reflect on the interpretation of other CLMPs, for other park lands sites. (Note also the reference in the text below to the *Adelaide Park Lands Management Strategy*, another example where interpretation of a CLMP might, and often did, rely on wider references to inform a determination on the broad policy position of the council.)

City council advice about the CLMP

The late 2017 council advice had been:

> "Administration has reviewed the 2009 CLMP and the Adelaide Oval Licence Area Licence Agreement (land licence) regarding the provisions within both documents and ability to grant consent for a permanent liquor licence within the Licenced Area (land licence).
>
> The 2009 CLMP recognises the use of these park lands as a major events venue (hosting large sporting events and concerts) and the role of the Adelaide Oval sporting facility as it was envisaged at the time.
>
> Section 4.4 of the CLMP, referring to the future of 'Recreational and Leisure Facilities', states: 'Issue: Recreational and leisure facilities for the general public need to be provided to encourage use of this Park. Retain the remaining sports facilities within the Adelaide Oval portion and promote an integrated approach to master planning of the leased areas incorporating Adelaide Oval, State Tennis Centre, Next Generation and the Memorial Drive Tennis Centre to maximise use of these facilities and ensure the ongoing viability of the sporting associations/clubs associated with them.'
>
> "As such, although the CLMP makes reference to the Adelaide Oval in terms of the 2009 leased area, it is supportive of maximising the use of those facilities and ensuring their ongoing viability. This also remains consistent with the recently adopted *Adelaide Park Lands Management Strategy*. [The 2016 version.]
>
> There is, however, no express reference in the CLMP on the use of the area to the north of the Oval (what now forms part of the Adelaide Oval Licence Area) to support activities inside the Oval other than for car parking.

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[33] Licensing Court of South Australia, Application for Redefinition of Licensed Premises pursuant to the *Liquor Licensing Act 1997*. 1694 of 2018, 7 and 8 August 2018. His Honour Deputy President Judge Gilchrist, 30 August 2018.

> The Adelaide Oval Licence Area Licence Agreement (land licence [2011]), however, permits activities that are ancillary to the use of Adelaide Oval or Adelaide Oval No 2 and take place: • on a temporary basis for a period not exceeding 1 month or, • on a temporary basis for the purpose of a special event or activity prescribed by the regulations to the Act" (no such regulations exist at this time). ...
>
> Pursuant to the *Adelaide Oval Redevelopment and Management Act 2011* any use of land under a licence may (subject to further provisions) be subject to the provisions of the CLMP."[34]

There followed a council conclusion that would often summarise the contents of any CLMP for park lands when administrators sought guidance:

> "There are no provisions in the CLMP which expressly speak either against or for the proposed use. However, the references in the CLMP (and the Park Lands Management Strategy) are considered generally supportive."

The council advice continued:

> "Stand-alone entertainment events (those not ancillary to the use of Adelaide Oval) are not envisaged by either the CLMP or the Licence for the area to the north of the Oval. The amendments to the existing redefinition of the existing special circumstances licensed area application would permit quiet activation (as defined) and would occupy a reduced area to the north of the Oval Core Area. Therefore, on balance, given the generally supportive nature of the CLMP towards events inside the Oval, the permitted uses under the Licence and the reduced nature and scale of the Liquor Licence application, consent is considered permissible in the circumstances."[35]

City councillor enquires

Initially, city council elected members had voted against giving landlord permission, but two months later council's administrators tried again, under changed arrangements, and permission was given, but with more limited allowances. Public objections continued. The AOSMA application was subsequently altered by AOSMA lawyers over subsequent months, leading up to the date of the court case.

A subsequent city council elected member's question on notice asked why the CLMP had failed to influence the determination of Judge Gilchrist. The council administration's answer was that it had sought legal advice in early 2018 during the period of the ongoing application. However, the administrators did not note that some legal advice had been subject to in-confidence provisions and was therefore unavailable to the public. In the court judgement it was not revealed whether the judge had had access to that advice.

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[34] Adelaide City Council (ACC), Council agenda, Special meeting, Item 5.1, 'Adelaide oval – Redefinition of existing special circumstances licensed area', 13 December 2017, 'Adelaide Oval CLMP and Licence Area (Land Licence)', points 21–29, pages 7–8.

[35] ACC, ibid., page 8.

The effect of confidentiality orders

As has been observed elsewhere in this work, most legal advice sought by the city council is subject to confidentiality orders. This includes advice about management of public land – the 690ha of park lands over which the council is 'custodian', that is, the registered proprietor. The council's lawyers are often asked to review matters and their advice might be that a legal position is tenable, even if other interpretations might arise in a subsequent court. But if the public cannot access the original advice, it is significantly handicapped. It cannot know how much assumption and interpretation may have been involved. It falls to them to pay for their own advice and, if necessary, pay the substantial legal costs of challenging the council's advice.

Public access to that advice would have been crucial in exploring the 'teeth' of a CLMP about park land adjacent to a major park lands sporting venue. Additional detail that would have been important in this discussion, and any discussion about CLMP relevance included:

- The CLMP in question was endorsed in 2009, several years before the oval's 'core area' (generally, but not totally, defined inside the walls) was redeveloped. Attempts had been made by the council up to 2014 to update it to embrace matters relevant to the new stadium's operations, but had failed to gain ministerial approval.
- The 2011 legislation that authorised the oval redevelopment overrode the provisions of the CLMP in regard to the 'core area' – the oval itself and surrounding built facilities inside the oval's walls, but not areas of land surrounding the oval's walls, especially the northern wall. But a lease and sub-licence agreement for use of the external land had been entered into in 2011 and this influenced what might have been a straightforward reading of the CLMP and a more simplistic analysis.
- The court found that representations by counsel for the AOSMA were compelling. "He [counsel for the AOSMA] pointed out that in respect of the leased areas, section 4(8) of the AOR Act [the *Adelaide Oval Redevelopment and Management Act 2011*] stipulates the lease is not subject to Chapter 11 of the *Local Government Act 1999* or s21 of the *Adelaide Park Lands Act 2005*. Accordingly, he said that considerations about compliance with the [CLM]Plan in respect of those areas do not arise. In connection with that part of the northern area that is the subject of the property licence, he noted that this was governed by section 7(6) of the AOR Act. Pursuant to section 7(6)(d) this authorised the Minister to permit activities that were ancillary to the use of the Oval. [Counsel] said that:

  > "If I was to find, as I should, that the activities of social drinking before events and during breaks in a game are activities ancillary to events being conducted at the Oval, again, considerations about compliance with the [CLM]Plan in respect of those areas do not arise." [36]

In effect, he successfully argued that a ministerial licence agreement for activity within the oval's walls could be interpreted as allowing for certain activity outside the walls, because the activity was 'ancillary' to oval events. This interpretation suggested that the CLMP's provisions were therefore irrelevant.

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[36] Licensing Court of South Australia, op. cit., paragraphs 55 and 56, 7 and 8 August 2018.

APPENDIX 12

Exploring the David Jones' study mystery

Some reasons why the Dr David Jones' *Adelaide Park Lands & Squares Cultural Landscape Assessment Study* no longer occupies a prominent advisory reference role in park lands management

This appendix follows on from Chapter 9: 'Why is David Jones' work relegated to the archives?'

1. Not sufficiently exhaustive to endure as a working reference

Early in his study's volume 1 Associate Professor Jones critically reviewed his work: "... it is fair to say that this study does not comprise an exhaustive review and analysis given the terms of reference set by the Corporation [of the City of Adelaide], the volume of extant data that was held in the Corporation's archives, the time available to the consultant, access to documentation, and the ability to draw the documentation together. Thus, it is not a complete history of the Adelaide Park Lands and Squares."[1]

He could have been interpreted as saying that, because his work was not exhaustive, it demanded no right to be a definitive resource across subsequent years.

He went on:

> "Further, the Corporation sought not a detailed review of the cultural history and (social, political, economic, and landscape) evolution of the Adelaide park lands and squares, but rather a detailed examination of the extant cultural landscape resources present in the Adelaide park lands and squares in which to make an informed decision about the status of and future management of these qualities, assets and components. This is important to comprehend as this Assessment Study (2007) was commissioned to inform the Corporation's community land management planning process, to address deficiencies in the 1998–1999 Adelaide Park Lands Management Planning Process (Hassell 1999; Donovan 1998) and the 2004–2005 *North Terrace Urban Design Study* (Taylor Cullity, Lethlean 2005), and not to provide a holistic survey of part or all of the history that is otherwise detailed in Marsden *et al* (1990), Sumerling (2004), Daly (1987), Rebbeck (1978), Morton (1996), Linn (2006), or Riddle (1992)."[2]

Again, he found reason to support the idea above, as not being exhaustive.

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1 Dr David Jones, (through) Adelaide Research and Innovation Ltd, University of Adelaide, the *Adelaide Park Lands & Squares Cultural Landscape Assessment Study*, October 2007, '1.6, Research Resources', page 30.

2 Dr David Jones, ibid. Note that Jones' volume 6 bibliography alone runs to 12 pages; all of these authors' works are cited in these 12 pages, between pages 1157 and 1169.

He continued, but this time suggesting that such a critical personal retrospective might have been too harsh.

> "The framework of the Assessment Study (2007) also, that required a detailed examination of the park lands and squares by each park land block and squares, negated a holistic historical review of this overall landscape. ... Notwithstanding these points, it is fair to say that a substantive holistic examination eventually transpired because of the nature of the primary and secondary resources examined, the theoretical framework applied, and the necessity to translate what was going on where and in which park land and square at what time, under whom and involving what species or works or constructions, has resulted in occasional portions that are holistic and contextual so as to position the importance, significance or temporal nature of the park land or square or component within a logical discussion and analysis."[3]

2. Administrative determinations about the content of Community Land Management Plans

The David Jones study was written to better inform a process of writing Community Land Management Plans (CLMPs) for precincts of parks in the park lands, instruments under the *Local Government Act 1999* that aimed at ensuring a "coherent, consistent, accountable and workable management system for the park lands".[4] Elsewhere in this work (*Pastures of plenty*) appears a chapter examining why – in the opinion of Dr Jones – existing 1999 park lands documentation was not sufficient to do this.[5] There are also other parts in *Pastures of plenty* that explore CLMPs and their administrative and political implications for the management of the Adelaide park lands.

While the first versions of those CLMPs for each park (created between 2004 to 2009) contained significant extracts from the David Jones study, when the second versions emerged after 2012 these detailed extracts had been removed, referred to only via digital links. While some city council administrators may have argued that the information still existed via these links, to which reference could be made, removing relevant Jones extracts from each of the documents diverted focus from a critical contextual element of the cultural landscape assessment for each relevant park. As a 2 January 2008 media release about the assessment had noted: "The assessment was to enable those preparing the management plans to quickly identify areas, items or uses that are sufficiently significant to be retained, and those which could be modified without reducing the cultural significance of the [particular] park."[6]

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[3] Dr David Jones, ibid., page 30.

[4] Dr David Jones, ibid., page 11.

[5] See Chapter 23: 'The park lands papers that froze time'.

[6] City of Adelaide/Adelaide Research and Innovation Ltd, University of Adelaide, Media Release, 'Adelaide park lands study', 2 January 2008, page 1.

After the 2012–13 revisions[7] of almost all of the CLMPs, in the absence of explicit presentation of the assessment text, the cultural significance was less evident and played a lesser role when administrators referred to them for guidance, especially when development pressures were being exerted to either endorse something new for a park, or worse, to have the CLMP altered to legitimise it. In the period 2010 to 2018 there were a number of attempts to have CLMPs revised to fit land-use proposals that did not accord well with the specifics of the site in terms of its cultural history assessment.

3. The political consequences of recommendations for heritage listings

The David Jones study concluded that there was "merit and relevance in the Adelaide park lands and squares being considered for a World Heritage nomination".[8] Of all the potential listings, the prospect of achieving World Heritage status remained contentious more than a decade after the Jones study October 2007 public release. At year-end 2018 (the end of the study period of this work) it had not been achieved. While Dr Jones observed criteria under the World Heritage Convention that supported his recommendation, he did not (after his three years of study) explore the political reasons why this had not been pursued. Discussion appears elsewhere in this work about this topic.[9] Should Adelaide's park lands ever be accorded World Heritage listing, there had emerged a belief many years previously (as long ago as 2001 within the city council) that the state might as a result have to cede determinations about major development projects in the Adelaide park lands to Canberra bureaucrats. This highlights a fundamental theme running through this work – the state's desire to retain unimpeded control over Adelaide park lands land-use planning determinations.

Some further discussion appears in this work's Chapter 15, 'The parliamentary Select Committee 2001 that never concluded'. It related to one of the terms of reference of the South Australian State Parliament's House of Assembly, Select Committee on Adelaide Park Land Protection, July 2001: 'd) The impact and feasibility of seeking to list the Adelaide park lands on the World Heritage List.'

Jones also recommended National Heritage listing, and in 2008 this was achieved. However, it is suggested in this work (*Pastures of plenty*) that that listing was not much more than a token gesture, in park lands 'protection' terms, with few administrative downsides, and none for the Adelaide Park Lands Authority or the council. This was because neither the Authority nor the council was required to 'self-assess' the impact of development proposals for the park lands and refer any likely impacts to the commonwealth government. That was left for the state to do, but only if it chose to, and the state didn't routinely share those communications with the city council.

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[7] Except one, which had been amended and was ready for ministerial endorsement, but was never subsequently ministerially endorsed during the study period of this work. This was the CLMP for Park 26 (which included Adelaide Oval and adjacent park lands). The original 2009 version remained in place at year-end 2018; indeed, it was still the applicable version in June 2022.

[8] *Adelaide Park Lands & Squares Cultural Landscape Assessment Study* (2007), volume 6, page 1154.

[9] See *Pastures of plenty* Chapter 53: 'A frustration of listings leverage'.

Dr Jones also discussed the potential for State Heritage listing of the whole of the park lands and established a case supporting the concept.[10]

4. Policy opportunities made possible *in the absence* of the Assessment Study

Administrators may today argue that the Jones work was a cultural and historical assessment frozen in time, while the post-2007 *management* imperatives, under the guidance of the *Community Land Management Plan* (comprising all of the parks or clusters of them in precincts), as well as the action planning imperatives, under the *Adelaide Park Lands Management Strategy*, had 'moved on'. There were two Strategy versions published after the first 1999 version, in 2010 and in 2016 respectively, featuring major amendments, and all of the CLMPs (with the exception of Park 26) had been revised in 2012–13. A key feature of that revision process had been omission from those revised CLMPs of detailed extracts from Dr Jones' Assessment Study and its cultural history observations and findings. Without the need to defer to that advice, administrators gained considerable document administrative flexibility, allowing the gradual amendment of those two instruments prescribed under the *Adelaide Park Lands Act 2005* – the Strategy and the CLMP – and also to allow for new policies, guidelines and master plans to influence administrative direction.

A review of the changes that have occurred across the park lands to the end of this work's study period suggests that a number of the changes would have been incompatible with some of Dr Jones' '10 component types' that he used to analyse the historical and cultural space across and within the park lands and squares. Chief among them would have been 'land uses', 'vegetation', 'structures', and 'historical views and aesthetic qualities'. By putting the Jones study aside – removing explicit management reference to it – little of this incompatibility would have been obvious in the subsequently amended CLMPs, and especially the 2016 *Adelaide Park Lands Management Strategy 2015–2025*. As new park lands policy had continued to evolve, the 2007 collective memory of the fine-grained detail of a comprehensive study of the park lands cultural history has been allowed to fade. The original city council brief (January 2004) had been: "The assessment should enable those preparing the management plans [CLMPs] to quickly identify areas, items or uses that are sufficiently significant to be retained, and those which could be modified without reducing the cultural significance of the park".[11] Dr Jones had stressed that the assessment would be applicable not only in 2007 but also over future years. As he noted, it could direct: "… what was of cultural heritage merit and significance [in the park lands] today."[12]

In the absence of detailed reproduction of extracts from the Jones Assessment study in post-2012 CLMPs, how convenient was this – and for whom?

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[10] A more detailed exploration of the pursuit of World, National and State Heritage listing appears in this work's Chapter 53: 'A frustration of listings leverage'.

[11] Associate Professor, Dr David Jones, op. cit., 2007, volume 1, 2007, page 11.

[12] Associate Professor, Dr David Jones, ibid., page 3, 0.0 Contents.

APPENDIX 13

A 2018 author retrospective on the 1998 *Issues Report's* concerns

This appendix provides summaries and reflections on themes contained in the 10 expert reviews ('The Reports') in the 1998 *Issues Report*, and adds a contemporary context.[1]

Recreation and sport

Notable themes

This first report noted the broadly held belief that the Adelaide park lands were "primarily for recreation", especially passive recreation, notwithstanding a long history of sports activity, and that "the issuing of leases and permits to clubs for the exclusive use of areas of the park lands is a complex and controversial matter."[2] It referred to a need to provide "the right balance", and listed the existing leases that claimed the right to use areas of the park lands. It also listed the recreation and sport land uses at the time. It concluded by observing that the city council had pursued a policy "since 1973 ... to eliminate long-term leases of the park lands by sporting organisations" and instead to encourage permits for park lands use, because: ... efficiency and enthusiasm of sporting club officials varies considerably; popularity of individual sports fluctuates with time; [and] it is more difficult to get long-term lease holders to make desirable modifications and improvements."[3]

It listed three long-term lease holders (horse-racing, cricket and lawn tennis) but this was not an exhaustive list. The last report in the *Issues Report's* appendix (Review of Economic Contribution) listed five, including the Adelaide Bowling Club and the South Park Bowling Club.

Reflection on themes

- This report noted the perennial park lands operational and policy issues and challenges that endure to this day. They include the tension between passive recreation and more active sporting activities; the complexities and downsides relating to the issuing of leases for exclusive use, especially leases for more than 21 years; and the need to balance competing interests as well as take heed of differing ideological views among South Australian communities of interest about how the park lands ought to be managed.

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[1] The full title of the document containing the collection of reviews (Part 3, 'The Reports') is: Hassell, *Park Lands Management Strategy, Issues Report, Prepared for the City of Adelaide, 23 February 1998*.

[2] Hassell, op. cit., 23 February 1998, 'The Reports': 'Park Lands Management Strategy Report: Review of Recreation and Sport, Report for City of Adelaide', report dated 18 February 1998, 'Recreation and Sport Report', Jill Andrews (Hassell), 1.3, Council controls leaseholder definition, page 1.

[3] Hassell, op. cit.,' Recreation and Sport Report', Jill Andrews (Hassell), 4, The annual permits system, [Footer reference:] "Section 4, page 8".

- In terms of the 1998 perception that it was "more difficult to get long-term lease holders to make desirable modifications and improvements", a relatively fresh observation since about 2011 was that lease holders were tending, ahead of the renewal of their lease periods, to explicitly propose building(s) upgrades or construction of new pavilions, and infrastructure improvements such as expanded car parks. In the seven-year period between 2011 and 2018 a number of long-term leases came up for renewal at a time when both lessee and lessor (the city council) observed that buildings and infrastructure required substantial upgrading. A common view among long-term lessees at the time was that they were content to invest significant sums in the refurbishment of facilities, or the construction of new facilities, but only if they could get a lease for a substantial period.

Public art

Notable themes

This very brief report noted that little attention had been paid to matters of public art on public land, and focused more on issues about art than on art in the park lands. It did, however, draw attention to a need to identify the key zones of cultural focus, and consider the changing patterns of park lands use by different cultural groups.

Reflection on themes

- These matters have since demanded considerable attention at the level of the Adelaide Park Lands Authority. Investigations and reports have resulted in the placing of public art in public places.
- There has been much improvement: clearer policy, with some popular public art now evident in the park lands.

Cultural activities and events

Notable themes

Perhaps because this report was informed by at least one author with an interstate perspective, gained through experience in public land management adjacent to other Australian cities, the themes are refreshingly broader and better advanced by comparison to Adelaide's more commonplace introspections. The result is a perspective that was not often seen in other Adelaide policy discussions, either at the time, or later. For example:

> "The park lands are one of the defining features of a city which, more than any other in Australia, defines the entire state. The sense of space, the hybrid nature of the landscape which encompasses both European and indigenous characteristics, the focus on lifestyle rather than commerce, the sense of order and the accessibility for all members of the community are all significant in the psyche of the population."[4]

The authors also noted that the park lands contributed positively to Adelaide's image outside the state.

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[4] Hassell, op. cit., 23 February 1998, Appendix report: 'Park Lands Management Strategy, Key issues, Cultural Activities and Events', Rob Brookman, Steve Brown and Ian Scobie, (Arts Projects Australia), 3, Introduction, "Page 2 of 17".

The report noted the challenge to address a local policy "tension" issue. "Clearly there can be a significant tension between the facilities required for leisure usage and the preservation of the park lands as open space. It is therefore equally clear that the provision of facilities of any kind should be of minimum impact. … Nevertheless, it would be simplistic to suggest that a policy of returning the park lands into an utterly natural state automatically renders them more accessible to the population."[5]

The report devoted space to events planning issues, including: capacity, location, infrastructure, enclosure, traffic, parking, access, space and shelter, amenity, physical features/venues, and existing activity. Importantly, it noted that sport had not been included as 'a cultural strategy' although "some may argue that it is one of the key cultural activities in Australia!"[6]

Discussion about cultural activity and event policy in 1998 asserted that there was "no ratified policy", and "lack of a formal framework" to make events work smoothly. Moreover, it claimed that the city council tended to be reactive to proposals: "facilitation rather than creation".[7]

The matters of road closures relating to events, and fencing and 'temporary alienation' were vexed and unresolved.

The listing of 20 key themes makes a useful checklist for reflection on the period. The principal theme raised is policy "tensions" between city and state; for example, events perceived to be "not in keeping with the overall projection of the city's character"[8] may prompt disagreements with the South Australian Tourist Bureau (as it was described in 1998).

Reflection on themes

- The observation that planners were tending to "reject the notion of arriving at specific end points" and instead focusing on "evolution towards a number of potential scenarios with constant adaptation to change taking place at the time" may well have informed not just the writing, a year later in 1999, of the first version of the *Park Lands Management Strategy Report 2000–2037*, but also, six years later, the *Adelaide Park Lands Act 2005's* provision for five-year 'reviews' of the Strategy.
- In relation to policy, matters considerably improved over years subsequent to 1998, but the administrative culture within the council with regard to events remained at 2018 one of "facilitation rather than creation". Events organisers approached the council in sufficient numbers to keep park sites booked well ahead. However, that facilitation came with demands on council event management funding, rising from $880,000 "for major events in 1997/98"[9] to $1.89m in 2017–18.[10]

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[5] Hassell, op. cit., 23 February 1998, Appendix report: Rob Brookman, et al, 3, Introduction, "Page 2 of 17".

[6] Hassell, op. cit., Rob Brookman, et al, 6, Existing Activity, "Page 6 of 17".

[7] Hassell, op. cit., Rob Brookman, et al, 6.4, Policy, "Page 8 of 17".

[8] Hassell, op. cit., Rob Brookman, et al, Partnerships for the future, "Page 17 of 17".

[9] Hassell, op. cit., Rob Brookman, et al, 6.4, Policy, "Page 8 of 17".

[10] Adelaide City Council, Agenda, The Committee, 'Financial Plan', 5 December 2017.

- In terms of the matter of road closures relating to events (and particularly sporting events, including fencing and temporary alienation), while the city council at year-end 2018 had policies, the arising complications and negative public responses to them remained contentious.
- The report's 1998 observation that sport had not been included as "a cultural strategy" at the time although "some may argue that it is one of the key cultural activities in Australia!" identified a latent issue. It would emerge as a major issue behind policy 17 years later as drafts of the third *Adelaide Park Lands Management Strategy 2015–2025* (council approval 2016; ministerial approval in August 2017) began to be influenced by government advisors to the Adelaide Park Lands Authority board. Anyone viewing the state of the park lands in 2018, supported in policy by multiple 'activation' concepts in that Strategy, could at 2018 conclude that across the park lands organised sport is viewed as the core manifestation of this fundamental cultural issue, given that a number of new pavilions had been erected for sport-based lessees, and with more plans for others being subject to development concept proposals at the time. At 2018, four had been built, commencing in 2011, linked to fresh, long-term leases, and another four were at an advanced concept stage.
- In terms of policy tensions relating to interstate tourism and its management by state agencies, the strongly evident trend by 2018 was that Tourism SA is a key contributor to Adelaide Park Lands Authority event advice and determinations by the council (where Tourism SA seeks to guide or intervene). This is an example of state influence over park lands policy issues (despite the council's custodianship of much of the park lands), and of events management policies and major events sponsorships.

The cultural significance of the Adelaide park lands

Notable themes

The report stressed the distinction between heritage and social value and introduced a third notion of significance: 'direct association'. "This significance derives from people's direct associations with the park lands, rather than any cultural or heritage significance." [11]

It notes author Michael Williams' 1974 work *The making of the South Australian landscape: a study in the historical geography of Australia* that observed that the park lands plan "... was a mould into which the plastic life of the new urban area was poured, and one of its most lasting contributions was to predispose its inhabitants into thinking of a two-part urban structure – a business core and a suburban periphery".[12] This was one fresh perspective among several noted in this appendix (as compared to other enduring and predictable ones focusing on public opposition

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[11] Hassell, op. cit., 23 February 1998, Appendix report: 'The Cultural Significance of the Adelaide Parklands, A preliminary assessment', Peter Donovan, Donovan & Associates, History & Historic Preservation Consultants, February 1998, page 21.

[12] Michael Williams, *The making of the South Australian landscape: a study in the historical geography of Australia*, Academic Press, London, 1974. [The page number is not cited in the Hassell appendix extract.]

to alienation and exploitation). The 'social value' concept included the notion of a place, the focus of which is spiritual, political, national or other cultural sentiment to a majority or a minority group. Another less commonly acknowledged perspective was that the park lands are man-made; "the open natural areas are not original".[13]

The report contained a state-of-the-park-lands 'key developments' summary as at 1998, a chronology spanning the years 1834 to 1996.[14] It illustrates, by event year, myriad instances of governments progressively constructing government buildings on the park lands, especially during the period 1871 to 1901, and from the 1920s onward. An obvious distinction (but perhaps not obvious to many) is how many government buildings were built (purposes being in four categories: government agencies; transport purposes; cultural/scientific; and cultural/educational), compared to notably fewer commercial buildings, with those buildings erected much more recently in the period to 1998 (Hyatt Hotel, Adelaide Station Environs Redevelopment [ASER] 1984, etc).

Aboriginal and European associations are noted in detail, as are cultural heritage assessment factors, and heritage criteria; in particular, State Heritage register listing criteria.[15]

Reflection on themes

- In relation to the chronology that notes the construction of buildings for commercial purposes (far fewer than government buildings), the trend changed in 1999 with construction of the National Wine Centre, which began as a concept for a government building supporting the wine and tourism industry but within a few years was leased for commercial purposes. Trends after about 2010 show that state government administrations began erecting buildings that had a commercial purpose, such as the Adelaide Oval stadium (2011 legislation). Other buildings erected on the park lands by quasi-government bodies, such as the University of Adelaide (Park 10 sports pavilion) were created ostensibly for sport-linked education purposes, but were run partly on commercial grounds, with sub-leasing to other sport groups. The same applied to the 2017 approval for construction of a three-storey South Australian Cricket Association pavilion on Park 25, west of the city, which became an alternative site to SACA's Park 26 Adelaide Oval facilities.
- The National Trust South Australia branch (NTSA) policy position makes timely reading (with the hindsight of more than 20 years, and usefully reflecting on the contents of the David Jones study).[16] Dr Jones began council-commissioned research in January 2004 and his work was published in October 2007. The lack of contemporary reference to this six-volume study illustrates what has slipped from (or, depending on your point of view, is missing altogether from) the

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[13] Hassell, op. cit., 23 February 1998, Appendix report, Peter Donovan, Lessons from the history of the Parklands, page 13.

[14] Hassell, op. cit., Peter Donovan, History of the Parklands, Chronology, pages 6–10.

[15] Hassell, op. cit., Peter Donovan, page 24.

[16] Associate Professor David Jones, (through) Adelaide Research and Innovation Ltd, University of Adelaide, The *Adelaide Park Lands & Squares Cultural Landscape Assessment Study*, released in October 2007.

crafting and application of park lands policy. In 1998 the NTSA had called for "an in depth analysis of the cultural and national heritage values of the park lands so that their conservation requirements can be identified as a preliminary step to any further development proposals".[17] This first emerged in the form of the David Jones study, published in October 2007, but on release, the currency of that study was fairly quickly overwhelmed by wholesale revisions in the period 2012–13 of *Community Land Management Plans* for parks whose cultural history assessment the Jones study had years earlier been commissioned to explore. (As a result of that 2004–09 process, most of the original CLMPs included extract material from the Jones study, but it was ultimately culled as new 2012–13 versions of the CLMPs were made more succinct, leaving only digital links.) The completion of these revisions by 2013 (with exception to Park 26: the Adelaide Oval stadium land and Park 26 sub-licence areas, whose CLMP remained dated 2009) meant that the important research of David Jones' study was essentially sidelined in active policy reference terms. More on this matter appears in Chapter 9 of this work (*Pastures of plenty*), and Appendix 12.

- The NTSA policy called for: "A process for analysing development proposals for the park lands to determine their compatibility with the cultural and natural values of the park lands."[18] The NTSA also recommended: "Cultural landscapes and areas with natural heritage values should be rehabilitated and, where appropriate, those values enhanced through revegetation programs."[19] However, despite the endorsement of this theme in the 2011 *Adelaide Park Lands Landscape Master Plan*, that master plan lasted only five years. It was suddenly rescinded in 2016, with minimal explanation. On the same day, the third version of the *Adelaide Park Lands Management Strategy* was signed off by the Adelaide Park Lands Authority. More about this appears in Chapter 41 of *Pastures of plenty*.
- The NTSA focus on and intention to achieve an "overall philosophy of public open space with the retention of cultural and natural heritage places that support recreational activities for all South Australians" can be seen by 2018 to have been frustrated in at least three ways. Firstly, themes evident in the *Adelaide Park Lands Management Strategy 2015–2025* (endorsed by the city council in 2016; ministerially approved in August 2017) were less focused on retention of contemplative open space, and more on creating 'hubs' for what the state government called 'activation'. This included built form (club buildings) and other infrastructure such as new sport pavilions, kiosk sites, paths and car parks. Secondly, the Strategy's preoccupation with 'activation' refocused attention from a desire to maintain places of cultural and natural heritage treasured for aesthetic reasons, to places of busy play activity, linked sometimes to the emergence of residential apartments sited on the park lands boundaries, but which had no play space. The park lands, perhaps with new facilities for these communities, was the obvious solution. Thirdly, the focus on 'activation' was code for sport-focused

[17] Hassell, op. cit., 23 February 1998, Appendix report, Peter Donovan, 'National Trust of South Australia Adelaide Parklands Policy', page 32.

[18] Hassell, ibid.

[19] Hassell, ibid.

activity. Many of the big initiatives after 2015 encompassed plans for sport-focused infrastructure and buildings. At year-end 2018 there were sports pavilion construction plans awaiting finalisation for Parks 9, 20, 22 and 21 West. Other earlier sites had been finalised at Park 10 (University of Adelaide sports in 2011) and Park 25 (part-shared with a football club, but with a major cricket focus, including a huge new SACA pavilion, completed in 2018, which included an expanded car park area and an exclusive, picket-fenced oval).

- Reproduction of the six objects of the Adelaide Parklands Preservation Association presented broad themes of what ought to represent the future intentions of park lands managers, but these were not explored at the same level, compared to the NTSA analysis.

Environmental issues *and* Horticulture parks and gardens issues

Notable themes

The first (very brief) appendix report ('Review of Environmental Issues', four pages) covered biodiversity, land management and water quality issues, and air and noise (traffic impacts).[20] It asserted that much needed to be done. It called for a park-lands-wide indigenous vegetation survey and creation of formal policy, and administrative machinery to apply it. The second appendix (Horticulture Parks and Gardens Issues, three pages) contained brief recommendations. In particular, it recommended: "Establish (vegetation and plantings) procedures for determining appropriate development for each zone", which implied that no in-depth policy vision was in place at the time, but lacked broader discussion.

It concluded with a call for "... a landscape vision for the park lands as a whole, accommodating all stakeholder aspirations and community responsibilities in relation to biodiversity and habitat; landscape impact (visual); amenity; water quality; water use efficiency; sustainability; and safety".[21]

Reflection on themes

- Elements of this observation were eventually captured, 13 years later, in the 2011 *Adelaide Park Lands Landscape Master Plan*. That plan was the 'environmental/ landscape character' addendum attaching to the 2010 version of the *Adelaide Park Lands Management Strategy* document. In essence, given the short length of the 2010 Strategy, and paucity of detail relating to a need for a master plan to 'unify' the whole of the park lands, the 2011 Landscape Master Plan was the real Strategy. Its sudden Adelaide Park Lands Authority (and hence, the city council) abandonment in 2016 (which included its conceptual proposal to adopt four zones) is covered in detail elsewhere in this work, *Pastures of plenty*, in Chapters 37 and 41. A whole section of *Pastures of plenty* (see Part 8) explores the evolution of the Strategies, including the short-lived *Adelaide Park Lands Landscape Master Plan*.

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[20] Author: Dr Mark Ellis (Hassell).

[21] Hassell, op. cit., 23 February 1998, Appendix report: 'Horticulture parks and gardens issues', Simon Fensom (Hassell), point 1.11, page 3.

Stormwater management strategies, and Land contamination and remediation

Notable themes

This was an engineering report in two parts. It covered observations on the existing stormwater management system, associated projects, management principles and opportunities for improvement. It discussed the potential for wetlands "... providing improved public amenity, water quality improvement, native habitat and some flooding mitigation".[22]

It also covered land contamination, referring to investigations into 'Areas of Environmental Concern' but didn't list them.

Reflection on themes

- Although some major wetlands projects were considered in the years that followed, especially at the southern edge of the park lands aligning with Greenhill Road, for many years none was commissioned beyond studies recommending that they go ahead. However, remediation work did occur to the creek and creek walls passing through that site at the southern edge of Victoria Park (Park 16) and a major city council-driven wetlands project commenced there many years later, around 2020. The impetus would be creek flood mitigation, and the works were largely state-funded.
- The issue of land contamination would be subject to many reports, especially focused around the west park lands rail yards where the new RAH was built (2011 commenced; 2017 opened) and also at adjacent Park 27 (Helen Mayo Park), a section of which lies along the edge of former rail-yard land adjacent to the site west of Montefiore Road on the edge of Torrens Lake. A detailed case study of management of this small (3.4ha) part of Bonython Park appears elsewhere in this work (*Pastures of plenty*, Chapter 30).
- Management proposals regarding park lands land contamination issues emerged at times when construction of new buildings was contemplated (the new RAH, 2011–17, and the new Adelaide Botanic High School (Frome Road, park lands zone, Botanic policy area 19, (2017–2019)) emerged as part of the assessment for the proposed land use. Where governments pursued these developments on park lands, the political pressure to see the building constructed overrode potential hurdles regarding the engineering complexities in managing contamination (and the significant additional costs). Where contamination was known to exist, budgets would simply factor in the anticipated extra costs for its removal. In the case of the RAH, the amount was $200m.
- Site contamination management also was evident when the new Adelaide Oval stadium underground car park was being excavated (2012), and a state quest to find where the minimally contaminated soil might be dumped. (It went onto nearby Park 27 – Helen Mayo Park – west of Montefiore Road and south of Torrens Lake, to cap contamination there – see the case study for this land elsewhere in *Pastures of plenty*, Chapter 30: 'Three hectares of western park lands equivocation'.)

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[22] Hassell, op. cit., 23 February 1998, Appendix report: 'Stormwater Management Strategies, and Land Contamination and Remediation', Nick Fleming PPK Environment & Infrastructure, February 1998, page 3.

Traffic

Notable themes

The appendix report, 'Traffic Report', comprised only two pages and discussed vehicle, bicycle and public transport matters, and concluded with a brief discussion of issues related to parking. Park lands car restrictions at the time were noted, with "general access restricted to designated areas"[23], but a general support for park lands parking was noted within those areas: "Discussions with council officers indicate that parking on grassed areas are [sic] not a major concern"[24] provided that rehabilitation of grass (through watering) followed. Where park lands built amenities existed, there was either insufficient parking space or, where there was space, excessive numbers of parked cars.

Reflection on themes

- Parking (in philosophical terms) in or near park lands became an increasingly controversial topic at some sites over subsequent decades, and remained controversial at 2018 and beyond. However, while early versions of the *Park Lands Management Strategy* (1999 and 2010) reflected relatively conservative policies, tending to avoid the encouragement of parking space development, the third version (2016) suggested a significantly more lenient approach should apply and actively encouraged concepts for parking around some proposed 'activation hubs', either on park lands, or on adjacent roadside verges, or on deeper verges proposed to be cut into the edges of these park lands sites. At 2018 these hubs remained largely conceptual, as did the ideas for where cars might park.
- Changes were made in 2020, after the period of study, to aspects of the park lands *Community Land Management Plan*. A new 'Chapter 1' replaced the former 'Framework' of the 2013 CLMP version, and weakened previous more disciplined management policy regarding park lands car parking. The amendments appeared in part 10, Park Lands Wide Statements: 'car parking'. Clearly, while the broad policy philosophy reflected in the third version (2016) *Adelaide Park Lands Management Strategy* was to reduce parking on the park lands by five per cent by 2025, it was not being reflected in practice.

Origins and legal status

Notable themes

The first four sections of this report covered a topic that has seen, and probably will continue to see, much discussion since South Australian settlement: the origins and legal status of the park lands. Headings included: *South Australian Colonization Act 1834*; Light's Plan; Ownership of the park lands; and Management and use of the park lands.

Government reserves and lands for public purposes were discussed.

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[23] Hassell, op. cit., 23 February 1998, Appendix report, 'Traffic Report', Richard Hanslip and Rob Bremert, PPK Environment & Infrastructure, Access, 2, Access, 2.1, Vehicle, page 1.

[24] Hassell, op. cit., 23 February 1998, 'Traffic Report', Richard Hanslip et al, 3, Parking, page 2.

A fifth appendix heading, 'The Current Situation' [1998] contained useful information about the evolution of the *Local Government Act 1934* and its provisions' central role in relation to the park lands. Historians today are tempted to focus only on the amended (1999) version of the Act and its provisions that 'sit behind' (among other Acts) the frameworks of all three *Park Lands Management Strategies* (dated 1999, 2010, 2016 respectively), but the original 1934 statute set the scene in terms of early general powers provided to the council regarding the park lands.

A little known observation is revealed in this 1998 report about park lands sites, that they could, theoretically, be sold, as the author noted: "if the land contained in [certain] titles was declared surplus to Government requirements, the titles could be conveyed to private interests without any encumbrance on their future uses".[25] Four freehold titles are noted in the report, held by the University of Adelaide; the Torrens Parade Ground title was held by the Commonwealth Government [but this had changed by 2018 because its title was passed back to the state some years before 2018]; the City of Adelaide, which held title to the former Posts and Telegraphs Station/Postal Institute on West Terrace; and "the Adelaide High School also has its own certificate of title".[26] However, the report qualified that claim by noting the existence of controls over development through the city council's planning document, *The City of Adelaide Plan*, (possibly the 1986–91 version). It also discussed the division of park lands under that plan, into two districts, a park lands district and an institutional district. Features of the then development plan included Desired Future Character statements and Principles of Development Control. (These early park lands planning features and concepts are discussed elsewhere in this work, *Pastures of plenty*: see Chapter 12, and appendices that follow on from it.)

Additional controls existed in the form of by-laws. Under the heading 'Potential Issues', native title is discussed. City council powers are briefly examined, with doubts expressed about what the council could do within the park lands, given a view that its powers "are limited and primarily relate to 'public recreation, amusement, health and enjoyment'".[27]

Reflection on themes

- Despite ongoing discussion to 2018, there continued to emerge debates about the origins and authorship of Colonel Light's 1837 Adelaide City Plan. Scholarship in 1986, published 12 years before this 1998 report, may have provoked controversy at the time of the writing of this appendix report, but the Hassell appendix authors do not explore it.[28] Twenty years later, scholarship published in 2018 exhumed and challenged the 1986 work, exploring the notion

[25] Hassell, op. cit., 23 February 1998, Appendix report, 'Origins and Legal Status of the Adelaide Park Lands', Stuart Main & Associates, 5, The current situation, "page 5 of 7".

[26] Hassell, op. cit., 23 February 1998, Stuart Main & Associates, "page 5 of 7".

[27] Hassell, op. cit., 23 February 1998, Stuart Main & Associates, "page 6 of 7".

[28] If so, potentially: Johnson, DL and Langmead, D: *The Adelaide City Plan, fiction and fact*, Wakefield Press, Adelaide, 1986.

that George Strickland Kingston had played a key role in shaping the 'Plan'. The 2018 work delivered a compelling argument that Colonel Light was the Plan's designer.[29]

- The critical importance of the Local Government (LG) Act remains (amended in 1999, but with many fundamental park-lands-related provisions surviving in one way or another). The Act sits behind (and provides substantial foundation for) park lands management frameworks and management policy, given that it is one of a number of interacting statutes with the *Adelaide Park Lands Act 2005*. The LG Act requires the creation of the charter for the Adelaide Park Lands Authority. In the Adelaide Park Lands Act, the *Community Land Management Plan* (a collection of precinct plans) is given operational effect under the LG Act; indeed, the LG Act requires the CLMP.
- The matter of words and semantics applying to intentions with regard to management and use of the park lands remains controversial, even after all these years, and especially since the 2016 publication of the new version of the *Adelaide Park Lands Management Strategy*. Those words from the 1998 appendix: "public recreation, amusement, health and enjoyment"[30] might easily have emerged (and probably did) in rationales between the years 2014 and 2016 justifying the state government's notion of increased 'activation' at multiple park land sites. Once again the distinction between recreation and sport remains blurred – recreation as a contemplative activity not requiring buildings or infrastructure of a permanent and significantly visually dominating nature, as opposed to sport as an active and highly organised preoccupation requiring substantial built form and associated infrastructure.

The statutory planning framework

Notable themes

For those interested in the planning politics regarding the Adelaide park lands at this early stage (1998, one year before the emergence of the first *Park Lands Management Strategy Report*) this report is useful. It contained background to the planning provisions; a review of park lands use; state *Planning Strategy* issues; and a detailed discussion of the Development Plan for the City of Adelaide. It concludes with an 'Issues Summary'.

Early sections focused on the looming need to create a "fine-grained statutory framework for the new millennium".[31] It noted that this was on the basis that what went before was 'uncodified' and that: "Although [park lands] development had to withstand the scrutiny of council, there was no clear basis on which to make choices or decisions, nor was there a comprehensive basis on which to plan [park

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[29] Peter Bell, 'Was it really Light's Plan?' – appendix essay in: *Heritage Assessment – Adelaide Park Lands and City Squares*, DASH Architects and Peter Bell, 17 May 2018, pages 77–82.

[30] Hassell, op. cit., 23 February 1998, Appendix report, Stuart Main & Associates, February 1998, "page 6 of 7".

[31] Hassell, op. cit., 23 February 1998, Appendix report: 'Review of statutory planning framework for Adelaide park lands', Terry Mosel (Hassell), Review dated 17 February 1998, 1, Context, page 1.

lands] future use or its maintenance or development. In the absence of the outcome of a planning framework, debates on development of the park lands were subject to the views and opinions of elected city council members."[32] This prompted the report author to accord "high praise" to the council for its past preservation of park lands open spaces, in the absence of specific controls to preserve those spaces, "over decades".

The evolution of city plans was discussed, as was the emergence in 1993 of Planning and Design Guidelines (draft 1993), which the report author described as "informal park land policies". (An improved draft had followed the enactment of the *Development Act 1993* and the *Environment Protection Act 1994*.) The author noted that the guidelines established that the park lands were an important ecological asset, and that they "indicate that new building development is only appropriate where removal or replacement is occurring. Emphasis is placed on preservation of the natural character and the avoidance of development that restricts public access".[33]

The report discussed the emergence of the January 1998 *Planning Strategy*: "the principal source of planning policy for Adelaide"[34] and the Development Act: "which gives effect to the Strategy" and the economic context for Adelaide. The report quoted the *Planning Strategy*, noting "... the key economic imperatives facing metropolitan Adelaide".[35] Among goals, the achievement of which were deemed relevant in terms of what the park lands could contribute, three were noted: economic activity and tourism; natural resources; and arts, heritage and design. Each of these heads an expanded discussion extracted from the *Planning Strategy*.

Relevant discussion followed, relating to the evolving Development Plan for the City of Adelaide and land-use control. A concluding section examined the critical (future) issue of how the Development Plan, as an "instrument of park lands management" might evolve. "For it to be effective, the Plan must not only guide development, when triggered by proposals, it should also invite council to think creatively about policy directions and guide council in its responsibilities as the custodian and manager of any 'development' in the park lands."[36]

Finally, seven "key issues" are raised, as matters for future contemplation. They would all preoccupy park lands managers' minds over the next 20 years.

Reflection on themes

- The observation about the lack of a clear basis to make choices or decisions (in planning terms) ought to be noted as of great historical relevance. It noted that, at the beginning of what turned out to be a brief period in the larger expanse of South Australian history of the park lands, a fairly primitive planning context

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[32] Hassell, op. cit., 23 February, Terry Mosel, 2, Background to the current planning conditions, page 2.

[33] Hassell, op. cit., 23 February 1998, Terry Mosel, 4.1, Planning and Design Guidelines, page 4.

[34] Hassell, op. cit., 23 February 1998, Terry Mosel, 4.3, Planning Strategy, page 5.

[35] Hassell, op. cit., 23 February 1998, Terry Mosel, 4.3, page 5 [but in referencing the Strategy the page number is not provided].

[36] Hassell, op. cit., 23 February 1998, Terry Mosel, 7, Issues Summary, page 11.

had existed until the 1980s. Further, a comprehensive action plan policy document, in a form similar to a subsequent *Adelaide Park Lands Management Strategy*, had not existed.

