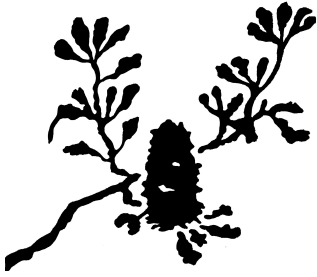


Submission
No 71

INQUIRY INTO CROWN LAND IN NEW SOUTH WALES

Organisation: Ryde Hunters Hill Flora and Fauna Preservation

Date received: 20 July 2016



The Hon. Paul Green
Committee Chair,
Legislative Council General Purpose Standing Committee No. 6
Crown land Inquiry
Attention: Mr Sam Griffith gpsc6@parliament.nsw.gov.au

Dear Mr Green,

Thank you for an opportunity to forward a submission to the Crown Land Inquiry.

We are a local conservation group that was established in 1966 around the time of a successful community campaign to protect the Field of Mars Reserve, a remnant bushland area in East Ryde comprising 72% Crown land, from expanded use by Ryde Council as a garbage tip. We have outlined the history of the Society in relation to the Field of Mars Reserve, along with other Crown land in the local district in the headed sections below.

We feel we have extensive experience with how the Crown lands, local government and planning acts interact in the practical on ground management of urban Crown land. We have a particular interest in the protection of remnant urban bushland and natural watercourses. If any clarification or explanation of our submission is required to the Committee, representatives of the Society would be available to attend one of the Sydney hearings.

Our involvement in local Crown land has been across a range of activities and interests and at various levels including volunteer bush regeneration sessions, litter clean up, community bushwalks, open days, guest speaker events, consultations regards management of the reserve, input into preparation of Plans of Management, development proposals on Crown land, letter writing and submission making.

Our members feel strongly that Crown land must stay in public ownership and management control unless government clearly justifies a need to change ownership and/or management arrangements via transparent and genuine consultative processes. Any changes to future Crown land legislation and management arrangements need further consultation.

CROWN LAND INQUIRY TERMS OF REFERENCE

- (a) the extent of Crown land and the benefits of active use and management of that land to New South Wales,
- (b) the adequacy of community input and consultation regarding the commercial use and disposal of Crown land,
- (c) the most appropriate and effective measures for protecting Crown land so that it is preserved and enhanced for future generations, and
- (d) the extent of Aboriginal Land Claims over Crown land and opportunities to increase Aboriginal involvement in the management of Crown land.

In summary, points a) and b) of the Terms of Reference are addressed under the headed discussion areas below. Point c) is addressed in the bolded recommendations throughout our submission and point d) at the end of our submission.

INTRODUCTION:

We feel that the NSW Government's proposed changes to Crown land legislation have been ill-considered. They reflect an erroneous attempt to streamline and simplify management of Crown land under one piece of legislation justified by argument that there is a need to reduce "red tape", inconsistency and complexity. What disappeared in this simplistic approach was any legislative capacity to identify the intrinsic values of Crown land by which to guide responsive management regimes and ensure preservation of these values for future generations. A streamlined "one size fits all legislative approach" seems somewhat naïve given the vast social, economic and environmental differences between urban and rural areas of NSW.

Community concerns about Crown land management are rarely about too much "red tape". More likely these community concerns arise from government proposals to sell or alienate Crown land in the absence of any assessment of the values of the land, lack of community information about Crown land management, poor resourcing of Crown land managers, absence of defined management regimes, a lack of transparent mandatory decision-making processes and political interference in development on Crown land parcels.

The pressures on Crown land can only increase as Sydney and regional growth areas expand. This means there is even greater need for transparent decision-making and a government commitment that Crown land will be managed in an environmentally sustainable manner and in the genuine public interest.

Our Society recommends that any changes to the legislation in respect of Crown lands embrace the principles of ecological sustainability, transparency in decision making, genuine community consultation and recognises the social, economic and environmental differences between urban and rural areas of NSW.

PART A - RELATED ISSUES REGARDS CROWN LAND IN NSW

Part A summarises the broad issues we feel are related to the values, community consultation processes and management of Crown land in a general sense.

A1. IDENTIFICATION OF CROWN LAND ON PUBLICALLY AVAILABLE MAPS

What actually constitutes the Crown land estate needs to be made available on an appropriate public map portal. This should be of the whole State and clearly identify the Lot and DP (including historical Lot/DP information), street address (if one), its size and Local Government Area. It should include current manager details and a basic history of any changes made via Government Gazettal notice. Ideally, the map should be able to identify past sales and alienations of Crown land.

Without a map and this information the public cannot clearly identify Crown land or track its sale or alienation. The values of the Crown land estate can be quickly eroded.

There is a need for improved inter-governmental agency discussion to facilitate an overlay of the Crown land map with Office of Environment and Heritage mapping data. This should identify significant environmental corridors, whether these are determined on a catchment or bioregion basis. These maps should be made publicly available. There is a need to factor the impact of a changing climate into environmental corridor mapping using appropriate software. All maps should be evidence based and peer-reviewed by specialist ecologists, climatologists etc. Crown land parcels identified as having significant environmental and/or habitat corridor values should be considered for inclusion within the National Parks estate.

There is need to link the above Crown land maps with the Native Vegetation Regulatory Map proposed under the amended *Local Land Services Act 2013* as part of the changes to Biodiversity legislation. At this stage it is vague as to whether high conservation value corridor Crown land, or parcels under private tenure, located within a significant environmental corridor will be regulated via the map proposed as part of the new regime. It may be that some Crown land with connectivity value will be mapped within the unregulated zone which we find concerning.

