Submission No 260

INQUIRY INTO CROWN LAND IN NEW SOUTH WALES

Organisation: Friends of Trumper Park

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FRIENDS OF TRUMPER PARK SUBMISSION TO NSW PARLIAMENTARY INQUIRY INTO CROWN LAND

Friends of Trumper Park (FOTP) have addressed the Inquiry Terms of Reference individually below:

(a) The extent of Crown land and the benefits of active use and management of that land to NSW

Friends of Trumper Park (formerly Friends of Quarry Street) wish to address our comments in relation to urban Crown Land. Key issues are complex, they relate to past, current and future dealings involving multiple government departments and agencies – ASIC, OLGR, ILGA, Trade and Investment Crown Lands Division.

We are concerned about Crown Land and public land dedicated for public recreation across NSW, of which the Paddington Bowling Club (now in liquidation) is but one parcel. Much of this land is located in highly populated areas. It is of high value to developers who often acquire the land for below market rates having finagled a change of purpose without community consultation. The 2 lots of Crown Land leased to CSKS Holdings, previously known as the Paddington Bowling Club – Lots 3 & 5/DP 1156846 are an example of this scandalous modus operandi.

The backstory to how CSKS Holdings came to be in possession of a 50 year lease is pivotal to demonstrate the misconduct leading to mismanagement of that land. The entire story has been written up by investigative journalist Wendy Bacon on her blog, we direct you to this entry outlining the history of how a private development company secured a 50 year lease over this prime Crown Land site:
http://www.wendybacon.com/2015/secret-transcript-disappeared-in-paddington-crown-land-scandal/

For your convenience a summary follows:

- *The original Paddington Bowling Club (PBC) fell on difficult times. Though their accounts remained in the black.*

- *A 'friend of a friend' introduced them to*
  who recently fell on his sword before being banned permanently by ASIC and exposed by Senator John Williams in his Parliamentary address:

http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;query=Id%3A"chamber%2Fhansards%2F4d6b9448-ce42-4699-bfce-818ed9a1d42e%2F0050"

- *also featured in a speech by Senator Lee Rhiannon: http://lee-rhiannon.greensmps.org.au/content/speeches-parliament/adjournment-speech-paddington-bowling-club*

- *Wily introduced developer to PBC who entered into a Deed Of Company Arrangement (DOCA), the linchpin of the deal being that the original PBC were to secure the sale of the PBC land to the club. would then extinguish remaining debts. The PBC board was stacked with acolytes and managed at exorbitant rates by family members:* http://www.smh.com.au/news/national/club-boss-on-480000-inquiry-told/2007/09/05/1188783320045.html

- *The sale of the land was pursued by an ex Lands staffer – , on behalf of PBC for 2 years.*

- *Crown Lands Div. stood fast, records obtained under GIPA show they did not believe the development company intended to maintain the land for the benefit of a Public Purpose – Public Recreation.*

- *2 weeks after Leo Macleay's company Enhance Corp. lobbied on behalf of ' company, the land sale was secured.*

- *Woollahra Municipal Council's (WMC)*
  alerted the council General Manager to the sale of land. There had been no formal correspondence between Lands and WMC regarding the intended sale. As justification for the hushed sale, WMC staff were told by Crown Lands afterwards that any discussion would not change their intention to sell the site, which included a part of the bitumen access road into Trumper Park. Cr. Andrew Petrie fought the land sale over a protracted period from 2006 and successfully stopped the sale.

- *A 50 year lease was awarded to the development co. in lieu of the land sale. Lands staffers told Melinda Hayton and I at our meeting that the "50 year lease is as good as a perpetual lease". When we asked whether due diligence was undertaken we were told "when your boss tells you to do something, you just do it". (Appendix 1). WMC were notified on Christmas Eve of the lease arrangement.*

- *Ex Lands staffer sat on the 'new' PBC board until just prior to the new PBC going into voluntary receivership June 2015. A situation triggered by a 2nd OLGR inquiry (1st in 2007) leading to infringements and prosecutions including loss of liquor license - ILGA decision accessed here:*

https://www.liquorandgaming.justice.nsw.gov.au/Documents/ilga/decisions-of-interest/paddington-bowling-club-final-decision-300316.pdf