- Among wording of the early 1990s planning guidelines two fundamental principles had emerged and would inform policy discussions across the 20-year period of this work's (*Pastures of plenty*) study. They were: "... new building development is only appropriate where removal or replacement is occurring ... [as well as] "avoidance of development that restricts public access."[37] The first principle would in years subsequent to 1998 establish as accepted practice a footprint currency trading concept that held that existing built form could be conceived as a denomination that could be traded later in the form of a replacement footprint area. It appeared logical, but beyond about 2011 would manifest as a matter of some controversy, with new proposals for buildings supposedly not to exceed the existing footprint, and ideally to occupy much less footprint than before. But in reality, many project proposals would exceed former footprint area, and this would be achieved in complicated, sometimes devious ways. Further, proposals for new park lands built form would be often attended by vastly increased floor area sums because of their multi-storey form. The second principle, about public access, would be a perennial matter of controversy. New sports pavilions that were constructed after 2011 tended to be closed to regular public access. In association with the new pavilion buildings, they would become 'members only' sites. This would be further compounded by the Liquor Licensing Act's requirements that licensed events on park land sites (outside of buildings), organised by the lessee or sub-lessee of the pavilion or other building, had to be fenced. As most major recreational/entertainment events beyond 2010 featured the serving of alcohol, vast lengths of perimeter fencing surrounding the event site became the norm. In this way, access to some park sections was further restricted, except to paying customers attending the event. Some entertainment events were licensed to last for several months. Towards 2018, the city council's initiating of a multi-year licence also became popular because it enabled event organisers to capitalise on the equity conferred by that licence. Some events featured day and night, seven-day commercial activities, and much money could be made.
- The idea of the park lands being a state asset that needed to *contribute* is another policy philosophy that contemporary park lands 'protection' advocates have often subsequently failed to observe as emerging at this time. Secondly, at 2018 some observers continued to remain blind to the idea, having advocated over the two-decade period (1998–2018) for the not-negotiable, wholesale 'protection' (read: preservation) of park lands landscapes from all planning-associated or commercial matters. This was influenced by parliamentarians in the period leading up to the 2005 Adelaide Park Lands bill, and for some time after the *Adelaide Park Lands Act 2005* came into operation in 2007.

[37] Hassell, op. cit., 23 February 1998, Terry Mosel, 4.1, Planning and Design Guidelines, page 4.

Their speeches had been peppered with the notion of 'protecting' the park lands in a way that implied 'preservation'. Moreover, for those in the know, the park lands most certainly could not be protected from a planning approach, whose development law (the *Development Act 1993*) featured the development instrument (the *Adelaide (City) Development Plan*) that defined how planning matters would be determined in regard to the park lands zone, legitimising many of the aspects that advocates tended to rail against before and after the enactment of the 2005 Act.

- The report's seven "Key Issues" about the Development Plan (presumably to be addressed when the looming *Park Lands Management Strategy* was to be published in 1999), are now addressed in multiple *Pastures of plenty* chapters. Number 7 of the 1998 Key Issues list highlighted that development in planning terms was moving much faster than was evolution of the policy documentation that ought to be in place to manage it. That issue centred on several contemporary (1998) irritations: "The inclusion in the [Development] Plan of major [project] developments that are under consideration, such as the International [actually the National] Wine Centre, the Adelaide Aquatic Centre upgrade, the Memorial Drive Sports Centre [the Next Generation gym development concept], and the City of Adelaide Golf Course upgrade."[38] These comprised some of the big and controversial park lands development projects at the time. All of them had commercial features, although the aquatic centre and the golf course were council-run operations set up as public facilities not anticipated to be for-profit enterprises.

Review of Economic Contribution Report

Notable themes

This report considered the micro- and macro-economic contributions that the park lands make to the City of Adelaide. Origins came from a 1987 report by the council, titled *Environmental Management Plan: Local Agenda 21*.

One quote is implied to be an extract from the council report: "Develop a strategy to ensure lease holder or permit fees to reflect the real cost of park lands use."[39]

In micro-economic terms the report commented on revenue and expenses matters, criteria for leases, lease cost benefits, annual permits, and income from major events. The author noted that events policy at this time needed to "... establish an approach that is consistent, fair and transparent".[40] Policy questions included: Are the charges for provision of park lands facilities and services high enough? What are the costs? Are there any community services obligations attached (and known)?

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[38] Hassell, op. cit., 23 February 1998, Terry Mosel, 7, Issues Summary, "Key Issue 7", page 11.

[39] Hassell, op. cit., 23 February 1998, Appendix report: 'Review of Economic Contribution Report, Prepared for the City of Adelaide', Doug Young, SA Centre for Economic Studies, University of Adelaide, this report dated 19 February 1998, 2, Micro Economic Value, page 1.

[40] Hassell, op. cit., 23 February 1998, Doug Young, 2.2, Micro Economic Issues, page 3.

The related cost of water for the park lands is discussed, noting that the city council had a special exemption from water charges, worth about $1m annually: arrangements that "shield the council from price signals affecting water use".[41]

In macro-economic terms the author discusseed intangibles, such as improved health, increased tourism and 'broad benefits' (intrinsic values) – "people place value … just knowing that the park lands are there, even if they do not physically use them."[42]

The author concluded: "The existence of these greater benefits, accruing to a wider population, supports the argument for a contribution from the state government to meet the difference between the costs of providing the park lands and the revenue gained from them."[43]

"The annual cost of maintaining the park lands has been estimated to be approximately $6m to $7m of which horticultural maintenance accounts for approximately $5m."[44]

The author commented: "... it is unlikely that all the benefits are captured by Adelaide City Council ratepayers. Therefore it would seem unfair for them to have to make up all of the difference between the costs and the revenue through their rates."[45] This accurately summarised the policy position in 1998 – and the practical reality more than 20 years later.

Reflection on themes

- In relation to the cost of park lands maintenance observed in the 1998 report, similar subsequent year comparisons to 2018 (the end of the study period of this work) of 'money out versus money in' were rarely found in city council public agendas or minutes. The administrative policy appeared to be that there was no ongoing 'money out/money in' analysis used to scope proposal determinations. But references to the council's Asset Management Plans relating to the park lands areas for which the city council held custodianship suggested otherwise. It may have been done at the level of reports to the council from its internal auditors, but these reports were mostly subject to confidentiality orders and thus were unavailable to the public. The 2019 public release of a comprehensive agenda paper detailing park lands funding and expenditure between 2017 and 2020 had been prompted not by an administrator, but by a Motion on Notice lodged by a council elected member.[46] It is explored in Appendix 28 of *Pastures of plenty*.

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[41] Hassell, op. cit., Doug Young, 2.3, The Cost of Maintenance, page 3. (A price signal is a change in cost that usually influences decisions by the manager of an asset.)

[42] Hassell, op. cit., Doug Young, 3.3, Broad benefits, page 4.

[43] Hassell, ibid.

[44] Hassell, op. cit., Doug Young, 2.3, The Cost of Maintenance, page 3.

[45] Hassell, ibid.

[46] Adelaide City Council, The Committee meeting, Agenda, Item 5.3, 'Adelaide park lands expenditure and income', 12 November 2019, pages 36–40.

- Micro- and macro-economic analyses sometimes later informed discussions at Adelaide Park Lands Authority level as well as council level, but their rigour and publication consistency was not predictable, and there was a sense over the subsequent 20 years that these matters were accompanied by unstated economic assumptions not needing specific policy articulation. A view that had appeared in the 1990s, that the park lands ought to contribute in some economic way to state planning outcomes, was not directed at making park lands developments pay for themselves. In relation to the redevelopment of the Adelaide Oval stadium (2012–14), or the construction of the new Royal Adelaide Hospital (2011–2017), or the new Adelaide Botanic High School (2016–2018), the rationale would be based not on how the park lands might be managed in a cost-effective way but instead on how their existence could contribute to state priorities, manifesting as (respectively) sport facilities, health facilities or educational facilities, all of which are seen as state infrastructure contributing to Gross State Product. In the Adelaide Oval's case it was related to intrastate and interstate tourism.
- These projects, among a number of other large built-form constructions on the park lands, illustrated that, more than 20 years later, economic issues might not necessarily dominate the policy debate at the park lands 'custodian' level (the city council) but they did at state government level, and the state government held all the cards when there was an ideological battle to be fought and won. The open-space/recreation/environmental priorities for the park lands were pitched against the economic priorities that the state conceived. In planning terms, it harks back to the ideology of the prioritisation of state development initiatives, first reflected, so long ago, in that all-important statute, the *Planning Act 1982*.

APPENDIX 14 PART 1

Park lands planning and the political environment in the 1990s

This is Part 1 of an appendix to Chapter 12: 'The governance of public space and the politics of planning'.

A useful source about the history of planning regarding the Adelaide park lands appeared in 1998, one year before the emergence of the first *Adelaide Park Lands Management Strategy*. It appeared in an appendix to the *Park Lands Management Strategy Issues Report*, commissioned by the Adelaide City Council.[1] It is instructive about the park lands statutory planning framework at that time. Titled 'Review of statutory planning framework for Adelaide park lands', it contained background to the planning provisions; a review of park lands use; state planning strategy issues; and a detailed discussion of the development plan for the City of Adelaide. It concluded with an 'issues summary'.

Early sections focused on the need to create a "fine-grained statutory framework for the new millennium".[2] It noted that this was on the basis that what went before was 'uncodified' and that: "Until the 1980s, planning for the future of the park lands ... there was no clear basis on which to make choices or decisions, nor was there a comprehensive basis on which to plan its future use or its maintenance or development."[3] The evolution of city plans was discussed, as well as planning and design guidelines, which emerged after the enactment of the *Development Act 1993* in 1994 and the *Environment Protection Act 1994* in 1995. It noted that the guidelines established that the park lands were an important ecological asset, and stated that "... new building development is only appropriate where removal or replacement is occurring ... [as well as] avoidance of development that prevents public access".[4] It was a simplistic statement, made at local government level, but loaded with implications and complications, as other chapters in this work explore.

Despite the planning framework in existence by the 1990s, there was a developing tension between local government park lands policy (given that the city council was the long-term 'custodian' of almost 700ha of Adelaide's 930ha of park lands) and what state administrations had been prepared to consider within the park lands boundaries. For example, the Dunstan and Bannon Labor administrations of the 1970s and 1980s had already established state-funded precedents for development on park lands. More were to follow under the state Liberals in the 1990s. As a result, in the late 1990s some state politicians began to agitate with an apparent

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1 The full title is: Hassell, *Park Lands Management Strategy, Issues Report, Prepared for the City of Adelaide*, 23 February 1998.

2 Hassell, 23 February 1998: Appendix report: 'Review of statutory planning framework for Adelaide park lands', (author Terry Mosel, Hassell), submitted on 17 February 1998, page 1.

3 Hassell, op. cit., (Terry Mosel), 2, Background to the current planning conditions, page 2.

4 Hassell, op cit., (Terry Mosel), 4.1, Planning and design guidelines, page 4.

urgency to better 'protect' Adelaide's park lands. It lit a metaphorical fire that smouldered for some time. In response, the state Liberal Party under Premier John Olsen introduced a bill in 1999, but it simply increased the heat. Those adding fuel to the (apparent) fire were members of the Labor opposition, anticipating an election in 2002, as well as some noisy park lands protection advocacy groups. No legislation resulted; the calling of the March 2002 election caused the bill to stall. The populism of the 'protection' approach was enough to galvanise public opinion, but it wasn't that politicians or park lands advocates were agitating for change to the *planning* framework. They weren't advocating for changes to the Development Act or its planning instrument, the *Adelaide (City) Development Plan* and its influence on development in the policy areas of the park lands zone. Neither were they advocating for change to the *Local Government Act 1999* whose statutory influence over community land (park lands) determination procedures would be significant, after the commencement of operation of that Act, on 1 January 2000. Few South Australians would have understood how such legislative change might even have been achieved, because only a handful of them – mainly lawyers – understood anything about the legislation associated with the park lands. The local communities and their MPs were simply responding to what they were observing on the park lands, increasing their resistance to what they saw the state doing – exploiting provisions and mechanisms to allow major development. The galvanised public opinion also prompted some to advocate for more profound philosophical change – better definition of the boundaries of the park lands, return of sections long alienated, and for new, independent bodies and mechanisms to enable more accountable and more transparent future park-lands-related decision-making.

A broader Australian perspective

In the years leading up to this period the issue of the apparent vulnerability of Adelaide's park lands to exploitation was emerging in the context of a much broader political administrative evolution. It was one that few South Australians comprehended. They were living in a period before which there had been a gradual change in Australian state government models from social democratic managerialism to corporate liberalism. It was well explored in a book written in the late 1990s and published in 2000 about Australian planning by planner academics Brendan Gleeson and Nicholas Low.[5] It provided a historical perspective of planning of Australian cities since World War 2, in particular the gradual evolution of models of urban governance between 1970 and 2000. This work did not specifically focus on open-space planning, such as that which was deployed to manage the large acreage surrounding the city of Adelaide, the only Australian capital with such a historically intact expanse of open space abutting all of the city's edges. However, its view is useful to allow a reader to step back and observe in a broad way the evolution of Australian urban governance at a state level, and the planning function and its features during the period. According to Gleeson and Low, social democratic managerialism's key aspects were: "Reform of the public

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[5] Brendan Gleeson, Nicholas Low, *Australian urban planning, new challenges, new agendas*, Allen and Unwin, 2000.

service to provide greater political control, a new relationship between economic planning and the management of urban development, and a desire to reform local government."[6] The authors identified the era of the South Australian Dunstan Labor government (the 1970s decade) as being an exemplar. Importantly, the authors identified that it was during that decade when some key South Australian government individuals triggered a fundamental change in the way state planning would be practised from that time: "... that planning should no longer be carried out at arm's length from cabinet and the political process ... Rather, the selection of planning tools was a choice for the government itself."[7]

A South Australian perspective

Under Premier Dunstan, the park lands were subject to a major development incursion when his government approved construction of a state-funded Festival Theatre on park lands. This was a replacement of another built form at Elder Park (the City Baths). The park was a prominent park lands section close to the city 'square mile', adjacent to King William Road. Construction of the theatre was the first symbolic exercise by state government of major park lands development since a much earlier project – but equally symbolic – the construction of a state high school on park lands, in about 1950.

After the fall of the Dunstan Labor government, a Tonkin Liberal government ruled for one term, replaced by another Labor administration led by John Bannon. Bannon too would leave his park lands mark. His premiership would demonstrate how the state by then was exercising its political imperative over park lands planning, by enabling the construction of state infrastructure to be accompanied by commercial infrastructure on land designated as park lands. Years later, other authors reflected on what occurred.

> "In the late 1980s the Adelaide Station Environs Redevelopment project (ASER) brought unprecedented land uses; the Hyatt Hotel and Convention Centre were built on former railway land, straddling the remaining passenger tracks. The 1928 Railway Station was refitted as the Adelaide Casino (now SkyCity). What was unprecedented was that the Hyatt Hotel, Convention Centre and Casino were granted long-term leases, the first major and overt commercial activities tolerated in the original footprint of the park lands."[8]

By the late 1990s, a subsequent state Liberal administration under Premier John Olsen had also enabled more development projects on the park lands. They included the Memorial Drive 'Next Generation' tennis centre and gym, near Pinky Flat at Park 26 (a redevelopment of the David Lloyd Leisure Centre), as well as a $24m National Wine Centre in the eastern park lands adjacent to the Botanic Gardens. Both developments confirmed that park lands planning was seen in the

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6 Brendan Gleeson, Nicholas Low, ibid., page 69.

7 Brendan Gleeson, Nicholas Low, ibid., page 75.

8 DASH Architects and Peter Bell, *Heritage Assessment – Adelaide Park Lands and City Squares*, (commissioned by: SA Department of Heritage and Natural Resources), 17 May 2018, page 29.

corridors of power as a function to be directed by state cabinet as a political process, no longer quarantined to the advice and guidance of planner professionals acting in domains separate from the aspirations (or sensitivities) of the state political apparatus. This then was the political reality as the new millennium loomed. Soon after, South Australians would see the election of a new state Labor administration in 2002 that would survive for four consecutive terms. But before all that, some examination of the evolution of state planning, and the context in which it was evolving, may be instructive.

The neo-liberalism focus of Australian planning

Describing planning in Australia in 2000 as being "in a low ebb", book authors Gleeson and Low had written: "We argue for a political view of planning as a form of urban governance."[9]

The authors observed that forces of change in planning since World War 2 could be categorised in at least four ways: Marxism, feminism, environmentalism or neo-liberalism. Nowadays neo-liberalism is associated with economic rationalism, a 1980s economic ideology that championed the ideal of free-market-driven – and, ideally, perpetual – growth. The authors noted: "The managerial and neo-liberal critics have set out to recast planning's role in capitalist societies in favour of the market."[10] Later in the book they added: "Australian planning has been overtaken by political reform, largely sourced in neo-liberalism. Planners have been left sidelined by the new priority given to economic development."[11] They added that: "… planning's role in many domains has been redefined from growth manager to growth promoter." But they challenged that redefinition, noting: "… in all public policy domains, including local government, planning should be strictly separated from those agencies promoting economic development."[12] What they appeared to suggest from a local government perspective was that planning should be a strictly separate function within administrative bodies.

Adelaide's city local government body was the Corporation of the City of Adelaide, the city council, the 'custodian' of much of the park lands for about 150 years (since legislation in 1849). In one sense this planning function was physically separated within that corporation, which employed a team of planners giving advice on planning matters. But in another sense, the planners' advice was expected to reflect support for growth models aiming at improving economic development outcomes across all of the council's strategic plans' priorities. Planners were expected to embrace state planning policy, to factor in growth models in their work, and ensure that their work was supportive of, and contributory to, state economic development. At the time (early 2000s) this broad philosophical approach did not spill in any significant way into 'growth model' planning in regard to park lands policy; however, there already was momentum arising from the earlier notion of how the

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9 Brendan Gleeson, Nicholas Low, ibid., page 1.

10 Brendan Gleeson, Nicholas Low, ibid., page 7.

11 Brendan Gleeson, Nicholas Low, ibid., page 218.

12 Brendan Gleeson, Nicholas Low, ibid., page 224.

park lands might *contribute* to the economic development of the state, contemplated in early city development plans before the proclamation of the *Development Act 1993*. When early iterations of what would become the *Adelaide (City) Development Plan* subsequently emerged, the ideology was applied across subsequent updates and contributed to policy applying to the park lands zone policy areas (then called precincts). The late 1990s Olsen government approval of commercial development on the park lands illustrated a state preoccupation with economic development that did not see the park lands boundaries as any significant barrier, although the government remained highly sensitive to it. It would be about a decade before the 'contribution' concept was to be ramped up significantly in park lands policy documentation, and by then state Labor was in government. It took its most visible formal policy form in the second (2010) and, in particular, the third (2016) versions of the *Adelaide Park Lands Management Strategy*. The year 2010 was a state election year, in which Labor had won its third term; the year 2016 saw Labor half-way through its fourth consecutive term. The pro-development 'activation' concepts in the Strategies – most evident in the 2016 version – had been strongly influenced by a 2014 state government intervention in the form of a special 'Project Advisory Group' that influenced the contents of the draft. The outcome would exert additional stresses on the interpretation of elements of chapters of the *Community Land Management Plan* for the park lands. As the *Adelaide Park Lands Act 2005* had required, both the Strategy and the CLMP had to be 'consistent'.

Testing the edges in 2007

Even while the 1999 *Park Lands Management Strategy Report 2000–2037* – the first Strategy Report – was current, in 2007 a test case arose where the neo-liberalism underpinning state Labor government planning policy would reveal itself. This was when the government pursued a big development proposal at Victoria Park (Park 16, east park lands), aimed at outcomes that sought economic development related to the horse- and motor-racing industries occupying that park. The bid was eventually blocked by public opposition, capitalising on not much more than lucky timing. But what occurred in 2007 illustrated the state government's view that the park lands should (rather than could) contribute in real and meaningful ways to state development. In many ways explored in other chapters of this book, year 2007 might be described as Year Zero, when the best of 'protection' intentions reflected in political statements expressed over the preceding five years, and implied in the Statutory Principles of a new *Adelaide Park Lands Act 2005*, were revealed to be at odds with what was actually occurring. Tagging a large park lands site a 'major events' site did not axiomatically mean that the state should also aspire to erect a permanent, $33m, 200m-long, three-storey 'grandstand' in the middle of Victoria Park for the economic benefit of the car- and horse-racing industries operating there. In reality, it was a multi-function structure predominantly featuring corporate boxes. But the state government considered this to be entirely reasonable and was happy to fund the big development. The people disagreed.

Post-2010 planning tactics

Beyond 2010, the state government prosecuted another radical approach, outside the influence of the Park Lands Act and the Development Act and its planning instrument, the *Adelaide (City) Development Plan*. This was the creation of new and overriding project-oriented development legislation for a specific park land site. A 1984 precedent had already been set in regard to this type of legislation, for an annual motor race in the park lands but using temporary infrastructure as the 1984 statute required. But the *Adelaide Oval Redevelopment and Management Act 2011* had much greater park lands impact because it featured permanent infrastructure of substantial bulk and scale. It was passed to authorise the redevelopment of ageing cricket facilities, replacing them with a huge stadium for use by cricket and football businesses. The legislation overrode the *Adelaide Park Lands Act 2005* and required that the $535m development application for the oval facilities be determined as complying with the *Development Act 1993*.

Less overwhelming, but nonetheless highly effective, would follow a series of ministerial development plan amendments for park lands zone policy areas. Other more subtle city council administrative ruses followed. For example, towards the end of the period of study of this work (in 2017 and 2018), some disturbing examples arose of attempts to use the *Adelaide Park Lands Act 2005* and its statutory policy documents – the *Adelaide Park Lands Management Strategy* and the relevant park *Community Land Management Plan* (CLMP) – to justify outcomes philosophically at odds with earlier visions. It was clear that the ruses were supported by the then Labor government. The ways included seeking to revise the CLMPs to acknowledge and legitimise proposed concepts otherwise not contemplated in the CLMP. Examples, such as a helipad concept, are explored elsewhere in this work (see *Pastures of plenty*, Chapter 31). Revisions of the first version of the Strategy (which occurred in a 2009 draft that was approved by the state government in 2010) and again in 2015 (approved by the council in 2016 and the state government in August 2017) also opened up fresh opportunity to use policy documentation content to encourage development projects, and use that content to drive amendments to the *Adelaide (City) Development Plan* in relation to the park lands zone. The new 2016 Strategy was crafted to encourage contemplation of a range of future recreation facilities and infrastructure concepts.[13]

[13] There was no legal provision that required amendment of the *Adelaide (City) Development Plan* just because a version of the Strategy contemplated development concepts for the park lands. It was nothing more than an assumption, born around the time of the publication of the first (1999) Strategy, and later ambiguously referred to by Planning Minister Paul Holloway when introducing the Adelaide Park Lands Bill 2005 in state parliament. But the 2005 Act never did make the idea a legal requirement. Despite that, the idea had endured for so long that some state bureaucrats appeared to believe that it was an authorised convention under the planning system.

Politicians' planning tactics

There were many other procedural aspects of park lands management that evidenced symptoms of the neo-liberalism influencing the state's 'build-it-and-they-will-come' park lands policy. For example, even while the first version of the *Park Lands Management Strategy* was current (10 years: 1999 to 2009), interpretation of the complying development categories open to park lands planners under the *Adelaide (City) Development Plan* made public resistance to new developments on park lands challenging. A revision of criteria for 'complying development' (Categories 1 and 2) could frustrate public resistance to proposals for new built forms. The aim was to recategorise a development concept from 'non-complying' to 'complying'. A Category 1 classification ('complying') did not require public consultation. Category 2 did, but did not allow for court appeals. A 2015 example was a government ministerial development plan amendment (DPA) for park lands near the University of South Australia's facilities on Frome Road to allow a new school to be constructed. The DPA subtly modified the *Adelaide (City) Development Plan's* 'complying' criteria for the policy area. Critically, it included (as a new criterion) the words 'schools and other education facilities' for that area. Non-complying criteria (originally classified as Category 3) was thus amended to Category 1 (complying).

There were other, far more brutal, tactics. The 2011 passing of specific project-oriented development legislation had swept away myriad legal obstacles to the total redevelopment of Adelaide Oval facilities which otherwise would have been a Category 3 proposal, subject to court appeal. The new legislation made possible the demolition of an ageing, low-scale, heritage, English-style cricket facility at the park lands Park 26 near Torrens River and its replacement with a $535m, state-funded, multi-storey stadium which pursued high capacity commercial sporting and entertainment activities and led to a major increase in the number of full-capacity oval sport events. These attracted significant revenues for the sports bodies and were proudly noted as evidence of state-induced economic development and therefore the inherent policy soundness of the means used to create the ends.

Earlier, and elsewhere, the state government had also used that favoured and more common tool, the *ministerial* development plan amendment (DPA: May 2009) to annex 10ha of western park lands for the slow construction of the new Royal Adelaide Hospital, a site originally tagged in the first *Park Lands Management Strategy Report 2000–2037* to be returned to open-space park lands after more than a century of restricted rail yard use for the state's train transport system. The Adelaide City Council cooperated. The $2.4b hospital building was completed in 2017.

In the lead-up to most of these proposals for the park lands, restrictions that could block transparency, allowed under the *Local Government Act 1999* (in particular, the section 90 (2) and (3) confidentiality procedures and provisions, which included 13 optional excuses) allowed state and local government to maintain a high level of early-stage secrecy about looming proposals. When this occurred, the city council could choose at will the confidentiality order rationale that suited the circumstances. Features are explored elsewhere this work.

Power decides whose interests policy will serve

To return to the Gleeson and Low reference published in the year 2000, and the politics of planning in an age of Australian neo-liberalism, authors Gleeson and Low had more valid points to make.[14]

> "We have suggested some fairly specific policies for urban planning. At least as important is the governmental process through which these policies may be discussed, modified, or rejected and new proposals made or shaped. Planning must, if it is to gain and retain wide public support, enhance democracy. ... when democratic notions of the public interest are undermined or even swept aside, power decides whose interests policy will serve ... Neo-liberals have sought to install the market as the arbiter of public interest, claiming that the pursuit of profit neatly coincides with the collective view ..."[15]

The construction of the Adelaide Oval stadium was a good example, using state money to create a huge sporting hub and delivering a government endorsed monopoly statutory authority (a private company, Adelaide Oval SMA Ltd) to manage it under an 80-year lease. Its 'market' was exclusively defined by the commercial operations managing two sports groups: cricket and football. A key government aspiration at the time was that it would stimulate economic activity in adjacent city businesses, as well as the corporate bodies that managed these sport businesses.

Over the 20 years to 2018 there were other examples of park lands developments whose justification drew on the notion that they would bring economic development to the state, in sport, recreation and related business outcomes. The city's daily newspaper, *The Advertiser*, often led the charge to have these concepts approved, praising the potential for future economic benefit in fulsome editorials. It would be discreetly left unsaid that the early economic benefit (in the form of advertising) would flow to its owner, News Ltd, later News Corp, as the principal promoter of the likely economic activity, state or otherwise. The newspaper practised a high level of subjectivity in its reporting on park lands development-related stories, especially in regard to any development that would bring to it commercial advertising revenues. In this way it was made extremely difficult for many South Australians to form an objective, balanced, well-informed judgement about the wisdom or not of a park lands development proposal. The coverage, on which most electronic media subsequently relied for facts, almost always reflected the mantra that 'All development on the park lands is for the public good.' Years later, candidates for the 2018 council election would champion the slogan 'Public land for public benefit'. Few comprehended how it might be interpreted in light of at least 20 years of park lands development exploitation, supported by neo-liberal state administrations.

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[14] Brendan Gleeson, Nicholas Low, *Australian urban planning, new challenges, new agendas*, Allen and Unwin, 2000.

[15] Brendan Gleeson, Nicholas Low, ibid., page 229.

Loss of park lands area tells the governance story

Readers may detect an undue scepticism about the outcomes of planning determinations affecting the integrity of the Adelaide park lands as the old century gave way to the new. They may point to hundreds of hectares of park lands that remain green, open space, unblemished by any constructed facility, or significant topographical alteration. But a comparison of the landscape of Adelaide's park lands in 1998, the beginning of the period of study of this work, and that which existed at year-end 2018, makes for uneasy reflection. These unblemished sites are now fewer in number. There also have been hundreds of hectares annexed (on paper) under urban development legislation crafted to side-step planning-related aspects of the *Adelaide Park Lands Act 2005*. For example, the Greater Riverbank precinct, created in 2013 as a separate policy zone in the *Adelaide (City) Development Plan* is the most obvious (see *Pastures of plenty*, Chapter 34). It is in this zone, after 2018, that the concept of 'public land for public benefit' would be most prominently demonstrated. It was prosecuted under the energised corporate liberalism of a new state administration, a Liberal government, elected in March 2018. The two years that followed this election win illustrated that the politics of neo-liberalism were alive and well. For example, in late 2018 an unforeshadowed proposal to construct a new hotel to abut the eastern walls of the Adelaide Oval stadium was very quickly endorsed. The motivation by the lessee of the Adelaide Oval, the Adelaide Oval Stadium Management Authority, had been money, future revenues anticipated to support the AOSMA's future operations.[16]

Legislative councillor protests

In 2013 South Australian Greens SA Parliamentary Legislative Councillor, Mark Parnell, reflected on the state's planning system and the habits of government administrations, as endorsed by state parliamentarians.[17]
His summary, issued as a pamphlet, focused on town planning and city and suburban development, but some of the critiqued elements had been evident in park lands planning uproars over the period of this work. The deeply embedded mechanisms and procedures highlight how Adelaide's state governments' corporate liberalism approach has influenced and will continue to influence land-use determinations – including those applying to the park lands. Particularly telling is how state administrations at the time hindered public resistance to exploitative habits.

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16 See *Pastures of plenty*, Appendix 27 of this work.

17 Mark Parnell MLC, [a summary of the flaws in South Australia's planning system:] *The Dirty Dozen: 12 things wrong with the planning system in South Australia and how to fix them*. Pamphlet: July 2013.

Quoting from his pamphlet:

- "Governments introduce planning changes before public consultation. This means that binding development approvals can be given before the community has had a say. SOLUTION: Legislate to stop the abuse of 'interim operation' provisions.[18] These tools should only be used to stop inappropriate development (such as demolition of local heritage) and not to fast-track the government's favoured developments." [and]
- "Ministers ride roughshod over communities by imposing unpopular planning changes against the wishes of local councils."

Lack of 'scrutiny with teeth'

Parnell also cited other abuses relating to the park lands:

> "Parliamentary scrutiny of planning changes [via development plan amendments (DPAs)] made under the *Development Act 1993* is a joke. The responsible parliamentary committee is government-controlled and does not get to consider DPAs until after they have come into operation. Even if parliament were to throw out any planning changes (which it never has), it would not affect any development approvals already granted. SOLUTION: Reform the Parliamentary Committees Act to ensure that the Environment, Resources and Development Committee is not government controlled, but reflects the diversity within parliament. Transferring responsibility to the Legislative Council [the upper house of the SA parliament] would achieve this ... [and further ...] Amend the Development Act to ensure that no changes to zoning or other planning rules can come into effect until after parliamentary scrutiny."[19]

Further reading

Readers seeking to explore earlier planning history regarding the Adelaide park lands may refer to Part 2 of this appendix. The title is: 'Reflections on late 20th century planning matters regarding the park lands'.

It explores the 1970s and 1980s origins of state and City of Adelaide policy and procedural approaches.

[18] At the time the rules about development plan amendments (DPAs) allowed the amendment to be immediately put into 'interim operation', effectively giving the green light to parties with development intentions to immediately lodge applications consistent with the amendment, and have them promptly approved.

[19] Mark Parnell MLC, op. cit., page not numbered, July 2013. Note that three years after Parnell wrote this the *Development Act 1993* was superseded by the *Planning, Development and Infrastructure Act 2016*.

APPENDIX 14 PART 2

Reflections on late 20th century planning matters regarding the park lands

This is Part 2 of an appendix to Chapter 12: 'The governance of public space and the politics of planning'. It explores the 1970s and 1980s origins of state and City of Adelaide policy and procedural approaches to the Adelaide park lands.

The origins of planning matters affecting the park lands, manifesting in land-use development control instruments in relation to the City of Adelaide in the 1970s (the custodian of much of the park lands), can be traced to the City of Adelaide Planning Study 1974.

Post-1970s park lands planning history might be seen as a cycle of ideas which gave rise to political, legal and administrative machinery to make them happen, followed by subsequent ideas which demanded evolutionary updates of that machinery. On that basis it may be useful to briefly retreat to this period to examine features on which some 1998 issues would rest, and on which post-1999 policy directions would be based.

One was the statutory planning framework for South Australia and, in particular, the City of Adelaide. In place were land-use development control instruments, evolving from the original *The City of Adelaide Plan*, written by Adelaide City Council and adopted on 18 October 1976.[1] That plan initiated later consideration of an important theme – that park lands matters were being considered in the context of evolving city council planning policy of these earlier years, relative to the council's long-established 'custodian' role. In the 1980s wider state planning imperatives would fuel momentum of the idea of how the park lands might economically *contribute*. That idea didn't arrive with bells and whistles. There was no major, defining announcement relative to ongoing planning considerations. The concept crept slowly into planning policy and management contemplations linked to the emerging neo-liberal ideology of successive state government administrations including, for example, the Bannon Labor government. Bannon's administration's urgent passing of park lands project-oriented development legislation in December 1984 in the form of the *Australian Formula One Grand Prix Act 1984* became the most symbolic gesture at the time. It was all about a

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[1] This plan should not be confused with Colonel William Light's Adelaide City Plan of 1837, which some contemporary (post-2000) researchers retitled in their works as 'Plan for the City of Adelaide' or 'the City Plan', or 'the Light Plan', or 'Light's Plan'. *The City of Adelaide Plan (1976)* was the title of the first of a series of early city council development plan documents, outlining the rules for development within the City of Adelaide, which is surrounded by park lands.

special tourism-focused event that urgently required use of an extensive area close to the city, the Adelaide park lands:

> "The 1985 Adelaide Formula One Grand Prix was such a Special (Hallmark) event. Adelaide's successful bid to be the Australian circuit for Formula One racing was a deliberate strategy adopted by the South Australian Government as a tourism and investment generator for the state.[2]

The idea of writing new legislation to make possible economic activity on the park lands that otherwise would not be feasible under existing legislation would have significant consequence in future years.[3] In fact, when examined in retrospect, the 'contribution' concept was to be a big idea behind evolving management approaches to park lands. It remains a big idea upon which much debate still thrives.

But to briefly walk back into the past ...

At least one important circumstance was to apply in the 1980s. It was in relation to the statutory planning framework for Adelaide's park lands and its effect on land-use development and management within and across park lands sites. In park lands development policy terms 'land use' refers not only to what can be approved for the park lands, including buildings, roads, fences and car parks, to name but a few, but also specifically which types of built form and their purpose. For example, forms might include weather stations, swimming pool facilities, sports pavilions, recreational hubs and even schools. The 1980s is not a focus period of this work, *Pastures of plenty*, but exploration of the period helps to explain what followed in the 1990s and later. Specific development legislation has sat behind the administrative superstructure of park lands management instruments and policy documentation.

The early plans

The origins of planning matters affecting the park lands, manifesting in City of Adelaide land-use development assessment instruments, can be traced to the *City of Adelaide Planning Study 1974* and, after that, four subsequent planning blueprint policy updates titled *The City of Adelaide Plan* (versions 1976–81; 1981–86; 1986–91 and 1991–96).

South Australia's 1974 *City of Adelaide Planning Study* was of significance because, in a definitive new planning approach, some districts – but not the park lands – became subject to 'action projects' as part of the plan's proposal that:

> "... the city be managed as four districts [within which] there would be 23 precincts which are intended to have a particular quality. It thus differed from a conventional zoning map in that specific uses were not allocated to particular sites but written statements for each precinct expressed a

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2 *The Grand Prix and tourism*, by Paul Van Der Lee and Jane Williams, Chapter 2, 1, Background, in: Burns, J, et al, *The Adelaide Grand Prix, The impact of a special event*, The Centre for South Australian Economic Studies, 1986, page 39.

3 For example, the *Adelaide Oval Redevelopment and Management Act 2011*.

> 'desired future' in terms of activity, use mixtures, building density, physical improvements and landscape character. The plan incorporated a complex set of regulations establishing performance standards for developments in each of the precincts with the [city] council retaining discretionary powers over all developments ... It also set out 38 action projects to implement the plan ..."[4]

The four districts would be the Core, the Frame, the Residential, and the Park Lands. While the 1976 Plan featured much Desired Future Character (DFC) detail for three districts, it had little to say about the Park Lands district. The contemporary 'vision' for the Park Lands district was simply summarised under Principle 4 as "... shall be conserved and enhanced for the relaxation, enjoyment and recreation of the metropolitan population and the city's workforce, residents and visitors".[5] Principle 5 followed: "Nothing in these Principles shall be construed as preventing the continued use of any land for the purpose for which the land was being lawfully used on the Appointed Day".[6] That left plenty of flexibility for contemporary users of the park lands. Precisely how the park lands should be 'enhanced' under Principle 4 was not explored, nor was there any definition provided of that word. Its lack of definition would suit later administrators, because it meant that it would mean whatever the administrator thought it meant – or wanted it to mean.[7]

The key reference resource

The City of Adelaide Plan (versions 1976–81; 1981–86; 1986–91 and 1991–96) became the reference resource not only as it applied to planning for the city, but also as it applied to land over which the city council had 'care and control' – Adelaide's park lands. The 1976–81 plan introduced a qualitative approach to city development control, one that would have significant effect on future planning for what would much later become the park lands zone under future development plans.

The later 1986–91 plan was controversial because it pursued the 1974 *City of Adelaide Planning Study's* notion of 'desired future character' for city districts, and about which many architect planners at the time took issue, preferring to rely on their own judgements to define city character by adopting more recent, contemporary city design ideas for future projects. But this challenge to the older approach, which was based on early European town planning and architectural traditions, would focus on the city, not the Park Lands district at this time. The city controversy would arise over subsequent years whenever something perceived as ill-fitting for city precincts was proposed. How was the qualitative approach to be interpreted? The 1986–91 plan contained objectives and policies. City principles of

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4 C Forster, M McCaskill, 'The modern period: managing metropolitan Adelaide', page 98, as found in: *With conscious purpose, a history of town planning in South Australia*, eds: Alan Hutchings, Raymond Bunker, Wakefield Press, 1986.

5 Adelaide City Council, *The City of Adelaide Plan*, 18 October 1976, page 33.

6 Adelaide City Council, ibid.

7 Years later, when the *Adelaide Park Lands Act 2005* was in bill form, that word 'enhancement', which appeared in the bill, still had not been defined, and would not be under the subsequent Act. In the years that followed, it would be exploited by anyone reflecting an interest in development on the park lands.

development control (PDCs) and statements of desired future character (DFCs) prompted much debate. The then city planner, Harry Bechervaise, a strong advocate of this planning approach and its potential to hold the line and reinforce the older planning and architectural traditions, summed it up regarding the city: "The fundamental philosophy which has guided the 1986–91 plan is that future development should respect the city's planning and built heritage and capitalise on its strong images and design potential so that Adelaide continues to be a 'special place'."[8]

Bechervaise observed that the Adelaide park lands played a key role in reinforcing his message. "The City of Adelaide is unique," he wrote in a council-produced pamphlet two months ahead of the formal adoption of the draft 1986–91 'City Plan'.[9]

> "It has a 'sense of place' largely due to Colonel Light's plan [for Adelaide] which sets it apart from other Australian capitals. Yet the Light plan did not just 'happen'. The free settlement of South Australia was 'designed' from England by the Colonisation Commissioners. ... Colonel Light's plan for Adelaide in 1837 was a sophisticated improvement on ... previous plans".[10]

It featured:

> "... a defined area of public common, as open Park Lands surrounding the city [and a] distinct line of demarcation between the Park Lands and the city, ie, the city edge [and] a distribution of formal squares, one to each residential quarter, with a central 'common' (Victoria Square) as the focus of public activity."[11]

Of the general principles of development control (PDCs) and desired future character statements (DFCs), Bechervaise noted that they had been introduced to ensure and promote Adelaide's city "character retention and better management".[12] He stressed the importance of the statutory backbone legitimising those PDCs and DFCs, giving the plan rigour, noting that: "the character of Adelaide has been rapidly decaying in recent years".[13]

1982 legislation introduces new 'state control' concept

At the time, the City of Adelaide was a city-state, a city governed under its own planning legislation, separate from the remainder of South Australia. In the mid-1970s the relevant planning statute was the *City of Adelaide Development Control Act 1976*. Six years later, the *Planning Act 1982* was brought into operation. The Act

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8 Harry Bechervaise, 'From the city planner', *Building and Architecture*, September 1986, page 12.

9 Adelaide City Council, *The design of Adelaide*, [precursor to the 1986–91 *The City of Adelaide Plan*, prepared by Harry Bechervaise, et al, A4, eight-page folded pamphlet, "Prepared for the City of Adelaide Plan Review"], month not stated, 1986.

10 Adelaide City Council, ibid., 1986.

11 Adelaide City Council, ibid., 1986. (Note that 20 years later, when the *Adelaide Park Lands Act 2005* came into operation, its new Adelaide Park Lands Plan included, for the first time, the city squares.)

12 Bechervaise, op cit., September 1986, page 13.

13 Bechervaise, op cit., September 1986, page 14.

adopted many aspects of the city's system and this brought two pieces of legislation closer together.[14]

The *Planning Act 1982* encouraged a planning mindset that incorporated the idea of state-centred control over development determination. It was noted four years after enactment: "The 1982 Planning Act, though it gives greater power to individual local councils, also specifically provides for state control over development decisions if they can be defined as of 'major social, economic or environmental importance'."[15]

This approach would be carried over in subsequent years in amendments to or replacement of this legislation, when significant park lands site development projects would be driven by subsequent state governments. For example (and in terms of the 1982 statute), a consequential and controversial debate arose in 1984 when the Bannon Labor government initiated development on land that, technically, remained park lands. This was in relation to the Adelaide [Railway] Station and Environs Redevelopment (ASER) plan. It featured proposals for a casino (to be developed within the 1928 railway station building), as well as an adjacent high-rise hotel (the Hyatt), a Convention Centre, and a government office high rise tower further west. To avoid risk of rejection, the state government created separate legislation. It capitalised on regulations reviewable in state parliament, but not by other assessment bodies.[16] This flagged the first of many instances in the lead-up to the study period of this work, *Pastures of plenty* (1998–2018), where a state government was (in effect) to resort to a type of project-oriented development legislation, side-stepping other legislation, policy, and instruments of park lands management, to enable development on land designated as park lands.

1976 and 1982 planning intents merge

Ultimately, new legislation in the form of the *Development Act 1993* merged the planning intent of both 1976 and 1982 statutes and redefined the instruments (the early statutory 'plans') that arose from them to control development. In the mid-1990s this would eventually take the form of a development plan for the city, which would include park lands policy areas, as "… a legal benchmark against which all planning applications in the City of Adelaide are assessed."[17] This would be the *Adelaide (City) Development Plan*. It would feature provisions regarding a park lands zone.

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[14] Michael Llewellyn Smith, *Behind the scenes, The politics of planning Adelaide*, The University of Adelaide Press, 2012, page 246.

[15] C Forster, M McCaskill, 'The modern period: managing metropolitan Adelaide', page 107, in *With conscious purpose, a history of town planning in South Australia*, eds: Alan Hutchings, Raymond Bunker, Wakefield Press, 1986.

[16] An SA Labor government reference in a 2006 State Cabinet submission described the ASER Act and noted that it "… in effect created a Strata Corporation for the various interests (Hyatt, Convention Centre, Trans Adelaide, SkyCity, and Riverside office building)". Source: *Freedom of Information Act 1991*: Bridgland application to the Department of the Premier and Cabinet (DPC) under DPC Circular PC031, 'Disclosure of Cabinet documents 10 years or older': Government of South Australia: Cabinet cover sheet, Minutes (MFI06/014 CS) *Regenerating City West*, section 3.11, 10 July 2006, page 7.

[17] Hassell, *Park Lands Management Strategy, Issues Report*, 23 February 1998. Appendix report: Terry Mosel (Hassell), report dated 17 February 1998, 'Review of statutory planning framework for Adelaide park lands', Part 6, 'Development Plan City of Adelaide Issues for Consideration', page 9.

Useful sources on 1980s planning circumstances

Park lands planning historians might find enlightening the summaries of the park lands planning circumstances applying a decade earlier, in the 1980s, as found in the city council-commissioned Hassell 23 February 1998 *Park Lands Management Strategy Issues Report*. Moreover, city circumstances are well explained in a second reference, *Behind the scenes, The politics of planning Adelaide*, published in 2012.[18] This reference reported on and explored three decades of City of Adelaide and South Australian planning history, from the 1970s to the 1990s.

In the 1998 Hassell *Issues Report* a reference is made to a 'major review' in the mid- to late-1980s, to "consider the future of the park lands for leisure and recreation".

> "... the review sought to identify conflicting use demands, trends in the change to the demand pattern, and the practical role that the park lands could make in meeting the recreation and leisure needs of the metropolitan area of Adelaide. That review was a thorough exploration of the park lands and appears to be the basis for the current [1980s] expression of policy."[19]

The origins of the *Adelaide (City) Development Plan*

The Hassell author, Terry Mosel, wrote of features of the early plans emerging in the city of Adelaide in the 1970s and early 1980s. The 1976 policy document *The City of Adelaide Plan* would be the first of a series. The ideas and planning concepts would form part of the city's later *Adelaide (City) Development Plan*. The author noted recurring elements stemming back to that first (1976) *The City of Adelaide Plan* and that it had featured – for the city, but not for the park lands – 'desired future character' statements and the 'writing in' and 'writing out' of specific uses. These aspects are useful in understanding the subsequent evolution of park lands administrative and planning documentation, and consequent management issues that emerged over subsequent years.

Another feature is today of relevance in relation to park lands planning during those years, because it has been largely forgotten. The Hassell author records: "The striking feature, however, was the conservatism [at the time] that underpinned the policy direction". The following statement (probably dated 1987) recorded in the 1998 Hassell report underscores the point:

> "The primary use of the park lands shall be as a continuous city park accommodating a diversity of leisure and recreational activities without compromising the character and heritage objectives. Consistent with this,

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[18] Michael Llewellyn Smith, *Behind the scenes, The politics of planning Adelaide*, The University of Adelaide Press, 2012.

