

**Submission  
No 124**

## **INQUIRY INTO CROWN LAND IN NEW SOUTH WALES**

**Organisation:** Ballina Environment Society

**Date received:** 24 July 2016

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From Ballina Environment Society Inc.  
PO Box 116; Ballina NSW 2478

With respect to

1(a) the extent of Crown Land and the benefits of active use and management of that land to NSW. And

1(b) the adequacy of community input and consideration regarding the use and disposal of Crown Lands

#### INTRODUCTION.

Ballina Shire has extensive Crown Land holdings on the coastal strip, tracts of coastal heath, littoral rainforest remnants and other protected lands. They form extensive and intensive tourism attractions and have significant biodiversity and conservation values. Coastal dunes provide some protection from erosive winds and the effects of climate change. They also include Aboriginal interests and a specially declared Aboriginal Place.

Ballina Environment Society (BES) wishes to restrict its focus for this submission on Crown Land around Lake Ainsworth (LA). We focus on road and open space matters as an example of our criticism and for the most part rely on documents obtained from Crown Lands (2010 to 2014) via a GIPA request and BSC publicly available documents.

Ballina Environment Society contention is that:

LA public access and issues to improve ecological sustainability are restricted dramatically by being squeezed between two huge commercial enterprises on Crown lands across the North by Sport and Recreation Centre (S&R) and across the South by Lake Ainsworth Caravan Park. Crown Lands, via a Trust, manages and directly profits from the latter. Crown Lands exercises no supervision or requirements of the former which, under Department of Sport management is free to operate as it pleases in environmentally destructive and/or neglectful ways. (This is not a reference to the person of any particular site manager. It is a comment upon systemic departmental decisions.)

The commercial interests of these two enterprises takes precedent in decisions Crown Lands makes for:

Public recreational opportunities

Public access

Sustainability of the lake

Threats to the dunes

Conservation of biodiversity

Costs to rate payers

Community consultations

Local government rights and decisions.

In pursuit of the LACP interests, Crown Lands, specifically Grafton Office of Crown Lands(GCL), over a number of years,

- takes contradictory environmental positions,
- makes illogical demands,
- refuses to acknowledge even so much as receipt of communications from recognised community groups (BES; Lennox Head Residents Association; Lennox Land Care) and requests for interviews from them but
- appears to have given publically claimed support to an undefined, non accountable protest group making scare type claims against already Crown Lands agreed upon positions and even seems to be ignoring ministerial directives.

Alarmed at Crown Lands behaviour, in 2014 BES made a GIPA request for all communications from and to Crown Lands regarding Lake Ainsworth precinct. The analysis of these documents and publically available BSC material is used to substantiate these claims. When an analysis was first made, GCL was sent a copy. As usual, no acknowledgement was received.

Attachment 1 lists all the GIPA documents by name and number.

BACKGROUND

Lake Ainsworth is a major freshwater lake at the northern end of Lennox Head. The catchment for Lake Ainsworth falls within the responsibility of Ballina Shire Council. The lake has an area of 12.4 hectares and is covered by two Crown Reserves namely:

Crown Reserve 82783 for Public Recreation. This Reserve was notified on 9 September 1960 and is described as Lot 62 DP 755725, Lots 7001 and 7002 DP 1052251 and Lot 7006 DP 1062252 Parish Newrybar, County Rous comprising area of 15.66 hectares. This Reserve accounts for the southern part of Lake Ainsworth including the Lake Ainsworth Caravan Park and other recreational land uses.

Crown Reserve 84109 for National Fitness and Physical Education. This Reserve was notified on 14 December 1962 and is described as Lot 140 DP 755725 Parish Newrybar, County Rous. The Reserve accounts for the northern portion of the lake including Lake Ainsworth Sport and Recreation Centre ("Sport and Recreation Centre") as it is locally known and Camp Drewe.

