

Governance of public land acquisition for regional open space in Perth and Sydney

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Abstract: The focus of this paper is a comparison of the history of the governance of regional public land acquisition in Perth and Sydney, with the case for the selection of these two cities established by a contrast of the planning approaches used. Specifically the paper aims to review the governance approaches and planning tools utilised in the two cities for the acquisition of regional public land, in particular for open space purposes – and to present the case for the extension of the model used in Perth - the Metropolitan Region Improvement Tax (MRIT). Contextualisation is provided by a consideration of initial ad hoc efforts to reclaim land for regional public purposes following the original alienation of Crown Land, and an overview of the introduction of metropolitan planning schemes and supporting legislation. Regional public land acquisition in Perth and Sydney are examined in detail. In the case of Perth, this includes an analysis of pre-Metropolitan Region Scheme (MRS) private land acquisition for regional public purposes, the introduction of the MRS and Metropolitan Region Planning Authority (MRPA), and the establishment of a ‘hypothecated’ (pledged) tax for regional public land acquisition – the Metropolitan Region Improvement Tax. Collection and management/spending of the tax are examined to demonstrate its success as a public land acquisition tool. A similar temporal approach is taken for the consideration of regional public land acquisition in Sydney, beginning with the situation prior to the County of Cumberland Plan and subsequent metropolitan plans for Sydney. Funding arrangements such as the Cumberland Development Fund, Sydney Region Development Fund, and Metropolitan Greenspace Program and betterment tax schemes such as the failed *Land Development Contribution Management Act 1970* are examined. The main outcome of the comparison and contrast of the approaches taken in Perth and Sydney is the case for the extension of an improved ‘Perth model’ of the MRIT, to other Australian capital cities. The benefit, from the perspective of the implementation of public policy and strategic metropolitan planning, of the availability and utilisation of a hypothecated tax for public land acquisition, is a key conclusion of this paper.

1. Introduction

Procurement and protection of regionally-significant areas of open space and land for other regional infrastructure such as major roads has been a long-standing goal of spatial planning in Australian cities. Indeed, this aspiration predates the advent of numerous post-war metropolitan plans in Australia, though it has of course been formalized over time in different ways through such means as the Green Belt of Sydney’s statutory-based *Planning Scheme for the County of Cumberland* (1948), Perth’s regional recreation reserves proposed in the Stephenson – Hepburn Plan (1955) and subsequently statutorily reserved under the *Metropolitan Region Scheme* (1963), and protected Green Wedges beyond Melbourne’s urban growth boundary (UGB) introduced by *Melbourne 2030* (2002). Past attempts at regional open space protection have been subject to substantial pressures. Sydney’s Green Belt for example barely lasted into the 1960’s before meeting its demise (see for example Bunker, 2002), although Evans and Freestone (2010) argue that the other major green feature of the County of Cumberland Plan, a Green Web consisting of a district open space network primarily made up of existing open spaces lining several dendritic river and waterway systems, was more robust and largely remained intact. Even though protected by legislation (the *Planning and Environment (Metropolitan Green Wedge Protection) Act 2003*) – which requires parliamentary ratification for any change to the UGB and related subdivision controls – in 2005 the Victorian Government expanded Melbourne’s UGB into the Green Wedge areas by increasing the amount of greenfield land available for development in its growth corridors (Buxton and Scheurer, 2007). Protection and public acquisition of land for regional open space and other regional infrastructure has arguably been more successfully implemented in Perth, due in no small measure to the adoption of the statutory-based *Metropolitan Region Improvement Tax* in 1959, which is discussed in more detail below.

The focus of this paper is a comparison of the history of the governance of regional public land acquisition in Perth and Sydney, with the case for the selection of these two cities established by a contrast of the planning approaches used. Specifically the paper aims to review the governance approaches and planning tools utilised in the two cities for the acquisition of regional public land, and to present the case for the extension of the model used in Perth of a tax 'hypothecated' to fund such acquisitions, the Metropolitan Region Improvement Tax (MRIT). A hypothecated tax is one where the revenue raised is statutorily earmarked for a particular purpose, rather than spent using discretion on a number of items or uses. The benefit, from the perspective of the implementation of public policy and strategic metropolitan planning, of the availability and utilisation of a hypothecated tax for public land acquisition, is a key conclusion of this paper.

