

**Submission
No 156**

INQUIRY INTO CROWN LAND IN NEW SOUTH WALES

Organisation: Protect our Parks Incorporated

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Submission by Protect Our Parks Incorporated - 24 July 2016 to General Purpose Standing Committee No. 6 Inquiry into NSW Crown Land

SUMMARY

This submission covers aspects of the following terms of reference, ie:

- (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.

Protect Our Parks Incorporated (POPI) is a community based organisation which was formed during 2015 by residents of the Wollongong area, with the aim of *ensuring that the public interest is always given priority over private profits on public parks for public recreation*. There are significant concerns throughout the communities in NSW about the management of Crown land, proposed changes to the Crown Lands Act and some apparent perceptions that all Crown Land is a tradable commodity to be dealt with at will to generate income for the government of the day, despite circumstances for creating the land, such as for public recreation. Clearly there is a responsibility to provide stewardship of public land to preserve these invaluable community assets for use by the ever-increasing population and the enjoyment of future generations. There are various judgements which support this need.

This document provides a case study re the apparent (mis) management of Dedicated Crown Reserve D580060 at Stuart Park North Wollongong, which was created 130 years ago and is arguably the most used and cherished local and regional coastal park on the NSW South Coast.

Over the past 17 years the public have been excluded from using the Stuart Park Oval / "village green" for public recreation and due to priority provided for private profits ahead of the public interest. This has occurred through various preferential leases and licences to Skydive the Beach (STB), involving Wollongong City Council (WCC) and the Nowra Crown Lands Office (CLO). This has resulted in major community concerns which include direct dealing negotiations, lack of merit based considerations, inadequate processes, possibly undue commercial and political influences, "mates rates", lack of transparency or accountability.

However the situation is about to worsen as it is understood that STB, WCC and CLO are in direct negotiations to extend leases/licences for another 20 or more years. Also maybe based on the current rate, a fraction of market income to Council and the community (\$8,000pa v \$400,000 - \$560,000pa), which has never been justified.

Whilst POPI recognises and supports the relatively minor tourism and economic benefits that skydiving brings to our City (0.2% of the tourism jobs and 0.3% of day trip spending in the region), these will continue if WCC decides to give the community a fair go, restore public access to Stuart Park Oval and relocate STB to their alternative drop zone that they have been using for the past 10 years, on 2.7

hectares on vacant land at Dalton Park east of the cycleway. This will also enable STB to grow by increasing landings above 19,000pa.

POPI and the community wants public access to Stuart Park Oval restored, as required by the current Plan of Management approved by the Minister for Lands in 2000, so that after 15 years of exclusion, the rapidly expanding numbers of nearby residents and visitors will again be able to enjoy using their “village green”.

CASE STUDY - STUART PARK NORTH WOLLONGONG

1 Overview

Name of park/space/reserve	Stuart Park North Wollongong. Dedicated Crown Reserve (D580060) proclaimed on 29 September 1885 resumed for public park under the Public Parks Act of 1884
Address	George Hanley Drive, North Wollongong
Lot no. DP no.	DP 1136814 Lot 3
Who controls and manages the land?	The Stuart Park Reserve Trust (D580060), whose affairs are managed by the Council of the City of Wollongong
Is the land leased? To whom?	Stuart Park has many licences and leases. The ones of concern are a licence for landing zones to Anthony Penn Boucaut, trading as Skydive the Beach (STB), and a proposed lease for a proposed new STB Administration building
What is the nature of the lessee’s business?	The Public Company Skydive the Beach Group Limited, of which STB is a part, provides tandem skydiving as “adventure tourism”. STB’s Stuart Park operation, which mainly targets the Sydney market (visitors and residents), has about 19,000 landings pa generating STB income over \$8m pa here. STB have two landing sites licensed by WCC, being Stuart Park on the Crown Reserve and a secondary infrequently-used site nearby at Dalton Park Fairy Meadow which is on a Council reserve

2 Relevant Legislation

Stuart Park is Crown Land which was proclaimed as a Public Park 130 years ago in 1885, and in 1920 the Council of the Municipality of Wollongong was appointed trustee. In June 1994 it was notified in the NSW Government Gazette that the Corporate name assigned is Stuart Park (D580060) Reserve Trust, Trust Manager Wollongong City Council. It is a most popular and heavily used park for passive recreation for residents and visitors to the region on the NSW south coast between the Royal National Park and the Victorian border.

