

**INQUIRY INTO MANAGEMENT OF PUBLIC LAND IN  
NEW SOUTH WALES**

**Organisation:** Lake Macquarie City Council

**Name:** Mr John Ferguson

**Date received:** 2/08/2012

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30 July 2012

The Director  
General Purpose Standing Committee No 5  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

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Dear Sir

**Subject: Management of Public Lands in NSW**

Please consider this letter and attached report as a submission to the Inquiry into the Management of Public Land in NSW.

The attached Report to Council provides a detailed synopsis of the issue and was formally adopted by Lake Macquarie City Council on 22 June 2009. This report forms the basis of Council's submission.

## Overview

At the meeting of 22<sup>nd</sup> June 2009, Councillors resolved to advise the NSW Government that Council wishes to transfer a parcel of land to the NSW Government for addition to the reserve and recently designated Sugarloaf State Conservation Area. In addition, Council also requests the DECC to incorporate the two reserves for Public Recreation (detailed in the report as R.89107 and R.84872) in the Sugarloaf State Conservation Area.

The National Park Estate (Lower Hunter Region Reservations) Act 2007 has led to, we believe, a number of unintended consequences, which need attention. The original intention of the legislation was to transfer and consolidate certain lands to the national park estate so that plans of management could be prepared and implemented.

This included the land now known as the Sugarloaf State Conservation Area, which saw the consolidation of 3,937 hectares of land previously held as Crown Land, State Forest or State Forest Estate. However, one small section of land was omitted from the legislation, effectively removing the existing entry point, developed recreation areas and facilities.

The result of this omission has resulted in a small parcel of land controlled and managed by three entities, Council, Department of Lands (DoL), and the Department of Environment and Climate Change (DECC). All three entities have different objectives in relation to land management, undermining the intention of the legislation.

Council's area of responsibility has been reduced by 98 per cent, while the level of financial responsibility remains at 100 per cent by providing the maintenance and staff costs without the benefit of any land management autonomy.

Given the dramatic reduction in the land area and the size of the resourcing required to keep a fully maintained recreation reserve and associated facilities, Council wishes to exit the

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Response regarding request for submission in relation to Management of Public Lands in NSW

management of any part of the Mt Sugarloaf Reserve.

Despite a number of letters to the relevant Minister and conversations with relevant State Government departments no definitive response has been received and the situation remains unresolved. A recent example of the impact of this issue occurred with Council being asked to maintain firebreaks around the transmission towers at significant expense despite all licence revenue for these towers going to the State Government.

Should you require further information, please contact me on 4921 0381.

Yours faithfully



John Fergusson  
**Manager Community Planning**



## Recommendations of the Community Development Committee - Monday 15 June 2009.

166

Moved. Cr. Birt

Seconded. Cr. Gissane

That the recommendations of the Community Development Committee on Monday, 15 June 2009, be adopted as outlined below, including Recommendation No. 5, amended by Minute No. 165.

(Carried)

### Recommendation No. 3

#### **09COM004 Mount Sugarloaf Reserve - Future Management**

Folder No: F2004/10653

Report By: Recreation & Land Planning Coordinator - Greg Weir - Ext. 1391

- A. Council advise the NSW Department of Lands (DOL) that it does not wish to continue trusteeship of any part of Mt Sugarloaf Reserve R.89107 and R.84872, and request the DOL to change the reserve purpose to remove 'Public Recreation' for Reserve 89107 and change Reserve R84872 for another purpose, in order to remove Council's legislative responsibility;
- B. Recommend to the DOL that the remaining area of R.89107 and R.84872 in DOL ownership, including all improvements, be transferred to the DECC (NPWS) to consolidate the public land into one ownership;
- C. Council request the DECC (NPWS) to consider accepting ownership of Council owned Lot 1 DP 231108 for addition to the Sugarloaf State Conservation Area.

