

**Submission
No 118**

INQUIRY INTO CROWN LAND IN NEW SOUTH WALES

Organisation: Stop Arms Fairs in Eurobadalla

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Legislative Council

General Purpose Standing Committee No. 6

Inquiry into Crown Land

SUBMISSION

This submission is made on behalf of SAFE Inc. (Stop Arms Fairs in Eurobodalla), an organisation of some four years standing, and with a growing membership currently numbering over 100.

We wish to bring to the Committee's attention our serious concerns with relevance to points 1(a) and 1(b) of the Inquiry's terms of reference. These concerns go (a) to the general question of allowing gun sales on crown land and (b) to the behaviour of the Eurobodalla Shire Council in its approval of the use of crown land under its trusteeship for an annual arms fair in Narooma, against the wishes of large numbers of residents and in breach of the *Environmental Planning and Assessment Act 1979*, the *Local Government Act 1993*, and guidelines for the management of Reserve Trusts.

Gun sales on crown lands

It is the view of the members of our organisation that it is highly inappropriate for NSW Government facilities to be used to promote and facilitate increased levels of gun ownership within our communities.

Regardless of the strength of the firearms regulatory framework in Australia, registered firearms in the possession of licensed owners still inevitably lead to the death and serious injury of many innocent victims each year. In addition to this, an estimated 1,500 registered firearms are stolen every year in Australia with relatively few recovered. Many of these firearms end up in the hands of criminals with further serious adverse implications for the community in general.

Although the private purchase and ownership of guns remains legally possible in approved circumstances in Australia, State Governments nevertheless are in a position to provide leadership in this very important aspect of public health and safety. As was the case over recent decades with cigarette smoking in publicly owned facilities, this State Government and its local councils provided significant leadership by putting in place restrictions that went well beyond the limitations imposed by the law at that time.

It would be highly appropriate for this Government to adopt the view that activities that promote and facilitate increased numbers of guns in our communities are not activities that should effectively enjoy Government sponsorship through the grant of permission for the conduct of Arms Fairs on publicly owned crown land in this State.

The benefits that flow from appropriately managed crown land should not be diminished or negated by activities that inevitably lead to negative outcomes for many innocent community members in this State.

The behaviour of the Eurobodalla Shire Council

Details of our concerns about the behaviour of the Eurobodalla Shire Council are set out in the following pages, and, in our view, provide a comprehensive case study of the way in which the current system for managing crown land is failing the people of New South Wales.

Failure to comply with *Environmental Planning and Assessment Act 1979 (EPAA)* in approving use of Crown Land

By means of the Development Consent 51/13, dated 12 October 2012, the Eurobodalla Shire Council (the Council) granted approval for the South Coast Hunters Club (SCHC) to conduct an event called “Huntfest”, involving “hunting, camping, photo/DVD competition, food stalls” on Crown Land each June long weekend for five years, commencing in 2013.

On 25 November 2014, the Council approved a variation to the SCHC event licence to cover the display and sale of firearms and ammunition, an air rifle range, hunting simulators, archery courses and animal skinning.

The 2015 event was conducted over the whole of NATA Oval and Southern Bluewater Reserve (Narooma Sports and Leisure Centre), and covers Lot 7011 in DP 1055108 and Lot 1 Sec 17 in DP 758754, which is a much larger area than was authorised by the 2012 Consent.

SAFE Inc. received advice from the NSW Environmental Defenders’ Office (EDO) regarding this matter. The location of the event in 2015 and future years is zoned as RE1 – Public Recreation. According to the EDO, the only development permitted without consent within RE1 zones is environmental protection works. Therefore, the Huntfest event clearly requires development consent.

The EDO advice states that, under Part 2, Division 3 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (Exempt Development SEPP), certain temporary uses and structures are classified as exempt development and do not require consent. Subdivision 7 prescribes tents, marquees or booths for community events as exempt development.

The EDO considers that mobile air rifle ranges and steel shipping containers for archery courses do not constitute tents, marquees or booths within the meaning of Subdivision 7.

On behalf of SAFE, the EDO wrote to the Council on 21 May 2015, advising of our concerns regarding these matters, and pointing out that, in the view of the EDO, Huntfest 2015 was so materially different to the development authorised by the 2012 Consent as to require a separate approval. The conclusion of the EDO is that the Huntfest event is either development that requires consent, which has not been obtained, or is prohibited development in Zone RE1.