[19] This 1980s 'review' is referenced (but not named) in: Hassell, *Park Lands Management Strategy Issues Report,* 23 February 1998, Appendix report: 'Review of statutory planning framework for Adelaide park lands', (Terry Mosel, Hassell), 17 February 1998, part 3, 'Review of park land use', page 3. The reference referred to may have been the *Environment Management Plan: Local Agenda 21* (City of Adelaide, 1987).

> the park lands shall not be committed to sophisticated sports centres or to specialist buildings, paved surfaces, services and other specialist amenities. Rather, the nature of formal recreation facilities shall acknowledge the landscape in a simple and responsive manner."[20]

The Hassell author of 1998 then concluded with the following illuminating statement: "That direction may be contrasted with current [1998] policies on the park lands which now very often refer to their role in the cultural, social and economic well-being of the city."[21]

Comprehension of the future directions of park lands management

The Hassell author was noting something important. It was that, on a smaller scale, a decade later, in the years leading up to 1998, there had occurred a significant change in the social, political and economic comprehension of the future directions of park lands management and planning. It highlighted that the former conservative administrative culture within the city council was giving way to influences pursuing something more exploratory and administratively creative. In the late 1990s, the park lands were not just being seen as a landscape for contemplative pursuits, as well as being a public recreational asset surrounding the city, but also as a landscape that could actively *contribute*, as the author said, to "the cultural, social and economic well-being of the city".[22] Those few words summed up something new as the new century loomed, from which subsequent accomplishments would draw.

That elusive policy goal – 'balancing the competing objectives'

The Hassell 1998 *Issues Report* noted it in a more administrative tone when discussing the emergence of a *Planning Strategy* that had arisen from a 1990 State Planning Review, and whose Metropolitan Section (January 1998) had provisions that impacted on the park lands. The *Issues Report* concluded:

> "Clearly the park lands could not expect to deliver on all of the expectations of the *Planning Strategy*. The review does, however, provide the opportunity to carefully consider the contribution that Adelaide's most significant asset can make. Delivery of the *Planning Strategy* will be a matter of balancing the competing objectives and focusing on those which can be complementary." [23]

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[20] The source of this is not cited in the 1998 Hassell Appendix report, but it may have been the *Environment Management Plan: Local Agenda 21* (City of Adelaide, 1987). The conservatism and desire to minimise the growth of park lands development is observed by others who discussed the period, including author Jim Daly, in his book *Decisions and disasters [Decisions and disasters, Alienation of the Adelaide park lands*, Bland House 1987].

[21] Hassell, op. cit., (Terry Mosel, Hassell), 3, 'Review of park land use', page 3.

[22] Hassell, op. cit., (Terry Mosel, Hassell), 3, 'Review of park land use', page 3

[23] Hassell, op. cit., (Terry Mosel, Hassell), 4, 'The current planning framework', 4.3, 'Planning Strategy', page 6.

That extract underscores an important theme – that park lands matters were not just being considered in the context of city council planning policy of earlier years based on all of the assumptions inherent in the 'custodian' role, but in a state context, with wider state planning imperatives fuelling momentum of how the park lands might *contribute*. But as would preoccupy administrators in future years, the matter of 'balancing the competing objectives' would be challenging, and would become an important theme after the *Adelaide Park Lands Act 2005* came into operation.

APPENDIX 15

The triumphal delusion: the pursuit of the park lands Statutory Principles

> *As the years passed the Statutory Principles were read in such broad ways that they took on chameleon colours, often interpreted differently by whoever sought guiding reference to or refuge in them, to justify determinations sometimes in contradiction to what a 'reasonable person' might conclude.*

The idea of inserting principles to reinforce among interpreters of the *Adelaide Park Lands Act 2005* a sense that their task had a touch of the evangelical was not original. It had emerged five years earlier, in 2000. The concept would lead to the manifestation of the triumph of a 'hope over experience' state of mind: that guiding principles could prescribe an explicitly defined assessment pathway, whose powerful presence might restrict the potential for future exploitation of the Adelaide park lands. Given the naivety of this idea, the origins were more probably political rather than legal, although given that many parliamentarians and their advising bureaucrats were lawyers, it may be difficult to conclude.

The origins

The first park lands bill to provide 'guiding principles' was the Liberal state administration's Brindal/Kotz bill, the City of Adelaide (Adelaide Park Lands) Amendment Bill 2000. The second was the Labor state administration's Adelaide Park Lands Bill of 2005, in which the statements became 'Statutory Principles'. Much was made by South Australian parliamentarians at the time that the future intent was to underscore a firm commitment to ensure that 'this time, things will be different'. Readers of the 2005 Act tended, and still tend, to assume a safe, warm consciousness as a result of scanning them. It is a theme across this work that one of the less obvious elements of Adelaide's park lands administrative matters is the opaque semantic fabric that drapes many of the administrative features, not only across statutes but also other policy documentation, such as the *Adelaide Park Lands Management Strategy*, as well as the statutory development instrument at the time, the *Adelaide (City) Development Plan*, and other policy guidelines.

It may be useful to refer to what Labor's planning minister introducing the 2005 bill, Paul Holloway, said in the South Australian Parliament's Legislative Council on 15 September 2005.

> "Clause 4 [the Statutory Principles] expresses a number of principles relevant to the operation of the Act. A person or body involved in the administration of the Act, or performing a function under the Act, or responsible for the care, control or management of a part of the park, must have regard to, and seek to apply, the principles."[1]

The term 'have regard to' is a popular legal phrase, but ambiguous as to what is really intended. Is it a passing glance, or the seeking of a specific legal opinion on the meaning of certain words? It is commonly the former. Another problem is that the principles were challenging to 'apply' in a way that might have real and practical effect. For example, the absence of a definition of the verb 'protect' in the principles meant that 'applying' it was fraught.

Comparing the versions

It may be instructive to compare the draft principles of the 2000 bill, which never became law, notwithstanding significant follow-up work by the Olsen state Liberal government, and the draft principles in the later 2005 bill which required very significant lead-up work by the Rann Labor state government between 2002 and 2005 and did get embraced in new law. The year 2000 wording is shorter and simpler, by comparison to the 2005 wording. The 2005 wording has all of the hallmarks of intervention by bureaucrats and lawyers, the products of amendments of amendments. However, both sets of principles feature the use of apparently important words but whose meanings have remained ambiguous in park lands documentation that subsequently emerged.

The 2000 bill's draft guiding principles

a) "The Adelaide park lands should be available for public benefit, access and enjoyment.
b) The primary consideration in relation to the management of the Adelaide park lands should be to ensure their protection and enhancement as park lands.
c) The activities conducted on the Adelaide park lands should be consistent with maintaining the cultural, environmental and social heritage status of the Adelaide park lands.
d) The State Government and the Adelaide City Council should actively seek to cooperate and collaborate in order to preserve and protect the Adelaide park lands in an appropriate manner.
e) The interests of the South Australian community in ensuring the preservation of the Adelaide park lands should be taken into account when considering any matter that may arise in relation to the use or management of the Adelaide park lands."[2]

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1 Parliament of South Australia, *Hansard*, Adelaide Park Lands Bill 2005, Legislative Council, 15 September 2005, page 2558.

2 'City of Adelaide (Adelaide Park lands) Amendment Bill 2000'.

The Adelaide Park Lands Bill 2005 Statutory Principles

It is revealing to compare how parliamentarians redrafted the year 2000 statements a few years later, for the Adelaide Park Lands Bill 2005. In the comparison below, words or phrases carried over from the 2000 principles are set to bold formatting to make them easy to see. Very little of the 2000 guidelines content survived.

"4—Statutory Principles [2005][3]

"Clause 4 expresses a number of principles relevant to the operation of the Act. A person or body involved in the administration of the Act, or performing a function under the Act, or responsible for the care, control or management of a part of the Park, must have regard to, and seek to apply, the principles. Those principles are as follows:

- the land comprising the Adelaide park lands should, as far as is reasonably appropriate, correspond to the general intentions of Colonel William Light in establishing the first Plan of Adelaide in 1837;
- **the Adelaide park lands should be held for the public benefit** of the people of South Australia, and should be generally available to them for their use **and enjoyment** (recognising that certain uses of the park lands may restrict or prevent access to particular parts of the park lands);
- the Adelaide park lands reflect and support a diverse range of environmental, cultural, recreational and social values and activities that should be **protected and enhanced**;
- the Adelaide park lands provide a defining feature to the City of Adelaide and contribute to the economic and social well being of the City in a manner that should be recognised and enhanced;
- the contribution that the Adelaide park lands make to the natural heritage of the Adelaide Plains should be recognised, and consideration given to the extent to which initiatives involving the park lands can improve the biodiversity and sustainability of the Adelaide Plains;
- the State Government, State agencies and authorities, and the Adelaide City Council, should actively seek to **cooperate and collaborate** with each other in order to protect and enhance the Adelaide park lands;
- the interests of the South Australian community in ensuring the preservation of the Adelaide park lands are to be recognised, and activities that may affect the park lands should be consistent with maintaining or enhancing the environmental, cultural, recreational and social heritage status of the park lands for the benefit of the State."

Further analysis of the Statutory Principles in the 2005 Act by the *Pastures of plenty* author appears in other sections of this work.[4]

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[3] Adelaide Park Lands Bill 2005, from *Hansard*: transcript of a reading by Hon Paul Holloway of the bill in the South Australian Parliament's Legislative Council, 15 September 2005, page 2558. See also: *Adelaide Park Lands Act 2005*, Preliminary, Part1, 4 – Statutory Principles.

[4] Please refer to *Pastures of plenty* Appendix 9: '2018 observations of the minister's introduction to parts of the Adelaide Park Lands Bill 2005' as well as Chapter 54, which presents a semantic analysis: 'Semantic alienation across the park lands pastures': see Table 2, 'Jargon study'.

Words and their meanings

In terms of the 2000 bill, the following words highlighted in bold formatting illustrate a selection of words whose meanings were ambiguous.

The 2000 draft guiding principles:

a) "The Adelaide park lands should be available for **public benefit, access** and enjoyment.
b) The primary consideration in relation to the management of the Adelaide park lands should be to ensure their **protection** and **enhancement** as park lands.
c) The activities conducted on the Adelaide park lands should be consistent with maintaining the cultural, environmental and social heritage status of the Adelaide park lands.
d) The State Government and the Adelaide City Council should **actively** seek to **cooperate and collaborate** in order to preserve **and protect** the Adelaide park lands **in an appropriate manner**.
e) The interests of the South Australian community in ensuring the preservation of the Adelaide park lands should be taken into account when considering any matter that may arise in relation to the **use or management** of the Adelaide park lands."[5]

The city council was keen to comment on the 2000 bill, and especially the principles, and in October 2000 it explored aspects in detail.[6] It recommended deleting the word 'should' in order "to strengthen" the principles, possibly because 'should' in legal terms can have the same meaning as 'might' and was therefore not ideal. ('Shall' would have been a better word.) The council reflected on its previous 18 September 2000 resolution for "a new guiding principle that recognises Colonel Light's plan, to read: 'Planning and management of the Adelaide park lands respect the history integrity of Colonel Light's original plan for the City of Adelaide'. It also observed that: "The guiding principles are to govern and guide all management decisions for the City of Adelaide park lands made by the Adelaide City Council, and it is suggested that *the principles should also explicitly govern decisions by the State Government under this bill* [emphasis added]".[7] Finally, the council called for "wording recognising the heritage of the Kaurna people" to be added.

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[5] Many of these bold terms and words would survive in documentation in subsequent years and become the source of many discussions and debates. Many of the state tactics leading to development project exploitation of the park lands landscapes turned on what politicians and their bureaucratic advisors, and city council administrators, thought they meant. Their very ambiguity was their appeal.

[6] Adelaide City Council (ACC), Agenda, City Strategy Committee, Item 5.3, City of Adelaide (Adelaide Park Lands) Amendment Bill 2000 – Suggested Amendments', 17 October 2000, pages 5–6.

[7] ACC, op. cit., 17 October 2000, paragraph 22, page 6.

An observation at year-end 2018, the conclusion of the study period of this work, is that in 2000 it might have been perceived as very challenging to comprehend how a set of sometimes ambiguous words could, as the council noted, "explicitly govern decisions by the State Government under this bill". The notion that principles as ambiguous as they were could *explicitly* direct action is difficult to comprehend. As late as 2005 the city council remained philosophically challenged over the difficulty inherent in the principles' ability to *explicitly govern decisions* [emphasis added] by the State Government. That was to arrive in a more tangible but different form (in future updates of the *Park Lands Management Strategy*), giving rise to more, but different, ambiguities. In fact, as the years passed the Statutory Principles were read in such broad ways that they took on chameleon colours, often interpreted differently by whomever sought guiding reference to or refuge in them, to justify determinations sometimes in contradiction to what a reasonable person might conclude. Fortunately for those 'reasonable persons', the planning minister in 2005 noted only the imperative to "have regard to, and seek to apply".[8] Both intentions remain open to interpretation.

[8] Parliament of South Australia, *Hansard*, Adelaide Park Lands Bill 2005, Legislative Council, 15 September 2005, page 2558.

APPENDIX 16

Observations made by the city council about what the 2000 Kotz bill proposed, and how the council might improve on those proposals

This appendix follows on from Chapter 14: 'Minister Kotz and her 2000 bill'.[1]

These notes about the Adelaide City Council's observations about that proposed legislation are here condensed and edited by this work's author, with author comments put into [square] brackets. Observations draw on the contents of an Adelaide City Council agenda paper analysis dated 17 October 2000.[2] To put the year 2000 observations into further context, these observations compare and contrast how subsequent legislation, the *Adelaide Park Lands Act 2005*, addressed similar thematic issues.

- **Year [2000] bill not to deliver a separate Act. It proposed an amendment of the *City of Adelaide Act 1998*, as a third schedule to that Act.** [In 2005 state Labor chose instead to create new legislation, the *Adelaide Park Lands Act 2005*, which would interact with a number of existing Acts. Where necessary, those Acts were amended such that the interaction delivered what the government wanted in terms of park lands management and land-use planning.]
- **Broad intention to return alienated land to park lands, and to encapsulate Crown land and government reserves.** [The 2005 Act also did this.]
- **'Guiding principles' to be enshrined in the legislation; and land could only be removed from the definition of park lands with the consent of both houses of parliament *and the city council*** [emphasis added]. [New Statutory Principles were included in the 2005 Act. The city council veto concept was new in 2000 and of significant political import. But the veto concept was not embraced in the 2005 Act.]
- **Dispute resolution to vest with state parliament's Environment, Resources and Development Committee (ERDC).** [The same function would be created under the *Adelaide Park Lands Act 2005*. But it was of little value. ERDC mediation allowed a complaint procedure, but with no determining power; only a minister had this power and if there was no political will at the time, nothing eventuated.]
- **New park lands fund to be administered by the council.** [Another new role for the city council with no contemplation of potential administrative complexities. This function also followed under the 2005 Act. The 'fund' was neither here nor there; it would never be the source of sufficient monies to pay park lands management and administration costs. The real issue was the matter of funding

[1] 'City of Adelaide (Adelaide Park lands) Amendment Bill 2000'.

[2] Adelaide City Council (ACC), Agenda, City Strategy Committee, Item 5.3, 'City of Adelaide (Adelaide Park Lands) Amendment Bill 2000 – 'Suggested amendments', 17 October 2000,

the big budget for park lands administration coordinating operations and maintenance of more than 70 per cent of Adelaide's park lands under the care and control of the city council. Funding under the *Adelaide Park Lands Act 2005* was left to the city council, drawing on the council's small rates base – as before. By year-end 2018, the funding allocation comprised about 10 per cent of the council's $200m budget.]

- **Irrevocable classification of park lands as community land under the *Local Government Act 1999* – park lands sections not to be disposed of under provisions in the bill.** [Broadly carried over to the 2005 Act, but a special provision allowed for 'another Act' to undo this intention.]
- **City council observation of the 2000 bill: "Former operational management plan requirements in the Local Government Act have been replaced with provisions that recognise the council's *Park Lands Management Strategy Report 2000-2037* in legislative terms and make that the prime strategy, objectives and performance assessment document."**[3] [This was the seed of a significant new approach, which would be taken up in the *Adelaide Park Lands Act 2005*, giving status to a Strategy in statutory policy terms. In early 2005 it was also suggested in parliamentary debates that the Strategy would inform planning policy, and be reflected in the future contents of planning instruments such as the *Adelaide (City) Development Plan*. But although administrators and planners recognised this assumption, there was no legislative requirement or other basis for it. Moreover, there also was never subsequent policy endorsement of any mechanism for 'performance assessment'. As amendments to the 1999 Strategy followed (it was superseded by a new version in 2010 and again in 2016) it became clear that anything could be written into each version by city council administrators, as long as it was always in alignment with government development aspirations at the time, and approved by the minister. After the 2005 Act was passed, ambiguous objectives in subsequent versions (2010 and 2016) were never subject to Key Performance Indicators or quantifiable features of an action plan or 'achieve by' critical-path dates. Moreover, each Strategy remained unfunded. Over subsequent years, Strategy concepts for park lands development would be cherry-picked by the government of the day, using the Strategy to ostensibly legitimise their subsequent authorisation and implementation via the *Adelaide (City) Development Plan* (park lands zone policy areas).
- **The *Development Act 1993* expressly stated to apply to the park lands.** [This reinforced a standard assumption at the time – that the park lands should be subject to the same development statute and related assessment procedures as any other South Australian land, although park lands zone policy area clauses in the *Adelaide (City) Development Plan* sought to discriminate (Desired Future Character, Principles of Development Control, etc) between park lands and land elsewhere. In and beyond 2000 some park lands 'protection' advocates argued that the Development Act's role in park lands planning matters was at the heart of a long-standing 'development versus open-space recreation' tension, debate about

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[3] ACC, op. cit., 17 November 2000, observation #13, page 4.

which broke out every time the then government alienated park lands under the Development Act's Major Project or Crown Infrastructure provisions. It would continue to fester until the Rann government created the 2005 Act, which required the disablement of these sections (46, 49 and 49a). But it still meant that the park lands were open to the other broad provisions of the Development Act to progress assessment of planning matters.]

- **Powers to grant rights of public access into the park lands for certain infrastructure. Infrastructure agencies to liaise with council; approvals via the Environment, Resources and Development Committee.** [See ERDC observations above.]

The broad themes

The city council's October 2000 analysis of the Kotz bill recommended 27 amendments or improvements, which might be summarised as addressing:

- Flaws in wording or other, with potential solutions.
- Flaws with no solutions offered.
- Loopholes that could be tightened.
- Loopholes that may be challenging to tighten.
- Suspicions not allayed.

Not all of the council's suggestions were embraced.

Notable/historical observations

It may be useful to examine several other year 2000 city council recommendations for amendment of the City of Adelaide (Adelaide Park Lands) Amendment Bill 2000. Some were recommendations that would have jabbed state political nerve endings, usually about confronting the state's consolidated control over the park lands, especially in terms of development project proposals and their assessment. Government administrators often hid a motivation to retain control behind ostensibly transparent mechanisms, but which are later found to be toothless and tokenistic, or which bury the potential efficacy of the ideas and concepts in *silence* when drafting bills. During 2000 at least two ideas arose.

1) The city council recommended the use of 'an independent body' "... such as the Environment, Resources and Development Court or some other judicial authority" if there was disagreement about future use and status of land (park lands),[4] or if dispute arose about "... decisions regarding ongoing use of land by the Crown, and decisions to retain land, [which] should also be able to be referred to a judicial body to determine the matter in the event that the Council and the Crown disagree. This would give public assurance that such decisions would be open to independent scrutiny."[5]

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4 ACC, op. cit., 17 October 2000, observation #35, page 8.

5 ACC, op. cit., 17 October 2000, observation #47, page 9.

The Rann government wrote the *Adelaide Park Lands Act 2005* to include opportunity to review certain matters through parliament's Environment Resources and Development Committee. However, there was still a place for appeals to the Environment Resources and Development Court of South Australia, but a development application would have to be classified under the *Adelaide (City) Development Plan* as a 'Category 3 non-complying' proposal. Not many Category 3 park lands proposals arose subsequent to the passing of the 2005 Act, because before a state development application for a major development project was lodged, if it were likely to be classified 'Category 3' then to avoid that either the city council or the planning minister would trigger a development plan amendment to ensure that, instead of being classified as Category 3 it would be classified under a complying category, such as Category 2, or ideally, Category 1, which would not even require public consultation. Under the 2005 Act the state government also maintained consolidated government control over a new Adelaide Park Lands Authority. The Act placed the Authority (a council subsidiary) under the control of the minister administering that legislation. Moreover, while the parliamentary ERD Committee could be an 'instrument of appeal' in the event of a park lands land-use dispute, its teeth depended on the political will of the government of the day. History records that city council approaches to it generally failed to obtain any fair remedy.

The council also had reservations about the ongoing capacity of the government to make certain regulations.[6] The matter was the potential exploitation by a minister of regulations relating to park lands development projects, and would continue to be after the passing of the *Adelaide Park Lands Act 2005*. This was because some regulations left the way open to implement park lands changes in ways that regulations ought not properly be used. For example, a change to a regulations schedule would be later used to enable under the *Adelaide (City) Development Plan* construction of the Adelaide Convention Centre (West) in 2011, without which that development project may not have been progressed.[7]

2) The city council noted that "... the right to approve the installation or extension of ... infrastructure is vested in the ERD [state parliamentary] Committee. It is recommended that the council should also have a role as an approving authority."[8] This may have been a step forward, had it been embraced, but it was not.

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[6] ACC, op. cit., 17 October 2000, observation #45, page 9: "... and prescribe other facilities of a class, other than infrastructure used in connection with the supply of water, electricity, gas, energy or drainage or treatment of water or sewerage, [these] should be removed due to [their] open-ended nature."

[7] See this work's Chapter 32: 'Western park lands development vision expands east, and, in particular, this work's Appendix 18: 'How the 2011 Convention Centre development legals had been managed'.

[8] ACC, op. cit., 17 October 2000, observation #46, page 9.

APPENDIX 17

Case study: *South Australian Motor Sport Act 1984*

FEATURES	COMMENTS
What	• *South Australian Motor Sport Act 1984* (formerly *Australian Formula One Grand Prix Act 1984*). The legislation authorised an annual, five-day, city road race that accessed part of the east park lands. • The original intention in 1984 was that a Grand Prix race would be a one-off Jubilee 150 state event. The *Australian Formula One Grand Prix Act 1984* was passed in December 1984. The first race was held on 3 November 1985.[1] • An early example (well ahead of the study period of this work) of project-oriented development legislation, whose effect can overwhelm other related legislative checks and balances – in this case relating to the Adelaide park lands. • The road race could not have been held without substantial access to the park lands, not only for track reasons, but also for temporary construction of race facilities and grandstands.
Park land area	A park land location as a 'declared area' and 'declared' period, covering sections of Park 16 in the park lands zone (Victoria Park), bounded by Wakefield Road and Fullarton Road, Rose Park.
Beneficiaries	• During the first 10 years, when the glamour and excitement of the Grand Prix event held sway, both Labor and Liberal government administrations basked in the international publicity that the event delivered. • Participants included members of the South Australian Motor Sport Board (until 30 June 2015[2]), and as many as 100,000 motor sport enthusiasts per day of the event (not more than five continuous days permitted under the Act).
Cost	• **The event:** Difficult to establish as an unambiguous, defining sum via state government sources for either the Grand Prix event (1985 to 1995) or the subsequent Clipsal 500 and Adelaide 500 events. Financial analyses provided to state parliament by academic agencies or the state government administrations over this time used 'economic benefit'

[1] Source: Foreword and Preface, in Burns, J, et al, *The Adelaide Grand Prix, The impact of a special event*, (eds: Burns, J, Hatch, J and Mules, T), The Centre for South Australian Economic Studies, 1986.

[2] The functions and legal obligations of the board were transitioned into the South Australian Tourism Commission on 1 July 2015. Since that date, the SATC has been the body corporate responsible for the management of the race event, in terms of the study period of this work, concluding at year-end 2018.

FEATURES	COMMENTS
Cost *(continued)*	summaries and 'job creation' figures to review the worth of the race, but cost-benefit analyses revealing the bottom-line cost to the state were not definitive after the inaugural 1985 event.[3] • **A proposed (2007) permanent building and race infrastructure:** $33m. (This was never constructed, and subsequent events continued the use of temporary infrastructure.)
Historical relevance in the context of a 1998 to 2018 study	Although this event began 14 years before this work's period of study (1998–2018), aspects of the 1984 legislation (as amended) came under fresh scrutiny in 2006 and 2007 when a state Labor proposal emerged to construct a major new permanent building ('multi-purpose grandstand') and other infrastructure at Victoria Park for the primary benefit of the car race. Another (former) long-term lessee, the SA Jockey Club, which also had used Victoria Park for horse racing for well over a century, was also anticipated by the state government to benefit via use of the permanent building and related infrastructure. A late 2007 government bid promoting the grandstand proposal failed to get endorsement for a site lease from the Adelaide City Council. Details are contained in this work in Chapter 25: 'The ecstasy and the treachery', and Chapter 26: 'The 'rotting albatross' of Victoria Park'.
Park lands management features	Adelaide's conservative caution about park lands management in the early 1980s was quickly set aside when an opportunity to host the internationally famous Formula 1 racing event under licence was made available to the Bannon Labor state government. The December 1984 fast-track passing of the necessary legislation was controversial, but opposition was quickly overwhelmed by South Australian parliamentarians' desire to attract the world-famous race to the streets and park lands of Adelaide. It capitalised on South Australia's economic and cultural cringe (in a national sense) and the potential for international publicity that the race might attract to a small southern Australian capital city. Significant concessions were extended to Grand Prix organisers during their decade in Adelaide (after which it moved to Victoria). The Adelaide

[3] A detailed 1986 study that examined the financials of the first Grand Prix race in 1985 presented a useful analysis, in: *The Adelaide Grand Prix, The impact of a special event*, (eds: Burns, J, Hatch, J and Mules, T), The Centre for South Australian Economic Studies, 1986 – see especially its Chapter 10, part 4, 'The financial results of the Grand Prix Board', pages 191–195. It stated "the event on its own, without the direct injection of public funds [revealed in that chapter to total $11m], made an operating loss of $2.616m … To take a parochial view … the event 'cost' the state $2.6m ..." (page 191).

FEATURES	COMMENTS
Park lands management features *(continued)*	events were widely speculated to run at a loss to the state. A small but vocal constituency, especially the families living close to the race site, maintained a long-running objection to the event and especially to the use of the park lands. But their voices were easily overwhelmed by the race attendees, as well as the state government, whose ministers could only see the potential for economic benefit. The Grand Prix events ceased after 1995 and, after a three-year hiatus, were replaced by the 'Sensational Adelaide' car race. Later it was badged as Clipsal 500. At the same time the state's concessions to race organisers were reduced. Financial risk, which until then had been assumed by the state government, was transferred to the organisers. In management terms, no other event exploited the park lands location as blatantly and as comprehensively as did this ear-splitting motor race that ran for only three days but locked out local east park lands users for up to six months annually while fenced infrastructure, grandstands and pit facilities were erected, then dismantled.
Park lands relevancies	A 1980s example of the use of park lands for state economic benefit, using fresh legislation to sweep aside traditional legislative checks and balances that once blocked the very activities the government wanted to allow at the site. In reality, while the benefit was claimed to be significant economic activity, without major commonwealth and state funding the race would not have been feasible. The South Australian Motor Sport Act was a classic example of project-oriented development legislation – and with a twist – installation of extensive but *temporary* infrastructure and fencing. (The legislation prohibited the installation of permanent infrastructure.) The race legislation was originally anticipated to expire in 1992, but successive government administrations – Liberal and Labor – continued to extend the period via amendments to the Act. Most exploitatively, the Act provided for the overriding of significant other legislation relating to the park lands, laws that in many ways preserved the park lands ambience, and restricted access to the park lands for commercial purposes. That legislation included the *Environment Protection Act 1993* (including the former *Noise Control Act 1977*), the *Local Government Act 1999*, *Road Traffic Act 1961*, and the *Development Act 1993*).

FEATURES	COMMENTS
Park lands relevancies *(continued)*	One small but telling indication of the complete assumption of control over the park land site by the Motor Sport Board during the 'declared period' is captured in a section of the Act which describes the board's right to total 'care, control' of the declared area, with roads 'ceasing to be public roads' and the board to have 'free and unrestricted access' to the land. Even when the annual 'declared period' ended, this authorisation endured in practice for months at Victoria Park as infrastructure was very slowly dismantled. The infrastructure demands on site managers before and after the declared period meant that substantial perimeter fencing restricted local families from the park site for up to six months while construction or deconstruction teams were active.

Further reading

For a detailed legislative record of this event, readers are urged to read 1984 extracts from *Hansard,* the record of debates in South Australia's state parliament. Some of the debate themes would recur in later years as each subsequent proposal to exploit the park lands arose. The state Bannon Labor government was also responsible in 1984 for initiating significant development designated as the Adelaide Station Environs Redevelopment (ASER) project, adjacent to the city's railway station. Under that project the station was redeveloped as a casino. The land, which had been built on for many years, remained technically land designated as park lands.

APPENDIX 18

How the 2011 Convention Centre development legals had been managed

While the Rann government was telling the people of South Australia one thing in 2005, within a short period later it would be telling something else to the authors of amendments to regulations schedules of the Development Act 1993 *as it interacted with the* Adelaide Park Lands Act 2005. *This approach could be distilled into one sentence: 'All park lands sites are equal, but when it comes to big state construction priorities, some park lands sites are more equal than others'.*

This appendix follows on from Chapter 32: 'Western park lands development vision expands east'.

The approach observed in 2011, crafted by the Labor state government to enable construction of a huge new building on a site designated as park lands west of the city, illustrated the high level of legal complexity that lay behind some public land encroachments. It also vividly illustrated that while government assurances in public implied one thing, behind the scenes bureaucrats and parliamentary counsel were occasionally prevailed upon to create the means to achieve contradictory outcomes.

The ease with which the state managed to fast-track early discussions about a development concept for construction of a new Adelaide Convention Centre (West) on land labelled 'Institutional (Riverbank)' but designated as park lands was in part highlighted during 2011 board meetings of the Adelaide Park Lands Authority. But the complicated machinations, which went back some years, could only be clearly tracked and understood by teasing out the political threads of the past.

They indicated that, a short while after the Adelaide Park Lands Bill 2005 was debated in parliament in late 2005, the state government had contemplated how to manage potential hurdles within its provisions that would have potential to thwart development project restrictions on land designated as park lands. This was especially in terms of use of land in certain 'Institutional' zones, close to the city CBD. These discussions would have incited much public controversy had they been held in the public domain at the time. The ministerial speeches in 2005 had been peppered with references to the importance of disabling certain park-lands-related development project powers that existed under then planning legislation (the *Development Act 1993*) that had allowed previous governments – both Liberal and Labor – to build big on park lands, prompting much public criticism.

Labor's ministers stressed their commitment to avoiding a repeat of those previous projects. For example, in the 15 September 2005 second reading of the Adelaide Park Lands bill in state parliament's Legislative Council, Labor Planning Minister, Paul Holloway MLC, had said:

> "The bill also provides key consequential amendments to a range of other Acts; in particular the *Development Act 1993* ... The changes to [that] legislation will prevent future governments using either the Major Project, Crown Development or Electricity Infrastructure development powers to provide ministerial development approval within the park lands."[1]

More specific information was provided two months later by Environment Minister, John Hill, in the House of Assembly in November. He had said:

> "Clause 5 amends section 49 of the *Development Act 1993* by inserting two new subsections. Proposed subsection (18) provides that section 49, which deals with Crown development, does not apply to development within the park lands. However, proposed subsection (19) allows for the making of regulations under subsection (3) of section 49 with respect to development within the park lands that, in the opinion of the Governor, constitutes *minor works*." [Emphasis added.][2]

Allowances for 'minor works' only

Regulations were written in relation to section 49. Bureaucrats' advice to government ministers in December 2006 had noted that the regulations allowed for only "minor works ... [of which] None involve construction of new buildings or equipment unless underground."[3] This unequivocal clarification was sent through ministers' offices to all relevant government departments.

But five years later, in 2011, the Adelaide Park Lands Authority (APLA), whose board members had assumed that the Montefiore Road land adjacent to the western park lands was inaccessible for Crown development purposes, were prompted to explore development allowances relating to the proposed Adelaide Convention Centre (West) project. They would learn that government planners had already anticipated the hurdle, and years earlier created a loophole to find a way around it. The Authority reproduced in its 12 May 2011 agenda paper an excerpt from section 49 of the *Development Act 1993* ('Crown development and public

1 Parliament of South Australia, *Hansard*, Legislative Council, 'Adelaide Park Lands Bill 2005', 15 September 2005, page 2558.

2 Parliament of South Australia, *Hansard*, House of Assembly, 'Adelaide Park Lands Bill 2005', 24 November 2005, page 4155.

3 Government of South Australia, Minutes to Minister for the City of Adelaide, 'Changes to development controls in the Adelaide park lands', 6DEC4214, Hon Gail Gago, 10 December 2006, 'Change in application of development powers and procedures in park lands', page 2.

infrastructure') which showed that a second sentence had been added to the schedule of the regulations sometime after 2005. It read:

> "(b) so as to exclude from the operation of this section development within any part of the **Institutional District of the City of Adelaide** that has been identified by regulations made for the purposes of this paragraph by the Governor on the recommendation of the Minister." [Bold emphasis added.][4]

It would have been useful – indeed critical – to help amateur readers better understand what this meant, had parliamentary counsel qualified that clause with an explanation that the 'Institutional District of the City of Adelaide' was under the care, control and management of the state government – not the city council. As such, matters relating to it were out of council's hands, and subject only to ministerial direction. The fact that it was land designated as park lands appeared to be immaterial.

The minister confesses

A letter sent to the Authority a month earlier on 12 April 2011 by recently installed Planning Minister, John Rau, had contained the confession that "the introduction of the regulation was contemplated at the time the *Adelaide Park Lands Act 2005* was prepared".[5] The date when this had occurred was not revealed. Rau, who had only very recently become Planning Minister, was confirming that the government had made an 'about-face' at the time, or at least soon after the *Adelaide Park Lands Act 2005* had been fully brought into operation (end of 2006). There had never been any public notice about this. Why would the state have made clear that a fresh loophole had been inserted for activation for Crown development purposes on this land at some future time? It would have been especially risky at a highly sensitive time, with the Act's proclamation occurring just months ahead of the March 2006 state election. It had been a period of broad ministerial acclamation about Labor's major achievement, the passing of new legislation to forever 'protect' the park lands from major construction projects and the disabling of certain provisions to underscore that commitment. Minister Rau's 2011 letter excuse was one of the state's more candid rationales describing government creation of the legal loophole, invisible to the populace at the time. In his 2011 letter he acknowledged that the intent was that: "... in ordinary circumstances development by a state agency could not be assessed as Crown development", but he said that the government "needed flexibility to retain Crown development

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4 Adelaide Park Lands Authority, Agenda, Item 5, 'Adelaide Convention Centre', 'Regulation required to enable development', 'Attachment C', 12 May 2011, page 17.

5 Government of South Australia: Deputy Premier, letter, John Rau to [Adelaide Park Lands Authority executive officer] Martin Cook, 12 April 2011, page 1, as found in: Adelaide Park Lands Authority, Agenda, Item 5, 'Adelaide Convention Centre', 'Regulation required to enable development', 12 May 2011, page 13.

powers within the park lands in certain situations." The 'situation' in this case was "key strategic initiatives that would help drive economic development of the state".[6]

Such a useful word, 'flexibility'. It is rather like another government favourite used in relation to the park lands – 'enhance'. No-one is quite sure what either word means, until there is an urgent political necessity to use one or the other.

Rau's letter illustrated that the Labor government's 2005 parliamentary view that all park lands sites should be 'protected' from Crown development projects had profoundly changed with regard to some park lands sites – and fairly quickly. The restriction to only 'minor works', so effusively championed in Labor's 2005 parliamentary debates as a 'protection' provision, had later been quietly amended to allow a major construction project of vast bulk and scale on this section of the park lands. The nominated site may have been under the specific control of the state, through the minister, but the minister still needed to consult the Authority, and the city council. Perhaps one reason why parliamentary disallowance of the change to the regulations schedule had not occurred at the time it was made could have been that when opportunity for disallowance came up, no-one from the government had flagged to the parliament what a planning minister might have had in mind for future park lands sites, especially this one. Had the minister done so, closer scrutiny may have resulted.

All of this illustrated that while the Rann government was telling the people of South Australia one thing in 2005, within a short period it would be telling something else to the authors of amendments to regulations schedules of the *Development Act 1993* as it interacted with the *Adelaide Park Lands Act 2005*. This approach could be distilled into one sentence: 'All park lands sites are equal, but when it comes to big state construction priorities, some park lands sites are more equal than others'.

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[6] Government of South Australia: Deputy Premier, letter, John Rau, ibid.

APPENDIX 19

Eight pavilion case studies

1. **CASE STUDY –** Park 10, north-east park lands, University of Adelaide, pavilion, 2011
2. **CASE STUDY –** Park 9, north-east park lands, Prince Alfred College Old Collegians, pavilion concept, 2015 (amended concept plan not publicly available at year-end 2018)
3. **CASE STUDY –** Park 24, west park lands, Adelaide Comets Football Club and Western Districts Athletics Club, pavilion, 2016
4. **CASE STUDY –** Park 25, west park lands, South Australian Cricket Association, pavilion, 2016
5. **CASE STUDY –** Park 1, Torrens-River-edge park lands, Tennis SA, pavilion, 2017 (under construction at year-end 2018)
6. **CASE STUDY –** Park 22, south park lands, concept plan for a 'community sports hub', 2017
7. **CASE STUDY –** Park 21 West, south park lands, concept plan, pavilion, 2018
8. **CASE STUDY –** Park 20, south park lands, Pulteney Grammar, pavilion concept, 2018

Between 2011 and 2018, theoretical attempts to limit park lands sports pavilion footprint or floor-area expansion, or to avoid creating new or expanded allowances for car parking on park lands, were mostly compromised. These compromises were supported at Adelaide Park Lands Authority board, Adelaide City Council, and Council Assessment Panel stages.

The determination by these bodies to compromise was influenced by broad but often ambiguous 'action' statements in versions of the *Adelaide Park Lands Management Strategy* (2010 and 2016). Assessors relied heavily on this policy source, as well as the *Community Land Management Plan* and the city council's 2008 architectural reference *Park lands building design guidelines*. However, significant additional influence also came via the arguments of skilled legal and planning advisors contracted by most development applicants. Their expansionist rationales drew on various council policy sources for their legitimacy, but in particular, relied on their interpretation of the *Adelaide (City) Development Plan* contents regarding the relevant policy area in the park lands zone. Another key influence was the city council's 2014 *Sports Infrastructure Master Plan*, which presented pavilion and grounds upgrade concepts for various south and west park lands sites. It did not appear to matter that it had never been fully endorsed by the council or the state government because of unresolved governance and tenure arrangement issues.[1]

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[1] Details appear in Chapter 38: 'Private investment in the park lands'.

Close attention was paid to the park lands policy area's Desired Character and Principles of Development Control provisions of the *Adelaide (City) Development Plan*, not only for fundamental planning compliance reasons, but also for tactical reasons. If a proposal was determined to comply with most plan aspects, there was a high probability that it would be classified as 'Category 1' ('complying' status), which meant that no public consultation was legally required during the development application assessment procedure. This was convenient for everyone: applicant and assessor.

The council's 'amnesia' problem

Public complaint about the 2011 authorisation to construct the University of Adelaide pavilion at Park 10 (adjacent to MacKinnon Parade, North Adelaide) without public consultation prompted the city council in 2016 to change its approach to future pavilion applications.

> "Whilst not a legislative requirement, it is clear that residents want the opportunity to provide feedback on a building concept in the park lands. The development approval process should therefore not be relied upon to trigger this engagement, with public consultation undertaken on all future developments in the park lands whether it is a legislative requirement or not."[2]

But in assessing subsequent building concepts, the council, or its subsidiary, the Adelaide Park Lands Authority, occasionally 'forgot' to apply the new policy. The evidence in those cases suggested that the amnesia was not accidental. It meant that the public was denied opportunity to comment. For example, there was no 2017 public consultation about the $9.8m Tennis SA development proposals for Parks 26 and 1. That particular case study appears in this appendix.

Development themes of the 'pavilion era'

The broad theme evident in these case studies was that there was a political will at this time to encourage sports pavilion development across the park lands, and this was embraced at Adelaide Park Lands Authority and city council levels, capitalising on myriad loopholes and exceptions, as well as ambiguities in park lands policy documentation. These could be widely interpreted, and were.

Category 1 – 'confusion as strategy'

If a proposal reached the Development Assessment Panel and had been classified by the panel ahead of time as Category 1 (a commonplace procedure), there would be no legal requirement to conduct public consultation about it. This highlighted the manifestation of the *Adelaide (City) Development Plan's* wisdom (or not). It was an instrument of the same planning law that applied to new building proposals anywhere in the City of Adelaide. In terms of categories for assessment purposes,

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[2] Adelaide City Council, Strategy, Planning and Partnerships Committee, 'Park 10 findings and their application', Out of Session paper, 8 November 2016, page 534.

park lands dirt was the same as dirt anywhere else in the city. For the public to question that wisdom, it would have had to challenge the contents of prior development plan amendment procedures undertaken in relation to park lands policy areas, finalised sometimes years earlier. This could (and did) pitch a curious public into a highly complex planning-focused analysis, necessitating the probing of the language used to define 'desired character' and 'principles of development control', and definitions of what constituted 'complying' and 'non-complying' development. In some cases, what the public thought the planning language meant was not what planners knew it meant. It might only be by the time a pavilion proposal finally came to the Development Assessment Panel that the public would see how panel administrators, and experts on the panel, interpreted the planning jargon. Of course, the proposal would have been also closely scrutinised by expert private planners ahead of time, contracted on behalf of the commercial applicants – schools, associations and clubs. Expert advice ensured that most development applications were crafted to address and comply with most of the critical development plan criteria. Moreover, the long history of development panel assessments shows that, when some minor development application matters prompted hesitation, most commonly the eloquent rationales of well-paid planners and their lawyers usually led to what was sometimes described in the panel's minutes as an 'on-balance' compromise to approve.

Ambiguous limits on footprint and floor area expansion

The 2016 *Adelaide Park Lands Management Strategy 2015–2025* presented much ambiguous wording in its Strategy 1.4 section – the one that most counted in relation to built form on the park lands. It read: "Achieve least possible footprint and floor area whilst ensuring facilities are fit for purpose." The words 'least possible' are meaningless, and are qualified by the second half of the sentence. In all of the pavilion proposals seen during this period, the 'fit for purpose' rationale addressed not only what the proponent was legally required to develop under the Building Code, such as separate and more numerous men's and women's toilets and shower facilities, as well as facilities enabling easy disability access (under disability legislation), but also other aspects. The 'other aspects' of the rationale would be based simply on what the proponent desired, regardless of the requirements. In the case studies in this appendix that reached development application stage, each featured proposals for expansive areas for social event catering, including food preparation facilities with potential for dispensing liquor in association with a liquor licence. This manifested in architects' drawings with many showing expansive pub-style facilities, including dining and entertainment areas. Moreover, in one of the pavilion applications, space for a commercially run gym also appeared. It was approved.

The concept of 'shared use'

Almost all of the new pavilion concepts that emerged between 2011 and 2018 came about as a result of city council policy encouraging expansion of *shared-use* park lands sites for expanded sport activity. This then encouraged consideration of provision for either new, or expanded, spaces for off-street car parking at selected

sites on park lands because of anticipated significantly increased numbers of site users. Despite this, some policy suggested that car parking allowances on the park lands should be decreased.

Over the period, some Authority or city council documentation began to discourage previous allowances for cars to be randomly parked on other parts of the park lands, and support creation of specifically located car parking spaces, at new, gravel-based sites, as opposed to the older, hard-stand sites. Policy discouraging parking on the park lands was most evident in the *Community Land Management Plan* (CLMP, comprising separate plans for each park or cluster of parks) as a result of revisions of the former first tranche of CLMPs (2004–09). Despite this, some applicants still succeeded in obtaining permission to create expansive, hard-stand (bitumen-surface) car parks adjacent to their pavilions. The SACA pavilion in Park 25, discussed in this appendix, was a good example.

The 'not-lost-to-park lands' rationale

Adjacent to many of the old club facilities, or their new pavilion replacements, are playing courts and sports pitches. In 2018 the city council's administrative views changed about whether expansion of such hard-stand area in the park lands effectively meant a loss of park lands. Until that year, the broad view was that any assumption of park lands for something other than open-space use would be recorded as a loss of park lands area. But in June 2018 the notion of hard-stand footprint expansion being defined as a loss of park lands was suddenly and paradoxically deemed by an Adelaide Park Lands Authority administrator to be defined as 'no loss'. As noted in an appendix to this work[3], the matter turned on the meaning of the word 'loss'. According to the Authority analyst's view, recorded in an agenda paper published in June 2018: "... loss or alienation of park lands is defined as a loss of publicly accessible space, including, generally, permanent car parks." But he then added a significant qualifier: "Sports buildings, courts and other sporting facilities, restaurants, kiosks and paths are not considered as a loss of park lands."[4]

This was particularly curious, given that sports buildings, commonly described in this appendix by architects as 'pavilions', would rarely be open to daily public access, although their toilet facilities would be at times. But most of the time the pavilion would be open only on play days to members of the club or association. Public access would be restricted to 'invitation only'.

The remainder of this appendix explores eight pavilion case studies.

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[3] See: Appendix 1, 'The 'lost' park lands and the administrator's magic trick routine'.

[4] Adelaide Park Lands Authority, Board meeting, Agenda, Item 7.2, 'State of the park lands', 21 June 2018, page 31.