**09COM004 Mount Sugarloaf Reserve - Future Management**

Folder No: F2004/10653

Report By: Recreation & Land Planning Coordinator - Greg Weir - Ext. 1391

**Précis:**

Until recently, Council was Trust Manager of a large section of Mount Sugarloaf Reserve. A legislative change has seen Council's area of responsibility by 98% with the majority of the reserve now owned by the Department of Environment and Climate Change and administered by the National Parks & Wildlife Service division - DECC (NPWS).

This report proposes that Council advises NSW Department of Lands that it no longer wishes to have any involvement in the management and maintenance of any part of this crown reserve, and proposes the transfer of a parcel of Council land to the State Government for addition to the reserve and recently designated Sugarloaf State Conservation Area.

**Recommendation:**

- A. Council advise the NSW Department of Lands (DOL) that it does not wish to continue trusteeship of any part of Mt Sugarloaf Reserve R.89107 and R.84872, and request the DOL to change the reserve purpose to remove 'Public Recreation' for Reserve 89107 and change Reserve R84872 for another purpose, in order to remove Council's legislative responsibility;
- B. Recommend to the DOL that the remaining area of R.89107 and R.84872 in DOL ownership, including all improvements, be transferred to the DECC (NPWS) to consolidate the public land into one ownership;
- C. Council request the DECC (NPWS) to consider accepting ownership of Council owned Lot 1 DP 231108 for addition to the Sugarloaf State Conservation Area.

**Background:**

Mount Sugarloaf forms part of the forest covered Sugarloaf Range which is generally oriented north – south and forms a natural backdrop to urban developments in the western portions of the City of Lake Macquarie.

Mt Sugarloaf Reserve (R.89127) was established in 1974 for the purposes of 'public recreation and the preservation of flora and fauna'. Refer to Appendix A, which shows the extent of the Reserve. On establishment, a private Trust of local residents was appointed to assume responsibility for management of the Reserve. However, this Trust was disbanded in 1994 and Council was 'appointed' Trust Manager by the NSW Department of Lands (DOL).

Additionally, Council is the 'devolved' trust manager of Reserve R.84872 for Public Recreation 1964 (Lot 21 DP 223395), and an associated Trig Reserve 4030 that covers all of R.84872 and part of the R.89107 reserve.



R.84872 is essentially the land occupied by the large 'ABC' transmission tower (which occupies the site under a licence agreement direct with the DOL), a smaller transmission tower, and the lookout on the highest point of the range. Council's level of responsibility is limited to day-to-day management / maintenance of the R.84872.

As Council is not the 'appointed' trust manager ('devolved' responsibility only) of the Reserve R.84872 all income derived from licence agreements for the telecommunications tower transfer directly between licensee and the NSW Department of Lands (DOL). The ability to receive funds from Crown land management by council's is restricted to 'appointed' trust manager status, not 'devolved'. Management responsibility for Crown Land automatically 'devolves' upon council when the land is reserved for public recreation (which the case for R.84872) or zoned open space under Section 48 of the Local Government Act.

During the periods of the private Trust operation and Council's Trusteeship, Council has provided staff to maintain those areas of the reserve with high recreational use, and has upgraded the reserve by the construction of roads (which also service the telecommunication facilities), amenities buildings, car parks, and picnic facilities.

During 2006, investigations proceeded within the State Government to transfer some Crown land and State Forests to the national park estate. As a result, the 'National Park Estate (Lower Hunter Region Reservations) Bill 2006' was enacted on 1 July 2007. On enactment, the majority of Mt Sugarloaf Reserve was transferred from Crown ownership to the Department of Environment and Conservation (now the Department of Environment and Climate Change DECC) to be administered by the NSW National Parks & Wildlife Service. The newly created amalgamated Crown and State Forests area is known as the Sugarloaf State Conservation Area and covers an area of 3,937 hectares.

However, a small section of the Crown reserve containing the majority of the developed recreation areas and facilities remained in place, with Council remaining as Trust Manager. Refer to Appendix B.

Council had belated knowledge of the proposed change of land ownership and management, with LMCC staff meeting with NPWS staff only several months prior to the Bill's enactment. Although management responsibilities and land boundary definitions were discussed with NPWS representatives at this initial meeting, enactment of the Bill proceeded without clarification or consideration of Council's three decades of involvement with the reserve.