The Council refused to act in response to the EDO's correspondence, and the expanded Huntfest event duly occurred on the June long weekend in both 2015 and 2016, with no separate approval having been granted.

On 22 March 2016, the Council extended the licence for Huntfest for the years 2018-2022. In doing so, it again took no steps to address the issue of the event having changed from a photographic competition to an arms fair without a new Development Consent.

Failure to consult with community on controversial use of Crown Land

The history of the Huntfest event has been one of failure to consult with residents and ratepayers.

It began with an urgency motion moved at the 26 June 2012 Council meeting, seeking in-principle support from the Council for an application from the South Coast Hunters Club (SCHC) to conduct Huntfest on the June long weekend of the following year (and for the four years after that) on Crown Land in Narooma. The motion was carried, despite the fact that no prior notice had been given, and the minutes of the meeting do not provide any explanation of the need for urgency.

Following the local government election on 8 September 2012, the new council, at its first meeting, approved a five-year licence for Huntfest, which was to comprise a photographic and DVD competition, and hunting and camping expo.

In December 2013, the Council approved the display of firearms at subsequent Huntfest events.

A petition opposing Huntfest attracted almost a thousand signatures and was tabled in the NSW Parliament in late 2014, but it brought about no change.

In September 2014, the SCHC applied for a variation to its licence, to allow the sale of guns and ammunition, and an air rifle range, to be included as part of Huntfest. Council, pushed by Greens councillor Gabi Harding, undertook a community consultation regarding this proposed expansion of the event. Of the 204 submissions received from local residents, 81 per cent opposed it. Nevertheless, at its meeting of 25 November 2014, the Council approved the inclusion of gun sales at future Huntfest events.

In 2015, with the incremental expansion of Huntfest arousing growing disquiet, Councillor Harding sought to have an independent review of Council's decisions concerning Huntfest. Instead Council asked the General Manager, Dr Catherine Dale, to conduct a formal review of procedures. She was not given terms of reference.

Subsequently, a panel appointed by Council reviewed the Dale Report. The review panel also was not given terms of reference. The review panel recommended that in future the Council should set the highest standards of transparency, independence and integrity for all reviews, and that such reviews be conducted at arm's length from council staff. The panel pointed out that in 2012 when concern was expressed about the name 'Huntfest', Council was told it was based on similar events in the United States, Canada and New Zealand. The panel concluded that Council should have foreseen that Huntfest would be likely to grow and should set clearer ground-rules for any such event in future.

While the two reviews found that the Council followed the required procedures, they did not deal with broader issues such as whether the Council had diligently addressed the full range of considerations regarding the public interest, whether undue priority had been accorded to the SCHC applications, and if so why, and why the overwhelmingly negative views of the community were ignored.

Following a request from the SCHC in August 2015 to secure a licence to operate Huntfest for a further five years beyond its current term, the Council meeting of 8 December 2015 agreed to call for expressions of interest (EoIs) to use the Narooma Sports and Leisure Centre on each June long weekend for five years (2018-2022).

Two EoIs were received, one from the SCHC for a continuation of Huntfest, and a second from the Animal Justice Party of NSW (AJP) for a festival to present the growing creative, cultural, culinary, healthy life style and sustainable ventures in the region.

Council then proceeded to use a tender process to decide between the two applications. The inappropriateness of this approach is dealt with in more detail elsewhere in this submission.

Suffice it to say that this point that deciding to treat the awarding of a licence for a once-a-year event, which was to be conducted by one of two not-for-profit organisations, as though the bidders were businesses tendering to provide goods or services of significant value to the Council, was at best unnecessary, and had the effect of bringing down a veil of secrecy over the decision-making process. Indeed, one is entitled to ask whether the use of a tendering process was a deliberate tactic in order to ensure a level of secrecy, as no proper explanation for the choice of that process in this instance has been given, as is explained elsewhere in this document.

The Council considered the matter at its meeting of 22 March 2016. Despite the fact that:

- the current licence for Huntfest had two years still to run; and
- no sound reason had been put forward nor sought as to why an early decision needed to be made; and
- a council election was due in less than six months' time; and
- approval would extend the licence beyond the term of the NEXT council; and
- no community consultation had taken place despite the controversial nature of Huntfest;

the Council decided to approve Huntfest for the five years 2018-2022.