There is also need to link the maps into the strategic planning processes within Local Environment Plans. Currently, LEP maps and zoning seem largely dislocated from any state-wide mapping layers.

RECOMMENDATION 1: A dedicated Crown land public map portal needs to be established immediately.

A2. REMNANT NATIVE BUSHLAND IN REGIONAL NSW - CONNECTIVITY VALUES AND MANAGEMENT:

The state-wide habitat connectivity values of remnant bushland on Crown land are significant, whether these be for threatened species, migratory species or ensuring a healthy genetic diversity of all our native species. Natural bushland assists native species in their adaptation to a changing climate, acts as a carbon sink, protects waterways from bank erosion, controls soil loss, reduces salinity and filters air. Overall, the Crown's natural areas are immensely valuable in provision of necessary ecosystem services and the consequent public benefit they provide.

The corridor and intrinsic values of natural areas on Crown land are under threat for a number of reasons:

- The absence of public maps, as mentioned above, means it is difficult to identify at a state level existing habitat corridor gaps and commence strategic ecological restoration of significant environmental corridors on both private and public land.
- Fragmentation of smaller habitat corridors continues with the fast paced sale of unmade crown roads and the alienation of the Travelling Stock Reserve and Network (TSR) via long-term permits. Often vegetated corridors on unmade roads and TSRs are the last remaining remnants of bushland across cleared agricultural areas.

RECOMMENDATION 2: Cessation of all Crown land sales including Crown roads until state-wide environmental corridor maps are available and strategic planning commenced to restore vital gaps in significant ecological/biodiversity corridors.

A3. PROTECTION OF WESTERN LANDS

We feel that the proposed changes to Crown land management outlined in the Crown Lands White Paper fail to recognize adequately the fragile ecosystems of western NSW and the need for these landscapes to be managed in ways that reduce land-use pressures. The objects of the current *Western Lands Act 1901* includes the need for ecologically sustainable development (ESD) of these areas but this provision has not been carried over into the streamlined, simplified legislative proposals proposed in the White Paper.

Controls over the fragile Western area landscapes need to be kept in place to protect the vegetation, soils and waterways. It is in the interest of all people in NSW to manage these areas in an environmentally sustainable manner - it is often the general taxpayers who pick up the costs of environmental repairs in Western NSW.

RECOMMENDATION 3: Keep ESD as a principle of all Crown land management, especially Western lands.

A4. CONSISTENT AND TRANSPARENT PROCESSES REGARDS SALES AND ALIENATION OF CROWN LAND

There will be times that Crown land will need to be sold, alienated or undergo a change in land-use. However we are not convinced that current processes are sufficiently transparent or consistent across all areas of the Crown land estate to ensure that the public interest is protected. In regard to sales or alienation, Crown land does not seem to have prescribed requirements for notification, community consultation, public hearings, length of a ministerial lease etc. The repeal of *State Environmental Planning Policy 8 - Surplus Public Land* removed an important mechanism for public scrutiny of any proposed sales of all public land.

Further, “land-use” change can be determined by a change in reserve purpose with the quiet placement of a Government Gazette notice rather than through the relatively transparent strategic process of zoning within a Local Environment Plan. Notifying an additional purpose via such gazette notices can allow a future land-use activity that results in a commercial alienation which compromises the important public benefits of Crown land. An environmental protection purpose can be removed without scrutiny. Crown roads continue to be sold off without any proper strategic scrutiny of broader social access values, environmental values or the assessment of longer-term public benefit. Sales can occur without on-site notification requirements or requirements to clearly identify the particular land parcel.

RECOMMENDATION 4: Improved transparency and consistency in how Crown land is sold, alienated or undergoes a change in permitted land-uses or a reserve purpose.

A5. INCREASED TRANSPARENCY IN PUBLIC RESERVES MANAGEMENT FUND PRMF

The operations of the PRMF lack transparency and accountability. We note that the NSW Audit Office has recently reviewed the PRMF but no report is available at the moment. Telecommunications towers erected on Crown land would seem to provide an increasing income stream for State government. There is need to ensure that all proceeds from any sales, rentals, leases or licence fees from Crown land are directed to Crown land management via equitable, transparent and targeted processes.

RECOMMENDATION 5: Monies paid into the Public Reserves Management Fund need to be managed transparently and access by a Council should not be determined by the income generated by a particular lease or licence of Crown land within their Local Government Area but determined according to a set of priorities which is consistent with the environmental protection and public, multi-use principles of the Crown Land Act.

PART B: OBSERVATIONS ON OUR INVOLVEMENT IN TWO LOCAL CROWN LAND PARCELS - FIELD OF MARS RESERVE & WILDLIFE REFUGE, EAST RYDE AND BORONIA PARK, HUNTERS HILL

Part B of our submission draws specifically on two local urban examples and the history of our involvement. In summary we feel these histories address a) and b) in the Terms of Reference and demonstrate that Crown land as public multi-use land is highly valued by the community whether this be bushland to enjoy; as an outdoor classroom to learn in; natural or cultural heritage items to admire; a sports field on which to watch sport or play it; passive recreational access to foreshore or in an understanding of the ecosystem services provided by natural areas to improved air and water quality. These wide-ranging values of Crown land are of benefit to all the people of NSW because it is a public asset.

Whilst the sale or alienation of Crown land could be argued by government to generate other sorts of public benefit this return is of an immediate benefit only and limits future opportunities for public use of the Crown land. Such sales and alienations cannot go on forever. There is a need for equitable and sustainable management of remaining Crown land by government, Councils and other Trust Managers to ensure continued access to the multiple values of Crown land for future generations. These local examples below also demonstrate that where Crown land has environmental values the community is prepared to defend it and is concerned to not see it degraded by inappropriate activity and land-use.

