

**Submission
No 77**

INQUIRY INTO CROWN LAND IN NEW SOUTH WALES

Organisation: Sandy Point Progress Association

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PARLIAMENTARY INQUIRY INTO CROWN LAND

SUBMISSION FROM THE SANDY POINT PROGRESS ASSOCIATION RELATING TO CROWN LAND KNOWN AS THE SANDY POINT QUARRY, HEATHCOTE ROAD, SANDY POINT

Unbeknown to the Sandy Point community, as there was no public consultation the Sandy Point quarry was licenced to Benedict Industries and re-commenced operation in 2010 after years of inactivity. The company relied on an existing 1967 Development Approval to Walker Quarries for 'extraction of rock ballast and filling'. Early 2011 the Sandy Point community began to experience problems with severe dust, noise from blasting, damage to homes and increased traffic. Subsequent investigations by the association revealed irregularities in the issuing and implementation of the Crown licence. Despite evidence supporting allegations being submitted by the community to Crown Lands, the illegal activities were allowed to continue.

SUMMARY OF MATTER

- No transparency as no formal tendering process was undertaken. It is the Association's belief that a decision favourable to the licensee was given for their advantage where a better outcome for the State could have been achieved through a fair and proper tender process.
- The Crown has breached its duty of care and public trust by ignoring repeated requests for investigation after evidence produced by the community of over-extraction and importation of material for which the company was not licensed.
- By accepting royalties for the illegal over-extraction of the unlicensed material.
- The Minister for Lands has condoned this action by accepting royalties for illegal activities and entering into a 25 year lease of the quarry despite extensive legal representations to the Minister.

Summary of Events

- Crown licence RI457788 issued in November 2009 to carry out studies and investigations associated with the preparation and lodgement of a Development Application to seek consent to develop for use and occupation.
- Despite the proponent being unable to obtain development approval from Sutherland Council Crown Lands issued licence RI45497 in March 2010 for access, extraction of material, occupation, recycling, and site investigation. This licence again required the proponent to seek a current DA from Sutherland Council. This was not done.
- The Crown permitted quarrying of an adjacent lot which was not covered by the 1967 DA and accepted royalties for this illegal extraction.
- Lodgement of annual returns to the Crown evidencing extraction of 400,000 tonnes pa in 2013-2014 and 2014-2015.
- Despite these irregularities the Crown still accepted royalties for the over-extraction.

Despite many complaints to Crown Lands by the community since 2010 no action was taken by the Crown to restrain the over-extraction and illegal importation by the licensee until December 2015.

On 19 June 2014 a meeting was held with Crown Lands, the EPA, Sutherland Council, Chief of Staff to Melanie Gibbons MP and the association where it was revealed and confirmed

- that the annual return lodged with Crown Lands by the licensee revealed quarrying of 400,000 plus tpa in 2012/2013;

- that the annual return lodged with EPA revealed quarrying of 30,000tpa for the same period 2012/2013.

The Association believes that quarrying also took place in 2014/2015 well in excess of the EPA licence.

At a meeting on 12-8-2014 with Kevin Humphries MLA, the then Minister for Crown Lands, the association was advised that the Minister was seeking legal advice due to alleged illegal activities.

At a meeting with Kevin Humphries MLA on 16-2-2015 the association was advised that Crown Lands would offer the licensee a 12 month licence which would lapse and the licensee would need to vacate if a lease was not entered into within 12 months which would be conditional upon the 1967 DA consent by Sutherland Council and the existing EPA license to quarry 30,000tpa and would not permit variations. The lease would not permit new uses and be subject to community consultation.

On 26 August 2015 a meeting was held with the new Minister for Lands Niall Blair when the association was advised that Crown Lands was now negotiating a lease for 25 years. Neither the Minister or Crown Lands staff, would confirm whether the terms being negotiated were as agreed to by the previous Minister. Community consultation was denied by the Minister.

The association sought legal advice as to the grounds upon which the Minister could rely to cancel the licence. This advice was referred to the Minister.

The Association has now been told that a lease has been granted to Benedict Industries for 25 years, the terms of which are unknown.

The Association believes that –

- A transparent tendering process was not followed which would have ensured a better outcome for the State and that other potential operators were not dealt with impartially.
- The Crown did not ensure that the conditions of the licence were met and that the required Development
- Despite community advice as early as 2012 that over-extraction and illegal activities had been taking place, a no action to remedy was undertaken by the Crown.
- The reluctance of both the Crown to investigate the over-extraction and terminate the licence.
- Royalties illegally accepted by the Crown for over-extraction for 2012/2013 and 2014/2015.
- The licensee is now being rewarded for over-extraction and illegal activities by the Crown entering into a 25 year lease.

The association believes that Crown Lands has breached public trust and confidence by

- Not acting upon the agreement by the former Minister breaching public trust and impairing public confidence.
- Exercising their official functions in a partial manner by issuing a 25 year lease to the company and condoning illegal activities.
- There has been no genuine and meaningful community consultation.
- The State government has been negligent in protecting the Sandy Point community from illegal activities.

CONCLUSION

The Association believes that the existing guidelines relating to community consultation are inadequate. Stringent guidelines need to be put in place. If it is proved that the guidelines have not

been followed that decision should be rescinded and submitted again to the relevant authorities and the community for consideration.

Guidelines as to what constitutes 'community' should be put in place and the method of advertising include a letterbox drop to all the homes in the immediate vicinity of the project which may be affected as well as the usual council and newspaper advertisements.

Guidelines should also include notification of the final decision by Crown Lands.

Crown Lands when acting as landlord should be made liable for the actions of the tenants in the same way as legislation requires of private landlords. The departmental officers should also be made personally responsible.

Crown Lands must not be able to impose conditions and then walk away and leave it up to local councils, the Environmental Protection Authority, etc to follow up and enforce them.