2. Context – early metropolitan planning and regional open space provision

A body of recent academic literature has focused on the intersection of metropolitan spatial planning, regional open space planning and provision, and urban governance (see for example, Amati and Taylor (2010), Evans and Freestone (2010) and Thomas and Littlewood (2010)). In a regional/metropolitan planning context, consideration of regional open space which was centred particularly on the green belt concept has traversed to focus on concepts such as green webs and corridors or wedges and, in more recent times, to the broader notion of 'green infrastructure'.¹ However described, the planning and protection of such regional 'green spaces', particularly in Australia's capital cities, has been of ongoing concern to successive State Governments. Moreover, efforts – albeit largely ad hoc – to reclaim land for public (including open space) purposes following the original alienation of Crown Land in Australia, were in evidence at State and local level prior to the introduction of metropolitan planning schemes and supporting legislation.

Early spatial planning and open space initiatives in Sydney

In the case of Sydney, three major parks – the Royal National Park, Ku-ring-gai National Park and Centennial Park – were proclaimed in the late 19th century. In addition, several large military reserves across the region were also proclaimed from the 19th century. Significantly, several of these located around Sydney Harbour were eventually to become 'surplus' to defence needs and, being relatively undeveloped, were fortuitously converted to significant regional public open space acquisitions in the latter decades of the 20th century. Little however was achieved by way of regional or local open space acquisitions in Sydney in the first half of the 20th century, despite the best efforts of groups such as the Parks and Playgrounds Association (an offshoot of the Town Planning Association of NSW) and some ad hoc reservations by various authorities of smaller tracts of typically rugged land unsuitable for development (Evans and Freestone, 2010). A major reason for this lack of progress at this time was the absence of a spatial plan for Sydney and town planning legislation.

Comprehensive town and country planning legislation did not transpire in NSW until the enactment of the *Local Government (Town and Country Planning) Amendment Act 1945*, which inserted into the *Local Government Act 1919* a new Part XIIA titled 'Town and Country Planning Schemes'. In this regard, NSW lagged behind a number of other Australian States, Great Britain, and certain States in the United States (Starke, 1966). However, the absence of comprehensive legislation did not infer a lack of concern with planning, as there had been a history of interest in the subject throughout the first half of the twentieth century in NSW (Winston, 1957). Pertinently, the 1945 Act made provision for a controlling planning scheme for the County of Cumberland. A Cumberland County District was provided by the Act, and was constituted by proclamation of 27 July 1945: the County consisted of local council areas in metropolitan Sydney and fringe local government areas such as Campbelltown, Camden, Liverpool, Penrith and Windsor. Under the 1945 Act the State Government established a formal metropolitan planning body, the

¹ Open space is increasingly seen as a subset or component of green infrastructure. For example, a special edition of *Planning Practice and Research* (2010, vol. 25(2)), which was devoted to Green Belts, included significant discussion on green infrastructure. Indeed, two of the articles appearing in this volume of the journal contained the term 'green infrastructure' in their titles.

Cumberland County Council, which was to prepare and submit to the Minister a scheme in respect of all land within the County District. The Cumberland County Council commenced work that year on Sydney's first spatial plan – the County of Cumberland Plan.

A draft of the County of Cumberland Plan was completed in 1948, adopted by the Cumberland County Council, and exhibited for public comment during the same year and again in 1949. Ultimately, the County Plan consisted of a report – *The Planning Scheme for the County of Cumberland (1948)* - a delegated planning instrument gazetted in 1951 that implemented the Plan, and accompanying maps. In the interim however, further progress with enacting the Plan between 1949 and 1951 was delayed. A major reason for the interruption in the operation of the County Plan was the refusal of the Commonwealth Government to make any contribution toward the cost of implementing the Plan, in particular its proposed open space acquisitions. These acquisitions consisted of both vacant and built-up land, and it had originally been assumed that financial support would be provided on an equal basis from Commonwealth, State and local levels of government. Commonwealth repudiation required the NSW Minister for Local Government to modify the County planning scheme by eliminating the provision for the acquisition of built-up lands, reducing the available open space acquisition budget by two-thirds (Evans and Freestone, 2010), with financial responsibility for the modified Plan having to be borne equally by the State and by local government. It was only after this crucial compromise was reached that the County Plan was able to come into force through Parliamentary enactment of the *Local Government (Amendment) Act 1951*. The County Plan was given legal effect, as a statutory instrument titled the *County of Cumberland Planning Scheme Ordinance*, which was set out in a Schedule of the 1951 Act, and became law on assent to that Act. The broad purpose and institutional arrangements of the County of Cumberland scheme were that it

... made provision for the reservation of land for the purposes of open space, county roads and railways, and for the zoning, on a more general basis, of land use. The Cumberland County Council was designated as the responsible authority for the control of the scheme in respect of the reservation of land and the green belt and special uses zones, all development by the Crown, the payment of compensation, places of scientific or historic interest, and the control of ribbon development. (Starke, 1966, p. 43)

