

**Submission
No 149**

INQUIRY INTO CROWN LAND IN NEW SOUTH WALES

Organisation: Crown Land Our Land

Date received: 29 July 2016



SUBMISSION

**Parliamentary Inquiry into NSW Crown Lands
23 June -- 13 October 2016**

24 July 2016

The Hon Paul Green MLC, Chair
General Purpose Standing Committee No.6
Parliament House, Macquarie St
Sydney NSW 2000

INTRODUCTION

This submission starts with thanks to the Chair and membership of GPSCNo.6 (the Committee) for undertaking this Parliamentary Inquiry into Crown Land. It is long overdue. In particular, the Committee is to be congratulated for the simple, wide-ranging terms of reference.

Crown Land Our Land Inc (CLOL) is the result of a group of concerned citizens who, as a result of in-depth personal experience with major failures in Crown Land governance, have joined together as a way to bring public focus to the principles and issues involved.

Start-point for this was a Parliamentary Summit held at the Macquarie Room in June last year. At this meeting, participant after participant shared reports about breakdowns in the rule of law regarding Crown Lands. Though localities were wide spread, and problems varied, it was obvious that issues re the Crown Lands Act 1989 (CLAct) were not isolated or one-off's. The pattern of un-lawfulness was systemic, and getting worse. Action was needed urgently - and the recent White Paper fiasco indicated it would have to come from the community.

Four months later, on 6 October 2015, registration as Crown Land Our Land Inc was confirmed. The key strategy underlying our organisation is to act as a core resource "hub", in effect to co-ordinate information on Crown Land (CL) issues/problems/developments/decisions throughout NSW and then use this to empower and support local Crown Land groups in their individual campaigns. As a result we have been gathering information on CL problem-sites, gaining affiliates and members, building data-files on issues and caselaw.

Apart from many general examples now on file that contribute to a wide-ranging, fact-based overview of the current situation re NSW Crown Land in 2016, CLOL now have more than a dozen in-depth case-studies, touching on all four topics in the Terms of Reference. We believe this information/experience will be of great assistance to this Inquiry.

CLOL was officially launched a month ago, also in the Macquarie Room, at another Parliamentary Summit. This was one year after the first, on Wed 22 June 2016. Fittingly, it was also the evening this Parliamentary Inquiry was announced.

A one-page Outline on CLOL is attached.

CLOL Constitution This demonstrates the depth of ongoing concern CLOL has re Crown Land - the first two pages show both our motivation, and our mission. On p.1 lists our key Objects are linked in aims to educate and inform re good governance of Crown Land - the rule of law. P.2 then makes this correlation explicit, with excerpts quoted directly from the NSW Crown Land Act 1989. It's a good Act - just never used properly.

CLOL Constitution attached. In excerpts, note "Principles of Crown Land Management". An outline intro to CLOL is also provided..

CLOL Credentials All founder/convenors of CLOL have years of experience with Crown Land issues, and these matters include intensive interactions, ranging from matters in the Supreme Court and Land & Environment Court, to multiple GIPA applications. We've been actively engaged with interactions involving every level of Crown Land management - various Ministers over time, the Department (head office admin, project officers, field staffers), the Attorney-General (as guardian of Trusts), local Councillors (as Trustee) and Councils (both as LGA's and as appointed Managers of Reserve Trusts), with the Ombudsman, and multiple times apiece with ICAC.

As recently as April-May, two of the CLOL Team Leadership committee were called in to provide detailed submissions to the Auditor General's current investigation into Crown Land affairs. This was based on specific personal case-studies. However, thanks to a growing network of CLOL-aware Groups throughout NSW, we are now building a State-wide database.

From this, CLOL sees mismanagement that is truly systemic. We can tell the Inquiry where, how (and sometimes even why) Crown Land governance and administration fail to comply with even the basics of the CLAct. In this submission we only touch on some.

Problems go way beyond inconsistency or incompetence and add up to a dire combination of wilful blindness overlaid with outright corruption - when the CL Dept itself is complicit in attempts to deceive the Supreme Court, this is close to total breakdown in the rule of law, and the Inquiry needs to know.

While there are undoubtedly skilled and upright staff in the CL Dept as such, and there are Councils that get things wrong because they don't know any better - the current situation is contrary to any concept of what "good governance" should be. What's needed is not new legislation but deep CULTURE CHANGE. The aim of this CLOL submission is to focus on how to help this happen.

Note also that while there may be "political" aspects to each 'location', problems come from both sides of politics. And whether it's a power grab, a land-grab, or a pay-off - the real issue is lack of respect for what Crown Land is supposed to be in the first place. Understanding this will assist towards more probing Q&A sessions for Hearings throughout the actual Inquiry

NOTE: *this submission is not a formal study. Brief summaries, abbreviations etc will be used to highlight example, inspire questions, add comments, make points, offer suggestions..*

FORMAT: *After a brief, but important, background to set the scene, topics will follow the same order as in Terms of Reference. Much will focus on Crown Land RESERVES since this is the area most available to community comment. All \$-amounts have been rounded.*

BRIEF BACKGROUND

To understand how NSW Crown Lands have come to be in their current state, some understanding of the history behind it is a big help - the dynamics rather than the dates.

Crown Land in NSW was being set aside for “public purposes” as early as 1824 - and some accounts say even earlier. The official Orders from Earl Bathurst to Governor Darling went way beyond polite requests to establish and protect public lands in the new colony - he added heavy exhortations that the Governor must ensure such lands could NOT be perverted by private use or private profit. *The relevant passage is in a one-page extract attached.*

Human nature being what it is, there have always been people cutting corners, trying to get more land or game the Crown Land system. And every so often, the CL system responds with revised laws, new arrangements. It happened in 1855, in the 1890’s, in 1903, in 1913, in 1932 and then again in the 1980’s. (Note that throughout this entire time, the designation of being for “public purposes” has remained as a pivotal protection, re-affirmed time and time again by caselaw - most notably in the High Court decision in Rutledge 1959, and as recently as a fortnight ago in another High Court ruling re old Berrima Goal.)

THE AFTERMATH OF 1989

So if the CLAct 1989 was introduced to clean up corruption, the elephant in the room for 2016 is this one big question: WHAT WENT WRONG ? At CLOL we’ve done some basic research, and urge the Inquiry to do a similar investigation. It soon becomes very clear what the real problem is. It’s not the Act - it’s the ONGOING failure to properly implement it.

In background 1989, CLOL has had access to conversations with a senior CL officer involved with drafting the actual CLAct. His first-hand knowledge tells how the addition of “Reserve Trust” provisions in this Act were response to decades of corrupt dealing under the old system whereby Councils had direct control of Crown Lands in their area.

Evidence of what occurred pre-1989 can be seen in pie-bald patches of private title dotted through the Western Division, where there seems to be no rhyme or reason for such haphazard result, and definitely not in such eco-fragile environments. *The attached CL Map show this.*

Knowing this history, it is unconsonable that recent proposals in the White Paper sought to revert to that same style of “direct” Council management. In effect, the Govt itself was inviting a repeat of what is on record as an era of notorious rorts, rip-off and blatant corruption. The Inquiry should ask - do the people of NSW want to risk a re-run of that disaster ?

SO WHAT DID HAPPEN?

The 1989 legislation was passed. By the next year there was a change of Govt, with change of direction. They left the new Act in place, but did nothing to support it. No training sessions to advise Councils about the new governance regime, and so far as CLOL can ascertain, not even a basic information kit on what was expected/required. Didn’t happen in 1990, nor later. A new century started - and still nothing.

Many of the problems now occurring date back to this fundamental omission 25 years ago. CLOL is convinced that lack of communication is still a core problem.

CLOL will now address the Terms of Reference in order, with the proviso that some level of information-overlap is unavoidable in such a wide-ranging subject as Crown Lands.

TOPIC [A]

The extent of Crown land and the benefits of active use and management of that land to New South Wales

Members of CLOL were active participants in both phases of Community Consultations, and throughout the White Paper process itself. At these sessions, the information given then still stands as a huge pointer to questions the Inquiry should explore in answering its own Topic A.

CROWN LAND - WHERE IS IT?

The extent of Crown Land was defined as being “*everything except....*”. This was based on a large map showing public land for all NSW, with various colour-codings for six factors - Tenure, Reserves, Crown Roads, Crown Waterways, and NSW Coastal Waters. The exceptions were identified as “*private title*” by being left uncoloured - ie white. *Refer copy attached.*

The management structure for this “everything except” map was described as being three Divisions - the very large Western plains, Central on the slopes, and then the strip of Eastern or Coastal. Although not marked on the map as such, we were told that these split into various sub-regions for departmental admin - *refer Land Districts map attached.* This management structure may have been workable in the 19th Century, and may have been unavoidable in a pre-computer mid 20th Century. But in the digital 21st Century it is no longer fit-for-purpose.

Note re planned software update: In the recent NSW Budget a sum of \$3million has been allocated to CL Dept for the development of an updated digital system. This sum is (somehow) supposed to be the answer to all the issues re communication/information on Crown Lands, both internal and (we gather) to the community at large. Given the scale of the task involved - the complexities and multi-billion dollar value of the CL land-holdings involved, the massive cost over-runs incurred by other Govt agencies trying to go digital on bare-bone budget, CLOL doubts it will come close. The Inquiry should certainly inquire.

And because we see info-based strategies/communication as THE key to both Topics [B] and [C] CLOL suggests that the Inquiry query this matter in depth - how is this money to be used, and precisely WHAT is it supposed to achieve. And remember that this is a Dept with woeful record in terms of training and communication - it took 17+ years for any guide to managing CL Trusts to appear - the first Handbook was released in 2007. And even as the Inquiry gets underway, this incredibly helpful guide has NEVER BEEN PRINTED

When CLOL members asked for a copy to keep on file, the advice was: it’s on the web, just do a download and print it yourself -- that is, ALL 282 PAGES. Yet commonsense suggests it should be mandatory as “bible” for every administrator with any dealings whatsoever involving CL Trusts. This includes Councils as Trust “Manager” - some don’t even know it exists.

Is it any wonder that CLOL can talk to Councils, and to community groups (even our affiliates and members) and find that they’ve never read the Handbook - so haven’t a clue.

CROWN LAND - WHAT IS IT ?

At the CL White Paper consultation sessions, questions were asked about the kinds of Crown Land. Answers were vague. The presenter apologised, saying she knew (from experience) what they were, but the map couldn't show how this worked because the CL system only did basic definitions, based on 20-yr old data systems installed in 1994. So far as COL can discover, they still are. So CLOL knows a digital update is definitely needed.

She went on to explain that, while the existing three Divisions are in the CL Act 1989, these arrangements date back to at least 1855, maybe earlier, with revisions circa 1913, 1932, and then 1989. To add a note of hope, she added that Crown Land was waiting for the Lands Dept to finalise its development of a new web-based SIX aerial mapping service and expected this to be a great leap forward when introduced.

This presenter came across as a long-time CL professional with great loyalty and wealth of knowhow, keenly aware that the CL asset management system she was given to work with was obsolete. Her dismal report has been reinforced by CL staffers as recently as 10 days ago, via casual comments referring to staff loss/change as if on public record.

From this CLOL put several dates together with other events known from other sources and we now believe that the CL Dept has been hollowed out, both in numbers and (more debilitating) in huge loss of corporate memory. It currently seems to be a demoralised residue after a draconian downsizing - 30% gone in 2011, exacerbated by a further 10% cut in 2013.

(We've since heard that the presenter referred to here was herself made redundant some months after the presentations phase in the White Paper process.)

ADMIN FAILURES - WHAT TO DO ?

None of the above is caused by the CL Act. And trying to fix management and admin failures by resorting to legislative change simple won't work. Nor will it answer the need for things like attitude-shift or culture-change. These come from communication - not statutory chaos.

The real breakdown is lack of respect for Crown Land as such, and lack of support for CL staff. Without saying so directly, the presenter left us in no doubt that the CL Dept had been so stripped of staff that operations are based on survival-mode, ie everything as-is, with neither scope nor expertise for initiative or future development.

The management of Crown Land in NSW does need reform - but not law "reform". The 1989 Act is not perfect - but it's still good law, it's just never been given a chance to work properly.

Rampant breaches have been allowed to continue in a climate of impunity. The Inquiry should also note that the "Goomallee" multi-use Amendments of 2013 have introduced layers of legal confusion, including the element of retrospectivity for breaches. CLOL urges the Inquiry to examine how such outrageous ploy can be part of sound public administration when it not only condones unlawful behaviours, but contradicts any concept of management integrity and undermines public confidence in the rule of law. This is the equivalent of telling a bank robber that because he's used the money for a year, he's got away with the crime.