- *It should not be necessary to revisit what has already been thoroughly investigated by Trade and Investment under the instructions of Minister Andrew Stoner and his Departmental Secretary Mark Paterson AO. The 320 page report resulting from the Holding Redlich desktop review can be accessed via Opengov – https://www.opengov.nsw.gov.au/viewer/81b25fee74db45ee92b75d130638203b.pdf*

  We also attach the summary of the original 2007 OLGR Inquiry. At one point in the transcript the legal representative for suggests the proceedings should go into closed session when Minister Tony Kelly is mentioned. This 30min portion of the transcript has been 'lost' and despite repeated attempts to locate that part of the transcript we were advised by the GIPA officer that it ***would not*** *be found. There is a dearth of damning evidence relating to the PBC case resulting from extensive government investigations incurring millions of dollars in costs and yet CSKS Holdings retain the 50 year lease obtained under these very dubious circumstances – we would like to know why? CSKS lease attached separately (Appendix 2).*

Despite years of investigations (2 OLGR inquiries, loss of liquor license – OLGR/ILGA, successful noise and disturbance prosecutions by Rose Bay Police, Trade and Investment review of lease transfer and subsequent referral to ICAC by Secretary of T and I, the current Div. Crown Lands have not cancelled the lease held by CSKS holdings as announced by T and I here:
http://www.crownland.nsw.gov.au/__data/assets/pdf_file/0006/653118/20150918-paddington-bowling-club.pdf

This is surely mismanagement of a monumental scale. Is this lease not enforceable by law? Is the Crown Lands Div. capable of withdrawing a lease after clauses of that lease have been breached multiple times? Of course CSKS Holdings maintain they are not Paddington Bowling Club despite it being common knowledge that are ostensibly one and the same entity. We assert a landlord is responsible for his tenants actions and it remains the landlord's responsibility to ensure the property is being maintained so as not to devalue that property.

The loss of Liquor license in itself devalues the lease. We are told by OLGR that future applications for a liquor license on the site are unlikely to be granted given its close proximity to residents and the history of noise complaints and prosecutions.

Friends of Trumper Park (formerly Friends of Quarry Street) recommendations:

1.Future use of Crown Land and public land must be discussed openly and transparently to allow genuine community involvement in decision making. Additionally, direct negotiations should be avoided at all costs, an ICAC recommendation in place yet ignored at the time of the lease transfer.

2.Institute a clerical crosscheck for information sent/received on or before public holidays, change of government etc. A number of key communications with Div. Crown Lands have suspiciously occurred on Christmas Eve, New Year's Eve and in the week of change of Government/Minister.

3.The Minister responsible for administering the Crown Lands Act has a duty to achieve the objects of the Act with due regard to the Principles of the Act. Clearly no one is enforcing the Minister's responsibilities. The responsibility should not be considered an act of benevolence. We ask that a Crown Lands Ombudsmen be available to the public where breaches are suspected and action taken to rectify.

4.Where commercial use is deemed by the community to be of benefit to the Public Purpose operators must pay market rent, money, which is then reinvested in the Crown Land contributing to upkeep. CSKS Holdings last year paid $52,000 pa. to lease the 10,000sq metres from T and I, and received a 50% discount for being a 'sporting' club. We are advised the 50% rebate has been paid back to Trade and Investment because the 2015/2016 OLGR inquiry revealed the PBC was not operating as a Registered Club.

5.Community Groups requesting information from the Minister and public servants, should be responded to promptly. During investigations into the lease transfer it was extremely difficult for us to obtain information. Following the Independent Inquiry overseen by Mark Paterson AO, we were dealt with in a timely manner. More than 12 requests to meet with the Lands Minister have been sent over the past 4 years, yet, to date we have had no interview with the Minister and 1 reply by his delegate.