Defining characteristics of the County Plan included that it: (i) was implemented (and legally enforceable) through a statutory planning scheme (the County of Cumberland PSO); (ii) provided a fund – the *Cumberland Development Fund* – for the acquisition of (vacant) land reserved for public purposes such as open space, future roads and other needs; and (iii) prescribed the outer limits of urban growth and sought a compact city form: this was to be achieved through the concentration of city growth within the existing urban area, and the establishment of an encircling 'green belt' based on Sir Patrick Abercrombie's Greater London Plan of 1944, to limit suburban expansion and link scenic and bushland reservations. In addition to the green belt, another noticeable growth management feature also proposed by the Cumberland scheme was a series of urban districts within the city separated by natural features, each serviced by a district centre. These districts, separated by areas of open space and girdled by a greenbelt, were drawn strongly from the Garden City concept of Ebenezer Howard. This web of largely existent district open space has generally survived intact to the present day (Evans and Freestone, 2010).

From its very beginning, the County Plan met with considerable institutional and stakeholder opposition. Constraints that the Plan imposed on landowners were felt to be troublesome; local councils resented and frequently defied the County Council; and State authorities were reluctant to be bound by the Plan (Ashton, 1988). These difficulties were compounded by physical challenges – in particular by a population growth rate in Sydney double that estimated by the Plan (Spearritt and De Marco, 1988). As a consequence of the demand generated by the unforeseen population growth, tremendous strains were placed on the Green Belt by both private and public sector land and housing developers (Stilwell, 1993; Spearritt and De Marco, 1988). Satellite cities needed to be established beyond the Green Belt to compliment the compact metropolitan core. Instead, in 1961 the Minister for Local Government announced, without consultation with the Cumberland County Council, the abolition of the Green Belt and ordered that large urban expansions be allowed. At this time the Minister foreshadowed the demise of the Cumberland County Council (it was replaced in 1963 by the State Planning Authority) and the

preparation of a new metropolitan plan, which became known ultimately as the *Sydney Region Outline Plan* (SROP).

Pertinently, the Cumberland Plan suffered from a lack of funding (from the Commonwealth Government), particularly for the acquisition of land for open space and infrastructure corridors, and for new urban releases, particularly in proposed satellite towns beyond the Green Belt (Ashton, 1988). Perhaps most importantly, the County Council suffered from a lack of political power and fragmentation of decision-making within the political and bureaucratic structures of the day. This meant that efforts made by the County Council to adapt the County Plan to changing circumstances – to accommodate the rapid growth that was occurring in Sydney – was doomed to failure, so that, by the mid-1960s, the County Scheme was “crumbling at the edges” (Ashton, 1988, p. 25).

Early spatial planning and open space initiatives in Perth

Like in NSW, at the establishment of the Colony of Western Australia, the Crown became the owner of all land and commenced a gradual ‘alienation’ of Crown land to fee simple (private ‘freehold’) tenure. Un-alienated Crown land remained the major source of land set aside for public purposes requirements in Western Australia from the beginning of settlement. Its reservation to the Crown for an existing or future public purpose was a relatively simple matter. It did not require any payment to be made from the colonial treasury, and nor did it require dealings for acquisition with a private owner of alienated land. In the laying out of fee simple lots for new towns and rural areas, the surveyors were instructed to reserve land to the Crown for roads, squares, parks, schools, public buildings and foreshore areas adjacent to water bodies (for example: Government of W.A., 1872, 1873, 1886, 1902; Government of W.A., 1882).

From un-alienated Crown land, as in Sydney, a number of major parks were established in the 19th and early 20th centuries in what is now metropolitan Perth. These included Perth (later Kings) Park to the west of Perth (1871, expanded to 400 ha in 1890), John Forrest National Park in the Darling Range (1898) and what became Yanchep National Park (1905).

However the early subdivisions of rural land grants in metropolitan Perth before and during the gold rush of the 1890s did not require any planning or local government approvals, and consequently very large tracts of residential estates were created by speculators. Whilst usually re-dedicating land for public roads to Crown ownership, these private subdivisions were lacking in constructed roads and services and land re-vested in the Crown for parks, foreshore reserves and other necessary public purposes such as schools. Generally only areas of Crown land subdivided by the government in that period resulted in the reservation from sale of land for public purposes. For instance the process for the government’s subdivision of Crown land to create the Subiaco/Shenton Park area from 1883 incorporated the reservation of land from sale for the necessary supporting public purposes such as civic facilities, schools and parks (local, as well as what is now a regional park – Subiaco Oval). In other government subdivisions such as the South Nedlands townsite (now Dalkeith), a wide foreshore reserve was set aside from Crown land next to the Swan River (Department of Lands and Surveys, 1920).

