

INQUIRY INTO CROWN LAND IN NEW SOUTH WALES

Organisation: Greenwich Community Association

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Greenwich Community Association Inc

SUBMISSION TO LEGISLATIVE COUNCIL

INQUIRY INTO CROWN LAND

General Purpose Standing Committee No 6

24 July 2016

Standing of Greenwich Community Association Inc

The Greenwich Community Association (GCA) is an incorporated association Y2838547. It has offered community members a forum to express their views since 1944 and has, as required, articulated community concerns to relevant authorities.

A resolution was passed at a committee meeting of the GCA on 4 July 2016 authorising the GCA to make a submission to this inquiry.

The GCA thanks the Legislative Council for this opportunity to make a submission. A representative of the GCA is able to appear before hearings of the Inquiry if required to do so.

Meredith Southwood
President
Greenwich Community Association Inc

24 July 2016

Overview

Crown land is a community asset that should be protected.

The Crowns Land Act (the Act) clearly articulates the principles to be applied in respect of crown land administration and management by trustees. The Act is unambiguous in respect of use and access, application of funds derived from use of the land and commercial use of the land.

It is understood that Crown Lands Division of the Department of Primary Industry (DPI) has administrative oversight of compliance with the provisions of the Act.

If a trustee elects to ignore the statutory obligations applicable to it, the community has a right to expect that the DPI will take steps to ensure compliance.

It appears that there are instances in which the DPI may not be doing this and the value to the community of crown land may be eroded as a consequence.

In the event that the DPI is unable to ensure strict compliance with the objectives of the Act, the GCA seeks legislative amendments to ensure that all parcels of crown land and conditions attaching thereto are clearly identifiable on a public register, that trustees are adequately monitored for compliance with their statutory responsibilities and that commercial use of the land is consistent with the principles of the Act.

Crown Land holdings of Lane Cove Council

The suburb of Greenwich is located in the Lane Cove Council (LCC) LGA.

The area is characterised by harbour foreshore and extensive bushland areas.

LCC has advised that there is approx 27 ha of Crown Land within LCC LGA, noting that there is approx 150ha of total public open and private open space in the LGA. In this respect, it is noted that DPI is not able to supply a list of crown land holdings in the LCC LGA for verification.

Lane Cove Council Management of Crown Land

Despite the statutory restrictions and obligations pertaining to Crown Land under its control, aspects of LCC's management of crown land suggest that it regards itself as owner of the land that it controls, rather than as trustee under the Act.

This is evidenced by:-

1. failure to separately identify in its open space/community land strategies those parcels of land that are subject to crown land conditions
2. failure to identify, during consultation processes, the parcels of land that are subject to crown land conditions and to identify what those conditions are
3. failure to consult around commercial use of crown land
4. failure to separately identify in accounts the income derived from crown land.

It seems that LCC is able to manage crown land as it has because there is minimal oversight of its adherence to its obligations by the DPI.

The Trust Handbook that has been uploaded to the website of the DPI

http://www.crownland.nsw.gov.au/data/assets/pdf_file/0007/652093/Reserve_Trust_Handbook.pdf

is, to all intents and purposes, a statement of objectives only that has limited impact in terms of the DPI's enforcement of crown land legislation and in terms of the conduct of LCC as trustee.

The inquiry has or will receive a separate submission in respect of the LCC's management as trustee of the Greenwich Baths which provides examples of the possible failure of the DPI to ensure compliance by LCC with its obligations under the terms of the Act and under the relevant trust instruments governing the Baths.

This submission addresses the specific terms of reference overleaf.

Terms of reference

(a) the extent of Crown land and the benefits of active use and management of that land to New South Wales

It is assumed that the area of crown land administered by LCC is as advised by LCC. Much of the land under this tenure is foreshore land or recreational space that greatly enhances the quality of life in an area close to the CBD. The areas held as crown land enhance both physical and psychological wellbeing of users.