Our experience has been that community consultation is often poor or disingenuous regards Crown land management decisions. Good community engagement is sometimes over-ridden by political decisions and other processes which lack transparency. Decision-making by Council and State government can be ad hoc and fragmented with the actual intent of decision-making not apparent until the proposed alienation/sale has occurred.

As stated above, Point c) of the Terms of Reference is specifically addressed in recommendations made throughout the document. By way of summary we feel that Crown land management must be integrated to other related pieces of legislation such as the Planning and Local Government Acts - all three of which need to operate with increased transparency and consistency in how Crown land is managed.

Integrated decision-making across whole-of-government is required especially if the intrinsic environmental values of natural areas of Crown land are to be managed sustainably and for future generations to access, enjoy and benefit from.

B.1 HISTORY OF THE SOCIETY¹ IN RELATION TO THE FIELD OF MARS RESERVE AND WILDLIFE REFUGE PITTWATER RD EAST RYDE (Field of Mars)

At the time of the arrival of Europeans at Sydney Cove in January 1788, the Wallumedegal people were the traditional owners of the area in which the Field of Mars is situated. This area was called Wallumetta and it is now within the City of Ryde. In 1804, Governor King set aside a large part of the as yet undeveloped area on the northern side of the harbour as a common. Known as the Field of Mars Common it covered 2523 hectares, extending from the present Boronia Park in Hunters Hill (discussed further below) through to West Pennant Hills.

The survival of the Field of Mars as an island of bush in 2016 is due in part to a series of accidents. After incorporation in 1870, Ryde Council began to look for a recreation ground and the Government offered Council 85 acres (about 35 hectares) of the old common, if “the Council would bear half of the cost”. Council rejected this proposal. The Government Gazette Notice of 3 December 1887 formally proclaimed the Field of Mars as Reserve No. 4,785 and set it apart for Public Recreation.

For the next sixty years or so the Field of Mars was a remote piece of bush into which the adjoining cemetery could be extended from time to time and where a lot of local residents learnt to swim in the Buffalo Creek swimming hole in the reserve.

Post World War 2 urban expansion of Sydney created problems for garbage disposal and most of the original salt marsh flats in the lower reaches of the reserve were filled with garbage. However, due to problems with smoke and smell from the tip reaching into the expanding residential development nearby it was closed in 1959.

However, in the mid 1960s Ryde Council proposed that the Field of Mars be developed as a major tip/reclamation site for putrescible garbage. Needless to say the local residents were not impressed with Council’s proposal and the Anti-Tip Action Committee (ATAC) was formed in May 1966. Concurrent with the formation and early activities of the Anti-Tip Action Committee was the formation of the Ryde Hunters Hill Flora and Fauna Preservation Society (the Society).

The fundamental objective of the Society was to bring to the public’s attention the need for wildlife conservation, with the specific task of preserving, managing and developing the Field of Mars as a flora and fauna sanctuary. Ultimately Council chose Porters Creek, North Ryde as its major reclamation area/tip and in 1966 Council agreed to the development of the Field of Mars as a flora and fauna sanctuary “subject to any development being carried out to the satisfaction of the Council’s Municipal Engineer”. Over the next ten years the Society undertook projects such as the planting and labelling of trees, stabilising the former tip areas, the eradication of weeds, the building of retaining walls and bridges and the clearing of trails. It lobbied to extend and consolidate the reserve.

¹ Drawn from 100 Years of the Field of Mars Reserve by Rod Wallace 1987.

In 1975, largely in response to this community effort R.4785 was revoked and was re-reserved together with other Crown lands proposed by the Society as R.89474 for Public Recreation and Promotion of the Study and Preservation of Native Flora and Fauna. Care, control and management devolved to Ryde Council pursuant to the provisions of section 344 of the then Local Government Act. Also in that year the reserve was proclaimed as the “Field of Mars Wildlife Refuge, No. 339”. By then it was about 49 hectares in area.

Since its inception the Society always believed that the Field of Mars and its surrounding environs had a great deal to offer teachers and students in the way of field studies and environmental education. The proposal to establish an official Field Studies Centre was successfully put to the Education Department and the Field of Mars Field Studies Centre officially commencing operations in 1987. This represented the culmination of many years of planning and consistent agitation by the Society. A purpose built education facility was finally opened in 1988 and is now visited by over 15,000 students annually.

The brief historical outline above indicates the importance of the community in local decision-making regards public land. The decision to build the tip at Porter’s Creek where a similar piping of the creek design occurred has been a disaster - leachate still seeping from the now filled tip is a major point source of pollution for the above weir section of the Lane Cove River National Park; management of this leachate draws significantly on the Council budget and the promised turfing and playing fields after tipping ceased never eventuated. Similar problems would have occurred if the tip had proceeded at the Field of Mars in a more residential area and with no weir to contain it, the pollution would have flowed directly into Sydney Harbour.

Further there would be no Environmental Education Centre and the ecosystem services provided by the natural bushland in terms of improved air and water quality would not be occurring. The establishment of an active community group also limited further expansion of the adjoining Field of Mars cemetery into bushland some of which is now protected under the *Threatened Species Conservation Act 1995*.

RECOMMENDATION 6: Where there is community interest in, and/or concerns about the management of a Crown Reserve with environmental values that a Community Trust is established to manage and protect these values

The land within the Field of Mars is complex in tenure comprising Crown land (72%), Council land (25%) and Department of Planning land (3%). This tenure complexity seems common in Sydney. Council has remained as Trustee Manager and has never supported the appointment of a Community Reserve Trust. The history of the making of a specific Plan of Management for the Field of Mars within the context of legislative change and the conflicting regimes arising from the different tenures exposes some core management issues related to mixed ownership reserves.

