

**Submission
No 45**

**INQUIRY INTO AGISTMENT OF HORSES AT YARALLA
ESTATE**

Name: Ms Megan Webster

Date received: 1/08/2013

Megan Webster

n

31 July 2013

The Director
Select Committee on the Agistment of Horses at Yaralla Estate
Parliament House
Macquarie Street
Sydney NSW 2000

The Hon Robert Borsak MLC,

RE: AGISTMENT OF HORSES AT YARALLA ESTATE

As an owner of one of the horses recently displaced by the decision of Sydney Local Health District ("SLHD") regarding the future of the Dame Eadith Walker/Yaralla Estate ("Yaralla"), I have been substantially privy to the deplorable conduct of SLHD, and indeed the greater NSW government, in the handling of this matter, being personally subject to SLHD's misleading and unfair conduct, failure to account and lack of impartiality. Moreover, I have witnessed firsthand the devastating outcome of SLHD's decision concerning both the forced removal of the community horses and the future plans for the estate on not just the daily users of Yaralla, as I once was, but the community in general.

My Stake

I have been a resident of Concord my entire life. For over 12 years, which amounts to half my life, I agisted a horse at Yaralla. My horse was one of the last to relocate from Yaralla under direction from SLHD earlier this year. Before I had the privilege of owning a horse, I learnt to ride and care for horses at Yaralla. Throughout my childhood I walked my dog (and for a period, my pet lamb) through the estate, sometimes every day. From infancy I visited Yaralla every weekend with my family to feed and pat the horses (and lament not owning a horse of my own). Yaralla has undoubtedly been the major influence in my life.

Proposed Plans

The negative impact of SLHD's decision regarding the future of Yaralla has been twofold. Through its enforcement of the eviction of the horses resident on Yaralla at the end of May 2013, SLHD forced the discontinuance of around 60 years of historic occupancy of the estate, thereby terminating a truly unique and iconic aspect of Concord and the greater Inner West region. Furthermore, SLHD's intention to facilitate police occupancy of Yaralla demonstrated a preference for NSW government benefit at the expense of the community in general, displaying a total disregard for public interest in the estate and the purpose of the land, with nuances towards illicit motivations.

Public Interests

The Concord and greater community has made their opposition to the removal of the community horses from Yaralla overwhelmingly clear. Over 500 signatures were put to a parliamentary tabled petition. Thousands more were submitted via the online forum of Go Petition. A Public Meeting (the “Public Meeting”) staged at short notice on 29 April 2013 was attended by hundreds of very vocal locals, calling for a stay of execution as a bare minimum. The community marched in force at a Public Rally on 26 May 2013, calling for Yaralla to be “saved”. Hundreds of letters to Premier Barry O’Farrell and to John Sidoti MP, have been forwarded, alongside children’s coloured pictures, by members of the immediate community, all conveying the consistent message of a desire for the community horses to remain at Yaralla.

A blatant disregard for the community has been shown in failing to appropriately respond to these representations (dealt with below). SLHD has justified its actions on the fallacy that Yaralla is separate and distinct from the community that has both supported and been supported by the estate for generations. This has demonstrated a willful blindness towards the community utility of the land and implied rights of the general public established by virtue of such ongoing use.

Violation of Purpose

SLHD has repetitively indicated to the public Yaralla’s purpose is health based, not community oriented. Yet SLHD’s actions have been contrary to its own representations, given its overt preference for occupancy by a government department (NSW Mounted Police) with no affiliation with health whatsoever without consideration of alternate tenders more suited to the purported purpose.

Of note, plans for Yaralla appear to have coincided with Yaralla's classification by the NSW government as an underperforming asset. This commercial treatment of the estate is further evinced in the blueVisions Report (the “Report”) commissioned by SLHD, with the Report focusing on the achievement of maximum capital returns. This approach is consistent with SLHD acting as proprietor rather than a trustee obliged to administer the land for the benefit of the beneficiaries. If not a direct breach of the trust, SLHD's action have certainly represented a violation of the spirit of the trust/Walker Trusts Act (the “Act”), with its emphasis on the land being utilised for public hospital, public health, open space and horse agistment purposes.

Illicit Motivations

It appears SLHD’s motivation in selecting NSW Mounted Police as the preferred alternate licensee is to loosely satisfy the requirements of the Act and actively disregard the greater context of the trust in order to benefit another arm of the NSW government. This raises questions as to the separate agenda being fulfilled (elaborated on below).