1. CASE STUDY

Park 10, north-east park lands, University of Adelaide, pavilion, 2011

FEATURES	COMMENTS
What	Two-level sports pavilion described as 'clubrooms', but featuring food and bar facilities and entertainment space overlooking the park lands. Planning application November 2010; approval September 2011; project completed September 2014.
Park land area	Park 10, adjacent to MacKinnon Parade, North Adelaide.
Beneficiaries	Adelaide University Sports Association.
Cost	Not revealed in the planning application.
Historical relevance in the context of a 1998 to 2018 study	One of the first major park lands pavilion developments in the post-2010 period, when proposed 'sports buildings' project concepts were increasing in footprint, floor area, height and scale. This university pavilion overwhelmed the scale of other existing buildings at the site. It also exceeded the park lands policy footprint 'like-for-like' implied protocol. The old buildings (single-storey, scattered over a wide adjacent area) covered a total footprint of 352sq m; the proposed new building (two-storey) footprint was 378sq m. One of the old buildings was never demolished as pledged to address the excessive footprint problem. It meant that the footprint differential assessment was even larger than claimed – but by then the development had been approved and constructed.
Park lands management features	• This development, and the process that addressed it, highlighted a procedural loophole. Public consultation would be triggered only under assessment via the *Adelaide (City) Development Plan* if the proposal were deemed 'non-complying'. But this was deemed 'complying', Category 1 – which meant that there was no requirement for public consultation. • That meant that most adjacent communities had no idea that there was a university plan in 2011 to construct a large pavilion at the site (or to demolish existing buildings to partially address the footprint 'protocol') until after planning assessment procedure had approved it and the university began construction. Some related consequences of this development are covered in detail in this work in Chapter 47: 'The footprint numbers game'. • Public complaint about this outcome – and the size and location of the pavilion – prompted the city council to adopt new November 2016 policy to change its approach to future pavilion applications, and publicly consult. This sounded promising, but subsequent consultation didn't always occur. Moreover, Adelaide Park Lands Authority assessments of post-2012 applications for pavilions in the park lands would not necessarily point to footprint assessments, because these

1. CASE STUDY *(continued)*

FEATURES	COMMENTS
Park lands management features *(continued)*	metrics were required to be assessed only at development assessment stage – well after Authority or council in-principle approvals. (The Authority was not a planning application assessment agency.) This illustrated another early procedural loophole – the public did not necessarily know how much bigger the new pavilion's footprint would be until very late in the procedure, and if the application was determined to be Category 1, there was no legal requirement for the public to be consulted.
Park lands relevancies	• The city council's Development Assessment Panel summary for the university development application (third and final approval stage) concluded with what in hindsight might be determined one of the stellar examples of park lands planning jargon published during the period: "The overall design of the building, whilst elevated, is such that the bulk and scale of the building is sufficiently reduced with an appropriate level of articulation and interest in the facades. The external finishes provide for a balance between robustness and low maintenance whilst allowing the building to sufficiently recede into the existing landscaping that surrounds the building on three sides."[5] In fact, the only landscaping was a large Moreton Bay fig tree to the building's west (two significant trees had been cut down to make room for the building). The fig tree hid the bulk from sight from busy Frome Road, a convenient outcome for the university. • Any visitor to the site today cannot but be overwhelmed with the scale of the building and its domination of the flat adjacent landscape. Today it remains an example of post-2007 'pavilion principality on the park lands', a glass, steel and mortar eruption of contrasting built form adjacent to a vista of wide playing fields otherwise uninterrupted by anything other than large eucalypts at the edges. Its form makes clear to visitors that while the site is public land, it is metaphorically 'owned' by the university for university purposes. The post-2012 42-year lease gave this 'principality' teeth, and access by other non-university sports practitioners was tightly controlled. More detail appears in this work's Chapter 47: 'The footprint numbers game'. **Key source reference:** Development application assessment: Adelaide City Council, Development Assessment Panel, Item 3.7, Warnpangga Park, MacKinnon Parade, North Adelaide SA 5006. [Demolish 4 buildings, remove two significant trees, construct new clubrooms, install underground water tanks and site works] DA/1026/2010 [DA] (F/DA/1026/2010, DJD), 5 September 2011 (22 pages).

[5] City of Adelaide Development Assessment Panel, Agenda, Item 3.7, Warnpangga Park, MacKinnon Parade, North Adelaide SA 5006, 5 September 2011.

2. CASE STUDY

Park 9, north-east park lands, Prince Alfred College Old Collegians, pavilion concept, 2015 (amended concept plan not publicly available at year-end 2018)

FEATURES	COMMENTS
What	Prince Alfred Old Collegians Association (PAOCA) proposal for a new sports pavilion. Not constructed as at year-end 2018.
Park land area	Park 9, adjacent to MacKinnon Parade, North Adelaide.
Beneficiaries	Prince Alfred College and the Prince Alfred Old Collegians Association.
Cost	$2.5m when announced in July 2015.
Historical relevance in the context of a 1998 to 2018 study	A new pavilion proposed for a park lands sports ground whose bulk and scale would, when built, dominate the landscape, significantly exceeding the bulk and scale of existing single-storey buildings at the site. The original 2015 plan also indicated that it would exceed the existing buildings' footprint (540sq m proposed, compared to existing 360sq m). This was later amended to more closely mirror the existing footprint, but at year-end 2018 the applicant had not reached development approval stage, so the final dimensions remained unclear.
Park lands management features	• The proposal was subject to confidential talks through 2014, was announced in July 2015, but was stalled on various grounds – including an excessive proposed building footprint – for several years beyond the study period of this work, year-end 2018. • A council-sourced architectural principle in the July 2015 documentation highlighted how the new building aimed to "encourage the introduction of more informal and non-traditional sport and recreational facilities".[6] This was code for a feature that applied to several other pavilion concepts at the time, envisaging future social, non-sport and liquor-licensed activities. At the time, PAOCA held a lease for the 5.7ha park lands Park 9 site, having occupied the site since 1991 and funded various facilities there. In conjunction with the proposed new concept, it sought a new 42-year lease (21+21 years), and anticipated sub-leasing to at least two other sports groups, as well as casual hire to the public, but only when sub-lessees weren't using it. • A measure of the extensive financial commitment behind the proposal was illustrated by PAC's 2015 $2.5m funding plan. It would comprise $800,000 from donors (a major donor and sponsor donors), $400,000 from government and grants ("AFL, Rec & Sport and Adelaide City Council"), $650,000 from sporting clubs/grassroots fundraising, and

[6] Adelaide Park Lands Authority, Agenda, Item 6, 'Enhancement of Tidlangga (Park 9)', 23 July 2015, Attachment E, 'Prince Alfred Old Collegians Association (PAOCA) proposal', Sports Infrastructure Master Plan, Principles, page 110.

2. CASE STUDY *(continued)*

FEATURES	COMMENTS
Park lands management features *(cont)*	another $650,000 from "PAC community organisations, PAC, PAOC Association and Old Scholars Sporting Clubs".[7] It is not surprising that it wanted a lease long enough to last at least two generations.
Park lands relevancies	In November 2015, significant changes were introduced to the city council's lease and licensing policy, which were even more favourable to groups pursuing future park lands pavilion development proposals than they had been previously. Additionally, within the city council's administration there had been for some years subtle changes in its so-called discipline about footprint limitations for new proposals. The changes were mainly semantic, but important strategically for applicants. For example, where once park lands policy demanded that proposed pavilion footprint must not exceed existing buildings' footprint (after those pre-existing buildings had been demolished), by 2015 policy and planning policy was beginning to hint at semantic loopholes. One clear indication appeared in late 2016, after the council had signed off the *Adelaide Park Lands Management Strategy 2015–2025*. In an 'out of session' paper reflecting on park lands pavilion development – past and future – the council wrote: "10. The sports building proposal for Tidlangga (Park 9) aligns generally and specifically with the Active City Strategy in relation to: (10.5) Seeking to establish a new fit for purpose facility to improve public amenities that service the playing field and adjacent activity hub, whilst also recognising that the footprint should be kept to a reasonably minimal level (*noting that sometimes this may be greater than the footprint of the pre-existing building*) [emphasis added].[8] That italicised text – and its ambiguity – said everything. The original 2015 proposal is covered in detail in the agenda papers of the Adelaide Park Lands Authority, Agenda, Item 6, 23 July 2015, pages 10–131. It would reappear later that year in city council agendas (including those for the Strategy, Planning and Partnerships Committee, 1 September 2015, pages 1–202) and subsequent post-2018 Authority agendas before seeking council in-principle approval of the concept, which would then lead to development assessment some years later. Note that investigation into whether a proposal complies with the footprint 'protocol' is not a matter to be addressed or, most particularly, resolved at Authority or city council stages, although administrators were free to comment. For determination purposes, the matter would fall to the Council Assessment Panel (the former Development Assessment Panel), the last stage of assessment.

7 Adelaide City Council, Agenda, Strategy, Planning and Partnerships Committee, Item 11, 'Enhancement of Tidlangga (Park 9)', Capital investment, 1 September 2015, page 198.

8 Adelaide City Council, Strategy, Planning and Partnerships Committee, 'Park 10 findings and their application', Out of Session paper, 8 November 2016, page 534.

3. CASE STUDY

Park 24, west park lands, Adelaide Comets Football Club and Western Districts Athletics Club, pavilion, 2016

FEATURES	COMMENTS
What	Pavilion: Described by the Adelaide Park Lands Authority as: "Community Activity and Sports Building".
Park land area	Park 24, west of the city, south of the Adelaide High School.
Beneficiaries	Adelaide Comets Football Club and Western Districts Athletics Club – and others likely to either sub-lease or share pavilion facilities, or access separated gym facilities in the same building.
Cost	• $2m, but later rose to an estimate of $3.5m to accommodate the council-preferred pavilion concept. Land contamination clean-up requirements added another $200,000. • Lease rent: peppercorn fee (standard fee but discounted 80 per cent: see below).
Historical relevance in the context of a 1998 to 2018 study	• This proposal followed the pattern set by other club proponents in this period who sought to demolish older and ostensibly no longer 'fit-for-purpose' buildings and replace them with new facilities. The ground footprint of the three existing buildings at this site totalled 489sq m. • This example highlighted how Authority and council assessors' contemporary fixation with footprint area compromised their judgement as to the extent that demolition of three ageing single-storey buildings gave way to construction of a much higher two-storey building (of the same ground footprint area, but significantly expanded in total floor area). This was because of the two storeys, and significantly larger bulk form, to accommodate fresh activity that was not directly related to the sporting purposes of the original park lands buildings. • The council decision endorsed a 'grandstand' concept that was not a feature of the older buildings. • The project highlighted how state government funding could be found to pay for the club's new facilities, and how council funding would pay for associated landscaping, roadway and car parking spaces – for the benefit of two commercial clubs and future sub-lessees, as well as a state school adjacent to the site. • It also highlighted government participation in the Authority decision-making, including revelations of 'perceived conflicts of interest' but which did not prevent government-nominated Adelaide Park Lands Authority board members from voting. (More discussion follows these notes.) • A policy loophole allowed the clubs to retain the site without needing to participate in a rigorous expressions-of-interest procedure that had been recently adopted by the council. (More below.)

3. CASE STUDY *(continued)*

FEATURES	COMMENTS
Historical relevance in the context of a 1998 to 2018 study *(continued)*	• Proposed pavilion concepts during this period were based on new concepts, one of which was described in 2017 by the Adelaide Park Lands Authority as: "Multi-purpose community space to support the social value that sport delivers and to allow for use by non-sporting groups."[9] This was code for club social entertainment space likely to be associated with food sale and a temporary or special circumstances liquor licence. Without this new recreational focus, the pavilions built during this period would not need to have been so big. Excepting the entertainment space, the basic requirement was change facilities, toilets, first-aid space and storage. However, in this particular case, even more additional space was sought for a wall-separated gym, to be "accessible to various community groups ..."[10] Potential receipt of associated revenues arising from public use of the gym, to be collected by the building's lessees, was not addressed. These features underscored that the new proposal sought a significantly expanded park lands building for significantly expanded purposes, some of which had commercial potential. • The Comets' site lease and oval licence was to expire within three months, by 31 May 2017, with Western Districts' lease to expire on 31 August 2017. Both clubs indicated they wanted a fresh park lands lease and licence to be able to use surrounding open space. They claimed that approval of the lease arrangements would allow them to obtain pavilion funding, using the lease as equity. However, relatively recent amendments to the council's Park Lands Leasing and Licensing Policy required a call at the initial stage for expressions of interest from other parties "where vacant land or buildings are involved".[11] This new policy had arisen in 2015 as an equity matter, allowing for the breaking of long periods of park lands occupation by one club or group of clubs, and opening up opportunities for newcomers. But there was a loophole. The new policy did "allow for deviation from this principle in exceptional circumstances".[12] The 'exceptional circumstances' (loopholes) were identified by the Authority. One was that the clubs had already spent $20,000 developing the proposal and concept over the previous year. Secondly: "The proposal demonstrates the opportunity for external investment and shared funding models deemed vital in the

[9] Adelaide Park Lands Authority (APLA), Agenda, Item 6.1, 'Tampawardli (Park 24) – Community Activity and Sports building', point 10.3, 16 February 2017, page 9.

[10] APLA, ibid.

[11] APLA, Agenda, Item 6.1, 'Tampawardli (Park 24) – Community Activity and Sports building', point 28, 16 February 2017, page 11.

[12] APLA, ibid.

3. CASE STUDY *(continued)*

FEATURES	COMMENTS
Historical relevance in the context of a 1998 to 2018 study *(continued)*	*Sports Infrastructure Master Plan* to fill the gap that government partners are unlikely to provide."[13] The irony was that within months the state government granted the clubs $3.5m to build the pavilion. An additional Authority justification under the 'exceptional circumstances' loophole had been that the clubs had indicated future use by multiple other groups. On 28 March 2017 the council agreed about a proposed concept, and agreed to negotiate a lease.
Park lands management features	From the beginning of discussions in August 2016, there was controversy about the size of the building proposed, which the Adelaide Park Lands Authority confusingly claimed was "928sq m for the total building floor area, representing a 90 per cent increase over the existing combined footprint".[14] (But total building floor area and total footprint area were not the same thing.) The February agenda referred to an August agenda the previous year. The 16 February 2017 agenda paper noted a recommendation for a single-storey building with a 'maximum total footprint' of 640sq m (page 4), but an Authority board dispute resulted in a recommendation for a two-storey building with a '*ground footprint* [emphasis added] of 490sq m. (The inconsistency in terms did not assist observers.) The result was a calculation of a gross floor area of 798sq m, as noted in that agenda paper of 16 February 2017 at page 8. Once again, the fixation with ground footprint area (490sq m) overrode the consequences of approving multi-storey development, which delivered a markedly increased total floor area – and, because the two-storey version had been chosen, higher built form that would be grossly at odds with the flat, treeless landscape.
Park lands relevancies	• Construction of buildings on the park lands costs a lot, and it emerged that while the Comets club was participating in negotiations with the Authority and council, it also was lobbying the state government to get the money. It struck gold soon after, on 28 June 2017, in the form of a Minister for Recreation and Sport grant of $3.5m. A 21 September 2017 Authority board meeting noted that concept designs would "feature a design palette sensitive to the park lands, as well as surrounding mounding and landscaping which minimises visual impact on park lands."[15] This describes a landscape architect's ruse practised in regard to other pavilion concepts, where earth can be banked up around the lower floor to trick the eye into seeing only one level. The mounding sometimes provided for

[13] APLA, ibid., point 28.2.

[14] APLA, op. cit., 16 February 2017, page 5, referring to an extract from 25 August 2016 Authority deliberation.

[15] APLA, Agenda, Item 6.1, 'Design and Park Lands Consideration', point 11, 21 September 2017, page 6.

3. CASE STUDY *(continued)*

FEATURES	COMMENTS
Park lands relevancies *(continued)*	seating tiers for spectators. However, ultimately this treatment was not applied at the Comets' site. Moreover, there would be no landscaping. (This approach would, however, be used for the SACA pavilion further north on Park 25, where a three-storey pavilion was made to appear as a two-storey pavilion.) • Key outcomes were summarised by the Park Lands Authority in 2017 as: 'Minimising visual impact' (see above); a footprint 'no bigger than the [former] buildings (but no mention of building floor area or height); and the building to '... provide a facility for the greater community and adjacent high schools'. The only adjacent high school was Adelaide High, within five minutes' walking distance. This may well have been the defining reason for the government funding, but the school did not get the lease or the licence for the oval. It may not have needed to either, to capitalise on the 'sharing of facilities' city council policy. • The council offered a 21-year pavilion lease to the Comets club. Although the state government was paying for the pavilion, the Authority noted that: "The proposed long-term lease is necessary to allow [the Comets] security to invest funds into a project of this size." Western Districts Athletics Club was offered a sub-lease of five-plus-five years. Comets' club lease rent was charged at $55 per square metre "with a discount of 80 per cent applied as per the park lands leasing and licensing policy."[16] If it was on the basis of a footprint of 490sq m, that calculates as $26,900 per annum, less 80 per cent discount, equalling $5390 per annum. • On this basis, a football club was given 21 years' occupancy of a sought-after park lands site at a peppercorn rent. The state had funded the club's new building, and various elements of its design allowed opportunities for revenue raising. They included the 'community space to support the social value that sport delivers and to allow for use by non-sporting groups' as well as a wall-separated gym. • Public consultation focused on the lease. Under the *Adelaide Park Lands Act 2005*, any proposed lease of more than 10 years must be placed before both houses of parliament. Consultation with the public lasted 21 days. The APLA minutes of 21 September 2017 recorded that consultation focused only on the 'draft lease agreement'. This was common in relation to pavilion proposals for the park lands. The public were not being asked about the built form proposal, only the terms of the lease. If no specific response about the lease resulted, the council could ignore feedback about the proposal itself. No law required it.

[16] APLA, Minutes, Item 6.1, 21 September 2017 page 7.

Park 24 – Management of decision-making and perceived conflict of interest

This Park 24 Comets pavilion case study indicates ministerial grant funding of $3.5m was offered and accepted to build the pavilion. Three Adelaide Park Lands Authority board members during 2017 were nominated to join the board in December 2016 by the planning minister, John Rau, who also approved their election to the board. They were government staff members employed by the Department of Planning, Trade and Infrastructure (DPTI). When the Authority came to finally endorse the Comets proposal and recommend it to the council (on 21 September 2017) the three put on record disclosures of a perceived conflict of interest and recorded identical scripts. The legal script text contained a perhaps ironic spelling error.

"Sally Smith, General Manager, Planning & Development, DPTI [and Anita Allen, Manager, Planning Reform, SPTI; and Chris Kwong, Manager, Development Policy and Assessment, DPTI]- disclosed a perceived conflict of interest in the Tampawardli (Park 24) Community Sports Hub, pursuant to Section 4.3 of the Adelaide Park Lands Authority Charter and Section 75 of the *Local Government Act 1999* (SA). Having taken legal advice to confirm her [his] position, this matter has come through grant funding from Minister Bignell, and the Office of Sport and Rec do sit under DPTI but they are a very discreet office for which her [his] role has had nothing to do with Minister Bignell or the Office of Sport and Rec providing enough separation to not be concerned, a fact that would not compromise impartiality/objectivity at the Adelaide Park Lands Authority meeting and therefore participated and contributed to the deliberations."[17]

The lawyer who had written the script ought to have used the word 'discrete' (not discreet) to suggest that the Office was distanced in activities from DPTI operational areas. It is not now possible to know how discreetly other government staff were negotiating with the two clubs about the potential for government funding, but such funding applications usually take some time to be processed via the slowly grinding wheels of government bureaucracy. It is possible that the high potential of the grant application succeeding was known during earlier Authority deliberations, but there is no record, or suggestion, that the three board members who made disclosures on 21 September knew this until after it was announced.

The suggestion in the minutes following tabling of the disclosures was that the pending approval would be uncontested, but before the motion to approve went ahead, APLA board member city councillor Sandy Wilkinson put an alternative draft motion: "... indicating the Authority does not support the current proposal, as it is a full two-storey; however, if the lower level was an undercroft then the design would be otherwise supported." This lapsed for want of a seconder.[18] (An undercroft is where part of a building is sunk below ground level and where its total height above ground is thus visually reduced.) Cr Wilkinson's effort indicated that not everyone on the board was happy about the scale of the proposal.

The minutes show that Sally Smith seconded a motion to recommend approval to the city council (among other things), but before it was put, the presiding officer, Lord Mayor Martin Haese, left the room. His role was assumed by Sally Smith. The minutes record that all three DPTI employees "voted in favour of the motion".

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[17] APLA, ibid., page 3.

[18] APLA, ibid.

4. CASE STUDY

Park 25, west park lands, South Australian Cricket Association, pavilion, 2016

FEATURES	COMMENTS
What	New, three-storey pavilion and major upgrade of surrounding playing fields, plus new car park (expanding space numbers, from 70 to 130; at the time, the largest new proposal for a car park for the park lands).
Park land area	Park 25, near the new Royal Adelaide Hospital, western park lands.
Beneficiaries	The South Australian Cricket Association; Old Ignatians Football Club Inc.
Cost	Claimed to be $8m (but architect's plans costed it at $6.558m).
Historical relevance in the context of a 1998 to 2018 study	• Based on 2014 implied council policy articulated in the *Sports Infrastructure Master Plan – West and South Park Lands* (SIMP). For park 25, it envisaged 'a multi-purpose community sports pavilion' among other facilities. While adopted in-principle in April 2014, this SIMP master plan blueprint for west and south park lands development had never been fully endorsed at council level, because requirements for significant governance and tenure arrangements had not been fully addressed.[19] Concept drawings in the SIMP for various sites were also ambiguous – in many cases quite different from those that eventuated. • However, the in-principle 2014 vote on the SIMP had been sufficient to imply legitimacy as policy at Adelaide Park Lands Authority level, prompting the commencement of a major wave of park lands pavilion proposals, mostly explored 'in confidence' (using confidentiality orders) long before they were publicly introduced by the Authority. SACA's was the most ambitious, and its subsequent facilities, oval and car park access would ultimately dominate the Park 25 site development. A 2018 comparison with the SIMP imagery for the proposal would reveal that much had changed between the SIMP 2014 detail, and the 2018 outcome. • The terms of the lease illustrated the very broad pavilion uses anticipated, much more than a utilitarian grandstand. The key words in the lease's 'Permitted Use' section were "without limitation" and "sport-related ancillary uses ... including small scale kiosk, curatorial or hub office accommodation and limited scale food and beverage facilities ..."[20] • SACA's development was one of the biggest pavilions to be constructed in the park lands during the 'pavilion boom' (2011–2018), capitalising on at least one loophole in the park lands policy area provisions of the *Adelaide (City) Development Plan.*

[19] Details appear in Chapter 38: 'Private investment in the park lands'.

[20] Adelaide City Council, Strategy, Planning and Partnerships Committee, Agenda, 'Park lands lease agreement', 8 November 2016, page 454.

4. CASE STUDY *(continued)*

FEATURES	COMMENTS
Park lands management features	• The loophole was that the plan did not stipulate a maximum height limit for such developments. This allowed a landscape-dominating, multi-level built form to be established in what was formerly green, open space. To obscure the height, mounding surrounded the front and sides of the lower floor, masquerading as tiered spectator seating. This made the pavilion appear to be only two storeys. • To the north of the site had been a small concrete brick storage shed, and further north, a comparatively unobtrusive, single-level (but large footprint) red-brick clubroom and car park, used by non-cricket sports groups. The new pavilion concept contrasted with Zone Principle 9 of the park lands zone development plan: "… existing buildings should only be enlarged … if the development rationalises or improves the appearance of undesirable or intrusive existing buildings or uses, or provides facilities for public purpose." But while existing buildings were not intrusive, SACA's new one would grossly dominate the landscape, not only because of scale, but also its central siting. This left the determination of the meaning of 'undesirable or intrusive' open to SACA interpretation in arguing its case, or the planning body in indulging the interpretation.[21] Regardless of the semantics, any visitor today cannot avoid an observation that the scale of the built form grossly overwhelms the landscape of the site. • The SACA capitalised on a very generous (80 per cent) discount on its rent upon agreement to pay costs for 'repairs and maintenance of a capital or structural nature'. This discount also was extended to other lessees of new pavilions in other park lands sites. • At the time of the Adelaide Park Lands Authority approval (first stage, June 2016), the SACA had attempted to have waived its proposed 42 lease years of rent over the building (42-year total $1,074,400.88, plus four per cent annual rent reviews) on the grounds that it would be paying $1.2m for development of its large new car park and the $470,000 annual cost of field maintenance. The Authority was keen to oblige (via city council administration request), but a last-minute amendment blocked it.[22] The subtlety of the administration request illustrated the influence that the council tried to exercise over the so-called arm's-length Authority. But the Authority's rejection carried through to subsequent council endorsement of that rejection.

21 City of Adelaide Development Assessment Panel Meeting, Agenda, Item 3.2, 'SACA Cricket Association Change Room park lands', 21 November 2016, pages 71–155.

22 Adelaide Park Lands Authority, Board meeting, Minutes, Item 7, 'Enhancement, Park 25', 23 June 2016, page 5.

4. CASE STUDY *(continued)*

FEATURES	COMMENTS
Park lands relevancies	• The development proposal was titled 'change room' at the planning assessment stage, but the architect's specifications revealed that it would have a liquor licence "... to facilitate the use of the clubrooms for functions and other activities'.[23] The design featured generous space for this. If it were to be a 'change room' it would be the largest change room in Adelaide's park lands (excepting the Adelaide Oval stadium (2011)). • This development capitalised on the large footprint of the existing older club rooms at the northern edge of Park 25 (to be demolished) to legitimise a proposal for construction of a huge pavilion, but of lesser total footprint. But because of its three levels, the new SACA pavilion would be of a significantly larger total floor area. It underscored a park lands development theme in which pursuit of the park lands 'footprint numbers game' in the years leading up to this development had become blind to (or simply ignored) major increases in total floor area of new buildings. In other words, much larger buildings, in multi-storey form, and significantly more confronting to the landscape character. The SACA development also was a beneficiary of a major revision of the 2010 *Adelaide Park Lands Management Strategy* in the form of the 2016 version. At the time (November 2016), while the Strategy version had been authorised by the city council (but only just, two months earlier), it had not been authorised by the planning minister and as such was not procedurally in effect as a park lands policy document, and would not be for another nine months.[24] This did not stop the pavilion's architect from claiming: "On balance, the proposed development is consistent with the provisions of the Development Plan. It should also be noted that the proposal is consistent with the aspirations for [Park 25] described in the *Adelaide Park Lands Management Strategy*."[25] Being 'consistent with aspirations' is not the same thing as being in accord with state-authorised planning instrument policy, but this is how architects' summaries were sometimes crafted. **Key source reference:** City of Adelaide Development Assessment Panel Meeting, Agenda, Item 3.2, 'SACA Cricket Association Change Room park lands', 21 November 2016, pages 71–155.

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23 City of Adelaide Development Assessment Panel Meeting, op. cit., 21 November 2016, page 152.

24 The minister did not sign off until August 2017.

25 City of Adelaide Development Assessment Panel Meeting, op. cit., page 155.

5. CASE STUDY

Park 1, River-Torrens-edge park lands, Tennis SA, pavilion, 2017 (under construction at year-end 2018)

FEATURES	COMMENTS
What	Small new, single-storey tennis court pavilion. Proposal for 'viewing room', toilets and change rooms: Construction began November 2018; finalised early 2019. Site formerly comprised only tennis courts.
Park land area	Park 1, southern corner Montefiore Road and War Memorial Drive.
Beneficiaries	Tennis SA and Memorial Drive Tennis Club.
Cost	This construction was part of a larger redevelopment of Tennis SA-leased land east of this Park 1 site, in Park 26, described as an 'anchor project'. Total project cost stated as $9.8m; this pavilion's cost was not segmented.
Historical relevance in the context of a 1998 to 2018 study	• A new pavilion on park land that until then featured no built form. Park lands policy intimated that park lands sites should remain open space, unless built form already existed, in which case it could be 'upgraded'. Given that no structure existed, any rationale for 'upgrading' was problematic. • One of the fastest approvals procedures of the period covered by this work: Authority and council phases completed in two months. Made possible in two ways. 1. A 42-year lease application for Tennis SA sections of Park 26 and Park 1 had been proposed and approved a year before. Not evident in the 2017 'anchor project' Adelaide Park Lands Authority or council meeting documentation was the fact that the city council had deliberated on Tennis SA lease matters, and Tennis SA's desire for a new long-term lease, many times in the four years leading up to 2017, but deliberations had been subject to confidentiality orders. This meant that there was no public-domain evidence of the details explored.[26] All records of the deliberations of these meetings remained confidential as at financial year-end 2018. The law required that state parliament and the public should be consulted over new 2016 lease agreements. This occurred (without public access to many lease particulars) but at the time there was no reference to any proposed new development proposal.

[26] The evidence for public discussions would have otherwise been found in: Adelaide City Council (ACC), Council meeting, Agenda, Item 12.3, 'City of Adelaide Annual Report 2017–18', Appendix matters: 'Confidentiality provisions – Use of sections 90(2) and 91(7) of the *Local Government Act 1999* (SA), by council and its council committees', [and] 'Subject matter and basis within the ambit of s90(3)', pages 103–161, 23 October 2018.

5. CASE STUDY *(continued)*

FEATURES	COMMENTS
Historical relevance in the context of a 1998 to 2018 study *(continued)*	2. Significant prior city council familiarity had been established with the proposed Tennis SA master plan, which had been fully reviewed by the city council in August 2013, but behind closed doors. At October 2018 this review remained subject to a confidentiality order.[27] Tennis SA calculation of the threshold project cost ensured that the approving body would not be the state government's assessment body, but would fall under the city council's Development Assessment Panel scrutiny. This is generally faster. It also attracts less publicity. • Because the project was deemed to be 'complying', classified as Category 1, there was no public consultation. • No public consultation occurred at any of the early examination stages.
Park lands management features	Construction of a new pavilion on a park lands site that was designated open space enabled fresh park lands built-form construction associated with tennis courts that after 2018 could be expanded later, capitalising on provisions of the *Adelaide (City) Development Plan* (or, after March 2021, the *Planning and Design Code*). This is a classic case highlighting the future prospect of building creep across park lands, done without notification to the public and without opportunity for the public to comment. The November 2017 development application also described a related, larger development near this Park 1 site, in the adjacent Park 26, which also featured construction of another pavilion. Most of the 'anchor project' focused on the Park 26 site, to comprise 41 tennis courts, two grandstands, a gym, offices, car parking and a swimming pool. This was in the park lands zone Adelaide Oval policy area of the *Adelaide (City) Development Plan*. The pavilion under scrutiny in this appendix was for development purposes associated with those works, but was at another site across the road, in Park 1. It was in the adjacent Golf Links policy area, about 700m south-west of Park 26. However, its application had been bundled with the other projects for contemplation at all three assessment stages. The text below focuses on this smaller pavilion only, constructed in late 2018 on tennis courts adjacent to Montefiore Road, opposite Pinky Flat. The land, while assumed to be part of Park 1 (which contained the adjacent North Adelaide golf course), is a small pocket of park lands adjacent to, but not on that golf course. The Crown Title Record diagram of the land could not be found on an initial council search by council staff. The figure on the

[27] ACC, Council meeting, Agenda, Item 12.3, op. cit., 23 October 2018.

5. CASE STUDY *(continued)*

FEATURES	COMMENTS
Park lands management features *(continued)*	Certificate of Title did not accurately illustrate the specific parcel of land; instead, it was a larger parcel of park lands extending west along War Memorial Drive. The area that the courts occupied had been progressively expanded some years earlier, adding more courts to meet demand. The proposal to build a pavilion illustrated how park lands construction-linked upgrades can expand over time.
Park lands relevancies	• The (phase 1) Adelaide Park Lands Authority (APLA) Tennis SA proposal advice on 21 September 2017 in relation to the *Adelaide Park Lands Management Strategy 2015–2025* drew selectively on references, quoting only (in one sentence): "Strategy 1.4: Support activation of the park lands by upgrading and enhancing buildings and structures responsive to their park setting." This said nothing about constructing new buildings. Moreover, there was no reference in this APLA advice to the remainder of the clauses under this Strategy. They would have undermined the case, because they included these words: "However, it is important that these buildings and structures are designed to complement their park land setting and minimise their footprint whilst ensuring they are fit for purpose." Further: "Achieve least possible footprint and floor area whilst ensuring facilities are fit for purpose." • The phase 1 assessment at 21 September 2017 Adelaide Park Lands Authority and phase 2 council stages soon after did not explore footprint or building floor area issues. Both assessments passed the buck about any necessity for public consultation to the last phase, but administrators would have known that if the proposal satisfied the criteria for a Category 1 development, it would never be subject to public consultation. Despite this, the APLA 21 September 2017 'Implications' discussion merely stated: "The project will be subject to any consultation that may be required as part of the development approval process."[28] The city council assessment agenda recommendation (five days later) was: "Consultation – The project will be subject to any consultation that may be required as part of the development approval process."[29] • However, these statements contrasted with council policy that had been endorsed only one year before, in November 2016, which had stated: "Whilst not a legislative requirement, it is clear that residents want the opportunity to provide feedback

[28] Adelaide Park Lands Authority (APLA), Agenda, 'Tennis Australia Anchor Project' Item 6.2, 21 September 2017, page 63.

[29] Adelaide City Council, Council, Agenda, Item 12.7, 'Tennis Australia Anchor Project', Implications, 26 September 2017.

5. CASE STUDY *(continued)*

FEATURES	COMMENTS
Park lands relevancies *(continued)*	on a building concept in the park lands. The development approval process should therefore not be relied upon to trigger this engagement, with public consultation undertaken on all future developments in the park lands whether it is a legislative requirement or not."[30] • Under law, public consultation matters would be the principal responsibility of the 'final phase' development assessment body, the council's Development Assessment Panel (renamed soon after as the Council Assessment Panel (CAP). • The CAP assessment of the entire 'bundled' anchor project development application of 20 November 2017 did not explicitly state footprint details (as footprint), but alluded to them in a vague and curious statement, implying that measures it referred to were either footprint or building floor area. "It is proposed to demolish a number of substandard existing structures totalling 202m² and construct new structures with a total of 368m²." It also stated: "the Park Lands Zone [of the Development Plan] seeks the gradual reduction in building floor area ..."[31] This extract is expanded and discussed below for reasons that will become clear. • The assessment compared development plan provisions in policy areas, revealing two perspectives. By judicious interpretation, it concluded that a proposal for major development adjacent to Memorial Drive near Adelaide Oval was supported. "It is proposed to demolish a number of substandard existing structures totalling 202m² and construct new structures with a total of 368m². Whilst the Park Lands Zone seeks the gradual reduction in building floor area, in Policy Areas such as Adelaide Oval Policy Area 25, Principle 5 allows for the construction of additional buildings for the continuation of formal recreation users." • This vague 20 November CAP reference side-stepped recording specific metrics that were known at the time. In the architect's drawings contained in the Authority minutes of 21 September 2017 ('Building: building footprint') the footprint expansion for the two pavilions (Park 26 and Park 1) was stated clearly: 'Existing 200m²; Proposed 350m²'. The difference between the 21 September drawings (200 vs 368) and the CAP reference two months later (202 vs 368) went unexplained. Nonetheless, it was clear that the footprint protocol (like-for-like) was going to be ignored.

30 Adelaide City Council, Strategy, Planning and Partnerships Committee, 'Park 10 findings and their application' Out of Session paper, 8 November 2016, page 534.

31 City of Adelaide Council Assessment Panel (CAP) meeting, Agenda, 20 November 2017: 'Built form and design', 8.3, page 370.

5. CASE STUDY *(continued)*

FEATURES	COMMENTS
Park lands relevancies *(continued)*	• The concept of a new pavilion for Park 1 was not so strongly supported in the *Adelaide (City) Development Plan's* Golf Links policy area provisions. They stated: "While the Golf Links policy area does not provide a direction as to the desirability of new built form relating to the tennis facility located in the south-west on Site 1, the proposed pavilion will provide needed amenities for the club ... [and will also provide] public access to the toilets, this enhancing the park lands experience for the wider community."[32] An examination of the Principles of Development Control (PDC) in the *Adelaide (City) Development Plan* revealed a useful loophole. • The PDCs stated: "While principle of development control (PDC) 6 envisages that the periphery be maintained for informal recreation, it does not preclude the addition of infrastructure that is ancillary to existing land uses." • Rationales such as this were at this time favourites of planning lawyers interpreting park lands policy rules. The 'ancillary to existing land uses' is code loophole wording created under Development Regulations 2008 under the *Development Act 1993*. (This is discussed further below.) • The documentation cited many other provisions whose interpretation benefited argument to support the proposal. • The determination of which authority should assess the development application had turned on the dollar figure of the project. A sum above $10m would have meant that the state's Development Assessment Commission would process it, but that would have delayed commencement of the project. The paper trail shows that the Tennis SA figure fell just below that threshold ("... total value of $9.8m, excluding fitout costs ...")[33] This curious exclusion of fit-out costs thus directed determination as to which body would assess, and led inexorably to assessment by the Council Assessment Panel. It met soon after and, in one sitting, approved it, without dispute. CAP assessments are not as widely publicised as DAC applications. In any case, this application was determined to be Category 1 under the *Adelaide (City) Development Plan* – requiring no public consultation. There were no public submissions received by the CAP on this proposal. This outcome would have been of great convenience

[32] CAP, op. cit., 20 November 2017, page 371. This claim was common in relation to other park lands sites' pavilion proposals rationales, but rarely delivered. For example, this Tennis SA pavilion was surrounded by high cyclone fencing, the gate to which was almost always locked in the years following completion of the construction (2019). The so-called public toilets were almost never accessible. So much for the 'park lands experience'!

[33] CAP, op. cit., 20 November 2017, page 404, and CAP Appendix: Planning Report, page 2.

5. CASE STUDY *(continued)*

FEATURES	COMMENTS
Park lands relevancies *(continued)*	to the applicant because it essentially allowed for very quick assessment approval. In summary: Arguable rationales for approval (but not contested, and no opportunity to contest). Classified as Category 1 – 'complying'. No public notification or consultation. Fast-track approval. A masterstroke of procedural practice! • Harking back to the Park Lands Authority's enthusiasm to endorse the proposal on 21 September 2017, it noted: "The proposal is consistent with the *Adelaide Park Lands Management Strategy 2015-2025* and will improve the quality and use of the park lands. The Adelaide Park Lands Authority supports this project."[34] • The public may have had a different view, especially in terms of the myriad exclusionary features of the procedure. **Postscript to 2017 assessment** The city council had conducted public consultation in 2016 – but only about a proposal to approve a 42-year lease to this site and the larger site (both Tennis SA).[35] But no such consultation followed in 2017 in relation to the master plan or subsequent development that followed.

POSTSCRIPT to 2018

The Tennis SA redevelopment plans were not concluded at year-end 2018, despite what was intimated in late 2018. A Tennis SA proposal was waiting in the wings for something even more audacious than a new pavilion. It would be major redevelopment leading to the creation of a significantly redeveloped tennis stadium. The plan was to refurbish the tennis court facilities in Park 26, adding a huge new roof, replacing all of the seats, creating a new function area and building new toilets. The scale of the proposal had high potential to prompt a major park lands public backlash, similar to the response that occurred when the adjacent Adelaide Oval redevelopment project arose, six years earlier. Advance notice about the redevelopment plans was therefore managed skilfully to avoid this outcome. What followed illustrated the exercise of all of the administrative ruses and loopholes legally available to city council administrators to frustrate public access to information about a proposal for major development works on the park lands at this site.

[34] APLA Agenda, op. cit., 21 September 2017, page 62.

[35] https://yoursay.cityofadelaide.com.au/past-consultations.

State delivers $10m windfall

An early 2018 proposal for state government gifting of $10m to Tennis SA for new works reached development assessment determination on 18 April 2019. It had been quietly progressed for more than three months before the April 2019 assessment.

Much of the money was to be spent on a new roof over the Memorial Drive Centre (Tennis) Court, replacing the two old roofs above each of the two ageing grandstands with a 6,500sq m, curved, steel and fabric 'trafficable' (moveable) shelter. News about a Tennis SA bid for what was essentially the creation of a new tennis stadium might have come as a surprise to park lands observers because, at Adelaide Park Lands Authority deliberation stage, on 24 January 2019, and the subsequent Adelaide City Council approval five days later on 29 January 2019, both matters had been concluded under an 'exclusion of the public' order, followed by a confidentiality order. In typically ambiguous style, council administrators had described the subject in documentation as a 'Strategic Lease Matter', leaving no clue as to what it related to. The secrecy was so effective that when the city council received the Authority's advice stemming from its 24 January meeting, no mention was made of the Tennis SA matter in the two-page advisory item.[36] The city council on 29 January 2019 also considered and approved the proposal under secrecy provisions. It was only on 18 April 2019 that the secret way the proposal had been progressed was confirmed. This occurred only because, under law, the 18 April development assessment had to be done publicly. In the Council Assessment Panel (CAP) Tennis SA development application assessment documentation of that month, a letter was reproduced, dated 31 January 2019, signed by Ian Hill, the city council's 'Director, Growth'.[37] Mr Hill confirmed that at both Authority and Council levels, the matter had been 'considered ... in confidence'. The date of the letter, 31 January 2019, also illustrated the speed with which the Tennis SA proposal was being prepared for administrative attention months later by the CAP. The dates illustrated that the proposal had cleared two key endorsement hurdles in seven days (Adelaide Park Lands Authority and Adelaide City Council), close to a record in contemporary park lands history. Mr Hill's confirmation to the CAP on 31 January indicated that the CAP assessment was also being fast-tracked, but behind closed doors.

Selective policy amnesia

The record of secrecy was made possible because of a selective policy amnesia practised by city council administrators. It had chosen to ignore council's own policy determination of November 2016, which had arisen out of non-consultation habits in relation to other former park lands pavilion concepts, and public complaints about these habits.

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[36] Adelaide City Council, The Council, Item 9.2, 'Advice of the Adelaide Park Lands Authority – 24/1/19', 29 January 2019, (two pages, not numbered).

[37] City of Adelaide Council Assessment Panel on 18/4/2019, Item 3.1, Memorial Drive Tennis Court, BO 370, War Memorial Drive, North Adelaide, 'Demolition of existing grandstand roofing and construction of free-standing roof structure' (DA/160/2019 – HD [CAP]).

> "Whilst not a legislative requirement, it is clear that residents want the opportunity to provide feedback on a building concept in the park lands. The development approval process should therefore not be relied upon to trigger this engagement, with public consultation undertaken on all future developments in the park lands whether it is a legislative requirement or not."[38]

There were other simple reasons, too. In preparations leading up to planning assessment on 18 April 2019, the CAP had examined the park lands zone 'policy area 25' rules under the *Adelaide (City) Development Plan*, and classified the Tennis SA application as Category 1 – no public consultation necessary.

In its 18 April assessment, the CAP recommended granting 'development plan consent'. A casual reader of the CAP document would have seen the document's 'Background' information, which noted that "The proposal has been ratified by both APLA and Council at their meetings ..."[39] But a reader seeking the details contained in these January records would have found no evidence of that, because all discussion and approval had been considered in confidence and, as such, had been inaccessible to members of the public. Indeed, the subject matter words 'Tennis SA, major development, new roof', etc, never appeared in the paper trail. Moreover, any January 2019 confidentiality order records that may have contained figures and drawings of the proposal also had been restricted from public access. The 'ratification' wording in the 18 April assessment thus misled readers into falsely assuming that the procedure had been transparent and open to public scrutiny. The opposite was true. Moreover, it also confirmed that the city council had ignored its 2016 policy to undertake public consultation about the anchor project before the proposal reached development assessment stage. In fact, no consultation had occurred.

Potentially fatal hitch

Buried in the 18 April CAP papers was a reference to doubt that existed as to whether the Tennis SA development application was properly classified as 'complying', because Principle of Development Control 18 for the Tennis SA policy area said that "all kinds of development are non-complying in the zone, except when certain exemptions apply". The exemption wording, a classic loophole, endorsed development if it were: "Development for and ancillary to existing uses contained within their existing boundaries".[40] The CAP assessment noted that a barrister (a QC no less) had been asked for advice, and had agreed that the wording allowed the development, turning on the phrase 'for and ancillary to ...'. The CAP advice then concluded that, on that basis, "Therefore, the proposed development is for a merit form of development for the purpose of section 35 of the *Development Act 1993*." This was planner code for 'complying development'. In this way, and in

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[38] Adelaide City Council, Strategy, Planning and Partnerships Committee, 'Park 10 findings and their application', Out of Session paper, 8 November 2016, page 534.

[39] ACC, Council Assessment Panel, Item 3.1, 18 April 2019, page 198.

[40] ACC, Council Assessment Panel, Item 3.1, 18 April 2019, page 248.

the absence of any public consultation or prior release of the legal advice, its content was used, without challenge, to rationalise the legitimacy of the CAP's bid to hurdle what may have been a fatal flaw in the application. Of course, given that the CAP had concluded that the application was a Category 1 (allowing for no public consultation) there was no reason compelling the CAP to publicly explain this technicality to anyone else or how it had been addressed.

In a pattern similar to the 2017 and 2018 deliberations about the Tennis SA development application, the April 2019 application also capitalised on a dollar-amount threshold opportunity to not only fast-track approval, but also to avoid any potential snags that may have arisen from wider publicity about the proposal. Major developments valued over $10m had at the time been assessed by the Development Assessment Commission (in 2019 renamed as the State Commission Assessment Panel, SCAP). SCAP assessments, which because of the capital cost of the projects tend to be more publicly controversial, were commonly publicised ahead of time, allowing for public comment, even though in most cases the comment carried no legal weight in the assessment. Given that the April 2019 Tennis SA application was valued at only $7m, the amount did not trigger the development regulation requirement for the SCAP to assess it.[41] This quarantined the assessment to a lower-order city council CAP assessment meeting, held one quiet April Thursday evening in a city council meeting room, for which there was no requirement for public consultation, and no legal opportunity for challenge or appeal, because of the Category 1 classification.

There remained only one other matter, about which the documentation explained nothing. Given that the proposal was valued by the CAP at $7m, but the state government was gifting a total of $10m, where was the remaining $3m going to be spent? Taxpayers were never told. One newspaper article about the redevelopment claimed the actual cost was $11m.[42] The reporter also claimed that the 80-year-old northern tennis grandstand one day might be demolished and rebuilt.