Since the Field of Mars is both Council owned land and Crown land it is technically under two management systems i.e. both the provisions of the Local Government and Crown Lands Acts. In the situation of the Field of Mars it would seem logical that Council, as Trustee, should meet the requirements of the *Local Government (Community Land Management) Act 1998* regards how the reserve is managed.

In our opinion these amendments provided a transparency and rigor to public land management that was not evident in the original *Local Government Act 1993*. However, these transparent and prescriptive requirements have only been in place since 1998. Prior to this Ryde Council, as manager of the whole parcel of “public” land could propose a garbage tip contrary to the land being reserved for Public Recreation with no apparent government objection to a portion of the “Public Recreation” Crown Reserve being excised for a garbage tip in 1955. It was community pressure which protected the bushland.

The 2009 Plan of Management for the Field of Mars was adopted under the two pieces of legislation even though the Crown land areas of the reserve were not categorized as per the requirements of the *Local Government (Community Land Management) Act 1998*.

Council in 2009 did not feel it had the authority to categorise the Crown land areas even though eight years earlier they had categorized all areas of the Field of Mars in their adoption of a Generic Plan² for all reserves in the city.

The government has argued that such conflicts are causing confusion and complexity in management of Crown reserves. However it is also arguable that what concerns the State government (and some Councils) is the accountability of land managers to the community that is provided by the prescriptive requirements of the *Local Government (Community Land Management) Act 1998*. These amendments introduced a transparency to processes, ensured proper notification of any proposed alienations, involved the community in decision making via mandatory Plans of Management and ensured that public land was categorized and managed for its intrinsic values. It may be that government finds such transparency in notification and community consultative processes concerning or an impediment.

This same degree of accountability is not apparent in the current provisions of the *Crown Lands Act 1989* in regards to land management. Whilst the principles of the *Crown Lands Act 1989* appear to guide sustainable management of Crown lands the Act does not identify a transparent and consistent process to ensure adherence to these principles. Management of Crown land is largely at the whim of government whether this is in decisions to sell off a “paper” crown road which is occurring at a fast pace currently, in placing commercially strategic parcels of Crown land under the Lands Administration Ministerial Corporation or in revisions of the reserved purpose via a government gazette notice.

RECOMMENDATION 7: That the State government halts the continued sale and alienation of all Crown lands until the Crown Lands Act has been amended to introduce a transparent approach in how changes to a reserved purpose for Crown reserves are made and how changes in land-use or ownership of all Crown land are notified, progressed and negotiated. For parcels where Council is Trustee Manager this should be consistent with the current provisions in the Local Government (Community Land Management) Act 1998.

² However, the Generic plan making under the requirements of the 1998 amended LG Act did have some benefit: a) A full inventory of Council owned and Crown land in the LGA was developed and is still publically available; b) Community land was categorized via an Independent Public Hearing process which allowed for community input into the process; c) Council made commitments to develop specific plans of management for its larger bushland multi-use parks after completion of the Generic Plans.

CURRENT THREATS TO THE FIELD OF MARS RESERVE

Urban bushland on Crown and Council owned land remains under threats that can see it destroyed or further degraded. Two areas of concern for the Field of Mars are:

1. Climate change impacts: The lower reach of the Field of Mars Reserve was originally a wetland prior to most of it being used as a garbage tip. It now forms part of the Buffalo Creek floodplain. This floodplain is frequently inundated with freshwater flows from the urban development in the majority of the upper catchment areas. Sea level rise associated with a changing climate will place additional pressure on the sensitive remnant native vegetation present along the creek lines and intertidal zones around Sydney Harbour such as at the Field of Mars. This includes remnant vegetation such as mangroves and endangered saltmarsh.

The protection of natural bushland on Crown land especially when it contains threatened species and ecological communities must be a government priority. It will be critically important that climate change impacts are considered as part of all decision-making about Crown land management, not just beaches. There is need for capacity at the State level so that climate change impacts are well monitored and coupled with adequate resourcing of Crown land managers at regional levels so that an appropriate management response occurs. Without commitment by government to manage the impacts of climate change the important environmental values of Crown land could be lost.

RECOMMENDATION 8: That all Crown land where threatened species or endangered ecological communities are present under either State or Commonwealth Threatened Species legislation be clearly identified on local maps which are publicly available. Where appropriate a strategic plan should be implemented to manage climate change risks and this information should feed into the environmental planning and assessment process via an appropriate environmental protection zoning in the LEP.

RECOMMENDATION 9: That funding via the Public Reserves Management Fund be prioritised to target threatened species and communities under particular threat from a changing climate and that all Crown land managers are able to access the fund for remediation/amelioration projects.

2. Possible 132,000 volt overhead power lines through the Field of Mars Reserve: Ausgrid is undertaking an upgrade project between Wentworth Point and East Ryde which is to occur in three stages. In Stage three of the project, four of seven route options involve bringing 132,000 volt overhead wires through core bushland areas of the Field of Mars Reserve. These overhead cables are proposed as possible options even though the project is replacing the existing **underground** cables in the streets around the Field of Mars.

With Ausgrid about to be privatised and arguments that the overhead cables are a cheaper option, this devastation of Field of Mars bushland is possible as the environmental planning and assessment of development by utilities such as Ausgrid on Crown bushland is weak. This is despite the current first stated principle “that environmental protection principles be observed in relation to the management and administration of Crown land” and “that the natural resources of Crown land (including water, soil, flora, fauna and scenic quality) be conserved wherever possible.”