SLHD’s Conduct

Intentionally Misleading/Unfair Treatment

Eviction Process - Key Events

Throughout the eviction process SLHD has consistently misled both horse owners and the general public regarding its plans for Yaralla, and demonstrated less than desirable treatment of the various stakeholders concerned. In apparent response to problems

with a single horse owner, SLHD gave one month's notice to the licensee of termination of a licence of approximately 25 years' uninterrupted duration (having been an informal licence prior to a written document being executed in 1996). This initial termination was to take effect on 31 December 2012. So close to the Christmas and New Years' Season, relocating approximately 30 horses within Sydney would have proved an impossible task, and naturally the possibility caused the horse owners serious distress, particularly given the lack of forewarning provided.

On 12 December 2012 Ms Deborah Flood represented SLHD at a private meeting with the horse owners, where a rumoured extension to the licence was confirmed and we were advised not to panic, as "no-one is going anywhere." Representations were to the effect that a number of issues with Yaralla had been identified but the horse owners need not worry as they were "SLHD's problem". Ms Flood gave the explicit impression that during the subsequent period involving the preparation of a report concerning the future management and maintenance of Yaralla, the horse owners would be directly consulted with. This implication was reinforced by Ms Flood's request that the horse owners present at the meeting each individually complete a form of advice featuring their contact details and availability for consultation (which we did).

The horse owners relied on the representations made by Ms Flood on behalf of SLHD to their detriment. Having been assured SLHD's intention was not to terminate their use of the land but rather to improve the management and maintenance of Yaralla for the mutual benefit of SLHD and all users of Yaralla, and placated by guaranteed involvement in the evaluation process to come, the horse owners acted consistently with this understanding, failing to make alternate agistment arrangements for their horses and continuing to expend personal funds and time to upgrade and repair the facilities at Yaralla (to the minimal extent allowable).

In the intermittent period a spokesperson for the horse owners continued contact with Ms Flood to ensure SLHD was aware of the horse owners' willingness to cooperate and assist with SLHD's assessment of Yaralla. Responses received indicated the process was underway and the horse owners would be kept informed. Despite such assurances, the only "consultation" that eventuated was another private meeting between Ms Flood and the horse owners, called at late notice for the evening prior to the Easter Long Weekend (Thursday 28 March 2013). At this meeting, the horse owners were informed of SLHD's decision to terminate the current licence on 31 May 2013.

A verbal account of the reasons for the decision to evict the horses was provided at the meeting, based on the apparent outcome of the Report. A copy of the Report was not provided to the horse owners until 9 May 2013 despite immediate and persistent requests. Without having consulted with the horse owners, it was communicated that SLHD had arrived at the conclusion that the horse owners would not cooperate so it would not be a viable solution to reduce horse numbers and alter paddock arrangements to suit the future plans for Yaralla. Overall Ms Flood emphasised SLHD's preference for an "intergovernmental cooperative" and indicated negotiations with NSW Mounted Police were already underway. The decision having apparently already been made, the horse owners were afforded no opportunity to discuss the concerns raised, respond to the allegations, present their case or otherwise influence

the decision of SLHD.

Various subsequent communications occurred between the various stakeholders and SLHD/NSW government in the prevailing period, with an emphasis on an extension to the vacation deadline (discussed below). No general extension was granted. Having been unable to secure suitable alternate agistment for our respective horses by late May 2013, I and three other owners urgently requested an extension to allow time for alternate agistment facilities to be located. A copy of our self-explanatory letter dated 30 May 2013, SLHD's reply dated 30 May 2013, and our subsequent letter dated 31 May 2013 is attached.

A verbal reply was received just prior to 5pm on 31 May 2013 when Ms Flood contacted me by telephone to advise we would be given an extension over the weekend to vacate Yaralla. She indicated no further extension would be granted. I was informed the additional two days was holding up SLHD's plans to commence rectification works on the land and that if our horses were not off the property on Monday 3 June 2013 legal action would be taken against us. All horses were removed from Yaralla by this deadline. Yet to date there appears to have been no works commenced at Yaralla of a nature that required such urgent vacation, to the detriment to the welfare of our respective horses (see below).

Justification

SLHD initially represented to the horse owners and the general public through media comment/releases the basis of its decision to terminate the licence was the poor care the horses and estate were being afforded by the horse owners. In addition, SLHD raised safety concerns, citing two separate occasions of horses escaping from Yaralla as evidence of danger to the general public. When we as horse owners disputed that our horses were in fact in extremely good condition and received a high standard of care, proffering veterinary reports, receipts for feed/horse care supplies, and produced evidence of the occasions we had specifically requested permission to improve the condition of the estate but been denied such permission by virtue of SLHD's own policies, SLHD quickly changed its story to blaming the licensee of the land for such apparent failings.

