GENERAL PURPOSE STANDING COMMITTEE NO. 6

INQUIRY INTO CROWN LAND

At Newcastle on Monday, 8 August 2016

The Committee met at 10:20 am

PRESENT

The Hon. P Green (Chair)
The Hon. L Amato
The Hon. C Cusack
The Hon S Farlow The
Hon Peter Primrose Mr
D Shoebridge
The Hon. M Veitch

The CHAIR: Welcome to the fifth hearing of the General Purpose Standing Committee No. 6 inquiry into Crown land. The inquiry was established to examine the adequacy of community input and consultation regarding the commercial use and disposal of Crown land. We will be looking at the benefits of active use and management of Crown land as well as the most appropriate and effective measures for protecting it. The inquiry will also consider the extent of Aboriginal land claims over Crown land and opportunities to increase Aboriginal involvement in its management. Before I commence I would like to acknowledge the Darkinjung people who are the traditional owners of the land on which we meet. I also pay my respects to elders past and present and extend that respect to other Aboriginals present. Today is the sixth of seven hearings we plan to hold for this inquiry. We will hear today from the Hunter Joint Organisation of Councils and Dungog Shire Council, the Awabakal Local Aboriginal Land Council, Stockton Bowling Club Co-operative, Stockton Community Forum and the Friends of King Edward Park.

Before we commence I would like to make some brief comments about the procedure for today's hearing. In accordance with the broadcasting guidelines, while members of the media may film or record Committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I also remind media representatives that they must take responsibility for what they publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to what witnesses may say outside their evidence at the hearings. Therefore, I urge witnesses to be careful about any comments they may make to the media or to others after they complete their evidence as such comments would not be protected by parliamentary privilege if another person decided to take an action for defamation. The guidelines for the broadcast of proceedings are available from the secretariat.

There may be some questions that a witness could only answer if they had more time or with certain documents to hand. In these circumstances, witnesses are advised that they can take a question on notice and provide an answer within 21 days. I remind everyone here today that Committee hearings are not intended to provide a forum for people to make adverse reflections about others under the protection of parliamentary privilege. I therefore request that witnesses focus on the issues raised by the inquiry terms of reference and avoid naming individuals unnecessarily. Witnesses are advised that any messages should be delivered to Committee members through the Committee staff. Finally, could everyone please turn their mobile phones to silent for the duration of the hearing.

ROGER STEPHAN, Chief Executive Officer, Strategic Services Australia Ltd, Hunter Joint Organisation of Councils, sworn and examined

CRAIG DEASEY, General Manager, Dungog Shire Council, sworn and examined

The CHAIR: Welcome, Mr Deasey and Mr Stephan. Would either of you like to make an opening statement?

Mr DEASEY: Thank you, Mr Chair. I would like to thank the parliamentary Committee for coming to the Hunter. As you would all be aware, it is the lifeblood of New South Wales from an economic perspective. There are significant tracts of Crown land within our area and some of them are absolutely pristine. There are a variety of representatives within the community who play an active role in Crown land management, not just local government. I think that needs to be acknowledged. As to opportunities for Crown land, obviously in some areas there are specific opportunities available. Probably they need to be explored further but they do need to have strong consultation surrounding them and robust governments.

The CHAIR: Do you have an opening statement, Mr Stephan?

Mr STEPHAN: I have sympathised with some of the responses from the 10 and counting councils in the Hunter region. Those responses related to the specific terms of reference. It may be appropriate to talk about them, if you are going to go through them one by one.

Mr DAVID SHOEBRIDGE: Did Mr Stephan say that he wanted to put on record his summary points?

The CHAIR: I think Mr Stephan just suggested that we go through and any we miss we will top up at the end.

Mr STEPHAN: Yes.

The Hon. MICK VEITCH: Thank you for your attendance today. The second term of reference talks about the adequacy of community input and consultation regarding the commercial use and disposal of Crown lands. With regard to the second term of reference what are some of the strategies we need to put in place to make sure there is adequate community input into the processes around the commercial use and/or disposal of Crown land?

Mr DEASEY: With Crown land, we need to remember that it is there for the public and the public use as best as practical.

(Short adjournment)

The CHAIR: Sorry for the interruption.

The Hon. MICK VEITCH: So what are the ways of ensuring adequate community input and consultation around the management of Crown lands, commercial use and disposal thereof?

Mr DEASEY: It is a difficult one in the context of the broader community. However you endeavour to promote the hearings, inquiries or consultation processes around Crown lands, you always end up with only a very small active minority of people who become involved. It is unfortunate because in the greater scheme of things, from my experience, many people could have input into the process who miss the boat. That is mainly because of their own working lives and their circumstances. It also comes back to the fact that in many instances the Crown land, if it is vested in the Crown and it is administered by the Crown, is a different kettle of fish than what it is with councils.

If it is with councils it has to go through a process in concert with the Crown lands department. That is one of the concepts where councils do play a major role if it is the local government area where the council is the trustee of such land. Where it is with the Crown, it is a different ball game again because as councils we communicate with our communities. We have our own websites and it would have raised its head in a meeting agenda or the like, whereas from a Crown Lands perspective, it is normally a notice in the *Sydney Morning Herald*, the *Government Gazette* and a local paper and that is about the extent of the consultation or exhibition of whatever is proposed, so it does lack.

Mr STEPHAN: What Mr Deasey has just said is the general view of the councils. The general mechanisms within the Local Government Act, particularly the community strategic framework, are a much more sound method of consulting with communities than public notices—the fine lines—that very few people see. There is certainly particular sensitivity in relation to the commercial aspects of the future role of Crown

land and a community suspicion that the value of potential Crown land would unnecessarily influence decision-making so the consultation process needs to be very comprehensive in order to avoid that suspicion.

The Hon. MICK VEITCH: So how could the processes that are articulated in the Local Government Act be improved to ensure—and someone last week used the word "meaningful"—meaningful consultation?

Mr STEPHAN: Very few people read public notices. I guess the mechanisms of government have not caught up with communication processes as they now exist. The imperatives in the Local Government Act are very good. You need to be able to demonstrate comprehensive community consultation; you need to be able to quantify certain things. If the processes in the Local Government Act were transferred against relevant considerations with the Crown land there would at least be a defensible mechanism that the Government could apply.

The CHAIR: In terms of parcels of land, what would you suggest if there was going to be a transfer of Crown lands into local government hands. Would there be any that you say should stay in State hands?

Mr DEASEY: To be honest, I think there is a fair bit of land that needs to stay in the State's hands. From our own perspective in the Dungog local government area [LGA], we have 60-odd parcels that we administer on behalf of the Crown now and some of those—and one of them in particular called the Paterson courthouse; it is a significant building and has significant heritage factors. It is a significant financial burden to maintain. We need to take those aspects into consideration with those that are going to be transferred across. Local government has gone through a process now as to our financial sustainability in looking at the whole-of-life costing. For those sorts of assets to come to local government in the future, there is going to have to be a lot more dialogue, discussion and financial modelling around those aspects.

The CHAIR: Are you aware already of the cost-shifting amount of the infrastructure you look after at a loss?

Mr DEASEY: Not one of the properties that we have runs with any surplus. We are reliant upon the community to administer many of those so that comes into play. We have section 355 management committees for a number of our sporting facilities and the like. Even the Paterson courthouse is administered on behalf of us by the Paterson Historical Society. In the last two years alone we have probably tipped $50,000 into the Paterson courthouse and that is for just one part of the roof.

Mr DAVID SHOEBRIDGE: We heard evidence from Wollongong council when we were down in the Illawarra. They said they had actually done an audit of their Crown land and found that it came at a net cost to Wollongong council of $7 million. Shoalhaven had done an audit as well and found it came to a net cost to council of $2 million. Has Dungog, or any of the Hunter councils, undertaken that kind of audit? If not, could you—to help inform the committee?

Mr DEASEY: Dungog has not undertaken it, and I really question the value of undertaking such an audit in the context that, when we are administering these community assets, they are there with a benefit to the community. Now, whilst there may be an expense, there's also the community benefit side—and that's the hardest thing to ever quantify. So, if you're going to talk about real costs here, they might be real costs, but what is the real public purse perspective as regards that community benefit?