The problem with disposal and sell off of Crown and public land is that, unlike our power infrastructure sell off where the power infrastructure continues to exist and provide power, the transfer of Crown Land to developers results in public parks disappearing forever at the expense of private profit for individuals. This public space consumption comes at a time when increasing population density intensifies the need for more public open space not less. Countless research studies have supported the need for more, not less open space to improve health in dense urban populations. The James Hutton Institute in Scotland have extensively investigated the relationship between open/green space and health in urban populations. Conclusion – open green space is essential to the

physical and mental health of those living in high density populations. http://www.hutton.ac.uk/research/projects/green-health

6.Crown Lands staff and their Minister appear to regard Crown Land as a property portfolio. "Government Property NSW" is perceived by the public as a Real Estate agency with a portfolio of $300 billion, $1billion of public property was sold in the two years since it was formed. They appear to peddle community land as if it is their own property empire. We would like to see a change of culture.

7.Crown Land staff claim that despite land being reserved for the Public Purpose, Section 34a of the Crown Lands Act allows the Minister to use his discretion and change that use without consultation and without the intention being tabled in both houses of Parliament – a proviso previously in force to protect the land unless believed to be in the best interests of the land. S34A makes a mockery of the Crown Lands Act. It has handed discretion to a single Minister without consultation, placing the Crown Land Estate in peril. Section 34A must be removed from the Crown Lands Act. A parcel of *Crown Land with a "dedicated purpose" must be observed unless an alternative is agreed upon by both houses of Parliament.*

8.When we asked Lands staffers in our meeting (Appendix 1) why S34A was used to transfer the land we were told it directed money to the Lands (T and I) coffers rather than general revenue. If this is true, the ramifications for such incentives need to be reconsidered by this Committee.

9.The High Court ruled in the 'Rutledge' case that Crown Land dedicated for 'public recreation' must not be used for private profit. We have evidence this ruling has been applied in a discretionary manner. Again, we urge the Inquiry to consider punitive measures for public servants riding roughshod over the Crown Lands Act.

10.Crown Lands website indicates 6 media releases in 2015 and 24 in 2014. Yet they have dealt with 100s of parcels of land effecting local communities. Transparency and communication prior to decisions being made is essential.

11.Land used for 'public recreation' such as tennis courts or registered clubs that are supposed to provide not-for-profit community services seem to change hands regularly and with each change a little 'goodwill' is paid. Its understandable that each subsequent lessee wants to 'get what they paid for' but this creep becomes an ever escalating expectation. Gradually these public recreation facilities are leased or controlled by private individuals for profit. 'Rutledge' should be enforced in line with the tenets of the CLA.

12.Where the 'use' does not comply. A time limit to use the land for the dedicated purpose should be instituted. Currently we have a situation where Crown Land Division is waiting indefinitely for the lessee to comply with the Dedicated Purpose. The lessee

has returned with the plans for a childcare centre again and again while the bowling greens are no longer recognizable as such. Clearly the land could no longer be used for a bowling club – the use which appears on the CSKS Holdings lease. How long must the community witness the weeds spreading seed throughout the park before the land is returned to Trumper Park?

13.The lessee should not be allowed to sub lease the land in the first instance. In our situation, the land was leased to CSKS Holdings for Public Recreation yet CSKS Holdings have never directly provided that service. The lessee in the PBC case is no more than a real estate dealer making a lot of money from sub leasing (PBC paid CSKS Holdings $100,000 to $500,000 pa rental, escalating over the term of their lease) while never directly providing a service.

The NSW Government's "Principles of Crown Land Management" are:

- Environmental protection principles be observed
- Natural resources be conserved wherever possible
- Public land and enjoyment, and multiple use be encouraged
- The land and its resources be sustained in perpetuity, and
- It be occupied, sold or otherwise dealt with consistent with these principles

14.Local Councils are a source of corruption in government. It would be fair to assert that they are the most corrupt level of government given their proximity to developers. They can not and should not be given control of our precious Crown Estate. The Crown Estate needs to be protected for our children and their children. We urge the Parliamentary Inquiry to do whatever needs to be done to safeguard the Crown Estate for future generations as our predecessors have done for us.

Local Councils make decisions with reference to Local zonings, Plans of Management and LEPs only. In our experience, the council felt they had no responsibility to understand or administer the CLA despite the fact that s.98 of the Crown Lands Act 1989 specifies that "this Act takes priority over any Local Government rules".

