

## MUNICIPALITY OF HUNTER'S HILL

### Report by Town Clerk

To the General Purposes Committee,

#### Kelly's Bush

This summary of events surrounding the land known as Kelly's Bush has been prepared from Council records in response to a motion by Ald. M.J. Baird carried at the meeting of Council on 24th October, 1977.

Part of an early grant to John Clarke, Kelly's Bush derives its name from T. H. Kelly who owned the land (about 19 acres) between Woolwich Road and the Parramatta River in 1892 when the Smelting Works was first established on the foreshore. Apart from some slag deposits, the bush was allowed to remain in its natural state as a buffer between the industrial site and the residential area on top of the hill.

When the County of Cumberland Planning Scheme was introduced in 1951, the land was zoned Waterfront Industrial (about 4 acres) and Living Area (about 1 acre) with the remainder (about 14 acres) reserved for Open Space purposes. In 1956, the Council, assisted by the then Cumberland County Council, purchased from the Sydney Smelting Company almost 7 acres of the 'reserved' land and named it Weil Park. In 1966, the Council unsuccessfully asked the State Planning Authority to acquire the remainder of the 'reserved' land as open space.

The Smelting Company moved its industrial activity to another suburb and in May, 1968, A. V. Jennings Industries (Australia) Limited, which held a conditional contract, made application to Council seeking action to suspend the County of Cumberland Planning Scheme Ordinance to enable the development, on 6.5 acres of the 12.1 acres still held in private ownership, of some 147 home units including three buildings each 8 storeys high. The Council opposed the development and renewed its representations for acquisition by the State of the whole of the area reserved for open space. This did not include the industrial land. Indicating that the whole of the land was not of county significance, the State Planning Authority made it clear that it was only interested in purchasing the waterfront area. The Council was not prepared to negotiate the purchase of the land proposed for development on account of the cost and then set about obtaining a development on the best possible terms.

A series of modified applications were subsequently submitted by the Jennings Group and disapproved before Council, in November, 1969, agreed in principle that it would favour suspension of the zoning to enable a strictly controlled town house type of development. Jennings ultimately purchased the land in August, 1970 and the Minister for Local Government then decided that he would not suspend the County Ordinance except to allow single dwelling development. After negotiation of several subdivision proposals, agreement was finally reached and a comprehensive legal document completed by the State Planning Authority of New South Wales, the Council and the Company on 3rd June, 1971 governing -

- \* the purchase of 5.6 acres by the State as a public reserve to be placed under the care, control and management of the Council.
- \* the landscaping of the old smelting works site by the developer as part of the foreshore reserve.
- \* the subdivision of 6.5 acres into 25 single dwelling allotments each of approximately 9,000 square feet in area.

- \* the construction of subdivision roads, drainage and paths and the provision of all public utility services underground.
- \* the location, height, design and materials of the dwellings to be erected under a stringent series of restrictive covenants.

The Council saw the result of the negotiations as being the provision of sewerage to a significant portion of the peninsula, the elimination of waterfront industry and the provision of over 5 acres of waterfront reserve to which the public previously had no legal rights.

At that time, Kelly's Bush attracted a great deal of publicity. There were protest meetings and, according to press reports, bans were imposed by the N.S.W. Labor Council, the Builders Labourers Federation, the Federated Engine Drivers and Firemen's Association and the Building Workers' Industrial Union. The Hunter's Hill Branch of the A.L.P. reaffirmed its total opposition to development of any kind at Kelly's Bush.

The Hunter's Hill Trust put to the Company and the Premier a proposal for a smaller development and the unions raised the possibility of 'swapping' Kelly's Bush for other government land.

Shortly before the Council election in September, 1971 the Minister for Local Government, then the Hon. P.H. Morton, suspended the County of Cumberland Planning Scheme in respect of Lot 3 D.P. 549711 and published Interim Development Order No. 2 - Hunter's Hill, in the New South Wales Government Gazette on 3rd September, 1971. The Interim Development Order, which remains current, provided for the following development only, with the consent of the Council:-

Drainage; dwelling houses; roads; utility installations other than gas holders and generating works.

With the Union "green ban" in force, the subject of Kelly's Bush slipped into the background until the public exhibition of the Hunter's Hill Planning Scheme towards the end of 1973.