A triumph of quiet deliberation

For Tennis SA, the procedures adopted to gain approval with the minimum of public fuss had been a triumph. One of the largest infrastructure redevelopments on the park lands during this period had been progressed with minimal publicity, no opportunity for public comment and no appeal rights. In fact, for most South Australians, the development assessment had occurred in an invisible domain, and the evidence suggested that much of it had been arranged to occur that way.

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[41] Development Regulations 2008: Schedule 10, Clause 4B, sub-clause (1), as noted in: ACC, Council Assessment Panel, Item 3.1, 18 April 2019, page 247.

[42] Tim Williams, *The City*, 'Sunny view for stadium', 'News', 16 May 2019, page 7.

6. CASE STUDY

Park 22, south park lands, concept plan for a 'community sports hub', 2017

FEATURES	COMMENTS
What	A park lands development project highlighting city council and state government support of incorporated sports bodies to upgrade park lands facilities: • New, two-storey pavilion (concept only at year-end 2018) with a proposed site building footprint expansion of more than 100 per cent (by comparison to the footprint area of existing older buildings at the site). • Two new synthetic hockey pitches (concept only at year-end 2018). • Proposal for construction of a formal car park for 580 spaces to replace informal, open-space park lands parking (concept only at year-end 2018). This would be the largest formal car park to be created in the park lands in the 20-year study period of this work. • Expanded number of netball courts (expanded hard-stand footprint, full resurfacing and lighting upgrade completed in early 2018).
Park land area	Park 22, south of the city, triangular site between Anzac Highway, Greenhill Road and Goodwood Road.
Beneficiaries	• Netball: SA Uniting Church Netball Association. • Hockey: Adelaide Hockey, and Burnside Hockey Clubs.
Cost	Total cost not known at December 2018; however, the $3.2m cost of expansion of netball court numbers (originally 20 but expanded without explanation to 24) and their resurfacing was paid by state government in a sudden bout of pre-election Labor party pork barrelling, announced in July 2017 and paid to council in August 2017. The money came with a state demand that the work had to be completed by council contractors by March 2018, the month of the state election. In early January 2018 the city council allocated $50,000 to pursue building design concepts for the site and establish a business case for the proposed 'community sports hub' to seek matching funds from the Office for Recreation and Sport through its Planning and Research Program.
Historical relevance in the context of a 1998 to 2018 study	A proposal for this new pavilion provided for the 'new concept model' of park lands buildings at this time, designed to address expanded sport-related recreational requirements, described as "social space/clubroom, change facilities, synthetic pitches, viewing spectator area ..."[43]

[43] Adelaide City Council, Agenda, Item 12.1, Josie Agius Park (Park 22) 'Community sports hub', text from Concept Plan 1, 30 January 2018, page 22.

6. CASE STUDY *(continued)*

FEATURES	COMMENTS
Historical relevance in the context of a 1998 to 2018 study *(continued)*	At year-end 2018, the concept plan for this project had been activated only in relation to the (very suddenly announced) resurfacing and improved seating and lighting of the expanded netball courts. However, should the concept plan be delivered after the study period of this work (year-end 2018) it would: • Illustrate that approvals for more than 100 per cent expansion of park lands building footprint could occur, despite many years of policy sensitivity to avoid such outcomes. • Represent a coming together of sports clubs for use of a small park lands park, as well as new club and car-parking facilities, shared by different sporting bodies, as well as meeting Royal Adelaide Show parking requirements (but in a much smaller parking area than that which existed before).
Park lands management features	A bid to address the needs of multiple sports groups in the park lands, as well as park lands car parking needs for the Royal Adelaide Show (once annually). The concept plan also reflected evolving policy about the need for upgraded sports buildings with improved changing and toilet facilities – as well as new facilities – for sport activity in the park lands, described (and perceived) by the council as "fit-for-purpose regional sports facilities, as per relevant planning guidelines."[44] A secondary motivation was ideological, reflected in statements in the third version of the *Adelaide Park Lands Management Strategy 2015–2025*. This had been very recently endorsed by the Weatherill Labor state government (August 2017). The Strategy called for an increase in "organised sport participation by 10 per cent". This was the rationale used to justify redevelopment of park lands facilities.
Park lands relevancies	A number of themes evident: • The *Community Land Management Plan* (CLMP Chapter 5, Parks 21W, 22 and 23) indicated that one of the Management Directions (part 1.3) required that car parking be restricted to one site in the park, shown as a shaded area on a map, south of the netball courts; however, agenda discussion in late 2017 suggested that this was not being complied with, and had not been for some time. Cars were parking on a much broader area. • The proposed substantial contraction of car parking area, from an open space Park 22 area of 6.8ha to a new formal car park limited to 580 spaces west of that area, contradicted this

[44] Adelaide Park Lands Authority, Board meeting, Agenda, Item 8.1, 'Community Sports Hub', 13 December 2017, page 5.

6. CASE STUDY *(continued)*

FEATURES	COMMENTS
Park lands relevancies *(continued)*	CLMP management direction which did not contemplate this park siting. However, no discussion about this contradiction appeared in either Authority or council agendas. A new proposal for two hockey pitches on that land also contradicted the CLMP management direction. The implication was that the Strategy's target objectives were overruling the CLMP's specifics. This was not a new theme. • The matters pursued reflected the challenges in bringing together multiple 'stakeholders' to use this small park, and meeting all of their needs. Much of the southern area proposed for the hockey grounds would be no longer available for car parking. Additionally, an area at the northern end of the netball courts also would be lost to car parking, because a plan to create four additional courts had been added in an upgrade from the original number of 20. The expansion took up that previously available space. That site had previously delivered up to 250 car park spaces for attendees at the Royal Adelaide Show. Before the concept plan appeared in late 2017, the Royal Adelaide Show administrators assumed that under a deed they had with the city council they still had long-term access under their lease to use a large area of Park 22 for car parking of up to 800 cars. They strongly objected to the proposed loss of parking areas, but the sport activity requirements of the two sports dominated the concept plan. An ideological rationale behind this was that council was pursuing an *Adelaide Park Lands Management Strategy* target to reduce parking on the park lands by five per cent by 2025. Given that upgrades to park lands occurred at different times, this was impossible to measure easily, but it provided a rationale that was bureaucratically useful at times like this. • The expansion of netball court numbers (four new courts) without that fact being specified in the Adelaide Park Lands Authority December 2017 presentation of the concept plan (or its later city council presentation) was deliberate, but administrators were careful not to refer to the expansion. At the government announcement of the special \$3.2m funding, the city council's reference had noted a total of only 20 courts, not 24.[45]

[45] Adelaide City Council, Agenda, Item 6.2, 'Project delivery approach' Park 22, Park 25, page 15: "8. The Wikapartnu Wirra (Park 22) Enhancement includes the following elements, as outlined in the prospectus: 8.1 Resurfacing and thermoplastic coating to all 20 netball courts ... 9. The State Government has requested that the resurfacing and thermoplastic coating to all 20 netball courts be completed by December 2017, and the balance of the works by March 2018."

6. CASE STUDY *(continued)*

FEATURES	COMMENTS
Park lands relevancies *(continued)*	• The council's approach also reflected emerging administrative views about expansion of hard-stand area in the park lands. Not being a building, the concept of hard-stand footprint expansion appeared to be deemed irrelevant. As noted in an appendix to this work (*Pastures of plenty*, Appendix 1: 'The 'lost' park lands and the administrator's magic trick routine'), the matter turned on the meaning of the word 'loss'. As mentioned earlier in that appendix, according to an Authority analyst seven months later in June 2018: "... loss or alienation of park lands is defined as a loss of publicly accessible space, including, generally, permanent car parks." He then added a significant qualifier: "Sports buildings, courts and other sporting facilities, restaurants, kiosks and paths are not considered as a loss of park lands."[46] • The concept plan did not draw attention to the fact that netball court numbers were expanding from 20 to 24, and when a city council elected member asked about it one day before the Authority approved it, the administration response avoided the substance of the question. Clearly, administrators of park lands matters were sensitive to the politics of hard-stand park lands expansion, but unwilling to consider that it was a relevant policy issue, by comparison to previous years of debates about park lands building footprint expansion proposals. • The proposal for a new clubroom to be shared by netball and hockey club teams implied (but did not provide specific metrics) that the building would have to be larger. At the time, there were two in Park 22: one for council's horticulture staff (southern end, to be demolished), and another old, single-storey club room for netball players (northern end, adjacent to the courts). Total existing site building footprint was stated by the Authority (and later in council agendas) as 450sq m, with the preferred Authority expansion option totalling 810sq m – quoting areas of 560sq m proposed, as well as 250sq m for a 'satellite' building in the same place as the existing netball clubroom. This delivered a total sum of 810sq m (plus what administrators described as another 130sq m for 'technical interchange areas for hockey'). The Authority's recommendation for footprint to not exceed 940sq m was endorsed by the city council. This was a critical resolution and footprint sum, and is addressed below. Overall,

[46] Adelaide Park Lands Authority, Board meeting, Agenda, Item 7.2, 'State of the park lands', 21 June 2018, page 31.

6. CASE STUDY *(continued)*

FEATURES	COMMENTS
Park lands relevancies *(continued)*	the concept plan highlighted a significant proposed expansion of footprint, which contradicted desires expressed in council policy documents to maintain, as much as possible, 'like-for-like' footprint replacement in other areas of the park lands. But the documentation (and minutes) at the time relating to this park proposal reflected no concern for the contradiction. • The new conceptual 'Central facility' (the pavilion) would sit between the proposed southern hockey pitches and the northern netball courts. Council horticulture services staff were anticipated to use the lower, undercroft storey when matches were not being played. • The matters noted above focused on one proposed new pavilion, but in the concept plan legend (the 'fine print') it was made clear that two buildings would be constructed. The second would address replica requirements ('toilets, canteen, storage and office') of the existing netball club room, and be in the same place. In other words, the netball club would retain its facilities in a rebuilt version. In the concept plan, the footprint areas presented different numbers, being 'Central facility 690sq m ... and the satellite facility at 250sq m (totalling 940sq m). This figure of 940sq m noted above thus assumed critical relevance. • It will be only if the city council publicly consults about the size and location of the proposed new pavilion that adjacent communities will become aware of the extent of change envisaged for this small park, not only in court and pitch areas, but also in the scale of the new building. But the key policy approvals were in place. At year-end 2018 the only existing (redevelopment) landscape feature apparent was the vast, newly resurfaced, blue-and-orange hard-stand area occupied as netball courts. Its scale and domination of the site's park lands landscape is astonishing to see.

7. CASE STUDY

Park 21 West, south park lands, concept plan, pavilion, 2018

FEATURES	COMMENTS
What	A proposal to: • Replace an ageing, single-storey club building with a pavilion whose footprint would be 19 per cent larger (original 390sq m versus proposed 465sq m, resulting in a new and much larger floor area of 930sq m, because of its two storeys.)[47] As a two-storey proposal, the building would be significantly more imposing, not only because of the height in contrast with the flat landscape, but also because of its proposed new siting in the centre of the park. This scale perception had the potential to endure, despite a last minute council resolution to incorporate an undercroft lower level to lessen the likely visual dominance of the structure. • Construct a permanent, gravel-based car park comprising 150 spaces. • Create three football/cricket ovals, up to six soccer fields and up to six Frisbee fields. This anticipated significantly greater sport activity at the site, attracting increased numbers of visitors.
Park land area	Park 21 West, a southern park lands site adjacent to the edges of Goodwood Road and South Terrace.
Beneficiaries	Adelaide Lutheran Sports and Recreation Association (ALSRA: head lessee), with anticipated sub-leasing or casual hire by many other sport and recreation groups.
Cost	Not known as at December 2018. A total of $35,000 had been allocated in the council's 2017–18 budget for "development of plans", which included Park 21 West.
Historical relevance in the context of a 1998 to 2018 study	Approach similar to the proposal for Park 22 (adjacent, west). A council-funded concept plan. Lessee had complied with an expression-of-interest procedure recently adopted by the city council to determine who may apply for a park's next lease when the old one lapsed, and ALSRA had been chosen. On approval of the concept plan in August 2018, meeting minutes noted that a long-term lease would be considered "to reflect the required investment in improved community sports infrastructure [there]".[48] This suggested that the lessee would pay the cost of the site upgrade, but it remained ambiguous (and the financial resources were doubtful). A draft building design was anticipated in 2019 (after the study period of this work concluded; but at June 2019 this detail had not emerged).
Park lands management features	Similar to those noted for Park 22. This Park 21 West proposal was at a very early stage in August 2018, with only the concept plan approved at city council level. Given that both Parks 22 and 21 West were anticipated to accommodate large numbers of users –

[47] These footprint figures applied at August 2018, but changed after the end of the study period (December 2018).

[48] Adelaide City Council, Minutes, Item 12.3, Park 21W, 'Community sports hub', 23 August 2018, page 7.

7. CASE STUDY *(continued)*

FEATURES	COMMENTS
Park lands management features *(continued)*	especially after the upgrades and construction of new playing fields – future pressures to accommodate car parking off-road and on-site manifested in the new provision for park lands car parks at both Parks 22 and 21 West. For Park 21 West, August 2018 Park Lands Authority and Council agendas and minutes highlighted the need.
Park lands relevancies	The complexities of managing car parking demand created by the provision of a new pavilion and sports grounds were highlighted. In the plan's approval, road parking rules bordering the park were to be amended, from all-day parking for commuters, to two- to three-hour parking allowances, 8am to 6pm Monday to Friday. This aimed to block city commuter exploitation of availability of the spaces. But the original council motion did not comment on the new park lands car park access times. This was clarified in an amended motion (subsequently endorsed) restricting access to the proposed park lands car park to "only on weekends and after 4pm weekdays when they require it, with a boom gate or parking controls to prevent this being used for general commuter parking outside these times".[49] While this might address a potential future commuter parking problem, it did not reflect any sensitivity about the broad philosophical issues arising from creation of new facilities for car parking on the park lands, where they had not existed before. The new car park would, when implemented, create one of the largest *permanent* sites on the southern park lands dedicated to the car. (Combined with adjacent Park 22 car park plans, the two proposed car parks would become *the largest* southern park lands car park sites.) The council agenda adopted a dubious statistics-related rationale to justify it, which deftly avoided addressing the philosophical question. It noted that the "combined concept plans of Park 22 and Park 21 West propose 730 formalised off-street parking spaces. This is an overall reduction in the current nominal allowance of 800 informal spaces in Park 22".[50] This reduction would be very nominal, given that open space parking allowed for rubbery figures. The rationale failed to address any of the issues to be faced by park lands car park managers at Park 21 West, and thousands of future users. The agenda had noted that a consultant's advice had concluded that each sports field at Park 21 West could trigger demand for 50 spaces, which led to a car park space proposal for 150 spaces. But given the estimated 35,000 park visitors anticipated per year, this tally appeared to be woefully short of the space supply required. The origins of the conundrum could be traced back to the state-influenced aspiration that appeared in the 2016 version of the *Adelaide Park Lands Management Strategy 2015–2025*, which sought a 10 per cent increase in park lands sport. The Strategy made conceptual provision for sport and recreation activity hubs across the park lands, but didn't allocate any specific funding for this to be achieved.

49 Adelaide City Council, Agenda, Item 12.3, 28 August 2018, page 52.
50 Adelaide City Council, ibid.

8. CASE STUDY

Park 20, south park lands, Pulteney Grammar, pavilion concept, 2018

FEATURES	COMMENTS
What	Private school proposal to demolish ageing facilities on park lands adjacent to the school, in collaboration with those of another sport body, the Adelaide Harriers Athletics Club, and replace them with new 'fit-for-purpose' facilities and upgraded grounds. Project to deliver a large pavilion to be shared as school/community use, and to include the Harriers. Extensive plans for new 'community sports courts, and upgrading of a sports field. Existing buildings footprint area would significantly expand (572sq m to 967sq m) in the form of two new buildings. One of them would feature two storeys, in a pavilion style.
Park land area	Park 20, adjacent to South Terrace, southern park lands.
Beneficiaries	The school, the Adelaide Harriers, and the public.
Cost	Not known as at year-end 2018. Part of the concept design cost was paid by the city council, but a financial breakdown had not been published. As the Adelaide Park Lands Authority stated: "We have been working with [the school and club] to support the development of a concept plan for new facilities."[51]
Historical relevance in the context of a 1998 to 2018 study	An example of a proposal that had its policy origins in the city council's *Sports Infrastructure Master Plan – West and South Park Lands* (SIMP), which had been paid for by the city council and Recreation SA. It had appeared publicly in April 2014, but clearly embraced building concept plans created some time earlier (but not released publicly) by the school. The emergence of the SIMP implied key policy support for the Pulteney plan; however, this policy document had never been formally endorsed at city council level.[52] The administrative treatment of the Pulteney bid was an illustration of how a substantially revised *Adelaide Park Lands Management Strategy* (new 2016 version) opened the policy gates to contemplation of major redevelopment and expansion of built facilities on the Adelaide park lands.
Park lands management features	An example of controversial park lands concept development project proposals being subject to many communications between the school and the council, but not reaching the public domain until ready for in-principle approval. The council also had briefed city councillors in secret, weeks ahead of its public introduction by the Adelaide Park Lands Authority on 21 June 2018. This highlighted the contemporary dynamic of new park

51 Adelaide Park Lands Authority (APLA), Board meeting, Agenda, Item 7.1, 'Pulteney Grammar, proposed sports and community building, Park 20', 21 June 2018, page 5.

52 Full discussion about this appears in Chapter 38: 'Private investment in the park lands'.

8. CASE STUDY *(continued)*

FEATURES	COMMENTS
Park lands management features *(continued)*	lands built-form development, where behind-closed-doors discussions were coordinated by the city council (and its subsidiary, the Adelaide Park Lands Authority) to manage a perceived political risk that advance notice and a consequential strong public backlash might stall park lands building expansion plans. As it turned out, this is what occurred in Pulteney's case. Policy documentation at Park Lands Authority and city council stages supported the plan; however, the significant proposed increase in footprint area will be a matter of more controversy at development application planning stage when it occurs. It was not reached as at year-end 2018 (the conclusion of the study period of this work). At the first two assessment stages (Authority and city council) this matter was debated as if the school proposal's grossly expanded footprint and height were simply matters for compromise. Development assessment at Council Assessment Panel stage had not occurred as at year-end 2018.[53]
Park lands relevancies	An illustration of Authority and city council encouragement of the progressive occupation via built form of sections of the park lands for the principal benefit of commercial entities. Some of these entities, which already have facilities on the park lands, seek refreshed park lands lease arrangements, simultaneously promising to deliver redeveloped and expanded facilities for 'community use'. In Pulteney's case, it was implied that unless a fresh 42-year lease could be negotiated, the redevelopment of its Park 20 facilities would be unlikely. The bid was made feasible by the city council's creation of park lands policy documentation in the form of the *Sports Infrastructure Master Plan – West and South Park Lands*, some time in 2014. It described the school's development vision two years before the school publicly presented plans consistent with that documentation. The desire to expand facilities was also supported by statements in the (2016) *Adelaide Park Lands Management Strategy 2015–2025*, whose contents had been directed by a government-chosen Project Advisory Group to open pathways to park lands recreational development projects, and provide policy rationales to reinforce them. That Strategy had been endorsed by the city council in 2016, and by the state government in August 2017.

[53] It remained unresolved at December 2022.

POSTSCRIPT to 2018

In retrospect, the 2018 bid for in-principle endorsement of a park lands building redevelopment plan by Pulteney Grammar had all the features of an attempt to get a quick, 'no fuss' public endorsement of deliberations that had occurred behind the scenes for some time. But it met much public resistance, which prompted a city council request on 21 June 2018 that the school (and the Harriers Club with which the school shared park lands space) to "... further refine the concept design to reduce the size and impact of the design on the park lands and to provide two alternative concept proposals for the buildings".[54] This thwarted the school's immediate objective to obtain in-principle endorsement, but the council's resolution was far from a not-negotiable refusal. Quite why the city council called for two alternative proposals to be created by the school and tabled at the next deliberation opportunity was not explained. But it might have been simply to exercise the old park lands administrative tactic that if two proposals are tabled, then at a subsequent approval stage one might appear more attractive than the other, leading to slow but progressive advance along the approvals pathway. The city council's procedural habits hinted at a behind-the-scenes desire to see the bid succeed. One reason was that there had been 'an expression of interest process' in which the school and the Adelaide Harriers had participated and been 'successful' (as noted on 21 June 2018, but without any supporting agenda documentation on that date revealing either the process or the contents of the submission). A second reason, a key reason, was evidence in agenda papers of close collaboration between the school and city council, dating back four years to 2014.

The question of 'return'

In April 2014 an administrator in one of the suburban councils bordering the park lands site adjacent to the school had sent an email to the city council. "Whilst a sensitive topic, the question was raised around what is the return you [the city council] are getting for the "private school" useage of the park lands rather than [being] open to the public? Happy to discuss further."[55]

It was a good question, raised by an administrator at the City of Unley. It might have been answered by the city council, but if it had been, no record appeared in the public domain. It also was revealing, because no other similar question had been raised by 16 other 'stakeholders' (schools and clubs) that had sent early 2014 feedback about the *Draft Sports Infrastructure Master Plan – West and South Park Lands* (SIMP). One reason was obvious. They all stood to benefit from council endorsement of the master plan, so such a controversial philosophical issue was not in their interests to explore publicly .

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54 APLA, Board meeting, Minutes, Item 7.1, 'Pulteney Grammar, proposed sports and community building, Park 20', 21 June 2018, page 5.

55 City of Unley, Stakeholder feedback on Draft Sports Infrastructure Master Plan, January/February 2014, as found in: Adelaide Park Lands Authority, Board meeting, Agenda, 'Draft Sports Infrastructure Master Plan – West and South Park Lands', 24 April 2014, page 108.

Park 20 – big plans for expansion

The two principal groups dominating Park 20's use, the Adelaide Harriers and Pulteney Grammar, had sent to council specific 2014 comments about the draft master plan regarding their plans for facilities and grounds redevelopment and expansion. The Harriers had said there was insufficient information in that plan, and noted that a proposed new building identified in it would be in the wrong place. The school claimed that it had consulted widely about its future plans with stakeholders, users of the site, but made no mention of consultation with the broader metropolitan public, almost certainly because there hadn't been any. Public release – but not formal public consultation – of the school's concept plans would not occur until four years later in 2018, and arrive via the Adelaide Park Lands Authority as an agenda matter.

In 2014, the school had said:

> "In principle, the school supports the [SIMP] recommendation of the consolidation of existing buildings into one shared community use building. However, the school believes that the building needs to be of a size and design that will sufficiently facilitate the activities of all affected stakeholders. As such, the footprint of the building should not be constrained to an arbitrary size based on existing footprints."[56]

It was fair comment in one sense. While the original (1999) *Park Lands Management Strategy Report* had pressed for the concept of 'overall net reduction' of existing footprint regarding proposals for future built form in the park lands, an observer since that time, and especially beyond 2011, would have seen that other parties seeking to construct buildings in the park lands had often managed to get approval for an expansion exceeding existing footprint area for their sport pavilion proposals. But in another sense, the school, which had received high-level professional advice about its plans to expand, ought to have known about the Authority's and the council's policy sensitivities about park lands footprint and its reference in the *Adelaide (City) Development Plan* as consolidated at 2014. If nothing else, and for the sake of diplomacy, perhaps it should have withheld suggestions that it, exclusively, ought not to be restricted by footprint expansion-related policy constraints.

Amended park lands policy reinforces expansion vision

In February 2016, soon after the city council had approved a full revision of the 2010 version of the *Adelaide Park Lands Management Strategy: Towards 2020*, to deliver the *Adelaide Park Lands Management Strategy 2015–2025*, Pulteney Grammar had written to the council, praising the version.

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[56] Adelaide Park Lands Authority, Board meeting, Agenda, 'Draft Sports Infrastructure Master Plan – West and South Park Lands', 24 April 2014, page 104.

> "The school applauds the stated intention to improve the useability of the sports fields and playing courts by revitalising the associated buildings within the park lands. The school welcomes the opportunity to continue the dialogue in relation to the removal and replacement of the older building stock on the park lands with purpose-built, modern, multi-use facilities for the benefit of all park users."[57]

There was no mention in the correspondence of the *Sports Infrastructure Master Plan – West and South Park Lands* (SIMP), the 2014 master plan that reflected in some detail what the users of Park 20 sought. The 'dialogue' to which the school's board of governors referred would have originated at that time. This would have given the school some confidence, because the April 2014 SIMP master plan made clear that some plans for the school already existed. It stated: "Development plans have been established and potential investment opportunities exist through Pulteney Grammar for improved sporting infrastructure. This investment is conditional on security of tenure."[58] This would have hinted at the school's desire to achieve a long lease period through the council.

In fact, as far as the school's planners were concerned, when the board's chairman wrote to council in February 2016, 'the dialogue' would be set to increase, leading to subsequent meetings anticipating major expansion of the school's facilities on park lands adjacent to the school's frontage. The city council was kept abreast of proceedings, but there was no public record of that. The level of confidentiality was characteristic of contemplations of park lands future development by lessees, in collaboration with the council, which held title to that section of the park lands. The council was happy to oblige. It also did not want to call on controversy ahead of time.

Councillor briefings precede public release

On 21 June 2018, the Adelaide Park Lands Authority released and explored in open session for the first time the school's concept plans for building expansion in the park lands. These had been earlier the subject of major city councillor briefings under the section 90 confidentiality provisions of the *Local Government Act 1999*. Normally, the Authority would be first to contemplate – in public session – then follow up with advice to the council, which would trigger a subsequent council examination. That this procedure was reversed (with councillor briefings ahead of Authority deliberation) indicated the high-level political sensitivity about the procedure and of the building concept, notwithstanding the fact that it complied with not only policy documentation, but also – in many respects (apart from the grossly excessive proposed footprint expansion) – with the park lands zone policy area provisions in the *Adelaide (City) Development Plan*.

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[57] One-page submission (number 53), 26 February 2016, Tim Goodes, chair, Pulteney Grammar board of governors, as found in: Adelaide Park Lands Authority, Special board meeting, Agenda, Item 2, 'Consultation results, *Adelaide Park Lands Management Strategy*', 9 May 2016.

[58] Adelaide Park Lands Authority, Board meeting, Agenda, Item 6, 'Draft Sports Infrastructure Master Plan – West and South Park Lands', Kurangga, Park 20, 'Future opportunities and potential investment', 24 April 2014, page 75.

One of the council's rationales for approving construction of large new buildings in the park lands drew on a mix of fact relating to more demanding building standards, as well as some hazy aspiration, described as 'requirements' by the lessees of park lands sites. Whose 'requirements' and for what purpose? On the evidence of use of new pavilions constructed several years earlier than the 2018 Pulteney bid, the requirements were social and recreational and of commercial benefit to the applicant, and the fact that the buildings were to be erected on park lands being in some ways neither here nor there in council contemplations. But at least the city council's summary was delivered in serious tone:

> "Sports building standards and spatial planning requirements have changed significantly since the original facilities were built in the 1960s and 70s. To meet these standards and requirements, facilities require greater circulation spaces, larger room dimensions, accessibility requirements, and an increased number of user facilities (i.e. the numbers of toilet/change room facilities per user numbers, and female changing facilities). Storage requirements have increased in order to provide additional space for the increasing sporting and community use in the park."[59]

The clue about social uses appeared in the words 'larger room dimensions', and these related to a theme that ran across all of the applications for 'pavilions' during this period. The larger rooms were in most cases social areas, masquerading as sport event observation spaces, but with room for bar facilities and food (cooking and consuming), anticipating ancillary use via applications for limited-period liquor licences.

The council also stressed the notion of likely 'significant community benefit'.[60] But at all stages of the proposal, including development application, the precise details of this 'benefit' remained ambiguous. It would be left to the proponent of the building project to prescribe those, and some lessees could be choosy about the timing of when to reveal them in public forum.

Leaked news

The leaking of the Pulteney park lands plan a week ahead of release by the Adelaide Park Lands Authority came via the Adelaide Park Lands Preservation Association.[61]

"The plan envisages demolishing several existing buildings with a combined footprint of 572 square metres, and erecting two new buildings with a footprint of 967 square metres," it warned readers in its 21 June 2018 newsletter. With the

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59 Adelaide Park Lands Authority (APLA), Agenda, Item 7.1, 'Pulteney Grammar Proposed Sports and Community Building in Blue Gum Park (Park 20)', point 30, 21 June 2018, page 8.

60 APLA, Agenda, Item 7.1, 'Pulteney Grammar, proposed sports and community building', Park 20', 21 June 2018, point 28, page 8.

61 Adelaide Park Lands Preservation Association (APPA), *e-Gazette*, digital newsletter number 039, 21 June 2018, no page numbers.

inclusion of a second storey in one of the buildings, the proposed total floor space on park lands would be 1,430sq m, an increase of 250 per cent compared to existing metrics.

> "The school is planning to include several features of a private nature, such as classrooms (alternatively described as a 'multi-purpose' space) an office, a gym, and extended storage. Level 1 – • Kiosk (20 square metres); • Small change rooms (270 square metres); • Storage (185 square metres); • Large change rooms and public WC (280 square metres). Level 2 – • Multi-purpose room (also described as 'classrooms') office, gym, kitchen (480 square metres). Pulteney Grammar has given no explanation as to why any of the essentially private facilities (including the entire second floor) should be on public park lands rather than immediately across the road on its South Terrace campus."[62]

The reference to classrooms touched a nerve with school management. The school principal, who attended the 21 June meeting, was reported in *The City* newspaper as saying at the time: "It is very unfortunate the [city council's] papers tabled by the council mentioned classrooms. This is not the case. These upper floors are designed in a way to provide flexible spaces for community partners or to support their training, community-building, or large community events in the park."[63]

Patterns taking form

APPA was doing what a small number of South Australians had been doing for most of 2017 and 2018 – identifying new attempts by commercial bodies, mainly sports focused, to either build or re-build facilities on their leased park lands sites.

"Hardly a month goes by when APPA isn't forced to respond to yet another attempt to alienate park lands for private purposes," its June 2018 digital newsletter stated.

"This month we are, yet again, reluctantly exposing a massive attempted land grab, this time by Pulteney Grammar School over a large swathe of Blue Gum Park/ Kurangga (Park 20). The school is telling its community that it plans to expand its campus 'on both sides of South Terrace'. This is not an exaggeration of its intentions."[64]

But it would be too late to stop the juggernaut. It had been rolling for more than four years. No-one had apparently noticed the contents of the 2014 *Sports Infrastructure Master Plan* (SIMP).

Only a close observer of the Adelaide Park Lands Authority documentation would have seen evidence of the tactical features employed to get the Park 20 plans this far.

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[62] APPA, *e-Gazette*, digital newsletter number 039, 'Plans for two-storey 'classroom' building in Park 20', June 2018.

[63] Simeon Thomas-Wilson, *The City*, 'Park lands proposals given the green light', 28 June 2018, page 14.

[64] APPA, ibid.

That evidence related to the 2014 SIMP in which much of the policy rationale had been established. The school's administrators would have taken heart from the Authority's assurances that the bid rested on very solid policy foundations because, as the Authority reported, it "aligns with council's SIMP".[65] It didn't just 'align', it stated very clearly what Pulteney's and the Adelaide Harriers' project would legitimately be. "Provide new shared-use community building for school use and junior and senior athletics clubs; [and] develop two new community sports courts to complement the existing courts [among other things]".[66]

There was also an air of certainty about success. As the 21 June 2018 Adelaide Park Lands Authority agenda noted: "Lease negotiations are under way between Pulteney Grammar School and City of Adelaide and it is expected that [the school and club] would be seeking a long-term lease to support their likely investment in these new upgraded facilities."[67] The principal focus of the lease negotiations would be one aspect – a desire for 42 guaranteed years of occupation in the form of a 21+21-year lease. And on the basis of all of the earlier negotiations for pavilions on the park lands, there was no reason why it would be refused by the council.

Even as late as June 2022 this matter remained unresolved – at least in so far as publicly available Authority and city council records were concerned.

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[65] Adelaide Park Lands Authority, Agenda, 'Pulteney Grammar Proposed Sports and Community Building in Blue Gum Park (Park 20)', point 30, 21 June 2018, page 9.

[66] APLA, op. cit., points 34.1 and 34.2, page 8.

[67] APLA, op. cit., page 5.

APPENDIX 20

'One day it could become known as the great park lands hijack'

Supplement (Insert) to the Christmas 2016 edition of the *Newsletter* of The North Adelaide Society Inc.

New blueprint means Council pursues major construction vision across Adelaide's Park Lands

By Phillip Martin (elected member, North Ward, City of Adelaide).

A secret operation began in 2014 with an elite group of representatives of the State Government and the Adelaide City Council gathered in the same room. At one of its quarterly meetings (we don't know which one because no minutes are available) the Capital City Committee resolved to make its target the 700-plus hectares of open space that ring the City.

This important sounding fraternity, once chaired by the Premier but now relegated to the Deputy Premier, has a membership that also includes two Ministers of the Crown and the Lord Mayor and two Councillors. Some of the other councillors have an openly contemptuous view of this forum, accusing their colleagues of meeting to engage in the ancient form of forelock tugging. The Capital City Committee had no mandate for their mission; they got that curiously when the job was done almost two years later with the Parliament and the Council agreeing to retrospectively endorse it.

But the target was plain from the outset. In the parlance, the Committee wanted to "activate" the park lands.

In the dying days of the Yarwood Council, the Capital City Committee resolved the best way to do that was to persuade the supreme park lands policy advisory group, the Adelaide Park Lands Authority, and the Adelaide City Council, to appoint yet another group to get things moving, "noting that the Minister prefers" to nominate a majority of the members of that group.

These people, unelected to the role, unknown to most South Australians and meeting behind closed doors ever since, have become known among insiders by the somewhat unattractive acronym of PAG – the Project Advisory Group. You won't forget their name or the way they've shaped what's planned for the park lands.

With links through the Capital City Committee into the Adelaide Park Lands Authority and Adelaide City Council, PAG has helped to shape the agenda and recommendations for the now not so secret Draft Park Lands Management Strategy.

This is where the story gets really interesting. Contrary to the provisions of the 2005 park lands legislation, PAG has been quietly working away on the premise that the park lands do not, in fact, belong to all South Australians in equal measure.

At the core of that assertion is the principle that local councils surrounding the outer edges of the park lands should have first dibs on the space for their residents who are clearly more equal than other South Australians. Well, why not, you might ask? This is where staggering population growth will follow the State Government's push on urban redevelopment.

This new, privileged group of residents will have unparalleled access to the park lands. They'll be served by new promenades of up to five metres in width and made of what are called "hard stand" (read gravel, asphalt or perhaps even concrete) surfaces that will dissect the park lands in half a dozen places. The grandest could go to the residents of Brompton and Bowden who are promised a promenade through the North Adelaide Golf Links to the river bank.

Parts of the last vestiges of indigenous vegetation described in the park lands plan as "uninviting" will be lost to create "an urban address" on main roads such as Greenhill, Fullarton and Port, with new paths, gutters, irrigated grass and, street furniture including benches, shelters and barbeques. A manicured look is on the way. Jealous? Wait – there's something in this for everyone. There will be at least six new buildings erected on the park lands to house new sporting and community activities. Why every sport or community using the park lands has to have a club house with meeting rooms and food preparation facilities has never been adequately explained to me. Even without such facilities, neighbouring residents and visitors to the park lands won't go hungry. No sir. The draft Strategy divides our open spaces into new areas called Precincts and within Precincts are what will be known as "hubs". There are 44 notable hubs and each is to be accompanied by a scale of permitted commercial development, according to the size of the hub and a separate approval process.

So, a medium hub could see the construction of a café and a large hub might host a new building for a restaurant or a restaurant/bar at lease prices generally well below market rates.

The additional possible building footprint is likely to be controversial in some quarters. For others, such as struggling café and restaurant owners nearby, there will be fears the influx of competitors on cheap rent will have the potential to distort the value of all hospitality businesses. And the pinnacle of the strategy is a series of larger projects labelled 'key moves', delivered in tranches over the next three financial years. One of the first is to be the rehabilitation of the site of the Old Adelaide Gaol. None of these moves have been costed, but my speculation is the price tag is somewhere well over $100 million.

You ask: "Who's going to find the money for this?" The draft Park Lands Management Strategy points out that the recommendations are unfunded. Currently, every Adelaide City Council property owner contributes more than 10 per cent of their rates to park lands maintenance and capital improvements that have been running at about $20 million a year over the past few years. But why? Is it equitable to burden the ratepayers of Adelaide with the cost of the upkeep of the park lands that are there for all South Australians? And what of the impact of the park lands impost on the competitiveness of business? And if existing and new residents of Burnside, Norwood/Payneham, Unley and other councils are to have

their own park lands urban address shouldn't they contribute? What will happen to the millions that will be paid to the State Government in levies by apartment developers on their patch who are required to provide open space or, as is usually the case, a percentage of the project cost in lieu of open space? Is there not a legitimate argument some of that money needs to be spent on the park lands?

This is a strategy that's as short on cash as it is on governance. Who's going to supervise the strategy? The unelected PAG, unknown to South Australians, always meeting behind closed doors, recorded in a recent set of minutes that it believes it should continue to supervise the Park Lands Management Strategy, shepherding projects through to the Adelaide Park Lands Authority which, in turn, informs Adelaide City Council's decision-making process. Transparency and equity are words that come to mind, but which seem to be lacking in this saga.

When the draft Park Lands Management Strategy recently came before Council, it was accompanied by the endorsement of the Lord Mayor [Martin Haese] (who keeps telling me "this is aspirational"), his Council Capital City Committee cohorts and those councillors to whom this flawed, deficient document appeals.

But more than the fundamental shortcomings, I and a handful of elected members who simply don't have the numbers to change the political debate or the outcome will be lamenting the lost opportunity to present to the ratepayers of Adelaide and the people of South Australia a real vision – something other than a blueprint for the development of the park lands. We know open woodland has diminished to the extent that it can now be found in only 24 per cent of the park lands. We know bio-diverse environments, which include the remnant indigenous vegetation, have been whittled away to about six per cent. And, at last count, parking spaces on the park lands numbered 1,700, covering 10 hectares.

A meaningful plan that understood the value the community places on our unique natural environment and open spaces would also have set in stone commitments to retain that 24 per cent of open woodland, and that six per cent of remnant indigenous vegetation, and it might have even offered a goal of reducing the number of car parking spaces and the expanses of hard-stand surfaces on the park lands.

However, you'll be pleased one measure of success has been agreed. The Deputy Lord Mayor, Cr Megan Hender, in September 2016 won sufficient support in Council to establish a register which will record how much park lands is lost each year as the park lands Management Strategy is rolled out. Break out the champagne!

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NOTE: A similar version of this essay appeared in an *InDaily* online article, 'The great park lands heist', on 6 November 2016.

APPENDIX 21

Extract from the *Local Government Act 1999*, section 90(3)

Section 90(3) of the *Local Government Act 1999* lists the following information on matters that may be considered in confidence by the Adelaide Park Lands Authority or the Adelaide City Council's committee or council meetings. Selections are made by the council's administrators from these criteria as recommendations to elected members as justifications for the applying of a confidentiality order.

The items formatted to **bold** are most commonly chosen, either individually or in clusters.

(a) information the disclosure of which would involve the unreasonable disclosure of information concerning the personal affairs of any person (living or dead);

(b) information the disclosure of which— (i) could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and (ii) would, on balance, be contrary to the public interest;

(c) information the disclosure of which would reveal a trade secret;

(d) commercial information of a confidential nature (not being a trade secret) the disclosure of which— (i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and (ii) would, on balance, be contrary to the public interest;

(e) matters affecting the security of the council, members or employees of the council, or council property, or the safety of any person;

(f) information the disclosure of which could reasonably be expected to prejudice the maintenance of law, including by affecting (or potentially affecting) the prevention, detection or investigation of a criminal offence, or the right to a fair trial;

(g) matters that must be considered in confidence in order to ensure that the council does not breach any law, order or direction of a court or tribunal constituted by law, any duty of confidence, or other legal obligation or duty;

(h) legal advice;

(i) information relating to actual litigation, or litigation that the council or council committee believes on reasonable grounds will take place, involving the council or an employee of the council;

(j) information the disclosure of which— (i) would divulge information provided on a confidential basis by or to a Minister of the Crown, or another public authority or official (not being an employee of the council, or a person engaged by the council); and (ii) would, on balance, be contrary to the public interest;

(k) tenders for the supply of goods, the provision of services or the carrying out of works;

(m) information relating to a proposed amendment to a Development Plan under the *Development Act 1993** before a Plan Amendment Report** relating to the amendment is released for public consultation under that Act;

(n) information relevant to the review of a determination of a council under the *Freedom of Information Act 1991*.

After the end of the 1998–2018 study period another clause was added to this section: "(o) information relating to a proposed award recipient before the presentation of the award".

Notes:

* After 2016 the *Development Act 1993* was amended and replaced by the *Planning Infrastructure and Development Act 2016*, but which by the end of the study period of this work (year-end 2018) had not yet been brought into full operation. This meant that the 1993 legislation still applied during the 1998–2018 study period.

** After 2016 a Plan Amendment Report was retitled as a Development Plan Amendment. In reference to the matter of public consultation, please refer to Appendix 22 to read a case study of the application of confidentiality orders: 'The Adelaide park lands 'in confidence' tradition'.

APPENDIX 22

Case study: The Adelaide park lands 'in-confidence' tradition

FEATURES	COMMENTS
What	The making of confidentiality orders at the city council committee or council meetings, or at meetings of the board of the Adelaide Park Lands Authority, under the provisions of the *Local Government Act 1999*. The mechanism can be in the form of 'orders to exclude' the public from a discussion of an agenda item, which is commonly followed by a 'confidentiality order'. This determines that the item, often a detailed briefing document, is restricted from public access. Such orders can stay in place for long periods. In plain English – legal secrets.
Park land area	Potential to apply to all park lands zone policy area matters across the land within the Adelaide Park Lands Act's Adelaide Park Lands Plan.
Beneficiaries	• Administrators who prefer confidentiality to transparency in park lands management. • Public agencies and private, commercially run bodies, for which confidential deliberations are tactically advantageous. • Parliamentarians in state parliament and ministerial advisors. • Mayors and elected members at local government level; in particular, within the Adelaide City Council, the 'custodian' of more than 70 per cent of the Adelaide park lands.
Cost	It is impossible to measure the staff salary component. The most revealing measure would be the administrative cost of declaring a topic confidential, then ensuring that records are maintained and updated, given that the law demands that confidentiality orders be routinely reviewed (mostly annually).
Historical relevance in the context of a 1998 to 2018 study	Covered in detail in this work's Chapter 46: 'The secrecy tradition'.
Park lands management features	A determination to declare a park lands matter secret usually has negative consequences, especially in relation to the exploitation of the park lands for state or commercial project reasons. For example, a park lands lessee may develop a plan to redevelop or extend an existing building, or upgrade an area, or use a park lands site for a commercial purpose. For a state agency, a plan might feature intentions to construct new buildings, other infrastructure and new car parks. The proposed concept will

Case study: The Adelaide park lands 'in-confidence' tradition *(continued)*

FEATURES	COMMENTS
Park lands management features *(continued)*	almost always be examined and discussed in confidence in a series of Adelaide Park Lands Authority or city council meetings. The proponent, if a lessee or licensee, will make it clear that the public or private funding of the plan may depend on an extension of a licence or lease period, or the securing of a fresh licence or a fresh, long-term, park lands lease. A term of 42 years, as two terms of 21 years, is popular. A plan's features may draw on state economic development imperatives, or government policy encouraging expanded sport or recreational 'activation' of certain policy areas of the park lands. During the secret talks, administrators may work with the applicant to help ensure that the proposal, concept or master plan complies with council park lands policy and state development assessment guidelines. This creates a tactical advantage because it means that when the proposal, concept or master plan is revealed to the public, the approvals process at Authority and council, sometimes followed by a development assessment process, can be quickly completed. This avoids delays, which can be administratively or politically risky. These aspects illustrate that the operation of secrecy provisions under the Local Government Act can be used as an administrative mechanism to keep detailed preliminary deliberations from public notice, mainly for the convenience of the applicant. The privilege extends not to tax-paying or city rate-paying observers of park lands management, but to state or commercial proponents. A park lands management regime that has opportunity for formal, in-confidence record keeping is not a publicly transparent regime. While any confidentiality order endures, the information must remain secret. In this way, likely applicants, licence holders, lessees or proposed lessees are extended a special advantage to keep secret preliminary deliberations, negotiations and evidence of council administrative assistance. This may be normal commercial practice in relation to private land titles, but the park lands are public land titles (ironically defined under the Local Government Act as 'community land'). Unauthorised release of information under confidentiality orders is a breach of the *Local Government Act 1999*. The confidentiality laws and procedures compromise the ability of elected members (or in the Adelaide Park Lands Authority's case, board members) from discussing such park lands proposals with the general public, especially city ratepayers whose rates contribute to Authority and council park lands operations.
Park lands relevancies	A legal regime of non-transparent documentation management, restricting transparency, as well as public agency accountability to share critical information about park lands management and administration and publicly debate it.

Test case – Application of 'in-confidence' procedures in regard to a June 2017 Adelaide park lands matter

> *The South Australian public has no opportunity to challenge the determination of a confidentiality order under law. For the public to do so they would have to get the order revoked to explore the subject matter details to establish the case for the challenge. It is Kafkaesque, and only a clique of lawyers working as parliamentarians could have devised such an arrangement.*

One of the most used park lands secrecy provisions is section 90(3), part (d) of the *Local Government Act 1999*. It relates to commercial matters. These do not have to relate to development proposals. They can also relate to temporary commercial propositions.

A study of park lands matters over the decade to 2018 illustrates that park lands zone topics have been subject to many in-confidence discussions, especially relating to commercial proposals, despite the fact that most South Australians believe that discussions and agreements should occur openly and transparently.

Section 90(3)(d) has been popular with administrators of the Adelaide Park Lands Authority, whose executive recommendations to the board to close the doors and keep secret information about park lands zone proposals have been commonly accepted, often without challenge, by the board members. The process is simple. The administrative recommendation is proposed to be adopted by a mover, seconded, and carried via a show of hands. Only a majority vote is required. There is rarely any record kept of debate about the appropriateness or not of a proposal to declare a matter confidential, or especially of dissent about and resistance to the proposal before the vote. The only way a member of the public might know of resistance by board members to the proposal would be to be an observer in the room at the time – before being asked to leave, under 'exclusion from meeting' provisions of the Act, when the matter came up for discussion.[1] In minutes of the meeting, the wording for the subject matter in many cases could be ambiguous; for example: 'Park lands matter' or 'Strategic lease matter' or 'Legal matter'.

