

Gillman land deal has short-changed taxpayers

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Political Reporter Sheradyn HolderheadThe Advertiser



Former Renewal SA chief executive Fred Hansen.

THE controversial sale of prime public land at Gillman has gone ahead despite a Supreme Court ruling it was “irrational”, “unlawful” and did not ensure the best return for taxpayers.

The State Government sold 150ha of industrial land at Gillman to private consortium Adelaide Capital Partners for \$40 million, just days after a scathing judicial review of the deal was handed down by the court.

ACP — which intends developing the site into a resources hub dubbed “Lipson Estate” to service the gas, oil and mining industry — has two exclusive options to buy the remaining 257ha of the former Multi-Function Polis site with a set price of \$30 million each.

In his December 24 judgment, released yesterday, Justice Malcolm Blue found sacked Renewal SA chief executive Fred Hansen’s decision to sell the land without public tender was “an irrational decision and a decision that no reasonable person in the position of the decision-maker could rationally have made”.

He found that Mr Hansen’s decision to enter into the contract was “unlawful” because it did not comply with the Public Corporations Act and (did not) apply commercial principles to achieve a profit.

“The decision-maker did not compare the advantages and disadvantages of entering into the contract with engaging in a competitive marketing and sales process ... nor obtain or seek a reliable relevant valuation of the land,” the judgment stated.

Justice Blue also found there was no:

REASON why the general principle that the sale be undertaken by a competitive sales process should not have been applied.

ASSESSMENT of the benefits and prospects of proceeding to market the land in an open and competitive manner as an alternative to accepting the ACP proposal.

UNDERSTANDING of the nature and extent of alternative purchasers and developers of the land.

RELEVANT or reliable valuation of the land and instead relied on a 2010 valuation.

INDEPENDENT advice to assess the alternatives to accepting the ACP offer.

Acquista Investments, known as Integrated Waste Service, and Veolia Environmental Services, initiated legal action over the deal in March after expressing interest in the land prior to the Government striking the exclusive deal.

But while Justice Blue found significant failings with the sale process, he upheld the contract between the Government and ACP. More than half of the board of government property developer Renewal SA resigned over the private deal after rejecting it twice.

The controversy forced the Government to release new guidelines for companies making unsolicited bids to develop public land or build infrastructure, after Premier Jay Weatherill said it had scared away potential investors.

Planning Minister John Rau said yesterday he would not comment on the judgment, given that Acquista Investments had indicated that it would appeal against the decision to uphold the contract.

“Renewal SA has undergone significant change in the past 12 months, including the appointment of a new Chief Executive and change in senior management,” he said.

“I am confident this agency will deliver significant projects for this state into the future.”

The Government and ACP signed a \$40m deal for the initial 150ha parcel of land on December 29.

ACP chief executive officer Andrew Gerlac said taking the first option was a “milestone”.

Deputy Opposition Leader Vickie Chapman said it was now clear that the Government failed to undertake due diligence when assessing the ACP proposal.

“Dealing directly with one buyer just was not good enough in this instance,” she said. “The Weatherill Labor Government’s decision to enter into this deal without proper commercial consideration may have led to a bad deal for South Australians.”

Analysis: Dud deal mars SA’s standing

By Cameron England

THE scathing judgment released yesterday on the State Government’s controversial Gillman land deal confirms what we’ve suspected since this debacle was brought to light by *The Advertiser* in late 2013: the public has been duded.

It will also do little to assure businesses competing for development rights in South Australia that there is a level playing field when it comes to having their proposals assessed.

Government bodies such as Renewal SA, which is basically the State Government’s land developer, are charged with getting the best bang for the buck out of government assets.

It’s unlikely in this case that this has happened, but we’ll never know, as the right to develop up to 400ha of land was handed to Adelaide Capital Partners on a platter.

All other interested parties — and there were at least three, with some outlining proposals for the site months earlier — were not given a chance to put in a competing bid. One company found out about the bid and pleaded with the Government to be able to compete — no dice.

The responsibility for the decision has been sheeted home by Justice Malcolm Blue to former Renewal

SA boss Fred Hansen, who lost his job last year.

Justice Blue calls it “an irrational decision and a decision that no reasonable person in the position of the decision-maker could rationally have made”.

But the decision to award the deal to ACP, and the responsibility for that, ultimately lies with the Government.

Premier Jay Weatherill and Treasurer Tom Koutanstonis have stood behind the decision to award the potentially lucrative development rights to ACP without putting the proposal out to the market.

In February last year the Premier said the Government took “full responsibility for the decision that we made” and “would make it again every day of the week”.

I guess we have to assume that those involved in the decision making had something akin to a “pretty good hunch” that this was the best deal they could do for the land.