Mr DAVID SHOEBRIDGE: Council does not, I think, have an unlimited bucket of funds, particularly in the context of additional assets proposed to be handed down to council**.**

Mr DEASEY: No.

Mr DAVID SHOEBRIDGE: I think there does need to be a serious conversation with the State Government about who is going to provide the funding to maintain public access and maintain these assets.

Mr DEASEY: I agree in one context, which is that if councils now want to take any more Crown assets, then they need to be the lever in respect to that, in my view—not sitting back and being the passive receiver. That is where you will have those discussions about the financial cost. If we look at trying to transfer—the issue of Crown roads and that at the moment—that is the last thing our local government area needs. There are parcels out there of paper roads still to go through the process, and as soon as there is any activity on that paper road, the Crown vests it in the council. Some of those roads are only accessible to one property. Now, do we want them? No.

The Hon. SCOTT FARLOW: If you are doing an analysis of those properties, the council may be interested in knowing that the Minister outlined the other day, in his evidence to us, that it would be an opt-in process. Have you at Dungog, or have any of the other councils, made an analysis of that land which you think would be critical for council and that which should remain with the State?

Mr DEASEY: In Dungog Shire we have not undertaken that analysis.

The Hon. LOU AMATO: What about lands of economic benefit to the community? Have you managed to identify any of them yet?

Mr DEASEY: There are not many that are of an economic benefit in terms of—what we have had is the issues associated with the Crown Lands Act and dealing with aspects in, say, State forests and the like. We have had businesses come along that wanted to establish some form of ecotourism facility in the forest. However, because the tenure is so limited, the return on capital is not there. So they have gone by the wayside. I can even go back to the days of the Tillegra Dam saga. There were a lot of conversations happening around that time in respect of the Crown lands and access into some of those areas.

The Hon. LOU AMATO: Are you aware of how many Aboriginal land claims have been lodged in your council's area—including the joint ones?

Mr DEASEY: All I can say is that there is a significant number. Don't ask me the exact number, because I am aware that the Karuah Local Aboriginal Lands Council virtually lodged land claims against every Crown reserve in the LGA that is in their area of control.

The Hon. PETER PRIMROSE: I would like to follow up on some of the questioning in relation to costs. There is something I have asked a couple of other witnesses to do, and to take on notice. When preparing the forward estimates, someone somewhere would be working out how much it is going to cost the council to maintain or look after a particular piece of Crown land—and then the same for this bit and for this bit. That is how you do your estimates. I am not interested in the total amounts, but what are the factors that are taken into account by council in preparing those cost estimates. What are the elements of those costs? It would be appreciated if you could come back to us with some guidance.

Mr DEASEY: I suppose every council is different in terms of its budget process, but they are similar in other ways. Ours is based upon your repairs and maintenance costs for them, your R&M. Some of the Crown reserves that we are trustee of, they are actually under an agistment-type arrangement. So they are just empty parcels of land sitting there up alongside a river somewhere—and adjoining landholders have usually got a lease over it. So that is a negligible cost in that context. But when you look at the likes of the Crown lands that we are trustee of that have buildings on them—we are talking about showgrounds, like the Dungog Showground, the Paterson Sports Ground, the Clarence town community centre—there are a number of buildings that do have R&M costs. Yes, we have them identified in our asset management plans. So we could pull that together.

The Hon. PETER PRIMROSE: That would be great, thank you.

Mr DAVID SHOEBRIDGE: On all of those properties—if you wanted to do something significant at the showground, does the fact that it is Crown land hinder you or benefit you? Is the process tortuous or useful? What is it?

Mr DEASEY: The process can become problematic. The main reason is because we are dealing with two pieces of legislation: the Local Government Act and the Crown Lands Act. That is where we always come into problems of conflict—because technically the council should be meeting separately as regards our Crown reserve trusts. To be honest, we just do not have the staff and resources to go through all that rigmarole.

Mr DAVID SHOEBRIDGE: Do you effectively adopt the local government plans of management and process for the management of Crown land?

Mr DEASEY: Yes, we do.

Mr DAVID SHOEBRIDGE: Mr Stephan, is that pretty much the case around the Hunter?

Mr STEPHAN: It is pretty much the case in relation to playing fields and other facilities, where, quite honestly, the community probably does not know that they are not council lands. So they become de facto council owned properties.

Mr DAVID SHOEBRIDGE: So for Dungog Showground, for example, a really important community asset—is there a plan of management in place for it?

Mr DEASEY: There is a plan of management in place for the showground. It has several historic buildings thereon—mainly the grandstand—so heritage considerations come into play as well in respect of that facility.

Mr DAVID SHOEBRIDGE: That is a plan of management you adopted under the process of the Local Government Act?

Mr DEASEY: Yes, under the Local Government Act.

Mr DAVID SHOEBRIDGE: So it has not got the sign-off from the Minister under the Crown Lands—

Mr DEASEY: No, not for that one. The plan of management, say, for the Paterson Sportsground does. The main reason it has the sign-off from the Minister is because there are two leases associated with the Paterson Sportsground, one being for the Paterson Golf Club and the other one for the Paterson tennis club. So they want some security of tenure as regards what they have invested into those aspects, so there are leases in place on those two separate identities. And they are signed off by the Minister.

Mr DAVID SHOEBRIDGE: When you are negotiating those leases, their lawyers basically said, "We want a plan of management that is valid for the site."

Mr DEASEY: It is in place. We had to do that back in about 2001, from memory, when the plan of management was developed for that site. Before that, there was nothing in place.

Mr DAVID SHOEBRIDGE: Mr Stephan, one of the case studies we will be looking at is King Edward Park. One of the issues that arose in that litigation was whether or not the development and activity on the site was permissible, given the plan of management—and, ultimately, the Land and Environment Court found it was not. Is that an issue that has appeared more than once in the Hunter? Is that something you want to take on notice?

Mr STEPHAN: I think we should take that on notice. Certainly that is by far the most notable occasion. But we would take that on notice.

Mr DAVID SHOEBRIDGE: If we went there now, we would see a fenced off public asset that the public is excluded from. There has obviously been a poor outcome for the Friends of King Edward Park. Do you have any observations about that?

Mr STEPHAN: Not specifically. Council management of Crown lands, in general, works very well. It becomes more complicated when there are two regimes operating and they don't work in sync with one another. There are further complications arising from council adherence to community service obligations in relation to costings et cetera. They become more complicated in the context of the Crown land procedure—but we would need to take on notice that general question.

Mr DAVID SHOEBRIDGE: Mr Deasey, when you were having a look at your race ground you acted in advance of that. You realised you needed a plan of management and you went out and consulted with the community about it, to make sure that you had ticked all the boxes on the plan of management and that what was proposed for the site was lawful. You took a forward-thinking approach. Is that right?

Mr DEASEY: I would not say it was forward-thinking. The golf club has been in existence for a good number of years. They wanted to develop it, to provide themselves with a little clubhouse. At that point it was observed that there was no plan of management over that Crown reserve and that we needed to get it regulated properly. That is why the councils had to take steps to engage with the community and the users of the Paterson sportsground in its broader context to ensure that when the plan of management was developed there were processes in place that would see it forward, to match the needs and aspirations of the Paterson community.

Mr DAVID SHOEBRIDGE: Having had that in place for about 15 years, would you now say that it has worked?

Mr DEASEY: Yes, it has.

Mr DAVID SHOEBRIDGE: Do you review that plan of management on a regular basis or do you just wait for another lease to come across council's desk?

Mr DEASEY: No. The leases have not long happened. We have left the review process with the management committee that is in place for it. It comprises the user bodies and several representatives of the Paterson community. It is their role to look at it. They will have a dialogue with us on their future proposals for the facility. It is probably one of the better working examples in the Dungog local government area.

Mr DAVID SHOEBRIDGE: So most of your prize assets that are on Crown land are run through committees established under section 355 of the Local Government Act?

Mr DEASEY: Yes.

Mr DAVID SHOEBRIDGE: Mr Stephan, are most principle assets on Crown land that are managed by councils dealt with by committees set up under section 335? Would you like to take that on notice?

Mr STEPHAN: I will take it on notice, but that has traditionally been the case.

Mr DAVID SHOEBRIDGE: Mr Deasey, how does that work? How do you establish a 355 committee? Who sits on a 355 committee and what authority do they have? Is it a good way of dealing with it?