In the 20th anniversary year of the Port Arthur massacre, Eurobodalla Shire Council chose to license the use of Crown Land under its control for an arms fair, for seven years into the future. The outcome of our enquiries through NSW Police would suggest that the Eurobodalla is the only council in NSW to have approved the use of public land under its control for the promotion and sale of firearms.

In 2014-15, Australian imports of guns hit a record high. According to an article in the *Sydney Morning Herald*, on 28 April 2016, University of Sydney public health researcher, gun control expert and founding director of GunPolicy.org, Philip Alpers, said:

"The proud claim of some Australians that their country has 'solved the gun problem' might only be a temporary illusion. The million guns destroyed after Port Arthur have been replaced with 1,026,000 new ones. And the surge only shows upward momentum."

This is the context in which Eurobodalla Shire Council, the custodian of some of the most beautiful countryside in Australia, has decided to make one of its key tourist attractions an arms fair, to which children are admitted free of charge.

Failure to apply proper process to licensing for use of Crown Land

Following the Council's decision to extend the Huntfest licence to 2022, SAFE Inc. wrote to the Hon Niall Blair MLC, in his capacity as Minister responsible for Crown Land, asking that he not approve the decision by the Council to grant an extension of licence. We provided to Mr Blair's advisers a detailed case explaining why the Council's decision should not be endorsed. These are set out below:

1. The use of a tendering process to license non-profit organisations to hold a once-a-year event on Crown Land.

The Council inappropriately used a tendering process to decide which of two not-for-profit organisations (SCHC and AJP) could use the Narooma Sports and Leisure Centre and adjacent oval for an event on the June long weekend between 2018 and 2022 inclusive. In using a process designed to cover the provision of goods and services, of significant value, to councils, and ignoring the fact that this type of activity is legally exempt from the requirement to invite tenders (LGA S55(3)), the Council then used the excuse of the "tenders" being commercial-in-confidence to exclude the public from the part of the council meeting at which their decision to extend Huntfest's licence was made.

The Council has defended its actions by claiming that:

- (a) it had legal advice that the process for approving the 2018-2022 licence must be a confidential tendering process. It has declined, however, to make public the details of this advice; and
- (b) the requirement to use a tendering process in such circumstances was confirmed by Crown Lands. The background to this can be found in the new Council "Code of Practice – Licensing of Public Reserves" that was presented, without prior notice, at the Council meeting of 8 December 2015. This code provides for annual advertising for expressions of interest in hiring council reserves and facilities, and states that, in the event of two or more applicants requesting the same venue for the same dates, a tendering process will apply. A report to councillors presented with this code contains the following claim:

"Crown Lands confirmed in July 2015 that Council's proposed process as outlined in this report is acceptable to them."

Copies of all relevant correspondence between the Council and Crown Lands were subsequently sought from the Council under the provisions of the *Government Information (Public Access) Act 2009* (GIPA Act), and it is clear that the code, or any document outlining the details of the proposed code, was never in fact provided to Crown Lands for examination and endorsement. The only documentation provided by the Council in support of the above claim was two brief emails whose substance goes to the need for long term licence opportunities to be “progressed by way of an open and transparent competitive process”.

2. Failure to apply appropriate guidelines regarding long-term licences for use of Crown Land.

The Council’s consideration of a further five-year licence for Huntfest was triggered by a request that was submitted in August 2015 by the SCHC. A copy of the request, obtained by SAFE under the GIPA Act, showed that the basis for the requested licence extension was stated as demands by sponsors, but no other information was provided as justification for such early consideration. Additionally, the above-mentioned GIPA process also revealed the absence of any attempt by the Council to verify or clarify the SCHC’s reasons for making the request. The Council simply went ahead and initiated the EOI/tendering process outlined earlier in this submission.

The decision of the Council to approve the Huntfest licence to 2022 effectively means that all other potential users will now be excluded from access to this prime Narooma event site on every June long weekend until at least 2023. This is an exceptionally long time into the future and it is difficult to imagine how it could be seen as being in the best longer term interests of the community. In an area such as Narooma, highly dependent as it is on the tourism industry, the retention of a capacity to react and respond to new initiatives for the use of local infrastructure is obviously highly desirable. Moreover, Section 14.6 of the Trust Handbook, which covers the roles and responsibilities of corporate reserve trust managers such as local councils, states that:

- The term of a licence should be as short as possible.
- Future changes in community needs should also be kept in mind when negotiating the length of term.