15.Local Council have applied questionable definitions. Woollahra Municipal Council asserted a private 'for profit' child care centre was a "community service" allowing them to recommend 'acceptance' of the DA without question. A DA for a CCC on Crown Land dedicated for "Community and Sporting Club Facilities, Tourist Facilities and Services". A privately run childcare centre is no more a 'Community" resource than a private café. A glossary of terms would clarify what is and what isn't 'community', though the issue appears to be with enforcement across the board rather than nomenclature.

16.Government Departmental staffers need to be 'red flagged' in dealings with their ex colleagues. Making deals with mates in your old workplace compromises even the most robust public servant.

17.Crown Lands Div. (T and I) correspondence should bear the date at the top of the page, as is normal business practice. Locating the date of documents is ridiculously difficult with dates being printed only with the delegate's signature at document end. This information may reduce the risk of documents being pre and postdated.

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

In the past, certainly up to 2011/12 the negotiations regarding The Paddington Bowling Club site lots 3 and 5 were conducted in secret. Full credit must be given to the . A whistle-blower who alerted Council to the intended 'sell off' of the Paddington Bowling Club site, unbelievably he was informed in a casual conversation regarding other issues.

Friends of Trumper Park (formerly Friends of Quarry Street) recommendations:

In more recent times, negotiations have been regarded as commercial-in-confidence, particularly by Council, preventing the public from accessing information. There is no commercial in confidence when the land in question is Crown Land dedicated for Public Purpose. The land belongs to the Public and must be dealt with in a transparent manner.

Crown Land subject to change of use should be negotiated by open tender. ***The ICAC guidelines clearly state:***

> *"Transparency is an important tool in combating corruption and providing public accountability for planning decisions"*

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

Section 34A of the CLA must be removed.

We reiterate, S34A places Crown Land in peril because it allows the Lands Minister to change history without consultation. In fact that is exactly what happened in the case of the Paddington Bowling Club. The Minister was able to change the dedicated purpose ostensibly to benefit a commercial interest. The Minister was even able to add to the lease, part of the access Road into Trumper Park, despite WMC's protests.

> *CROWN LANDS ACT 1989 - SECT 34A*
> *34A Special provisions relating to Minister's powers over Crown reserves*
>
> *(1) Despite any other provision of this Act, the Minister may grant a lease, licence or permit in respect of, or an easement or right-of-way over, a Crown reserve for the purposes of any facility or infrastructure or for any other purpose the Minister thinks fit. Any such lease, licence, permit, easement or right-of-way is referred to in this section as a "relevant interest" .*
>
> *(2) The following provisions apply in relation to the granting of a relevant interest:*
>
> *(a) the Minister is to consult the following persons or bodies before granting the relevant interest:*
>
> *(i) the person or body managing the affairs of the reserve trust (if any) appointed under Part 5 as trustee of the Crown reserve that is the subject of the relevant interest,*
>
> *(ii) if the Crown reserve is being used or occupied by, or is being administered by, a government agency-the Minister to whom that agency is responsible,*
>
> *(b) if the Crown reserve is to be used or occupied under the relevant interest for any purpose other than the declared purpose (as defined in section 112A) of the reserve-the Minister is to specify, by notice published in the Gazette, the purposes for which the Crown reserve is to be used or occupied under the relevant interest,*
>
> *(c) the Minister is not to grant the relevant interest unless the Minister:*
>
> *(i) is satisfied that it is in the public interest to grant the instrument, and*
>
> *(ii) has had due regard to the principles of Crown land management.*

(3) Failure to comply with subsection (2) (a) does not affect the validity of the relevant interest concerned.

(4) The proceeds from a relevant interest are to be applied as directed by the Minister.

The legislation specifies requirements such as those laid out in (2) (a) above and importantly note, "3) Failure to comply with subsection (2) (a) does not affect the validity of the relevant interest concerned".

Crown Lands Division are failing to apply the Crown Lands Act. Making private profit out of Crown land dedicated for a public purpose clearly contravenes the Act does it not?
The guiding principal of the Crown Lands Act is that private profit cannot be derived from Crown Land dedicated for a Public Purpose. A principal, which safeguards 'commercial interests' taking over the public interest. We understand the Government intends to 'value' the Crown Estate using a formula related to development 'opportunity cost'.