Mr DEASEY: It is the only way of dealing with it, from a council perspective. There are so many assets that you could not administer them otherwise. It is a better way of engaging with the community. Another benefit is the amount of volunteer hours that the community put into those assets.

Mr DAVID SHOEBRIDGE: It is free engaged labour, which is a good thing.

Mr DEASEY: They love it. For some people it becomes a passion. That has to be recognised. On a lot of management committees we have a good number of passionate souls who are willing to have a go, but their governance arrangements are remiss at times. Local government has to bear some of that risk. It does not matter what you put in place. People have a vision for something and are not worried about the red tape around workplace health and safety and the like. We have to take that into consideration. The committees work well for us. Some of them are sloppy with their paperwork, but we could not do without them.

The Hon. MICK VEITCH: Earlier, in answer to a question by the Hon. Scott Farlow, you spoke about opt-in or opt-out arrangements for council. What would be some of the elements that you would give consideration to in determining what you would take up in an opt-in arrangement and what you would decline in an opt-out arrangement? What are the things you are looking for?

Mr DEASEY: For an opt-in arrangement we would be looking for a positive return on investment. It is difficult to answer on opt-out arrangements. I would love to opt out of a couple of current arrangements because I do not believe we are the right authority for them. Pilchers Reserve is a classic example. It has significant environmental and cultural heritage, but it is virtually landlocked. It has some of the last remnant rainforest vegetation in our local government area [LGA]. It is landlocked by private freehold land. It has a significant cave system and significant cultural heritage for the Aboriginal community. I would rather opt out because we as an organisation cannot really manage that.

The Hon. LOU AMATO: Is there an Aboriginal claim on it?

Mr DEASEY: I do not know whether there is an Aboriginal claim on Pilchers Reserve. It needs professional management. It should not be managed by my manager of environmental services or my engineer of assets. They are not the right people. While it needs to be preserved, there should also be the opportunity for it to be explored by more people.

The CHAIR: Are your sportsgrounds Crown or council land?

Mr DEASEY: We have a mix.

The CHAIR: Would you take ownership of the sportsgrounds, then? Would you think that appropriate for council? There are hindrances attached to Crown lands.

Mr DEASEY: Yes. Bennett Park in Dungog is a classic example. It has the sportsground and the Doug Walters Pavilion, which we built. The Dungog swimming pool is also on that site. It is under a leased contract arrangement.

The CHAIR: So you have council assets on Crown land?

Mr DEASEY: Yes.

The CHAIR: You would opt in on those lands?

Mr DEASEY: I would opt in.

Mr DAVID SHOEBRIDGE: You are already paying for it.

Mr DEASEY: Yes. We are servicing it.

The CHAIR: Mr Stephan said it, and other evidence has backed this up: People out in the community do not know that council does not own the land.

Mr DEASEY: No.

The CHAIR: You mentioned the cost burdens that will come with some land. My concern is that, with the pending biodiversity Act, many councils will be unaware that Crown land management will involve an additional burden because of the cost of caring for the vegetation. As you said, much of that land requires a professional approach, even though it is not used for any other purpose. Are you concerned about that?

Mr DEASEY: Not really. I do not see the biodiversity Act as a major concern in our council area. We have landholders whose land adjoins Crown reserves. They might have their stock over that land. That is just the way it has been. There are a couple of parcels of land that I think even my staff do not know the location of. They are right up the top of the shire, near the border with Upper Hunter Shire. There is only one landholder around it. It is plonked on the river.

The CHAIR: Do you have travelling stock routes [TSR]?

Mr DEASEY: There are TSRs in the shire, yes.

The CHAIR: Would you like to see ownership of them retained by the State Government?

Mr DEASEY: Yes.

Mr DAVID SHOEBRIDGE: They are important environmental corridors, aren't they? They are crucial for biodiversity.

Mr DEASEY: A good number of them hold remnant vegetation, but they are also important from an economic perspective. We have been fortunate that drought conditions have not been too bad in the Dungog LGA in recent years. A good number of graziers have moved their livestock around, so those corridors are important. Dungog Common is not ours—it is administered by a reserve trust these days—but any complaints about it come to council.

The Hon. MICK VEITCH: You would be aware that one of the proposals in the Government white paper was to repeal the Commons Management Act and bring it and a number of other Acts under the Crown Lands Act.

Mr DEASEY: That needs to be done. That makes sense. This is the twenty-first century.

Mr DAVID SHOEBRIDGE: Mr Stephan, I suppose travelling stock routes are not just a matter for Dungog to consider. Is it correct that there are stock routes all across the Hunter?

Mr STEPHAN: Yes, there are.

Mr DAVID SHOEBRIDGE: Would you give us a summary of their environmental and economic importance for the Hunter? Would you like to take that on notice?

Mr STEPHAN: I will take it on notice. We are lucky, in the Hunter, that our mapping of vegetation is extraordinarily accurate, thanks to Commonwealth and State government funding and local funding. We have an accurate idea of the impact of those routes on endangered species. I will provide the Committee with a more detailed answer.

Mr DAVID SHOEBRIDGE: We would appreciate that. In Dubbo the Committee heard that travelling stock routes had a diminished economic importance on the coast compared to in western New South Wales. In your opinion do they still have a vital economic role to play east of the ranges?

Mr DEASEY: They are still required in my view. You just cannot go and offload some of those parcels of land. Really I do not think that we are the right people talking about travelling stock routes because it is really Hunter Local Land Services that should be having that discussion. They probably would like to offload some of them, I would say, from an administrative perspective but I think from a rural economic perspective they are still a vital part of our economy.

Mr DAVID SHOEBRIDGE: Is your area covered by the one local land service [LLS]?

Mr DEASEY: Yes, Hunter Local Land Services.

Mr DAVID SHOEBRIDGE: The Committee has had real concerns raised with it about the difficulty in moving from one LLS to another, and the bureaucracy and multiple permits, and having to go to head office. Has that filtered down to you?

Mr DEASEY: I have not heard of any of it but travelling stock permits are a problem at times, and they always have been. It is just the movement now with the larger, broader LLS has got to be far better than what was in place with multiple pasture protection boards of the past.

The CHAIR: I refer to the 29,000 backlog in Aboriginal land claims.

Mr DEASEY: Yes.

The CHAIR: Will you share ideas of how you think we can quicken the process to get those returned land claims to the Aboriginal people so they can be self-reliant economically?

Mr DEASEY: I think that is what needs to happen, that is, a fair dinkum dialogue with the Aboriginal land councils in respect of these parcels where they have lodged the claims. Many may have a cultural benefit to those communities but are they going to be able to afford the financial burden that comes as a consequence of many of those areas? It is not just councils that are involved in this. The ability to control public lands is always complex. If you look at it from a bushfire perspective, a public management perspective and an illegal dumping perspective there are always costs with land wherever it is. We are always burdened with having to go out and clean up waste that has been illegally dumped along a roadside. But it also can happen on Crown lands or in the forests; it does happen.

The CHAIR: Given there are Aboriginal land claims, you have noted that we are going to lay fairly big environmental burdens on the Aboriginal people because most of the lands to be given back to them have environmental values. We trust that they have a great respect for cultural values but we tend to padlock a lot of these land claims with zoning and environmental planning decisions of many years of government. Do you think we should remove the padlock and give them back to the people to have total autonomy over that land?

Mr DEASEY: It is a difficult question. If I were to say personally I do not believe that you can unlock them totally because you have in place the Environmental Planning and Assessment Act. They are already going to be zoned from a local government perspective. They would have to go through any normal rezoning process and through the planning panel in that way. If you look at the Rural Fires Act and the administration governing that in terms of what has to be in place to develop a number of these in terms of roads, access in and out, egress, all those elements come to play in many of these parcels of land. So as I said, I think there needs to be a genuine dialogue with the Aboriginal Land Councils. It is not really my place to say that as I think from council's perspective we are sitting on the sideline. Yes, we have zoned the land and if it is environmental land, we have zoned it environmental land. It does not matter who owns it, that is the zoning. The reason it is zoned that way is because it has key quality characteristics that reflect the environmental zone.

The CHAIR: Mr David Shoebridge has said in relation to a new Crown Lands Act that this land was and always is Aboriginal land. Do you want to add to that?