The value to the community of access to crown land along foreshore areas in Lane Cove cannot be over-estimated, given the encroachment of development into public spaces in other parts of Sydney Harbour.

The Foreword on page 1 of the Trust Handbook makes the statement that “we are fortunate in New South Wales to have around 35,000 Crown reserves that provide a wide range of experiences and activities as well as many other significant environmental and cultural benefits, for the entire community”.

Onerous charges, rigorous conditions or limitations around access and/or commercial use arrangements risk effective loss to the public of the benefits of crown land. It is understood that trustees, in most cases, councils, need to fund the cost of ongoing maintenance of reserves under their control. In the absence of significant public funding for this purpose, it may be necessary for trustees to secure a financial return from crown land to fulfil their obligations as trustees. However, the principles of crown land management are clear in this regard:-

11 Principles of Crown land management

For the purposes of this Act, the principles of Crown land management are:

- (a) that environmental protection principles be observed in relation to the management and administration of Crown land,*
- (b) that the natural resources of Crown land (including water, soil, flora, fauna and scenic quality) be conserved wherever possible,*
- (c) that public use and enjoyment of appropriate Crown land be encouraged,*
- (d) that, where appropriate, multiple use of Crown land be encouraged,*
- (e) that, where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained in perpetuity, and*
- (f) that Crown land be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the State consistent with the above principles.*

GCA Submission

1. The Department of Primary Industries must review its protocols to ensure that acts of trustees are, at all times, assessed against the principles of management outlined in the Act.
2. Approval by the DPI of all leases, licences, development applications and other agreements (third party arrangements) between trustees and third parties should be detailed on a public register and include a statement that the DPI has assessed and approved the third party arrangement in terms of the principles of Section 11.

(b) the adequacy of community input and consultation regarding the commercial use and disposal of Crown land

The comments of the GCA in respect of this term of reference are limited to use, not disposal, of crown land.

It is assumed that the term "commercial use" relates to use by a trustee or a third party in agreement with a trustee to operate a commercial venture/ profit making enterprise on crown land.

In this respect, the GCA is not aware of any circumstance in which LCC, as trustee, has formally sought community input and consultation regarding the commercial use of crown land in the Greenwich area.

Commercial use by trustee

In the event that a trustee elects to manage crown land in its own right and to operate on that land, in its own right, a commercial venture such a snack bar, any charge to enjoy use of the crown land should, consistent with principals with Section 11 (c) and (d), be kept to a minimum required to allow the trustee to cover its costs associated with the management of the land.

Any profit derived from commercial activity should be appropriately disclosed in terms of the Act and disbursed in accordance with the Act.

Crown land entrusted to a trustee should not be a revenue source for a trustee with no obligation to return funds back to the crown asset.

Commercial use by third parties

It most cases it is understood that trustees of crown land may need to "outsource" some of their obligations in respect of crown land for one or more of the following reasons:-

1. lack of manpower resources to carry out ongoing management obligations
2. lack of funding to carry out obligations
3. that the maximisation of the benefits of the features of the reserve may be better achieved through management by a third party
4. that the land provides a trustee with the opportunity to offer facilities/land to community/special interest groups.

Ideally, the rules and protocols surrounding the commercial use of crown land should be covered in negotiated plans of management of assets as contemplated in Part 5 Division 6 of the Act. However, in the case of LCC, very few such plans exist. In the absence of such plans and in the absence of any amending legislation to cover consultation around commercial use, it is assumed that Chapter 14 of the Trust Handbook and the terms of the Act provide the benchmark against which commercial use must be assessed.

It is understood that it will probably be necessary to offer a commercial incentive for a third party to take on management of crown land. It is also understood that the details of the commercial arrangements between the trustee and the third party should, rightly, be treated as confidential.

Commercial arrangements will generally require consent of DPI and, as suggested in our first submission, the community has a right to expect that DPI should ensure that such commercial arrangements will not erode the objectives of Section 11, particularly sub-sections (c) (d) and (f).