However, defining the cost to public health and wellbeing is less easily derived and will probably be equally less impressive in comparison. The health ramifications of open space loss is palpable in the community. How can a derived cost to the healthcare system compete with 'opportunity cost' – a far more tangible figure? The comparison of the Crown Estate's worth on this basis is a farce and provides no real metric for the true value to the community.

We have been referred by Crown Lands staff to Section 34a of the CLA which they interpret as providing carte blanche authority for Crown Land to be used for any purpose. However we note that this Section is qualified by

(c) the Minister is not to grant the relevant interest [under s34A] unless the Minister:
*is satisfied that it is in the **public interest** to grant the instrument, and*
*(ii) has had due regard to the **principles of Crown land management**.*

Friends of Trumper Park (formerly Friends of Quarry Street) recommendations:

1.Reclassification of Crown Land from 'Public recreation' to other uses to allow for development must not occur without full community consultation. A small advertisement in the local paper is insufficient. Adjoining properties and nearby neighbours should be contacted by post. Community meetings must be organised to

allow for discussion. Checks and balances must be implemented to restore confidence in the system.

2.It is of considerable concern to communities across NSW that S34a is used to blatantly walk all over communities and the intended use of their community resources. Section 34A must be removed from the Crown Lands Act.

3.Local Government must not be allowed to change the use of Crown Land in their Plans of Management and their LEPs. They must not be able to override the dedicated use. We were advised this was the case by Crown Lands staffers 3 years ago, see Appendix 1.

4.The errors of the past must be fixed.
It must be possible for the Minister to cancel a lease at his discretion. We note the lease iterates this, but in reality it seems to be very difficult to do. We have been told the legal costs to the Crown Lands Div. would be too great and that the Division will not be willing to expose themselves to this risk. We believe the risk of the current lease being onsold and then being subject to further indefeasibility places this land at further risk of development. The Paddington Bowling Club lease must be cancelled at the Minister's discretion. The clause exists in the current lease, if the lease is unenforceable why include the clause?

5.Crown Lands Division is currently hampered by the fear of legal action and its related costs. However, the cost of the current muddling through past mistakes is, we suspect, far in excess of the cost of ultimate legal action to rescind these leases. In the PBC case there have been 2 OLGR inquiries, referral and prosecution via ILGA, numerous policing costs, court costs associated with the successful police action. Departmental inquiry by law firm Holding Redlich resulting in a 320 page report and countless hours of work by the Dept. Primary Industries with referral to ICAC, Woollahra Council incurred costs when they sought legal advice regarding the DA application and the cost to private citizens such as ourselves who have worked on this case for 4 years. The cost to government and community is far greater ongoing, than the cost of rescinding this lease. This lease is costing the government and the public – rescind the CSKS Holdings lease.

6.The owners of the PBC lease are in breach of numerous clauses of their lease and yet still, the Minister has declined to rescind the lease. What is the legal recourse of an unenforceable lease? It doesn't protect the Crown Land, Lands Dept. or the public. Where is the use of Minister's discretion for the good of the land? If the public were able to sue on behalf of the Crown Estate we could hold the Government accountable for their mistakes, currently the staffers responsible have had a slap over the wrist and training in anti-corruption by ICAC for their part in jeopardising our dedicated Public Purpose land. Give us recourse to action via an ombudsman or other enforcement body.
The CLA needs to include a retrospective clause that where leases of Crown Land dedicated for public recreation were granted for 20 years or more in a manner not consistent with the CLA or the Principles of Crown Land Management in force at that time - these leases can be cancelled *without* legal redress.

7.The CLA needs to specify that all contact verbal or in writing with Crown Lands or Ministerial staff will be made available to the public without the need to request it under GIPA.
'Public access' needs to be clearly defined as just that – free public access at all times. This does not mean that the public must pay to join a club or organization beyond a notional amount.

8.There needs to be an independent authority that enforces compliance with the legislation.

