CLOL SUBMISSION #149
Parliamentary Inquiry into NSW Crown Lands
23 June -- 13 October 2016

GPSCNo.6 - CROWN LANDS INQUIRY
HEARING - Macquarie Room, 15 August 2016

Question on Notice - CLOL RESPONSE

Brief Background

Crown Land Our Land Inc was a witness at the Inquiry Hearing that took place at 2.15 - 2.45 pm on 15 August 2016, being represented by Mrs Cheryl Borsak and Ms Emma Brooks Maher. Midway through that session The Hon. Trevor Khan posed a question which we took on notice, and this is our response. The relevant section is as follows (Inquiry transcript p.49).

The CHAIR: I would like to clarify. We have taken evidence across New South Wales. A lot of councils have parcels of land that are half Crown and half council land. A lot of those are sporting ovals. Would you be averse to them taking control of the sporting ovals, or are you saying that there are issues where it might leave to commercialisation or privatisation?

Mr OWENS: From what we have seen there is no doubt. In every case, virtually, Routledge (sic) has been ignored again and again by local councils. They cannot learn. I would be horrified if they were given stewardship over trust properties. If there are current trusts there that were used for reaction (sic) I would certainly say that it should not be given to local councils.

The Hon. TREVOR KHAN: Certainly?

Mr OWENS: Certainly do not give it to them.

The Hon. TREVOR KHAN: Even if there are two parcels of land, both of which are being used for sporting ovals—indeed, the same sporting oval could run over the two parcels of land; one being owned by council and one Crown land—you would say under no circumstances vest in the council the other half of the sporting oval.

Mr OWENS: Yes, Mr Khan. We have seen nothing but abject failure by local councils in their ability to manage Crown lands for the benefit of the public.

The Hon. TREVOR KHAN: How would managing a piece of land which is used for an identical purpose to an adjoining piece of land, as a sporting oval, cause some public mischief?

Mr OWENS: Let me give you an example, if I could: North Bridge (sic) oval on Sydney's North Shore. My family has been involved in North Bridge (sic) football for years and years. It is a community oval—a village green. It is not council land, as council seems to think; it is a Crown reserve for public recreation. Council have proceeded on the basis that it is just council land. They have ripped up the village green grass and put down synthetic grass with no development application [DA], even though a DA was proposed. They have allowed North Bridge (sic) oval—the village green that was set aside for public recreation—to be effectively taken over by Central Coast Mariners for their elite sport. That is the sort of reason I would never—

The Hon. TREVOR KHAN: Going back to the example that the Chair and I gave, that is two adjoining pieces of land, whether they be parks or sporting ovals, being used for identical purposes. Why does the vesting of the completely adjoining Crown land create a mischief?

Mr OWENS: It does not create a mischief of itself but the potential for falling away from the requirements of the law is profound. That is all I would say.

Ms BORSAK: Can we take that on notice, because there is a very long list that provides very good examples?

Ms BROOKS MAHER: I would like also to take that on notice.

The CHAIR: Yes, if you could. We had evidence that some of the infrastructure on those sporting ovals also cross over and it hinders local sporting groups from having real control and opportunity to make a buck for their clubs.

The CLOL Response

The issue of sporting activities taking over on Crown land is a classic case of misunderstanding WHAT a Crown Reserve is supposed to be, and why. If the Govt wishes to change the role of a reserve and downgrade it to that of being an "Oval" then there are legal ways to do so - but pretending its current status does not apply is, literally, unlawful - ie not good governance.

Mr Owens has outlined the problems in relation to Northbridge Oval. It has been gazetted, that is statutorily set aside for "the public purpose of public recreation". Yet because it has been gradually taken over for organised sport by football clubs, Council has acted as though that justifies its acceptance of this as THE priority use, to the exclusion of other users.

There are two reasons why this is just plain wrong.

First - the Rutledge rule: Crown Reserves must be open to the general public as of right - not because they are club members or sports fans or hold a season's ticket. This principle has been stated in numerous caselaw decisions. (Refer, inter alia: *Brush Park Bowling Club Ltd-v-Ryde Municipal Council 1970; Storey-v-Council of North Sydney 1970.*)

Second - "public recreation" means just that. Recreation is general, and often passive, leisure activity. A site reserves under trust for public recreation may be either entirely open-access, or managed in such a way that it can be enjoyed equally by all manner of different users - from school groups, to informal games, to casual visitors, to family outings, and even where appropriate, picnickers and dog-walkers. For a CL Reserve Trust to fulfil the purpose of "public recreation", it must remain open to the public generally (for the latter's welfare, not club income) and its use cannot be restricted to organised sport, much less paid spectator-sport, and certainly not as a commercial "venue" or "exclusion zone" for private profit.

This situation becomes even more confused when there are two different ownerships involved at the one sportsground, ie a mix of Crown Reserve, and Council "community" land. As Mr Khan intimates, such a situation is not clear cut. The result can be a lawyer's nightmare.

Consider the situation at Gosford's Central Coast Stadium, now seen as "home" of an aggressively "in business" Mariners Football Club. It does indeed look like one football field. But this a two-part venue, where the northern half is Council-owned, while the southern half (nearest the water) is actually Crown Land Reserve - R-50055 "for public recreation", declared as such on 8 July 1914. It seems the combined area was renamed as Grahame Park in 1939, and devoted to general sporting activities, including tennis courts, cricket pitch and bowling green.