Cheating the Crown Land is no different.

CATEGORIES & CLASSIFICATIONS

The SIX system is now in place, and is a huge help for defining boundaries, finding street names, DP and Lot numbers, and such. However it does NOT provide some simple descriptors or use-details that should be considered basic essentials in differentiation the many KINDS of Crown Land. The Carapiet Review suggested a system of CLASSIFICATIONS that would introduce a more sophisticated means for identifying different kinds of Crown Land:

rural--urban--town--village--city--pastoral--agricultural--wetland--forest etc.

This would be a good start. However, when considering this aspect, CLOL suggests that the Inquiry stay aware of several things.

1. the very first Object of the CLAct (s.10) itself is a call for the **“proper assessment of Crown Land”** - and it seems that 27 years later, this has still not been done.
2. the Act (ss 8, 9) does make provision for revising the definitions of different land districts, and for recognising **“cities, towns and villages”**. Why hasn't this been done years ago ?
3. right now, management of NSW Crown Land is the **opposite** of corporate best-practice for **asset management**, which is based on clear identification, good categorisation by type/priority, strategic valuation, strategic use-planning and risk-assessment especially for long-term holdings like land.

Perhaps the proposed digital upgrade provided for in the Budget marks some realisation of what's needed. And CLOL certainly realises that even a pitiful \$3 million is better than a prior 20 years of nothing. However we respectfully submit that if (after investigation) the Inquiry comes to the conclusion that this sum is nowhere near even half-adequate, then your Report must challenge the allocation as woefully inadequate, and call for reappraisal at a more realistic level, or in some form of strategically phased plan.

If the aim is indeed, to manage Crown Land in a business-like manner (the “Enterprise” model as indicated in White Paper 2014) then the current situation is years away from being ready for either in method or manpower. By itself, a software program or new digital-era tools may make it easier for staff - but won't come close to doing what's needed for such an attitudinal shift. Neither will a new website, no matter how slick or pretty.

The Inquiry should also take account of TIME. It will be a mammoth, time-consuming task just to do the Audit needed - probably the reason why it hasn't been done. Then comes the further complication of identifying the categories that each Crown Land parcel fits into let alone the added issue of integrating that into a new software system - though this may in fact simplify the process once it's underway.

Introducing a new admin system based on “active use” sounds fine. But try to do it now, with the basic groundwork still missing after almost 30 years - it's a recipe for chaos. It won't work. Hopefully, this Inquiry will be able to prevent such disaster.

Note. While CLOL philosophy is built on the CL Act and the rule of law, we are NOT defending the status quo as such. We look to a future where the whole paradigm has shifted into a much more holistic overview of what Crown Lands ARE - and aren't.

THE GREAT DIVIDE - ATTITUDE

There is a great divide between merely managing a portfolio of land-holdings, and being an ASSET based entity. The difference is attitude. The first is that of a bureaucrat who sees the “holdings” as a fixed factor - with work/costs required in their management. The second sees ASSETS as valuable, and their pro-active management as opportunity to maximise value.

CLOL supports this second approach every way consistent with the public interest. But we add this proviso - attitude change requires a radically different approach from what we’ve experienced in current CL Dept. Developing a strategy that re-defines what Crown Land IS, literally from the ground up, might be a useful way to go. This would provide a basis on which to build the answers that Topic [A] calls for, namely “ACTIVE” use for the benefit of all.

Accordingly, CLOL supports the Carapiet ideas on classification as a first step. But we believe that this could be taken much further, into the concept of Crown Land categories that take into account USE-factors, as well as physical location in towns/villages/coastal etc.

By creating new categories relevant to the 21st Century, management of Crown Land can become far more flexible in understanding both the nature, and true value (including social capital) of itself as ASSET BASED entity. This philosophy can be summed up in four words. Know what you’ve got. The secret for Crown Lands is to do so with clarity AND consistency.

Once done, the corollary then means that Crown Lands can, and with confidence, identify lands which are in fact residual, or surplus, or “non-conforming” and thus optional in the overall plan.

The end result would mean that management of Crown Lands is no longer based on geography, as shows now in the longitudinal “Divisions”. Instead, like-categories could aggregate into clusters, each creating its own definition as an ASSET CLASS - in precisely the same way a corporation may have different classes of shares, or iconic “brands”, or subsidiary operations.

COMMUNICATION FAILURE

The Inquiry needs to be aware that the Handbook scenario is not alone.

The same penny-pinching failure-to-communicate that has subverted the CLAct and perverted CL management by Councils throughout NSW managements also shows up in the few Crown Land Policy fact-sheets available - especially re REBATES & RENT CONCESSIONS and the Crown Land FOOD & BEVERAGE POLICY that sets out the rule for Kiosks and Dining facilities on Reserves. *Both are attached.*

These are truly excellent summaries re relevant portions of the CLAct - both of recent origin, and both buried by systemic ignorance that they exist. If Councils knew what they said, knew how they empower Trust Managers to insist getting the most “appropriate” result at a Reserve - how many current problems in CL management could have been prevented.

Committee-members may expect such information to be “basic” tools in the management of Crown Land. WRONG. Even CL Dept ignores them and gaily “approves” inane illegalities, like alcohol service at Greenwich baths - which even its own Policy prohibits.

The Inquiry should explore just what kind of COMMUNICATION plan CL Dept has.

SAMPLE SITES - READ & WEEP

Without trying to burden the Inquiry with long lists of egregious problem locations, CLOL knows of multiple breaches, all demonstration-sites for where the CL Dept has been actively complicit by signing off (ie “owner’s consent”) on Council-approved licences, leases, DA’s etc. Here are just a few examples in recent years --

2012 - 2015 King Edward Park Headland Reserve Newcastle (KEP)

Newcastle Council (NCC) didn’t just ignore CL Dining policy in approving a re-development of this landmark site into an exclusive Conference & Function Centre, the CL Dept actively colluded with NCC in attempts to get around the CLAct by changing KEP Plan of Management and the LEP involved. When residents took DA consent to LEC, both Council AND Dept did their utmost (at huge cost) to enforce the illegalities. Failed. In May 2015 decision, CLAct prevailed. KEP is now caselaw - aspects will be mentioned later again in this submission.

2015 - Greenwich Baths Reserve.

An attempt to turn a small much-loved family inlet on Sydney Harbour into a full-on function centre. Commercial operators somehow acquired the lease and lodged a DA with Lane Cove (LCC) for greatly expanded operations. Although the term “Crown Land” did occur, there was no real recognition of what this means. Serious anomalies were ignored -- big constraints on general access, parking, bypass of CL Food & Beverage Policy, introduction of serious safety issues by allowing alcohol in a water-based Reserve. After intense community protest, supported by CLOL, the JRPP decision was for some increased activity but not all - with virtual no consideration allowed re the Crown Lands rules. Note - not so long ago LCC allowed mega re-development of a major Crown Lands park near their CBD as a large for-profit Aquatic Park - at least equivalent to another “Stadium” as anomaly.

2015 - Alfred Higgs Reserve, Gosford (AHR)

The culpable mis-management of Crown Land by Gosford Council (GCC) is typified by last year’s consent for a lease-dependent DA for a multiple-operator food court on this small strip of foreshore land between the the Stadium and the waterfront. Ignoring all public protest, GCC said yes, despite being contrary to the “public purpose of public recreation”, despite alienating the entire Reserve for commercial operations, despite involving a complexity of unlawful sub-leasing, and despite being a 50m long, 5m high concrete structure obstructing the ONLY safe exit route for a 20,000 seat sports venue. The un-lawfulness of this Consent cannot be overstated. That it was ever on the desk of a designated manager of a Crown Land Reserve Trust is a disgrace. That GCC gave it the go-ahead with arrogant impunity adds a notch to its record as a serial CL offender. In fact, the Stadium alongside AHR stands as yet another indictment. Thankfully, this DA is in abeyance - but only after vehement late objection by Fire, Safety, Police and Emergency services.

2016 - Stuart Park Reserve Wollongong

*This is a large, iconic dedicated Reserve between the coastline and Wollongong CBD, managed by Council (WlgCC). About half the whole park has effectively been taken over as “exclusion zone” for tourist/para-gliding activity by Skydive the Beach (SDTB). This for-profit franchise operates multi-million dollar business for \$8000 a year rent via a CL licence based on 10sq.m - the per-person area needed for ONE landing. Such low fee is a mockery of space & commonsense - and in clear breach of market-rent policy. Yet they not only stay with impunity - the recent DA to build commercial office facilities for SDTB was approved under delegated authority by WlgCC General Mgr. A community group has challenged the Consent in LEC - first Hearing was in June. CLOL believes this appeal MUST win, since CL Act **prohibits** delegation re “leases licence, easements and related matters”. Refer p.183 of CL Handbook attached. There was a similar situation at Willoughby Council where the GMgr’s delegated approval of a 2007 DA at Talus Reserve was, in 2013, ruled “void ab initio” by CL Dept itself!*

These are just a sample from dozens of CL “problem sites” documented in some way and known to CLOL so far. It seems that every time another community group seeks our help, yet more issues emerge in regard to non-compliance. Sometimes the problem is Crown Lands as a Dept, more often than not there’s a Council involved, running roughshod over a Reserve.

Even these few instances demonstrate that a common element seems to be an abject failure to take the Crown Lands Act seriously. Councils argue that because the DA complies with the LEP is must be OK. Or, that because the Zoning allows for such-and-such use, the “public purpose” has somehow been lost or over-ridden. Sometimes this misdirection is deliberate, sometimes not. It’s especially notable when the CL purpose is for “public recreation”.

It’s not just a Council issue, but also comes from the community concerned. All too often the objections are lodged solely on planning requirements. It’s a scenario the Inquiry should keep in mind. People seem oblivious to the “Crown Land” aspect of Crown Land - to consider thus as either secondary, or an optional extra. - despite the force of s.98 which says explicitly that in case of conflict with the LGAct, “this Act prevails” ie CLAct.

Yet in case of KEP, it was overwhelmingly “Crown Land” considerations that carried the day. Despite knowing this, it seems the residents re Stuart Park relied far more on LEP and DCP factors, forgetting their far stronger challenge that for a Crown Land Reserve, there can be NO delegated approval. (Only the Trustees can decide, meaning that SDTB DA is void ab initio.)

CLOL includes it in here to highlight the scale of need for information- the glaring lack of communication. If as indicated by Topic [B] the Inquiry is concerned with community input and consultation then this demonstrates how widespread the need.

It also shows why CLOL exists - that we have taken on this mission to “educate & inform” is an indictment of CL leadership over years of neglect, and of a Dept that has failed to protect the public lands it controls from an ongoing and toxic combination of common greed, landgrabs, political opportunism, wilful blindness, lazy maladministration, impunity, complacency, human error, and (for ordinary people) powerlessness and despair.

MULTIPLE & SYSTEMIC

CLOL wishes to emphasise that this submission is not about airing a few random complaints. Crown Land mismanagement issues are so far beyond “widespread” as to be truly systemic. If we give more details here, it is in the hope that doing so will hit home just how chronically out of kilter Crown Land management currently is, and how desperately it needs this Inquiry to reach into all levels. Make no mistake - NSW is in crisis

On 6 October last year (CLOL Incorporation day) our data files had just four main case-studies: Talus Reserve Willoughby (Talus), Paddington Bowling Club at Trumper Park (Trumper), Yasmarr Reserve Trust at Haberfield (Yasmarr) and the North Parramatta Heritage Precinct, Parramatta Pool & Park (ParraPark). Any one of these could be the subject of a PhD or major management study in “what not to do” re Crown Lands, ranging from idiocy to outright lies and financial corruption.

In less than a year the list has expanded to over 40 - some are smaller local matters (like Moxham Quarry Reserve or Patonga) others have State-wide impact, like the ongoing controversies now simmering around Centennial and Moore Parks, and the Anzac Ave trees.

There are at least 8 and probably more CL sites around the Gosford Waterfront - with community in conflict over Reserve status, Council approvals in blatant breach of rules or due process, and new issues (like re-assignment of the IguanaJoes lease) constantly coming up, adding confusion to complexity.

At Moree there are low-key CL problems in the management of Mary Brand Park, while a wharf collapse at Pelican Point triggered questions as to how a private residential component came to be built into this CL Marina at Lake Macquarie. Meantime, at Port Macquarie; secret deals in the sale of the Plaza carpark to Woolies has started a stoush between Council and CL Dept & Minister over this prime foreshore Crown land. What a mess

In almost all these, one notable feature is, again, the ABSENCE of the CLAct.. It often starts in basic admin of DA processing. CLOL has seen major DA’s for development on Crown Land, where that fact is not even mentioned, or if so only as location identifier on intro pages. The first docs for Alfred Higgs were like this. Ditto those for Greenwich Baths.