9.The CLA needs to be amended to provide for communities or individual members of the public to have a point of appeal against Crown Land decisions. Currently community groups have spent 1000s of hours and 1000s of dollars attempting to find out what has happened to their public land. In many cases the CLA has not been complied with. We need to be able to have these matters investigated by an Ombudsman or other independent authority.

Conclusion

We thank the Committee for this opportunity to submit our thoughts and frustrations to the Parliamentary Inquiry into Crown Land. It has been an exhausting and frustrating 4 years but we have managed to halt the annexation of Public Land so far and will continue to pursue our goal of having the land in question returned to Trumper Park.

We are most concerned by the Government's plans to rewrite the Crown Lands Act and fear the intention will be to privatise the Crown Estate to raise funds. This would in our view be a grave mistake. We implore the current government to have the long range foresight demonstrated admirably by our forefathers in 1894 when the Crown Estate was first conceived and reserved for the Health of the people of NSW. We owe it to future generations to protect this finite resource, particularly in urban Sydney.

Lesley Scott and Melinda Hayton
Co-Convenors - Friends of Trumper Park

APPENDIX 1

Transcript of Meeting with Stephen Fenn and Mark Maloney 31/3/14

31ST MARCH 2013 12-1.30PM - MEETING WITH CROWN LANDS REPRESENTATIVES
AT LEVEL 12, 10 VALENTINE AVE PARRAMATTA.

Present: Stephen Fenn (SF), Mark Maloney (MM), Melinda Hayton (MH) and Lesley Scott (LS).

SF

- confessed to being "not that across the details"
- understood there was a perpetual lease to the Paddington Bowling Club
- understood there was a request to purchase by the Bowling Club
- understood there was no sale because it was deemed "not in the public interest"
- when questioned as to whether the Sanchez/Wily/Kirk approach was initially via the department or the Minister, both SF and MM declared the initial approach was to the Minister (Minister's office).
- SF said the negotiations took place from 2006-2009,

MH clarified – that was at the time you were working in Minister Kelly's office Stephen?

SF – yes but I don't recall much about it

MM clarified that was until 2010 and that the PBC made many attempts to buy the land.

Discussing the carving off of lot 3, what we now call the roadway…

MM - clarified that "it is not a road in the legal sense"

MM – the subdivision of the DP that includes lot 3 – the road was negotiated between Andrew McAnaspie and Warwick Hatton of WMC and that Hatton agreed giving the PBC the parking would make parking 'more orderly'.

MM - understood that the PBC wanted to achieve parallel parking for it's members, they wanted to formalise the arrangement.

LS and MH explained that it actually took parking control out of the hands of WMC, the body responsible for parking control on the other side of the street, so we don't buy the argument about parking control by PBC.

LS and MH explained that bollards have now been erected on the street and that they are on lot 3, however they are never fully unlocked and so therefore cannot be used by club patrons creating parking chaos in nearby streets.

LS and MH asked why the community had not been consulted on this

SF - this is a “direct lease over a public reserve by the minister”, “The only obligation is to consult with the trust manager ” (not the public - he said he thought it was up to WMC to consult the community).

MH - We understand WMC opposed the lease of lot 3.

MM – In response to an enquiry as to whom did they negotiate with? “Principally discussions were with Armstrong Wily – Brian Kirk attended most of the meetings

MM – Andrew McAnaspie and MM attended site meetings.

MM – added context to the above saying they “were directed by the Director General to help the club trade out of their position”. We enquired as to who the Director General was and MM confirmed it was Warwick Watkins.

MH – I assume you were both aware of the OLGR enquiry and the report that showed there was no justification for the claim that the Club had a debt of $1.2m – that there was no documentation to prove this?

SF and MM both replied that they had never read the OLGR report and were not really aware of the inquiry

LS – we recommend you read it

MM – Armstrong Wily gave Lands Dept the documentation. MM believed that in transacting arrangements that it was “beyond my remit” and that he never questioned the bona fide nature of Armstrong Wily’s authenticity.

MM - clarified strongly that he would never have questioned the authority of his senior manager – Warwick Watkins. If an administrator comes to you and says “sort it out” you don’t question them do you?