The lake has recreational, environmental, economic, educational and cultural heritage attributes that are significant in the local and regional setting including:

- The lake is an important natural area in an otherwise urban environment;
- The lake is a popular active and passive recreational resource;
- There are a number of local businesses that rely directly and indirectly on the lake area for their income;
- The lake is valued as an important educational resource for the region;
- The lake is one of the largest dunal lakes on the north coast and the lake and environs contain a remarkable diversity of native biota; and
- The lake is a significant tourist destination on the North Coast of New South Wales. ( Connell Wagner Master Plan Report 2005)

Attachment 2 map of recreation area (GIPA Doc 1)

LACP stretches narrowly along long borders from east to west between the Pacific Pde beachfront road to the wetland and heath in the west. The southern part of Camp Drewe road, referred to as the south road, separates the public recreational area from the caravan park. As you can see from the map the caravan park totally dominates public recreational area. In

fact the CP extends across the whole of the southern recreation area frontage creating only one access point for the public and for potential traffic congestion in the SE corner. At the moment the road reserve through the caravan park is used as a walking path to the lake.

The caravan park was initially managed by Ballina Shire Council (BSC) in its own right and later as Reserve Trust Manager. In 2009, Crown Lands asked BSC to resign as Reserve Trust Manager. Byron Shire had by then been summarily deprived of its caravan parks and their revenue streams without compensation. Crown Lands excuse was that Byron Council had failed to develop a Plan for its parks despite a plan having been lodged and awaiting approval with GCL for some two years. BSC considered that if it did not comply with the request the Shires caravan parks would be compulsorily acquired sometime in the near future as had happened unfairly with Byron. It was decided unanimously to resign voluntarily in order to try to salvage something. All Councillors expressed unwillingness and unhappiness at feeling forced to resign.

An agreement for resignation was negotiated with Crown Lands and signed in May 2010 (Note 1). LACP was formally gazetted as the responsibility of the newly formed North Coast Accommodation Trust henceforth called the Trust. The Trust had been established purely as a commercial enterprise, and remains to this day (albeit the name and organizational structure has been changed from time to time).

After residents expressed concern for the health of the lake in the 1980s BSC commissioned a scientific study of the lake processes (Note 2) with a view to developing a Management Plan for the Lake. Attachment 3 shows a time timeline for the main developments/reports from 1996.

In 2001 the Lake Ainsworth Management Study(Note 3) was commissioned. The study, using the Processes information systematically examined every possibility for a Management Plan and evaluated each option. Detailed community consultation was included. For the eastern side of the lake the conclusion was that the road should be closed and the eastern side rehabilitated. The study authors expressed satisfaction that an option to interfere with the Lake Processes by means of limiting the natural variations in water height or intrusions into the dunes was not supported by two thirds of community respondents.

Right from the beginning the commercial interests of the CP was dominant and it remains so regardless of who nominally controlled it. The Management Plan committee was forbidden to consider the LACP in any of its deliberations/recommendations. This despite the Process Study Summary having listed its first significant problem as being the alienation of Crown Land due to the proximity of the caravan park to the lake.

The Management Plan 2002 was developed with broad community and stakeholder input including commitments from S&R.

The Management Plan proposed to close the south road about 2/3 of the way along to the west and build a bypass road to the North vaguely on the western edge of the caravan park(CP).

Widespread community unrest soon erupted over a development proposal to extend the CP across to the very edge of the lake bank itself into the already public recreational space that was to be created by closure of the western part of the south road and to build high value cabins there. The unrest spilled over into general issues of the health of the lake, the domination of the CP over public recreation land and the inadequacy of some aspects of the Management Plan relating to roads and public space. The CP development was highly recommended by GCL which remained committed to it long after the planned extension itself was abandoned by BSC (N7).

In response to the public outcry BSC commissioned consultants Connell Wagner(CW) to produce a Master Plan to determine what should be the boundaries of the CP and where the road network should go.

From the beginning of the CW consultancy Crown Lands reminded BSC and CW that they should be aware that the caravan park was central to CL plans. (N8) Although CW recommended a small section of the CP be returned to public use the report also commented that it felt bound to consider Crown Lands position regarding the CP. Over crowding and over use of the public recreational space and public safety featured strongly in the report and most of the recommendations attempted to address those issues but with the GCL request about the commercial interest in mind.