The satisfaction of community land needs over the following decades in those subdivision estates that were devoid of, or deficient in, local parks, foreshore reserves and other land for public purposes, largely relied upon Crown land being made available for that purpose (including the reclamation of river foreshore areas such as in the creation of Perth’s Langley Park). Alternatively, the use of municipal funds was applied to acquire land for local and major parks. For instance, under the influence of its Town Clerk, William Bold, the City of Perth spent £37,000 up until 1918 purchasing land for parks and gardens, apparently much of it borrowed (Saw, 1918, pp. 45-46). The State government also added some private land to major parks, such as the expansion of Kings Park along the top of the escarpment of Mt Eliza by resumption in 1896 (Government of W.A., 1896) and assisted the City of Perth to transform former clay pits in East Perth into Queens Gardens in the late 1890s.

Local government gained approval powers over the subdivision of land in W.A. in 1900/1904 (Foley, 1995), although much residential subdivision of the original rural land grants around Perth and Fremantle had already occurred. In any event, local governments were often not sure what to do with these new

powers, with one contemporary commentator stating that they all had "different ideas, and governed by guess-work methods" (Boas, 1931, p.144). Nevertheless, some local authorities secured from developers parks, foreshore reserves and other infrastructure in new subdivisions, often due to the persuasive efforts of town planning enthusiasts such as surveyor Carl Klem.

Community concerns at the lack of planning during the gold rush era led to the formation of the Town Planning Association in 1916 whose concerns included the deficiency of parks and playgrounds in many residential areas. As early as 1918, Association member William Saw was advocating a minimum of 10% public open space from residential subdivisions for (local) parks, recreation and children's playgrounds (Saw, 1918, p. 45 & p. 58). After much lobbying by the Association, the *Town Planning and Development Act 1928* was passed by the W.A. Parliament which enabled local governments to make town planning schemes to control private land use and development, and to re-subdivide and redevelop areas (by compulsion if necessary). The new Act also centralised land subdivision approval powers with a new authority called the Town Planning Board, which first met in 1929 (predecessor of the current Western Australian Planning Commission [WAPC]).

One of the first tasks of the new Board was to draft, and have approved by the Governor, the *Uniform General Bylaws for New Subdivisions and Re-subdivisions* in January 1930 (Government of W.A., 1930). These bylaws are arguably the first planning policies in W.A. They incorporated requirements for subdividers to provide land for foreshore reserves to water bodies, as well as parks:

3(g) ... at least 100 feet reservation fronting seashore, lake sides, or banks of streams (exclusive of any road widths), and no rear of any lots shall abut such reservation unless expressly approved...;

3(i) spaces and sites for dedication to the local or other authorities for parks, recreation grounds, playgrounds, public buildings, schools, churches, memorials, or public services; ...

In addition to the Board, another planning body, the Metropolitan Town Planning Commission, had been established in 1928 under separate legislation, the *Metropolitan Town Planning Commission Act 1927*, to consider the planning of the whole of the Perth metropolitan area. The Commission reported to the State Government in 1930, and having completed its task, was disbanded (Boas, 1931). Its comprehensive report looked at a wide range of issues, and made many recommendations, including the need for a metropolitan system of regional roads, parkway belts, and river and coastal foreshores to serve Perth's long term needs. It advocated the setting aside of government land for parks, the acquisition of private land by purchase or resumption for public purposes where necessary, possibly with the use of rating powers, and the obtaining of foreshore and local park reserves free of cost from subdividers.

However, with the scarcity of funds due to the onset of the Depression, and without the benefit of statutory regional planning measures such as a statutory plan, a specific funding mechanism and a dedicated authority to facilitate the report's recommendations, the report sat on the shelf. Despite this, it did leave a legacy to the extent of clarifying the importance and need for State and local government to actively plan for the provision of land for all types of public infrastructure, including for recreation purposes, such as children's playgrounds, playing fields, foreshores reserves, regional parkway belts and National Parks.

In the 1930s and 1940s, the Town Planning Board, under the leadership of Town Planning Commissioner David Davidson, appears to have been successful in negotiating and achieving parks and foreshore reserves in its approval of at least some new private subdivisions. For instance, in 1936, the developers of the Attadale estate, Sydney company T. M. Burke Pty Ltd, gave to the State and local government a mile-long stretch of the Swan River foreshore totalling 53 acres (21 ha), as well as another 10 ha for parks and a government school site (*The West Australian*, 9 April 1936, p. 23).

