

Submission  
No 294

## INQUIRY INTO CROWN LAND IN NEW SOUTH WALES

**Organisation:** Residents of Greenwich community

**Date received:** 25 July 2016

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# Submission to the Parliamentary Inquiry into Crown Land

## General Purpose Standing Committee No 6

### Prologue

In making this submission we refer to the speech by the Hon. Justice Brian J Preston SC “Protected Areas in the Courts: An Overview” at IUCN World Parks Congress 13 November 2014, Sydney. Page 29: *Ownership of these common natural resources is vested in the state as trustee of a public trust for the benefit of the people. The state, as trustee, is under a fiduciary duty to deal with the trust property, being the communal natural resources, in a matter that is in the interests of the general public, who are the beneficiaries of the trust.*

### Executive Summary

This submission addresses the specific terms of reference of the Inquiry. It is made by members of the Greenwich community who have significant shared concerns about the management of Greenwich Baths Crown Reserve Trust by both Crown Lands Division of the Department of Primary Industries and Lane Cove Council as Trust Manager.

These concerns relate to:

- Failure on the part of Crown Lands Division to enact its responsibilities under the Crown Lands Act 1989, including ensuring this Act is observed and the public interest protected
- Identified significant failures by both Crown Lands Division and the Reserve Trust Manager (Lane Cove Council) in regards to Greenwich Baths Reserve Trust
- Commercial leasing agreements that limit public access of Crown Reserve land
- Absence of community consultation and representation in its management
- Privatisation by stealth
- Failure of local councils as reserve trust managers to have in place reserve trust management plans developed in consultation with the community and failure to maintain Reserve Trust Accounts and disclose these to the community

### Background

As far back as 1828 the importance of Crown Land to the community has been recognised. Darling was specifically instructed by Lord Bathurst: “We do strictly enjoin and require you that you do not, on any account or on any pretence whatsoever, grant, convey or demise to any person or persons any of the Lands, so specified as fit to be reserved as aforesaid, nor permit or suffer any such Lands to be occupied by any private person for any private purposes.” (ibid, at p117 at about .6-.7). Lands were also to be reserved for various public purposes including “.....places fit to be set apart for the recreation....and for promoting the health of the community” (Historical Records of Australia, Series 1 Governors’ Despatches To & From England Volume X11 June 1825 – December, 1826 at 113, 116-117 Mitchell Library). Crown land should therefore not be sold under any circumstances.

The NSW Crown Lands White Paper seeks to commercialise our Crown Lands without any attempt to quantify the enormous long term cost to our society of denying future generations access to this public community asset. This has occurred because

of the refusal of Crown Lands, Department of Primary Industries, to respect and apply the Crown Lands Act 1989. It has been reported that the CEO of this department, on releasing the Paddington Trust Report, acknowledged that there has been systemic mismanagement of Crown Land by his department. Yet this systemic mismanagement has continued.

In the 1959 Rutledge case, Justice Windeyer's seminal judgment examined Lord Bathurst's instructions and it upheld that where Crown land is held on trust for public recreation requires the land to remain open to the public generally as of right and not be a source of private profit. Rutledge has been applied without demur since 1959, and most recently affirmed in the cases of Goomallee and King Edward Park. It is simple and it is commonsense and acts as the High Court's way of stopping privatisation by stealth.

*The clearly stated principle is that where profit is derived from the use of land reserved for a specified public purpose that use will only be lawful so long as the profits are devoted to the public purpose: Minister Administering the Crown Lands Act v New South Wales Aboriginal Land Council (2012) NSWCA 358 (30).*

#### **Current Local Situation: Greenwich Baths Crown Reserve Trust**

Greenwich Baths is a net enclosed harbour side pool located on Crown Reserves whose designation appears in the Government Gazette on 26 October 1928. The land is reserved for public baths and an adjoining reserve as public recreation. Lane Cove Council (LCC) is the lessee and Trust Manager.

The area of the Greenwich Baths operates under a commercial sublease between LCC and a private operator. The sub lessee also operates Lane Cove Aquatic Centre which is also located on Crown Reserve. Greenwich Baths is, to the best of our knowledge, now the only harbour side pool situated on Crown Land in Sydney that is currently leased to a private operator. Its users extend well beyond the local community.

- **Access Issues**

The Greenwich Baths sublease essentially denies the community their right of access to this Crown Land as it specifies that these baths be open only for part of the year. Effectively they are open during daylight hours and for the summer season. They are closed from April to September, almost half the year. This denial of access is supported by the Department of Primary Industries Crown Lands Division as signatories to the sub lease.

Further, during the months these baths are closed to the community, the sub lessee is able to reside in the waterfront caretaker's residence that has unhindered harbor and city views, not just during the months these baths are operating, paying minimal rent on a 12 month basis.

- **Alcohol and Public Interest Issues**

Both leases covering Greenwich Baths Crown Reserve Trust; LCC's Crown lease and the sub lease; have until recently specifically prohibited the sale and service of alcohol.

However in 2014, LCC varied its sub lease agreement (without any community consultation) to allow for the consumption of alcohol and alcoholic beverages at Greenwich Baths.

