



A WEEKLY COMMENTARY

ON TARGET

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The price of Freedom is eternal vigilance –

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THOUGHT FOR THE WEEK: 681 Mrs Pratt asked the Attorney-General and Minister for Justice and Minister Assisting the Premier in Western Queensland (Mr. Shine) –

With reference to constituents who have raised concerns that the traditional common law rights attached to freehold land in Queensland have been extinguished, and as these concerns arose from a recent legal case where Judge McPherson JJA of the Queensland Court of Appeal in *Bone v Mothershaw* [2002] QCA120 stated 'he retains unimpaired, for what it is worth, his estate in fee simple absolute in the land. He has been stripped of virtually all the powers which make ownership of land of any practical utility or value' –

- (1) What steps will the Queensland Government take to restore the rights of property owners?
- (2) Are there any treaties, national and international, or any other mechanism by which the common law rights of freehold property in Queensland can be overridden?
- (3) Who is the holder of public and private land title deeds?

HANSARD: Question on Notice: Thursday 30th April 2008

GOVERNMENTS NOW THE ROBBERS: "Mediaeval systems may not have eliminated robbery and oppression; but it is certain that they did not legalise it... A Cabinet can pass laws confiscating, under the name of taxation, the work of a man's lifetime or the land his family has dignified for centuries; but it cannot avoid the consequences. The crucial issue is, what will those consequences be? Or to put the matter slightly otherwise, is there a moral 'law' connecting political transgression with national punishment? Contemporary Governments clearly think that there is not; that they are free to legislate in a moral vacuum.

Can anyone point to a pronouncement of the Church of England, [or any other 'moral' authority for that matter...ed.] as such, which contests that idea? Assuming that so-called nationalisation of this or that has any virtues, which is far from self-evident, has the Church ever criticised the methods by which it has been achieved?"

"The Realistic Position of the Church of England" by C.H. Douglas, 1948

AUSTRALIANS' COMMON LAW PROPERTY RIGHTS UP FOR GRABS: Anyone keeping up with the League's repeated warnings to their sleep-walking fellow Australians over the last sixty years could not be surprised to read that the centralisers think Australians are now ready for a

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greater Marxist-Corporatist 'push'. Having read the following make sure you link it in your mind with what is happening to that other former centre of western culture, now Marxist-governed South Africa. The *Sydney Morning Herald's* Harvey Grennan, 19/4/08, writes: The State Government plans to give its agencies and councils power to compulsorily acquire private land to re-sell to developers at a profit – or, if they choose, at a reduced price so the developers make even more money.

Legal authorities describe as "quite remarkable" a section of new planning laws flagged by the Minister for Planning, Frank Sartor, to acquire land by force to onsell to private developers.

"A man's home may no longer be his castle, but it could well end up being somebody else's castle," said Anthony Whealy, a planning expert with Gadens Lawyers. "It will certainly be welcome news to many in the development game.

"Under the current law, the minister is not able to re-sell land which has been acquired or transfer it to another person. The new scheme expressly allows that, and makes it clear that it may be done as part of a profitable proposal by a private developer."

Mr. Sartor insists the law will only be used to ensure developments for the greater public benefit cannot be blocked, but the Greens – who have helped to expose the extent of developers' donations to the Labor Party – say it could invite corruption.

"Given the whole stench surrounding developer donations, it lends added weight to the view that this Government is introducing the most developer-friendly laws ever seen in this state," the Greens MP Sylvia Hale said.

A similar U.S. state law to transfer land from one private owner to another for an urban renewal plan in New London, Connecticut, caused national uproar several years ago. In 2005, the U.S. Supreme Court upheld the law by the narrowest of margins but it was widely criticised as a gross violation of property rights and 42 states passed laws to limit the impact of the court's decision. (Please take note of how important is the separation, division and balance of power....ed.)