The Inquiry may be intrigued to learn that the writer was on Ashfield Council (1999-2004). For over 4 years there wasn’t the slightest hint this Cr role included Trustee responsibilities for the iconic 1888 Ashfield Park as a CL Reserve. It was not even mentioned. Not during a “Mary Poppins” re-make of the children’s area. Not in re-negotiations for the Bowling Club lease.

This wasn’t corruption - just oblivion. There seems to be a “black hole” of attitude, whereby Crown Land is just open space, thus “available” for whatever whenever anyone wants it for something else. Consider that same Ashfield Park. Thje first plans for West Connex just grabbed it as a convenient location for road-widening and an equipment dump.

Little wonder the CL Act gets ignored. By including anecdotes like this we hope the Inquiry will be impelled to recommend urgent remedy - recommending fast-track solutions such as more training, more relevant communication, and more ways for the community to contribute and to be involved.

CL MANAGEMENT - WHERE TO FROM HERE ?

Non-compliance is NO reason to ditch the Act -- rather, it indicates that the Inquiry should investigate how such climate of impunity has been allowed to develop - and what to do about it. CLOL believes that the “Principles of Crown Land Management” rank high among the world’s best for management of public land. We also see this short list as being foundation for CLAct 1989, and as such cornerstone of the whole NSW Crown Land system.

Apart from rescinding the untenable anomalies of 2013, the only thing this Act really needs - and has never enjoyed, is a culture of COMPLIANCE . This is the key to making CLAct 1989 work. In urging the Inquiry to look into this as a major concern, CLOL looks forward to finding strong recommendations in the final Report.

These will be faster, easier, safer, and far more effective than the disfunctions and unintended consequences of throwing out one law to bring in a whole new regime, and one based on the theory that privatisation works. Even prior enthusiasts for this (like Mr Rod Sim of ACCC) no say this doesn’t work.

We urge the Inquiry to Report that before making any drastic legislative moves to the CLAct, it might be a smart move to re-think, and GIVE THE CURRENT ACT A CHANCE TO WORK. At the very least this will “buy time” for CL Dept to do the Audit required, to get the new software management systems in place; and be ready to move seamlessly into a new regime.

Remember --

without PRIORITISATION, privatisation cannot succeed.

New laws geared to asset sales may raise a few random dollars in the short term, but (based on CLOL’s combined experience with people, markets, legalities and Crown Land issues) we confidently predict that if not preceded by strategy and proper preparation as outlined here, then they are doomed to be self-defeating. In fact, the more arbitrary their introduction, the faster they will serve to compound the CL management problems at large

The other side of CL training then becomes pro-active monitoring for compliance. A whole new regime of checks and balances will be needed to ensure that, like the Act itself, this new paradigm prevails. Such attitudinal shift is also going to be an essential element underlying the success with any new law. Without it, big resistance, big questionmarks, and probably big fail.

While the current CLAct is not perfect, and there are a number of ways it can be “tweaked” to work more smoothly, the big problem is NOT the CLAct, but rampant failure to comply. While this is sometimes a case of “didn’t know” (a plea that any Inquiry would be justified in rejecting from an entity appointed to manage a Reserve Trust) there are all too many times where the situation involves wilful blindness, collusion, or complicit intention to subvert the CLAct.

###

MORE MANAGEMENT CONSIDERATIONS -

CARAPIET

The Carapiet Review was completed in 2013. Although missing key information from either its business-based brief (not the fault of Mr Carapiet) or the very flawed White Paper community sessions which followed (and were manipulated to downplay awkward input), it did at least try to bring some semblance of impartiality to its Report on NSW Crown Land.

The big problem for the Carapiet Review is that the author was given no insights into how the Crown Lands Department actually “works” out there in the field.

How could he know about the failing IT systems, the poor staff morale, the cover-ups for incompetence, jiggery-pokery and mates rates and a legal department happy to give advice on how to “regularise” what was gross “unauthorised occupation” of a Crown Reserve - and to do so in a way that perpetrated the same situation. CLOL has documentary evidence of this re Talus Reserve. This is the Dept that now supports Willoughby Council in its mischievous use of ex-parte s.63 Application for that so-called “regularisation”, by using lies and omissions to deceive the Supreme Court. Talus alone is a continuing scandal this this Inquiry cannot ignore.

As far as real “management” of the CL Dept was concerned, the poor man at a disadvantage. have a clue. Yet for all that, he was savvy enough to pick up on some things, and the Carapiet Crown Lands Management Review as presented to Deputy-Premier Stoner in 2014 does at least point in the right direction. The suggestions on Page 7 re “strategic assessment” and “classifications” are excellent. The Inquiry may find these useful to re-visit.

Unfortunately this cannot be said about other things in the Review - and the ensuing White Paper was even worse. That process of 2014 made a mockery of even a half-move in the right direction, since proposed legislation had been already drafted and held ready to be tabled even before the so-called consultation period was complete.

The only thing that put pause to this “enterprise model” plan was overwhelming rejection of the then-proposals, not just by “the community”, but by Local Government and other organisations/entities that Minister Stoner had assumed would welcome the chance to take over direct local control of Crown Land, especially the most desirable parts, these being Reserves and Dedications. The proponents failed to understand three things -

1. Community mood - lack of trust in political motivations after decades of rorts and rip-offs re Crown Land (and public lands generally) have made communities suspicious of ANY suggestions re change or “privatisation”.
2. Local Govt as victim-bites-back - Councils have been the fall-guys for years of cost-shifting by NSW Govts - were instantly aware of the ramifications, instantly resisted being given (yet again) “full responsibility - no budget”.
3. Timing of the White Paper was unwise - the “Goomallee” amendments of late 2013 had already stoked concerns - the White Paper proposals made even more people aware that Crown Land issues were afoot, adding fuel to smoldering protest.

MISSING OUT - INFO & COMMUNICATIONS

There is another unforgivable identification gap that CLOL has become aware of in regard to Crown Land: how it relates to other statutory requirements - for example heritage areas.

To explain - thanks to the presenter mentioned previously, CLOL has a copy of the master list for ALL Crown Reserves in NSW, including Dedications. It has a lot of information - 13 separate columns and (as at late- 2014) just over 35,000 separate listings, each with site-site, complex lot & DP details, dates, LGA, name of Trust (if any) and such.

But it has no provision for street address, contact point for Trust or manager, and nothing to identify heritage or environmental factors. Reason? Format is an XLS spreadsheet dating from 1994, and when first compiled no-one even thought of adding a field for “heritage” or “wetlands” or whatever.

Worse, when it comes to places of high heritage significance, like items on the State Heritage Register, the gap is a chasm because, as a matter of policy, the SHR does not identify ownership. When CLOL raised this dilemma with CL staff, the only advice given was to “phone around local Councils and ask if they’ve got any SHR Crown land on their books”. *What a joke.*

Except that this joke points to a fundamental difficulty re CL management. Because if you do go to a Council and ask the CL-heritage question (and CLOL has!) you find that there are all too many Councils (and some of these in the top quartile of LGA’s) who don’t know, or at best aren’t quite sure, what Crown Land they do have. Often, the lines have been blurred for so long, or so lost in staff-changes, that a CL site is somehow assumed to be Council-owned land - even called operational.

GOSFORD - CL PROBLEMS GALORE

By co-incidence, just as this submission is being finalised, reports are coming in, that such mindless take-over has been happening in Gosford in regard to the Wamberal Memorial Hall, its CL status only now “remembered” as residents resist a proposal for the wholesale conversion of “Council-owned” parks into operational land.

There are other problem sites in the news at Gosford right now - and give more indication of how dysfunctional Crown Land management can be. The former Primary School site is a case in point, with more questions than answers. CLOL has seen documentation that shows it was dedicated public land in the 1930’s, for the public purpose of education. And we know that despite ongoing searches, no-one can show any evidence that it has been un-dedicated. Yet Gosford Council, and the JRPP have just given consent for the construction of a multi-storey building for the ATO, and assessment is underway for second commercial DA alongside.

Such a basic fact should surely be settled before going ahead ? And what kind of management structure can lose track of such fundamental information?

Another Gosford problem site concerns that well-known eatery on its sweeping waterfront - IguanaJoe's. A few weeks ago a sale sign went up, offering a 20-yr Crown Lease for sale. After checking with the sales agent, CLOL ascertained that in reality this would involve transfer of the second Option part of a 20+20 existing lease, with rent currently at \$60,000 pa. Further checking finds that this CL Reserve started life as a community "Aquatic Club" in the 1950's, then gazetted in 1974 with the public purpose of "future public use". Owners and use has change - but nothing has altered in the gazettal. Yet somehow this pivotal on-water site has morphed into a full-scale function centre.

Now knowing the background, CLOL has grave concern re the legal status of the original 1999/2000 IguanaJoe consent. The questionmarks have only grown after reading recent rulings of the High Court which stress the over-riding imperative of the "public purpose" in the governance of Crown Land. It truly does have the force of law.

Just along from IguanaJoe's, the next few hundred metres are also Crown Land - but the easterly strip is a different reserve, this time "for public recreation". What used to be a mobile van serving as pie-shop for the boaties on weekends has somehow gained approval to become a large fixed structure taking over an area about 100 sq.m, with huge EAT STREET sign now dominating the Reserve. This is no mere "kiosk", and the sign is so large it surely breaches the CL Dining Policy. How has this been allowed? Why has the CL Dept give consent?

And just to add more threat to the Crown Lands in Gosford, there's Council talk of bulldozing part of 100-yo Memorial Park (yes, another CL Reserve) so an elevated access can be built to the proposed Convention facilities masquerading as a Performing Arts Centre.

Along with the appalling Alfred Higgs situation already referred to, these are just some of the Crown Land "anomalies" in Gosford right now - we cite them to give the Inquiry a glimpse of such how varied, and how systemic the problems are. One way or another, all are in breach of the the "Principles of Crown Land management". All are geared to commercial interests, and for private profit.

If nothing else, the Inquiry should be asking - how can so many "issues" happen in just one city? What has the CL Dept been doing ? Or, more to the point - NOT doing ?

FIASCO STATUS FOR STADIUMS

By this, being thus far into this submission, it will come as no surprise to the Inquiry that CLOL goes into such detail because we believe that key to the benefits, active use and management of Crown Land is the rule of law, namely the Crown Lands Act 1989.

With that in mind, we bring the Inquiry's attention the ongoing problems that somehow get set in concrete when business-minded sporting entrepreneurs see a swathe of open space and decide they don't need to abide by the law - wouldn't be easy to just to take over that parcel of Crown Land. The promises are all about social benefit, team spirit and sporting facilities. The results remain dubious, and probably un-lawful. Even when they've been standing for a decade or more - as with the Stadium (now so commercialised it's branded Pirtek) at Parramatta Park, not just a Reserve but dedicated for public recreation more than a century ago..

Example 1 - Grahame Park Gosford. (GPG)

This is a major sporting Stadium in Gosford. Built on a land mix of ownerships, some private, some public with the half nearest the Gosford foreshore being a Crown Land dedication gazetted pre WW2 for “public recreation”.

Long maintained as open space for multi-use by the community, the current 20,000 seat facility was constructed in 1999 as a Football Stadium, including catering provisions for spectators. The problem is that the Crown Land dedication has never been revoked, and caselaw makes it abundantly clear that commercial operation of a “Club” can never qualify as “public recreation” under CLAct 1989. For some years now, the operators at GPG have refused to allow “Carols by Candlelight” or similar general community events on their ground, now called “Central Coast Stadium”. Worse, the 2m high metal fence recently erected not only enforces total exclusion, Land Title maps show that it takes in public land beyond the GPG boundaries (ie a landgrab) and thereby cuts off public access to the stately parade of heritage-listed palms which were a gift to the whole community decades ago.

Gosford Council has allowed all this to occur. The public has been cheated, and now arbitrarily excluded, from lawful rights to its own open space.

Example 2 - Tibby Cotter Bridge (TCB), Moore Park Trust (MPT)

At the moment, there’s rampant controversy regarding ambit claims by the operators of Sports facilities at Moore Park for major extensions and new facilities. For too long the assumption has been that if such august bodies see some handy open space and want it, they only have to say so. This is the message of what happened with Tibby Cotter Bridge. Quite apart from querying the big WHY this structure became a \$38 million imperative, the Inquiry should consider the HOW it happened - and what this says about lax management mores even with such an iconic Crown Land Trust.