As no advice was provided to Council from either the DOL or DECC, Council staff sought clarification from the DOL concerning the change of ownership, land status and management/maintenance responsibilities. The DOL responded with advice that, in its advice to the DECC, *"we emphasised the presence of a Trust manager at Mt Sugarloaf and recommended retention of this land in the Crown estate. Nevertheless conservation values of these areas are significant and permanent reservation under National Parks and Wildlife Act was considered by DECC to be the most appropriate outcomes in accordance with the LHRS (Lower Hunter Regional Strategy)."* And further, *"It is regrettable that Council as Trust Manager was not consulted in the process and unfortunately this decision is now unable to be altered."*



After receiving this advice, Council staff met jointly with DOL and DECC representatives at Mt Sugarloaf. Outcomes from the discussions are mentioned in the Implications sections of this report. At this meeting, NPWS staff indicated that NPWS was not interested in managing or maintaining the developed recreation areas or associated facilities within the reserve.

Separate to this matter, Council owns a large parcel of land Lot 1 DP 231108, which is almost entirely bushland. The Council land is completely encircled by State and Federal owned land. Refer to Appendix B, which shows the Council land. A well formed and maintained gravel access road dissects part of Council's land, and is evident in Appendix C.

In terms of environmental outcomes, there is a benefit in having one agency manage the area as a whole to provide consistency in conservation management, bushfire management and routine maintenance. In practical terms, there is no way of determining land ownership boundaries on the ground. A whole of site management approach by one agency facilitates achieving sound and timely results by removing the need for cross-agency consultation, land management planning considerations and duplication on routine matters.

#### **Proposal:**

Prior to gazettal of the Sugarloaf State Conservation Area, the whole of the original Mt Sugarloaf Reserve managed by Council covered an area of 454.6 ha. Following gazettal of the Conservation Area, the land area under Council's management responsibility was reduced to 8.0 ha, which is only 1.8% of the original trustee appointed land. Council remains responsible for its own land, Lot 1 DP 231108, which has an area of 4.05 ha.

Given the dramatic decrease in Council's management responsibilities for Crown land, it is proposed that Council request the DOL to extinguish any trustee requirements that bind Council to the reserve. Depending upon the negotiations, ownership and subsequent maintenance of all public facilities located on the land would transfer to either the DOL or DECC. The recommendation to request the DECC (NPWS) to consider accepting ownership of Council owned Lot 1 DP 231108 for addition to the Sugarloaf State Conservation Area equates to only 0.2% in area of the now gazetted Sugarloaf State Conservation Area. The addition of the proposed land for transfer would provide a practical extension to the conservation area facilitating controlled entry point for recreation and tourism visitation associated with the State Conservation Area.

Additionally, it is proposed that Council offer to transfer its land holding, Lot 1 DP 231108 to either the DOL or DECC for inclusion in the Crown reserve or the Sugarloaf State Conservation Area. Appendix C shows the location of the Council land, which is primarily bushland, in relation to the surrounding reserves and private land. The transfer of management of the existing recreation area and associated facilities is consistent with State Conservation Area management objectives including facilitating recreational opportunities.

#### **Consultation:**

Prior to the transfer of the majority of R.89107 from DOL to NPWS, Council staff met with NPWS representatives to gain information concerning the proposal. Limited information



was available, as NPWS had been negotiating with the DOL as landowner, and did not recognise that there may have been a need to discuss the issue with Council (the appointed Trust manager).

Several months after the transfer, a meeting was held at Mt Sugarloaf with DOL and NPWS representatives. This meeting clarified some minor matters, but failed to ensure that NPWS would resource the required management and maintenance levels to the standard currently provided by Council.

In February 2009, senior Council staff including the Director of Community Development, Manager Asset Management, and Recreation and Land Planning Coordinator met with DOL representatives to discuss Council's continued involvement in management of the remaining small part of R.89107. This meeting also clarified a number of matters, and provided Council staff with the options outlined in this report.