CW recommended three road options for a connecting road from village to the existing western section of the Camp Drewe road. The chosen one of the road options would function as an alternative to the east road for access to S&R, Camp Drewe and the northern beaches. CW recommended the closure of the east road and the return to public land of a small north east

section of the CP. The overall effect of the latter two proposals would create space for a small car park further from the lake and double the open public land in the south east corner of the lake.

Road Op1 required a new road joining the village to the existing western section of Camp Drewe road in a long loop directly behind residences of Barrett Dr and around through the heath well to the west of the CP;

Op 2 utilized the existing road reserve through the middle of the CP.

Op3, included because of pressure from BSC and community, made a small realignment to the existing south road.

CW recommended that in all three of the road plans the east road along the narrow strip between the dunes and the lake be closed and a shared path built that would double as emergency access to S&R.

Crown Lands agreed to that eastern precinct plan, expressed general support for the CW Master Plan and made it clear that Op 1 was its strong preference. Environmental improvement for the lake and best for the caravan park was stressed as the reason for that choice. (N9)

However, Op 1 would benefit the CP enormously by removing through traffic from between the CP boundary and the lake shore. This was not mentioned by CL. At this time CL had not shifted from its strong support for extending the CP over to the lake shore.

Op 2, CL stated would be acceptable because the unformed road reserve was the legal road to the North although it did not have the same environmental advantage that Op 1 had. However, Op 2 had advantage to the Barrett Dr residents and significant costs to ratepayers that Op 1 did not and CL did not mention this.

CL made it very clear that Op 3, continuing to use the south road but slightly realigned as the through road, was not acceptable under any circumstances because it was insufficiently different from the existing usage and environmentally unacceptable because it offered minimal change from the present. However, as was clear to every local stakeholder, that to close the south road would be of strategic benefit to the CP because it would become virtually a lake frontage even though fewer CP sites would be lost with this option.

Attachment 3 is a timeline of actions which makes CL's role clear.

So here, CL showed scant regard for community concerns, argued a strong case for environmental benefit of its preferred option and threw the weight of its authority to prevent Op3 and discourage Op2.

### **Grafton Crown Lands actions re LACP preferment**

## **Pre BSC resignation agreement 2010**

Council hired Connell Wagner to report on a master plan which determines the Caravan Park borders and the road network around Lake Ainsworth.

The Report (2005) recommends closure of the east road and southern part of Camp Drewe Rd for two of its options. GCL supports the closure of the east road and the proportion of the south road. Of the three road options for alternative access to Sport and Recreation Centre GLC responded :

- Favours Op1 a road around the west of the Caravan Park to join up with the existing western road. A new road reserve would be created by swapping the only existing one for it. A number of CP sites would be lost. The lake environment would benefit because the road would be moved well away from the south shore.
- Recognises the legitimacy of Op2, a road through the Caravan park on the only existing road reserve and Council's right to choose this option. Sites would be lost here too. But adds a requirement for Op2 the unformed road reserve, if chosen, to demonstrate the same environmental advantages as its preferred Op3. The manipulations of GCL to be rid of Op2 is most of the story here.
- Strongly condemns and refuses to cooperate to allow Op3, the existing southern road connection of the Camp Drewe Rd as being of little environmental improvement and of being there only as a political fix for BSC. The southern road is not a road reserve but an access road through the Crown Reserve.
- Approves (Jan 2007) Op 2 after Council adopts it as preferred option in response to GLCs refusal to countenance Op3 which had been BSCs first choice being the least disruptive to the community of Lennox Head, the most direct/shortest and the cheapest (N10).

It was obvious that the community was suspicious of CL refusal of OP3 because of the caravan park extension project. The whole northern boundary of the CP would have limited traffic on the road between it and the lake waters which would be a huge plus for the CP. The Barrett Dr residences would not be disadvantaged by being sandwiched between two fully functioning roads.

## **The Signed Resignation Agreement**



In 2010 BSC formally resigns as Reserve Trust Manager of Lake Ainsworth Caravan Park to Crown Lands who puts it in the control of NSW Crown Accommodation Park Trust (henceforth referred to as The Trust).