Local councils had continued their open space acquisition programs to make up the deficiencies of the subdivision estates created in the 1890s gold rush era, with the City of Perth purchasing additional land for playgrounds, parks and recreation (City of Perth, 1936). Perth's purchases included large areas which would now be considered 'regional' open space, such as land next to Lake Monger and its surrounds in Leederville (Boas, 1931, p. 108). The City of Perth also set aside an area called 'Bold Park' from part of

lands 'endowed' to it by the State. Some local councils were not content with just acquiring land for regional park purposes. They sought to address the lack of a regional road system and hierarchy. For instance, in the absence of State government action, the City of Perth resumed 29 houses in 1929 at a cost of some £20,000 in order to extend Cambridge Street in Leederville to provide an improved major road system (*The West Australian*, 10 July 1929, p. 14). Overall, however, securing lands for future major public purposes to support the continuing metropolitan urban growth that was occurring was a continual catch-up game for State and local governments in the absence of a systematic planning and acquisition program, particularly at the metropolitan regional level.

3. Regional public land acquisition in Sydney

The Sydney Region Development Fund

Central to the County of Cumberland Planning Scheme's federally-emasculated regional open space acquisition program was the subsequent agreement for its funding on a shared 50:50 basis by State and local government. This informal arrangement, which operated to finance acquisitions by the County Council on a somewhat ad hoc basis throughout the 1950s (Evans and Freestone, 2010), was not codified until 1963 when the Cumberland Development Fund (CDF) was formally established by the State Government with the passage of the *State Planning Authority Act 1963*. The CDF was initially created to support the implementation of the County Plan (and subsequently its successor, SROP) by acquiring land reserved under the Plan for regional public purposes – green belt (Regional Open Space), parks, main roads and freeways. Local government funding of regional open space acquisitions by the Cumberland County Council was sourced from local councils in Sydney being levied by the County Council (and later by its administrative successors beginning with the State Planning Authority in 1963). Levy amounts were calculated as a percentage of councils' rate bases (unimproved property value) and adjusted annually for CPI. The State Government made substantial contributions (at least matching councils) and provided sizeable loan funds (Bob Waldron, pers. comm., 2011). In 1980 the CDF was superseded by the Sydney Region Development Fund (SRDF) which, similar to the CDF, is financially supported by State Government and local authorities, with the level of council contributions being determined by the unimproved value of all land in a local government area (DEP, 1987). In this regard the SRDF revenues are not a tax based directly on the unimproved value of urban lands such as Perth's MRIT.

Lands earmarked for acquisition under the SRDF were generally regionally significant public purposes and were set aside as reservations in statutory planning instruments by both local councils and State authorities. Reservations created a legal obligation for the State Government – through the SRDF – to acquire this land. The timing of acquisitions was largely related to affected property owners approaching the Fund when they wanted to sell, though powers existed for more proactive resumptive action by the Fund where lands were needed more urgently. Funds raised through the SRDF were originally hypothecated for the agreed planning purposes and used for land acquisition, interest on loans and administration. By the late 1980s however fiscal constraints meant that the outstanding loans had to be placed on a more sustainable basis. Council contributions, matched by NSW Treasury, were used to meet interest and administration costs only. Future capital requirements (consisting mainly of ongoing acquisition commitments) were to be funded from a new program of asset sales.

The SRDF has continued to meet its acquisition commitments on this basis. Asset sales were a fortuitous and successful revenue source because many former (mainly road) reservations from the time of the County of Cumberland Planning Scheme were abandoned and large areas acquired in the 1950s and 1960s were no longer deemed part of the future planning needs of Sydney (Bob Waldron, pers. comm., 2011). Revenues from asset sales are hypothecated for the purpose of the SRDF (that is, for land acquisition, some property improvement and the occasional development project such as the Rouse Hill Regional Centre). However, while asset sales have met ongoing funding needs of the SRDF for the past 20 years or so, it is not sustainable in the long term. Given capital funding limits, Government reviews since the early 1990s have also limited the extent and ease of new reservations being created in the Sydney Region, the most recent being the revision of public land reservations in statutory planning instruments following amendments in 2006 to the compulsory acquisition provisions of the *Land*

Acquisition (Just Terms Compensation) Act 1991 (DoP, 2006). Limitation on funding has constrained the earlier freedom planners had to put new planning schemes in place, and has also led to the use of alternative mechanisms such as development contributions, voluntary planning agreements, conservation agreements and environmental zoning controls to secure local and regional public open space. Some of these other programs focusing on regional open space acquisition in the Sydney region are outlined below.

Other mechanisms for funding regional public land acquisition

Various forms of levies on development have been attempted in NSW in order to capture for planning purposes such as public open space provision, part of the 'unearned increment' arising from 'betterment': that is, the uplift in property values caused by planning decisions that are financially beneficial to landowners. Part XIA of the *Local Government Act 1919* allowed for the collection of betterment. Sections 342AF and 342AG empowered councils to levy betterment charges where the prescribed planning scheme expressly so provided. This charge was directed to the recovery of any increase in the value of land attributable to the operation of the prescribed scheme. However, the provision proved to be of little practical importance since only a handful of schemes under Part XIA provided for recovery of betterment, as councils were reluctant to claim betterment charges due to its electoral unpopularity.