The Renewal SA board appears to have disagreed, with more than half of the board resigning shortly after ACP was handed the deal — against the original advice of Renewal SA’s management.

Mr Weatherill last year went so far as to complain that the controversy around the Gillman deal could scare off potential investors in the state. Many in the business community would argue the opposite.

How can a business be confident they are getting a fair go if they are not convinced there is an open and transparent process for bidding for development rights, mineral exploration rights, or other potentially lucrative deals in SA?

South Australia wants to be known as being open for business, but deals such as this will have investors thinking twice before knocking on the door.



HOW IT UNFOLDED

December 23, 2013: The State Government announces in *The Advertiser* that it has struck a deal with consortium Adelaide Capital Partners to buy and develop the 400ha former Multi-Function Polis site at Gillman.

December 24, 2013: It is revealed that more than half of the board of State Government property developer Renewal SA resigned over the deal after rejecting it twice, believing it should have gone out to public tender.

January 22, 2014: Premier Jay Weatherill said "there have not been any offers for this land of any substance for the last 30 years", adding that a competitive tender process would have driven away the developer's interest.

January 25, 2014: The Government is accused of short-changing taxpayers for agreeing to sell the site for \$100 million, one-quarter of its potential value, without going to tender.

January 30, 2014: Mr Weatherill said the Government had received a "couple" of other proposals for the site but dismissed them as not "credible". When asked if the Renewal SA board had rejected the proposal, Infrastructure Minister Tom Koutsantonis said: "Not that I'm aware of. If you have evidence of that, please show it to me."

February 6, 2014: Details emerge that civil engineering firm Bardavcol had approached the Government with a detailed proposal for the site in May.

February 7, 2014: It is revealed that waste-management company Integrated Waste Services is considering legal action against the State Government after it submitted a detailed proposal for the site the previ-

ous year. It is also revealed that Adelaide Resource Recovery had made a proposal but ruled out legal action.

February 11, 2014: Details of Renewal SA board's advice from November 20 emerge, recommending that Mr Koutsantonis "reject the ACP submission". Mr Koutsantonis said "the Government did not accept the proposal the board was not happy with". He said the proposal that Cabinet approved was different.

February 12, 2014: Mr Weatherill admits Renewal SA was lobbied to overturn advice that the sale of the site be put to an open tender.

March 14, 2014: Acquista Investments, known as Integrated Waste Service, and Veolia Environmental Services initiate legal action against the State Government's land developer Renewal SA over the sale of the site. The waste company hopes the legal row will lead to a sale of the site by public tender.

March 24, 2014: A parliamentary inquiry into the deal is set up. Mr Weatherill and Mr Koutsantonis refuse to appear.

October 2, 2014: The Government decides to overhaul the guidelines for companies making unsolicited bids to develop public land or build infrastructure in the wake of the Gillman land deal controversy, which Premier Jay Weatherill said has scared investors away from the state.

January 12, 2015: Supreme Court Justice Malcolm Blue hands down his final judgment on the deal in which he upholds the validity of the contract but finds serious concerns with the process, calling it "irrational" and "unlawful".

ABOUT THE SITE

■ What is the Gillman site?

It's a 407ha parcel of prime industrial land near Port Adelaide.

In 1987, it was the site of a proposed joint venture, between the Federal Government and Japanese investors, called the Multi-Function Polis, to develop futuristic villages containing housing, teaching facilities, business premises and recreational areas for about 100,000 people.

■ Why is it now controversial?

In December 2013, the Labor State Government signed a deal for the site with Australian Capital Partners, an Australian-based consortium, without putting the sale out to the open market. Premier Jay Weatherill said it was a premium price and that there were no other credible proposals for the land. He added that ACP would have walked away if the site was put out to tender. Since then, industry sources have said the land could be worth up to \$400 million and details of at least four other proposals have emerged. Four members of the Government land development agency Renewal SA's seven-member board resigned over the deal, after advising the Government to reject it.

■ What is the deal?

The deal gives ACP six months to exclusively work up a detailed plan for the site, which, as long as it meets conditions set by the Government, will be sold for \$100 million: \$40 million for the first parcel of 150ha, with options to buy the remaining 257ha.

WHAT IS ADELAIDE CAPITAL PARTNERS

■ It is a consortium led by former

“ A decision



“ Dealing



that no reasonable person in the position of the decision-maker could rationally have made.



directly with one buyer just was not good enough.



– **Vickie Chapman**

Santos chairman Stephen Gerlach

■ The consortium members are Gerlach Asset Development and ResourceCo

■ ResourceCo – run by Simon Brown – is a waste management

How the Gillman land deal unfolded