Mr DAVID SHOEBRIDGE: We are talking about 42 per cent of the State which is Crown land and before colonisation every square metre of it was Aboriginal land, and some would argue it still is. If we are developing a new Crown Lands Act, and that is what the Parliament will be doing towards the latter half of this year, do you think one of the key principles we should put in the Act is to prioritise the return of land to Aboriginal people acknowledging their prior ownership and the injustice in the past two and a quarter centuries?

Mr DEASEY: Whilst you say 42 per cent of the State is Crown reserve I would imagine a fair bit of that percentage is in the western areas?

Mr DAVID SHOEBRIDGE: Yes, not 42 per cent of Dungog.

Mr DEASEY: No I know that. I do not have a major concern in the context of Aboriginal recognition within the Act in terms of ownership.

Mr DAVID SHOEBRIDGE: As a priority principle, given the history and the facts?

Mr DEASEY: It is not really my place to say that because you are the people in charge of Crown lands, not me. I can only talk from my local government area. The population of the Aboriginal community in our local government area is about 4 per cent. I could not tell you where the majority of those people are, or what their interests are. We have four different land councils in our local government area alone. Just trying to understand the cultural significance of those lands, you have got to have a deep affinity with those people. I am afraid I am not in that position to say that. I have got some good friends who are Aboriginal people but I cannot make a statement in that regard.

Mr DAVID SHOEBRIDGE: But you acknowledge that Aboriginal people in your local area have a deep affinity with the land and a special relationship with the land that should be recognised in the Crown Lands Act?

Mr DEASEY: That is not what I am saying. I am saying that Aboriginal people do have a deep affinity with the land. It is undeniable that they were here before us. They are the traditional custodians of the land.

Mr DAVID SHOEBRIDGE: They are still here.

Mr DEASEY: Let us recognise that.

The CHAIR: That is my point. They were the custodians of the land and they were great environmentalists themselves so should we unlock the laws to allow them to restore what they had?

Mr DEASEY: Let us look at how they used to manage vegetation with burning.

The CHAIR: Cultural burns.

Mr DEASEY: Yes, is that acceptable in many of the environments of today?

The CHAIR: Cultural burns are coming back, are they not? I know the National Parks and Wildlife Service is working with the Aboriginal community.

Mr DAVID SHOEBRIDGE: I think the Chair and I are addressing two different matters. I am addressing return, and the Chair is addressing environmental restrictions and zone restrictions.

The Hon. CATHERINE CUSACK: I think we have taken this as far as we can.

Mr DAVID SHOEBRIDGE: I am addressing return, and the Chair is addressing environmental and zoning restrictions. They are different. We are cutting across two different things.

The CHAIR: Are there any further questions?

Mr DAVID SHOEBRIDGE: Would it be possible to seek to get the Committee some information on a council-by-council basis about how many outstanding Aboriginal land claims are in the Hunter?

Mr DEASEY: No.

Mr DAVID SHOEBRIDGE: As best you can with your council?

Mr DEASEY: I will answer that straight away for you, Mr David Shoebridge. I have got no idea the number of land council claims in our area because a lot of them are still within Crown lands. Many of them have not even been notified to us. They are just trickling through.

Mr DAVID SHOEBRIDGE: A number of other councils have the information to hand. Do you have a relationship with Crown Lands and you can ask them how many land claims there are and where they are?

The Hon. SCOTT FARLOW: To be fair Mr Deasey is not our researcher.

Mr DEASEY: That can go straight to Crown Lands.

The Hon. CATHERINE CUSACK: What are you trying to find out?

Mr DAVID SHOEBRIDGE: Have you sat down with your land councils—key stakeholders in your community—and worked out those priority land claims and tried to do what you could to assist or has any council in the Hunter done that? Have you tried to assist priority land claims rather than just allow the 29,000 to tick away in a bureaucratic endless grind?

The Hon. CATHERINE CUSACK: Why is that council's job?

The CHAIR: The witness can choose to answer that question.

Mr DAVID SHOEBRIDGE: There are two witnesses.

Mr DEASEY: Dungog shire has not sat down with the land councils to look at their respective claims—that is Dungog shire's response at the moment.

Mr DAVID SHOEBRIDGE: Mr Stephan, do you have a position?

The Hon. LOU AMATO: Mr Deasey has already answered the question.

The CHAIR: Mr Stephan, do you want to respond to that question?

Mr STEPHAN: I can't speak for all the councils at the moment because I do not have that information. I can seek information from the councils.

The Hon. Mick VEITCH: Earlier in your testimony you spoke about the parcel of land in the far north of your shire boundaries which is probably not known by your council officers.

Mr DEASEY: No.

The Hon. Mick VEITCH: Is it reflective across the Hunter that there are parcels of Crown land that people do not know about? Is there a difficulty in identifying Crown lands via the Crown Lands office itself? How accurate is the surveying and mapping of Crown land in the State? How readily accessible is this information?

Mr DEASEY: I think part of the problem is that they are still trying to convert old system freehold title and the like across to the Torrens title system. At times you will find that there are little pockets of land that

were vested by the Crown many decades ago to trustees. We have come up with a couple in our area which are cemeteries that have existed in the middle of virtually nowhere. It is a problem.

Mr STEPHAN: I think council areas like Dungog are particularly finely refined versions of the problem simply because of the nature of the land. The issue would not be the same in Newcastle, for example, for very obvious reasons. It is a lack of both definition at Lands and also communication as well.

Mr DEASEY: To quantify that, Dungog shire is 2,248 square kilometres. A little parcel, one acre, in the scheme of things is—

Mr STEPHAN: There is also the practical reality that it is unlikely that the State would wish to transfer control of those little parcels to the local council. The issues really relate to those parcels that are very public in their nature.

The Hon. MICK VEITCH: Hence my earlier question about what elements or aspects a council would give consideration to if they were going to opt in as a part of the management process?

Mr STEPHAN: There is a good example in the Maitland Gaol. The Maitland Gaol was closed in 1994 or 1995 and the local council took over control because it was such a significant landmark that it felt it had to. The council inherited a largely derelict heritage site. Without any funding from the State it has restored it and turned it into a commercially viable tourism operation. That actually made no sense in many ways, but in terms of its community importance and its now economic importance it was important. It is still held under a licence, so the negotiations with the State in relation to the future of the Maitland Gaol clearly need to take into account the ongoing maintenance cost of that facility. That will influence the council, I would imagine.

The CHAIR: Thank you very much, gentlemen. You have 21 days to supply the answers to the questions you have taken on notice. The secretariat will help you with that. You might receive some further questions in light of your evidence.

(The witnesses withdrew)

KIM OSTINGA, President, Friends of King Edward Park, affirmed and examined **JOHN LEWER**, Vice President, Friends of King Edward Park, affirmed and examined

MARGARET OSTINGA, Member, Friends of King Edward Park, affirmed and examined

FIONA BRITTEN, Convenor, Stockton Community Forum, affirmed and examined

GORDON LAFFAN, Chief Executive Officer, Stockton Bowling Club Co-op, affirmed and examined

Ms BRITTEN: I am also the editor and publisher of the *Portside Local*.

The CHAIR: Would anyone like to make a brief opening statement?

Mr OSTINGA: We present a case study of a six-year struggle for a piece of land in a park. The land is reserved for public recreation under section 87 of the Crown Lands Act and it is controlled by trustees. At the outset I would like to say that we have no problem whatsoever with the Crown Lands Act as it stands. Our problem throughout has been dealing with the people who administer Crown lands. Perhaps it is best summarised by Justice Biscoe in our case for security of costs when he said that we are a community group attempting to protect a public park and in so doing we are attempting to enforce public law obligations on the Minister and the council.

Throughout our case study we have found difficulty in the normal procedure. I would like to draw the Committee's attention to this park. It is not just an ordinary site. The Minister referred to it as just 0.6 of a hectare in a 35 hectare park as if, well, so what? I refer you to this picture I am showing. It is a spectacular piece of land at the very mouth of the King Edward Park. It is extremely important to the Aborigines in the sense that it is known as Yi ran na li, or the place of falling rocks, both to the Awabakal and also to the Worimi. Up to 1983 it was the place where the Worimi held up their newborn to their ancestors past. There was an Aboriginal land claim for it in 2011, which was refused because the land was lawfully used and occupied and also the claimed land was essential for the public purpose of social recreation and economic benefit.