The fact is this: the spiral-access design of TBC takes up a lot of land-space on either side of Anzac Ave. In effect two big chunks have been excised from Moore Park.

Yet not a word of this can be found in the Minutes of Moore Park Trust. It wasn’t even discussed. Now, MPT is not some country Showground or local group -this is a formally constituted Board of Trustees with their own specific statutory powers to act for the public interest in significant public lands in a key urban location. Yet even here highly-respected, Govt-appointed custodians have been complacent, if not complicit, in seeing Crown Land as just “up for grabs”.

CLOL has reason to believe that equivalent scenarios pertain to Pirtek Park and its position in the dedicated Parramatta Park Trust, and questions also concerning Lambert Park in Leichhardt. Stuart Park Wollongong also involves an “Oval” - perhaps the furore there has other aspects, apart from sky-diving. And Talus Reserve is yet another CL lease where a dodgy process in the first place (whole sub-lease set-up there is contrary to CLAct in so many ways) undermines what’s there today.

In this era of corporatised big-biz sporting activities, pious justifications about “anything goes” so long as it’s for a sports club no longer apply. To underline this, the Inquiry should also keep in mind that, at law, organised “sport” is not public recreation - and neither is paying an entry fee to be spectator at a game. Note too, that by definition “club sport” is the opposite of having public access “as of right”.

The point the Inquiry should take from these Stadium examples is not so much about what’s now there, but rather, that what’s there is pointer to a prevailing attitude: repeat patterns of “ignore the law”.

If a Sports Stadium is required - then revoke the dedication for public recreation. Explain to the owners, the State of NSW - ie the community, why the proposed new use pre-empts the existing public purpose. Good management can mean change - but do it within the rules.

And when its Crown Land - let the owners, ie the public decide.

If areas of Crown Land are needed as landing-ground for a bridge, don’t just let it be taken away on a nod and wink. Use proper procedure to discuss, evaluate and document the matter - and maybe even ensure fair compensation comes to the public for the loss of its open space. This is public land, not some private deal or secret enclave. Decisions on what happens to it should be in the public record.

If a full-scale tennis centre is the best benefit/use - do it honestly. Revoke the reservation or revise the “public purpose”. Don’t just give a lease to one group, then quickly rubber-stamp massive change a few months later when they “re-assign” the lease to a different non-public entity. And don’t turn a blind eye when that set-up then sub-leases to a private operator who proceeds to put signs saying “private property” on prime open space. *Photos are available.*

In short - when considering what the “benefits of active use” of Crown Lands are, the Inquiry should take into account what’s required to create or to deliver those benefits. How can this be achieved within due process and respect for law.

With CL Reserves the best benefit is the “public purpose” - this should be the rule until proven otherwise. And if it isn’t, then re-define, or propose revocation. Transparency demands it, and so does the Crown Lands Act.i

There is an alternative way to proceed, and it may be to revoke or rescind. Perhaps the Inquiry should also be asking why this hasn’t occurred.

As the old saying goes: there’s more than one way to do things.

As the CL Handbook shows - doing it right isn’t hard: it just takes care.

DON'T KNOW, SO CAN'T CARE

Doing it right also means you need to know what's needed. In management of Crown Lands ignorance is NOT bliss, because the results can be so detrimental to the public good. Nor is it any excuse at law.

Consider this: many Councils still haven't a clue on what the legal ramifications of the (1989) Trustee/Manager relationship involve. And the CL Dept hasn't done a thing to advise (or admonish) not even when the Dept has done a formal review of compliance and KNOWS something's wrong, as happened with Willoughby Council (WCC).

Worse, there's conflation of finances, with Councils adding Trust monies willy-nilly in with their consolidated funds. Strict separation is an essential requirement in BOTH the CLAct, and the Local Government Act. Yet even in the last 12 months various CLOL people have been told (including in emails) by senior officers at several LGA's that there's "no need to have" any special Trust Fund. We've also been told there's no need for separate bank accounts, because a line-code in the Accounts computer system "does the same thing" - an attitude that's in breach of even basic Accounting Standards that Councils are supposed to conform to.

In some cases CLOL has seen where a Council's own Annual Reports (Willoughby) go into some detail about their requisite Trust Fund, so much so they declare it's available for public inspection "at the counter". But when CLOL asked to see this register, staff haven't a clue what's being talked about, and scarcely believe it even when shown what it says in their own Annual Report. For a CL Trust Manager, this is beyond incompetence.

CLOL is aware that a similar situation occurs at North Sydney Council, Lane Cove Council and others. We suspect that this is a widespread issue, and for larger Councils there is simply no excuse. This situation is not just poor practice - it is a serious breach of Trust law.

This is another aspect for the Inquiry to consider. CL Reserve Trusts are Trusts, and should be managed as Trusts, under Trust law. They are not just ordinary land-holdings. And caselaw has long since established that this indisputably applies to those set aside for "the public purpose of public recreation" - and that all such are, ipso facto, "charitable trusts" with all the strictures and legal status this involves.

Neither Councils at large, nor the CL Dept seem to have any idea about obligations as TRUST Managers - nor the gravity of maladministration re Trust management - not even when told. Breach of Trust is not just "naughty" - it is fundamental transgression. The multi-level Trust status (ie with Councils as Mgrs, not owners) as introduced in 1989 was brought in precisely because Councils had failed in their duty of care in respect to the Trust of Crown Lands.

CLOL sees this as a key consideration for this Crown Land Inquiry in regard to Topic [A] and how to manage Crown Land. In regard to CL Reserves, we say it is wrong to suggest that the CLAct needs "reform" when it's never been given a chance to work !

The brief Background given in the first pages of this Submission explain how this has come about - ie basic lack of training and failures to communicate. Putting these in place IS needed, and would be a great leap forward.

Perhaps PENALTIES in the CLAct for Council non-compliance would be a good change.

Make no mistake - failure to comprehend is no excuse when the very relationship that exists between a Council and the Crown Land under its control is based on being the MANAGER of the Trustee entity itself. Where problems are known - failure to rectify is in itself a further breach of Trust.

It would be remiss here not to mention the conflicted situation of Willoughby Council in regard to Trusts. We believe it would apply almost universally throughout NSW, in breach of all rules which insist that Trust business be kept entirely separate from any other activities; indeed, that EACH Trust itself is a separate entity, required separate meetings, Minutes, bank account, annual Audit certificate, AGM, etc. (*again, refer CL Handbook p.212, 213 etc*).

Firstly, WCC General Managers (plural intended) have shown themselves as past-masters at conflating Council and Trust business - particularly when using a mix of trust-me and “mushroom management” that keeps Trustees (ie the Crs) in the dark. WCC Minutes are a motley of obfuscations re Talus Reserve.

In contrast, WCC is cynically using the Trustee Act 1925 by way of s.63 application (2015) to the Supreme Court as a way to gain approval for the existing “unauthorised occupation” at Talus Reserve. CLOL see this as a dubious ploy. We are even more appalled that WCC is joined by the CL Dept in this travesty of Trust management. Court transcripts to date are riddled with misdirection and lies - inc by omission, as if Aboriginal Land Claim No.36,628 of Oct 2013 was a non-event. *Hearings ended last Nov, with decision still to come.*

THE NITTY-GRITTY OF MANAGEMENT

Another aspect of Crown Land management that CLOL brings to the Inquiry’s notice is the overwhelming failures in regard to the meetings and Minutes. We have already mentioned the omissions at Moore Park re Tibby Cotter Bridge. That body does at least have Trust meetings. Most Councils don’t. They should. Instead, everything is collapsed into “Ordinary Council Business” - sometimes without even noting that the site under discussion IS Crown land.

Yet the Schedules in the CLAct (explained with step-by-step clarity in the CL Handbook) stipulate that a CL Reserve Trust is NOT Council business, it just happens that the Councillors are also, ex-officio, Trustees for each Reserve in that LGA. The Council is appointed as designated Manager to assist the Trust - but Council as such does NOT run or control the Trust. And the General Manager has no part in the Trustee function other than as service-provider.

It should also be noted that each Trust is a SEPARATE LEGAL ENTITY, and as such requires separate discussion, debate, decision - by the Trustees. These can occur immediately after a normal Council meeting - or possibly even within it. But there has to be a separate agenda issued (and this on 10 days notice - way ahead of the usual “Council” timetable) and Minutes must be clearly identified as being for whichever Trust, and if for several- then each decision shown separately. Decision/s are then implemented by admin services as supplied by the Council in its role as “Manager”.

CLOL agrees that these inter-relationships are not easy to follow, and this may be an aspect of the CLAct 1989 that the Inquiry could consider for revision, or to simplify in some way. Far easier of course would be to recommend proper Training Seminars - as in Victoria.

But meantime, the protocols can be explained, and once understood are simple enough to put into practice. The sad fact is that, as explained in “Background”, there has never been any “training” program for Councils or Councillors to show how the Trustee system should work.

What happens now is as though the CL Schedule on Meeting procedure had never been written. Agendas include Crown Land by “address” as if this is just another location in that LGA. In the run-of-meeting, it becomes “business as usual”. CLOL can report how one Council goes into closed session to consider various matters - one item being a CL Reserve. Other than the Reserve name, no other information is given on the Agenda, not a hint of topic or rationale for discussion. Secrecy is supposedly sanctioned by confidentiality provisions in the Local Govt Act, and these are cited. WRONG - the LGAct does not apply to Trust business. (In fact the CL Handbook insists that Trust matters are to be considered PUBLIC business, with very limited reasons allowed for non-disclosure.) And often the LGA reason given bears no relation to the CL matter anyhow. *It's a shamble.*

Then, when Crs come out of closed session, they do ONE vote to confirm everything agreed. Result - CL business has been totally subsumed into the “Council” process. *It's now invalid.*

To date, CLOL complaints about maladministration (as above) have met with curt dismissal as nit-picking or “minor”. Yet such things go to fundamentals in the rule of law. We trust that the Inquiry will see relevance. If the everyday management of Crown Land is so manipulated and muddled in a set-up designed to deliver checks and balances -- what will happen if the muddlers (ie Councils) are given direct control ?

This is not a matter of fiddling a few parking tickets (and the Inquiry will recall some names sentenced to jail for doing just that) but involves real TRUSTS on behalf of the public good. Why are Councils (and indeed the CL Dept) so blind to the fact that, over and above the CLAct, the Trustee Act 1925 also demands stringent probity, with the onus of self-compliance as an inextricable part of Trustee responsibilities - and outcomes.

That expectation alone puts CL Reserve management into a far higher level of accountability, calling for transparency and scrupulous attention to detail on every point, meetings and Minutes included. It's a good rationale why major Crown Land decisions, like “leases, licences, easements and related matters” cannot be delegated, not even with the Minister's say-so

GIPA and YASMAR

In terms of transparency, not only does the CL Handbook urge the Trust Board/Trustee to involve the community in Trust matters, it recommends that Trust meetings be open, with agendas and Minutes made available to the public as standard practice. The Inquiry will also note how the Handbook reinforces this with a complete section explaining that Crown Land, and thus CL Trusts, come under the GIPA Act in terms of making information easy to access.

The Inquiry may find it useful to know that public access also extends to financial information, meaning core details of CL leases that involve >\$150,000 over the term of lease must be on the eTenders website. And if the sale/lease involves >\$5 million, then same applies, plus this extra: the ACTUAL CONTRACT must be publicly available in full.

It was largely thanks to GIPA that the writer became aware of the perversities of Ministerial dealings re Yasmar Reserve at Haberfield. The sorry saga revealed is useful in showing just how dysfunctional management of Crown Land can be --

- *Yasmar lease was signed early 2007, the rent being \$120,000 pa, as OFFERED even prior to a token EOI, wherein the result was being discussed a week before the bid were supposedly assessed.*
- *At Ministerial signing, much media fanfare about trade-off - rent \$\$'s to be used for urgent restoration etc. Management direct by Ministerial Corporation.*
- *Mid-2008 Yasmar papers tabled in Upper House. Writer sees copy of draft Lease, briefing notes with reports re non-payment of rent*
- *Mid-2011 do a GIPA - discover that no rent has been paid for 4 years. Not a cent, not even "Commencement Rent" at Minister's big photo-op signing.*
- *Try to confirm lease situation, -- senior staffer lies about "it's lost" but finally get copy*
- *Am told that no rent paid because "no invoice sent" - with "reason" being no-one had set up a computer code for Yasmar Reserve, so as far as CL: Accounts Dept were concerned, the Yasmar lease didn't exist.*

What happened then is even more outrageous. CLOL hopes that once known, it will alert the Inquiry to the the need for a certain level of scepticism when self-serving comments come from Crown Lands staff - and this goes all the way up to ministerial advisors.