A provision in the draft bill released by Mr. Sartor last week arises from similar circumstances. Last year Parramatta City Council sought to compulsorily acquire three properties, with Mr. Sartor's approval, to allow its \$1.4 billion Civic Place redevelopment. The land would have ended up in the ownership of the developer Grocon.

The Land and Environment Court upheld an appeal by the two owners against the acquisition. Now the minister wants to override that ruling and give himself the power to acquire land to transfer to another private owner, and to delegate such power to councils and state agencies such as Landcom, for the purposes of urban renewal and land releases.

The power would extend to land that "adjoins or lies in the vicinity of" such projects. It could be sold "whether for profit or otherwise" with the only constraint being that in the opinion of the designated authority there is a "net public benefit". But Gadens says this is not defined anywhere on the legal statutes. "Inevitably this will lead to a purely subjective determination of whether a proposal amounts to a net public benefit," Mr. Whealy said.

Favoured 'son waiting in the wings' would benefit: Alex Davidson, who owns land suitable for subdivision on Sydney's outskirts at Glenorie, is fearful of the proposed law. "That provision, if enacted, will end any pretence that owners actually 'own' land in N.S.W. It will enable the Government to force a landowner to sell ... then sell, perhaps cheaply, to a favoured son waiting in the wings," Mr. Davidson said.

"It is an absolutely unacceptable elevation of state power over private property rights and will greatly exacerbate the potential for corruption. It is an abuse of power for the Government, when faced with being unable to get their way because the judge upheld ownership rights, to simply change the law so they win next time."

Mr. Sartor's spokeswoman said it followed two court cases that might have frustrated good planning. The first concerned Parramatta's "award-winning" Civic Place project.

"In the second, City of Sydney Council's existing provision that removes cars from Pitt Street Mall may have been jeopardised through the inability to acquire an adjacent easement to allow vehicle movements into a proposed development site."

The ability to compulsorily acquire land for "important public outcomes" had been a longstanding, accepted practice for Government. "It is also established practice to offer for sale any residual land which may be left over after the completion of a project, such as a new road or railway line.

"Importantly, the acquisition of land for such purposes would only be authorised after all other avenues have failed and after appropriate public exhibition and consideration."

Anyone could challenge any determination by the minister or the acquiring authority, including on the issue of net public benefit, in court.

<<http://www.smh.com.au/news/national/state-can-sell-your-home/2008/04/18/1208025479556.html?page=fullpage#contentSwap1>>

LITTLE BATTLERS FIGHT THE MOVE: Urban Affairs Reporter Jano Gibson of the *Sydney Morning Herald*, 19/4/08, tells the story of one of the little battlers fighting the move:

"Soon before Pino Pellizzeri died several weeks ago, he advised his son, Robert: "Don't let the mongrels take it for nothing." The old man was referring to the family's Parramatta hairdressing business on Darcy Street, which they have run for almost 30 years. Now, in echoes of the film "The Castle", the Planning Minister, Frank Sartor, has proposed a change in the law that threatens to strip the Pellizzeris – and potentially thousands of other landowners – of their land rights so government agencies can on-sell the land to developers.

Amendment grossly unfair: Critics say the amendment, buried on page 126 of the draft planning reform bill, is grossly unfair and could be open to abuse and corruption. In the case of the Pellizzeris, their land could end up in the hands of the developer Grocon as part of a complex financial deal with Parramatta City Council, which wants to build a \$1.4 billion civic centre on the site.

"It obviously seems the movie mustn't have meant much because now the legislation [could be] changed completely," said Robert Pellizzeri, 51, who runs the salon with his mother, Luciana. "Where's the little bloke's rights? He hasn't got any anymore." The Pellizzeris were told in 2006 that their land was being compulsorily acquired by the council. They did not have the means to challenge it in court, but two other local businessmen, Michael Winston-Smith and Ray Fazzolari, whose properties were also seized, did.

Last year, the Land and Environment Court found that the council could not take their land to pass it on to Grocon. The council appealed against the decision.