MH - asked in relation to the extremely lengthy lease given “what instigated the 50 years?

MM – they were offered a “contemporary’ crown land lease” Both MM and SF explained that a perpetual lease is as good as a 50 year lease so they were just formalising it.

MH – We understand the lease was not advertised in the media as required under Crown Lands Act (CLA) S34

MM –the lease is under section 34A – relevant interest. Notification not required.

MM – thinks council was only interested in the roadway, “after a point, council correspondence ceased.”

MH and LS asserted that they hadn’t seen any correspondence in the WMC file pertaining to the extended lease term of 50 years.

MM said that he had definitely sent the letter because he recalls making a mistake on the letters and rewriting them. He said it was definitely sent 24th Dec, 2009.

LS and MH suggested that the date being Christmas Eve may account for the matter, being missed by WMC because it may have been lost amongst a dearth of mail received over Christmas/New Year.

MM –"Armstrong Wily pushed for a 50 year lease" and it was a head office determination.

MH - asked about the 14 day advertising period not having been adhered to?

MM – asserted that a section 34A lease doesn't require advertising. The reason (for sale) that they were "building up crown lands reserves trust"

SF and MM explained that under a section 34 lease funds go to treasury, under a section 34A lease funds stay within the lands department.

MM - That was "the thrust at the time"

MM – "there was a "term lease for a particular purpose"

MH commented that at the time the 50 yr lease was signed to PBC on 1/12/2010 the rent was a mere $26,000 per year. So suggesting section 34A was used due to the need for revenue seemed a bit implausible.

MH and LS spoke to the desired outcome of the lease being withdrawn -

?MM/?SF – "The minister doesn't withdraw a lease"

Back to the lot 3 assignment…

MM – "undertook to 'regularise' parking"

MH and LS explained the bollard issue again… noting our email to WMC regarding same.

MM " procedurally wrong, it is for the local planning authority to give DA consent for the bollards – it is unauthorized construction"

SF and MM possited that PBC should have sought consent from the Minister to lodge a DA for the erection of bollards and then they needed to obtain a DA for same from WMC.

This has definitely not been done as far as we understand.

Schedule 2 (86) of the CSKS lease to provide a business plan and financials 12 months after the signing of the lease- MH asked whether the clause had been complied with. We thought it may not have since the PBC and CSKS had not submitted annual reports to ASIC regularly?

MM - "that clause was inserted by me", for "performance monitoring to trade out of the DOCA"

Side note – MM seemed very pleased with himself about adding this clause , it seemed to add to his intelligence, but what it actually did was alert us to the fact that he did have misgivings about the whole deal before it went through.

MH - asked about their knowledge of an OLGR enquiry?

MM – "I'm not aware of any OLGR inquiry"

Moving on to the transfer to CSKS Holdings…

MM – " I wasn't involved in the transfer – absent in 2011 – when they first came – presented a business case – give them the lease – why give them the lease to one party then transfer to another?" "Wily said it was a way of discharging the DOCA"

MH - how could you claim CSKS was a "Private equity Financier?"

MM - above wording was an MM invention

He seemed quite pleased with it.

MH - but a simple due diligence would have shown that CSKS was not a private equity financier

MM – I did check the file and the Crown Lands staff who did the transfer did do an ASIC check.

MH – but that would have shown many changes of director which may have alerted staff to a problem. If they had done an internet search on the name of the director Christian Sanchez it would have shown the major financial problems of their company Crows Nest Retail P/L.

MM – if I had been here I would not have agreed to the transfer from PBC to CSKS

MH – so who did the transfer?

MM - "John Gardiner consented to the mortgage. Bronwyn Connolly and John Gardiner were the officers who worked on this".

LS and MH asked if CSKS has the Minister's permission to sublease - explained that Palms Tennis Centre is sublet 2 tennis courts by PBC. Also asked if there is an approved sub-lease between CSKS and PBC

MM – noted that if that is the case then PBC should have sought the minister's approval to sublease and this would be recorded on the title.

MH and LS - stated there was no evidence of that.