To we non-Indigenous people, or Australians, or whatever we are, it is also important in the sense that it was the first coal shaft in the Southern Hemisphere at the time in the industrial revolution when people were starting to recognise the enormous wealth there must have been in Newcastle and surrounding areas. It is no accident that the streets are named after those people concerned with the invention and the establishment of the steam engine. From there the first coal was shipped from Australia. We see it as a very important piece of land in the basic history of Australia. We have fought hard for it. We have had three court cases—two have been associated with costs in an attempt to knock us out I think. The first was security cost, which I have described with Justice Biscoe, and the second was an argument over costs from the main case in which we were granted costs and the judge said that we had basically won all of our points in court. The definitive case established the Rutledge principle—that to fulfil its purpose as public reserve it had to be accessible to the public as a right and not to be used for private profit. It also said that the developer should be constrained from using the land for any purpose other than that definition for public recreation.

If you look at the land now it is surrounded by wire. The reason it is surrounded by wire we are told—this is 18 months past the definitive judgement—is because it is unsafe. It is unsafe for the public to go there because the demolition was incomplete. Some GIPA documents given to us in the last 10 days reveal that there is a very strong legal relationship between the Government and the developer in the form of a development agreement which, in spite of the fact that the development application and the plan of management was declared invalid and of no effect, this development agreement is still alive and well.

The Hon. CATHERINE CUSACK: Do you mean the council or the Government?

Mr OSTINGA: The Government—the State and the developer. There is a development agreement; it is alive and well. There is talk in the GIPA documents that the Minister will be advised to grant the Aboriginal claim and there is a lot of discussion in just how that can be explained away when the status of the land is the same. More alarmingly, in the document is a statement that the development application can proceed as originally planned and this, of course, depends on the LEP, which initially in the 2003 LEP forbade function centres. However, a schedule 1 was put onto the LEP for 2012 and this schedule 1 allows function centres. The reason this was investigated by the first parliamentary inquiry—the LEP was changed in order to bring it into line with the development application and the plan of management, both of which have been declared invalid and of no effect in court but schedule 1 remains on the LEP. You can see that the whole episode of the Friends

of King Edward Park attempting to save this park for all the people has been quite a saga. We presented a case study and I would beg the Committee's indulgence to allow Dr Lewer to make a short summary at the end of it.

Dr LEWER: We thought that might be useful for the Committee's purposes. As I understand it there will be some questions and maybe we could provide some commentary at the end. Would that be acceptable?

The CHAIR: Yes, if you feel that the Committee has not got the information that you would like it to have. We can also take your opening statement on notice if you would like to table it. Would anyone else in this group like to make an opening statement otherwise we will move onto the next group?

Ms OSTINGA: I would like to state that one of the reasons that we have continued this fight is that we have all had an interest in the preservation of Crown land for its dedicated purpose. We have made various submissions—I think they are in *Hansard* on the Crown Lands Amendment Act. We made more than 35 submissions to the Crown land 2014 white paper and we have appeared before the upper House inquiry relating to planning in Newcastle but it did relate to land. If we had not had that purpose behind us we probably would have given it up long ago. We feel that we did establish something because, although the Minister does not acknowledge that our case has established the Rutledge principle, the *NSW Law Journal* has an article which states that they allege that the Friends of King Edward Park's case established the Rutledge principle.

The CHAIR: Ms Britten, would you like to make an opening statement?

Ms BRITTEN: In simple terms I would like to bring to light the impact on a community that can occur when a commercial arrangement goes sour. I have got a written submission for everyone. It gives you a very pictorial walk through what occurred on a site, 147 Fullerton Street, Stockton, which has for decades been Rose's Garage. It was the only remaining service station on the peninsular, serving 4,500 residents and thousands of tourists every year.

Mr DAVID SHOEBRIDGE: Is this a fresh submission today?

Ms BRITTEN: Yes. It provided essential mechanical repairs and it significantly serviced elderly residents on age-restricted licences who could not leave the suburb to get fuel anywhere else. Their lives were impacted and changed forever until July 2012 when a new licence was granted to a new operator. What really happened over those years—3½ years of fighting, 168 emails, multiple requests for assistance from Crown Lands management, from council, from the EPA and from the Port of Newcastle to get some traction on a site that had turned from a very basic service station operation into a dumping ground for used vehicles that were being sold without a licence and second-hand goods that were being sold without a licence. Generally an unsafe area developed around the entire site through intense littering with vehicles left everywhere. The photographs will tell the story for you, which is why I have included them today. I was not the only person who made multiple complaints within the community. We had it escalated to State Parliament and questions were asked. We had Federal member involvement as well, and still no relief. After 3½ years of being advised that not only were there safety risks but there were serious concerns about the structure's stability, it burnt to the ground. It has been left in that razed state for the last seven months and remains an eyesore in our community.

The CHAIR: Mr Laffan, would you like to make an opening statement?

Mr LAFFAN: I represent Stockton Bowling Club, I am the CEO there. I am here today to make sure that Stockton Bowling Club does not turn into another King Edward Park in that the bowling club fails and Crown land—it's their land anyway, but the community loses an asset. It is a vital asset to that community. We provide a range of activities across a range of age groups, from preschools coming to do barefoot bowls right through to bingo on a Wednesday morning for your granny, and bowls for the ladies' and men's clubs. My dealing with Crown Lands, as my submission says, has always been great—we have paid the rent and they have left us alone. It is getting harder to pay that rent. The model for registered clubs isn't the same model that was there when that lease was put in. We have tried to find new and interesting ways of raising funds to pay for the approximately $150,000 worth of greens that we have to maintain every year—outside of wages, outside of anything else, just to maintain those greens is approximately $150,000.

Mr DAVID SHOEBRIDGE: That does not come to us by the way.

Mr LAFFAN: Of course. With the Crown Lands arrangement the rent is, in commercial terms, peppercorn. I am very happy with the rent I am paying—I make that quite clear—but my issue is with how we are dealt with when something does go wrong or when we need Crown Lands to come to the fore. We found some interesting ways of raising $12,000 by having a telephone tower repeater station and Crown Lands shut us down because it is a non-sporting activity; Crown Lands does not allow for it.

The CHAIR: You still could have made some money out of it.

Mr LAFFAN: Exactly. We did a loss this year—unaudited, about $40,000 roughly, and that $12,000 would have gone a long way to easing that. I have still got to find the money; I have still got to find all of that. I have now just got to try and find a new and interesting way of finding that money again. The visual impact of the telephone tower is on a light pole, a floodlight that is already there. So there was reasonably no visual impact. Infrastructure wise, the pole was already there. The installation of that repeater station would have meant that sailors out on Stockton Bight would have had mobile phone access. People in Stockton would have had better mobile phone access. Heaven forbid, we might even get some decent internet connection through it. But helping sailors and helping the phone reception is $12,000 to me and I was told by Crown Lands that even if we succeed in getting that light pole through, however we managed it, my rent would go up by $12,000.

Mr DAVID SHOEBRIDGE: So you could put it in, get the $12,000 and they would bump your rent up by $12,000 to take it into account.

Mr LAFFAN: Correct.

The Hon. CATHERINE CUSACK: Who in Crown Lands told you that?

Mr LAFFAN: The gentleman's name was—

The CHAIR: Maybe a position would be better than a name.

Mr LAFFAN: He was the person in Crown Lands that dealt with telecommunications issues in the Newcastle office. I have got the name if you want me to say.

Mr DAVID SHOEBRIDGE: You might provide it to us later.

The CHAIR: If you can provide it later that would be great. We will take it on notice.

Mr LAFFAN: That is no problem. In speaking with the company who was doing the installation—a company called Complan—when I mentioned that I was speaking with Crown Lands in Newcastle they basically said goodbye, there was no chance, forget it, and I have not heard from them since. I told them I am appearing here today and they have said that materially it will not make a difference because by the time this rolls through they will find another location.

The Hon. SCOTT FARLOW: Was that in particular to do with Crown Lands or Crown Lands in Newcastle?

Mr LAFFAN: Correct.

The Hon. SCOTT FARLOW: Just Crown Lands across the board or—

Mr LAFFAN: I know he has dealt with this individual in Newcastle but the impression I got was Crown Lands in general. So I will not commit fully on that but let us say my impression was it was definitely Newcastle.