The gag is applied

An extract from a June 2017 Adelaide Park Lands Authority agenda paper appears below.[2] This was the rationale used to justify holding a discussion behind closed doors, forbidding board members and, subsequently council elected members, from subsequently discussing the subject matter in public.

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1 After 2020, when use of Zoom technology proliferated, the debate could be observed on screen but if an order was made, the screen would freeze until all discussion related to the matter had been concluded.

2 Adelaide Park Lands Authority (APLA), Agenda, Item 8.1, 'Adelaide Oval – Community Land Management Plan', 22 June 2017.

GROUNDS AND BASIS FOR CONSIDERATION IN CONFIDENCE

THE GROUNDS:

Section 90(3) (d) of the *Local Government Act 1999* (SA) (d) commercial information of a confidential nature (not being a trade secret) the disclosure of which—

(i) could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and (ii) would, on balance, be contrary to the public interest;

THE BASIS:

This Item contains commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information and confer a commercial advantage on a third party.

THE PUBLIC INTEREST:

The Board is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of this information may result in release of information prior to the finalisation of 'commercial in confidence' negotiations between the proponent and their suppliers and may materially and adversely affect the financial viability of the proponent in relation to contract negotiations which on balance would be contrary to the public interest.[3]

Similar extracts have appeared for many years in Authority or city council agenda papers and minutes. However, this particular extract, from an agenda paper of a particular date, makes for a useful study because it illustrates the manipulative or sometimes ill-advised use of the way secrecy provisions can be triggered, in terms of timing, and the duration of the order.

This one applied to deliberations regarding a 22 June 2017 proposal by Adelaide Oval Stadium Management Authority (AOSMA) management to use a park lands oval (Oval Number 2, Park 26, adjacent to Montefiore Road) for a concert to be attended by about 13,000 people. It was an arrangement not contemplated by the *Community Land Management Plan* (CLMP) for use of the park section containing the oval, which meant that it had no park lands policy support. The Oval Number 2 was adjacent to the Adelaide Oval stadium, within which the concert could easily have been held, but wasn't. Despite the CLMP restriction applying to Oval Number 2, AOSMA oval managers had advertised the concert event months earlier and sold all of the tickets. It had subsequently applied for a temporary liquor licence before it approached the Authority and then – and only then – did it ask the city council for permission to use the site.

[3] APLA, op. cit., 22 June 2017, page 73.

Given these facts, and especially that 13,000 people already knew of the upcoming concert, the application of the 'in-confidence' determination by the Authority, and later the city council was clearly without reasonable basis. The commercial matters had been resolved, no commercial position would be prejudiced (the ticket sales revenues were in hand) and the financial viability of the proponent in relation to contract negotiations was by that stage assured. Moreover, keeping the matter in the public domain (that is, not confidential) by that stage was very clearly in the public interest because a restriction had been blatantly ignored. The AOSMA and its legal advisors had either misjudged or discounted the rigours of the *Community Land Management Plan* and, as a consequence, the council's hand was being forced because of the sold tickets, committing all parties – including the park lands landlord, the city council – to the commercial event, notwithstanding the CLMP's content. The Adelaide Park Lands Authority's suggestion that 'on balance' revealing the matter to the public would be 'contrary to the public interest' was plainly absurd. This latter clause, which over many years has been used to justify secrecy of deliberations, is perhaps the silliest legal wording to exist in the section 90(3) criteria.

More commercial proposals

The same agenda item also prompted discussion about the potential for the AOSMA to use Oval Number 2, on the park lands outside the Adelaide Oval's 'core area' for additional commercial purposes. These were AOSMA concepts for concerts for up to 18,000 people in the park section north of the oval (illustrated in a drawing of an auditorium of seating facing residential precincts). This land was an area sub-licensed to AOSMA by a government minister under the *Adelaide Oval Redevelopment and Management Act 2011*. Given that these commercial concepts were also inconsistent with the CLMP's contemplation of uses for this land (which concepts were mainly limited to car parking), it is curious that the Adelaide Park Lands Authority (and later, the council) even entertained the discussion in the agenda because the concept was not supported by the CLMP and the AOSMA could have been told this in a brief email or phone call ahead of time. Extracts from the agenda relating to the AOSMA proposal follow.

"Proposed events

15. While the two currently proposed events are the trigger for this report, the AOSMA would like to hold, annually:

15.1. Up to five community events or concerts on Oval No.2 (excluding the One Day International Village Green which is conducted ancillary to the main event inside Adelaide oval and thus permitted under the terms of the Licence)

15.2. As well as 3-4 such events on the northern car park area.

16. Such events could have an attendance of up to 18,000 people on each occasion.

17. The SMA advises that traditional concerts or 'Day on the Green' type artists are preferred and they are not considering 'Big Day Out' or 'Future Music Festival' type events.

18. The SMA does however advise that it is considering ticketed community events such as Food and Wine Festivals or AFL Grand Final Screenings."[4]

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[4] APLA, op. cit., 22 June 2017, page 75.

In writing the agenda paper in this way, the Adelaide Park Lands Authority's and the council's administrators used their reproduction of this tentative, conceptual proposal information to trigger a confidentiality order. None of it was warranted. The matters (extract points 15–18 above) were not formal proposals directed to either the Authority or the council for endorsement. They were simply 'ideas'.

Order suddenly lifted

For about six months the entire subject matter of the 22 June 2017 agenda item remained secret and inaccessible to the public. Then, in December 2017, the confidentiality order was suddenly and without explanation revoked and the agenda documents released to the public. This action, and the treatment of the matter for that six-month period, highlighted disturbing aspects about the determination to declare secret the contents of these agenda papers in the first place.

Firstly, it ignored one of the Local Government Act's section 90 provisions – subsection 4. This is rarely referred to in the public domain when triggering subsections 1, 2 and 3. It reads: "... it is irrelevant that discussion of a matter in public may: (a) cause embarrassment to the council or council committee concerned, or to members or employees of the council; or (b) cause a loss of confidence in the council or the council committee."[5] Very clearly, it was relevant to the Adelaide Park Lands Authority and the council because the Authority (a subsidiary of the council) had been forced into a position of compromise about Oval Number 2 use by the AOSMA (and therefore was embarrassed), and the adoption of confidentiality orders had been used to keep secret the explicit detail from city ratepayers and the public.

Secondly, it illustrated a level of confusion. In June 2017 the order had implied that publication could "reasonably be expected to prejudice the commercial position of the person who supplied the information".[6] But in December, that belief had evaporated. There was no explanation. It might have been because the entire determination process relating to confidentiality orders had been a haphazard, kneejerk, poorly considered decision and procedure in the first place.

The philosophical transparency problem

The philosophical transparency problem relating to the declaration of confidentiality orders, especially with regard to park lands matters, can be summarised under five points.

1. An administrator's decision to consider recommending that a confidentiality order be made is guided by law that demands he or she must first address the 'public interest' test – "the [committee/council/board] is satisfied that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because ..." But there is no mechanism open to the public to assess how that satisfaction was arrived at, and no law that requires the administrator to explain it. To do so might reveal the details of the secret matter at the time.

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5 *Local Government Act 1999*, section 90, subsection 4.

6 APLA, op. cit., 22 June 2017.

2. The fact that a formal resolution must follow in public to have that order declared does not attach any transparency to it.
3. The range of criteria offered under section 90(3) provides the board chair or committee chair or subsidiary presiding officer with a very broad suite of excuses, many of which allow easy justification by virtue of often vague circumstantial links. For example, where any documentation has legal references (extremely common in any Australian local or state government administrative domain), a subject matter may be declared secret under the criterion relating to legal advice. Where any documentation has references to commercial activity (very common in relation to South Australian park lands matters) the topic may be declared secret under the criterion relating to 'commercial information'. Confidentiality orders may also be imposed where disclosure "would divulge information provided on a confidential basis by or to a minister of the Crown, or another public authority or official." This clause allows these persons to dictate a determination for secrecy – even before a local government administrator chooses to exercise a right to advise elected members or board members to subject the matter to a confidentiality order![7]
4. The administrator advising may choose to have the entire communication and its attachments, or agenda discussion paper, declared secret, even if the so-called 'sensitive' content may appear in only a small section of the whole document.
5. The South Australian public has no opportunity to challenge the determination of a confidentiality order under law. For the public to do so they would have to get the order revoked to explore the subject matter details to establish the case for the challenge. It is Kafkaesque, and only a clique of lawyers working as parliamentarians could have devised such an arrangement.

Further reading

Please refer to Appendix 23: 'Council secrecy orders – park lands key data'.

[7] Correspondence only needs the prefacing of the communication with the word 'Confidential' to trigger this.

APPENDIX 23

Council secrecy orders – park lands key data

> *The overall theme is that there have been myriad matters relating to Adelaide park lands determinations whose background briefings, paper trails and other detailed records were excluded from the public domain, resulting in their subject matters remaining opaque to public comprehension, sometimes for years.*

This appendix records and discusses data relating to the Adelaide City Council's confidentiality orders, extracted from several council sources.

It is instructive to compare the council's record with the record of the Adelaide Park Lands Authority (APLA), sourced from APLA's minutes over the period 2010–18. The Authority's confidentiality orders record appeared to be minimal by comparison to the city council's. (More discussion on this point appears later in this appendix.) Each made orders from time to time to exclude the public from a meeting to enable park lands matters to be considered in confidence, before occasionally taking the next step to impose confidentiality orders under the provisions of the *Local Government Act 1999* (section 90(2) and (3)) to ensure that the documentation was restricted from public access.

The word 'operative' applying to a confidentiality order means that, while it may have been made some months or years earlier, it is still in place. In other words, an agenda paper, report or other document presented to a council committee or full council meeting as a basis for discussion and, subject to an order, remained a confidential document under law and could not be accessed by a member of the public. This could endure for years.

Legally the city council must review its confidentiality orders annually, and resolve to maintain the confidentiality if it deems that any source documents subject to an order should continue to be subject to that order, in other words: remain secret. All of those noted in Tables 1 and 2 in this appendix would have been periodically examined over the period and prompted council administrators' desire to maintain confidentiality as at year-end 2018. Legally, no reason has to be given to the public as to why an order previously made is determined to remain operational or 'active'. Ongoing confidentiality indicates that the documents contain something the council desires to keep inaccessible to the public.

An overview of the confidentiality orders record

The following text was current in 2018 in relation to the latter part of the period covered by this work (post-2011). The features, procedures and legal allowances are likely to be similar at a future time, unless changes occur to the confidentiality provisions of the *Local Government Act 1999*, or the Authority charter, or the provisions in the *Adelaide Park Lands Act 2005* relating to the operations of the Authority board.

The number of the city council's confidentiality orders highlights the extent to which its administrators (and elected members) capitalised on the Local Government Act to restrict public release of information otherwise commonly subject to open discussion at meetings.

Table 1: Adelaide city council confidentiality orders 2011–18, and continuity of orders over that period (includes park lands matters)

Calendar year	Number of confidentiality orders made *	Orders made during any respective year that endured (still 'active' as at December 2018)[1]
2011	111	39
2012	152	59
2013	124	79
2014	Not provided	111
2015	97	75
2016	114	105
2017	106	101
2018	108	108

Sources for these data appear below.
Note: These orders relate to all subject matters. But they are not exclusive to park lands matters.

* **Sources ('Number of confidentiality orders made')**

- A March 2018 partial city council summary (prompted by a councillor's question) covered the six years between 2011 and 2017 (but excepted 2014). The annual number of confidentiality orders in that record, from 2011 (and excluding 2014), were respectively: 111, 152, 124, [year 2014 not provided], 97, 114, and 106.[2]

[1] Source: City of Adelaide website: July 2003 to December 2018 – Register of active Confidentiality Orders available on the City of Adelaide website (https://dmzweb.cityofadelaide.com.au/agendasminutes/files08/Agendas/CORDERS/2018/2018_12_21CORDER S__-_Register_with_Information_Available_to_the_Public_-_2003_-_2017_as_at_21_December_2018.pdf) Identifies: "6.1 the date, 6.2 meeting which made an 'in-confidence' order, 6.3 the subject matter and reason, 6.4 the duration of the order, 6.5 what the 'in-confidence' order covers and what information is available to the public." Link found in: Adelaide City Council meeting, Minutes, Councillor Martin, Question on Notice, 'Confidentiality orders', 29 January 2019, point 6, page 8 (and duplicated at page 36).

[2] Motion on Notice, Cr Phillip Martin, 13 February 2018 [and] council response recorded in: Adelaide City Council, Agenda, Item 7.5, 'Exclusion of the public requests and confidentiality orders', 8 May 2018, pages 41–43, including six web links for summaries of six calendar years' order subjects and dates.

- The total number for 2018 emerged in the city council's 2017–18 annual report. The numbers were 110 ('exclusion from the meeting'), and 108 (confidentiality orders).
- The data suggest an average minimum of at least two matters subject to 'exclusion from the public' resolutions and/or subsequent confidentiality order resolutions per week (but not necessarily in every week, of course). Moreover, given that the council did not meet for 52 weeks per year in any of those years, the actual 'weekly' number would have been higher. The numbers regarding whether the item was discussed 'in confidence' indicated that almost all of the administration recommendations for a resolution to make confidentiality orders were endorsed by elected members.
- An intriguing subsequent aspect of the data, however, was that a high number of the items continued to remain secret. That is, at the time of the provision of the data (May 2018), many dating as far back as 2011 remained confidential and unavailable for public inspection. This was further clarified, with the October 2018 release of 2011 to 2018 details, in a draft of the council's 2017–18 annual report, which dated the data as at 30 June 2018.[3]
- A 23 October 2018 city council agenda paper noted 'a 2018 review' of 891 city council 'operative' confidentiality orders that had been made between 2011 and 2018 (calendar years, except for 2018 which was captured as a financial part year, 1 January to 30 June 2018). It noted that 165 would be released "in part or in full on a progressive basis from November 2018". But there remained another list of 145 orders, which the council wished to extend – orders made during the financial years 2003–04 to 2017–18, a period of 14 years.[4]

Key themes: park lands matters

Table 2 in this appendix indicates the following trends in regard to city council activity.

- There was an average of nine park lands background briefing documents a year declared secret (that is, subject to confidentiality orders) and over the period 2011 to 2018 these remained secret (under continuing orders) as at mid-2018. (However, note the qualification in the third bullet point below regarding the recording of 'subject matter' and the consequent difficulties in determining explicit park lands links.)
- There appeared to be a spike in orders during 2013 and 2014 (totals 19 and 19 respectively). This aligns with the emergence of various controversial park lands matters during those years.
- Of concern in terms of archiving, the subject descriptions of some items were often so ambiguous that it was impossible to conclude a specific park lands

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[3] Adelaide City Council, Council meeting, Agenda, Item 12.3, 'City of Adelaide Annual Report 2017–18', Appendix matters: 'Confidentiality provisions – Use of sections 90(2) and 91(7) of the *Local Government Act 1999* (SA), by council and its council committees', [and] 'Subject matter and basis within the ambit of 90(3)', 23 October 2018, pages 103–161.

[4] Adelaide City Council, Agenda, Item 12.1, '2018 review of confidentiality orders', 23 October 2018, pages 7–25.

reference and therefore to determine a more accurate count. This highlighted the council's administrative opportunity for procedural manipulation – an administrative freedom to describe a subject matter in a way that obscured what it related to, especially whether it explicitly related to a park lands matter. For example, descriptions included: 'Capital City Committee development program' or 'Update'; 'Temporary infrastructure proposal'; 'Development policy implications'; 'Commercial business case'; 'Commercial matter'; 'Legal matter'; 'Cultural opportunity'; 'Question without notice – legal matter'; 'Emerging risk – legal matter'; 'Agreement with the government of SA'; 'Long-term planning for the city'.

The overall theme is that there have been myriad matters relating to Adelaide park lands determinations whose background briefings, paper trails and other detailed records were excluded from the public domain, resulting in their subject matters remaining opaque to public comprehension, sometimes for years.

The Adelaide Park Lands Authority (APLA)

Despite a common public perception that all park lands matters were first addressed at Park Lands Authority level, this was, and remains, false. Between 2007, when the Authority board first met, and 2018 (the end of the study period of this work), some park lands matters would not be first considered by the Authority, going instead to other committees before ending up before the full council. However, of those matters that did go before the Authority, its board would respond by providing advice to the city council. Sometimes that advice would be subject to a confidentiality order at both APLA level and subsequently at council committee or full council level. The Authority did not often appear to restrict public access to its documents or discussions by means of a regular application of 'exclusion of the public' orders or confidentiality orders. However, there was another mechanism at play, and it was not obvious to the observing public. This was the restriction applied under its charter. "All board members must keep confidential all documents and any information provided to them on a confidential basis for their consideration prior to a meeting of the board ..."[5] This clause left board members open to be canvassed and lobbied by administrators, government bureaucrats and their ministers, and commercial groups. Further, it imposed on them a duty to keep the subject matter and content secret. Whether these matters were ever listed as agenda subject matters for discussion was, and remains, impossible to determine. However, restricting these matters from a necessity to be listed as agenda matters (because they were instead discussed, as the charter said, "prior to a meeting of the board") would have resulted in the skewing of confidentiality order data, simply because there would have been no need to impose an order. Moreover, there was no mechanism available to the public to enquire into such discussions or the content of those discussions.

Superficially then, it appeared that the exclusion of the public from meetings, or the triggering of confidentiality orders at meetings, occurred far more commonly at city council level.

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[5] Charter 2018, 'Meetings of the board/Authority'. Source: Adelaide City Council, Agenda, 26 June 2018, part 4.8. clause 20, page 71. This restriction applied from the first day of the activation of the original 2006 charter. The original 2006 charter references about meetings of the board appeared under part 4.5, clauses 19–24.

Table 2: Confidentiality orders
— Adelaide City Council (ACC) and Adelaide Park Lands Authority (APLA), 2010–18

Calendar year period[6]	Total ACC orders made during the period that remained operational (active) as at year end 2018[7]	Total ACC orders with a specific park lands reference that remained operational (active) as at year-end 2018^	Total APLA confidentiality orders each period #
2 Feb 2010 to 6 Dec 2010	19	4	0
19 Jan 2011 to 20 Dec 2011	39	6	0
24 Jan 2012 to 11 Dec 2012	59	4	2
23 Jan 2013 to 10 Dec 2013	79	19	4
21 Jan 2014 to 16 Dec 2014	111	19	2
20 Jan 2015 to 15 Dec 2015	75	12	2
19 Jan 2016 to 13 Dec 2016	105	14	4
31 Jan 2017 to 31 Dec 2017	101	4	2
23 Jan 2018 to 11 Dec 2018	108	10	7

Notes to Table 2:

- ^ ('Total ACC orders with a specific park lands reference ...') An important qualification is that the data are not definitive. This is because the city council's 'subject matter' wording in its data documentation is often ambiguously described, by terms such as Property matter; Legal advice; Open space proposal; Strategic lease/licence matter; CEO update: unsolicited proposal; Confidential CEO update; Progress of confidential discussions; Event proposal; Development policy consideration; and Capital City Committee. These may or may not relate to park lands, but there is a possibility that they do. In this analysis, only those subject descriptions that clearly indicated a park lands matter have been counted. This means that the number is probably very conservatively estimated.
- References to reports or updates relating to the Capital City Committee (which sometimes played an important role in directing the evolution of subsequent park lands determinations) have not been included in the table data. Throughout the

[6] 'Calendar year period' source: Adelaide City Council record of confidentiality orders still active at year end. This source is calendar year end 2018: 2018_12_21CORDERS__-_Register_with_Information_Available_to_the_Public_-_2003_-_2017_as_at_21_December_2018 2.pdf

[7] These figures, except for data February 2010 to December 2010, also appear in Table 1, in the right-hand column.

post-2010 period there were many references in the council data to confidentiality orders made regarding Capital City Committee advice. While content was never released to the public, occasionally the related resolution was subject to revocation of the order and made public. However, the *resolution* was generally restricted to something very brief, such as "Received and noted the advice of the Capital City Committee". It therefore revealed nothing of the substance (nor whether the CCC advice related to park lands matters or not). This did not assist this appendix analysis.

- # ('Total APLA confidentiality orders each period') Source: Minutes of the meetings of the Adelaide Park Lands Authority, 2010 to 2018. See also Table 3 below.

Table 3: Adelaide Park Lands Authority application of confidentiality orders, dates and subjects

Calendar year period of APLA operation	Date order applied	APLA confidentiality order (CO) number and topic
2010	nil	nil
2011	nil	nil
2012	12/7/12	CO750 Leasing matters of the park lands
	11/10/12	Exclusion to consider matter: Western park lands sport and recreation master plan
2013	30/5/13	CO892 Expression of interest. Leasing matter Victoria Park, Park 16 CO893 Leasing matter, Adelaide Bowling Club CO894 Leasing matter, North Adelaide Railway Station
	31/10/13	CO939a Leasing matter, Lounders boathouse
2014	27/2/14	CO984 Tennis SA lease
	25/9/14	CO1084 Construction Convention Centre Stage 2 – Lease, works compound
2015	23/7/15	CO1168 Lounders boathouse lease arrangements
	1/10/15	CO1185 Land tenure arrangements
2016	21/4/16	CO1226 Tennis SA – Lease CO1227 Pavilion, Park 21
	23/6/16	CO1253 Pavilion, Park 21
	17/11/16	CO1306 Helipad, EOI
2017	20/4/17	CO1361 Presentation Golf Business Master Plan
	20/7/17	CO1394 Recreation business proposal – Commercial business lease
2018	24/5/18	CO1485 Tennis SA – Landlord consent
	19/7/18	CO1502 Bonython Park EOI results CO1503 North Adelaide Golf Master Plan
	23/8/18	CO1521 Confidential EOI property results CO1522 Torrens water licence EOI results
	20/9/18	CO1537 EOI results – Mary Lee Park
	18/10/18	CO1542 Strategic licence request

Notes to Table 3: This record does not imply that all of these orders remained 'active' as at year-end 2018. Source of data: APLA minutes of the periods.

Matters of controversy

Table 4 below explores the period 2011–18 and subject matters of controversy.

The difference in number totals over the period between the council and the Authority illustrates that the Authority did not appear to play a central role in the progression of park lands matters likely to be so legally, commercially or politically sensitive as to prompt confidentiality orders. This, of course, is almost certainly manifestly misleading, given the variety of controversial matters that its board discussed over the period of study. The data suggest that decision-makers at council administration level restricted direction of requests for advice by council's subsidiary (the Authority) to a limited range of matters to be subject to board member scrutiny.[8]

Some Authority board members did note with irritation that some controversial matters were not brought to the attention of the board. For example, during 2011 when controversial matters were being progressed in relation to legislation and proposals to redevelop Adelaide Oval facilities, the Authority did not play a central role in assessing oval proposals. Authority board members at the time noted this trend with alarm.

In another example around this time, Authority board members were prevailed on to 'note' a matter that had previously not come before the Authority for discussion and resolution, even though its park-lands-related subject matter ought to have required it. The matter, about contaminated soil in Park 27 (Helen Mayo Park), was highly controversial. In the way the matter finally did come to the attention of the board there was no need for the Authority to have to consider adopting a confidentiality order to block public access to the detail. It was a small example, but does illustrate how data can be skewed as a result of procedural shenanigans.

The subject matter criteria for orders

The overall pattern of subject matters assessed by the council appears consistent with the council's subject rationale for applying confidentiality orders. They included:

- "Business matters with commercial-in-confidence considerations for a third party.
- Matters where the council competes and/or co-partners in the private marketplace.
- Strategic property matters.
- City/state matters for which cabinet in confidence considerations apply."[9]

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[8] Remember, too, the matter referred to in earlier discussion in this appendix relating to the Authority Charter: part 4.8. clause 20: "All board members must keep confidential all documents and any information provided to them on a confidential basis ..."

[9] Adelaide City Council, Council meeting, Agenda, Item 12.3, 'City of Adelaide Annual Report 2017–18', Appendix matters: 'Confidentiality provisions – Use of sections 90(2) and 91(7) of the *Local Government Act 1999* (SA), by council and its council committees', [and] 'Subject matter and basis within the ambit of section 90(3)', 23 October 2018, page 9.

The small number of Adelaide Park Lands Authority (APLA) meeting exclusions and/or confidentiality orders appears consistent with the limited number of agenda subjects arising at APLA level that contemplated the above four criteria. But there were some exceptions. A small number of sensitive matters continued to be addressed by APLA, and the higher numbers of 'exclusion of the public' orders or confidentiality orders in the years 2013, 2016 and 2018 reflect this in Table 4.

Table 4: Periods, subject matters of controversy, and general observations by the author of this work, *Pastures of plenty*

Calendar year	Subject matters of confidentiality orders	Observations by the author of this work, *Pastures of plenty*	'Exclusion of the public' orders or confidentiality orders (specifically park lands related)
2011	Adelaide Oval redevelopment	A highly controversial topic. See this work's case study: Chapter 27: *Adelaide Oval 2011*.	APLA: 0 # Council: 6 *
2012	Victoria Square contract: 'Leasing matters of the park lands'; Victoria Square procurement contract; Victoria Park award of contract; Adelaide Oval landscape plan.	All of these matters were controversial at the time, especially the Adelaide Oval landscape plan, which profoundly altered the Park 26 landscape to suit future oval operations and provide more accessible car parking facilities – against much public opposition.	APLA: 2 Council: 4 *
2013	Redevelopment at Park 25 (SACA west park lands proposal for a pavilion and ovals); Torrens Lake management (pollution); Victoria Square awarding of contract; Park 24 landscaping, leases; VictoriaPark/Adelaide Bowling Club/North Adelaide Railway Station; Adelaide Aquatic Centre works.	The SACA Park 25 development proposal was a bid to construct a large new pavilion. The Victoria Square money (about $30m) funded only half of the master plan, and there was no future allocation for the other half. At year-end 2018 the square remained half redeveloped. The Adelaide Bowling Club is on park lands, a commercial venture which was generously supported in policy determination by the council in a number of ways.	APLA: 4 # Council: 19 *

(continued)

Table 4 *(continued)*

Calendar year	Subject matters of confidentiality orders	Observations by the author of this work, *Pastures of plenty*	'Exclusion of the public' orders or confidentiality orders (specifically park lands related)
2014	Adelaide Aquatic Centre works; Tennis SA lease (multiple orders: multiple items); 'Discussion on park lands issues'.	Aquatic Centre works were costly, and funded only by city ratepayers. The paper trail, on Tennis SA (Parks 26 and 1) and lease negotiations, commenced well ahead of major redevelopment in 2018. The theme is that the council maintained a high level of confidentiality about plans by this park lands lessee. This topic is explored in Appendix 19 in this work titled 'Eight pavilion case studies'. The matter of 'Discussion on park lands issues' is impenetrable, but there had to be a reason why it remained confidential for years.	APLA: 2 # Council: 19 *
2015	Events in the park lands – temporary activation; Glenelg to park lands recycled water; Lounders boathouse lease agreement.	The council occasionally extended major concessions to parties seeking access to the park lands for events. Sometimes these occurred by allowing operational flexibility to favoured licence applicants. Government applicants tended to win the most generous conditions, and sometimes licence fee discounts.	APLA: 3 # Council: 12 *
2016	Leases: Lounders boathouse (near Elder Park); Tennis SA (Parks 26 and 1); Park 21, Events in the park lands financial analysis; Riverbank activation proposal.	The fees charged to manage events came under much discussion during this period. Analysis showed that until this time some licence holders had benefited from generous interpretation of the (then) rules. Riverbank by this time had been created as a zone separate from the park lands zone, subject to park lands policy influence by the state government's development arm, Renewal SA, as well as a separate Riverbank Authority.	APLA: 6 # Council: 14 *

(continued)

Table 4 *(continued)*

Calendar year	Subject matters of confidentiality orders	Observations by the author of this work, *Pastures of plenty*	'Exclusion of the public' orders or confidentiality orders (specifically park lands related)
2017	'The pavilion – park lands lease'; North Adelaide golf course master plan – financial sustainability; Councillor question on notice Capital City Committee; old RAH, APLA advice recreation business proposal.	All of these matters hint at controversial park lands topics. There is a reason why all of them remain subject to confidentiality orders, but the public cannot be told. (Note that in the cell to the left the Capital City Matter is not included in the total because it could not be definitively concluded that it was a specific park lands matter.)	APLA: 2 # Council: 4 *
2018	'Event request'; Tennis SA landlord consent (and) leasing matters; golf course master plan.	The golf course master plan cost a lot, and was kept confidential well after the council's November 2018 election. (It remained confidential at December 2022.) It contained a major plan for commercialising the operation, a mini-golf hub, new landscaping and redevelopment of a park lands building.	APLA: 7 # Council: 10 *

Notes to Table 4:

* Calendar year period source: Adelaide City Council record of confidentiality orders still active at year end. This source is calendar year end 2018:

2018_12_21CORDERS__-_Register_with_Information_Available_to_the_Public_-_2003_-_2017_as_at_21_December_2018 2.pdf

(Further detail: see footnote 1, this appendix.)

\# Source: Minutes of the meetings of the Adelaide Park Lands Authority, 2010 to 2018. (See Tables 2 and 3 for dates and subjects of orders. Some are orders that remained operational ('active') as at year-end 2018.)

APPENDIX 24

Extract from Strategy 1.4 of the *Adelaide Park Lands Management Strategy 2015–2025*

(approved by the city council in 2016 and the state government in 2017)

This is an appendix referred to elsewhere in this work:

- **Chapter 47: 'The footprint numbers game'**
- **Chapter 54: 'Semantic alienation across the park lands pastures'.**

(Reader 'period context' note: Although well beyond the study period of this work[1], at December 2022 this version of the *Adelaide Park Lands Management Strategy* remained the current operational version, even though it had been due for 'review' and possible replacement as at August 2022. This was because it had been signed-off by the minister in August 2017 – five years previously – and that the *Adelaide Park Lands Act 2005* required 'review' every five years. At December 2022 there was no evidence in the public domain to suggest that this review had been completed.)

| **EXTRACTS** | **Strategy 1.4:**

- "Support activation of the park lands by upgrading and enhancing buildings and structures responsive to their park setting."
- "Buildings and structures are critical to making open space functional and meeting the needs and expectations of users. However, it is important that these buildings and structures are designed to complement their park land setting and minimise their footprint while ensuring they are fit for purpose. This will require a review and alignment of Development Plan[2] policy and the Park Lands Building Design Guidelines."[3]

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[1] *Pastures of plenty*, 1998–2018.

[2] This is the *Adelaide (City) Development Plan*, which was current during the Strategy's early operational years (2016 to early 2021) but was superseded by the *Planning and Design Code* on 19 March 2021, consistent with the *Planning, Development and Infrastructure Act 2016*.

[3] The *Park Lands Building Design Guidelines 2008* document was at year-end 2018 a policy document of ambiguous status. Even by 2017 this reference had been apparently quietly but formally abandoned, and may have been abandoned for some years without formal notice. Email advice to this study's author from the Adelaide Park Lands Authority (APLA) executive officer, Martin Cook, on 29 August 2017 was: "These [guidelines] are nine years old now and have become quite outdated. We also now have our own internal design team and a review process, with architectural input as required, for any building proposals, so we don't actually use them any more." However, an Adelaide Park Lands Authority (APLA) meeting almost two years later, on 20 June 2019, noted that the guidelines were 'current' and 'which are in current use today', although the source document (board minutes) also noted that they were 'currently under development'. (Source: APLA board meeting, Minutes, Item 7.2, 'Presentation, Park Lands Building Design Guidelines', Chris Dimond, Architect, Strategy (City of Adelaide), 'Purpose of the 2008 Guidelines', 20 June 2019, page 20.) In November 2019 a new revised Guideline was approved by APLA, amended, then approved again on 4 June 2020. There was no evidence that it had been 'aligned' with the *Adelaide (City) Development Plan*. Moreover, that plan was subsequently replaced by the *Planning and Design Code* in March 2021.

| EXTRACT | Strategy 1.4:

"ACTIONS

"1. **Undertake a program of building consolidation, enhancement and development to ensure that all buildings in the park lands:**
- Play a role in supporting both active and passive use of the park lands for outdoor recreation – both organised sport and informal recreation.
- Are fit-for-purpose and support multiple park lands activities (where appropriate).
- Enhance visitor experience at activity hubs.
- Complement their park setting and minimise their visual impact.
- Reinforce the overall identity of the park lands.
- Achieve creativity and boldness in design.
- Achieve universal design principles.
- Achieve least possible footprint and floor area whilst ensuring facilities are fit for purpose.
- Manage building height and form to minimise impact on the landscape.
- Are energy efficient and incorporate renewable energy sources (particularly solar) and water-sensitive urban design principles.
- Meet the requirements of the Government Architect's Design Review Panel."

"2. **Review the Development Plan provisions and Park Lands Building Design Guidelines to optimise design and functional outcomes from park lands buildings and structures whilst managing impacts on the park lands."**[4]

"3. **Support mobile food and drink outlets (and associated temporary outdoor seating) in the park lands by:**
- determining suitable locations for mobile food and drink outlets
- establishing pop up and plug in facilities at these locations."

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[4] Actions 1, 3, 4 and 5 are relatively clear in their intentions. (Note, however, that the *Adelaide (City) Development Plan* was superseded by the *Planning and Design Code* on 19 March 2021.)

However, the Action 2 wording (formatted to bold) reads more like an internal memo to council administrators about procedural updating issues. Reviews of statutory planning instruments such as the *Adelaide (City) Development Plan* or replacements, such as the *Planning and Design Code* (March 2021) entail detailed planning procedures that can take long periods to deliver outcomes. A review of the 2008 *Park Lands Building Design Guidelines* would take a long time. In March 2020 a new Guidelines version was created, and three months later endorsed in June – but this was nine months ahead of the operational launch of the *Planning and Design Code*. No evidence came into the public domain of any updating of that recently amended Guideline, in order to be consistent with the new code. The general theme is that some provisions in the 2016 *Adelaide Park Lands Management Strategy 2015–2025* (still current at December 2022) were sometimes fogged with ambiguity. Administratively, the management of park lands building construction policy appeared to be at times ad hoc and unpredictable. The very late arrival of the new *Planning and Design Code* in March 2021 (arising out of 2016 legislation) did not help city council architect administrators. It also did not help administrators of the content of the 2016 *Adelaide Park Lands Strategy 2015–2025*. Its operational shelf life endured as late as December 2022, with no indication of a completed review, under the requirements of the *Adelaide Park Lands Act 2005*.

“4. Ensure that public toilets are provided at key locations across the park lands, such as activity hubs and gateways.”

“5. Permit commercial services to operate where they provide community benefit and support outdoor recreational use of the park lands.”

“6. Undertake a review of all buildings and structures on the park lands and remove all redundant infrastructure which does not support outdoor recreational use of the park lands.”

Postscript

Evolution of the 2008 *Adelaide Park Lands Building Design Guidelines* highlighted two problematic themes. They were:

1. The administrative problem of old and dated policy documents being referred to as key and timely references in updates to other policy documents, such as the *Adelaide Park Lands Management Strategy 2015–2025* (the 2016 version). This created an administrative ‘misalignment’ between the contents of the older Guidelines and the contents of updated statutory policy documents.
2. A problem about ‘facts’, insofar as Authority minutes claimed in 2017 that the 2008 guidelines were redundant, but in June 2019 a council architect who was advising the Authority claimed that the 2008 guidelines remained in use.

Authority (APLA) board minutes of 20 June 2019 claimed that the guidelines addressed four key functions:

- “Provide clear design direction on building projects in the park lands.
- Inform proponents and designers of the City of Adelaide’s expectations for building design.
- Inform consistent decision-making by APLA, Council and the Administration for the assessment of building designs for the provision of landlord approval.
- Guide proponents through the typical Council approval process.”[5]

In late 2019 a new revised draft version of the guidelines was released. It remained ambiguous about footprint. It reinforced the long-standing city council and architectural ambiguity by failing to stipulate explicit, quantitative footprint reduction intentions, total floor area reduction limits, or height limits. The revised document was due to be authorised in June 2020.

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5 Source: APLA, Minutes of a meeting of the board, 20 June 2019, page 20.

APPENDIX 25

Case study: *YourSay*

The city council's *YourSay* consultation model and its use in informing subsequent Adelaide park-lands-related determinations.

> *The concept of* YourSay *always was going to be problematic, even as long ago as 2011 when it first came into Adelaide City Council use. The US-licensed model presupposes that time-poor respondents who (if they weren't so busy) might devote significant time to scrutinise other council website links and thus deliver a rich palette of considered, well-informed views. That's one of the fallacious assumptions behind use of this digital media model for consultation.*

FEATURES	COMMENTS
What	*YourSay*[1] is a digital approach used under contract to collect and interpret opinion data arising from Adelaide City Council and Adelaide Park Lands Authority public consultations. It delivers subsequent analytical results to inform decision-making within the administration.
Park land area	All sections of the Adelaide park lands under the care and control of the city council.
Beneficiaries	The council's leaders and senior managers, the data contributing to a culture of publicly informed transparency and accountability within the Adelaide City Council.
Cost	US licence fee for the contract agreement is a secret.[2] Related staff salary costs are not segmented in publicly available documents or annual reports.
Historical relevance in the context of a 1998 to 2018 study	Many park lands determinations have been made as a result of presentation of results of *YourSay* consultations and subsequent analysis.

[1] Note: Style matter. The US company owning the rights to this digital model formats the words as: Your Say. The Adelaide Park Lands Authority and the Adelaide City Council use the words YourSay. For this work's style purposes, it is set to italics.

[2] A question on notice asked by city councillor Phillip Martin on 13 November 2020 failed to prompt public release of details. The city council administration response stated that "the commercial terms of the annual licence fee are confidential and have been provided directly in confidence to council members." (Source: Adelaide City Council, The Council, Minutes, Item 15.7, Question on Notice Replies, 13 November 2020, page 62.)

CASE STUDY: *YourSay* *(continued)*

FEATURES	COMMENTS
Park lands management features	The general assumption is that all *YourSay* results reflect a well-informed and statistically significant sample of responses. This assumption is contestable. It is challenging to gather sufficient and reliable park-lands-related public opinion data because few South Australian respondents fully understand the history, scope and complexity of park lands legislation, or the instruments of management policy, or the related strategies, guidelines and master plans. *YourSay* city council consultations assume that respondents have the time and the desire to research key background documents, made available through *YourSay* digital links provided by the council. Submissions are encouraged. However, if respondents are not motivated to do the research, there is presented to them a simplistic alternative range of response options, segmented as: 'Strongly agree/Agree/Neutral/Disagree/Strongly disagree'. These follow questions crafted to probe aspects deemed necessary by council staff to explore. This very general approach can lead to results that can be misinterpreted. Some consultation results merely highlight the fact that many respondents do not comprehend the complexity of the background information, or the consequences of their responses using that range of optional categories. Despite a *YourSay* record of poor total response numbers, major determinations are commonly made based on the data collected. Being a digital process, and the ease with which a person can respond online, the *YourSay* model is also open to abuse and can result in corruption of data.[3]
Park lands relevancies	Significant, but with potential for concern. Assumptions that consultation results are an accurate reflection of the views of inner city ratepayers, outer metropolitan communities and regional taxpayer communities can be misleading. The model's use of simplistic questions can prompt simplistic answers, and these are common among time-poor respondents. Modules and the design features of survey forms encourage superficial responses. A 'Strongly agree/Agree/Neutral/Disagree/Strongly disagree' response is weighted the same as a 1000-word submission. Whichever way that data is collected and collated, there is no legal requirement for administrators to respond to feedback in any specific way.

[3] For example, consultation about a 2017 park lands helipad concept proposal. This is explored later in this appendix.

CASE STUDY: ***YourSay*** *(continued)*

FEATURES	
Park lands relevancies *(continued)*	A lesser-known feature of a *YourSay* consultation (especially about the park lands) is that the city council sometimes consults despite knowing that its subsequent determination will ignore the feedback. This can occur because a decision has already been made on a political or operational basis, or because budget allocations need to be spent by a deadline that has already arrived, or because of requirements arising from ministerial amendments of park lands statutory instruments, such as the development plan regarding the park lands zone.[4] In these cases, the initiation of a *YourSay* consultation might be best described as 'going through the motions' or 'being seen to be consultative'.

The digital revolution

The digital revolution had been under way for many years before 2011, the year in which the state government and the city council changed their method of consulting with the public. The use of *YourSay* broadened the way the public could be notified and enticed to respond, and it also led to changes in the substance of public responses. *YourSay* influenced the way administrators were able to process the samples and interpret the results. A detailed exploration about the laws and city council policies guiding and informing operation of consultation processes appears in an earlier chapter in this work.[5]

Before 2011, an older consultation model applied, which used a wide range of media to notify the public and prompt responses. For example, between 2000 and 2007 the model for the public dissemination of information and the consequential seeking of public views included such things as the use of council's website, media releases (and consequent media articles), public displays in libraries and other places, press advertisements, public meetings (especially for proposed changes perceived to be controversial), and precinct presentations or stakeholder workshops.[6] Around 2007 there grew an increasing emphasis on the use of websites (government and council). However, public meetings, especially to allow for discussion and debate about controversial issues, remained an option for city administrators.

Paper use diminishes

As the digital revolution progressed into the teen years of the second decade (2011 onward), digital processes began to replace the use of paper communications. The dialogue about controversial park lands matters – and public consultation announcements – was more commonly pursued online. Some paper notifications

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4 After March 2021 the development plan was titled the *Planning and Design Code*.

5 Please refer to Chapter 48: 'The consultation lark'.

6 Adelaide Park Lands Authority, Agenda, 'Communication and consultation tools', 21 August 2007, page 2140.

continued, however, with paper responses preferred by those who did not like using digital media, but the public was encouraged to prefer digital because of the ease of collection and collation of data by the Adelaide Park Lands Authority or city council. Younger, digital-media-savvy South Australians, who generally had very little historical knowledge of park lands matters (and often no experience in dialoguing with those in charge of their management) responded well to online procedures, but superficially. This was not only because of their lack of knowledge about city matters, and especially matters regarding the park lands, but also because their responses were encouraged to arise from the 'strongly agree/agree/neutral/disagree/strongly disagree' option model. A common trend was economy of response, especially where the respondent considered that insufficient background information had been provided, in which case the response could often be summed up as 'neutral'. This gave staff analysing results considerable flexibility when interpreting the data. Were respondents 'neutral' because they had no strong opinion or because they couldn't comprehend the complexities?

Data for all to see – with exceptions

A positive aspect about the city council's use of *YourSay* was that the raw feedback was often published (or made accessible via digital links) in Authority or city council agendas or minutes for all to see. This allowed elected members, and the public, to explore areas where feedback was unclear.

It is important to explore times when this model, held as an exemplar of transparency and accountability, was not used. This said something revealing to South Australians monitoring park lands development project decision-making. When *Development Act 1993* provisions were triggered, such as assessment of a development application relating to a park lands site, *YourSay* was not used. The 1993 Act was the major planning statute interacting with the *Adelaide Park Lands Act 2005*. The Development Act's statutory planning policy instrument was, at year-end 2018 (the end of the study period of this work), the *Adelaide (City) Development Plan*.[7] Where this plan's Category 1 classification allowed for a park lands development application to be deemed as complying development and therefore not requiring public consultation, the city council did not use *YourSay* to test public opinion as to whether they thought it should require public consultation. Matters determined by planners as Category 1 under the development plan could feature highly controversial developments in the park lands. Examples (among many) included a 2011 application to build a large sports pavilion in Park 10. This was an application by the University of Adelaide, replacing a university change room the size of a large garden shed. There was no public consultation conducted about the development because it was classified under the plan as a 'complying development'. A second example was a 2016 state government development application to build a six-storey, $100m high school in the park lands. This was also not subject to public consultation, for the same reason.

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[7] *The Development Act 1993* was in operational effect during the years of this work's study period (1998–2018). The new statute intending to replace it was the *Planning, Development and Infrastructure Act 2016*. But that 2016 statute had not been brought fully into operation in relation to park lands matters at year-end 2018, which meant that the *Adelaide (City) Development Plan* remained in use for some years after 2018.

In this way, while an observer might be tempted to conclude that *YourSay* was held up as a model of consultation transparency and accountability, some aspects of SA planning law did not require public consultation to occur at all – even if the matter was about community land such as the park lands – so *YourSay* was not used.

An American import

The American Your Say template is an import. The city council pays a licence fee to use it. It is a consultation model that has been in use in Adelaide since 2011, when the council replaced use of its own website and data analysis model, and adopted the USA model. As at the end of calendar year 2017, about 280 matters had been probed, seeking consultation feedback and, of those matters, about 45 per cent had been park lands matters.[8]

How one Adelaide test revealed the flaws

In 2018 a city council *YourSay* survey probed the public response to a proposal to approve changes to a key park lands policy instrument to support a proposal for construction of a helipad and related infrastructure in the park lands. The instrument was the *Community Land Management Plan* for Park 27, and the site was a small park titled Helen Mayo Park adjacent to Torrens Lake. This was in the park lands zone. A 136-'yes' vote resulted, but the consultation model had been exploited. The result highlighted how the *YourSay* model could deliver corrupted data. The corruption was identified only when a member of the public warned the council's CEO. Council staff had assumed that the 72 per cent 'yes' majority (136 of 188 responses) clearly supported a certain proposition for use of the park lands. But a park lands 'protection' advocate later scrutinised the sample breakdown and found that only a small number of votes had said that. The remainder of that 72 per cent cohort supported the concept – but not use of the site. The corruption matter was revealed when it emerged that the big 'yes' sample had been prompted through a private organisation's offer of a free lottery prize (a free helicopter ride) to a randomly chosen person who could confirm that they had voted yes, via the *YourSay* consultation, so corrupting the sample. The council decided that the entire consultation would be abandoned. A council inquiry later set out to probe implications for the rigour of *YourSay*, but deftly twisted the term of reference as to whether anyone within council had manipulated the process. They had not. The assessor also challenged the suggestion that any manipulation might have occurred, but the website evidence of the private firm's intention was clear to both the council staff and the public.[9]

A city council whitewash was obvious. Pursuit of the helipad concept, which had led to two *YourSay* consultations, cost council $42,420 over two years to administer and it had also spent $35,000 on a report. Despite that big wake-up call, there was no publicly released evidence to indicate that major changes to the *YourSay* model or its assumptions or analytical approach had been contemplated, or pursued.