In some cases, the proposed commercial use will require assessment of a development application under the Environmental Planning and Assessment Act during which community members will have the opportunity to express their views on the merits of the development application. However, the authority assessing the development application has no power to concern itself with matters that fall under the Crown Lands Act.

It is hoped that the DPI, when alerted to community concerns around a development application, would be pro-active in terms of assessing a proposal against Section 11. However, in the case of the Greenwich Baths development application for a liquor licence referred to earlier in this submission, DPI showed no regard for concerns as to lease conditions expressed by the community in terms of Section 11 of the Act nor did it make a submission to the development application assessing authority in relation the requirements of Section 11.

GCA Submission

1. There should be community input and consultation regarding the commercial use and disposal of crown land.
2. The DPI has not demonstrated that it has the resources/capacity to ensure that proposals for commercial use meet the principles of Section 11.
3. A legislative amendment in isolation to require community input and consultation in respect of proposed commercial use may be of limited effect for the following reasons:-
 - (a) trustees may elect to proceed with negotiation of agreements without input and consultation despite such legislation, or
 - (b) in respect of those transactions that will require DPI approval, it is likely that prevailing capacity limitations within DPI will impede the capacity of the DPI to ensure that such requirements are satisfied.
4. The Act to be amended to require that individual Plans of Management be prepared for each parcel of crown land in NSW and to be adopted by the Minister. The Act may make provision for a Plan of Management to cover more than one parcel of crown land with Ministerial consent.
5. The Act to require that such Plans of Management include mandatory community input and consultation in relation to proposed commercial use of crown land.
6. The Act to require a trustee to give public notice of proposed commercial use of crown land in a manner similar to notification of development applications.
7. The Act to provide that agreements/arrangements/ leases relating to commercial use will be of no effect unless the trustee provides to DPI details of appropriate public notification, evidence of due consideration of objections and other input of the community and a statement that the transaction satisfies the requirements of Section 11 of the Act.
8. All such agreements/ arrangements/ leases to be noted on a public register administered by DPI.

(c) The most appropriate and effective measures for protecting Crown land so that it is preserved and enhanced for future generations

The GCA affirms its previous statements as to the value of crown land to the community and the environment. Unfortunately, like many government authorities, the DPI does not appear to have the capacity to ensure adequate oversight of the management of crown land.

Those with responsibility, as trustees, to manage crown land need to be resourced to perform their duties adequately and this may involve devolving management to a third party. The challenge is to provide a balance between providing commercial incentives to encourage a trustee or third party to manage the crown land whilst, at the same time, ensuring that the community is able to enjoy use of the land consistent with the terms of its relevant grant.

Trustees may choose to treat crown land as, to all intents and purpose, their own land – it makes life less complicated. However, crown land is a community asset and the community should be offered and take up the opportunity to be more involved in the management of these valuable assets to ensure that they remain in public ownership and that management is consistent with the principles of Section 11.

GCA Submission

1. DPI should place on its website an easily accessed register of all crown land in NSW.
The register should include the following:-
 - (a) Address of the land
 - (b) Name by which land is commonly known eg Greenwich Baths
 - (c) Link to documentation that details the conditions attached to the crown grant/reserve/copy of such document
 - (d) Name of the trustee
 - (e) Details of commercial arrangements/lease etc (as outlined in the previous submission) pertaining to the land.
2. Trustee of crown land to be audited annually for compliance with duties to list crown land separately from its own assets and to provide separate financial records relating to the crown land.
3. The detail in (2) above to be available on an easily accessed register administered by the trustee.
4. Mandatory Plans of Management as detailed in items 4 -10 of our previous submission.

(d) The extent of Aboriginal Land Claims over Crown land and opportunities to increase Aboriginal involvement in the management of Crown land

The GCA acknowledges the importance of this element of the Inquiry but lacks the information and resources to make a submission in respect of this term of reference.