Council’s obligations include to take into account the requirements of the NSW Crown Lands Act, the Trustees Handbook and the Local Government Act, and the need to ensure transparency and accountability in processes, when considering the proposed continued use of Stuart Park.

A Principle of the Crown Lands Act is that land must be dealt with in the best interests of the State. It outlines licencing and leasing requirements of Trusts and

refers to tendering procedures. The NSW Trade and Investment Reserve Trust Handbook provides guidance to Trusts, including references to commercial market rents representing a proper return to the public, and to competitive tenders when negotiating leases or licences for commercial activities.

Unfortunately it seems that at least since the late 1990's most WCC councillors have lacked adequate training and awareness of their role and responsibilities involving Trust Management. They rely on the General Manager, which can be precarious, as experienced at WCC. When the new councillors started in 2011, after a three year period of Administration, there were only 3 with some LG experience, two at WCC. This has enabled one particular councillor to exert significant influence, which has appeared to occur in decisions regarding STB.

3 Approved 2000 Plan of Management

In 2000 the Minister adopted the current legal instrument for this land, being the Plan of Management for Stuart Park and Northbeach Reserve, which included: *“create a village green in the area of the old sports oval”*. Also: *“the area will be opened up to provide for an additional passive recreation area for additional open space as a ‘village green’ environment.”*

In January 2008 Council resolved to request the Minister to adopt a revised Plan of Management (PoM), which supported the advice of Council's Property section that it: *“takes into account the safety issues and business needs of Sky Dive the Beach”*, yet 132 public submissions were dismissed in less than one page in the staff report on the PoM and the associated Blue Mile Master Plan (BMMP). This seems to indicate a bias towards STB interests rather than for the public interest by WCC Property Manager and the GM. The Minister has not adopted the revised Plan and Council was sacked shortly afterwards in March 2008.

The BMMP was estimated to cost \$48million and take 5 years. But 8 years on it is understood that \$50m has been spent and less than half the projects have been completed, so costs could exceed \$100m and work could take over 15 years to complete. Frequent requests by councillors and the community have been refused by WCC to disclose estimated and actual costs and review the BMMP, consider options, engage the community, make amendments and ensure its future relevance, practicality and affordability. This provides another example of WCC mismanagement of Stuart Park and other nearby public land.

4 Right of Public Access to the Oval

The Public have a right to access and enjoy the 1 hectare Oval / "Village Green" area, which is a major usable flood-free part of Stuart Park. But inexplicably, over the following 7 years until he resigned in mid 2007 (ahead of ICAC adverse findings), the WCC General Manager Mr Rod Oxley continued to support STB using the oval rather than for passive recreation by the public. This continued under the new GM Mr David Farmer, a former WCC employee in the 1980's and early 1990's under GM Oxley.

A WCC report acknowledges that the large area occupied by Skydive restricts public access. WCC 2008 proposed management plan shows the drop zone occupying

about 10,000 square metres on the oval (ie 1 hectare). But the SRB licence approves an area 10m x 10m, ie 100sqm which is one hundredth of 1 Ha.

Attached is a plan of restricted areas in Stuart Park which WCC created in March 2013 when considering areas for commercial fitness training. This shows the huge area of prime land in the centre of the park allocated by WCC for STB use, to the exclusion of the public, (ie the Oval / “village green”, carpark and caretakers cottage). The area to the northwest is for the Lagoon Restaurant, their (public) carpark and WCC playground.

An example of the impact of STB excluding public use if the oval is from the November 2014 Sydney to Wollongong charity bike ride, which finished short at Fairy Meadow because the usual site at Stuart Park was wet when inspected at the planning stage. But if the STB drop zone had been available, the 10,000 riders could have finished at Stuart Park as in previous years, thus promoting the Blue Mile and providing significant tourism benefits for Wollongong in one day.