A later attempt in NSW to introduce a betterment tax – the *Land Development Contribution Management Act 1970* – operated briefly between 1970 and 1973. This legislation, with its cognate statute the *Land Development Contribution Act 1970*, enabled the capture of 30% of the increase in value from the rezoning of rural land around Sydney for urban use or the sale of other 'declared land' that had not yet been rezoned, and raised some \$9 million for public works and services needed for the rezoned land (Day, 1995). The tax was collected either upon the granting of development consent, sale, or rezoning of land declared for urban release under the Act. The NSW Land Development Contribution statutes were hailed in some quarters as "... a brave attempt to achieve a worthwhile and workmanlike method of ensuring that the betterment achieved by zoning is returned to the community..." (Fogg, 1982, p. 521). However, the tax proved problematic due to the impediment it placed on new residential development at a time of extreme land shortages and inflationary pressure in the property market. The legislation was abandoned as developers were either refusing to develop land (so avoiding the tax) or, if developing land, were passing the cost on to home buyers, both actions further exacerbating land supply shortages and inflation in land and house prices in Sydney (Williams, 2000).

The Metropolitan Greenspace Program (MGP) is a modest grants funding program for allocating part of the SRDF for planning and improvement of regional open space in the greater Sydney region. It is a partnership program involving State and local government to improve and extend regionally-significant open space for recreational purposes. Between 1985 and September 2012, the MGP has provided over \$32 million to councils for 539 projects across the metropolitan area through the SRDF (DoPI, 2012). All 43 metropolitan councils are eligible to apply for grant funding. Annually, approximately \$2.5 million is available, on a dollar-for-dollar matched funding basis. For a project to be eligible for MGP funding it must demonstrate both: matched funding – MGP funding must be matched dollar for dollar with cash funding; and the regional status of the open space – councils must demonstrate the regional qualities of the green space project for which funding is sought. While the MGP is used for the acquisition of new open space, much of its recent budget has been directed to capital works improvements to enhance the accessibility and connectivity of the existing network of regional recreational trails in Sydney (DoPI, 2012).

4. Regional public land acquisition in Perth

Planning at the metropolitan regional level was revived for metropolitan Perth in the early 1950s. In 1955, when anticipating a significant industrial and urban expansion boom in and around Perth fuelled by increasing post-war immigration and overseas investment, the Western Australian Government published the *Plan for the Metropolitan Region: Perth and Fremantle*. This became known as the 'Stephenson – Hepburn Plan' after its key authors (Stephenson and Hepburn, 1955). With a metropolitan population of 400,000 in 1955, the Stephenson - Hepburn Plan showed great faith in metropolitan Perth's future growth

potential, taking a 40 to 50 year view and identifying land for future development and regional public purposes to accommodate a population of around 1.4 million.

The report for the Plan undertook a comprehensive evaluation of outdoor recreation and open space. Public open space was divided into three distinct categories in the report: (1) Local Open Space; (2) District Open Space; and (3) Regional Open Space. Regional Open Space identified in the plan included a wide range of recreation functions including National Parks, river, lake and ocean foreshores, natural areas, picnic areas and camping grounds, areas of landscape value and open country, and regional sports facilities.

To implement the Stephenson–Hepburn Plan, the report recommended legislation to create a statutory metropolitan region planning scheme administered and kept under review by a regional planning committee. This would provide a broad legal framework within which the more detailed local government planning schemes would need to fit. Most importantly, however, it would ‘reserve’ land for a wide range of long-term future regional public infrastructure purposes to support the future population and economic activities. The public acquisition of the ‘reserved’ private land would be funded via a new land tax.

The W.A. Parliament accepted the Stephenson – Hepburn recommendations and passed the *Metropolitan Region Town Planning Scheme Act 1959* and *Metropolitan Region Improvement Tax Act 1959*. These Acts resulted in the creation of the Metropolitan Region Planning Authority (MRPA) in 1960 and the establishment of the recommended land tax, the *Metropolitan Region Improvement Tax* (MRIT). The MRPA was charged with preparing the *Metropolitan Region Scheme* (MRS). After reviewing the Stephenson–Hepburn Plan, the MRPA prepared a draft MRS which was advertised for public comment in 1962 and approved by the Governor in 1963 (Metropolitan Region Planning Authority, 1962, 1963). The MRS either ‘zoned’ land for essentially private development purposes such as ‘Urban’, ‘Industrial’ or ‘Rural’; or it ‘reserved’ it for existing and future regional public purposes such as ‘Parks and Recreation’, ‘State Forests’ or ‘Important Regional Roads’. When land was ‘zoned’, the local governments’ more detailed town planning schemes (already provided for under the 1928 Act) had to generally reflect the purpose of the MRS zone. For land that was ‘reserved’ in the MRS, the local scheme was automatically amended to include the MRS reservation. Importantly, the MRPA gained sole development control when land was reserved so that developments proposed on reserved land that would be incompatible with the long term intended public purpose could be refused or appropriately conditioned. The Act provided that private land reserved under the MRS could be purchased by the MRPA using the monies from the MRIT, and compensation for ‘injurious affection’ could also be paid if a claim was proved.