Mr DAVID SHOEBRIDGE: Mr Laffan, do you know if there is a plan of management for the site?

Mr LAFFAN: Which plan of management would you like?

The CHAIR: The signed one preferably. But if it is not signed it is a draft plan.

Mr LAFFAN: There was a Newcastle City Council Coastal Management Plan that was developed by Newcastle City Council probably four years ago, at a guess. In that document the bowling club becomes a hub of the sporting activity because we have a football oval at one side, tennis courts and netball ovals on the other, with the surf club sitting in front of us, and part of that redevelopment of the coastal management plan was that they would all come into one hub, a sporting precinct, within the bowling club. That is the only plan of management I have seen that I am aware of. Obviously we have got our own internal documents of things we would like to do if we ever had some money, including the $12,000 that we want. But that is the only management plan that I am aware of.

The CHAIR: So, Mr Laffan, you would not be averse to the local council maybe embracing an opt-in situation for your bowling club and then taking the leadership over that and embracing the tower and embracing the rent?

Mr LAFFAN: I would have no issue at all because when that coastal management plan—and I am not casting that on Newcastle City Council, but we were never approached in the drafting of that plan. I read the plan and I thought that's nice, look what they are doing for us.

Mr DAVID SHOEBRIDGE: You were becoming the centre and the hub of a sporting complex under a plan of management by Newcastle council that they never spoke to you about.

Mr LAFFAN: Correct.

The CHAIR: Just for the information of members, the reason we have started with Mr Laffan is that he will be leaving at 12 sharp. So if anyone has any questions—

Mr LAFFAN: My apologies. I do have to get to Sydney, I am sorry.

The Hon. Peter PRIMROSE: Ms Britten, my reading of your submission—and I am aware of some of the aspects to it from talking to the local member of Parliament, Tim Crakanthorp—is that the concern is that even though a licence had been given, there was an expectation, because of that licence, that a service would be provided on the site but that there was no way of actually ensuring that that service was provided.

Ms BRITTEN: Within the conditions of the licence, that is correct. As far as I understand it that is correct, yes.

The Hon. Peter PRIMROSE: Can you tell us firstly what attempts—and I know you have outlined them but if you could reinforce them—were made and to whom to try and get the conditions of that licence fulfilled and, secondly, what you believe would need to be included in a new Crown Lands Act to maybe assist this not occurring in future?

Ms BRITTEN: I do not have the title—yes I do. Senior Manager Hunter Area North Region, Trade and Investment was where my original inquiry started. It started in October 2012, some three to four months after the new owner had taken over and they went through that as the right channel and we continued to attempt to have them engaged. The responses were very short and I never saw that senior manager come to the area; he never asked to come and speak to me or any other community members in relation to what was happening on the site.

What I believe should have occurred within the licence is that it should have been stipulated that for it to remain under a lease agreement, which I imagine was a fairly affordable rent, that it would continue to provide the service to the community in which it had been handed over and had done so as a legacy service for a number of decades.

Mr DAVID SHOEBRIDGE: Which is a service station.

Ms BRITTEN: A service station and mechanical repair shop.

Mr DAVID SHOEBRIDGE: Mechanical repairs and fuel?

Ms BRITTEN: Yes.

The Hon. Mick VEITCH: And it has now been burnt—razed, as you said. Have there been any attempts to secure the block?

Ms BRITTEN: There has been some temporary fencing around it.

Mr DAVID SHOEBRIDGE: Cyclone fencing.

The Hon. Mick VEITCH: I should have said I inspected this block several months ago prior to it being burnt. Have you heard from the Department of Lands at all about when they intend to clear the block? Firstly, I should ask: Is it the Department of Lands' responsibility to clear the block or that of the licence holder?

Ms BRITTEN: We understand that it is back with the responsibility. The licence was revoked in November 2015 after the community outrage was finally heard. We understand that at this point in time it is with Crown Lands for them to do whatever with the site—make it look attractive again or give it a purpose.

The Hon. Mick VEITCH: Some sort of remediation.

Ms BRITTEN: However, I must say that nobody from Crown Lands has contacted us at any time since it was burnt in December.

The CHAIR: They would have to rehabilitate the soil, would they not, if they were going to re-engage another commercial facility on it?

Ms BRITTEN: Yes. If they put in in-ground tanks there are above-ground solutions which work very effectively through the rest of the country.

Mr DAVID SHOEBRIDGE: You want Crown Lands to recognise the importance that this site was playing and the service it was providing to the community.

Ms BRITTEN: Yes.

Mr DAVID SHOEBRIDGE: I assume you want them to come and meet with you and do what they can to reinstate the service station there and reinstate the services to the community. Is that basically it?

Ms BRITTEN: That is basically it. And not just the community. It is located at the entrance to Newcastle's only holiday park. We have thousands of recreational vehicles go through that every year, yet they were quite prepared for them to go onto a road potentially unsafe, major arterial roads outside of that, without any option to get mechanical repairs.

Mr DAVID SHOEBRIDGE: You have had meetings on-site, you have had questions raised in Parliament, you have had letters and correspondence. Has anyone from Crown Lands come to Stockton to meet with you?

Ms BRITTEN: There was a meeting in October 2014. Three people from Crown Lands came onto the site. They walked the premises with the operator and after walking the site with the operator they obviously issued a number of orders for him to clean up the site. Within three weeks of that site being cleaned up it was worse than ever before.

Mr DAVID SHOEBRIDGE: But did they meet with you?

Ms BRITTEN: We had a very brief discussion. They told me that they were not to speak to the media in my capacity as media. They also stood there whilst serious sexual verbal abuse was headed towards me from the operator and said nothing. They allowed it to occur.

Mr DAVID SHOEBRIDGE: We have such little time. I will put questions on notice about the process. Mr Laffan, you run a small, essential not-for-profit club with strong community support, is that right?

Mr LAFFAN: That is correct. I operate under what the mining companies—and Newcastle being a mining community, a phrase they use is social licence. That is doubly apt when it comes to registered clubs—small, suburban registered clubs sitting on Crown land. We are there only because the community want us there. The day they stop wanting us to be there they will not spend their money there.

Mr DAVID SHOEBRIDGE: What you are saying to us is that Crown land management should allow for some very small non-impacting income-producing additions to your Crown land?

Mr LAFFAN: Correct.

Mr DAVID SHOEBRIDGE: So that you can keep that community club running—

Mr LAFFAN: As a sporting facility.

Mr DAVID SHOEBRIDGE: —otherwise we might see the club fall over and a far worse outcome?

Mr LAFFAN: Exactly. I drew the analogy that I buy a keg from the brewery. I adapt that keg and turn it into schooners. Is that a sporting activity? I can make money out of it but it is not a sporting activity. My contract caterer provides food. Now that is not a sporting activity. Am I in breach of my lease?

The CHAIR: It is an ancillary use.

Mr LAFFAN: Yes. Is a telephone tower something similar? That is my argument. I understand Crown lands have to operate with a variety of sizes of entities and we are on the smaller end of that. The same rules should not apply. There should be some way of scaling back what is allowed and what is not allowed.

Mr DAVID SHOEBRIDGE: But provided you have community support—

Mr LAFFAN: Correct.

Mr DAVID SHOEBRIDGE: —you think they should cut you a bit of slack?

Mr LAFFAN: Correct. If I was putting up a brand new tower that was visually pollutant; if I was putting a tower out on one of the bowling greens. I am not. I would have thought in all good faith my contacting my landlord and saying, "This is what I'm doing. There's no impact, there's no visual, audio, nothing"—I would have thought that was a fair and reasonable use for me to get $12,000 so I can continue to provide community assets.

Mr DAVID SHOEBRIDGE: I go to Friends of King Edward Park. At the moment you have a closed bowling club with greens that are fenced off that you cannot access. Would it have been a better outcome to have allowed a community-run club to have had access to some of these non-impacting additional revenues on the Crown land that they could reinvest in the Crown land and keep your club operating?

Mr OSTINGA: There was a club there. When the Newcastle City Bowling Club failed—and it was liquidated—it was run for a while by private operators and it failed because it was not well attended.

Mr DAVID SHOEBRIDGE: So what would be the best outcomes for you right now on this beautiful patch of public land—pull the fences down and let people on?