We note also that the Department of Primary Industries website highlights the following point:

The Trust Handbook should be the first point of reference to answer questions about reserve trust management.

This recommendation appears to have been totally ignored by Eurobodalla Council in respect of its decision to grant a licence for use of Crown Land for such a lengthy period.

The SCHC's request for a further five-year licence was submitted to the Council in August 2015, almost three years out from the commencement of any new licence in June 2018.

At the Council meeting of 22 March 2016, many of the Public Forum presenters, and some councillors, strongly argued that any consideration of the SCHC's "tender" should be deferred until after the local government election in September this year. The views expressed were that the controversial issues around the Huntfest event, particularly the use of Crown Land and council facilities for the promotion and facilitation of gun sales, should properly form part of the debate and discussion during the upcoming council election campaign. The Council without explanation rejected these requests for a deferral.

Given that (a) the nature of the Huntfest event and (b) the initial event in 2013 was able to be organised within six to eight months of the issuing of council and ministerial approvals, it is difficult to see why any approval for the 2018 event could not reasonably be deferred until the new council is elected on 10 September 2016, which is still more than 18 months out from the 2018 June long weekend.

Furthermore, the Council has committed council facilities and Crown Land to the Huntfest event until 2022 without any investigation into the impact of the event on Narooma and the wider shire. Assertions have been made by the SCHC and others of the supposed economic benefits of Huntfest, but no evidence has been presented to show that the event has attracted more business to the area than would be expected in any case during a long weekend in mid-winter, in a coastal region close to Canberra. Beyond that is the damage to Eurobodalla's reputation as the Nature Coast, which conjures an image of beautiful beaches and bushland, with plenty of opportunity to appreciate nature close up and at its best. Narooma being promoted as "the home of Huntfest" undermines this image, in the view of many residents. This is no small issue given the importance of tourism to the Eurobodalla region, and that is why the Council has been negligent in accepting without question, unsupported claims about Huntfest being of benefit to the area.

Failure to comply with the *Local Government Act 1993 (LGA)* in decision-making regarding use of Crown Land

At the 22 March 2016 meeting, at which the Council agreed to approve a further five years of the Huntfest event, the decision-making process involved a series of breaches of the LGA, including moving the meeting into closed session without any attempt to explain why it would not be in the public interest to keep the meeting open.

SAFE Inc. wrote to the Minister for Local Government on three occasions, detailing the Council's breaches of Sections 10B(5), 10D(1), 10D(2) and 375(1) of the LGA in the process of deciding to extend the Huntfest licence.

Failure of Ministers to act

This year alone, SAFE Inc. has written to the following Ministers detailing concerns about Huntfest and the approval to license it until 2022:

- The Hon Paul Toole MP, Minister for Local Government – on 29 March 2016, 15 April 2016 and 26 April 2016 providing information about the Council's breaches of the LGA in making decisions about Huntfest.;
- The Hon Niall Blair MLC, Minister for Primary Industries – on 29 March 2016 and 16 April pointing out the failure of the Council to meet appropriate guidelines in regard to Huntfest, and requesting that he not give his approval to the Council's decision;
- The Hon Rob Stokes MP, Minister for Planning – on 16 May 2016, advising of SAFE's legal advice on breaches of the EPA Act by the Council in amending the Huntfest licence from a photographic display to a gun fair; and
- The Hon Andrew Constance MP – Minister for Transport and Member for Bega – on 20 April 2016, providing him with copies of our correspondence to his fellow ministers and requesting a meeting with him as the local State Member of Parliament.

Minister Blair and Minister Stokes have sent replies, which do not address the substance of the issues raised. Neither Minister Toole nor Minister Constance has responded at all. This raises the important question of the point of legislation, regulations, guidelines and other requirements placed on those who manage the use of Crown Land. To whom does one go when breaches occur? Who regulates the managers? Is ministerial responsibility a thing of the past?

Summary

We believe the Eurobodalla Shire Council's management of this part of the Crown Reserve, as detailed in this submission, has demonstrated arrogance, incompetence and a total lack of appreciation of the responsibility entrusted to them. We hope that the Committee's Inquiry produces recommendations, which address these types of issues, for the benefit of citizens of Eurobodalla and throughout New South Wales.