Under s 34A of the Crown Lands Act, the Minister can grant a ‘relevant interest’ (i.e. lease, licence, permit, easement or right of way) over a Crown Reserve for new works. There does not seem to be any notification or assessment requirements in such situations except via a notice in the Government Gazette after the decision by the Minister.

Whilst there does seem to be a requirement to consult with the Trustee Manager of an affected Crown Reserve regards the granting of a “relevant interest” - in the case of the Field of Mars this would be the City of Ryde - this seems to be only a courtesy as it is not a requirement for the Minister. Further, it would seem the Minister has the power via a notice in the Government Gazette to attach an additional purpose for “power-lines” to the reserved purpose of the Field of Mars for Public Recreation.

RECOMMENDATION 10: Greater transparency is required by government when a change is made to the purpose of a reserve which should not solely be a Government Gazettal notice. A proper notification process is required that includes clear identification of the affected parcel i.e. on site signage and what is the intent of the changed purpose i.e. whether a proposed sale/alienation or a land-use change.

Under the *State Environmental Planning Policy (Infrastructure) 2007* Ausgrid’s project falls within the scope of the Infrastructure SEPP as an activity permissible without development consent. Ausgrid can construct overhead cables in the Field of Mars, a significant 50 hectare urban bushland remnant without need for development consent from the City of Ryde. Ausgrid becomes the determining authority for electricity developments under Part 5 of the EP&A Act and will need to consider the impact of the activity under this legislation and Clause 228 of the Environmental Planning and Assessment Regulations.

Ausgrid will need to take account of the *Threatened Species Conservation Act 1995* and the Commonwealth’s *Environment Protection and Biodiversity Conservation Act 1999*. However, *State Environmental Policy 19 - Bushland in Urban Areas* does not apply under the Infrastructure SEPP even though the bushland in the Field of Mars is zoned as E2 - Environmental Conservation under Ryde’s LEP.

At this stage the TSC Act would apply but by the time the Review of Environmental Factors is prepared it is possible this legislation will have been repealed as part of the State government’s review of biodiversity legislation. With these proposed changes to biodiversity legislation all urban areas in NSW will be excluded initially from the native vegetation regulatory framework developed under an amended Local Land Services Act. Urban bushland will then await protection under a new State Environmental Planning Policy which when introduced will remove local Tree Preservation Orders from LEPs.

The absence of legislative protection for Crown land with environmental values as evidenced at the Field of Mars and the Ausgrid proposal is occurring across the State.

RECOMMENDATION 11: The environmental values of Crown land across the State need improved protection within the environmental planning and assessment process. In urban areas SEPP 19 must apply for proposed developments under the Infrastructure SEPP and especially where land zoned as E2 in an LEP is affected.

B.2 HISTORY OF THE SOCIETY IN RELATION TO BORONIA PARK, PARK ROAD, HUNTERS HILL

Boronia Park is a Crown land reserve (Reserve No. 500262) within the Hunters Hill Council area. It is Hunters Hill's largest parcel of intact bushland with a total area of 24 hectares. Brickmaker's Creek flows through it via a Melaleuca wetland and the foreshore reserve forms a major natural filter system for stormwater for the Lane Cove River. It contains Aboriginal cultural heritage items. It has had a long history as a multi-use park available to a range of sports and local schools.

It was dedicated for Public Recreation in 1887 and the Hunters Hill Public Recreation Reserve Trust, managed by Hunters Hill Council was established in 1893. At some later date "Communication Facilities" was added to the reserve purpose.

Preparation for a Boronia Park Plan of Management commenced in late 2001 using independent consultants. During the development of the plan there had been consideration of a future community facility in Boronia Park, with south of the existing Grandstand the preferred location and only location mentioned in the community consultative sessions. The Grandstand was located on the edge of the park with good public road/bus access.

Towards the time of the plan's adoption there was some community concern at a rumoured proposal for a purpose built Hunters Hill Rugby Clubhouse in a separate location other than near the Grandstand. Council made late changes to the Plan during the Council meeting at which it was adopted to include a new Community Facility in a central location of the park. This area was categorised as General Community Use along with an existing maintenance road which led to it. This Plan was adopted in December 2002 under the *Local Government Act 1993*. Changes were made at some stage to the dollar amounts allocated to items specified in the Action Plan and \$500,000 towards a sporting club venue was added as a new budgeted item post the public exhibition period.

During mid 2011 around 25 trees were removed from the park and many truck-loads of excavated fill began to be placed on an area of Boronia Park described as Oval 3. Our Society and the community became increasingly concerned at the extent of the fill and what environmental planning and assessment had occurred in relation to the project. The amount of fill brought onto the site seemed significant, possibly up to 25,000 tonnes, and included some contaminated fill by mistake. We gather that no EPA licence is required in such situations. Rock battering to contain the fill appeared unstable and no geo fabric had been installed.

In response to the Society's concerns, Council stated that the works were considered to be exempt development under Division 12 - Parks and other public reserves, clause 66 Exempt development of the *State Environmental Planning Policy (Infrastructure) 2007*. The Society questioned the appropriateness of this since the works were being undertaken by the Rugby Club, not Council; Boronia Park was heritage listed under the Hunters Hill LEP; pollution of the Great North Walk and the Lane Cove River was occurring because of inadequate sediment controls; the works were not specified in the adopted plan and regardless the plan had not been adopted under the *Crown Lands Act 1989*

Thus began a lengthy exchange of letters between the Society and the Departments of Planning, Local Government and Lands which continued into early 2014. The EPA issued notices to install adequate sediment fences and geo-fabric, remove the contaminated fill and stabilise the rock wall batter but then handed the matter to Council as the entity responsible in such matters.