- As recognition of BSCs already adopted and CL approved plans for the Lake precinct, CL formally signs an agreement to adopt Op 2 as its preferred option as a condition of Council resigning as Reserve Trust Manager. The CP boundary is gazetted as being in two parts either side of the road reserve. The gazette entry was sent as an attachment to BSC and THE TRUST but it was the only attachment not included without explanation in the GIPA documents requested by BES. BES requested the attachment but has not received it.
- The Trust prepares a CP development Plan a few months later but doesn't adopt it. This Trust Plan was redacted from those document released under the GIPA request from BES(N11). This Society believes that Plan, coming so soon after the formal adoption of Op2 by CL, would have been made with Op2 in place which was a powerful reason some years later to sink it.

This agreement represents the formal abandonment of the CL declared imperative for Op 2 to demonstrate the same level of environment advantage which CL had previously declared was unlikely. It is hard to see the switch as anything but a bribe to get hold of the lucrative LACP. BES does not see this change as an environmental disadvantage over Op1. As we have argued above we believe that environmental argument, whilst there was undoubtedly an environmental gain, had definite commercial advantages to the CP.

## **2011 plus**

GCL endeavours to sidestep Op2 with a progression of changes as each endeavour becomes unstuck. GCL

- Denies approval of Op2 in Dec 2011 in a strongly worded condescending tone (N12).
- Omits any mention of its 2010 signed adoption of Op 2 when forced to admit to having approved it in 2007 in (N 13).
- Allows Complete Urban consultancy (2014) to dismiss the Master Plan road options on spurious grounds. Firstly that CW did not consult with major stakeholder Sport and Recreation Centre on the Northern border of the Lake about closing the east road. The claim is not accurate. However, it is true that S&R declined to attend stakeholder meetings with CW until the reporting meeting when it was known that the recommendation was to be for east road to close. Secondly Op 2 was dismissed because Crown Lands did not approve it at the time of the handover. Exactly the

reverse was the case. The Trust must have been aware that this claim false but did not comment(N14). BSC commissioned Complete Urban 2014 to review the Master Plan and carry out initial design works to implement the closure of the east road. Despite being presented with the documented evidence of both the 2007 CL approval and the 2010 signed CL agreement this claim is still embedded in the CU Report 2014. Later the claim of non approval morphed into The Trust didnt approve at the time of the handover. There is some evidence that GCL put pressure on BSC to accept these demonstrably false statements.

- Begins Ballina Regional Coastal PoM revision with Op3 mandated (as modified by Complete Urban). For reasons unknown, this PoM revision is aborted to the chagrin of GCL. (N15) GLC requested that this document be redacted but the request was refused.
- Approves new modelled Op3 (as represented in Complete Urban Report 2014) A complete reversal of its proclaimed environmental reasons for rejection. However, GCL still argues for Op 1 but refuses a request to pay for the extra length of road required and still wants to erase Op 2 the road reserve through the CP from all possibility.
- GCL offers to pay\$218,000 to purchase Op2 (still at this point preferred by BSC) towards the repair of the south road.

At this point the originally despised Op 3, the south road, becomes the preferred route of GCL. GCL has now fully supported each Master Plan road option in turn with each being proclaimed environmentally suitable. The reason for the switch is that CU proposes for the first time since 2002 that the east road does not close because of disadvantage to S&R. There is therefore no need for any changes to the road network. The commercial advantage to the CP is that no sites need be lost as for Ops 1&2. The CP is no longer required to be divided. As there will be no increase in usage of the south road the CP is still relatively commercially advantaged by direct, unfenced access to the lake for its patrons. The CU report is a very big win for both of the commercial facilities.

BSC rejects the CU proposals and restores the road reserve as its preferred option

To enforce its preference GLC responds:

- Proposes restricting Council's right to choose Op2 because it adapts the 2002 PoM for the Lake by claiming – inaccurately – the PoM as a statutory document.(N16)
- Ignores Ministers letter approving Councils rights.(N17)
- Doesn't acknowledge Community letters.

- Doesn't respond to Council requests for approval to begin implementing Master Plan

Note: The Trust has not yet produced PoM for the caravan park six years after assuming control.