Additionally, Council field staff have provided quality advice concerning management and maintenance practices on Mt Sugarloaf.

Council's Environmental Planner was consulted to determine whether there were any possible environmental disadvantages by the disposal of Council land or Council managed Crown Land. There were, in the opinion of the Environmental Planner no environmental disadvantages for the identified parcels of land being disposed of provided it was transferred into NPWS ownership.

It was determined that significant land management advantages in consolidating the identified parcels under the one land management agency could be achieved by the options outlined in this report.

Council's Property Services Manager has been consulted concerning the disposal of the Council land, Lot 1 DP 231108, to either of the State Government bodies, and fully supports the proposal. The land will always remain as bushland due to its position and significance. Given its natural bushland reserve attributes, it is unlikely to realise any significant developable value over time, and there would be no financial or strategic disadvantage to Council if removed from Council's property portfolio.

#### **Implications:**

##### ***Policy Implications:***

As mentioned previously, Council is currently the 'appointed' Trust Manager of reserve R.89107 that is formally reserved for the purpose of 'Public recreation and the preservation of flora and fauna'. Whether Council is the 'appointed' or 'devolved' Trust Manager, Council's management and maintenance responsibilities are essentially the same, as long as the purpose of the reserve includes 'Public Recreation'.

For Council to be relieved of all management responsibility, the DOL would need to change the purpose of the reserve to remove 'Public Recreation'. In discussions with DOL staff, such a request will be considered, but no indication of its success can be given.



***Environmental Implications:***

There are no adverse environmental implications associated with the recommendation. The land would be managed by NPWS, and be utilised for recreation activities and bushland preservation to the extent determined by NPWS consistent with State Conservation Areas. Council staff have been provided with realigned boundary information from NPWS Rangers, and directed not to undertake any further mowing or maintenance works within the NPWS land until the outcomes of this report are known.

The encouragement of bushland regeneration encroachment into existing picnic areas requires a planned approach to avoid potential adverse effect on recreation facility use and maintenance. If successful, the proposed land transfer would also see the Sugarloaf State Conservation Management Plan include the transferred land recognising any significant remnant of native vegetation communities as well as recreational opportunities.

The NPWS proposed management plan for the Sugarloaf Conservation Area would provide for required level of planned conservation and rehabilitation in a whole of site approach including access to an appropriate level of recreation facility provision.

Transfer of the Council land, Lot 1 DP 231108, to either of the State Government departments will have no adverse environmental implications. If the successful transfer of the land will see it protected by legislation as State Conservation Area administered by the NPWS with recognised natural area management and conservation management core objectives.

***Social Implications:***

Following the formal reduction of Council's responsibilities, some of the recreation facilities (seat/table units and barbeques) are now located within the NPWS land. These facilities are not being maintained by NPWS, with the resultant reduction in the availability of maintained and safe facilities. All facilities within the land under Council's control continue to be maintained to current standards. There is a risk that if the land were handed back to Department of Lands and consolidated into the NPWS administration that the all facilities would continue to deteriorate.

NPWS has agreed to Council removing its assets from the NPWS land, and for the land to regenerate into bushland.

However, the increase in the provision of picnic facilities over past decades has been in response to increased user numbers and needs, and any reduction in areas available for picnics will have a negative impact on the recreation experience enjoyed by thousands of persons annually.

The recommendation that the area currently under Council management be transferred to DECC (NPWS) for addition to the Sugarloaf State Conservation Area would not result in any long term adverse social implications. State conservation areas are lands reserved to protect and conserve significant or representative ecosystems, landforms, natural phenomena or places of cultural significance, while providing opportunities for sustainable visitation, enjoyment, use of buildings and research. The principal difference between the management, objectives and principles of national parks and state conservation areas is



that mineral and petroleum exploration and mining may be permitted in state conservation areas.