Also WCC continues to refuse to require STB to clearly define the boundaries for their use of the Oval, which prevents public recreation activities. In fact a sign has existed on Stuart Park for many years near the oval warning the public that: “ *Stuart Park: The oval shall not be used without written permission of Council having first been obtained. Town Clerk/General Manager*”.

Therefore access to the “village green” by the general public is restricted by the trustee (WCC).

Another preferential arrangement for STB is there is no additional charge for unrestricted use of the adjoining 60 space public carpark by STB staff and customers. WCC has also identified a gross shortage of car parking positions in Stuart Park yet allows the commercial operations of both Sky Dive the Beach and the Lagoon Restaurant patrons to occupy a substantial number of these at what appears to be at no charge.

A further example of failure WCC’s duty as trustee of the Park is their lack of enforcement of licence conditions, eg:

- The licence in May 2009 indicates a maximum 18 drops/day (ie 144 patrons/day)
- The DA approved in March 2015 indicates 28 drops/day, (ie 224 patrons/day)
- A recent local media article quoted STB as stating they had 286 patrons landed on 30 June 2015, ie twice the 2009 approval and ~30% above the 2015 approval.

5 Leases and Licences

Since 2000 some senior Wollongong Council staff seem to have been very generous in their support of STB and have exclusively negotiated with STB and Crown Lands staff to provide many development consents, licences and leases, without competitive processes. Up to 2009, Council staff provided about 15 approvals (8 re DAs and 7 re licences) enabling STB exclusive use of Stuart Park cottage, for six drop zones on the oval & beach areas, and a 27,000 square metres drop zone at Dalton Park, whenever they want to land, day or night and at minimal rent. Licence terms appear to have expired but monthly tenancy remains.

In April 2015 it was revealed that since late 2011 WCC staff had been negotiating with Crown Lands Nowra staff, who indicated their support for “direct negotiations”

exclusively with STB to approve future licences for drop zones and leases for a building at Stuart Park. It is understood that direct negotiations are continuing with STB re long term (for 20 and maybe up to 30 years) leasing/licensing for the proposed new building and landing zones on the oval, in the park and on the beach.

6 Proposed STB Building

In early 2014 a DA for a new STB building at Stuart Park was submitted on behalf of STB by a business that provides property services to WCC. It then became known that negotiations by STB with WCC had been ongoing for some time regarding this proposal, instead of renovating the caretaker's cottage, which has heritage significance, or moving to the other site. WCC resolved by a small margin to reject a councillor's notice of motion on Stuart Park Privatisation (which had called for a detailed report including re management of Stuart Park, business case/s for any leases, costs and benefits to Council and residents to enable proper consideration of issues), and instead resolved to "support in principle the activity of skydiving at Stuart Park".

In January 2015, after considering reports by WCC officers (rather than an independent consultant - which appeared to create a potential conflict of interest), WCC's Independent Hearing and Assessment Panel (IHAP) recommended approval the DA for the proposed new STB building. This was despite widespread community opposition, and the report including the dissenting view of a very experienced urban planner IHAP member: *"I am unable to support the officer's recommendation for the following reasons: a The amended proposal, being for a major commercial operation which will effectively alienate a significant area of public parkland into the long-term, is not in the public interest pursuant to Section 79c.1.(E) of the Environmental Planning and Assessment Act. b... Notwithstanding the above, I am supportive of the current use continuing in the existing facility for a period of time not exceeding five years from the date of any approval."*

In March 2015 Council staff, under delegated authority, approved a DA for the demolition of two Council buildings and construction of a new building for sole use and operation by STB. POPI contend that Council as Trustees have not properly considered the public interest, nor has it applied the rule of law, which dictates and protects the public's right to proper access and enjoyment of Stuart Park Reserve.

Unfortunately at WCC's May 2015 meeting the majority of councillors voted against a councillor's motion seeking a legal opinion from Senior Counsel in this matter. Therefore POPI was forced to obtain senior legal advice, and on that basis lodged an appeal in June 2015 to the NSW Land & Environment Court against Council's development consent for the new STB building in Stuart Park. The appeal hearing was in June 2016 before Justice Moore and a decision is awaited.