## **2014 plus**

GCL:

- Formally opposes Council's choice of Option 2 and asserts a preference for new Op 3 or Op 1.(N18)
- Declines Council request for additional funds for Op1 requested because that route is longer and more expensive than Op2 and is of no more benefit.
- Is quoted by an informal protest group as supporting their opposition to closure of east road in defiance of all previous support – BES request for either documentation or informal information to support this claim is ignored by the spokesperson of the protest group. CP and S&R managers are part of the protest group to keep the east road open.
- Does not respond to BESs formal request to confirm or deny communication with the protest group re opposition to closure of east road.

The Minister does not intervene having previously stated that BSC is the local roads authority to remove or add roads in the Crown Reserve but asks that S&R and BSC to meet to see what can be agreed.

Throughout 2015 meetings between S&R, BSC and GCL continue. BSC addresses all the issues raised and concludes that the case for the east road to close is strong and should close. The CU amended route for the south road will continue to be the access to S&R.

## **2016**

BSC continues detailed planning having in January's Ordinary meeting rejected a so called compromise motion to build a new road on the east. The edge of the existing road is falling into the lake The important question for now is has Crown Lands continued plotting to undermine all road developments that might even marginally disadvantage the current position of LACP. The maximum benefit for public open space with the minimum impact on LA is at stake. The latest agitation is to take the past rejected proposition by community submissions and expert consults to diminish the dunes or artificially restrict the level of the lake in order to maintain an eastern road with full parking for the commercial benefit of the CP and S&P. Both a motion and then a recission motion to build a new road came before Council this year.

BES believes GLC needs to explain its role in the publicly made claims of support for that proposal. It seems highly unlikely that the protest group spokesperson would have invented such a claim.

### **Sport and Recreation Centre**

BES has less to say about the S&R because for the later years it has been closed to public access without a specific appointment.

S&R occupies and manages the entire northern third of lake Ainsworth. An excellent google map clearly shows the Centre and its relationship to LA.

S&R has continually opposed the closure of the east road.

However, at a public meeting on 24<sup>th</sup> June to open preliminary discussions with the community Mr Paul Doorn, Executive Director, Sport and Infrastructure Group, distinctly said that he was comfortable with BSC plans for the eastern side of the lake.

This is convincing evidence that S&R opposition is not convincingly about coping with the east road closed. It is more about preference.

BES believes that Crown Lands, although the owner of the land, has never tried to set boundaries for S&R activities nor in any way to expect that S&R should respect the environmental needs of the lake.

It is noted:

S&R has always been consulted in all studies, reports and proposals by BSC.

Claims to Complete Urban that it was not consulted by Connell Wagner in developing the Master Plan are inaccurate. What is true is that the then Manager did not attend consultation sessions with stakeholders until the final presentation when the proposal to close the east road was to be discussed.

It was also consulted by BSC during its deliberations on the CW report and in every discussion since.

In 2014 S&R submitted a list of claims why the east road should remain open. Each claim was addressed by BSC. It should be noted that the east road is sometimes closed because the lake water is over the road. In 2011 the road was closed for six months. There is no evidence that this caused hardship and this was without any proposed changes as may now happen with the closure of the east road.

After the 2007 decision by BSC and approved by CL to close the east road, S&R built facilities that were best to be loaded and unloaded from the south later arguing these facilities should prevent the closure of the east road. S&R did a similar thing with the security system.

It should also be noted that S&R did not fulfil its undertakings regarding the Management Plan. As these undertakings go to the sustainability of Lake Ainsworth they are of serious concern for the ecology of LA and should be to GCL which is the land owner. The present Management expresses willingness to do the ecologically right thing but claims lack of funds. Some actions would clearly be in breach of statutory coastal zone management plans.

- Native vegetation has been removed from a significant length of the lake edge in order.
- Native vegetation has been removed from parts of the dunes that have been left bare or planted with exotics.
- There is no stormwater management at all. In some places storm water is directed via a u drain straight into the lake. A large bitumen parking area drains straight into the lake.
- Demands to keep the east road open show no cooperation with the need to increase public open space and public safety. In fact S&R offered funds to help restore the precinct on condition that the CU recommended exclusive S&R destination road was built. The community found this idea bizarre. It should also be clearly rejected by GCL as blatant preference for commercial interest over public use.