NPWS correspondence indicate it is currently preparing a management plan for the reserve which will provide management direction and guide the resources that will be put into the management of the reserve in the future. The management plan will recognise that this area is a significant remnant of native vegetation communities and ecosystems as well as identifying areas of archaeological sensitivity, cultural heritage and recreational opportunities.

After advice to Council staff from school groups who use the reserve, it became evident that NPWS is charging groups to visit the reserve. NPWS responded to this matter by saying *"It is important to note visitors are only charged a fee when a formal consent under the NPW Act 1974 is required, for use of an NPWS reserve. This usually involves a specific group requesting permission to use the reserve for events such as orienteering or other organised activities. Administration fees are charged to cover the cost of preparing these consents. No other fees are charged. There have been circumstances where groups wanting to use Mt Sugarloaf lookout (reserve) have sought consent from us, in all cases they have been referred to Council for approval."*

This being said, the perception of the organised user groups is that a 'per person fee' is being charged for use of all reserve facilities, including the Council maintained carparks, toilets, mown picnic areas, shelters, seats and barbeques. At no time in the past has the private Trust or Council charged a fee for the public to undertake activities on the reserve.

Over time, the decrease in maintenance of the facilities on NPWS land could be misconstrued as being a failing of Council.

#### ***Financial Implications:***

As at October 2008, Council has listed assets totalling \$331,932 on Mt Sugarloaf. This includes a parcel of land valued at \$183,060. This valuation is essentially a 'book value' and is unlikely to be realisable if Council were to seek to dispose of the land on the open market. Although the transfer of this land to the State Government would adversely affect Council's overall land portfolio value, it is considered that this proposal will enhance Council's already high environmental credibility by adding the land to an established environmental conservation area. This action is likely to afford the land equal or improved protection to that which currently exists if the land remained as Council owned bushland with its 7(2) Conservation (Secondary) zoning. The transfer of the land will not only preserve the land for its intended purpose, but will also relieve Council from any ongoing liability (e.g. maintenance etc) in respect of the land.

The remaining public assets located on Crown land have a total value of \$148,872. If the land is transferred to DOL or DECC ownership, either Department will assume ownership of the public improvements provided on the reserve over past decades.

These assets include 2 brick amenities buildings, electric and wood burning barbeques, tables, shelters, pathways and vehicle barriers, as well as sealed access roads and carparks. All the assets range in age from 5 years (electric BBQ's and shelters) to 40+ years old (amenities buildings), and are in a fair to good state of repair.



At present one full time staff member is retained on-site undertaking general maintenance (mowing, amenities and toilet cleaning, barbeque and shelter maintenance, and litter control) at an estimated cost of \$75,000. On transfer of management responsibility, Council maintenance of all these public facilities would cease, enabling the staff member to be redeployed to other Council parks and reserves.

At present, maintenance equipment committed to the reserve includes small machinery (hand mower, brush cutter, chainsaw), assorted hand tools, a John Deere tractor and implements. These items would be removed from the site and utilised by staff at other parks and reserves.

In addition to the above, Council's Asset Maintenance staff carry out approx. \$10 000 to \$15 000 per annum for reactive maintenance due to vandalism, graffiti, break-ins etc. Departure from reserve management will see Council not being responsible to react to asset maintenance issues that would arise in the future.

As stated in the Social Implications section above, NPWS is charging access fees for *'specific group requesting permission to use the reserve for events such as orienteering or other organised activities.....to cover consent administration costs'*. Although the fees paid to NPWS are seen by the NPWS to be for use of the land only, it is to be expected that all visitors would need to make use of the facilities currently provided and maintained by Council.

If the land is transferred to DECC ownership, NPWS may choose to charge an entry fee into the Mt Sugarloaf picnic area, similar to the arrangement at Lake Munmorah State Recreation Area contributing to covering the costs of maintaining access and provision of recreational opportunities. Although briefly raised by NPWS staff in discussions, this proposal has not been stated in any DECC correspondence to Council. A range of NPWS Park Passes are available which cover both individual NPWS reserves as well as a combination of a number of reserves. There is the possibility that Sugarloaf State Conservation Area may become one of these reserves in the future.