- *Communication with office of then-DG Sheldrake - was advised that back rent would be paid and Yasmar account put on normal track*
- *Discovered that instead of the \$480,000+ due for 4 years rent as agreed, total amount actually paid was just \$1600. The true shortfall exceeds \$500,000.*
- *Reason given - leaseholder was a "community group" so CL had agreed to reduce rent to absolute minimum allowed in CLAct - ie \$400 per year. Voila \$1600.*
- *In 2006 this so-called "poor" organisation had given iron-clad bank references in its EOI - were emphatic that the \$120,000 pa rent offered was fair, and would be paid*
- *Meantime in late 2011 there was even argy-bargy about paying an extra \$160 as GST owing on the 4-yrs rent. Leaseholder has never used the land - just a "squat"*
- *In 2012 the CL Policy on Rebates & Concessions was printed We read that there is a \$400 pa minimum rental - but only applies for pensioners living in their own home on Crown Land. The revised Yasmar rental was a swizz - probably corrupt*
- *Made more fuss, further demands lease be terminated as only way to get sense into whole Yasmar situation - the heritage villa & grounds now in parlous condition.*

Instead, lease renegotiated. Prior shortfalls written off, and starts anew at old rent of \$120,000pa - but now with maximum 50% rebate, so pays only \$60,000 pa.

- *This rebate should NOT apply as the leaseholder is not “using” the land for community benefit - in fact not using it for anything except rats & roof leaks - see CL Policy for Rent Rebates & Concessions . In effect, CL Dept doesn't observe its own rules.*
- *New conditions include performance deadlines for use-of-land. Every year has been failure-to-fulfill - yet lease is rolled over or renewed at concessional rate.*
- *The scandal at Yasmar is far more than financial - this malfeasance has caused almost a decade of delay, ie 10 years of more dereliction and decay, in plans to save what should be a SHR-listed heritage jewel - the last, and only, surviving homestead Estate anywhere along the whole 23kms of Parramatta Rd.*
- *Yet urgent restoration was the whole excuse for giving a Yasmar lease in the first place.*

The above situation at Yasmar continues. It is now 9 years into a 20+20 lease and there is still no use, no restoration - and no fair-dealing for this magnificent Crown Land Reserve. There no Council to complain about here - this site is managed directly by Crown Lands, via MinCorp. CLOL makes no comments on ministerial input, though it is known that certain professionals on CL staff have recommended immediate termination - every time, being over-ruled.

We also know that at one stage the Minister withdrew MinCorp input, and appointed an external consultant (Albert Talarico) to supervise some sanity into Yasmar management - gazetted Jan 2013. This arrangement lasted less than 3 months, Mr Talarico advising the writer that the Yasmar scenario was “untenable”.

There have been two costly attempts (2008 and 2012) to get a Plan of Management in place for Yasmar - both stymied by the reality of this misbegotten mockery of a lease. The mere fact that it exists is enough to overshadow Yasmar's future. The site area involved cannot be avoided - it dominates the entry and driveway, complicates parking, raises huge uncertainty as to what activity may end up there. The original plan to develop as a “school” has been abandoned. But nothing is settled to replace it, and this great “unknown” deters possible alternative users.

None of the above adds up to “active use” or good “management”. And the lost-opportunity cost to the community is probably even more severe than the financial loss that has seen Yasmar miss out on a much-needed \$500,000 - or more if you add in the recent half-rent concessions. There's also the fact that security services are still being paid, along with some rudimentary maintenance, to the tune of approx \$300,000 in Budget estimates.

Yasmar should be celebrated as an incomparable Crown Land asset for the benefit of all the people in NSW. Instead it reeks with a stench of stale corruption. We urge the Inquiry to probe further into the above information. Then, as a separate matter from your general Report on 13 October 2016, take whatever steps needed to ensure some resolution to this impasse.

In conclusion regarding Topic [A] and the management of Crown Lands at large, we refer the Inquiry to the final pages of our submission, which concern the Model Litigant Policy that should govern all governance in NSW.

TOPIC [B]

**the adequacy of community input and consultation regarding
the commercial use and disposal of Crown land,**

The Inquiry can take as a given, that it's the abject FAILURE of all matters in Topic [B] that has led to the establishment of CLOL Inc in the first place. There has been a total mis-use of supposed 'consultation' - and any input has been ignored.

The community - and this is far more than just CLOL members - have tried to give input, to be meaningfully engaged with each with their own local Crown Land area or site. Killalea - Patonga - Moxham Quarry Crown - various takeovers by private holiday park operators etc - each time it's led to long-standing campaigns as we try to protect our public lands.

If there's any inadequacy in "community input and consultation", AND THERE IS, re the commercialisation or sale of Crown land - then it's not the community's fault. Each in his/her own way over recent years has tried to give input, or contribute to consultation, or tried to stop a low-rent rort, a sell-off, or sell-out for commercial use. It's also because in almost every case we've been rebuffed, perhaps tolerated-but-ignored - but mostly, made to feel irrelevant or powerless against the powers-that-be. THIS is why our CLOL submission comes with the strength of so much personal detail. *We've lived what we say.*

In considering this Topic, we trust the Inquiry will find the combined experience of CLOL Team Leaders to be of immediate assistance, if only because we've done so much, talked to so many, tried so hard, been so involved - and more often than not, still failed. This is powerful information, if only to show the Inquiry what's missing. And from that, to then deduce what might be needed.

Please note that again, our submissions here refer largely to Crown Land Reserves and dedications. While we hope our comments will be relevant in regard to the use/disposal of other Crown Land, CLOL cannot say so for sure because to date, such sites have not often come within our general experience.

FIRST - A FEW FUNDAMENTALS

The biggest, and probably most significant, point that CLOL can offer in regard to "input" and "consultation" is this: there are NO COMMUNITY RIGHTS to any such thing.

In this day and age, there should be.

Not only that, there are NO RIGHTS OR STANDING at Court - neither for individuals, nor for community groups like CLOL. We should have.

How it happens now. Scattered throughout the CLAct 1989 (inc its Schedules, Amendments and Regulations) are numerous references to publication of specific information, usually in some locally appropriate newspaper, with this to occur a specified number of days (usually 14) before or after an event, the subject of the clause.

There is no statutory requirement to give any more detail than a bare minimum as specified - no need for background detail, no call to explain reasons, to justify decisions, to invite comments.

And most important of all - no provision for members of the public to appeal decisions.

So, technically speaking, if such advertising occurs strictly as required, then it could be argued that that's "adequate" - the mere fact that an ad has been done fulfils the legal requirement. In a few instances failure to comply with timing factors can invalidate the matter - but in no case that CLOL can find are there consequences for lack of extra information. And what usually happens is - the minimum. (Often for both budget AND tactical reasons.)

Is this "adequate" in a digital era of mass-communication? NO. Does it meet the everyday expectations of a 21ST Century, computer-savvy, google-getting, Facebook-streaming, Twitter-trained community? NO WAY.

RE-THINK STARTS HERE

The Inquiry may find this topic easier to assess if it gets clear about this vital distinction -

- the CLAct only calls for a one-way message - NOTIFICATION
- what Topic [B] involves is two-way relationship - COMMUNICATION

It is also worth making a mental note that the CLAct was introduced in 1989 - decades before the digital tools of today. Publication in a newspaper back then could have mass-reach in its marketplace. In 2016, newspapers are dwindling if not disappeared entirely. Those that remain are converting to an online presence. And so are the readers.

CLOL believes that the massive response to both the White Paper, and to (say) proposed changes to Planning Law was not the result of Govt information - but rather the result of community networking, and particularly in use of SOCIAL MEDIA.

Today, any law that mandates press-only coverage is a dealing with a dinosaur, and there can be no guarantees that what might have been normal expectation 25 years ago is even in existence today. The same applies for the readers. Lifestyle patterns have radically changed since the 1980's - split jobs, casualisation, shift work, laptops, tablets, mobile phones.

If Crown Land information is meant to be read - it must now (as the media mavins say) go the where the eyeballs are. It may mean a shift to social media, or maybe going more www.

This means a rethink of message - the **what/when/why** as well as the big media HOW. It suggests that Crown Land should be developing a new Policy on Communications - one that takes into account the need for community INPUT, and that has provision for meaningful community CONSULTATION.

If so, then the CL Dept needs to be aware that these days, it's a "communications" savvy world. Kids learn about messaging in kindy, and people use mobiles for far more than telephony. There's a mood that's very suss about spiel - so if you want input, it has to be for real.

So, as the Inquiry looks into adequacies of community input re Crown Land there's one golden rule. If you go out for consultation, you better be prepared to listen.

FEEDBACK FROM 2013 & 2014

CLOL makes a point to the Inquiry about FEEDBACK because this is precisely what HASN'T HAPPENED in the most recent examples by Crown Lands.

As indicated in the Topic [A] section, CLOL members' experience in the consultation phase re the Carapiet Review was poor. Perhaps it was a personality thing with the presenters, but they were arbitrary, condescending, came across as predictable - and rude. If they didn't like the question, they ignored it or cut off the questioner. In 2013, the rooms were full of people - but the sessions did more harm than good. A sham as "consultation".

The consultation sessions in mid-2014 regarding the White Paper was much improved - mainly because they were given by long-time Crown Land staffers who came across as genuinely concerned to communicate. It was clear they knew what they were talking about, and wanted to communicate. There was a lot more to & fro in their Q&A sessions.

Then came the disillusion. Over 600 people/groups put in written submissions re the White Paper, most not in favour. It's no secret that only about 8 were positive - and most of those were developers. However, this comment is not about the ratio of response - but rather about what DID NOT happen next. In fact it was worse than nothing - it was a broken promise.

During the consultation process it had been a key talking point that "all submissions will be put up on the web and you'll be able to see what people say". Two years later, and with more talk of new Crown Land legislation coming soon - still nothing.

CLOL urges the Inquiry to insist that good faith must be restored. This failed promise must be revived, and those prior submissions put up as part of information provided in any NEXT consultation process re Crown Lands.

Such late "completion" of the first White Paper will be noted, but seen as "better late than never". It will also act as powerful incentive to ensure at least half-way constructive participation (input) in future consultations. CLOL cannot emphasise enough the degree of disillusion in the community on this matter - nor the anger.

We suggest the Inquiry take on board a well-meant warning that if some such make-good doesn't happen, then CLOL predicts that the current public scepticism and stand-off scenarios will continue, to the detriment of Crown Lands both as a Dept, and as significant element/asset in NSW. Which would render ANY recommendations about Topic [B] irrelevant.

A POSSIBLE PARALLEL

Notwithstanding the above, CLOL would prefer to provide some constructive ideas for the Inquiry to consider.

In preparing this submission on input/consultation CLOL has been reminded that in regard to Crown Land Reserves, it is a bitter irony that although THE fundamental character of a reservation is that it must be "For the **public** purpose of", a member of the public has in reality no legal standing whatsoever to challenge anything in Court. Not when it's for sale or disposal, nor leasing, nor commercial use. No say - no rights whatsoever.

Members of CLOL know this only too well with what's happening right now in the Supreme Court - ie the s.63 Application by Willoughby Council about Talus Reserve. One retired lawyer was granted leave to appear solely because he also represents the plaintiffs in another Supreme Court matter involving Talus - a case that seems to have been stymied because it is pointless to proceed until the issues raised in the s63 application are determined, one way or another. And if the Aboriginal Land Claim succeeds - his case has nowhere to go either.

As as a "Contradictor" he was allowed barely 10 minutes to speak, and lucky to get that. Yet as an ex-parte Hearing, WCC is able to say, or not say (ie omit) anything at will.

The public have no input here - no right to be heard.

As it happens, the writer also approached the Court with request to make representations re Talus, had material prepared - but was given no opportunity to speak in the Hearing late Nov last year. If CLOL Inc had not been so newly-formed, we may have been able to seek standing as Amicus Curiae - but this is a very time-consuming, costly way to go for ordinary folk just wishing to protect Crown Land.

Indeed that prior Talus matter is a Statement of Claim by five members of the public - but they have only been given leave to apply because of specific circumstances - not because the situation at Talus Reserve is so corrupt. The Inquiry should consider this simple truth - when things go wrong with public land, who is more likely to suffer harm? The PUBLIC. So who would be most appropriate to reveal the wrong-doing? The PUBLIC.