Ms OSTINGA: Absolutely. We have been awarded costs and we have made offers to the Crown Lands department suggesting that with community volunteering—and we will continue to fundraise, which is what we have done for the last five years—we would like to improve this site. We have had had consultation with Rick Leplastrier, who is a gold medal architect, and discussions with landscape architects about what we could do there. We would love to see a national competition for a sculpture, representing something for the Indigenous people and ourselves—a theme of justice, I guess.

The Hon. CATHERINE CUSACK: Hypothetically, if a telecommunications tower was going to help fund a recreational centre on the site, would you support that or would you oppose that?

Ms OSTINGA: We would not oppose it but I would imagine that we do not need it. We do not have a problem at Stockton as we have excellent—

The Hon. CATHERINE CUSACK: But the court case you have been running is focused on only recreational uses of the headland and something like a telecommunications tower would not be a use that would fall into that definition?

Ms OSTINGA: We would say it is redundant, I suppose, in the fact that we have excellent wi-fi reception and we have the National Broadband Network [NBN].

The Hon. CATHERINE CUSACK: I am talking hypothetically. It is quite interesting here to see that one organisation is trying to seek a more diverse use of the site in order to maintain it for the community and another organisation feels that nothing should be permitted at all.

Mr DAVID SHOEBRIDGE: I do not think that is a fair characterisation.

Ms OSTINGA: I do not think that is right.

The Hon. CATHERINE CUSACK: The court case was specifically, as I understood it, about—

Mr DAVID SHOEBRIDGE: Public access and public recreation. That is not nothing. Most people value that, Catherine. It is not nothing—public access and public recreation.

The Hon. CATHERINE CUSACK: What do you mean? Who said "nothing".

The CHAIR: Order! Just concentrate on the witnesses. They are here to tell their story.

The Hon. MICK VEITCH: With regard to the plan of management, which you were successful in taking to the Land and Environment Court because the proposed use was inconsistent, it is interesting for this inquiry because plans of management are one of the instruments used to manage Crown land. In light of your experience do you think that the plan of management is an adequate instrument for managing Crown land and, if not, what is a better instrument by which Crown land can be managed?

Mr OSTINGA: The plan of management for King Edward Park was not all that bad in the sense that it said that the area should be equally divided between a commercial enterprise which provided public recreation and the public. It suggested a small building in the centre of the site, transparent and it preserved all the boundaries for the public through terraces and seating overlooking the park, so the plan of management was not really a bad compromise. It was unfortunate in the sense that in the community meeting before that, the community opted for open space to complement the park. However, it was a compromise.

When the development application came, it was strikingly dissimilar to the plan of management. The southern boundary had gone; it was advertised as a single storey building; it was in fact a two-storey building. None of the artists' impressions of the building were taken from the park. They were all from Ordnance Street showing a little modest building set against the skyline with no park. The plan of management is a fair mechanism so long as it is adhered to. I doubt very much if there would have been a lot of opposition to a small building within the centre of the park where the park was complemented, where the history was respected, both Aboriginal and white or Australian history; I doubt very much if there would have been a fuss.

Mr DAVID SHOEBRIDGE: Basically the Act is okay in terms of public interest—

Ms OSTINGA: Absolutely.

Mr DAVID SHOEBRIDGE: The plan of management was okay but to enforce it takes five years of litigation, three different court costs and tenacity that most communities would not have?

Mr OSTINGA: The reason it was necessary to enforce it was because the law was being flouted. That was obvious to people walking round in the street. You did not have to be a lawyer to see that. When we complained, it was perfectly clear that we were up against a block of council workers, politicians who were in close contact with the developer and an absolute combined force was against us. We were the enemy and we still are the enemy. If you look at some of these different documents, we are the enemy—oh my God. The Minister has referred to us as vigilantes. Sorry, Minister, we have won three court cases; vigilantes do not win court cases.

Mr DAVID SHOEBRIDGE: You are not operating outside the law.

The CHAIR: Order! Dr Lewer wanted to contribute to that.

Dr LEWER: I think it is important to point out, too, that the Friends of King Edward Park have always acted in good faith. We did obtain a private opinion from a senior silk in the Land and Environment Court, which we made available to the consenting authority, the Newcastle City Council, which then made it available to the Crown. That opinion was that the development application was inconsistent with the plan management. We did due diligence. We did the work, we obtained the opinion and the opinion was then made available to those agencies. As it has turned out, the Land and Environment Court has found in favour—the determination of the Land and Environment Court was consistent with that opinion. I think that speaks about our good faith in the manner in which we have approached this issue—that is, protecting the headland for its dedicated purpose.

Mr DAVID SHOEBRIDGE: You have even had to take them to court to enforce the costs order. You got a determination of costs, but then you had to spend more money and take them to court again on costs.

The Hon. CATHERINE CUSACK: May I please clarify—take whom to court?

Mr DAVID SHOEBRIDGE: Why was there a third court case, this time on costs?

Mr OSTINGA: Because costs were argued. We were given costs, and the costs were argued.

Dr LEWER: The Crown disputed the way in which the costs would be allocated between the parties. Essentially, Justice Sheahan found in favour of the Friends of King Edward Park and that all our costs would be borne by the respondents. The principal respondents were the Crown and, in this instance, Newcastle City Council. The Crown then disputed how those costs should be distributed and the matter was subsequently litigated. As we point out in our submission, Justice Sheahan again found in our favour and specified that our costs should be met. If you reflect on the fact that they had an opinion some many years earlier pointing out what the likelihood of the litigation would be, from a public taxpayer's perspective it is quite fascinating to reflect that Newcastle City Council has borne considerable costs in litigating this matter, as has the Crown. That is of course not the case for the Friends of King Edward Park. We are just a community based organisation that has to secure the interest and support of some, as it has turned out, very indefatigable people in taking action for us.

Mr DAVID SHOEBRIDGE: Do you have an estimate of what your costs have been and what you will be seeking to recover?

Ms OSTINGA: Are you referring to the Friends of King Edward Park?

Mr DAVID SHOEBRIDGE: Yes, to Friends of King Edward Park.

Ms OSTINGA: Our particular costs would be about $36,000. That is as a community group. Then there would be the costs from the barrister and the costs from the Newcastle Legal Centre and from their junior barrister.

Mr DAVID SHOEBRIDGE: Your costs would probably be a fraction of what the council and the Crown have spent.

Ms OSTINGA: Absolutely. That would probably be $400,000 or $500,000, I would imagine.

Mr DAVID SHOEBRIDGE: I can see that a more refined figure is coming.

Mr OSTINGA: I can add to that. Friends of King Edward Park, $20,000; University of Newcastle, $70,000; council, $200,000.

Mr DAVID SHOEBRIDGE: And all of that could have been avoided if they had given respect to the initial advice.

Mr OSTINGA: Yes.

The CHAIR: Was the advice to council a recommendation to take the matter to court? Was that overturned by councillors? Do you know what the original recommendation was—about whether to contest this in court, given that the case was against Crown Lands and council? Please take that on notice, if you can. I would be interested in knowing.

Dr LEWER: I imagine it was a resolution of council to litigate the matter. I think it is important—

The CHAIR: Staff normally give a number of options and council then chooses one. I am trying to ask here whether the councillors went against the staff recommendation? What did they choose?

Ms OSTINGA: They chose the staff recommendation.

The CHAIR: The staff recommendation was to contest the matter in court?

Ms OSTINGA: I am sorry—the staff recommendation was to approve the development application. We then challenged the development application in the Land and Environment Court.

Mr DAVID SHOEBRIDGE: The chair is asking about the decision.

The CHAIR: I am asking whether the council staff then said, "We think there is merit in contesting this", or was the staff recommendation, "Don't contest this"? That makes a difference.

Mr DAVID SHOEBRIDGE: It may not have gone to the council.

The CHAIR: For the public gallery's advice, we do have the secretary of the committee here. If you write a note, you can have the secretary pass that to the witnesses.

Mr DAVID SHOEBRIDGE: Or you give us the answer on notice if you wanted to do that.

The CHAIR: Yes, you can have your clients take it on notice if you want to get us more accurate advice.

The Hon. CATHERINE CUSACK: In earlier evidence, it was mentioned that the developer has an agreement with the State Government. Is that correct?

Mr OSTINGA: Yes, a provisional development agreement. It still holds, and according to the documents we have—

Ms OSTINGA: We will hand up some documents.