#### ***Risk and Insurance Implications:***

There are no negative risks or insurance implications associated with the recommendation. If Council proceeds in line with the recommendation, Council's departure as landowner and land manager on Mount Sugarloaf will decrease its exposure to risk and insurance issues relating to ownership and management of bushland and recreation facilities at Mt Sugarloaf. However, the amount of reduction in exposure to risk and insurance is hard to quantify.

#### **Options:**

1. Proceed in line with the recommendations to advise the DOL of its wish to relinquish trusteeship, recommend the remaining area of R.89107 and R.84872 be transferred to the DECC (NPWS), and request the DECC (NPWS) to consider accepting ownership of Lot 1 DP 231108 for addition to the Sugarloaf State Conservation Area.
2. Council may decide to remain as trust manager, retain its landholding Lot 1 DP 231108, and continue with management and maintenance of the limited Crown reserve area. This option is not recommended, as Council will remain responsible for



all costs, risks, and insurances associated with management and maintenance of all public facilities on the dramatically reduced area of Crown land. This is likely to require a reduction in staff resources and service, which could then see an increase in anti-Council sentiment if the quality of the facilities maintenance reduces. The size of the area of land also limits Council's options in providing recreational opportunities, which may be depend on the wider State Conservation Management Plan outcomes.

3. Council may decide to remain as trust manager, retain its landholding Lot 1 DP 231108, and then seek funding assistance from the DOL to continue its management and maintenance responsibilities. This option is not recommended, as there has been no strong DOL commitment for maintenance funding assistance to indicate that this is a viable option.
4. Council may decide to remain as trust manager, retain its landholding Lot 1 DP 231108, and then seek funding assistance from the NPWS. This option is not recommended, as past discussions with NPWS staff indicate that funds are limited for management of all NPWS administered lands, and therefore the provision of funding from NPWS to Council would be highly unlikely.
5. Council may decide to remain as trust manager, retain its landholding Lot 1 DP 231108, and investigate the opportunity to be 'appointed' Trust Manger of R.84872 maintaining an on-site presence at Mount Sugarloaf. As 'appointed' Trust Manager, Council obtains any potential income from the telecommunication licenses. This option is not recommended as it is inconsistent with benefits of the single agency whole of site management approach outlined in this report and insufficient information available in regards to potential income. It is unlikely that this option to have the DOL support.

### **Conclusion:**

Council's area of responsibility at Mount Sugarloaf has been reduced by 98.2%, whilst its level of responsibility for management and maintenance of the remaining 1.8% of the land remains at 100% and provides for the majority of infrastructure related costs without the benefit of any land management autonomy. The isolated nature of the site is restrictive in providing recreational opportunity as the majority of the surrounding area is a dedicated State Conservation Area.