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[8] https://yoursay.cityofadelaide.com.au/past-consultations

[9] 6 September 2017: http://www.glamadelaide.com.au/main/should-adelaide-have-a-cbd-helipad-this-is-your-last-chance-to-have-a-say-win-1500-heli-ride/

YourSay and public consultation policy

A determination to use communication methods, including *YourSay*, to test public opinion, arises from the provisions of the city council's public consultation policy. This must comply with the *Local Government Act 1999*, sections 8 (responsible and accountable government) and 50 (effective consultation with the public). That policy informs council's Community Engagement Strategy, which determines consultation processes. In January 2018 the council triggered a revision of its older 2009 policy. Public consultation that followed used a variety of means to elicit views about the revision, including advertising in city and suburban newspapers, social media, communications with community groups and *YourSay*. Given that much previous public distemper traditionally arose when topical subjects became subject to feedback surveys, the result that emerged from this one was surprisingly poor. The council observed: "The consultation information was viewed by approximately 6000 people and produced 17 responses; ten came from external responders, and seven from internal sources and from other councils."[10]

This highlighted two fundamental problems faced by council administrators whenever they wished to initiate a survey. Firstly, how could they obtain a statistically significant sample, and secondly, if they could not achieve that, how could they make recommendations based on such poor results? Detractors of the *YourSay* model would sometimes tap into these dilemmas and blame *YourSay*, citing two issues as contributing to the problem:

- a requirement that time-poor respondents explore complex background material, the technicalities of which they may not comprehend; and
- use of simple questions prompting simple answers.

The council would especially attract criticism because *YourSay* was the one tool among all of the consultation options over which the council had the most control.

What the Americans say

The *YourSay* model comes from the US-based Your Say firm Bang the Table, which claims to be "online community engagement specialists".[11] "We're a registered B-Corp with teams in the USA, Canada, the UK, Australia, New Zealand and India," its website stated in 2017. "Since 2006 we've worked with more than 500 organisations to help them engage their communities online."[12] Software is described on its website as: "A sophisticated digital public engagement toolbox with eight feedback tools, a relationship management system, and tailored analytical reporting in a single integrated package." Company website extracts, replicated on a city council website in late 2017, follow:

"What are the advantages of engaging online? Engaging online allows you to have your say in the council's decision-making process in your own time and comfort:

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[10] Adelaide City Council (ACC), Council agenda, Item 7.4, 'Approval – Draft Community Consultation Policy', Discussion, point 4, 8 May 2018, page 30.

[11] http://Bang the table.com/press

[12] www/bangthetable.com/press/

- You don't have to attend community meetings at a set place and time; you can contribute at a time and place that suits you.
- It is a quick, safe and convenient way to have your say on a range of issues and topics.
- It is a great way to keep up to date and contribute your views on issues affecting your community.
- You can see what other community members think about an issue or topic, respond with your own views and engage in a discussion.
- It allows for a range of different people, with different views to discuss matters that impact on their community."[13]

The council website text continued:

"What happens to my feedback/comments? All comments, ideas and suggestions are collated and used by the relevant project officer to inform the development of strategies, programs, activities and designs, or to gain an insight into community views and opinions. Often, feedback provided online is used in conjunction with other face-to-face consultation activities such as workshops, meetings, open days or surveys. When each consultation closes, all contributions are compiled into a report, which will be presented to council when considering the particular matter.

"All feedback provided during consultation will be considered; however, this does not mean that every suggestion can be taken on board and adopted as proposed."

Is it anonymous?

[The council website:] "Yes! Your privacy is totally protected because the 'Your Say Adelaide' is hosted and moderated by an external independent organisation, Bang the Table. No third parties have access to or will be provided with your details. What's the difference between a formal submission form and a survey? It is council policy that a formal submission is required for some specific projects or decisions to fulfil a legislative requirement. These are usually for strategic decisions (e.g. Annual Budget) and also include the provision of a lease/license over community land or within park lands. A formal submission requires the contact name and address of respondents which becomes public information and is provided to council for their consideration."[14]

How is the site moderated?

[Bang the Table website:] "All moderation is carried out by Bang the Table and is independent of Adelaide City Council. The moderators do not edit or alter any comments and will only remove comments deemed to be significantly off topic, offensive or malicious, in which case they are removed from the site immediately. Refer to the Moderation guidelines." [15]

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[13] https://yoursay.cityofadelaide.com.au/about-us/faqs

[14] https://yoursay.cityofadelaide.com.au/about-us/faqs

[15] www/bangthetable.com/press/

What South Australians said

In January 2018, when the city council triggered a revision of its public consultation policy, it used Y*ourSay* to test public views about the way it conducted public consultation. It elicited some unflattering feedback. A view emerged that those living distant from the city relied on state-wide print media to find out about city consultations and wanted the use of state-wide media to continue, but the council was proposing to change the policy. One respondent said: "… decisions made for the state's capital city can impact on others in outlying areas. By removing [council's] notification [via] Public Notices in our state-wide newspaper … a large number of affected people [that is, ratepayers of rim councils] may not find out about proposals that affect them." It would not be limited to rim councils. Many regional and rural South Australians could be affected by city based decisions.

The survey also led to feedback on what people didn't like about the City of Adelaide's model of *YourSay*. Said one respondent to the consultation, held between 7 February and 7 March 2018: "The [online] surveys should include comment sections for each of the questions/topics and not just one comment section at the end of the survey. Rarely can an issue be distilled to just a binary response. [Another] aspect concerns respondents … On occasions, and particularly with online contributions, respondents use nom de plumes. This raises the question of whether the contribution comes from a bona fide respondent or … is it a multiple contribution from one person? The most stringent efforts should be made to ensure genuine responses." [16]

Testing the assumptions

The concept of *YourSay* always was going to be problematic, even as long ago as 2011 when it first came into Adelaide City Council use. The US-licensed model presupposes that time-poor respondents who (if they weren't so busy) might devote significant time to scrutinise other council website links and thus deliver a rich palette of considered, well-informed views. That's one of the fallacious assumptions behind use of this digital media model for consultation. "From our experience," said another respondent to the January 2018 consultation, "not enough detail is provided for the community to make educated submissions [so] we cannot see how elected members can make informed decisions." There was also high potential to skew a sample. Said one: "No anonymous contributions should be considered, as they have in the past." Said another: "We have seen responses from interstate. They should not be commenting on South Australian proposals, skewing outcomes for locals." There was an inherent potential for superficiality. Said another: "To give the same weight to a simple yes/no answer [as] to a considered argument is to 'disrespect' those who have gone to the trouble of developing an argument [perhaps in a submission]. Yes/no answers can facilitate corruption of the consultation process by making it easier for 'votes' to be bought."

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[16] ACC, Council agenda, Item 7.4, 'Approval – Draft Community Consultation Policy', Discussion, link identified at point 5, 8 May 2018, page 30.

APPENDIX 26

Reproduced from *The Adelaide Review*, May 2012, page 10.

Political discounting erodes Adelaide's park lands funding

Political pressures are affecting the city council's ability to fund its traditional role as custodian of Adelaide's park lands

John Bridgland

Recent changes to city council rules on lease fees for big government developments on Adelaide's park lands will further compromise its ability to fund its role as custodian of the city's unique green belt.

The move highlights the challenge of funding its $12.2 million annual park lands maintenance costs, while surrounding local governments contribute nothing and the state government wins special discounts as it ramps up plans for more development on the city's green recreation areas.

In the dying days of 2011, ending a row that began seven months earlier, city councillors agreed on a special discount formula that will significantly benefit the state government and its big contractors managing state infrastructure developments on or at the edges of the park lands. Hundreds of thousands of dollars will in future be jettisoned from lease charges traditionally paid by the state government.

The discount bid highlights political pressures on the council to shave charges from these developments as Riverbank, Adelaide Oval and new RAH-linked developments continue to emerge at the northern edge of the city. More concepts exist to develop parts of the park lands adjacent to the river or near the Old Adelaide Gaol and olive groves near Bonython Park. Despite the current northern-edge focus, the council's new fee discount schedule will benefit any future government proposals for any part of the hectares of park lands managed by the council. At a time when the council is facing more financial pressures than ever before to manage its share of Adelaide's park lands, the discounting bid inserts a new 80 per cent discount category for the highest potential lease fee developments.

Even before the new formula was adopted, in May 2011 the council discounted by 75 per cent the fee applying to the state government's Convention Centre expansion near the Morphett Street bridge, slashing the fee from $177,450 to only $44,362.50. The discount was based on a complex calculation, used to justify that "state government projects that are of state/city significance" and of 'strategic value', defined as "considered to result in an increase in visitation, workforce, education or residents".

While the council stoush over formalising this discounting moved closer to resolution late last year [2011], one urgent bid for a special lease fee for western park lands car parking for RAH construction workers was approved. A $292,500, five-year lease fee to allow 80 cars to park near the Old Adelaide Gaol reflected a similar high level of discounting whose formula was formally approved a few weeks later. It boiled down to a peppercorn rate of $37.50 per car, per month. The council approval stated that this fee was "in recognition of the social, community and economic value of the project to the city and state ...". The lease agreement was to be between the council and Hansen Yuncken Pty Ltd and Leighton Contractors Pty Ltd but the offer was later rejected by the contractors.

Local media interest in the car park deal at the time prompted a council response that the car park lease money would be used to fund Bonython Park developments. Previous park 'enhancements' had capitalised on 66 per cent government funding and the council at that time had no budget strategy in place to fund its remaining five stages. There was no follow-up comment by the council when the car park deal collapsed.

The council's December adoption of the discounting formula carried a curious final recommendation: "Community consultation is not required as the fee schedule relates specifically to State Government projects." Future spin is likely to focus not on the discounting (which will be difficult to identify because the new schedule will automatically apply) but on the allocation of the (now minimal) fees charged. Council's very recent history illustrates that large amounts of money have been thrown away in ad hoc decisions before the new formula was adopted. In 2010, $118,000 was waived on a government project for bus access to parking during the Gawler-to-Adelaide rail line upgrade (a 100 per cent discount). Nearby, at Adelaide Oval, a $500,000 adjacent oval lease fee was discounted to only $167,000. None of this discounting assisted in the challenge to boost park lands maintenance budgets. Council took its biggest hit in 2011 when the state government nominated for itself a $10 per annum fee – for 80 years – for the new Adelaide Oval licence area created under a new Act. Council's park lands budgets lost more than $300,000 in annual lease fees which until then had been anticipating another 33 years of indexed annual revenues from the former lessee, the SA Cricket Association. Despite the loss, the council will remain responsible for park lands upkeep on the oval's eastern frontage.

The cost of council's park lands custodianship was in December examined by the Adelaide Park Lands Authority, which concluded that none of the park lands uses, such as sporting leases or licences, restaurants, car parking, events, major project construction or works permits would bring in sufficient income for future maintenance and enhancement.

In advice that contrasted the discounting policy, however, it recommended that council reduce its current 95 per cent funding responsibility to 50 per cent, seeking the remaining 45 per cent via "additional funding from potential partners", which it did not identify. The authority also recommended that philanthropic funding be sought, but noted that such monies would not be claimable as tax deductions. Another option, a community foundation model, had tax complications that would mean that the foundation wouldn't be able to 'deliver projects in the park lands'. A third model, an Independent Trust with a public fund was complicated to set up, but might work. The idea of an independent Trust echoes back to 2003 when a new Rann Labor government was selling the idea of legislatively protecting the park lands from future development and in public statements leaned heavily on the idea of a Trust. That's history now.

In September 2003, in a government commissioned options discussion paper, observers wrote: "The nexus between funding, decision-making authority and accountability has also been highlighted by community feedback. It is noted in many submissions that stakeholders who are [considering] contributing funding will expect to play a meaningful role in planning and decision making. Some participants noted that resolution of the funding issue was central to arriving at an informed opinion about a preferred management option." Nine years later, and six years after the Park Lands Act was proclaimed, it is perhaps not surprising that the public funding issue, linked to the idea of accountability to every South Australian who has a stake in their city's unique park lands, remains unaddressed.

APPENDIX 27

State parliament explores: the Legislative Council's 2018 Select Committee on the 'Redevelopment of Adelaide Oval'

The Select Committee's inquiry was a detailed exploration of the complexities and commercial advantages of project-oriented development legislation regarding land use within the Adelaide Park Lands Act's Adelaide Park Lands Plan. One thing was clear. This type of legislation has the potential to be a highly effective means to make null and void all of the elements of the park lands custodian's 'protection regime' – as well as being the means to enable triggering of unanticipated consequences years later.

The potential for unanticipated consequences regarding the use of sections of land within the Adelaide Park Lands Plan can be illustrated by a $42m hotel construction project that commenced in Park 26 near North Adelaide in 2020.

It had been initiated in 2018 by a private company limited by guarantee, Adelaide Oval SMA Ltd, that had been created 10 years earlier. The hotel's purpose would be to deliver a new revenue stream to shore up financial operations of a huge park lands sports stadium that had been completed in Park 26 in 2014.

The hotel project would be made possible because of legislation passed years earlier in 2011. It had enabled Adelaide Oval SMA Ltd, more commonly known as the Adelaide Oval Stadium Authority (AOSMA), to manage and operate the oval precinct. The story behind the hotel proposal stemmed from the terms of the lease for that land for a stadium purpose, but in 2011 there had been no obvious parliamentary contemplation at the time for construction of a hotel.

Before 2011, the oval land had been occupied under a city council lease by a long-established cricket club, the South Australian Cricket Association, whose members had progressively constructed and expanded spectator and administration facilities there over more than a century. In 2009 these facilities were subject to a state government proposal to fund their complete redevelopment. The passing of 2011 oval redevelopment legislation to make that possible, and the subsequent operations of the Adelaide Oval Stadium Management Authority, would seven years later become the focus of the parliamentary inquiry.

The protection 'regime'

In the years following the enactment of the *Adelaide Park Lands Act 2005*, the city saw that there was what its administrators described as a 'regime' of working parts that enabled it to deliver 'protection' of the Adelaide park lands. Elements included legislation that interacted with the 2005 Act, an Adelaide Park Lands Authority, and a strategic management instrument, the *Adelaide Park Lands Management Strategy*.

These elements ostensibly played key roles in protecting the park lands from proposals that had potential to otherwise alienate the public from them. However, after only a relatively short period after the 2005 legislation came into operation, the potential for exploitation of elements of that regime, leading to further alienation, would become clear.

The 2018 setting up of a parliamentary select committee was seen not only as a way to probe the economic and financial aspects of the management of the Adelaide Oval stadium by AOSMA, but also as a means to explore the complexities that could arise in relation to any other future commercial outcomes enabled by parliamentary legislation and related lease arrangements, especially arrangements enabling the construction of a new park lands hotel.

Dual focus by committee

The establishment of the Legislative Council's parliamentary committee was announced on 5 December 2018 but did not begin sitting until early 2019. Hearings were held randomly during that year. Such committees usually conclude their inquiries with a final report, but in this case, an *Interim Report* would be the only outcome.[1] It would be released in December 2019. Contents included a very detailed examination of the operations of the AOSMA's management of the oval business over the period 2014 to 2017. There were also 17 pages of scrutiny of a proposal for an 'Adelaide Oval Hotel development'.

Committee terms of reference

> "The Legislative Council established a Select Committee to inquire into and report on a redeveloped Adelaide Oval, with particular reference to –
>
> (a) The economic and financial benefits of the redevelopment of Adelaide Oval, including to whom the benefits are accruing;
> (b) The operations and financial management of the Adelaide Oval;
> (c) The corporate governance of the Oval, including the Stadium Management Authority;
> (d) The financial returns to the South Australian National Football League, the South Australian Cricket Association, and the Adelaide and Port Adelaide Football Clubs;
> (e) The financial contributions into the Oval infrastructure and into the broader sporting community from the Oval's operations;
> (f) The proposed hotel development at the Adelaide Oval, and the process by which the Government considered the proposal and approved financing the proposed hotel development;
> (g) The impacts on the hotel industry in Adelaide of the proposed hotel development;

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[1] Parliament of South Australia, Legislative Council, *Interim Report of the Select Committee on the 'Redevelopment of Adelaide Oval'*, Parliamentary Paper 257, (Interim Report: 68 pages, laid on the table Legislative Council, 3 December 2019).

(h) The legislative, regulatory and other legal frameworks governing the operations of the Adelaide Oval, and any opportunities for improvement;
(i) The impact of the Oval and its operations on the surrounding parklands and the legislative, regulatory and other legal frameworks governing further development in the parklands; and
(j) Any other related matters."[2]

One intriguing feature of the committee's focus was that, of the 10 terms of reference, only one (term i) had sought to explicitly probe a matter of fundamental relevance to the broader recent development project history of the Adelaide park lands. This was the term: "The impact of the Oval and its operations on the surrounding park lands *and the legislative, regulatory and other legal frameworks governing further development in the park lands*" [emphasis added].[3] Although the committee did not devote much time to exploring this term, when it did, its focus fell on one person's comprehensive powers once a lease has been enabled under legislation – the minister who is the government party to that lease. This is explored later in this appendix.

Objectors explore the technicalities

Contemplation of the 2018 architectural model of the hotel prompted many questions among observers. Objectors seeking to resist the bid looked first to the *Adelaide Oval Redevelopment and Management Act 2011* to explore how a hotel plan might be blocked. They initially focused on what they thought was a key extract of the Act, which (they argued) should have been sufficient to reject hotel approval. It stated:

> "The Adelaide Oval Core Area must be used predominantly for the purposes of a sporting facility (including related uses and with recreational, entertainment, social and other uses being allowed on an ancillary or temporary basis from time to time)."[4]

However, even non-lawyers could see that although there was some ambiguity in this provision, the wording "other uses being allowed on an ancillary or temporary basis" could allow hotel proponents to put an alternative argument: that this provision, clumsy as it was, supported a hotel 'use'.

A distinction between the Adelaide Oval core area (land inside the stadium's walls) and the outer core area took up some committee discussion time. The outer core area was seen by some inquiry witnesses to be clearly designated as park lands, because it did not include land on which the stadium was situated. They also claimed that a hotel was "not in keeping with the environmental and cultural values of the park lands, namely, recreation, sport and nature".[5] One witness claimed that

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[2] 5 December 2018.

[3] This was the ninth of ten terms.

[4] *Adelaide Oval Redevelopment and Management Act 2011*, part 2, section 4(4).

[5] Parliament of South Australia, ibid., pages 16–17.

"long-term private sectoral uses that exist to lock out non-paying customers" ought not to be allowed in the park lands. That at least focused on the notion of alienation from access to the park lands, a compelling rationale whose use drew on more than a century's park lands protection advocacy, verbalised by many others seeking to keep all sections of the park lands open and accessible to the public.

Despite this, and in the end, it was a government minister's "absolute and unfettered discretion"[6] that would give the green light to the AOSMA hotel proposal, in his role as a party to a lease that had been co-signed with the City of Adelaide, many years earlier, on 17 November 2011.[7] The lease had initially enabled post-2011 redevelopment of the old oval facilities to create a new stadium inside what was described as the 'core area' and, seven years later, fresh development in the form of the hotel abutting the eastern walls of that stadium. As the committee noted:

> "The operations of the SMA are subject to the requirements of the Act and to the terms of the sublease. The sublease outlines the permitted use of the Adelaide Oval Core Area … and allows for the SMA to *use the area for any other purpose with the prior written consent of the minister*" [emphasis added].[8]

Monetising the use of park lands

Through this means, the AOSMA confidently assumed a right of commercial discretion to consider how it could monetise the use of the site, stating in January 2019 to the committee that the hotel project could be boiled down to "improving a state government asset that sits on Crown land".[9] At its core was a business deal, relying on a low-interest, $42m South Australian Financing Authority loan, and anticipating future hotel revenues likely to flow to shore up future AOSMA operational costs. Moreover, there was even a contemplated escape clause if it all went wrong. This was revealed in statements to the committee, by one AOSMA board member (a board member of the South Australian Cricket Association), that the "exit strategy in place for the SMA [would be] to sell the licensed interest in the Adelaide Oval Hotel if the business failed".[10] A member of the SA National Football League (the other AOSMA controlling body) was even more specific, stating that the "*operating lease and assets could be sold*" [emphasis added] if the hotel business failed.[11] That such a business model could be contemplated threw into sharp relief the irony of how parliamentary legislation and a lease in 2011, that led to construction of a sports stadium, had enabled subsequent contemplation by AOSMA's board members of the broader monetisation potential of the Adelaide

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6 Parliament of South Australia, ibid., page 15.

7 At the time, a number of oval lease matters were subject to confidentiality orders, which prevented the public from accessing the details and comprehending the consequences.

8 Parliament of South Australia, ibid., page 20.

9 Parliament of South Australia, ibid., page 50.

10 Parliament of South Australia, ibid., page 53.

11 Parliament of South Australia, ibid., page 53.

Oval stadium. In reality, of course, the hotel would monetise the open-space landscape character of the park lands east of the stadium's walls because that was the vista visible from the hotel's windows.

A lucrative operation

Most of the committee's other terms of reference about the Adelaide Oval stadium focused on financial and strategic operational matters in relation to the post-2014 management of the oval's facilities as a business operation. The committee heard that the returns had been lucrative. Further, the committee noted evidence that, since the stadium's completion in 2014, the AOSMA had won city council approval to conduct additional commercial activity, including:

- Commercial use of Oval No 2 adjacent to and west of the stadium, for music concerts and other large-scale events.
- Commercial use of adjacent northern park lands of Park 26 for car parking.
- Expansion of liquor-licensed areas outside the north and east gates of the stadium.

A strong motivation was obvious for AOSMA – to extract maximum revenues from the park lands site, both inside the oval's walls (the oval) and outside them (the hotel) on land subject to a sub-licence. Of the two, the hotel would be the most audacious project. The oval's business plan had been successfully tested for five years, but the hotel's plan would not be tested for some years following construction.

The 'other legal frameworks' test

In terms of the second clause of the ninth term of reference (i) ("other legal frameworks governing further development in the parklands") the committee noted myriad objector comments relating to the hotel proposal, but also noted that various other witnesses discounted and dismissed all of them. This was because the legal framework and instruments, described by the Adelaide City Council as elements of a protection 'regime', which ought to have resulted in rejection of the commercial hotel proposal, had been swept aside and made null and void via the provisions of the *Adelaide Oval Redevelopment and Management Act 2011*.[12] Reference by the committee was made to the seven Statutory Principles of the *Adelaide Park Lands Act 2005*, but the committee's summary noted that the 2011 Oval Act made no reference to them. Moreover, it noted the substantial ministerial powers. "The Act authorises the minister to manage any part of the Adelaide Oval Core Area that is subject to a lease in such manner as the minister thinks fit."[13]

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[12] As listed in the *Interim Report* on page 15: The elements of the City of Adelaide's "protection regime" comprised: "Provisions of the *Local Government Act 1999*; the establishment of the Adelaide Park Lands Authority; the requirement for the Adelaide Park Lands Authority, the City of Adelaide and the state government to reach agreement on a management strategy which is to be subject to periodic review; and the obligation on the City of Adelaide to ensure there are community management plans maintained in respect of the park lands which must be consistent with the management strategy."

[13] Parliament of South Australia, ibid., page 15.

It may not have been obvious to committee members and observers at the time, but this fine-detail focus on the lease terms also revealed a much bigger picture – that once legislation allows for a lease that is controlled by a minister, that minister assumes extraordinary powers over what might occur in any section of the park lands subject to that lease.

The committee did record objections by the City of Adelaide and the Adelaide Park Lands Authority, which were comprehensive and reasonable appeals by parties who assumed their roles were critical to park lands management, but were disturbed to learn otherwise.

Observers and journalists present at 2019 committee hearings gradually began to reflect on the brutal reality of the recent past. It was this: had the oval redevelopment legislation never been created, the lease arrangement could not have been put into place, the stadium could never have been built and, therefore, the subsequent 2018 hotel concept for its eastern wall could never have been proposed.

Secret planning had begun in 2014

Some committee discoveries were particularly disturbing to observers. For example, the public had not known that almost as soon as construction of the stadium was complete in about 2014 the AOSMA had begun quietly exploring the concept of a hotel to complement the oval facilities and, most critically, to bring in much needed revenue to support the AOSMA in future years. The select committee heard that secret independent financial modelling was pursued in 2017. AOSMA's legal advisors would have understood how such a proposal might be made possible at some future time, not only via the 2011 legislation, but also under the terms of a lease, which would give a government minister substantial discretionary powers. The revelation illustrated how plans to exploit the park lands for economic purpose could often take many years of preliminary confidential discussions, not only among the two controlling bodies of AOSMA, but also with state ministers. Clearly, the hotel plan had been one of Adelaide's best-kept secrets during the fourth and last term of the Weatherill Labor government. Carriage of that secret would pass to Premier Steven Marshall when his government won office in March 2018.

Significant advantages

The 2019 parliamentary committee heard that there were very significant and exclusive commercial advantages available to the AOSMA in pursuing a hotel development at that site. The AOSMA was exempt from paying land tax and council rates. There was also no cost for the land, and car-parking facilities already existed below the oval core area. An Adelaide hotel industry witness, John Culshaw, highlighted all of these matters, stressing how inequitable it was for other hotel businesses in the CBD near the park lands who enjoyed none of those advantages.

Remedy not triggered

One theme was already obvious to those attending hearings up to year-end 2019.

As the inquiry chairman noted, the "broad land use ... reflected in the sub-leasing arrangements with the Stadium Management Authority"[14] had triggered a view by some presenting evidence to the committee that there ought to be a subsequent parliamentary duty to amend the 2011 Act to block any similar future opportunity with regard to the oval site. "Evidence was received from numerous stakeholders in this Inquiry which suggested amendments to the [2011] Act may be required in order to ensure [that] future developments on the Adelaide Oval Core area, of a similar commercial enterprise to a hotel, are prohibited."[15]

However, subsequent to the inquiry, no attempt followed in the South Australian parliament to amend the 2011 Oval Act. The lack of political will to initiate that meant that an opportunity continues to exist whereby the minister administering that 2011 Oval Act legislation, and a party to related lease terms, may approve further commercial activity, potentially including construction of new facilities, as the planning lawyers reading the 2011 Act might observe, "... related uses and with recreational, entertainment, social and other uses being allowed on an ancillary or temporary basis from time to time".[16]

The Select Committee's inquiry was a detailed exploration of the complexities and commercial advantages of project-oriented development legislation regarding land use within the Adelaide Park Lands Act's Adelaide Park Lands Plan. One thing was clear. This type of legislation has the potential to be a highly effective means to make null and void all of the elements of the park lands custodian's 'protection regime' – as well as being the means to enable triggering of unanticipated consequences years later.

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[14] Parliament of South Australia, ibid., 'Introduction by the chairperson', 2 December 2019, page 9.

[15] Parliament of South Australia, ibid., page 9.

[16] *Adelaide Oval Redevelopment and Management Act 2011*, part 2, section 4(4).

APPENDIX 28

What does it cost to manage the Adelaide park lands?

Best practice financial planning for the management of the Adelaide park lands? First, ask the right question. Then unravel the complexities.

On 13 August 2019 a city councillor formally posed a question at a council meeting that no elected member had previously posed in the same way and in open session in the 20-year period of study of this work. It was an attempt to probe the sources and amounts of Adelaide park lands funding and income, and to obtain the information in one succinct summary.[1] The media ignored the event and also the answer, highlighting an absence among the city's journalists of any comprehension of its significant relevance to the historical progress of post-2007 park lands management, and thus its news value. The answer revealed fresh comparative information about funding of management of the city's edge community lands, information that until August 2019 had not been previously publicly available in the form in which it came.

The posing of the question would have been an exceptional event for the city's administrators too, and the three months it took to collate and deliver an answer illustrated the challenge of creating such a summary via access to the city council's and state government's administrative and financial records.

The question had been posed by a new board member to the Adelaide Park Lands Authority, South Ward councillor Alexander Hyde, a relative newcomer to the council. He had been elected only nine months earlier. This was his first term. He had been appointed to the Authority four months after the November 2018 council election, after an atypical council-induced spill and replacement of most Authority board member appointments in April 2019.[2] In the past, such spills were foreshadowed toward the end of each calendar year, to be implemented in the first month of the subsequent year. The timing of the April 2019 spill had been unusual.

Cr Hyde's August 2019 question was this.

> "In order to facilitate best practice planning for the park lands, [could] administration provide at the earliest opportunity a report detailing as far as possible all costs and associated income for the park lands,

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1 Adelaide City Council (ACC), Council meeting, Agenda, Item 11.7, 'Understanding our most important public asset', Cr Hyde, Motion on Notice, 13 August 2019, page 18.

2 The appointees are listed in the Adelaide Park Lands Authority annual report 2018–19, (see untitled table, page 27), APLA Board meeting, Agenda, Item 9.1, 24 October 2019. It was a volatile year. See further detail in: End Note (a) in this Appendix 28 study.

> including (but not limited to): • Capital projects; • Planning and design; • General improvements; • Maintenance; • Park lands properties and leasing; • Events; [and] • Car parking; • Staffing.[3]

Cr Hyde's curiosity was revealing in itself. Not only had he comprehended the absence of fine-grained financial analysis available to the Authority's board members at any given time, but also he had noted the importance of having key data in the hands of council's administrators – if they accepted that 'best-practice planning' was central to current and future park lands management. To put Cr Hyde's unique August 2019 request into historical context, none of the three Authority presiding members between the years 2010 and 2019[4] had sought to publicly present similar information to existing or newly appointed board members (or the observing public) in such a succinct and publicly accessible form. Moreover, during their elected terms none of these presiding members were on public record (in agendas or minutes) as at year-end 2019 as prompting board members' curiosity about such fine-grained financial data analysis that might inform 'best-practice planning'. Further, none of the previous board members had proposed a Motion on Notice similar to that of Cr Hyde's. This apparent lack of interest reflected a long-established Adelaide Park Lands Authority board culture of apparent disinterest in pursuing fine-grained financial analysis regarding the cost of park lands management through information presented in its agendas or minutes.[5]

Staffing cost analysis excepted

Curiously, when the result was tabled on 12 November one subject matter of Cr Hyde's August 2019 eight-point question had been omitted from the record. In the APLA executive officer's response of 12 November the reproduction of the original question omitted reference to "… all costs … for the park lands including but not limited to: *staffing*." However, on provision of his 12 November 2019 report the executive officer had provided a caveat:

> "This report sets out to identify the totality of costs associated with managing and improving the park lands, offset by the income derived through their use. The expenditure figures presented here may appear to differ from those in the 2019/20 Integrated Business Plan which takes a more project-based approach and separates out associated staff costs."[6]

A check by this work's author (John Bridgland) of the City of Adelaide Business Plan in November 2019 did not, however, indicate any segmentation of park-lands-

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[3] The answer to this 13 August request appeared in: Adelaide City Council, The Committee meeting, Agenda, Item 5.3, 'Adelaide Park Lands Expenditure and Income', 12 November 2019, pages 36–40. It is reproduced at the end of this appendix.

[4] Lord Mayors Stephen Yarwood (2010–14); Martin Haese (2014–18); Sandy Verschoor (2018–22).

[5] Not that no financial analysis had occurred. Please see additional background detail in End Note (b) in this appendix.

[6] Adelaide City Council, The Committee meeting, Agenda, Item 5.3, 'Adelaide Park Lands Expenditure and Income', 12 November 2019, page 36.

associated staffing costs. While it did provide information on the capital costs of park lands projects for the relevant financial year period, the income and expenditure statement contained only forecast and budget staffing figures for the entire corporation for the whole 12-month reporting period – the total of employee costs for the period. This suggested that specific employee costs relating to specific park lands activities were either not treated in a way that could be segmented, or perhaps were deemed too imprecise to have reporting value. Either way, the result meant that nothing was deemed appropriate to form the basis of a public report on 'associated staff costs' relating specifically to park lands management.

Multiple financial reports

The 12 November 2019 Park Lands Authority 'Adelaide Park Lands Expenditure and Income' report illustrated that various council financial records relating to park lands management had to be interrogated individually to present a coherent overall picture.

This may have come as a surprise to public observers, and particularly the city's 25,000 ratepayers, some of whom retained a curiosity about where their money was spent, and on what. The sensitivity would have arisen from the fact that it cost the city council $16.7m in 2018–19 in non-capital spending on park lands management, without any alternative funding source except for $1.56m in an indexed annual state government grant. There also was income earned through annual park lands activities and events, but because there was no explicit provision of associated salaries and wages data, it was impossible to deduce whether park lands activities or events income was sufficient to cover council employee costs.[7]

On this basis alone, it was tempting to conclude that 'best-practice planning' (or procedure) which would have segmented all aspects, including employee costs (or 'staffing' costs, as Cr Hyde put it), was not an established feature of contemporary park lands management. This work's author queried the absence of employee cost data specifically related to the Adelaide park lands in the 12 November Authority response to the 13 August question. By subtracting the non-capital expenditure totals (for each of the three year periods, 2017–20) from the 'Total park lands expenditure without grant money' totals (same periods) it was put to the Authority's executive officer (who had collated the 12 November response) that the resulting amounts may perhaps have reflected employee costs. But his response was that they were not employee costs, and that figures did not include staffing costs.[8]

The record sources

The city council revealed its costs for annual maintenance and operations. They were described as non-capital expenditure, which for the period 2018–19 was recorded as $16.7m in the 12 November 2019 report. The Adelaide Park Lands

7 Other sources of City of Adelaide park lands income during 2018–19 (as shown in Table 4 'Sources of City of Adelaide park lands income') totalled $6.2m, including that $1.56m, but the 12 November agenda summary did not explicitly state employee costs, or indicate how much had been spent bringing in that income.

8 Personal communication, John Bridgland email 22 November 2019 to Martin Cook, executive officer, APLA. Please refer to End Note (c) in this Appendix 28 study for his explicit response.

Authority, whose task was to deliver policy advice as a subsidiary of the council, reported in its own financial statements (recording that Authority annual expenditure for 2018–19 was $187,000).

The state government also controlled another source of funding for park lands capital projects spending in the form of a 'Planning and Development Fund' (P&D Fund) collected through 'open space contributions'. This had been set up in 2013.[9] However, none of the records referred to above was comprehensively linked by notes to the council's annual financial statements to enable a curious reader to follow the expenditure and income flows and thus easily collate a summary. The least transparent record (state government-sourced funding) related to the P&D Fund. But although somewhere in the financial records of the South Australian state government the allocations of this spending must be recorded, it was not easily accessible to the public through Authority or city council links, nor was it cross-referenced in either the Authority or City of Adelaide financial reports. This confusing arrangement applied for the duration of the period 2007–19 (and especially the period 2013–2019 in relation to the government spending from the P&D Fund established in 2013). It therefore must have been very useful for APLA board members when the 12 November report was tabled.

A brief history of park lands funding from 2002

Why the confusing funding framework?

It is instructive to reflect on why park lands financial records were segmented in a way that makes the compilation of a succinct summary so difficult. While there may be a logical and legislated need for separate financial statements (Authority/council/state government), there was at the time of Cr Hyde's 2019 inquiry few 'notes to each of the financial statements' linking (or even recording) related aspects. But the 'multiple ledgers' matter may be explained. Historical origins dated to the early 2000s, during the first term of a new Labor state government administration under Premier Mike Rann (2002–06). Despite grand rhetoric about a need to allow future park lands managers more independence from government control (especially during Labor's 2002–06 first-term period before the proclamation of the *Adelaide Park Lands Act 2005* in late 2006), the government's actual imperative was to maintain complete control of park lands management policy and determinations. But to obscure this unpopular objective, it had to create a body that would appear to have statutory control of policy (but in reality ceded that control to a minister as soon as the *Adelaide Park Lands Act 2005* was brought into operation in late 2006). It also had to create a body that appeared to be separate from the city council, the traditional 'custodian' of much of the park lands – to feed the illusion that this new body had some 'independence'. The subsequent legislation required the creation of a council subsidiary, the Adelaide Park Lands Authority, which as a

[9] This comprised monies collected by the state from land division contributions, when land division did not result in retention of open space, or the creation of open space. The consequence for the new land title holders was a government-enforced 'contribution'. The state's intention was to spend these monies on open-space grants and programs.

statutory authority was required to have its own annual financial report. Some related park-lands-management financial data were also reproduced in the city council's annual financial statements. But monies from the Planning and Development Fund were delivered under a separate funding function, controlled exclusively by the state government, and often randomly and unpredictably allocated to park lands open space projects. Neither the Authority's nor the city council's financial statements recorded this funding. It wasn't theirs to spend: it was purely at the minister's discretion. It was only when Cr Hyde asked his August 2019 question that the funding from all three sources was required to be reported in one document.

City council's fateful decision of 2004

Other chapters and appendices in this work explore the reasons why the city council at a critical juncture in its early 21st century park lands management history accepted major responsibility not only for much of the non-capital funding of park lands management and operations after the 2006 proclamation of the *Adelaide Park Lands Act 2005*, but also the operations budget of the Adelaide Park Lands Authority from 2007. This had been a legacy of provisions of the *Adelaide Park Lands Act 2005*, which required a park lands statutory authority (but only as a subsidiary to the council; in effect, a sub-committee). In the 2005 Act the provisions were silent about a funding requirement for its board. In this way, the costs fell to the council to pay.

Park lands operations

In 2003 before the draft park lands legislation had been written, the city council had set up a specific Adelaide Park Lands Committee for the monitoring of park lands management matters. There already was a park lands maintenance and operations budget (non-capital spending) in place before the 2005 legislation emerged. The *Adelaide Park Lands Act 2005* was brought into operation in late 2006 and the Authority board began sitting in early 2007. Annual non-capital spending on the park lands in the very early years averaged $10m, but it grew to $16.7m by 2018–19.[10] There had to be an Authority budget (as a council subsidiary), which at 2018–19 indicated annual spending of $187,000. The Authority could not have functioned without incurring significant council employee costs but the Authority's annual report made no mention of these costs, citing only the cost of paying "compensation" (board member sitting fees) for 'Key Management Personnel' – the board members. In 2018–19 this cost totalled $9,209.[11] There also was a contracted executive officer fee commitment. In 2016–17 it cost $119,663, rising to about

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10 Adelaide City Council, 2018–19 Integrated Business Plan, DL brochure to ratepayers, circa July 2018. Please refer to End Note (d) in this Appendix 28 study for additional detail, including the council's The Committee source.

11 In practice, the board members were not 'management'; they merely made determinations based on management advice, including the advice of the executive officer. For further clarification about the executive officer's contract arrangements, please refer to End Note (e) in this Appendix 28 study.

$130,000 in 2017–18, and then $136,860 at 2018–19. However, this matter was not recorded in the Expenses section of the Authority's financial statements. Instead, it appeared in a city council annual report, in a Related Party Transactions section note.[12]

Key advisors and their staffing costs

In the city council's 2018–19 annual financial report, reference to the executive officer's contract fee could be found in a 'Controlled Entities' note, 'Other Disclosures'. It reported: "APLA contracts staff from Council with the on-charge totalling $136,860 for the year".[13]

The executive officer was not the only one providing or monitoring advice between the years 2016–19. Early in that span of financial periods, up to seven other personnel formed part of the Authority management 'team', although they were never referred to in that way. The seven 'Key Management Personnel' included the Lord Mayor, the Chief Executive Officer and five directors (with the Lord Mayor being included in the definition of 'Key Management Personnel'). The elected members and the salaried officers all played occasional key roles in park lands discussions and related policy strategies, but except for the Authority's presiding member (the Lord Mayor) there were very few participatory trails recorded in any of the financial year periods.

Year 2016–17 salaries (short-term employee benefits) of these personnel (excluding 'post-employment benefits, long-term benefits and termination benefits') totalled $1.759m.[14] The CEO earned more than $300,000 annually.[15] Suffice to say that the executive directors who occasionally produced park lands policy discussion material that could be found in APLA agenda or minutes papers were often paid more than the Authority's executive officer, yet had less long-term advisory experience in Authority matters than the executive officer who had filled the role for many years. (He had commenced his council employment as a park lands project officer.)

In 2018–19 city council arrangements changed, and employee costs increased significantly. In that period's annual report[16], financial statements noted that 'Key Management Personnel' comprised "the Lord Mayor, councillors, CEO and Directors". It stated: "In all, 21 persons were paid the following total compensation (excluding 'post-employment benefits, long-term benefits') $2.326m."

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12 Executive officer contract fee amounts also appeared in the city council's annual report financial statements. Please refer to End Note (f) in this Appendix 28 study for further detail on the annual report financials.

13 City of Adelaide, annual report 2018–19: 'General purpose financial statements to June 2019', Controlled entities, Other disclosures.

14 City of Adelaide, annual report 2018–19: 'General purpose financial statements to June 2019', Note 23, Related Party Transactions, page 123.

15 In December 2017 the council's CEO received a 4.5 per cent package pay rise, bringing his total to $351,000.

16 City of Adelaide, annual report 2018–19: 'General purpose financial statements to June 2019', Note 21, Related Party Transactions.

In broader historical context – a reflection of park lands funding challenges

Both the City of Adelaide and the Adelaide Park Lands Authority budgets were managed against a corporation background of significant competition for funds, as managers faced multiple operational demands that attempted to draw on limited revenues from council's very small ratepayer base. Ratepayer numbers in the early 2000s were about 14,000 (commercial and residential) but had risen to about 25,000 by 2018–19. For the purpose of this work, contemporary council annual budget summaries showed, for example, that at the beginning of the 2018–19 financial year forecasts were $102.9m revenues from commercial and residential rates, compared to a general operations budget of $101.7m. In other words, there was intense competition for budget priority spending.

In the earlier years, it was a struggle to find sufficient funding to address park lands requirements. By 2014, seven years after the commencement of operations of the Adelaide Park Lands Authority, budget shortfalls continued. For example, the forecasts for the operations, maintenance, renewal and upgrading of existing park lands and open spaces city assets project outlays for the 10-year period 2014 to 2024 were '$12.814m on average per year' but estimated average funding forecasts were only $10.342m – 81 per cent of the forecast cost to provide the service.[17] The city council's 2015 Asset Management Plan concluded that managers would have to "reduce service levels in some areas, unless new sources of revenue are found ... the service reduction may include delaying planned asset renewal/upgrades."[18] But 16 months later, an October 2016 draft update of the plan suggested adoption of a new policy, announcing: "Council has since resolved to fully fund the [park lands] assets to ensure we can deliver the existing services at the desired service levels and the Long Term Financial Plan has been changed to reflect this."[19]

Minimal tranquillity among budget managers

Despite the commonly held assumption that Adelaide's park lands were pastoral sites of tranquillity, there was probably little tranquillity among the council's finance managers about the funding challenges. Apart from obvious budget pressures, the Adelaide park lands were subject to many unlikely influences that could affect future operations – and therefore costs. For example, in October 2016 the city council noted that 'demand drivers' influencing future use and management of the park lands included: "... population change, changes in demographics, seasonal factors, vehicle ownership rates, consumer preferences and expectations, technological factors, economic factors, agricultural practices and environmental awareness."[20]

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17 Adelaide City Council (ACC), 'City Park Lands and Open Space, Asset Management Plan, version 0.5, May 2015'. As found in: Infrastructure and Public Space Committee Meeting, Agenda, 5 May 2015, page 318.

18 ACC, ibid.

19 ACC, Finance and Business Services Committee meeting, Agenda, 'Park Lands and Open Space Asset Management Plan', 18 October 2016, page 422.

20 ACC, ibid.

The observation perhaps should have prompted pursuit of a comprehensive new model for 'best practice planning'. It is curious that evidence of this pursuit would not emerge in the public domain until almost three years later when a new Adelaide Park Lands Authority board member, Cr Alex Hyde, called for an expenditure and income summary that might in the future become a foundational basis for such a model.

End Notes

(a) The page 27 table in the APLA annual report 2018–19 highlights three 'periods' of appointments across the 2018–2019 financial year. Periods 2 and 3 commenced after the election of new Lord Mayor, Sandy Verschoor. The changes in appointments were made with the apparent concurrence of the city council; however, they were in reality driven by the Marshall state government. Four city councillors who were board members were sacked. Cr Hyde was a new appointment.

(b) This is not to suggest that no city council asset management financial analysis was occurring, but it was not preoccupying the monthly agendas of the Authority and therefore board members' attention. It illustrated how dependent board members were on the administrative work and judgement of the executive officer and other council staff. Readers can access other records presented to other council committees; for example: ACC, Finance and Business Services Committee meeting, Agenda, 'Park Lands and Open Space Asset Management Plan', 18 October 2016.

(c) Mr Cook responded: "Council does of course have its own capital expenditure – and that is the $8.4m, $6.8m and $8.6m [figures] you refer to (and are identified in Table 3* as $8.4m, $6.7m and $8.6m). Capital expenditure figures do not include staffing costs – which are included under the non-capital expenditure figures [Table 2: cell 2: 'Non-capital expenditure']." *Table 3 is titled: 'Areas of City of Adelaide expenditure for the park lands.' The word 'Areas' might be better described as 'subject matter', including 'capital projects', 'golf course', 'public realm', 'park lands property' and 'events' etc. (These tables appear in the citation noted at footnote 6 of this appendix: Adelaide City Council, The Committee meeting, Agenda, Item 5.3, 'Adelaide Park Lands Expenditure and Income', 12 November 2019.)

(d) This figure was clarified in late 2019 as $16.7m in the source document, cited in this chapter. It is: Adelaide City Council, The Committee, Agenda, Item 5.3, 'Adelaide park lands expenditure and income', 12 November 2019, page 38.

(e) The executive officer of APLA was paid under contract by the city council, which activity was directed by the council's 'Key Management Personnel' and guided by the Authority's charter, which had been significantly amended in 2018. It had expanded the officer's role and responsibilities and gave him greater discretion over some matters. (This is detailed in Appendix 6 of this work.)