About this time other matters concerning the oval project became apparent to the community:

- In August 2009 the Rugby Club had requested a 25 year lease from Council (for five years with 4 x five year options) to build a “community hall” on the park;
- Council gave “in-principle” support for this request stating that the hall was identified in the 2002 Plan and that concurrence be sought from Land and Property Management Authority whilst recognising that the plan may need to be amended to permit a long-term lease;
- the Rugby Club had received funding (\$37,000) under the NSW Community Building Partnership program towards Stage 1 (the oval expansion);
- Stage 2 of the project included “...a community facility/clubhouse...several commercial opportunities and business activities including a Food and Beverage outlet, functions, personal training business, gymnasium, meeting and training rooms.”
- For Stage 1 \$20,000 was to be received in payment of the fill placed on the oval and a further \$20,000 from profits from an annual Council festival. The Rugby Club was stated to be contributing \$80,000;
- A section of the oval encroached onto E2 bushland but there was insufficient detail in Hunters Hill LEP maps to confirm this.

Hunters Hill Council did form a sub-committee to review what had been recognised as a poorly executed project in the construction of oval 3. The recommendations of this sub-committee were that there should be formal agreements required for any future Council-Community Organisation Infrastructure Project Partnerships.

The Society expressed disappointed in that the review had failed to recognise the need for remediation of the damage caused to bushland and the likelihood of longer term environmental damage if drainage controls were not improved. Nor did the report identify who would be responsible for these necessary remediation works.

The Society continued to raise concerns about the failure in processes that had resulted in significant environmental damage to bushland by the oval 3 construction, the Great North Walk and local waterways into Sydney Harbour. A reply from Planning and Infrastructure suggested that the Society forward concerns to the NSW Ombudsman or the Division of Local Government.

The NSW Ombudsman did not seem to understand the complexity of Crown land management by Councils in regards to Plans of Management and also accepted that it was reasonable that the Rugby Club do the works as exempt development under SEPP

(Infrastructure) 2007 on Councils behalf as Council had stated that it did not have, nor would have the funds to do the works.

The Division of Local Government referred the Society to the Department of Primary Industries (DPI). Various letters received from DPI by the Society have confirmed that Hunters Hill Council as Reserve Trust Manager has responsibility for care, control and management of the park in accordance with the principles of Crown land management set out in the Act. That major environmental damage has occurred to the park, contrary to the Crown land management principles has been dismissed as it was considered Council's responsibility. Further, damage has occurred to the Great North Walk a major regional trail and in areas where ecological restoration works were undertaken. The works were the subject of significant government funding over a number of years.

It became apparent to Council and the community that the 2002 Plan of Management was now "out of date" given a range of works that had occurred outside the scope of the original plan. Further, the long-term lease for the Rugby Clubhouse was not permitted under the 2002 plan. Once again Council engaged independent consultants to develop a new Plan of Management. The community again expressed its concern to see the environmental, cultural and social values of Boronia Park preserved as a multi-use Crown land parcel.

Hunters Hill Council made significant changes to the draft plan some contrary to the advice of the independent consultant. The changes were considered significant and it was resolved by Council that the updated draft plan be readvertised.

By this time, it was apparent to the community that Council supported the Rugby Club's intent to build a new clubhouse with a road access to an adjoining parking area. The Boronia Park Plan of Management would reflect Council's support, regardless of broader community concerns. Council argues that any future Rugby Clubhouse/community centre will be the subject of a local development application. But the previous environmental damage that occurred with the removal of trees, importation of the fill, the un-remediated rock batters and levelled area for a future building will not be assessed in this LDA process.

Our Society continued attempts to better understand the processes regards authorisation of any long-term lease on Boronia Park as, likewise to the 2002 plan, the 2014 plan was adopted under the *Local Government Act 1993* not the *Crown Lands Act 1989*.

The EDO NSW was engaged and further letters sent to the DPI who kindly responded yet again on this matter. It was finally established in correspondence dated 29.2.2016 that:

- "Neither the Department or the Minister has any legislative authority to direct the Reserve Trust unless there is a flaw in its management process for Boronia Park."
- "Current State government direction regarding Plans of Management encourage Councils to prepare "management plans" or "master plans" for adoption by Council and do not require adoption under the provisions of the Crown Lands Act 1989."
- "Councils are able to enter into temporary licence agreements of up to 12 months, without the consent of the Department (under Ministerial delegation)."
- "Any lease/licence agreements of a duration beyond 12 months would need to be in accordance with Section 102 of the Crown Lands Act 1989 which requires the formal endorsement of the Department. It is unlikely that that endorsement would be withheld in this instance."

It has now been established that the long-term lease proposal for a Rugby Clubhouse sits with the State government. Whether the three ovals are of a standard for international rugby games is as yet undetermined. But the proposal by the Rugby Club to have three full-sized ovals on Boronia Park on which to hold “regional, state and national tournaments” presumably will form a package to be presented to senior levels of government by senior representatives of Rugby Union interests without any opportunity for broader community consultation to occur.

Further alienation of Boronia Park for exclusive use by the Rugby Club restricts use by others whether this is for passive recreation or a range of active sports activities including by local schools. We would argue that this is not the best use of the Crown land when demands for playing field access by men, women and children’s sporting groups are ever increasing. It also needs to be pointed out that the community has never objected to rugby games on Boronia Park or expansion of the Grandstand for use by the Rugby Club. The major concern has been the creation of a road access to the oval and a function centre/clubhouse through an environmentally sensitive section of the park and an intensification of use inside the park which will cause conflicts with a well used public recreational space popular for walking and passive recreation.