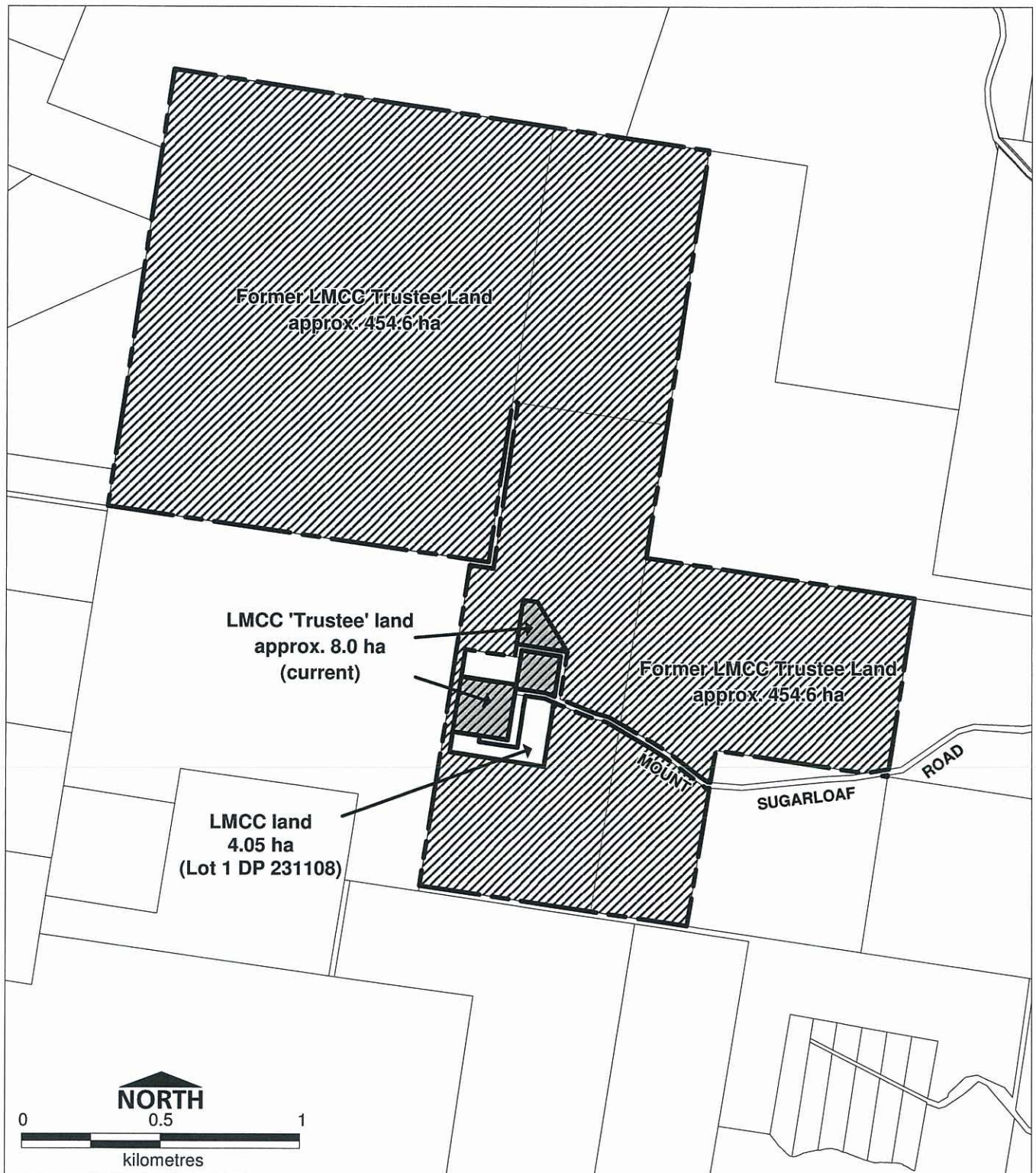
Given the dramatic reduction in land area and the resourcing required to keep a fully maintained recreation reserve and associated facilities which has been effectively reduced to a 'pocket park', it is recommended that Council exit the management of any part of the Mt Sugarloaf reserve. In this exit strategy, Council could offer ownership of the extensive Council owned parcel (Lot 1 DP 231108) to either the DOL or DECC for inclusion and preservation within the Crown land reserve or the Sugarloaf State Conservation Area.

Manager Community Planning - John Ferguson

- Appendix      A:    *Plan of Original Trustee Responsibility – pdf – 1pg*
- B:    *Plan of Council owned land and reduced Trustee Responsibility – pdf – 1Pg*
- C:    *Department of Lands Aerial Plan – Mt Sugarloaf recreation area – pdf – 1pg*