Surely there should be provision for pro-active public input - not just by way of "response" to ads. Perhaps the CLAct should have a version of "whistleblower" provisions, or the Act could introduce an "Public Advocate" role within the CL Dept whereby members of the public have someone to represent the PUBLIC interest, and as a point for bringing issues to attention, and perhaps even more useful in terms of efficiency -- for addressing CL problems before they escalate into issues. The nearest we get now is a 1300 phonenumber in Dubbo.

ROLE OF ATTORNEY GENERAL

Committee-members of GPSCNo.6 may be aware that under the Trustee Act, the Attorney General is considered to be the legal guardian of Trusts or custodian of all Trustee matters - and thereby, an avenue of last resort for appeal in anything to do with Crown Land Reserve Trusts.

Knowing this, some time prior to 23 Nov 2015 (Hearing date for Talus) CLOL members, including the writer, wrote to Attorney General respectfully requesting that she take action to ensure the Court received accurate information on the Talus situation. The AG declined, which means that, notwithstanding the pre-emptive force of the "Principles of Crown Land Management", the public interest aspect of Talus has had no protector, no voice - as mentioned above, only a 10min Contradictor.

The writer has further direct experience of this powerlessness against the anonymity of the CLAct, having sought high-level legal advice on the possibility of challenging the Yasmar lease in Court. The barrister, though deeply sympathetic, advised that no matter how grave the cause for complaint - it was a flat no-go. I had no grounds to apply for "standing".

COMPARE WITH THE LEC

In comparison, CLOL is aware of what happens in the Land and Environment Court (LEC). It recognises that the public may have something to say that assists the orderly management of planning matters. Thanks to the wording in the EP&A Act, ordinary people can challenge a DA Consent, and can be heard, because unlike CLAct, that law provides for it. With emphasis added, the key clause is:

123 *Restraint etc of breaches of this Act*

(1) Any person may bring proceedings in the Court for an order to remedy (etc)

Using this provision, many unwise, flawed, even illegal Council consents have been given closer scrutiny by the LEC and either amended - or thrown out. Although essentially a planning process, the EP&A Act has become an avenue of last resort for people trying to protect Crown Land. In effect, concerned citizens must rely on, then wait through, the whole DA process before calling into question the CL legalities of developer proposals that seek to subsume, subvert, monopolise, or otherwise compromise the public nature of a CL Reserve.

In effect, the LEC via EP&A Act, has become by default, the main guardian of the CLAct, because the CLAct contains no “public access” provision to protect itself - nor has it any to let those ostensibly its sole beneficiaries in Trust (ie the public) take any action to safeguard their public interest. Of course, if the Minister or CL Dept notify a proposal by advertising, comments and objection can be lodged, and may be taken into account. (CLOL says, mostly not.) But there is no independent arbiter, tribunal or judge. Once a decision is made, the CLAct has no way that allows challenge or appeal.

This fallback role for the LEC is obvious in caselaw, not only in legendary CL rulings such as Rutledge 1959, and Garigal 1992, but in many more recent examples. Right now Wollongong residents (POPI - Protect Our Parks Inc.) have been left with no option but to go to the LEC to protect their dedicated Stuart Park against the Council-favoured, Council-subsidised (the Inquiry should be enraged when it sees the peppercorn rent) landgrab of Sky Dive The Beach. The Hearing was in late June.

About the same time, ordinary people at Tugun and Tweed Heads have been in the Federal Court, fighting a private consortium which has ostensibly (and with the backing of Air Services Australia) bought a CL Reserve for use as storage area in an extension of Gold Coast Airport - this despite being reserved for the “public purpose” of protection for eco-fragile wetlands.

THE PEOPLE-v-POWERS-THAT-BE

The Inquiry will no doubt be well-aware of last year’s now-landmark, King Edward Park Headland Reserve decision as mentioned in Topic [A]. It was no easy thing. Friends of KEP had to fight in LEC twice-over. First, against financial threats involved with lodging big-\$\$ securities before they could have their challenge accepted as coming from a community group, and thus get leave to proceed. Then it was the actual case - a complexity of CL issues against the combined weight of Newcastle Council and the CL Dept combined.

This was truly a David-and-Goliath matter - with threat of costs always huge.

Like CLOL, no doubt the Inquiry will be aware of facile arguments that say Crown Land matters should be left to “the Council” or “the CL experts” - or that the Minister has oversight, and that should be enough. WRONG.

If nothing else, KEP proves how dangerous such assumptions can be, because here it was the Minister, and the Dept, and the Council joined in a triumvirate of collusion.

Together they were prepared to knowingly sabotage the CLAct itself so that a certain development would proceed. If the custodians are the criminals, where does the victim go ?

This is an inescapable conclusion when you read the LEC decision of May 2015; and CLOL urges the Inquiry to do so in detail. It’s relatively short, and reveals that long before this DA was advertised as such, it had had the benefit of secret dealings between no less than three levels of Govt, each intent on making sure the CLAct was bypassed, if not negated.

To achieve this, the trio used their own statutory power to manipulate notification processes, rubber-stamp a Ministerial consent, and amend statutory instruments, like the LEP. Friends of KEP faced an Everest of odds-against.

Most damaging, the pseudo-legal sabotage went so far as to revise the relevant Plan of Management (PoM) with use provisions designed solely to legitimise a Convention or Function Centre at KEP - thereby perverting the long-standing public purpose of the KEP Headland Reserve, for “public recreation”. If this plan had succeeded, a magnificent publicly-owned Headland Reserve would have been privatised, effectively lost forever.

We know now that the KEP win was complete vindication for the community stand. On all four points, its ruling was decisive - **“invalid and of no effect”**. In relation to what Topic [B] seeks to explore, CLOL suggests the Inquiry go behind the Court case and ask what was happening while the KEP machinations were afoot.

Changes to the LEP, the PoM, the various stages of DA proposal - all require advertising under standard procedures. How “adequate” was this ? Why didn’t public input at that stage have any effect ? How can a community protect CL Reserves against wrong-doers working in official cahoots? Why should it have to, if the Principles of Crown Land Management pre-empt all other considerations, and protection is already in the LAW ?

The KEP story is important for this Inquiry because it shows that when it comes to consultation, “technical” adequacy is not enough in real life, not when it comes to Crown Land and plans to sell or re-organise for commercial use.

It’s too easy to use a drip-feed of dilutions, done over time, that give no indication of the real ramifications. This is what bedevils the Gosford waterfront right now - a Council determined to commercialise and privatise, but doing so piecemeal so it’s almost impossible to keep track of.

Given the degree of cumulative detriment to the public realm, CLOL suggests that KEP points to the need for a Crown Land regime that allows for far more consultation - more transparency as to dealings, documents and deadlines. And not just more public input, but more certainty that that input will be taken into account. Those 600 submissions might be in limbo today - but they still count. They must not be forgotten.

A FEW CONCLUSIONS ON INPUT/CONSULTATION

CLOL would like to conclude Topic [B] with a few random thoughts.

1. We agree that Crown Land can be sold - but only AFTER the Audit that we have already urged as a major priority - and which the CLAct itself asked for in 1989.
2. Any such sale or commercialisation should only be allowed after close scrutiny whereby the Principles of Crown land Management have been rigorously applied
3. When complete, the Priorisation Program CLOL calls for will simplify consultation, as land-use priorities re public benefit will be already known and agreed
4. The prioritisation and categorisation (P&C) that CLOL calls for will be a major exercise in itself, in line with what Carapiet calls “strategic assessment” though far more in-depth than his outline of “classifications.
5. Prioritisation MUST involve community input and some mode of consultation.
6. One large category may well be “available for disposal/sale”
7. The P&C process must include feedback to “explain” result and outcomes.
8. The more “protected” the category of that Crown Lands is, the more rigorous should be the verifications, checks & balances before proceeding to sale
9. For instance, if the land is a Category #1 Reserve of State-value, this would require widespread public consultation. If it’s a regional riverside or beach park - say a Category #4 Reserve, then a lesser area would suffice.
10. Remember - AUDIT FIRST, then define the Categories !!!!
11. Some Categories should be declared major Crown Land Estate and permanently excluded from Sale - all Pacific coastland, all State Heritage Items, all official buildings in a CBD, all fragile environments, wetlands etc.
12. Having such comprehensive categorisation done upfront, ready & waiting to be used, should streamline things further down the system - huge savings in time and red-tape
13. Rigorous site-appropriate rules, including relevant usage constraints, should apply to special-purpose areas - water catchment for instance. In such areas it may be wiser to ban sales, allow longer term leasing.
14. Allowing 99 year leases is nonsense, and equates to sale. CLOL believes we should restore the former formula for generalised 20+20 maximum lease terms for CL sites.
15. Alternatively, invent a category where longer leases can apply without meaning long-term alienation, ie of land the public should own, and have access to.
16. The categories should take account of multiple factors when assigning categories re commercial use - these include SCALE, INTENSITY, INTRUSION, TIMINGS and TYPE of use. Seasonal? Fast turnover ? Leisure oriented? Strictly for-profit?

17. It may be useful to develop some form of “impact-ratio” tool to assist assessment for commercial proposals. Simplistic \$-values are far too crude.
18. To maximise value for the PUBLIC GOOD, it may be smart to set up a separate, non-departmental, CROWN LANDS BUSINESS MANAGEMENT UNIT
19. CLOL definitely supports the strategy of creating an entirely new NSW entity for the re-invented CROWN LANDS ESTATE. This would be like the ABC - independent from Govt, though answerable to the people/Parliament through Govt, never “to” Govt.
20. We know from the Carapiet “Crown Lands Management Review” of 2014 that Crown Lands have done work on VALUING the Crown Estate. On Page 2 there are two diagrams - the top indicate types of land-holding and shows a total of 33.6 million ha. This equals 42% of the land surface area of the whole State of NSW.
21. The lower diagram on Page 2 indicates a total valuation of \$10.989 billion. CLOL believes this is woeful understating the true worth of the Crown Land Estate. Compare - \$11 billion will scarcely buy two submarines for the Navy - and here it’s the price tag on almost HALF the State.
22. In the Carapiet Review, the Inquiry should also take a look at Page 37 for the sample “valuation” on Hyde Park. This huge two-part Park is assessed at \$19 million - a pittance for this 16.2 ha (40 acres) of prime parkland encompassing two whole city blocks in the centre of Sydney CBD.
23. CLOL is aware that the Govt has recently sold its magnificent Victoriana sandstone precinct in Bridge St for a paltry \$35 million. These magnificent, irreplaceable buildings should never have been sold.
24. What is Crown Land for if not to protect our inheritance - and the birthright for our children’s children
25. But even so, the Inquiry might like to compare values. Real estate pages regularly report on sales in Vaucluse, Hunters Hill and the like, for sums around \$30 million, \$38 million, even more. And this is just for a house (admittedly posh) on average 2000 sq.m land -- dwarf size in comparison.
26. Then there’s ELAINE, the Lady Fairfax Estate at Point Piper. It’s just over 1.7 acres - 1/20th the size. Asking price is \$70-80 million. Within that are two sub-divisible half-acre lots, no house, but with valuations exceeding \$25 million apiece.
27. Although the Review does make some attempt to quantify non-financial contributions, like social factors and “opportunity cost” CLOL believes that these go nowhere near the real value - or more to the point, values, that attach to Crown land for the Community.
28. For instance - where is the \$\$ recognition of heritage, regional identity, the contribution of TREES per-se - the air-processing function of canopy cover for the environment, the scarcity value of PUBLIC open space to the community alongside urban densification.

29. Certain kinds of Crown Land are currently being derided and disposed as irrelevant, such as stock routes.
30. The value of these is now being shown in their function as vital habitat corridors - where is this factored into the valuation? Has CL Dept asked a bilby or counted a koala?
31. The environment is yet another reason why we need rigorous categorisation before any program of legislative change - or sales campaign. The current situation re Tugun wetlands versus Gold Coast Airport is a warning.
32. And above all what CLOL asks every to bear in mind when it comes to sale/disposal - **once it's leased, it's lost for years -- once it's sold, it's gone**

All of which brings us full circle back to WHY community input and consultation should be part of good governance for Crown Land - and integral to the CLAct. Because it's not Govt land - it's OUR land. And let's call it that. The Crown Land ESTATE.

A FEW COMMENTS ON ICAC

CLOL would like to conclude this Topic [B] on input/consultation with a few comments re community interaction with ICAC on Crown Land matters. It's been a case where "input doesn't count". We trust the Inquiry will investigate further, as a matter of major concern.