During the intervening period, however, the Council made representations from time to time and even threatened legal action in an effort to cause the then State Planning Authority to invoke the penalty provisions of the Tripartite Agreement and proceed with the landscaping of the old smelting works area. The Council also declined to grant extension of the subdivision approval and the Metropolitan Water Sewerage and Drainage Board eventually went ahead with the sewerage reticulation of the area known as Low Level 4A which relies upon the pumping station at the southern end of Margaret Street.

A. V. Jennings Industries in 1974 offered to sell the land to the Council for \$405,000.00. The State Government was not interested and the Council was unsuccessful with a submission to the Grants Commission.

When the Planning Scheme was placed on public exhibition in November, 1973, Lot 3 was described as Residential 2 (a2) which recognised the terms of the Interim Development Order.

There were 8 public objections to the zoning of Kelly's Bush including submissions by the National Trust, the Hunter's Hill Trust and Mrs. J. F. James on behalf of the Battlers for Kelly's Bush. All of the objectors sought the zoning of the land as "Open Space" and some gave evidence before Mr. W.A.C. Dale who was appointed by Council as an independent Commissioner to conduct a public hearing and report on the objections to the Planning Scheme. The hearings took place in June and July, 1974 and in his report, submitted to Council early in 1975, Mr. Dale supported the objections and said -

"....It is appreciated that the cost of acquisition of this land is a very real obstacle to its preservation. It is suggested that the use of the old smelter site for town houses might make it economical for a developer to cede the balance of the area. This could be done with little effect on the bulk of the Kelly's Bush area or of the environment generally. Following an inspection of Kelly's Bush, I am of the opinion that it should be preserved for posterity and recommend that the 2 (a2) area be reserved as 'County Open Space' as part of the overall plan to preserve the existing character of Hunter's Hill."

The Council's Consultant Town Planners recommended endorsement of the Commissioner's report, without comment, but the Town Clerk did not support this recommendation because the Council was a party to a legal agreement and because the State Government had consistently declined to purchase on the ground that beyond the foreshore strip the land was not of "county significance".

After the hearing of objections, but before completion of the Dale Report, Council received and referred on to the Commissioner an Environmental Impact Study Report prepared on behalf of Jennings by the Planning Workshop Pty. Limited of North Sydney. The Study suggested other development alternatives and while Mr. Dale retained the view that the land should be open space, he said that if that were impracticable on account of cost, the cluster housing suggestion could be considered as an alternative.

The General Purposes Committee decided to recommend that Council adhere to the zoning indicated on the Certified Scheme Map and when the matter was dealt with by Council in December, 1976, a motion for adoption of Commissioner Dale's report on Kelly's Bush was defeated on a call for a division.

The Committee recommendation was then adopted and this decision, unexpectedly, triggered another burst of publicity condemning the Council and reporting that the State Government would ensure that no development occurred at Kelly's Bush. This led to the negotiations in which the Council has been asked by the Minister for Planning and Environment to meet half of the cost of acquisition.

Barely a week after the revival of the Kelly's Bush story, Hunter's Hill again made headlines over the discovery by the Health Commission of high level radiation in Nelson Parade and in the old smelting works. Certainly this news has complicated the Kelly's Bush situation and since then the Council has declined to commit the Municipality to either acceptance or rejection of the proposition which at one stage included the nomination by Jennings Industries of a cost figure in excess of \$500,000.

Subsequently the Company made a new offer to the Minister involving the sale of 22060 sq. metres of the land for \$275,000. This offer was conveyed to Council by the Minister in August, 1977 and is subject to:-

1. Subdivision of Lot 3 and exclusion of the old dwelling and curtilage, approximately 4000 sq. m. from the sale.
2. Termination of the liabilities of the Company under the Tripartite Agreement.
3. Cancellation of the Bankers Guarantee of \$10,000.00 held by the New South Wales Planning and Environment Commission for landscaping.

The Company has not stated its intentions in relation to the land proposed to be retained. The Council, since the recent triennial election, has asked the Minister for more information about the radiation and about the value of the land offered. It has also informed the Minister that no Council should be liable, in these circumstances, for dealing with the problem of radioactivity which should be recognised and accepted as a responsibility of the State or Federal Government, if not the owner.

At this date, the question of the purchase and/or development of Kelly's Bush is unresolved.

3rd November, 1977.

W. Phipson  
TOWN CLERK