Public open space, finally given some priority by BSC, would be significantly the poorer for any attempt to keep a road in this vulnerable and very narrow location.

If CL is serious about its sustainability responsibilities it should insist that at least one officer of S&R on the ground has knowledge and responsibility to the sustainability needs of the lake.

## Conclusion

The saga of the roads network around Lake Ainsworth is a sorry one of neglect and commercial interest domination. The saddest part is that now BSC is committing to do something to maximise public space and minimize ecological impact on the lake after years of planning and a great deal of money spent on consultancies, the two commercial enterprises, supported by GCLs desire to maximise moneymaking from the LACP are committed to preventing this happening. GLCs dominant interest is in maintaining the best advantages for its profit at the expense of the ecology of the lake and public recreation. Appropriate balance must be restored and defined in some clear way not subject to commercial domination.

Dr Lyn Walker  
Secretary, BES  
24/7/2016

## Attachments

- 1 List of GIPA documents
- 2 Map of Recreation area GIPA Doc 1
3. Timeline of events

## NOTES

1. GIPA Doc 2
2. Lake Ainsworth Processes Study, 1996 Manly Hydraulics
3. Lake Ainsworth Management Study 2001
4. Lake Ainsworth Management Plan 2002, Ballina Shire Council
5. Lake Ainsworth Master Plan Report 2005 Connell Wagner and
6. . SOURCE Complete Urban Report Claims based on COUNCIL ADVICE

Quote: 2.1 As part of our tender submission to Ballina Shire Council, COMPLETE undertook a review of the Lake Ainsworth Crown Reserve Masterplan (14th October 2005) and specifically the Option 2 \_Road access through the middle of the Caravan Park. **Following the confirmation from Council that this option was not**

**supported by the Crown when they took over management of the caravan park COMPLETE has reviewed the masterplan road options again as part of this report. (pp 8 Complete Urban Stage 1 report Oct 2014)** My emphasis.

AND

This option was not supported by the Crown when they took over the management of the caravan park. (CU re MP Op 2.pp 11)

7

9 GCL response to master Plan road proposal  
GIPA Doc 14 and

Source 1Ref GF 80 R 46 Baumann 30/10/2006

Further to our letter of 10 July 2009 I wish to emphasise the Department's stated position that Option 1 of the Master Plan is the Department's preferred option as it is considered as being in the best interest of both the overall reserve and the caravan park. We do not support Option 3 as the basis of the Master Plan. We acknowledge that Option 2 reflects the existing public road network and therefore could be considered as an alternative possible option.

SOURCE 2 David McPherson

Team Leader Environment

North Coast (my copy undated)

Regarding the proposed options for road access:

- The Department strongly supports Option 1 that relocates the road between the back of Barrett Drive and the Caravan Park. Further, the Department would be willing to concur to the acquisition of land to allow the opening of a public road in that location. The existing public road reserve could then be closed and added to the Reserve.

Should Option ;2 be selected by the Trust, it is important that provision of the other benefits provided by Option 1 outlined above be included and addressed in the implementation.

The Department does not support Option 3 for relocation of the road and would not concur to the acquisition of land to allow for the opening of a public road in that location through the Crown Reserve.

N10 Email to LW from GM 24/6/2014

It is correct that Council has had varying correspondence from Crown Lands in respect to option two with correspondence from the Department of Lands dated 22 January 2007

confirming' that option two was an acceptable alternative to the previously adopted option three.

11. GIPA Doc 39

12 GIPA Doc 19

13 Omissions of 2010 Agreement see GIPA Docs 21, 24,37,56,59. These are internal GCL briefing notes.

14. Trust replies thanks GIPA DOC 20

15 Aborted Ballina Coast Regional Crown Reserves will sort the road issue GIPA Doc 26, 40,42

16. GCL seeks to prevent BSC using Op2 Doc 56 internal briefing note

17 Ministers letter GIPA Doc 33

18 GIPA Doc 51 GCL openly repudiates support for Op 2 for the first time.

19 BSc Reserve Trust meeting 15 march 215 Attachments