The MRIT is payable annually by the proprietor of land within the Perth Metropolitan Region that is subject to State Land Tax whose name is registered on the title as at midnight on 30 June. The rate of the MRIT is stipulated in the *Metropolitan Region Improvement Tax Act 1959*. Initially struck at half a penny in the £1 of unimproved land value as assessed under the already existing *State Land Tax Assessment Act 1907*, over time the rate has been amended and the types of land it applied to has been contracted. The MRIT is currently imposed at a rate of 0.14 cent for every dollar of the aggregated taxable value of the land in excess of \$300,000. Exemptions exist for properties that are used for certain purposes such as a primary place of residence, rural businesses, and land used by educational, religious bodies and non-profit organisations (Office of State Revenue, 2013).

As a tax that is ‘hypothecated’ (pledged) for a particular purpose under its Act, it has had to be transferred annually to the MRPA’s (and now WAPC’s) *Metropolitan Region Improvement Fund* (MRIF)². Receipts into the MRIF commenced in 1960. The MRPA worked alongside the Town Planning Board, which from 1956, had made and administered *Interim Development Order (IDO) No. 1* for the Metropolitan Region under an amendment to the *Town Planning & Development Act 1928* to control development until the MRS was in place. This included compensation and acquisition powers, and from 1960, the MRPA commenced using the MRIF to acquire, and pay compensation for, private land ‘reserved’ in the MRS for future public purposes, including regional parks and recreation, roads and railways.

² Subsequently officially renamed the Metropolitan Region Improvement Account.

Since 1963, the zones and reservations of the MRS have been regularly updated via amendments. When undertaking this review work, the MRPA could reserve additional private land with the relative confidence that its future acquisition and compensation payments could be secured by the annual amounts guaranteed to be transferred to it from the MRIT collected by 'Treasury'. The result has been that significant amounts of 'reserved' private land in the Perth Metropolitan Region have been purchased for future regional infrastructure needs, including for regional parks and recreation.

By May 2013³, some 112,000 ha of public and private land was reserved for 'Parks and Recreation' in the MRS (compared to 26,700 ha originally reserved in 1963⁴). For comparison purposes, Perth's iconic Kings Park is 400 ha. Since 1960, around 26,000 ha⁵ of private land reserved for 'Parks and Recreation' has been gradually acquired by the MRPA and its successors, the State Planning Commission, and now the WAPC (mostly by private treaty with very little need for compulsory acquisition). Once land is in WAPC ownership, the WAPC has an interim management function until a sufficient amount of land has been acquired at which time park management plans are usually prepared and the land is consolidated into Crown reserves. Management is then transferred to a long term management body, most often local governments and the Department of Parks and Wildlife. Examples of regional parks and areas that have been created solely or largely by acquisitions using the MRIT include Yellagonga, Beeliar, Herdsman Lake, Jandakot Botanic Park, Rockingham Lakes, Darling Range, Araluen, Whiteman Park, and the Swan and Canning River foreshores (see Western Australian Planning Commission, 2007 a & b for other examples)⁶. These results of the implementation of the MRIT could hardly be argued not to be positive community outcomes. However, tensions have been apparent over the years between 'Treasury' and the planners regarding the need for the MRIT to remain hypothecated.

There are a number of advantages of the reservation system of future public land operating in Perth. Firstly, land is reserved well in advance of need which helps create certainty (that is, 'people know where they stand'). Secondly, the Western Australian Planning Commission (WAPC) is able to use its development control powers to prevent incompatible development (though minor or temporary development may be permitted). Thirdly, land is gradually purchased as owners wish to sell: only in limited cases is land resumed (or 'taken', as it is now termed). Fourthly, the cost in real terms to the community is not high, as public works such as road widening or park creation can more easily take place because the land is there, that is, it has already been reserved and mostly acquired for that use. Finally, the WAPC is able to get on with the task for public land acquisition without having to plead to 'Treasury' each year (unlike many other government agencies when trying to buy land for public purposes). Though there are some disadvantages of the reservation system (potential adverse effects on landowners; political costs; and non-purchase price acquisition costs can be high in situations of disagreement over 'injurious affection' compensation or determination of value when the WAPC 'elects to purchase' rather than resume), these are generally outweighed by its advantages.