All founding members of CLOL have made formal complaint to ICAC about grave concerns regarding serious breakdowns in governance at a CL Reserve they have close connections with, usually proximity to home or work. Since starting CLOL, we now know of many more. Sites include Yasmar, Talus Reserve, Stuart Park, Killalea, and most notoriously - Paddington Bowling Club at Trumper Park appealed to ICAC again, and again.

In most cases, an incredible amount of documentation has been provided as evidence - in the Talus matter, almost 2000 pages - mostly official files, Minutes, memos, emails from WCC etc.

All the malfeasance complained of was way beyond maladministration, well into outright corruption - altering lease-dates (remember Currawong? - similar at Yasmar), awarding contracts before closing date, fudging figures and deliberate deceit in reports to Crs (multiple times re Talus), misrepresenting market-rent so the public is cheated to the tune of hundreds of thousands of dollars - in Yasmar case \$½ million. Only one thing missing - a brown paper bag.

In all cases, ICAC declined to take action. Reasons given varied: either too busy (often with Obeid) or failed to see a smoking gun in pay-offs. Perjury, misconduct in public office, breach of Trust, benefit by deception, blatantly un-lawful conduct - nothing was deemed ICAC-able.

Yet when the Office of Liquor & Gaming took a look into Paddo Bowls at Trumper (aftermath of public protest after ICAC refusal to act) they found such a stench of corruption that it forced the Govt to act, setting up an independent Review. After 23,000 pages of evidence, the verdict was a damning indictment - systemic corruption, rotten to the core.

So what did the Minister do? Told the CL Dept to do staff-training in "fraud and corruption" - ***to be provided by ICAC***. If that's a joke, CLOL isn't laughing. ICAC is no remedy at all.

TOPIC [C]

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

Without being flippant, CLOL says the answer to this Topic [C] is, to make sure this is the most penetrating, most effective, most successful Inquiry yet held by GPSCNo.6.

The next answer is to say “all of the above”. This means all the things already mentioned throughout this submission - to re-inforce the CLAct, to insist that non-compliance is not on, to warn that a culture of complicity must change, and to demand urgent action to ensure all CL sites are identified with CL signage, big & bold and something like:

***PROUDLY PART OF
OUR CROWN LAND ESTATE
FOR THE PEOPLE OF NSW***

CONSULTATION & TRAINING

CLOL encourages the Inquiry to make recommendations re consultation, not as a token gesture but as a PRO-ACTIVE way to ensure that culture-shift needed. This will require some drastic rethinking by the Minister, and within the CL Dept itself. First off - it must go beyond “words” and become an actual PLAN FOR ACTION

True change will probably require outside help - appointment of COMMUNICATION specialists to advise and assist. This probably means that separate Project Division will have to be set up to handle this.

The same applies, and maybe even moreso, to TRAINING. This applies not only internally with CL Dept (staff motivation, human resources Dept etc) but also in regard to outreach programs for COUNCILS as the main implementation/admin level in CL management.

CLOL knows how the system works in Victoria. There, a specialist private business runs a series of professional talks, seminars and such on the management of Crown Lands. It is geared to Local Govt in that State and subject matter covers a diverse range of topics, from strict legalities, to policy changes, to urban/rural relationships in CL, to functional form-filling. Attendance not just encouraged - it counts toward career-development “points” for participants. The trainings are scheduled throughout regional Victoria, and Councils can request in-house sessions for specific situations.

Called the “Public Lands Consultancy p/l” CLOL has spoken to the CEO and understand his organisation has been in preliminary talks with the NSW CL Dept, with no outcome known. The Inquiry may well wish to pursue this as a matter of urgency. It certainly seems to provide a swift answer to an overwhelming need in NSW.

In fact, CLOLmembers have been lobbying the CL Dept for some time on the need for Council-based information - pleading for such a simple thing as to send out Handbook with a special message to Councils that it applied to them as “Trust Managers” as much as to Trust “Boards”.

What happened ? Nothing.

The Inquiry may also be concerned to learn that CLOL's first contact with the Public Lands Consultancy (PLC) was the result of sheer desperation at hearing (via CL sources) that the Dept was considering a few weeks of Council "training" sometime, perhaps, in Oct 2016 - "IF" the budget came through for it. And now we find they haven't even printed the CL Handbook.

The Dept hasn't a clue about what's really involved. And funding in the Budget goes to IT.

Depending on the outcome of this Inquiry, CLOL is considering whether we can link up with PLC in some kind of franchising arrangement, borrowing their admin/delivery structures and adapting content to fit the CLAct here, and other aspects of Crown Lands NSW. But it's a sad day when private citizens have to step in to overcome the omissions in Govt performance. Especially when the problem is so significantly public, as Crown Lands.

PLANNING FOR THE FUTURE

By responding as above, CLOL is telling the Inquiry that we believe that the "most appropriate and effective measure for protecting Crown land so that it is preserved and enhanced for future generations" is, first and foremost, GET THINGS RIGHT TODAY.

But after the audit and first prioritisation are in place, the CL signage and CL identifications at every CL site, the training and communication underway, the classifications and categories set up in the all-new IT system - what then? CLOL believes that this is where community consultation comes into its own.

Perhaps it starts with a version of Carapiet - a Mark-2 Review for public discussion over months. It should have a range of options - like a mini-referendum as they do in Vancouver when seeking input on major Planning initiatives. The secret with this is that they always offer alternatives - more than one proposal, so the public DECIDES on the key direction.

One idea that may emerge after prioritisation is a strategy of graduated ASSET EVALUATION and land-banking. By this CLOL means identification CL sites in a hierarchy of status, with the top layer to be marked as "never-for-sale", not ever no matter what - public assets in perpetuity. This would include harbour foreshore land and the Gosford waterfront Reserves, heritage treasures like Parramatta Park and its convict Precincts, colonial Courthouses and schools and one-off's like Yasmar and Bondi Pavilion, and every CL-owned item on the SHR.

Under this would be a layer of high-priority environmental sites - CL assets that make major eco-contribution to localities and the State well-being overall. These may well include riparian and catchment zones, stock-routes and holiday parks on rivers, lakes and coastal areas.

There would be analysis of existing lease-holdings into relevant categories, with a critical look at how these lease fit into categories/prioritisation. And after that, the lands left could be assessed in levels of sale-ability - not for immediate sale, but as a land-banking resource to be released to market in a strategic way.

In short - CLOL sees the best way to preserve and enhance Crown Land for the future is to forget short-term opportunism. Take a professional approach - be simpatico to social context, SOCIAL VALUES. Think long-term, and public benefit. Let the law prevail. Trust the people.

After all, it's OUR land - and for our children's children.

TOPIC [D]

the extent of Aboriginal Land Claims over Crown land and opportunities to increase Aboriginal involvement in the management of Crown land.

Crown Land Our Land Inc. has no hesitation in acknowledging the special relationship that should be allowed between the Aboriginal people and Crown Land. After all, prior to European settlement it was ALL aboriginal land, and that connection to what we now call NSW extends 40 -60,000 years back, way beyond the reaches of recorded history.

This commitment is demonstrated in the second Object of our CLOL Constitution:

The Objects of Crown Land Our Land Inc are to:

(B) Promote and support indigenous rights to the Crown Estate.

These are not empty words. Already CLOL has offered practical advice and much relevant information to assist Aboriginal Land Claim (ALC) No.36,628, this lodged 28 Oct 2013 in regard to the Talus Reserve at Willoughby. It was CLOL that “discovered” the existence of this claim and made it know to WCC in March 2015, noting with near-despair that the CL Dept had failed to refer to it once in the first Talus Hearing late-Feb, despite a standing order to Govt departments that there should be no new transactions re a CL site until any ALC is cleared.

As a result of contact with a CLOL person, an Aboriginal leader stepped up and contacted the Minister, formally requesting expedition in consideration of ALC-36628 in tandem with the Talus case at Court. This was declined. Although the Claim did get brief mention in relation to the delayed status of the other Talus matter (this having been put on indefinite hold by the s.63 Application) no further progress is known. CLOL wishes we could help more. We are keenly aware that over 29,000 ALC’s remain outstanding in NSW.

Based on our own limited experience in Topic [D] matters, our best suggestion to the Inquiry is to keep asking **WHY**. Why the horrendous backlog? Why fail to advise the Talus Trustee that an ALC had been lodged ? Why ditto re WCC ? Why allow leases to be re-made for land already subject to Claim? Why deny potential for quick resolution by link with a current Court matter? Why fail to advise the Supreme Court that ALC 36628 existed until forced to acknowledge by outside circumstances - ie CLOL?.

URBAN LINKS - ABORIGINAL CONCERNS

Separately, as part of the CLOL Summit we have established liaison with a respected elder, Cr Dominic Wy Kanak of Waverley Council, building lines of mutual support and info-sharing. Cr Wy Kanak has a holistic understanding of “country” and does not confine his Crown Land interests solely to ALC matters. Such contribution would be invaluable in terms of Aboriginal involvement in the management of Crown Land.

At the moment CLOL is sharing strategies with Cr Wy Kanak in regard to the re-development currently proposed for Bondi Beach Pavilion - a pivotal Crown Land asset in his Ward. In return, he has offered to assist with further meeting re Talus, moreso as CLOL waits for the outcome of that Court case. His wisdom will also assist should action restart on certain ALC matters on the Central Coast - dormant at the moment, but with Gosford such a crucible of community protest re Crown Land, these are likely to revive at any time.

BERRIMA - BREAKDOWN OR BREAKTHROUGH ?

Even more revealing of the breakdown in relationship between Crown Lands Dept, governance, and Aboriginal land Claims is the near-farcical situation involving the old Berrima Gaol.

In late 2011 Berrima Correctional Centre was closed, with this cessation of use then advised by gazettal on 10 Feb 2012. On 24 Feb Aboriginal Land Claim 36,016 was lodged. This was refused by the CL Minister on 20 Nov 2012. The ALC then appealed this decision to the LEC in March 2013, with Hearing in December 2014. This failed, so ALC took the matter to NSW Court of Appeal, being heard by full CofA in Nov 2015.

When this appeal also failed, the ALC went to the High Court seeking special leave to appeal on points of law, being heard on 17 June 2016 before French CJ and Gageler J.

The significance of this for the Inquiry is in the points-of-law as raised by Bret Walker SC on behalf of the ALC. Briefly in the “leave” application, and later in his detailed Submissions, these seem to show the casual attitude, if not incompetence, of the CL Dept and CL Minister in regard to Crown Land governance and requirements of the CL Act. It also goes to the Aboriginal Land Rights Act 1983 which allows that where claimable Crown Land is involved, an ALC claim must succeed if that land is not being “lawfully used”.

In effect, three main arguments have been put on behalf of ALC - that the dedication for gaol use continued in force, and as such, was the only lawful use of the gaol site notwithstanding that use as such had been terminated and gazettal as a gaol officially revoked. Next, that far from demonstrating “use”, padlocks on gaol gates and security patrols were measures to deter “occupation” and thus helped prove “dis-use”. The basic maintenance work carried out also indicated lack of “lawful use” because, although supervised by Corrections, the workers were intermittent and not “prisoners”, while the ONLY use which could be valid was that of its dedicated purpose - ie a gaol. and the same could be said of the

We gather that the CL Minister further held that the site was being “used” because preparations were being made for sale, an argument long since disproved by a case called “*Wagga Wagga*” whereby it is now long-accepted that intention to sell (or preparation for this) suggests that “*the State no longer has use for and wishes no longer, if it ever had, to occupy the land*”.

Mr Walker has emphasised that the Crown Land Act is a “very special Statute” in that it involves a “very large public interest element”, and that for errors to have been committed by the State in the way it deals with such land, it raises a “serious question of law”, justifying Appeal.

The High Court agreed on the day, and granted leave to appeal, with next Court date mid-Sept.

Submission has now been lodged with HCA on behalf of NSW Aboriginal Land Council in regard to Berrima Gaol - copy provided. In it, the Inquiry will find issues of fundamental concern in CL matters - the role of the “Crown” in Crown Land matters, the statutory powers of the CL Minister as distinct from any “other” Minister or Govt entity, such as the Dept of Corrections, or Minister for Justice. These go to the heart of who can authorise “lawful” occupation, and why. In all cases the answer comes back to the CL Act 1989

The simple fact is: Crown Land IS what it is, thanks to Crown Land law, and that law rules.

THE WIDER MESSAGE IN THIS

There is another key point the Inquiry should note as a side-note in this Berrima Goal decision. The HCA has accepted (yet again) caselaw (“*Wagga Wagga*”) to confirm the pre-emptive role of a gazetted “public purpose”. It sounds simple to say, and (as the Bathurst-Darling orders show) has been part of Crown Land law in NSW since at least 1824. But it goes to something every person involved with Crown Land, including this Inquiry, should be clear about.