RECOMMENDATION 12: “Division 12 - Parks and other public reserves, clause 66 Exempt development of the State Environmental Planning Policy” needs to be clarified as to whether a third party such as a Sporting Club can undertake such a significant project on Crown land as occurred at Boronia Park in 2011/12.

RECOMMENDATION 13: Given that residents and local conservation groups do not have the finances or access to test whether works on Crown land do comply with planning controls there is the need for greater resourcing of Crown Lands Division (CLD). During the time that this damage was occurring to the park and the Great North Walk staff cuts were severe. Reduced staffing in CLD and Local Land Services has implications for the protection of the values of all Crown land in NSW.

RECOMMENDATION 14: Where long term leasing is proposed whether driven by Council as Trustee Manager or the State government there is need for prescriptive notification processes and the development of a Plan of Management under the Crown Lands Act 1989 which sets out the basis for the alienation of Crown land for an exclusive use and/or commercial activity and requires a community consultative process.

RECOMMENDATION 15: Government money via the Community Building Partnership funding rounds must be underpinned by a transparent and well-audited process. Whilst projects on Crown land may have merit in many cases there is the need for such proposals to be part of a properly prepared management plan over the Crown land which has been prepared via a genuine community consultative process. The consent of the grant application by the Trust Manager must be advertised or ratified via a Council meeting.

PART C: OUR OBSERVATION ON OUR INVOLVEMENT IN OTHER CROWN LAND IN RYDE AND HUNTERS HILL LOCAL GOVERNMENT AREAS

Besides our specific involvement in the above two reserves, the Society wishes to make brief comment on some other Crown Reserves in the area.

C1. WICKS PARK, WATERLOO ROAD, NORTH RYDE

Formerly Crown Reserve 61081, this small reserve provided significant ecosystem services in the provision of improving the water quality of the Lane Cove River National Park. Water quality, upstream of the weir at Fullers Bridge is appalling due to sewerage system overflows and leachate runoff from the old Porter's Creek landfill mentioned above.

Once swimmable and popular, this upstream of the weir section of the Lane Cove River Recreation Park has degraded in less than one generation. Whilst the reasons for the dramatic degradation of this section of the river are complex the preservation of natural riparian zones such as was in Wicks Park is critical if we are to restore water quality in Sydney Harbour and allow swimming and see fish in the river. The incremental importance of Crown bushland such as Wicks Park is vital to improved Sydney Harbour biodiversity and water quality.

Wicks Park has most recently been absorbed into the North Ryde Station Urban Activation Precinct. It now comprises part of the open space requirements for the high-rise development of this UAP. In the mid 1990s it formed part of "Parcel 5" of the Surplus Lands to the M2 tollway. It was natural bushland comprising Melaleuca swamp and magnificent small bird habitat in need of appropriate management. It was the only section of natural watercourse entering the old Porter's Creek landfill, the history of which has been mentioned in Part A. It provided a soak area for a known flood zone and assisted in holding back flows into the piped section of Porter's Creek under the old land-fill which is costly to maintain.

In February 2002, this parcel was acquired as a compulsory acquisition of the Planning Minister at the time under the terms of the *Land Acquisition (Just Terms Compensation) Act 1991*. No public notification appears to have occurred. During the next 10 years it formed part of the assets of various government agencies as the site was used as a works compound for major projects, finally ending up under ownership of Urban Growth prior to its sale.

Whilst it is arguable the state has benefited from the sale of this land, the ecosystem services it provided have never been costed in this process of ownership transfer and sale, despite the principles of the *Crown Land Act 1989* to protect the state's natural assets. It has been largely cleared as part of the development of the site for high-rise development and it is proposed that a boardwalk be built through the remaining Melaleucas seemly still within a flood zone. The long term effect of these changes to flows within the Porter's Creek sub-catchment is unknown at this stage. Urban Growth failed to recognise the value of the natural riparian zone. Sydney Water commented that it was a Category 2 watercourse and required a wider protection zone. If the culverts fail under Porter's Creek old landfill because of increased intensity in flows, the cost will be borne by the ratepayers of Ryde and taxpayers of NSW via grants.

If the development of the adjoining Lot-parcel to the boardwalk area had been removed from sale, as one of the 12 "super-lots" on the parcel, the ecosystem services of Wicks Park could have been preserved and possibly reduced the costs related to possible future pipe failure under Porter's Creek which will be borne by Ryde rate payers or the people of NSW.

RECOMMENDATION 16: Crown land across the State provides ecosystem services such as improved water and air quality and biodiversity preservation which government must consider in any changes in ownership or land-use even between government agencies.

RECOMMENDATION 17: That there is need for a concurrence role with relevant water agencies in the environmental planning and assessment of major projects which include Crown land parcels along and including watercourses.

C2. MARSFIELD PARK, CULLODEN ROAD MARSFIELD

Marsfield Park is Crown land reserved for Public Recreation in 1895. A Reserve Trust was established in 1997 with Ryde Council the Trust Manager. The park contains sports fields, bushland and most recently a Riding for the Disabled Centre. The bushland in the centre of the park is comprised of critically endangered shale forest which is protected under State and Commonwealth Threatened Species legislation. The park is surrounded by medium housing development, a lot of which is student accommodation provided by Macquarie University.

A small horse riding activity had been occurring on the site for many years but it was under a management plan prepared by Council in co-operation with the small riding club. This plan aimed to minimise the impact of the horse riding on the endangered shale forest and nearby small watercourse. It was anticipated that horse-riding activity in Marsfield would cease as urban development intensified in the area. No horses were permitted to stay on the site under the zoning in the Ryde LEP.