Thus, whilst the spatial aspects of the 1955 Stephenson–Hepburn Plan have been influential on Perth's development, its report's implementation mechanism recommendations of a statutory region planning

³ Figure provided by Mapping and Geospatial Data, W.A. Department of Planning.

⁴ Metropolitan Region Planning Authority (1979) *Annual Report 1979* (MRPA: Perth), p.12. By 30 June 1979, this amount of land reserved for 'Parks and Recreation' in the MRS had grown to about 32,000 ha, of which 18,000 ha was already in the Crown or local government estate. Of the balance 14,000 ha, the MRPA had acquired 11,017 ha at a cost of \$33.86 million (apparently actual dollars).

⁵ DoP estimate; detailed figures are unavailable at present.

⁶ In 2012-13, the MRIT raised \$85 million (compared to \$84 million in 2011-12). As required under the legislation this was transferred to the WAPC from the Department of Finance. The WAPC's Annual Report indicates that only \$39 million was spent on purchasing properties and some further funds were spent on administering the scheme, although the full amount received was apparently not expended, even though there is a considerable demand on the fund from private land owners to purchase their land. The amount of unspent funds accrued in the Metropolitan Region Improvement Fund was \$117 million in 2011-12, whilst this had grown to \$145 million in 2012-13. This would seem to indicate either a degree of reluctance on behalf of the WAPC to expend, or some direction from government not to spend. [WAPC/DoP *Annual Report 2012-13*, p. 67; WAPC/DoP *Financial Summary and KPIs* appendix to the *Annual Report 2012-13*, p. 92.].

scheme accompanied by a hypothecated land tax with the ability for an independent planning authority to relatively easily reserve and acquire private land for regional purposes, has arguably been its key enduring legacy. This can be measured against the acquisition of land in the two other regions where statutory region planning schemes have since been instituted – Peel (2003) and Greater Bunbury (2007). In these two regions a hypothecated land tax was not included in the legislation and consequently the WAPC relies on annual 'Treasury' grants from consolidated funds which have remained constant, making the acquisition of land and payment of compensation an even more challenging task than in the Metropolitan Region⁷.

5. Conclusion

The key finding of this paper is the benefit, from the perspective of the implementation of public policy and strategic metropolitan planning, of the availability and utilisation of a hypothecated land tax for public land acquisition. The benefit of using a hypothecated tax that will grow over time by being related to (unimproved) land value is evident when compared the approach utilised for public land acquisitions in Sydney. The main funding source in recent decades for regional open space acquisitions in Sydney through the SRDF has been asset sales – that is, the sale of previously acquired public lands. Not only is this somewhat counter intuitive in the sense that public land sales are being used to finance new public land purchases, but it is also unsustainable in the long term as there is an ever-diminishing stock of saleable public land. Further, the monetary sums and hence physical size of acquisitions under the SRDF and schemes it sources such as the Metropolitan Greenspace Program (MGP) is relatively modest. The annual budget for the MGP for example is only \$2.5 million and much of this in recent years has been spent on improvements to the existing open space network, rather than new acquisitions.

Planning for future regional open space needs and other public infrastructure in Perth, has clearly benefited from a hypothecated land tax for public land acquisitions. But as discussed above, the effectiveness of the MRIT is that it has also been used within the context of a robust strategic plan for Perth – in line the key recommendations of the report accompanying the Hepburn - Stephenson Plan. The crucial mechanisms recommended for implementation of the Plan were the creation of a statutory region planning scheme accompanied by a hypothecated land tax with the ability for an independent planning authority to relatively easily reserve and acquire private land for regional purpose. The combination of the Metropolitan Region Scheme (MRS), the MRIT/MRIF and the Metropolitan Region Planning Authority (later WAPC) have provided these mechanisms. Having a sound statutory spatial plan in place which clearly delineates future regional public land/open space needs, being able to reserve that land thereby quarantining it from potential land uses detrimental to its future public acquisition and use, and a guaranteed (and growing) stream of income in the form of the MRIF/MRIT to realise this element of forward land use planning are evident in the Perth strategy. It is a model which warrants consideration by other Australian cities.

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⁷ A September 2013 planning reform discussion paper has suggested that land taxes similar to the MRIT should apply to parts of the state other than just the Perth Metropolitan Region: Department of Planning (2013) *Planning Makes it Happen: Phase Two, Planning Reform Discussion Paper* (Perth, Department of Planning), p. 25.

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