Many more landowners in same predicament: Under the draft amendment, many more landowners could find themselves in the same predicament. The planning minister, or a council, would be able to compulsorily acquire land for urban renewal projects or urban land releases that offer a "net public benefit". The seized land could then be sold to a third party, such as a developer, "for profit or otherwise".

The Opposition spokesman on planning, Brad Hazzard, said property owners should be outraged. "It opens the door for any council or government body to decide they want to grab your land and the only test appears to be whatever Frank Sartor decides is in the public benefit. "The second diabolical aspect is that it opens the door to corruption. If a local council or government body gets your land it can on-sell it, with or without profit."

The Mayor of Parramatta, Paul Barber, said: "The Civic Place development will deliver a city centre which is a more attractive, dynamic and creative place in which to live and work."

Mr. Winston-Smith, whose property has been owned by his family for almost 90 years, said he challenged the council in court out of principle. "If it was for a railway station, or a bus interchange, it would be for the greater good of the people of Parramatta. In this case, it's just really for the greater good of the developer and Parramatta Council."

Mr. Pellizzeri said the court victory spared his family the indignity of being forced from their business. "We would have just gone through the acquisition, getting ready for the executioner," he said. "That's basically how you felt because you just basically take what they were going to dish out."

N.S.W. PLANNING MINISTER LINKED TO DEVELOPER: Andrew Clennell, State Political Editor in the *Sydney Morning Herald*, 19/4/08, explains to his readers the alleged cosy relationships between a Local Council, the N.S.W. Minister for Planning and private Developers. Under the heading "Little blokes fight move to grab family land" he writes:

It is alleged "Five months after he is alleged to have telephoned the developer Stockland to ask that the company attend a fund-raiser for him, the Planning Minister, Frank Sartor, contacted the general manager of Wollongong City Council to intervene on the company's behalf."

The ABC TV's Stateline raised the matter and reported that after the intervention, the council's charge to Stockland for building a road to its development at Sandon Point was reduced from \$4 million to \$700,000. Mr Sartor told Stateline the commission had already investigated the valuation and had decided not to investigate.

One group that was not satisfied with Mr. Sartor's explanation is the N.S.W. Greens who have referred the new allegation to the Independent Commission Against Corruption

A fax to Mr. Sartor from Stockland's head of strategic urban planning, Deborah Dearing, on 6/7/2006 shows the Sandon Point development was discussed by Stockland and Mr Sartor at an architects' awards dinner on July 5.

"During the evening you asked how Stockland's Sandon Point project was proceeding. As I mentioned, in a general sense the project has been proceeding well and our interactions with the Department of Planning have been professional and productive," Dr. Dearing wrote.

"However," he continued, "in the past two weeks, negotiations with Wollongong council have taken an unexpected and unsatisfactory turn."

The SMH article continues: "A margin note on the fax shows Mr. Sartor referring it to his director-general, Sam Haddad, asking him to "please investigate". Both Mr. Sartor and the former Wollongong council general manager, Rod Oxley, who during the sex-for-development inquiry this year admitted breaching the council's code of conduct, agreed yesterday they later had a conversation on the matter."

Mr. Sartor told Stateline his actions were appropriate: "I get complaints from parties all the time about the other party and I often mediate, or my department does, or I do. This side issue was potentially going to delay the whole processing of this [development] application [for the site]."

Mr. Sartor said he would most likely have referred the complaint to Mr. Oxley and asked the council to follow proper processes. Mr. Oxley said he had a vague recollection of Mr. Sartor's phone call but "Frank never put any pressure on me in relation to any council matters".

Mr. Sartor said: "I'm pretty sure, I'm absolutely certain I didn't tell Oxley to back off anything ... I have since received advice from the administrators at the Wollongong council that the ... original valuation was incorrect. Probably in this case the developer was justified in raising concerns."

Mr. Sartor has said he does not recall a phone call Stockland's managing director, Matthew Quinn, to see if his company would purchase a table at a "Re-elect Frank Sartor dinner" in February 2006.

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