Riding for the Disabled had commenced activities in a separate location in 1983 in the grounds of the Royal Rehabilitation Centre at Putney. When the Rehabilitation Centre was proposed for redevelopment around 2006 no space could be found on the site for this important service for people with a disability. The Putney site has since been fully developed for high-rise housing and a new rehabilitation centre.

An alternative location was proposed by government for the Riding for the Disabled but an area in the Ryde area was preferred by the organisation. The Riding for Disabled and small Ryde Horse Club entered into a memorandum of understanding to continue the riding activity for people with a disability on the Marsfield Park.

However, Riding for the Disabled was planning for a larger complex which involved an arena and the keeping of horses on site. Council, as Trustee Manager had concerns with the environmental impact of the larger facility on the protected shale forest and small watercourse and did not support the larger facility on Marsfield Park. Unlike the situation outlined above at Boronia Park where the local Council as Trust Manager had total management responsibility, the State government intervened at Marsfield Park.

In 2009, the then Planning Minister introduced a specific amendment to the *SEPP (Infrastructure) 2007* to permit the establishment of a Riding for the Disabled Centre. This made such a Centre complying development under the *SEPP (Infrastructure) 2007* and removed planning control from the local Council. No environmental assessment of impact of the centre on the nearby endangered forest and watercourse was required and no community consultation occurred. Dimensions of buildings and required setbacks were specified in the SEPP. Up to ten horses could be kept on site. It is unknown what lease arrangements are in place in terms of use and access to the site.

The protection of endangered ecological communities and natural bushland generally will not occur if the environmental planning and assessment processes are compromised by ad hoc

political intervention. For Crown land, as publically owned land this is especially important. The community generally supports the provision of services such as Riding for the Disabled on public land but such facilities must be well located and still require scrutiny under environmental planning controls. The Private Certifier had limited powers for the development.

Environmental assessment of the development and continuing land-use is especially important where the Crown land contains natural bushland of such rarity and sensitivity as occurs at Marsfield Park.

RECOMMENDATION 18: That “spot zonings” via planning instruments such as the SEPP (Infrastructure) 2007 cease and that threatened species and vegetation communities on Crown land receive proper protection under environmental planning controls.

C3. BETTS PARK, HUNTLEYS POINT ROAD, GLADESVILLE

Betts Park was devolved to the care and control of Hunters Hill Council in 1909. No Reserve trust has been established. It is a foreshore reserve, approximately 1.3 hectares in size with 1 hectare of that being bushland.

The area as a whole affords a significant, predominantly natural corridor along the Parramatta River, providing links to Bedlam Bay Regional Park to the west and Riverglade Reserve to the north. Volunteers have been working in Betts Park to control weeds and restore natural bushland for over ten years. About two years ago trees were poisoned along the foreshore reserve, presumably to increase water views from adjoining houses, even though the houses are much higher up slope of the reserve.

Council reacted quickly and erected signs stating the trees had been illegally poisoned. These signs were removed and new signs erected. Illegal poisoning and clearing of native vegetation on Crown land especially along foreshore reserve areas ultimately affects the public amenity of Sydney Harbour and its biodiversity and water quality.

Reduced water quality and biodiversity is not in the public interest and the State government needs to provide greater support to Councils managing Crown land along the Harbour foreshore.

RECOMMENDATION 19: That the State government provides immediate practical support to Councils and Trust managers that have care and control of Crown land affected by illegal activities such as tree poisoning and dumping. This support should include signage which clearly states that the land is Crown land and that poisoning, dumping etc is illegal. Access to monitoring equipment may also be necessary. Such support should be funded from the Public Reserve Management Fund.

Point (d) of the Terms of Reference is addressed below.

The history of dispossession of the original owners of Australia can be confronting and disturbing for many Australians. The effects of this dispossession are evident in some Aboriginal communities today with high incidences of drug and alcohol related problems and youth suicides. Recognition of Aboriginal people as traditional owners and custodians facilitates community cohesion and helps restore and maintain links with cultural practices and knowledge. In socially cohesive communities there is a reduced risk of substance abuse and emotional difficulties among children.

The Native Title claims process has been slow. There is a need for increased resourcing to increase processing times of claims. Any decision-making by government regards Crown land management should not compromise future claim rights of Aboriginal people.

RECOMMENDATION 20: That the State government recognises the rights of Aboriginal people under the Native Title (NSW) Act 1994 and the importance of a speedy and transparent process to consider Aboriginal land claims. Traditional land-use practices should be considered as part of Crown land management approaches and in conjunction with ecological monitoring. There should be increased involvement of Aboriginal people in the management of Crown land which is considered to have high Aboriginal cultural heritage or social history values.

CONCLUSION

Our primary recommendation is that any changes to the legislation in respect of Crown lands embrace the principles of ecological sustainability, transparency in decision making, genuine community consultation and recognises the economic and environmental differences between urban and rural areas of NSW. In our view the current White Paper does not adequately address the importance of these principles in Crown land management and is not an appropriate basis from which to develop new legislation.

Submissions to the White Paper identified a strong interest that Crown land remain as publicly owned land with serious concerns about alienation for commercial and other reasons that result in adverse environmental impacts and degradation of its natural heritage values. Further genuine community consultation is necessary by government.

In addition to this primary recommendation we have made 20 other recommendations on specific matters where we see that improvements to the management of Crown lands are necessary. This is based on our extensive direct experience with how the Crown lands, local government and planning acts interact in practical on the ground management of urban Crown land.

We urge that the Inquiry adopt all of our recommendations

Yours sincerely,

Cathy Merchant
RHHFFPS Committee Member