Crown Land is not just a vague generalisation about “public” land. It is a legal fact, and it belongs to the whole “State of NSW” - ie it is in a very real sense “our land”. Once gazetted, it has a public PURPOSE and this is a STATUTORY STATUS, not optional - and certainly not variable at the whim of some bureaucrat or local Crs. To ignore this is tantamount to sabotage in what should be the rule of law for a democracy.

There is also reference in this Berrima matter to possible Constitutional insignificance re NSW Crown Land, and CLOL has included more legal material about such aspect as the conclusion of this submission. If the Crown Lands Act does indeed have Constitutional force, pre-dating 1855, then there is even more reason for the Inquiry to investigate what & why things are now so systemically wrong in 2016.

GOOMALLEE FACTORS

The above also suggests that changes to the Crown Lands Act should not be undertaken lightly, and with all ramifications weighed carefully beforehand. This did NOT happen with the most recent Crown Lands Amendment (Multiple Land Use) Act 2013 .

This Amendment was the Govt response to a finding by the Court of Appeal that a grazing licence granted over a CL land-parcel reserved for the purpose of “public recreation” was unlawful. The matter started with a 2012 claim by the NSW ALC under the ALRA Act 1983.

The Goomallee judgement was clear - grazing is NOT “public recreation”, so a licence for such purpose does not equate to lawful use or occupation. Accordingly, the land was “claimable” - and the CoA ruled that the Minister must transfer the land to the ALC.

In response, the Govt not only introduced the above Amendment 2013, but also introduced several awkward changes into the CL Act 1989 itself. These have the effect of retrospectively allowing ministerial approval for non-conforming (even blatantly illegal) occupation of Crown Land - despite the contradiction that the CL Minister has a strict duty under s.12 to uphold s.10 and s.11 - the Principles of Crown Land Management.

CLOL also points out to the Inquiry that any suggestion that these amendments were somehow “necessary” to enable multiple use on CL sites is nonsense - Principle (d) in s.11 already calls for multi-use as core-law, and has done since 1989:

(d) that, where appropriate, multiple use of Crown land be encouraged,

Now, to conclude in regard to both Aboriginal involvement/claims, and this submission as a whole, CLOL can do no better than refer to the Model Litigant Policy, long-since adopted, confirmed and applicable for good governance by all tiers of government in NSW.

RELEVANCE OF THE MODEL LITIGANT POLICY

To conclude this submission, CLOL can speak no more strongly than to remind the Inquiry of the MODEL LITIGANT POLICY which all arms, branches, entities and suchlike of NSW Govt must obey, and ensure compliance by others. This is mandatory, not optional. It means that ALL government bodies must always conduct their powers for the public benefit.

Accordingly, this Inquiry itself has a duty to Report to the same standards - to state honestly what it hears and finds, in regard to Crown Lands in NSW. The matters touched on in this CLOL submission are but a fraction of what will come to your attention in terms of maladministration, malfeasance and plain corrupt dealing. Failures of governance seem to be so rife, so systemic as to be almost taken for granted as status-quo.

To put this in context of what “should” be, here are some pivotal quotes. CLOL has added emphases to highlight just how much has been missing - and needs setting right. We trust that this awareness will assist, and inform, your Report. To start, we use the landmark - and now legendary quote from “Rutledge”.

Council of the Municipality of Randwick v Rutledge (1959) 102 CLR 54

29. In principle, for land to be used for public recreation and enjoyment, insofar as to be in some sense akin to a public park - which is what the Act contemplates

two conditions must be fulfilled. The land must be, in the relevant sense, open to the public generally as of right; and it must not be a source of private profit.

Justice Mahoney in Cantarella v Egg Board (1973) 2 NSWLR 366, 383.

The duty of the executive branch of government is to ascertain the law and obey it. If there is any difficulty in ascertaining what the law is, as applicable to the particular case, it is open to the executive to approach the court, or afford the citizen the opportunity of approaching the court, to clarify the matter. Where the matter is before the court it is the duty of the executive to assist the court to arrive at the proper and just result.

Justice Mahoney in Logue v Shoalhaven Shire Council (1979) 1 NSWLR 537 at 558-559.

*... it is proper to have in mind that the council is a corporation constituted by statute, and discharging public functions. It has acquired the property by a procedure which was invalid, and it may retain it only if it is to have the unfettered benefit of protection designed primarily for the protection of third parties. It is well settled that there is expected of the Crown the highest standards in dealing with its subjects; see *Melbourne Steamship Co. Ltd. v. Moorehead* (83),, per Griffith C.J. What might be accepted from others would not be seen as in full accord with the principles of equity and good conscience to be expected in the case of the Crown: see *P. & C. Cantarella Pty. Ltd. v. Egg Marketing Board (N.S.W.)* (84).*

In my opinion, a standard of conduct not significantly different should be expected of a statutory corporation of the present kind; there being no competing interests, the council should be seen as holding the land subject to the appropriate rights in equity.

NB: In this long quote, the Inquiry should take special note of final points (a) (b) and (c)

Justice Finn in Hughes Aircraft v Airservices Australia [1997] FCA 558

As with any agency of government ...it has no private or self-interest of its own separate from the public interest it is constitutionally bound to serve: ... There is, I consider much to be said for the view that, having no legitimate private interest in the performance of its functions, a public body (including a state owned company) should be required as of course to act fairly towards those with whom it deals at least insofar as this is consistent with its obligation to serve the public interest (or interests) for which it has been created. ...

*Secondly, there is what Griffith CJ referred to in *Melbourne Steamship Co Ltd v Moorehead* [1912] HCA 69; (1912) 15 CLR 333 at 342 as: "the old-fashioned traditional, and almost instinctive, standard of fair play to be observed by the Crown in dealing with subjects, which I learned a very long time ago to regard as elementary" This proposition has received significant, recent judicial endorsement in this country most notably in the Full Court of this Court in *SCI Operations Pty Ltd v Commonwealth of Australia*, (unreported, FC FCA, per Beaumont andinfeld JJ, 28 August 1996); see also *Greiner v Independent Commission Against Corruption* (1992) 28 NSWLR 125.*

*I note in this particularly the observations of Mahoney J in his dissenting judgment (on grounds not presently relevant) in *Logue v Shoalhaven Shire Council* [1979] 1 NSWLR 537 at 558-559 in applying the proposition to a local authority - to "a corporation constituted by statute, and discharging public functions": ...This fair play principle has its most common manifestation in the "model litigant" standards exacted from the Crown in legal proceedings: see eg *Director of Public Prosecutions for the Commonwealth v Saxon* (1992) 28 NSWLR 263.*

*Thirdly, and again litigation related, the rule in *Ex parte James; Re Condon* (1874) LR 9 Ch App 609 has been applied to public bodies (eg local authorities: *R v Tower Hamlets London Borough Council*; *Ex parte Chetnik Developments Ltd* [1988] AC 858) so as to ensure "high principled" action when mistaken payments have been received by them; see also *SCI Operations Pty Ltd v Commonwealth of Australia*, above. In differing ways these instances reflect policies in the law, albeit in specific contexts,*

(a) of protecting the reasonable expectations of those dealing with public bodies;

*(b) of ensuring that the powers possessed by a public body, "whether conferred by statute or by contract", are exercised "for the public good": cf *Jones v Swansea City Council* [1990] 1 WLR 54 at 71; and*

*(c) of requiring such bodies to act as 'moral exemplars': government and its agencies should lead by example: refer *Olmstead v United States* [1928] USSC 133; 277 US 438 at 485 (1928); *Joint Committee of Public Accounts, Social Responsibilities of Commonwealth Statutory Authorities and Government Business Enterprises, Report 315, esp para 2.21ff,* (AGPS, Canberra, 1992).*

CONCLUSION

To highlight just how high-stakes Crown Land matters are, and why the RULE OF LAW is an ongoing thread throughout the CLOL submission, the Inquiry should be aware that there is caselaw that considers the NSW Crown Land Act 1989 as being so powerful that it has nothing less than CONSTITUTIONAL force in both meaning and application.

We can offer no stronger conclusion to the 38pp of this submission than to refer the Inquiry to the following quotations - both with emphasis added by CLOL. The first is taken directly from the Supreme Court in a case often called “Fensom”. The ruling has since been cited approvingly in other cases - most recently in 2015, as shown in the second quote from the Court of Appeal. These comments are sometimes referred to simply as “Leeming” after His Honour.

Fensom & Anor v Cootamundra Racecourse Reserve Trust & Ors [2000].

[5] *Under the CLCA, general provisions relating to reserve land were made in PtIII and applied to land reserved under earlier legislation: see s3. Under s26 trustees could be appointed, and were charged with the care and management of the land.*

Until 1974 trustees were not given a grant or other title to reserve land, and leases could be granted by the Minister, but only in accordance with prescribed procedures.

All dealings in reserve lands and other Crown lands were subject to the overriding control in s6 of the CLCA which had the effect that all dealings with Crown land including leases must be made in accordance with statutory authority. This should be regarded as a constitutional principle for New South Wales.

New South Wales Aboriginal Land Council v Minister Administering the Crown Lands Act [2015] NSWCA 349 (16 November 2015) - His Honour Appeal Justice Leeming.

24. *Section 6 of the [Crown Lands Act 1989](#) provides (just as s 6 of the Crown Lands Consolidation Act 1913 (NSW) provided) that “Crown land shall not be occupied, used, sold, leased, licensed, dedicated or reserved or otherwise dealt with unless the occupation, use, sale, lease, licence, reservation or dedication or other dealing is authorised by [specified Crown lands legislation]”. That important obligation was regarded, rightly, by Bryson J, as of the utmost importance:*

“All dealings in reserve lands and other Crown lands were subject to the overriding control in s 6 of the [Crown Lands Consolidation Act] which had the effect that all dealings with Crown land including leases must be made in accordance with statutory authority.

This should be regarded as a constitutional principle for New South Wales”:

Fensom v Cootamundra Racecourse Reserve Trust. [\[2000\] NSWSC 1072](#) at [\[5\]](#).

25. **The same approach must apply here.**

Submission ends.



TERMS OF REFERENCE - reprinted here

Inquiry -- TERMS OF REFERENCE as approved 23 June 2016

1. That, notwithstanding the allocation of portfolios to the General Purpose Standing Committees, General Purpose Standing Committee No. 6 inquire into and report on Crown land in New South Wales, and in particular:
 - (a) the extent of Crown land and the benefits of active use and management of that land to New South Wales,
 - (b) the adequacy of community input and consultation regarding the commercial use and disposal of Crown land,
 - (c) the most appropriate and effective measures for protecting Crown land so that it is preserved and enhanced for future generations, and
 - (d) the extent of Aboriginal Land Claims over Crown land and opportunities to increase Aboriginal involvement in the management of Crown land.
2. That the committee report by 13 October 2016

List of Attachments

- [1] **CROWN LAND OUR LAND Inc. - 1p**
About CLOL - Background info - more with www.crownlandourland.org.au
- [2] **CLOL CONSTITUTION - 2pp**
For Crown Land Our Land Inc -- as Incorporated 6 Oct 2015
(full 16-page Constitution available if required)
Page 1 - CLOL Objects - our aims.
Page 2 - from NSW Crown Lands Act 1989 - ss 6, 10, 11, 12
- [3] **MAPS - CROWN LANDS IN NSW**
Page 1 - as provided by Ms Carolyn Raine, Crown Lands 2014
Page 2 - Land Districts - from p.241 in CL Handbook
- [4] **CROWN LANDS HANDBOOK - 282pp**
For CL Reserve Trust Management Boards, inc Councils
Page 183 - re Delegations - "NOT leases, licences, easements & related matters"
Page 212 - re Minute Books, meeting protocols etc
Page 213 - re Trust funds - separate bank account etc
Page 231 - re GIPA - how these rules apply
- [5] **CL POLICY - RENT REBATES & CONCESSIONS - 4pp**
- [6] **CL POLICY - FOOD & BEVERAGE OUTLETS 2004 - 8pp**
- [7] **1824 EXTRACT FROM OFFICIAL ORDERS - 1pp.**
Instructions from the Earl of Bathurst to Governor Darling
with orders to establish a Land system that includes
RESERVATIONS FOR PUBLIC PURPOSES
- [8] **CARAPIET - CL MANAGEMENT REVIEW - 2014**
- [9] **- HCA S168 / 2016 - APPELLANT SUBMISSION (Bret Walker)**
NSW-Aboriginal Land Council-v- MINISTER for NSW Crown Lands