Submission No 308

INQUIRY INTO PLANNING PROCESS IN NEWCASTLE AND THE BROADER HUNTER REGION

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NSW Legislative Council

Select Committee on the Planning Process
in Newcastle & the Broader Hunter Region

PERSONAL SUBMISSION

Dear Committee & Chair -----

having just finalised a formal submission on behalf of The Haberfield Association Inc, I would now like to submit some personal observations in regard to Planning proposals re King Edward Park Reserve. As President of Habas I have been involved with considerable interaction with Crown Lands re management of the SHR-listed Yasmar Estate, so my comments come from considerable personal experience. I am also a founder-member of the CROWN LAND OUR LAND Group.

First – this headland Reserve is an iconic public asset, not just for the people of Newcastle, but for all NSWW. It has links to so much history, and has such huge heritage connotations(both in terms of heritage vistas, and colonial uses) that the very thought of alienating this landmark headland point for private profit is anathema. It may be a prime real estate site, but this now only serves to add more urgency to the imperative of resisting developer calls that would alienate it for short-term gain, but result in the permanent impoverishment of future generations. After all, such long-term protection is why Crown Land Reserves were established in the first place.

Look at the original Act 1861. Look at the Act 1989 – especially the key sections re "Principles of Crown Land Management. (see s.10 and s.11)

The fact that some decades ago a community bowling club was allowed to take over some land on the King Edward Park site is irrelevant. It was wrong then and still is.
It certainly offers no justification for the more drastic, more permanent alienation proposed now. That the club is defunct and old premises now derelict is even more reason to return the site to what it should have been all the time – open space, with public access as of right.

After all, that's what a RESERVE purposed for public recreation means. That's what the Crown Lands Act says it IS. I believe the Committee has no option but to agree that this site stay this way until there is either legislative change, or the gazettal of King Edward Park is rescinded. Either would be a draconian over-reach in terms of Planning powers. Neither has occurred.

King Edward Park remains Crown Land for public recreation – and that does mean PUBLIC (not private) use "as of right" - and certainly not for private profit. In fact, according to the Act, any profit at all must be strictly for the benefit of the Reserve – ie to maintain, improve, assist, foster or otherwise facilitate & encourage public use.

So, to establish and run a function centre on this public Reserve, any operators should not only pay a MARKET rent, but they must guarantee (with independently audited books) that ALL PROFIT is returned back to the King Edward Park Reserve. Private gain is simply not on. Against the law. End of story.

This rule also applies to Newcastle Council. As Trust manager, the Council has a duty of care to ensure that all management income derived from the use of King Edward Park goes directly TO the Reserve – and this includes future income. No matter what mistakes have (or haven't) happened in the past.

In its dual role at Trust Manager, and as Consent Authority, Council also has a double duty of care re Planning per-se – not only to ensure that there is no unlawful occupation of the Reserve – but even moreso to exclude any such proposals as non-complying (ie with the Crown Lands Act). As such, they should be automatically disqualified from consideration. Such pre-exclusion IS allowed under the EP&A Act – for example, re wrong zoning.

As a Haberfield resident, I'm not privy to precisely HOW it comes about that there is now a "minor revision" to a Schedule at the back of the Newcastle LEP whereby "function centre" becomes a permitted use on this headland. But if Newcastle Council has in any way condoned such change, then it is not only guilty of the worst kind of planning subterfuge by secret revision, it is in breach of both the Trust Act 1925, and of the Crown Lands Act. Both require that crown lands be managed with PUBLIC INTEREST as the absolute, inalienable priority. This is so crucial, so fundamental, to the management of Crown Lands that it even has its own section within the Act and moreover, is a frequent and explicit reference-point throughout the whole legislation.

I urge the Committee to see this snide revision for what it really is - in effect a "Spot Rezoning" that alienates public land to private profit. Given that your Committee brief is to consider the "Planning Process" – here is a prime example what NOT TO DO – an arbitrary and disconnected excision of a site from its overall context. It's just plain BAD PLANNING PROCEDURE - the opposite of an equitable, integrated approach.

And this is even before we come to questions of motivation and/or morality – none of which stack up against the status of this landmark site as iconic public land, and recognised as such by both

tradition – and the law! When there is so much public opposition, the question becomes: who benefits?

Note – there is another aspect about this perversion of planning process that should be rejected by the Committee, namely the attempt to alienate prime public land by way of LEP. It's an egregious mis-use of planning instrument, a legal nonsense, a reprehensible waste of time. The Committee will do a great service for all Councils in NSW if your Report spells out once and for all that Crown Lands legislation takes precedence over any Local Environment Plan. Highlighting this by pointing out the legalities involved re Rutledge will be even more useful.

Let me conclude by saying the current disregard for the "Principles of Crown Land Management" is systemic, not only here in this Newcastle example but throughout NSW. Recent reports re Maules Creek coal-mining suggest it will be found throughout the Hunter Valley region. From my experience, it permeates both Councils and the Crown Lands Dept itself (for information, I attach copy of my personal submission to the recent White Paper) and shows in several ways, all summed up in this headland case –

- there is lack of understanding of what being a Crown Land reserve actually MEANS both in practice, and at law
- there is a lack of respect for the PUBLIC ownership of Crown Land Reserves – that this means access and use, as of right
- there is a lack of understanding that the Crown lands Act IS legislation, ie LAW - and must be complied with
- there is an attitude that Crown Lands are "up for grabs" – that "public use" is just a holding operation and not a valid reason to deny someone's profit potential – especially if that developer is a political friend or business 'mate'.
- there is an expectation by Govt and/or Councils that Crown Lands can be manipulated for use by private operators with impunity

I realise that this personal submission will reach you after COB on 24 Oct 2014, and my only explanation is that it was not until the Habas letter had been finalised the I realised the need to offer a more personal viewpoint. I trust that this extra info is not only relevant, but helps – ie gives you a sufficiently different 'angle' to include in your deliberations. I hope so.

Thanking you in advance – EMMA