The first stadium as-such was built in the late 1990's did have shared in community use, such as "Carols by Candlelight". This has now ceased, with access prevented by a security barrier in the form of 2m high iron fencing, this actually being so far beyond the stadium boundary as to enclose a parade of heritage listed palms which are in fact on another CL area, this related to the adjoining foreshore of Alfred Higgs Reserve - R-79084.

In short, the Central Coast Stadium is a classic case of incremental takeover - where the status as Crown Land has been so ignored as to now be invisible - yet remains legally in force. Simply signing over such land to Council is no equitable answer - this CHEATS the real owners, the people of NSW. The result condones years of what is, in reality, unlawful commercial occupation.

Another point we can add in regard to that forbidding fence now at Central coast Stadium. The arrangements at Redfern Oval prove that it IS possible to have security on game days, while leaving the field open for public access at other times. The fencing at Redfern is very similar in style to Gosford - but is installed in sections that double-up, so there are openings on weekdays, but the second sections can slide out to a "closed" position when needed. So simple - and that's what the compliance with the CL Act should be.

You will notice that the Central Coast Mariners are the beneficiaries in both the Central Coast Stadium, and now the Northbridge, examples above. It's quite likely that success in gaining such total control at Gosford has encouraged ambitions re other land-grabs. If you can get away with privatisation by stealth at one site, why stop there ? This is yet another reason why CLOL says that retrospectively rubber-stamping a legal mess is no way to clean it up.

We know of other sporting operations that parallel the Mariners take-over creep re CL Reserves. The unauthorised tennis business occupant at Talus Reserve is one, having recently gained control of another tennis facility in the Willoughby Council area in somewhat curious circumstances.

In recent years, too many Councils seem to have been bamboozled by big operators, virtually giving away key CL Reserve the minute someone says "Sports". This even applies to Trust Boards, including those for the Showground/SCG and Moore Park. In both case, the Trustees have seemed only too eager to co-operate with expansion plans by entrepreneurs or the commercial operators involved. For instance: the proposed Royal Randwick Hotel has led to disastrous consequences for the ancient avenue of Moreton Bay Fig trees so savagely demolished to make way for an alternative light rail route. There are submissions on this.

The Moore Park Trust also seemed to have been complicit in the unauthorised alienation of sizable areas of CL Reserve to make way for the "landing pads" on both sides of Tibby Cotter Bridge, this ostensibly to be some form of access to nearby sportsgrounds. These sizable areas are now occupied by spiral roadway, and CLOL cannot find even a one-line record of it in official Trust minutes. And yes, it was built at the urging of then-Premier O'Farrell - but this is irrelevant, because under the Act powers regarding Crown Land are not transferable, not even to Premiers.

The ONLY Minister who holds any authority under the CL Act is the Minister for Crown Lands. So Tibby Cotter remains as intrusive, unwanted - and unauthorised.

A similar situation seems to have developed at Stuart Park Wollongong, albeit for adventure sport rather than team games. As explained in Submission 156, a private operator has now has control of the main central area of this large Park. What started out as a small area for weekend parachute enthusiasts has morphed into a full-blown tourism operation called Sky-Dive- the-Beach, such that air-safety requires an exclusion zone that effectively takes over the entire "oval" area known locally as the "Village Green". The current proposal, given delegated consent, is to build sizable commercial headquarters for managing this all-day/week for-profit enterprise. A truly notable case of creeping landgrab via Crown Reserve.

The way Wollongong Council has conspired to help this happen is also a damning indictment as to WHY Councils should not be given unfettered control of Crown Land. For instance - WCC purported to approve the aforementioned DA under delegated authority - in direct breach of the CLAct. Refer p.183 of the CL Handbook which specifies that in regard to "leases, licences… and related matters" (which include DAs) not even the Minister can approve such delegation.

In fact, as the 40pp CLOL submission (No.149) makes clear - many Councils are so unaware of, or non-compliant with, the CLAct it could be argued that they need more rules and guidelines, not less. The lack of Trust Fund Accounts is notorious. They certainly need more oversight by the CL Dept and more enforcement/penalties when they ignore the law.

CONCLUSION

Mr Khan in effect asks: *"What is the mischief in vesting two adjoining parcels of land, where one is Crown Land?"* The first answer is - refer Gosford above. The differences might be invisible, but the linked lands remain in an underlying situation of entrenched, irretrievable confusion as to status, title, purpose. In short - legal chalk and cheese.

The next answer starts with a big IF. If the two parcels are made legally equivalent, then there's no impediment to linking them. But this means abiding by due process to remove the reservation. The CLAct provides for revocation - but unless and until this is done, the Reserve remains a fact, and so does the law that governs it. Sportsgrounds are not exempt. Not even by halves.

In short the easiest way towards sorting out the current mess of Crown Lands and ovals etc is not by launching into another layer of chaos called new legislation. It's to ensure the existing CLAct is used properly. Especially with s.11 - the Principles of Crown Land Management.

Thank you.

Emma Brooks Maher - Secretary

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