The allegations made against the licensee were entirely contrary to the provisions of the formal licence, which provided for the licensee to maintain the estate to SLHD's satisfaction, placing the onus on SLHD to advise the licensee of any issues. The licence also revealed the areas from which the horses escaped on the two cited occasions were outside the jurisdiction of the licence and therefore SLHD's responsibility to prevent. On top of this, evidence was adduced to prove that the horse owners were actively involved in advising SLHD of problems with the estate. Therefore, not only had SLHD failed to adequately monitor the condition of land for which they were responsible, but actively ignored notifications of issues with the land. Accordingly any assertions that Yaralla had been allowed to fall into a state of disrepair implicates SLHD rather than the individuals SLHD promoted at fault. SLHD, as trustee was responsible for managing the estate. Any failure to do so represents a breach of SLHD's duty of care.

Interestingly a SLHD 4 June 2013 media release reveals plans to change Yaralla have been in the "pipeline" since 2010. It therefore appears SLHD had plans in mind for

Yaralla all along and has simply sought to justify such decision after the fact, using the horse owners and licensee as scapegoats to draw attention away from its own failings. By the same token, one must question whether the estate was intentionally allowed to fall into a state of disrepair as an intentional ploy to support self-serving changes to Yaralla.

Inconsistent Representations

Throughout the eviction process, SLHD has promoted various positions, which have been revealed as misleading at best. In particular:

- SLHD has consistently asserted public access to the estate will not change. Yet SLHD has indicated electronic gates are intended to be installed. In addition, the intended occupancy of the estate by NSW Mounted Police simply could not have avoided change. At the Public Meeting representatives of SLHD indicated the outbuildings on Yaralla, currently used for various purposes by members of the public, would be provided to the police for their uses. An expert in security present at the Public Meeting also attested to the fact that it is considered an unacceptable risk to allow the public to interact freely with police horses.

Plans released by SLHD in June 2013 show proposed changes that *will* affect access. Moreover, public access has changed. Prior to 31 May 2013, any member of the public could apply to agist a horse at Yaralla. At present no member of the public is given this opportunity, and dependent on the outcome of the anticipated tender, even if some members are given this opportunity again in the future it is likely to be a sectored portion of the public.

- The deal with NSWMP was signed with apparent urgency, overnight. At the Public Meeting the general consensus of the public was for the deal to be overturned. CE of SLHD, Dr Theresa Anderson, represented repetitively that no such action could occur - it was a “done deal”. One member of the public even asserted that an agreement between two arms of the same body (i.e. NSW government) could not be binding, so was it not the case that the deal could in fact be cancelled. Again, Dr Anderson denied this possibility. Yet this was an apparent mistruth, as it was announced on 15 May 2013 that the deal had been overturned due to public pressure.

Failure to Account

This is a decision that has a direct impact on community, in light of its concerning the use of land left in essence for the purposes of the general public, yet there has been no community participation in the decision-making process. From discussion with hundreds of local members of the community since 28 March 2013, it is clear the majority of the public are both opposed to the proposed change and shocked to have been denied the right, as a minimum, to be consulted with throughout the decision-making process.

Had it not been for the requirement to give notice to the horse owners of the need to vacate it seems apparent that SLHD would have given no notification to the public of the proposed changes, and certainly not provided any opportunity to be consulted on

the proposal. Indeed there has been a persistent regime of failing to account to the public. Many questions remained unanswered at the conclusion of the Public Meeting. As a result questions were submitted on paper and answers assured to be provided by SLHD.

This did not occur. A meeting was staged by SLHD on 15 May 2013 with various stakeholders present, as an apparent opportunity to respond to these queries. The individual questions posed were never answered, but rather a general discussion held. Furthermore the meeting invited a restricted number of horse owners to attend and did not invite representatives of the public at all. It was at the horse owners' initiative that such participants were allowed to attend.

At the Public Meeting the Report, which had not been provided despite requests in the intervening month, was once again requested and a motion for an extension supported close to unanimously by the public. As mentioned above, it was not until 9 May 2013 that the Report was finally provided. The extension was not denied until 15 May 2013, giving the horse owners limited time to make alternate arrangements. The public was never accounted to directly by SLHD in these respects, despite the community's vested interest.

Lack of Impartiality

The overt and stated preference for SLHD towards a government cooperative demonstrates a clear lack of impartiality towards administering SLHD's duties as trustee. A review of the blueVisions Report makes apparent blueVisions was briefed to consider NSW Mounted Police as alternate licensee. This is consistent with members of NSW Mounted Police being sighted inspecting Yaralla in January 2013. These factors imply a foregone conclusion of removing the community horses before any result had been arrived at, with the Report simply supporting a desired outcome.

In the circumstances of blueVisions being an entity affiliated with the liberal party, rather than an independent body, it seems clear the Report was designed to back a decision already made (apparently back in 2010). This is consistent with the "nit-picking" nature of the Report. As horse owners of a great depth of collective experience and knowledge we were very surprised by some of the findings. Having since discovered that blueVisions' expertise lies in development projects, not the areas the subject of the Report, some of the absurd and impractical findings/recommendations are explained. A subsequent Agronomist's Report has discredited the findings of the Report (supplied with other submissions).