(f) The 'other staff costs' relating to policy work for the Authority were not segmented in the council's annual report financials, so it is impossible to fully summarise the overall cost of operating the subsidiary which is the Authority. Other senior council staff on significant salaries also delivered policy advice to the Authority in the form of discussion and analysis for agenda papers, often the result of extensive research, demanding significant staff time. The output created by these staff complemented the work of the executive officer.

Attachment follows:
PDF document – Adelaide City Council, The Committee meeting, Agenda, Item 5.3, 'Adelaide park lands expenditure and income', 12 November 2019, pages 36–40. This links with many aspects discussed above.

Adelaide Park Lands Expenditure and Income

ITEM 5.3 12/11/2019
The Committee

Program Contact:
Shanti Ditter, AD Planning, Design & Development 8203 7756

2013/00057
Public

Approving Officer:
Klinton Devenish, Director Place

EXECUTIVE SUMMARY

At its meeting on 13 August 2019 Council resolved that:

Administration, in order to facilitate best practice planning for the Park Lands, provide at the earliest opportunity, a report detailing as far as possible all costs and associated income for the Park Lands, including (but not limited to):

- Capital projects
- Planning and design
- General improvements
- Maintenance
- Park Lands properties and leasing
- Events
- Car parking

This report sets out to identify the totality of costs associated with managing and improving the Park Lands, offset by the income derived through their use. The expenditure figures presented here may appear to differ from those in the 2019/20 Integrated Business Plan which takes a more project-based approach and separates out associated staff costs.

RECOMMENDATION

<u>THAT THE COMMITTEE RECOMMENDS TO COUNCIL</u>

<u>That Council:</u>

1. Receives the report.

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IMPLICATIONS AND FINANCIALS

City of Adelaide 2016-2020 Strategic Plan	*Strategic Alignment – Liveable* *Work with neighbouring councils and the State Government to enhance the facilities, attractions, landscapes and movement networks in the Park Lands to meet the needs and expectations of growing high-density communities living in and near the City. (page 49)*
Policy	*Funding for implementation of the Strategy will be considered as part of the long term and annual budget planning of the City of Adelaide, State Government and other project stakeholders. (page 100 of the Adelaide Park Lands Management Strategy)*
Consultation	Not as a result of this report
Resource	Not as a result of this report
Risk / Legal / Legislative	Not as a result of this report
Opportunities	Not as a result of this report
19/20 Budget Allocation	For the Adelaide Park Lands - $25m, plus $7.5m grant
Proposed 20/21 Budget Allocation	Undetermined
Life of Project, Service, Initiative or (Expectancy of) Asset	Ongoing
19/20 Budget Reconsideration (if applicable)	Not as a result of this report
Ongoing Costs (eg maintenance cost)	Similar to the last three financial years
Other Funding Sources	Not as a result of this report

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DISCUSSION

Background

1. The City of Adelaide (CoA) is responsible for managing approximately 690ha of the Adelaide Park Lands (74% of the total 930ha) including the six Squares and River Torrens / Karrawirra Pari, as shown in the Adelaide Park Lands Plan (Link 1).
2. Expenditure figures detailed in this report include associated staff costs for each program.
3. A funding deed established in 2006 between the City of Adelaide and the then Minister for Environment and Conservation provides for an annual grant to the City of Adelaide for the management and enhancement of the Park Lands. This grant commenced at approximately $1.3m and has been increased annually by the Consumer Price Index so that this financial year the grant amount is approximately $1.6m. The commencement figure for the grant was based on the value of the mains water use at the time.
4. The State Government has responsibility for managing approximately 26% of the Adelaide Park Lands, which mostly consists of the institutional, educational and biomedical precincts along north of North Terrace but also includes the Adelaide Botanic Garden (and Park) and West Terrace Cemetery.
5. The costs for maintaining the Adelaide Botanic Garden and Park for the State Government is $4.5m, but off-set by $497k in income from events, shop, café and parking.

Total expenditure on the Park Lands managed by the City of Adelaide

6. Total expenditure on the Adelaide Park Lands has varied over the last two, and current, financial years as capital projects have been delivered, largely with grant money from the State Government. Table 1 shows the variation in total expenditure.

Table 1 – Total expenditure on the Park Lands managed by the City of Adelaide

Financial Year	Total Park Lands Expenditure	Portion of total which is capital expenditure	Portion of capital expenditure attributable to grant money	Total Park Lands expenditure without grant money
2017/18	$37.5m	$20.1m	$11.7m	$25.8m
2018/19	$26m	$9.3m	$2.5m	$23.5
2019/20	$33.1m	$16.1m	$7.5m	$25.6m ($25.6m represents 12.2% of the total 19/20 CoA budget)

Non-Capital expenditure and income

7. Setting aside capital expenditure, CoA's costs in maintaining and managing the Park Lands have been reasonably consistent over the last two, and current, financial years. Income has also been reasonably consistent. These figures are shown in Table 2.

Table 2 – Non-capital expenditure and income

Financial Year	Non-capital expenditure	Non-capital income
2017/18	$17.4m	$7.0m
2018/19	$16.7m	$6.2m
2019/20	$17m	$6.2m

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Park Lands expenditure

8. The following table shows the principal areas of expenditure for the Park Lands.

Table 3 – Areas of CoA expenditure for the Park Lands

Area of expenditure	Expenditure 2017/18	Expenditure 2018/19	Expenditure 2019/20
Capital projects (not including State Government grants)	$8.4m	$6.7m	$8.6m
Golf Course and U-Park Park Lands	$2.8m	$2.9m	$3.1m
Public Realm	$8.3m	$7.9m	$7.8m
Park Lands Property	$1.6m	$1.4m	$1.6m
Park Lands Events	$427k	$438k	$541k
Planning, Design and Development (previously Strategy & Design)	$889k	$678k	$756k
Infrastructure	$2.3m	$2.4m	$2.1m
Adelaide Park Lands Authority	$188k	$187k	$329k (includes $100k for World Heritage project)
Recreation and Sport (Community and Culture)	$526k	$525k	$558k
Sustainability	$367k	$259k	$177k
TOTALS	**$25.8m**	**$23.4m**	**$25.6m**

9. The figures here exclude the costs and income from the Aquatic Centre (a separate facility within the Park Lands) but include those for the Golf Courses which are open, accessible Park Lands.

10. Approximately 105.5 ha of CoA managed Park Land is occupied by sporting fields and courts maintained to varying degrees by holders of Sporting Licences. CoA contributes a fortnightly cut for most of these fields, excluding such areas as those used by the University of Adelaide and SACA.

Recent State Government capital expenditure in the Park Lands

11. In December 2013, the then Minister for Planning announced an investment in the Adelaide Park Lands of $20m over a four-year period. This fund was allocated for the following enhancement projects:

   11.1. Pelzer Park / Pityarilla (Park 19) – approx. $4.63m

   11.2. Gladys Elphick Park / Narnungga (Park 25) – approx. $6.73m

   11.3. Josie Agius Park / Wikaparntu Wirra (Park 22) – approx. $3.24m

   11.4. Northern Park Lands either side of Prospect Road approx. $3.2m

   11.5. A series of smaller projects, including:

      11.5.1. Rymill Park Master Plan

      11.5.2. Bikeways (not exclusively Park Lands)

      11.5.3. Temporary City Skate Park in King Rodney Park / Ityamai-itpina (Park 15)

12. The State Government is also separately and currently funding:

   12.1. The Skate Park redevelopment in Park 25 ($3m)

   12.2. Quentin Kenihan Inclusive Playspace in Rymill Park / Murlawirrapurka (Park 14) ($1m)

Park Lands income

13. Park Lands income is derived from the principal sources shown in Table 4.

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Table 4 – Sources of CoA Park Lands income

Program	Income 2017/18	Income 2018/19	Income 2019/20	Notes
Golf Course and U-Park Park Lands	$2.4m	$2.5m	$2.8m	Approx. $470k of that amount is derived from Park Lands parking operations.
Annual State Government Grant	$1.54m	$1.56m	$1.6m	Increases annually by CPI
Public Realm	$660k	$613k	$321k	Project cost recovery
Park Lands Property	$1.5m	$1m	$950k	Sporting and commercial Lease/ Licences
Park Lands Events	$575k	$490k	$500k	
Other	$295k	$6k	$43k	Park Lands activity such as horse depasturing and River Torrens project cost recovery
Totals	**$7.0m**	**$6.2m**	**$6.2m**	

ATTACHMENTS

Nil

END OF REPORT

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APPENDIX 29 DECEMBER 2021

Adelaide's park lands: 2021 Riverbank Precinct Code Amendment proposal

Riverbank rezoning bid unearths flawed National Heritage listing protection policies and procedures

- State won't reveal Riverbank Precinct Master Plan.
- The plan is key to test impact on National Heritage values.
- December 2018 National Listing report resurfaces.
- Reveals loopholes and confusion, enabling avoidance of reporting.
- No large-scale park lands development since 2009 found to have had 'significant impact' on heritage values.

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One of Adelaide's park lands management secrets is now revealed. It throws fresh light on how the Adelaide park lands have been managed for many years and relates to a requirement under commonwealth law that commenced in 2008. Revealed is that Adelaide's capacity to properly manage likely impacts on the values of the National Heritage listing of the park lands is hamstrung by ambiguous rules and a land-use-monitoring system not only riddled with flaws but also beset by park lands land-manager confusion.

This disturbing finding is one inadvertent result of SA government department PlanSA's September 2021 bid to rezone 70ha of the city's Riverbank precinct of Adelaide's park lands and to revise the state's *Planning and Design Code* to allow multiple major developments there. The bid faced significant public opposition, and was rejected on 9 November by a majority of City of Adelaide councillors – except for one proposal, a Riverbank Arena at a site earmarked for rezoning.

Despite the passing of 13 years since the 2008 National Heritage listing of the Adelaide park lands, significant evidence now exists that the machinery can't function as was intended under the law that created it, the commonwealth *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*.

Both the state government and the city council have known this for some years, especially about myriad flaws and weaknesses behind the commonwealth government's legislation. But the public didn't know – and there was no easy way to confirm suspicions.

Note the white-shaded area on the National Heritage List map between North Terrace and the southern edge of the River Torrens and Torrens Lake. This area comprises the Institutional precincts and Riverbank, and is exempt from the National Heritage listing of 2008. It means that none of the huge developments there has been – or needs to be – reported for assessment as potentially impacting on the Adelaide park lands National Heritage values.

The legislation aimed to ensure protection of values under a 2008 National Heritage listing. In theory, this required rigorous pre-development-application self-reporting checks and assessment to manage potential impacts on those values.

Report reveals all

A little-known and poorly publicised 2018 report reveals all. Titled *Adelaide Park Lands and City Layout: Issues and opportunities analysis for the National Heritage Listing*, by DASH Architects and planner Stephanie Johnston, it was commissioned by Heritage SA and the SA Department of Environment and Water (DEW).[1] Ms Johnston is a board member of the Adelaide Park Lands Authority, a city council subsidiary. Jointly funded by the state-government and city council, the report was completed on 17 December 2018. It is one of the most revealing

[1] Subsequently referred to as 'the DASH report 2018'.

council and state government park lands administrative analyses seen since 1998.[2] Most damning is the fact that despite December 2018 completion, it is clear that three years later none of its eight recommendations have been implemented. It is also clear that, although a small number of proposed park lands developments were properly reported for assessment to the commonwealth government under the legislation, it never resulted in rejection of some major state infrastructures, despite arguably obvious negative consequences on the park lands landscapes' 'views and vistas'.

Labor's park lands 'report card'

Although the Marshall Liberal state government had been in office for nine months at the time of completion of the report, the report essentially exposes the administrative legacy left by the Rann/Weatherill state Labor government, which had held office for four terms over 16 continuous years until March 2018.

It is the most definitive 'report card' published so far on Labor's long-term administration of the park lands, noting also that it was Federal Labor that made possible the National Heritage listing of Adelaide's park lands in 2008.

Hiding in plain sight

At December 2021 the report had been effectively 'hiding in plain sight' on a state Department of Environment and Water website for three years. Public awareness of the 2018 findings of the report had not been made easy by the city council because its brief references to its content in agendas and minutes, including in those of its subsidiary, the Adelaide Park Lands Authority, did not reproduce its highly critical findings and did not provide an internet link to it so that the public might be drawn to it.[3] However, for a time, the report apparently appeared on the council's website – but with no attention drawn to it or its critical contents. Staff in November 2021 confirmed it was later removed.

Major flaws in documentation and process

The report reveals that the council, the custodian of much of Adelaide's 930ha of park lands, has been culpable in relation to 15 of 21 significant identified documentation and process flaws since adoption of the 2008 National Heritage status. Despite three years' passing since the report was finalised, the council still has no Heritage Management Plan, a critical complementary element to the national listing. In 2021 staff were still seeking funding to create one. An urgent need for the plan also remained unidentified in the council's *Adelaide Park Lands Management Strategy 2015–25*.

There also remained a major disconnect between council's many policy documents that guide park lands management, and those related to management of the commonwealth Act's heritage values. The report diplomatically notes that this *"can create policy tensions or conflicts between the ongoing management of [park lands], and management of their National Heritage values"*. Put simply, it means that inside Town Hall there's a park lands policy and guidelines administration mess.

State government medical research facilities towering over 'Institutional zone' land adjacent to the Riverbank precinct – never reported under National Heritage listing assessment requirements because of an exemption allowed by the commonwealth government when initiating National Heritage status recognition in 2008.

Government failures

The report also identifies failure at commonwealth and SA government levels. The commonwealth is culpable on at least five counts. Federal parliament created a major loophole in the 2008 mapping of the Adelaide park lands and City Layout under the

[2] Something similarly revealing had appeared 20 years earlier in: Hassell, *Park Lands Management Strategy Issues Report*, 23 February 1998. (Commissioned by the city council.)

[3] For example: Adelaide Park Lands Authority discussion: Minutes, 23 May 2019 (Item 7.3).

legislation, in which a large section of Adelaide's Riverbank was exempted from listing and thus not subject to the commonwealth EPBC Act's provisions. In this way, none of the huge medical research and new Royal Adelaide Hospital infrastructures was subject to the Act's listing assessment scrutiny before being built. The report also found that the heritage values under the Act remain ambiguous, allowing some land managers to avoid applying for assessments. Moreover, an important and well overdue 'bilateral agreement' between SA and the commonwealth remained 'still in draft' on a commonwealth website despite years of delay, leaving open opportunity to avoid imposition of assessment conditions.

The SA state government is identified as being culpable on at least 12 counts. Some of its park lands (non-council) land managers – administering 11 per cent of park lands within the National Heritage boundary – had at 2018 not prepared management plans as required under the state's *Adelaide Park Lands Management Act 2005*; state Department of Planning, Transport and Infrastructure's 'Cultural Heritage Guidelines 1999' were out of date and didn't refer to the National Heritage listing; and because 'self-assessment' against the National Heritage values is voluntary under the commonwealth Act, managers don't understand their obligations, and there's "a lack of transparency in the process". (A full list of flaws appears in Appendix 1 of this essay.)

No integration with the state's planning system

Most seriously, there is "no integration with the state's (SA) planning system", which is key to assessing development applications for the park lands. This aspect was in September 2021 brought into sharp relief because of the Marshall state government's bid to rezone the Riverbank precinct and amend a recently adopted *Planning and Design Code*. Council planning staff in October 2021 noted that there was already no overlay or policies in the code relating to any items in South Australia that are on the National Heritage listing. Worse, if the land were to be rezoned, the council said that the state could choose to delete existing park lands zone development plan policy. At an October 2021 special council meeting, councillors were told that the proposed code amendment "would allow for the permanent removal of open space from the park lands, the very essence of the National Heritage listing".[4] The alarming disconnect between state and commonwealth National Heritage listing intent highlighted the incompatible relationship between the two tiers of government in relation to 'protecting' the 2021 fabric of Adelaide's park lands. Moreover, for the council, a spotlight could now be shone on myriad park lands policy and guidelines management problems that have remained unaddressed and obscured for many years. (These also are listed in Appendix 1.) No wonder council administrators were reluctant to publicly tease out and explore the DASH report's findings and recommendations when it was completed and published in December 2018.

Adelaide Botanic High School under 2017 construction north-east of the CBD. Reference to this six-storey building on park lands does not appear in the report's list of notifications and assessments made to the commonwealth government between 2008 and 2018. Someone determined not to self-report to Canberra, and not help assessors to anticipate potential impacts on the park lands National Heritage values. It clearly met the criteria for reporting. Today, views of the Botanic Gardens and adjacent park lands east are now blocked by this building.

[4] Council Special Meeting, Agenda, Item 4.1, 'Riverbank Precinct Code Amendment – Draft [council] Submission', 26 October 2021.

How the machinery is intended to work

In 2013, advice to the Adelaide Park Lands Authority stated:

"A site's National Heritage listing is afforded a degree of protection through the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act). *The EPBC Act can prevent actions occurring where the Minister responsible for the Act considers that there is likely to be a significant impact on one or more of the National Heritage Values – in that they will either be lost, degraded, damaged, notably altered, modified, obscured or diminished."*[5]

"This means that approval must be obtained before any action is taken that may have a significant impact on the National Heritage values of the place."[6]

But what really happens

The 2018 DASH report noted that, contrary to what appears to be a required self-assessment procedure, it is instead voluntary.[7] This is a major procedural loophole. Moreover, even if a land manager or agency does determine to notify the commonwealth government, confusion reigns. The report notes:

"There is a lack of understanding of when a self-assessment is required against the National Heritage values, and a lack of transparency in the process; [and] There is a general lack of rigour in the self-assessment process against the gazetted National Heritage values, and a general lack of mitigation measures."[8]

The 2016-approved, $8m South Australian Cricket Association sports pavilion, west of the city. This three-storey building is not listed in the DASH report's table of places reported for assessment between 2008 and 2018. Its scale and dominance of the park lands site west of the city ought to have prompted the SACA board to accept that the building should have been reported for assessment. However, the report notes that because the values under the 1999 EPBC Act are in places ambiguous, and because responsibility to report "remains vested in the persons undertaking the action", a convenient reporting loophole was left open to SACA.

The 'views and vistas' trigger

Significant ambiguity relates to the most tangible trigger for notification by parties proposing a park lands development. It relates to whether a proposal is likely to alter, modify, obscure or diminish 'views and vistas', either within the park lands or from external vantage points, observing park lands landscapes from a distance. Large-scale, multi-level projects are the most obvious built form under the listing's 'Significance Criterion (f)' to test and assess. But in practice, the idea of 'views and vistas' remains not "well defined" and, even at 2021, was still the subject of debate. Despite this, at state level the Department for Environment and Water in 2018 presented the authors of the DASH report with a list of "Actions that should be self-assessed in terms of their impacts to the National Heritage values of the park lands…". But, as if to reinforce the confusion and doubt, it ended that sentence with the words "…and that *may* [emphasis added] require referral."[9]

These actions are listed in a table in Appendix 2.

[5] Adelaide Park Lands Authority (APLA), Board Meeting, Agenda, Item 4 – Councillor Anthony Williamson - Question on Notice - Interruption of Views [2007/00343], found in: APLA Minutes, 30 May 2013, pages 2–4.

[6] APLA, ibid.

[7] "The final determination as to whether a referral should be undertaken remains vested in the persons undertaking the action." *Adelaide Park Lands and City Layout: Issues and opportunities analysis for the National Heritage Listing*, by DASH Architects and Stephanie Johnston, 2018, page 36.

[8] Ibid., 'hereafter, the DASH report', page 42.

[9] Ibid., page 36.

10 notifications, 10 'passes'

The report lists 10 developments since 2008 that were the subject of notification, prompting 'controlled action' assessment by the commonwealth government (as a result of notification), but none of which resulted in rejection.[10] Although a majority were not likely to alter or obscure 'views and vistas', several others were highly likely to, because of their scale. Of the 10 referrals to the commonwealth, large-scale park lands developments included the $535m redevelopment of Adelaide Oval facilities into a new, huge stadium (2011); the 2012 redevelopment of Adelaide High School; the 2013 $40m construction of the Torrens Footbridge; the 2016 redevelopment of the Festival Plaza; and the 2017 Plaza proposal for a 26-storey 'commercial tower' by Walker Corporation. (Its development application was amended in late 2021 to allow 29 levels.) Several featured new or expanded car parks.

Curiously, several large-scale developments that commenced during the reporting period do not appear in the report's list. One apparent omission was the construction of the $100m, six-storey Adelaide Botanic High School, whose October 2016 development application date suggests that, given its scale, the state government's contractors ought to have referred an assessment notification to Canberra. But the report's list, which concludes with a 2017 referral, does not include a 2016 referral for the school's high-rise built form.

Additionally, over the period 2011–18, construction of three large sports pavilions (Parks 10, 24 and 25, two with expanded car parks) was approved by the city council. These replaced existing, smaller park lands facilities. All should have been the subject of National Heritage listing assessment by the commonwealth government, especially the largest, the $8m, three-storey South Australian Cricket Association pavilion in Park 25. None appear in the 2008–17 list in the report. Each easily met the 2018 criteria for referral and assessment.[11] More pavilions are foreshadowed but at December 2021 had not been built: at Parks 9 (PAC), 19 (Pulteney Grammar), 21West and 22.

Netball courts at Park 22, south-west of the city. A 2017 state-government-funded pre-election upgrade announcement included an expansion of court numbers (four more were added). It makes an instructive case study regarding an important phenomenon discussed in the DASH report: the 'cumulative' impact on the park lands. It claimed that expansion of hard surfaces at park lands sites has a clear impact on the park lands National Heritage-listed values. No reference to this major infrastructure site upgrade appeared in the DASH report's '*Summary of past referrals to the Commonwealth for the National Heritage-listed park lands*'. The omission highlights the documentation and process flaws that existed in 2018 – and still existed three years later in 2021. As the report noted: "*There is a general lack of rigour in the self-assessment process against the gazetted National Heritage values, and a general lack of mitigation measures.*"[12]

'Cumulative' impacts not recognised

The DASH report observed a critical matter commonly discounted by the city council and state government over many years. This related to the 'cumulative impact' of park lands 'enhancement' on a scale not perceived to be significant in and of itself, but over time contributing to a significant broader consequence and thus impacting on National Heritage values. It noted the following actions, most commonly approved by the city council:

" *...use (permanent or temporary, expanded or new, hard or soft surface); alteration of the place (infrastructure upgrades (stormwater, roads), landscaping, expanded existing use); additions to the place (buildings, structures, infrastructure, artworks); alienation (restriction on access/use, further excised land); impacts on views and vistas from and to the National Heritage place.*" The first four of these easily describe decades of state

[10] Ibid., DASH report 2018, Table: 'Summary of past referrals...': pages 29–30.

[11] See Appendix 2, this essay. Key criteria included: 'Change of land use and associated landscape character' (or) 'New buildings and additions to existing buildings (greater than 30m^2)'.

[12] DASH report' 2018, page 42.

government and city council park lands initiatives and projects, and especially those that arose after 2008 when the commonwealth legislation applied.

No comprehension of 'cumulative impact'
In relation to the report's table 'Summary of past referrals', which lists only 10 construction projects, reported over the decade 2008 to 2018, it is clear that land managers did not comprehend the notion of 'cumulative impact' and thus did not self-assess or report such impacts to Canberra under the EPBC Act 1999. Given that the principal land manager, the City of Adelaide, has 'care and control' of most of the park lands within the National Heritage boundary[13], the culpability lies mostly with the city council and its subsidiary, the Adelaide Park Lands Authority.

John Bridgland is a North Adelaide journalist and a City of Adelaide ratepayer.

APPENDIX 1
Examples of 'documentation and process' flaws attributable to levels of government.
Key: City of Adelaide (**bold formatting**); SA state government (*italics*); Commonwealth government (underlined).
'Key issues in managing potential impacts': Source: pages 42–43 of the DASH report, 2018.

"A high-level review of the management and policy documents for park lands has identified the following key issues that may require further policy development to manage potential impacts on the National Heritage values of the place:
"Documentation and Process
1. There is no dedicated agency to manage and improve the park lands as a whole;

2. The lack of a detailed Heritage Management Plan (HMP) limits guidance on the management of the National Heritage values of the place;

3. The preparation of a HMP or review [of] other management documents for consistency with the National Heritage management principles for the park lands National Heritage listing has not been identified in COA's Management Strategy[14];

[13] DASH report, reporting expert staff advice: page 24.
[14] Section 324X(2) of the EPBC Act 1999.

Construction of the Adelaide Oval stadium in 2011. It was referred to the commonwealth government in the same year by development firm Baulderstone Ptd Ltd. Despite its huge scale, in 2012 it was approved as consistent with the National Heritage values of the place under the National Heritage List criteria. The stadium is so high that Elder Park and the city vista, once visible from North Adelaide's Light's Lookout, can no longer be seen. Similarly, views of sections of the northern park lands can no longer be seen from Pinky Flat on the riverbank.

4. There are a multitude of documents that inform and guide the management of the park lands, including *Community Land Management Plans, Adelaide (City) Development Plan* and COA 's [City of Adelaide's] Management Strategy. Each of these documents contributes towards managing differing aspects of the park lands to varying degrees. Existing *Community Land Management Plans* (that were prepared with limited National Heritage consideration) are at times misguidedly considered to fulfil this function; however, these documents only consider a narrow understanding of the National Heritage values of the place;
Other documents were not written with the intent to manage the National Heritage values of the place. This disconnect, and the absence of a HMP, can create policy tensions or conflicts between the ongoing management of the place, and the management of its National Heritage values;

5. *Community Land Management Plans* only consider limited attributes of the National Heritage values of the place, and accordingly may provide policy recommendations that may be in tension with the broader National Heritage values of the place;

6. Not all State Government agencies within the National Heritage boundary of the park lands have prepared Management Plans, as required under section 20 of the Adelaide Park Lands Act [2005];

7. Exclusion of large sections of the park lands, such as the Riverbank and Institutional precincts from Council custodianship and the National Heritage listing;

8. DPTI's Cultural Heritage Guidelines (1999) are out of date and do not refer to the National Heritage List, which was inscribed in 2008;

9. Heritage responsibilities under the EPBC Act for the National Heritage listing of the place are not mentioned under some of the COA Plans (i.e. *Biodiversity and Water Quality Action Plan 2011, Sports Infrastructure Master Plan 2014* or the *Community Land Management Plan;*

10. National Heritage places are not mentioned in the *Adelaide (City) Development Plan*, and there is no trigger to assess the potential impacts of proposals on the National Heritage values of the park lands;

11. There is a lack of integration between the* Adelaide (City) Development Plan[15] *and various other Management Plans and Strategies, which leads to a lack of connection between APLA advice and COA's Assessment Panel and State Commission Assessment Panel decision-making process;

12. There is a lack of integration and consistency between policy applied to COA's administration assessment of proposals, APLA's Assessment, Elected Member Assessment and COA's Assessment Panel (and State Commission Assessment Panel) assessments;

13. The cumulative effect of minor activities with the park lands, that in themselves may neither trigger the need for a self-assessment under the EPBC Act, or would be considered to not be a 'controlled action' under such an assessment, may have overall impacts to the National Heritage values of the place (refer Section 4.3 for further information);

14. There is a lack of awareness of different land managers (and potentially facility managers) in terms of their responsibilities for managing the National Heritage values of the place under their control, and incorporating these responsibilities into their processes and policies;

15. There is a lack of clear strategy and direction in managing leases with park lands in relation to community accessibility, and managing the cumulative effect of restricted access of such facilities;

16. There is a signed 'Assessment Bilateral Agreement' (2014) between the Commonwealth and State Government relating to environmental assessment; however, there is no signed 'Approval Bilateral Agreement'; this means that potential impacts to the park lands National Heritage values are not being assessed through any approval authority unless they are referred to the Commonwealth Government; when applications are referred, the process does not appear to impose conditions unless they are considered to be 'controlled actions';

17. There is a lack of understanding of when a self-assessment is required against the National Heritage values, and a lack of transparency in the process;

18. There is a general lack of rigour in the self-assessment process against the gazetted National Heritage values, and a general lack of mitigation measures;

19. The voluntary nature of the self-assessment process against National Heritage values [has] no integration with the State's planning system;

20. The extent and specifics of any heritage values attributable to views and vistas associated with park lands is neither well defined by the National listing, nor generally understood. This raises the risk of actions or development not being appropriately assessed against impacts to these potential National Heritage values;

21. There is a lack of appreciation of potential actions that may have impacts on the National Heritage values of the park lands, which may include:
- use (permanent or temporary, expanded or new, hard or soft surface);
- alteration of the place (infrastructure upgrades (stormwater, roads), landscaping, expanded existing use);
- additions to the place (buildings, structures, infrastructure, artworks);
- alienation (restriction on access / use, further excised land);
- Impacts on views and vistas from and to the National Heritage place.

[15] In March 2021 the *Adelaide (City) Development Plan* was replaced by the *Planning and Design Code*, and the Natural Heritage Listing values do not appear in the new code. (Source: city council planning staff.)

APPENDIX 2

The 2018 DASH report included a table informed by the state's Department of Environment and Water to provide guidance about "actions that should be self-assessed" under the National Heritage listing values at times of park lands rezoning proposals where major development is foreshadowed. However, ambiguity endured – note the qualifying verb: "*may* require referral".[16] Text formatted to **bold** reflects aspects under consideration in the late-2021 South Australian state government's Riverbank Precinct Code Amendment [Rezoning] proposal.

"Table 2 – Examples of actions that would require a self-assessment"[17]

CATEGORY 'A' ACTIONS **Actions that should be self-assessed in terms of their impacts to the National Heritage values of the Park Lands, and that may require referral**
Significant infrastructure, such as rail, tram, helipad
Change of land use and associated landscape character
Major road alignment or widening, and new roads, including elevated roads
Permanent road closures
New buildings and additions to existing buildings (greater than 30m²)
New bridges or footbridges
Open air car parks
Any new development within the squares, including buildings, structures, fences and plazas
Extensive landscaping, including additional hard surfaces, or new or enlarged areas of biodiversity management
Utilities infrastructure, including above ground pipelines and telephone towers
Any development described in an approved master plan
Public artworks, monuments, statues and plaques
Land division
Major changes to the River Torrens basin or other major riparian works
Any encroachment in the street grid
Solid fencing
Large loss of open green space
Land use adjacent to the park lands that may impact on views and vistas (e.g. building height limits)

[16] DASH report 2018, page 36.
[17] Source: DASH report, pages 36–37. The report says: "List provided by DEW and amended by authors." No further explanation about that amendment is provided. Note: this table appears in the DASH report as one of two. The other table listed those developments that would not require self-assessment. It has been omitted here simply to save space.

The most obvious component *not* provided by the state government during its September-October 2021 public consultation about the Riverbank Code Amendment proposal was a Master Plan for the whole of the identified 70ha site. Perhaps state planners thought that, by not releasing it, (although it had been seen under the 'culture of confidence' of the ultra-secret Capital City Committee), no reporting obligation under the National Heritage listing and values would be triggered.

Actions likely to trigger a reporting obligation

However, there were other 'actions' likely to arise from the 2021 state proposal that, if the 'Table 2 actions list' were valid, would trigger an obligation once a development application emerged. They included:

- 'Significant infrastructure, such as helipad'. This was one land use already permitted under the revised *Planning and Design Code* for the park lands zone near the banks of Torrens Lake, at a site known as Helen Mayo Park.
- 'Change of land use and associated landscape character'. The proposal's multiple zone changes made it clear that land use would be changing from park lands zone open space to sites designated as 'sub-zones' for the purpose of built-form development assessment. One example was an ambiguous concept proposed for Pinky Flat on the riverbank's edges for construction of permanent 'community, cultural, tourism, shops and licensed premises'.
- 'New buildings…' and 'Open air car parks'. These criteria were consistent with a state proposal to create a multi-storey car park on park lands as part of a master plan for construction of a new Women's and Children's Hospital west of the city.
- 'Land division': similarly, the rezoning of the park lands to allow for these hospital developments featured a change to the *Planning and Design Code* that allowed 'land division' as complying development.
- 'Large loss of green open space'. Multiple concepts arose from the Riverbank Precinct Code amendment proposal, including the hospital car park concept, a Riverbank Arena concept, and an ambiguous concept for high-rise development on land proposed to be rezoned adjacent to (south of) the Adelaide Botanic High School (Botanic policy area 19).

APPENDIX 30 MARCH 2022

10 popular myths about the rules regarding Adelaide's park lands

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A disturbingly small number of South Australians understand how vulnerable the Adelaide park lands are to large-scale construction projects, often announced at very short notice by the state before they are implemented.

The late-2021 announcement about the state's proposed Riverbank precinct's rezoning for a park lands billion dollar infrastructure projects program is a good example of state tactics prosecuted well ahead of the public's ability to fully comprehend the complexities and all of the likely consequences. Public consultation, frustrated by the absence of a Master Plan for the whole precinct, contributed to the confusion, as did lack of understanding of why it was so challenging for the Corporation of the City of Adelaide to quickly respond to the proposal, even though it is the custodian of 690ha of the total 930ha estate. Despite the council's traditional 'care and control' role, it is clear that the state holds all of the cards when it comes to planning and development decisions affecting proposals to build in the park lands. Unfortunately, the average householder and taxpayer continues to believe a number of myths about who calls the shots about park lands matters, especially the myth that the city council sets the rules. This has endured over the park lands management's long history, stemming back to the decades that followed council-related 'custodian' legislation passed in 1849. Today's extent of legal complexity and a culture of administrative secrecy contribute to the endurance of many of the myths.

DISCUSSION

Let's begin with a contemporary example…

Myth #1

Some myths have relatively recent origins. The Capital City Committee was created under the *City of Adelaide Act 1998*. Its confidential meetings, attended by state and city council leaders and administrators, are generally the place where early strategic and political discussions about Adelaide raids of the park lands commence. But under the Act, committee members must abide by a 'culture of confidence'. In other words, secrets shared at meetings must stay secret. The committee never has

10 myths – believe it or not – these are all false. Did you know?

1. The Capital City Committee, which often discusses park lands proposals and long-term policy for management of the park lands, must have open meetings, table all of its deliberations online and keep detailed reports and minutes for public inspection.
2. Under South Australian law, city council and state government deliberations about, or development proposals for, the park lands must occur in a very transparent way, so that everyone knows what is going on.
3. The *Adelaide Park Lands Act 2005* protects the Adelaide park lands from development exploitation and alienation of park sections from public access.
4. The Act makes it impossible for the government to change the planning rules that allow for new major developments and infrastructure construction on the park lands.
5. The *Adelaide Park Lands Management Strategy* is a strictly monitored set of rules to ensure that commercial or state government interests can't exploit the park lands or restrict public access.
6. There is an Adelaide Park Lands Authority that, under the Act, controls all park-lands-related activities and approvals.
7. The state government cannot over-rule the Authority, because it is a statutory authority under the *Adelaide Park Lands Act 2005*, which means it makes all the final decisions – and has the power to enforce them.
8. City council park lands management policy papers and guidelines are legally enforceable documents because the *Adelaide Park Lands Act 2005* says so.
9. The values under the 2008 National Heritage listing of the Adelaide park lands represent a major hurdle to approval of new development project proposals for the park lands.
10. The National Heritage listing includes the whole of Adelaide's 930ha of park lands surrounding the city, so every hectare is protected.

open meetings (apart from public relations stunts), its minutes and any other reports or links are publicly inaccessible, and FOI searches by nosy journalists are blocked under its 1998 legislation. If committee reports or discussions are ever revealed to city councillors, they too must maintain the secrecy. In this way, the public never gets access to early hints of a likely raid, even if councillors wish to warn their constituents. The secrecy is politically driven.

Myth #2 – deliberations must be 'public'

Myth #2 is that city council deliberations about proposed park lands development projects must be open to the public, as must be agenda papers, minutes and other links. However, under the *Local Government Act 1999* the council has a legal right to exclude the public from meetings where park lands matters (or any other matters) are revealed. Worse, it also may determine that any matter become subject to a confidentiality order, making secret all discussions, background papers, agendas or linked reports. This procedure has applied to many park lands matters over many decades, and the contents can remain secret for as long as the council determines. There is no public right of appeal. And when it periodically reviews whether to maintain the secrecy, as it must do under the 1999 Act, it may extend the life of these orders without explanation. Again, there is no public right of appeal to challenge extension of these orders.

Myths #3 and #6 – 'protection' is guaranteed

Myth #3 is that the *Adelaide Park Lands Act 2005* guarantees the South Australian public a means of protection from developments on park lands, and guarantees continuity of public access to all city-edge open spaces in the Act's Adelaide Park Lands Plan (the formal record of the green belt's boundaries surrounding the city). But in reality all the Act does in terms of implied 'protection' is provide for several statutory instruments (documents) related to park lands sites' management and action planning. These are the *Community Land Management Plan* and the *Adelaide Park Lands Management Strategy*. The Act also lists seven Statutory Principles that imply that the park lands are 'protected' (a word never defined in the Act) but aspects of some are too ambiguous to be effective in practice. Implied in many of the Act's other provisions are guarantees that, on close analysis, feature various loopholes open to exploitation. For example, one creates the Adelaide Park Lands Authority, a council subsidiary that in practice has no authority unless agreed to by a state government minister – who rarely agrees to allow such authority if the Authority opposes development exploitation! (See also myth #6, which falsely implies that the Authority must adjudicate on and make rulings about all Adelaide park-lands-related activities and approvals.

Myth #4 – Who sets the planning rules?

Myth #4 highlights what determines development outcomes when a government wants to authorise construction of buildings, bridges, fences, car parks, hotels, hospitals or schools on park lands. The *Adelaide Park Lands Act 2005* acknowledges and includes the other statutes to which planners must refer when development is contemplated for the park lands zone. The principal law is the *Planning, Development and Infrastructure Act 2016*, an update of the former development legislation that enabled all of the park lands developments that followed year 1993, when the (now redundant) *Development Act 1993* once applied. (The 2016 Act has replaced it.)
South Australia's state parliament could have required the *Adelaide Park Lands Act 2005* to mandate a planning instrument under the Development Act whose desired character provisions expressly stated that the park lands become a quarantined, no-major-development-no-exceptions area, compared to the land-use rules applying outside the Act's Adelaide Park Lands Plan boundary. But it did not do that. By acknowledging the then development legislation and the then planning instrument, it left open opportunities for South Australian state governments to write development plan instrument amended versions that allowed for the park lands developments that have followed since 2005. In other words, there was – and continues to be – no political will within state parliament to apply tighter restraints on land-use development on the Adelaide park lands.

Myth #5 – that curious Strategy document

Myth #5 is a particularly influential source of confusion. The *Adelaide Park Lands Management Strategy* is an 'action plan' that the city council must maintain and occasionally update – but it can only come into lawful operation when a government minister endorses it. He or she will only do so if the words in the Strategy don't frustrate state or commercial exploitation concepts for the park lands zone. Instead of being a strictly monitored set of rules to ensure that commercial or state government interests can't exploit the park lands or restrict public access, the content of past Strategies sometimes encouraged the opposite outcomes.

It has done this because the Strategy is littered with ambiguous wording which, when interpreted by bureaucrats and planners, endorses pro-development 'activation' concepts across the park lands. At year-end 2021, the then edition (number 3 since 1999) was due for an update. But its ambiguity is certain to endure, and a government minister will only approve it if it stays ambiguous. Planners and planning lawyers will depend on its 'activation' concept ideas to shore up the rationales in future development applications for land-use projects across the park lands zone policy areas. This feature is rather similar to the words in the state's new *Planning and Design Code* relating to the park lands, which created the idea of sub-zones, whose proposed amendments to the Assessment Provisions for zones in the Riverbank Precinct caused such public indigestion in late 2021.

Myth #7 – that 'all powerful' 'Authority'

Myth #7 is particularly misleading for the public. Despite suggestions to the contrary, the state government can over-rule the Adelaide Park Lands Authority any time it wants to. It's irrelevant that it is a statutory authority under the *Adelaide Park Lands Act 2005*. Moreover, all the Authority can do is provide advice to the council or state, but it has no power to enforce the adoption of any of that advice. It is a completely toothless advisory body.

Myth #8 – those 'enforceable policies'

Myth#8 is another highly misleading matter in which many South Australians take much false comfort. It is true that the city council has many park lands management, policy or guidelines documents. But most of them are not legally enforceable over the authority of the government minister in whose portfolio the park lands management machinery resides. Moreover, the *Adelaide Park Lands Act 2005* doesn't mention most of them. They are simply the administrative reference library that the city council needs as sources for policy determinations. One that the 2005 Act does mention, however, is the *Community Land Management Plan* (CLMP), which is a management-direction plan for each park or collection of park sites. While it appears to have teeth via the interacting *Local Government Act 1999*, a recent test case found that its ability to block certain commercial bids was ineffective in a court of law. If there is any uncertainty, the city council can be prevailed upon by the state to revise the wording so that a commercial or state development-related proposal being considered suddenly appears to be contemplated by the *Community Land Management Plan*. This removes the 'policy blockage'.

This image informs discussion about myths #9 and #10 on page 1 of this leaflet. Note the white-shaded area on the map between North Terrace and the southern edge of the River Torrens and Torrens Lake. This area comprises the Institutional and Riverbank precincts, and is exempt from the values of the National Heritage listing of 2008. This has been particularly convenient for the SA state government, which has heavily developed those precincts.

Revising existing guidelines to legitimise a new proposal could be administratively described as 'the tail wagging the dog', but council and government bureaucrats appear to see no problem with it. In other words, council's park lands management administrators enjoy much policy flexibility, as do so many other local or state agencies. As a result, park lands management documentation can mutate rapidly if a need arises, usually to make complying that which was until then non-complying. The media, usually too busy to monitor such shenanigans, rarely perceives what is going on.

Myths #9 and #10 – that national listing…

Finally, we come to a matter that relates to commonwealth legislation that brought about the 2008 National Heritage listing of the Adelaide park lands. As at March 2022 (and even later) it is improbable that the values under that listing represent any major hurdle to assessment or

restriction of any future river-edge development applications.

Importantly, the listing does not embrace the whole of the Adelaide park lands. Look at the listings map of 2008 (on page 3 of this leaflet), and you'll see that most of the Institutions precinct and adjacent Riverbank precinct is represented as an exempt area. The values don't apply within it. But they did in the adjacent park lands zone in late 2021, sites where the state government was pursuing a major rezoning bid. Assessment will only be necessary if a Master Plan is tabled, or any rezoning is approved, resulting in amended *Planning and Design Code*.

What *are* the National Heritage listing values?

The official values (here significantly condensed):

- Criterion A: …Events, processes: Signifies a turning point in the settlement of Australia. Significant for the longevity of park lands protection and conservation.
- Criterion B ... Rarity: Rare as the most complete example of 19th century colonial planning where planning and survey were undertaken prior to settlement.
- Criterion D ... Principal characteristics of a class of places: An exemplar of a nineteenth century planned urban centre.
- Criterion F ... Creative or technical achievement: Park lands and city layout is regarded throughout Australia and the world as a masterwork of urban design.
- Criterion G ... Social value: Park lands has outstanding social value to South Australians.
- Criterion H ... Significant people: Colonel William Light is most famously associated with the plan of Adelaide.[1]

A flawed public assumption after 2008 was that these values would present a new, rigorously applied hurdle to authorisation of development projects on the park lands. In other words, that major projects would be perceived as "... actions occurring where the minister responsible for the [commonwealth] Act considers that there is likely to be significant impact on one or more of the National Heritage values – in that they will either be lost, degraded, damaged, notably altered, modified, obscured or diminished."[2]

But recent history shows that the values have not presented any significant handicap to assessment and approval of applications for some large-scale developments since 2008, especially if the *Adelaide (City) Development Plan's* provisions in the park lands zone policy areas made them feasible. (Note that the new planning instrument replacing that Development Plan is the *Planning and Design Code*, adopted for the metro area on 19 March 2021.)

Intriguingly, a poorly publicised 2018 state-commissioned report into issues related to managing the consequences of National Heritage listing of the park lands found that content and procedural policy management and practice was a city council and state government shambles.[3]

For example, for the 10 years 2008 to 2018, it noted:

"The extent to which self-assessments of actions are undertaken against the National Heritage values of the park lands is unknown, as there is no requirement to submit them to the relevant planning authority as part of the state's approvals process. As such, it is difficult to assess whether this process is being undertaken in a rigorous manner across all actions within the boundary or in the immediate vicinity of the National Heritage boundary of the park lands."

The report identified 21 major 'documentation and process' flaws, an astonishing catalogue of 'disconnects', conflicts and confusion.[4]

These myriad flaws continue to frustrate South Australians' efforts to see the park lands 'protected'. After 185 years, there remains "no single, dedicated agency to manage and improve the park lands as a whole" [5]and no rigorous or transparent regime of park lands management to guarantee a park lands estate is genuinely protected from an enduring motivation to exploit it for permanent state or commercial development.

***John Bridgland is a North Adelaide journalist and a City of Adelaide ratepayer.**

[1] http://www.environment.gov.au/cgi-bin/ahdb/search.pl?mode=place_detail;place_id=105758. The home page leading to this link comprising this detail is: https://www.cityofadelaide.com.au/planning-development/city-heritage/national- listings/

[2] Adelaide Park Lands Authority, Board meeting, Minutes, Item 3, ' Question on Notice, Interruption of views' [National Heritage listing values: protection of] 30 May 2013, page 3.

[3] DASH Architects and Stephanie Johnston, 17 December 2018, *Adelaide Park Lands and City Layout: Issues and opportunities analysis for the National Heritage Listing*, commissioned by Heritage SA and the Department of Environment and Water. SA media ignored it.

[4] See the detailed list: pages 41–43.

[5] DASH architects, ibid., 4.2, 'Key issues in managing potential impacts', #1, 17 December 2018, page 43.

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Lastly, I thank the citizens of Adelaide. They were those who would go out of their way, and often at their own expense, to advocate for the 'protection' of our fine park lands from exploitation and short-term political expediency. I thank all of those fine South Australians who, over many years, rejected park lands political cant and humbug, and often said so courageously and passionately. I thank them for their stamina in the face of political indifference and administrative rat cunning, as politicians indulged in the appropriation of public land for state or commercial purposes, usually grossly at odds with the cultural history and landscapes that make the park lands so special. To those who resisted, challenged and protested, I remain deeply grateful. They routinely reminded me that I was not alone.

John Bridgland

Adelaide

2023

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