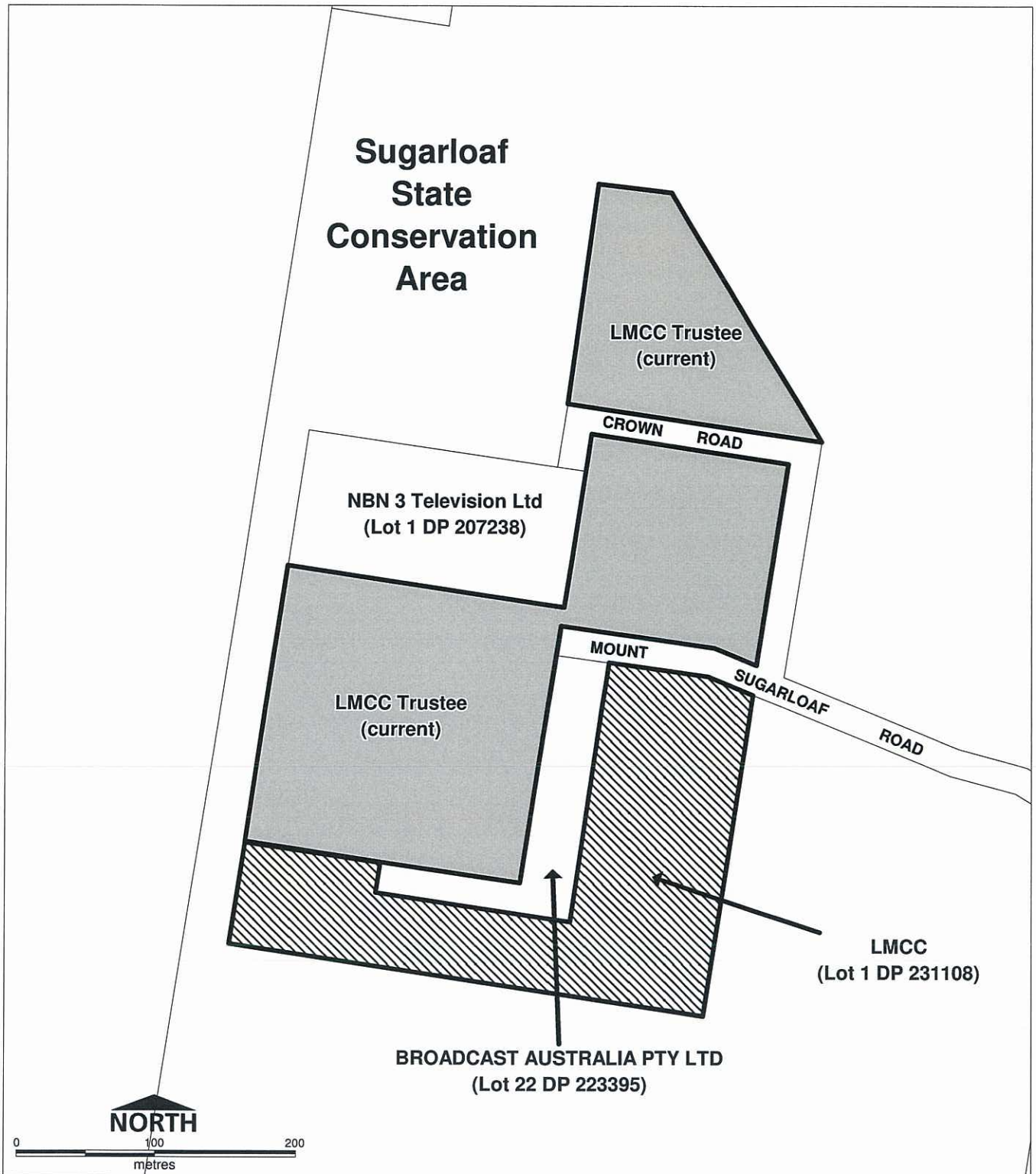


## Plan of original 'Trustee' responsibility



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## Plan of Council land and reduced 'Trustee' responsibility



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# APPENDIX C

Appendix C  
F2004/10653  
1 of 1

## MT SUGARLOAF PRECINCT

Locality: West Wallsend  
Parish: Teralba  
County: Northumberland  
LGA: Lake Macquarie & Cessnock

### Legend

- DECC Additions
- Cadastral Lots



0 20 40 60 80 100 120 Metres

Aerial Photography: SKM AusImage  
Date of Photography: 2007  
Projection: Transverse Mercator  
Zone: 56 Datum: GDA94

Prepared By: Alan Thorne 2008



Disclaimer:  
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