This variation was then endorsed by Crown Lands Division on May 1 2015, some considerable time later despite the significant issues surrounding the consumption of alcohol at these Baths.

Allowing the consumption of alcohol on this site effectively demonstrates the failure of Crown Lands Division to ensure that the relevant legislation is observed and the public interest protected.

The next issue the community has faced, was a Development Application proposed by the sub lessee and supported by LCC to permit the service of alcohol at Greenwich Baths. Due to strong community opposition this was fortunately overturned by an Independent Hearing and Assessment Panel, with the reason given that it was not in the public interest. However the consumption of alcohol remains permissible according to the existing lease.

- **Defacto Privatisation Issues**

Crown Lands Division, in ignoring its responsibilities, is in effect supporting an incremental process of privatisation of these Baths.

Evidence of further attempts to privatise this public facility can be found on the sub lessee's website which indicates it is possible to hire portions of this Crown Land site for exclusive use on the payment of a fee. <http://greenwichbaths.com.au/event-bookings/>

- **Consultation and Management Issues**

The community is alarmed by the lack of consultation and transparency with regard to the granting of commercial leases and the lack of accountability over the financial management of these public facilities.

LCC does not have a Plan of Management for the Greenwich Baths Crown Reserve Trust nor are there specified limits to capacity in Council's lease to the sub lessee.

- **Absence of LCC Reserve Trust Account Issues**

LCC in its 2010 Annual Financial Statement indicated it had a separate trust account (obtained through GIPA), with the balance reported was nil, despite both Greenwich Baths and Lane Cove Aquatic Centre both charging entrance fees and being leased under contract to a private operator, who is also running a kiosk and charging for children's programs at both of these locations.

A recent enquiry from a member of the Greenwich community to the Executive Manager Human Services at LCC on February 25 2016 seeking a copy of the annual accounts for the *Greenwich Baths Reserve Trust* resulted in a response on February 29 2016 stating "*The accounts are part of Council's overall accounts – there are no separate Trust accounts for any of the Crown Land in our care and control*".

It now seems that the LCC Crown Reserve Trust account no longer exists as part of Council's annual financial statements.

- **Crown Lands Division Role Issues**

When previously alerted to the concern of residents over the lack of transparency in the management of the Greenwich Baths Crown Reserve Trust by LCC, Crown Lands Division's response was merely that this was a matter for LCC.

In effect, Crown Lands Division has done and is doing nothing in regards to requiring LCC to act according to the requirements of trust manager for this Crown Reserve. It has just turned a blind eye and wiped its hands.

- **Broader Crown Lands Issues**

The concerns with regards to Crown Lands issues and Greenwich Bath Crown Reserve Trust are not unique to the residents of the Municipality of Lane Cove as we know of similar issues across the state in both city and rural areas.

The failure of government in its duty of care to execute this common law has resulted in the community having to increasingly rely on the role of the judiciary to enforce the Crown Lands legislation.

There have been numerous examples where it has been shown, often with the involvement of the Courts, that local councils are not appropriate managers for these community assets. It is frequently the case that a local council is both Manager and cojoined applicant for a development proposal involving a sub lessee with whom council have a commercial arrangement. Such a scenario is significantly conflicted which, when drawn to the attention of Crown Lands, has not been acted upon.

## **Conclusion**

1. Greenwich Baths Crown Reserve is an important asset benefiting the community. Crown Lands Division must take responsibility for this important community asset so as to ensure its active use and effective management. This includes it being open to the community and operating to their benefit.

Our Crown Land Reserves are a precious and priceless asset that must be preserved for present and future generations. Previous governments have had the foresight to allocate these reserves for both their natural and social benefit to the community. We do not need new laws for the conservation and management of Crown Lands. We need the current law to be applied without fear or favour and we need our right of access to our Crown Land protected.

2. Community consultation in regards to the commercial use of Greenwich Baths Crown Reserve has been inadequate and largely overlooked by both LCC and Crown Lands Division. This must be rectified

LCC should not be permitted to act as both Reserve Trust Manager and also be a conjoined applicant for development proposals involving a sub lessee with whom they have a commercial arrangement.

3. The most appropriate and effective measures for protecting Crown land so that it is preserved and enhanced for future generations is to ensure that the existing Crown Lands Act 1989 is implemented to its full extent and that Crown Lands Division performs its full responsibilities under this Act.

The long term conservation of our Crown Land Reserves is a duty of government. These areas are held in trust for the benefit of the community and cannot be disposed of or privatised for convenience or financial profit.

We thank the Legislative Council for the opportunity to make a submission to the Inquiry on Crown Lands issues and would welcome the opportunity to appear before a hearing of the Inquiry if required to do so.

For some time members of our community have been trying to get LCC to meet its statutory obligations as Reserve Trust manager. Please find attached to this submission a copy of a published article in our local newspaper last year in this regard.

This submission is supported by and lodged by the following residents of the Greenwich Community:

- Liz Gill
- Ian Meller
- Lisa Perry
- Gregory Perry
- Emily Perry
- Sue Buchanan
- Michael Buchanan
- Malcolm Stuart
- Jan Stuart
- Tricia John
- Philip John
- M Richardson
- D Richardson