MM - asserted there definitely should be in both cases . *He will check on that*

MM - "I visited Bowling Clubs with Andrew McAnaspie – …prospect new tenures… to secure the long term future"

He explained that Petersham BC is very well run and is a model community based organisation.

MH and LS - explained that ideally we would like to see the PBC gifted to WMC for park purposes.

SF – "doesn't need to be gifted, WMC are already the trustee (manager)"

MM - explained that despite the lease wording – reserved for public recreation, community, tourism etc. the WMC LEP prevails and that the land is "zoned open space". He asserted that the 2 designated uses don't necessarily correlate but the LEP overrides the lease 'zoning'.

Apparently Brian Kirk says the zoning prevails and that is why they have lodged a DA for a childcare centre (CCC). It is zoned for ccc and community use.

Happened when WMC undertook (are undertaking) a new LEP under the new state govt.

MH and LS raised the issue of further development of the site.

SF and MM were adamant that aged accommodation or a hotel would never be approved as they are commercial activities. Childcare is not considered commercial.

Mortgage over

MH asked how CSKS could take out a mortgage the same day they signed the transferred lease. They were surprised by this, did not seem aware really of the mortgage and asked how did we know. We said we had a copy of the registration of the mortgage.

MM - CBA does not simply assign the lease, need minister's consent

MH - asked the date the minister was approached as it looked like it was approved retrospectively 3 months later .

MM said – "not qualified to answer"

MM – under the Real Property Act a mortgage is a registerable interest, the lease and mortgage are registerable.

MM- Under the Crown Lands Act "CSKS can't commence construction without the consent of the crown lands department" This comes after the DA is approved by the local council. Minister has to be notified by the lessee and then seek his consent to build – construction certificate needed from Minister.

SF – recapping "compliance, bollards, balance sheets, business plan" – undertook to pursue CSKS with a please explain in relation to the alleged breaches of the lease

LS - asked about the press release stating that some Crown Lands are to be handed back to local councils for them to administrate?

SF "This is not a low priority"…"it is not a pocket park" …" it is state significant"

LS clarified that this area of land would therefore not be handed to council in the recently advertised moves by the state to 'simplify' the crown lands holdings and SF made it very clear that this lease gives crown lands $56,000 pa and it is significant funds for the department. LS clarified $52,000pa.

MH raised the issue of the comparison with White City and whether this amount is a 'commercial rental rate – no reply.

Discussing our investigations and the way forward…

MM – "don't make it personal, focus on the systems not the people no-one will thank you for that"

Recapping, all in…

- 34A doesn't mandate advertising therefore no community consultation.
- Expectation that the trust manager (WMC) would undertake consultation (with the community, usually by a display in chambers).
- They were surprised that WMC let the matter drop,

MM - "no return letter to lands – no reply!"

MM and SF – resourcing issue, insufficient resources to perform due diligence, oversee compliance management

SF and MM noted there is a White Paper currently open to community consultation, closes 20th June 2014.

MH asked whether the Minister's consent letter for the DA was only valid for 12 months?

MM- knew the exact date consent was given - 15/3 /13. He stated Chris Sanchez had rung him to ask if it expired after 12 months very recently?

MM – explained that it is a consent to lodge a DA, not a consent to develop.

Side note – MM seemed to be inferring that the approach to Warwick Watkins was by Andrew Wily.

WMC – once it has made a determination, must be referred back to the Minister prior to building.

If WMC denies consent, then the lessee, CSKS Holdings, must notify lands of their intention to go to court if they proceed to Land and Environment Court.

The Construction certificate is issued by WMC, but lands sign off on it.

Can't start building without the land owner's consent.

Generally agreed that they would consider all our issues raised in the document we provided to them.

Overall they seemed completely unaware of the Sanchez family's financial activities and of the OLGR report. They seemed on completion of the meeting to feel that it was a bit of a hornets nest that needed sorting.

APPENDIX 2

OLGR (2007) summary by Brian Guest Barrister, Commissioner March 2008.
Attached as separate file.

APPENDIX 6

Media release T and I, CSKS Holdings to retain lease - access: http://www.crownland.nsw.gov.au/__data/assets/pdf_file/0006/653118/20150918-paddington-bowling-club.pdf