7 Lease and Licence Fees

POPI agrees with the dissenting view of a very experienced urban planner IHAP member that *alienation of a significant area of public parkland into the long term is not in the Public Interest.*

However if it is decided that leases and licences to enable STB new building and or

STB landings to continue at Stuart Park then realistic market rates must be applied.

Licence fees at Stuart Park approved in 2006 by Council GM were \$13,000 + CPI for use of the cottage, and \$5,000 + CPI for drop zones, which are a fraction of current true market value, particularly for the skydiving industry. The cottage fee has been increased to \$30,000 pa, and fees for six drop zones at Stuart Park and at Dalton Park are less than \$8,000 pa in total. It is estimated that fees paid over the past 15 years are many \$million less than market rental. It is not yet known why.

The early 2015 STB Prospectus pre floating as a public company provided information on a licence to Skydive Holdings from Port Philip Council (St Kilda) site until December 2016 to enable landings for a fee of \$122,500 pa, plus \$2.40 per jump for adults. St Kilda had 4,948 jumps in FY 2014, ie 12% of total 41,241 for Skydive across all their Australian sites. Wollongong had 18,781, ie 46%.

The STB St Kilda licence fees equate to \$27 per jump, whereas STB Wollongong pays ~\$8,000 for 18,781 jumps, ie \$0.42 per jump. The St Kilda \$27 fee is ~6% of their stated \$416 average price paid by customers for a tandem jump, whereas Wollongong's 42 cents is 0.1%, which is a sixtieth. Clearly the community and State are not getting market value at Stuart Park.

Another indicator which could be relevant when considering market value in this case, is a report to Blue Mountains City Council on 22 November 2005 (which has previously been advised to WCC staff), which refers to market rental for the Skyway operation. It states "the (Government) Valuer recommended that a "fair and reasonable" land and air space rental valuation for the Skyway lay between 5% to 7% of the annual gross revenue from ticket sales of the Skyway ride."

Potential Market Rates at Stuart Park

For STB, based on information provided in their Prospectus, the Wollongong operation Revenue for financial year 2014 is estimated at ~\$8M, so 5% would be \$400,000 pa, and 7% would be \$560,000 pa rental. This would be over 50 times the current rental for landings at Stuart Park and Dalton Park of ~\$8,000 pa.

8 Conclusion

STB appears to have received unconscionable and favourable treatment over the past 15 years as the figures above indicate, and concerns have been expressed about probity in previous dealings with Council staff regarding DAs, licences and leases for STB at Stuart and Dalton Parks.

Community submissions over many years have opposed the continued alienation of public park for use by a commercial skydiving operator at Stuart Park.

WCC decided in April 2014 by a small margin to "support in principle the activity of skydiving at Stuart Park", whereas STB currently use Dalton Park also, which is only a mile to the north.

POPI supports the dissenting view of a very experienced urban planner IHAP member that *alienation of a significant area of public parkland into the long term is not in the Public Interest.*

Should WCC persist in giving preference to private profits for skydiving over public access to public land at Stuart Park, then WCC should call public tenders for the lease or licensing, in accordance with the Principles of the Crown Lands Act 1989, keeping in mind there are other companies in the business, and in the interests of openness and probity. Then given the requirements of the Crown Land Act, the Reserve Trust Handbook and in the Public Interest, market value must be determined and achieved. Therefore it seems obvious that an independent valuation should be obtained from the Government Value). This could provide rent of between \$400,000 pa to \$560,000 pa, which is 50 to 70 times current rent paid by STB for landing zones.

RECOMMENDATIONS

- 1 The committee review this case study and seek clarification and/or further information from the author if necessary,**
- 2 The Minister intervene and refuse to extend any leases or licences for Skydive the Beach on Dedicated Crown Reserve (D580060) at Stuart Park North Wollongong beyond 2020**
- 3 Names be withheld from publication**

This submission 24 July 2016 by Protect Our Parks Incorporated is authorised by:
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