Furthermore, we are aware the inspection on which the Report was based took place on 18 January 2013, one of the hottest days in the Summer period after a lengthy period of hot weather and minimal rain. The variation caused by the season was apparently not taken into account.

It is hard to envisage the Risk Management Workshop Report used to justify the enforcement of the 31 May 2013 termination date, having been prepared by a number of individuals with connections with SLHD or NSW Mounted Police, would be any less biased towards a desired outcome.

NSW Government

It has been a great disappointment to a large number of the public that the NSW government has failed to take the community's concerns seriously. On behalf of hundreds of people I arranged for the forwarding of letters to Premier Barry O'Farrell and representations to John Sidoti MP. To my knowledge no replies were ever received. This has shown a complete disinterest in an affair within their responsibilities and hints at a higher agenda with the support of upper government.

Throughout SLHD has maintained a stance of unaccountability, citing being "health experts", not "horse experts" as justification for any shortcomings. Yet there is evidence that fill contaminated with asbestos was dumped on Yaralla with SLHD permission. Of more concern, when the presence of the asbestos was detected, inadequate measures were taken by SLHD to alleviate the ongoing risk of exposure to the public. This is a surprising response for a "health expert".

A Hidden Agenda?

When considered together, the facts point towards a long term objective. Despite SLHD's assurances, it is quite clear the proposed plans will change access to Yaralla, particularly if police occupancy eventuates. SLHD's persistent preference for this eventuality raises questions of whether there is intent to gradually reduce access to Yaralla as a means of reducing public opposition for development in the future. Our experiences with SLHD and the NSW government to date certainly assure us we cannot take them at their word on this issue.

Impact - What Yaralla Represented/Welfare Issues

The removal of the Yaralla horses has completely changed the character of Concord and its surrounds. Yaralla was a one of a kind location where children and adults alike could delight in interacting with animals they normally might never have the pleasure of encountering - right in the middle of suburbia. Yaralla is now empty while its previous occupants live in less than ideal alternatives.

Yaralla represented a place where any person could agist or interact with horses. You didn't need to be wealthy to own a horse; people from all walks of life passed through Yaralla. The health benefits were palpable, not just from a fitness perspective of those riding daily, but psychologically for the whole community, whether it be people who visit the grounds regularly or those who felt a little more serene for driving past a strip of country in the city daily. The joy the horses brought to their owners, visitors to Yaralla and patients at the nearby Concord hospital, was obvious. I know I am not alone in believing having the daily escape that was Yaralla saved me from being a victim of life.

The removal of the horses after such a span, particularly in circumstances of aspersions being cast about our character by SLHD, has caused the horse owners significant distress. Moreover, our horses, many of whom have barely known another home, have been significantly traumatised by the drastic change, and needlessly it would seem, given the discrediting of the Report, lack of restoration works carried out to date and revelation of potential ulterior motives.

My horse had been a resident at Yaralla for almost 10 years (more than half his life) when his removal was forced. On the weekend of 1-2 June 2013, I made countless phone calls (following earlier unsuccessful enquiries, partially documented in

Annexure "A" to the attached letter dated 31 May 2013) regarding alternate agistment arrangements. These were not fruitful. Without confirmation of an agistment spot elsewhere I was unable to book transport. As documented in the attached letter dated 30 May 2013, I had an alternate agistment opportunity without care available. Out of desperation, under threat of legal action from SLHD, I had to make last minute arrangements to move my horse to this location. Being a weekend I was unable to secure a transport company's services on short notice. I was forced to hire transport and arrange a driver (being unable to drive the vehicle myself due to the company's policy which required a driver over the age of 25), at an extreme financial and emotional toll.

My horse arrived at this alternate location, 2.5 hours from Yaralla, at 11pm on Sunday 2 June 2013. He had gone from being visited twice daily for feeding and rugging/unrugging, to no care whatsoever. His subsequent loss of condition, and accrual of various maladies is unsurprising. I am aware other of the horses has likewise suffered as a consequence of being forced from Yaralla without time for suitable long-term alternatives to be investigated.

Restoration

In the circumstances I fail to see how the supposed upcoming tender can be impartial. The clear preference for NSW Mounted Police occupancy of Yaralla remains, with a blatant possibility of future plans against the interests of the community. Appropriate measures must be taken to ensure the tender process is appropriately regulated and Yaralla protected from a progression towards development. Most importantly, all stakeholders, including the public, should be consulted on this important issue. Ideally, the public voice should be given due consideration and the horses restored to Yaralla for the ongoing benefit of the community.

Thank you for your consideration.

Kind Regards,
Megan Webster