Mr OSTINGA: Yes, we will tender some documents. But, according to the documents we have, the State has agreed to cover the development for the demolition costs and also the costs of the development application for the demolition.

The Hon. CATHERINE CUSACK: This relates to the rehabilitation of the bowling club site—is that right?

Mr OSTINGA: No, the preferred development application is to develop something on that site.

The Hon. CATHERINE CUSACK: To demolish the old bowling club, which is on that site?

Mr OSTINGA: No, there is a—

The Hon. CATHERINE CUSACK: It might save time if it were possible for you to table a copy of that agreement?

Mr OSTINGA: Yes, we can do that.

Mr DAVID SHOEBRIDGE: I think Mr Ostinga was trying to answer your question.

The Hon. CATHERINE CUSACK: I was trying to understand an aspect of the agreement. If he provides a copy, that will answer my question.

Mr OSTINGA: The provisional development agreement is still operative, despite the fact that the development application on which it is based has been invalidated. I do not personally understand that, but that is in the agreement between Mr Stewart Veitch and—

The Hon. MICK VEITCH: No relation, by the way.

The Hon. CATHERINE CUSACK: Our understanding had been that costs were awarded against the reserve trust and Newcastle City Council—because it was Newcastle City Council that approved the development application.

Mr OSTINGA: The respondents in the case were the Newcastle City Council and the Minister, and costs were awarded against them.

The Hon. CATHERINE CUSACK: Has the Minister been found liable to pay costs?

Mr OSTINGA: Yes, the costs are to be shared between the council and the Minister.

The Hon. CATHERINE CUSACK: My understanding is that the court ruling was that it would be the trust and the council—and that it was not the Minister—that were liable to meet those costs.

The CHAIR: That is probably more likely the case, Mr Ostinga.

Mr DAVID SHOEBRIDGE: There is probably no legal distinction between the two—the Minister represented the trust and the Minister will be responsible for the trust's costs.

Ms OSTINGA: It is a ministerial trust.

The Hon. CATHERINE CUSACK: Do you support the Aboriginal land rights claims over the headland? For example, there has been a suggestion from Mr Shoebridge that Crown land, wherever possible, ought to be handed back to Aboriginal people.

Ms OSTINGA: Yes, we certainly support Aboriginal land claims. If you look at our objects of incorporation—I have handed out an application form—it talks about how we seek to involve the community in our objectives for the park and that the reserve is a place of special significance in the Hunter in Aboriginal history. Then there is quite a little bit of detail in that application form about the Aboriginal history, which is very significant. Yi ran ni li, the place of falling rocks, means a lot to people here because we had a huge rock fall previously on that site. As late as 1981, it was a sacred place for the Worimi. We have sought to involve them in all our activities. We have had a flag-raising ceremony with an Aboriginal and an Australian flag.

The Hon. CATHERINE CUSACK: Do you support returning the site to the Aboriginal land council?

Ms OSTINGA: Yes, our concern with the awarding of the claim is raised by some documents we received a week ago which suggest that there is nothing to stop the developer proceeding with the same development with the Aboriginal land council.

The Hon. CATHERINE CUSACK: But if that were the wish of the land council, would you not respect their wishes?

Ms OSTINGA: We would be surprised if that were their wish, because this is a very culturally significant site, but we would have to accept that.

Mr OSTINGA: That is a very difficult question. Really, that is a very difficult question. We have had six years fighting for this land claim—for everyone. Then it would seem that the manoeuvring that is going on at the moment is not so much in the interests of the Aborigines but in the interests of getting rid of their association with the developer and getting the developer on that land the way it started.

The Hon. CATHERINE CUSACK: Whose association with the developer?

Mr OSTINGA: The State's association with the developer. In answer to that question I would say: in principle, yes, yes, yes. But in this instance there is manoeuvring going on that is highly troublesome.

Mr DAVID SHOEBRIDGE: In the management of any land that was returned under a land rights Act you would want to also ensure that traditional elders, owners and custodians—not just the land council—had a significant, ongoing role.

Ms OSTINGA: Yes, and a role in promoting the cultural significance of that site.

The CHAIR: I note that Mr Laffan has to leave. Mr Laffan, the Committee may put questions on notice to you, and you have 21 days to answer.

Mr LAFFAN: The problem that I perceive with Crown land is that it is an unwieldy beast when one is dealing with community issues. I hope the inquiry will look into that. Crown lands are a great responsibility but community assets are much more important to the community. Managers of Crown lands need to look at that and realise that everything they do has an impact on communities. I hope the Committee will make some recommendations on that. The system works well until something goes wrong, and then it breaks down completely.

The Hon. SCOTT FARLOW: Mr Laffan, there is a suggestion in the white paper to transfer to local government land deemed to be local land. Given your concerns about Crown land management being an unwieldy beast, do you think that would be of benefit in your situation?

Mr LAFFAN: I would fear any transfer. At the moment we have a lease in perpetuity. Councils favour 99-year leases. That would be my fear.

Mr DAVID SHOEBRIDGE: And it would be fair to say that you did not have an excess of consultation with the council when they did their plan of management.

The Hon. CATHERINE CUSACK: Mr Britten, would you like to answer that question as well?

The CHAIR: Mr Laffan needs to go.

Ms BRITTEN: Would you repeat the question?

The Hon. SCOTT FARLOW: There is a proposal in the white paper on Crown land management that certain land that is not State significant be deemed local land and transferred to councils on an opt-in basis. Would it have been beneficial for you in the case of the Stockton service station site if it had been council land rather than Crown land?

Ms BRITTEN: There are issues with people in either authority. There is a serious gap in process and it can occur in any authority. I do not know.

Mr DAVID SHOEBRIDGE: Ms Britten, you have provided a perspective that we have not heard before about the important role that a commercial operation on Crown land can play in a small community. It can be a necessary tenant or an essential community service provider. Do you think that element should be included in any new Crown Lands Act? Should Crown land that is providing essential commercial services for a community continue to do so?

Ms BRITTEN: Yes, because there will be a detrimental impact on that community if the service is ripped away. Six businesses closed in Stockton over that three-year period because those who could drive to get fuel and mechanical supplies elsewhere also bought their groceries and pharmaceutical supplies elsewhere. The town went into shock for three years.

Mr DAVID SHOEBRIDGE: As a large landowner the State Government is in a position to offer land for a peppercorn rent to facilitate the essential services that are needed in towns like Stockton. We should not forget that.

Ms BRITTEN: Exactly. We should not forget that. I believe that the review of Crown lands should also look at the legacy. Previously there were six service stations in Stockton. The remaining one was financially viable for the operators because of the peppercorn rent.

The CHAIR: Thank you very much.

Dr LEWER: This inquiry provides an opportunity for us to reflect on the use of Crown land generally. I will make some concluding comments about that and how we ended up in the situation that we are in. Our case study shows a "whatever it takes" imperative of the Executive and its agencies to make the headland available to private development, contrary to its dedication. Some 18 months since Justice Sheahan handed down his judgement in the Land and Environment Court, we have been provided with schoolboy "the dog ate my homework" excuses for not allowing the public access to the headland, as is their right. In our view, having that wire in such a significant place bespeaks the contempt shown by the Executive to the authority of the judiciary. Imagine that you are Justice Sheahan and you hand down the decision making that headland available to the public, as a right. Eighteen months later, the public are unable to exercise that right. The Government's litigation over costs makes it difficult not to conclude that, paraphrasing John Howard, the Government will decide which court order to obey and the circumstances in which it obeys it.

As to the legislature, as we point out in our submission, questions without notice to the Minister do not necessarily produce satisfactory responses. In our view, that highlights the imperative work of this Committee's inquiry in examining the bona fides, the honest and sincere intentions of those charged with the responsibility of managing Crown land. The Friends of King Edward Park is a quintessential community group with limited financial resources, completely unlike a developer or the State. Our bona fides have been well tested, as Kim Ostinga pointed out.

Justice Biscoe in the Land and Environment Court found that we act in the public interest. Our bona fides were tested at a hearing where the city council tried to knock us out on a security costs argument. Reflect on that: a small community group was attempting to get justice for the dedicated use of the headland and they

tried to knock us out on a technicality. In that case Justice Biscoe found in our favour, saying that our purpose was to enforce public law obligations on Newcastle City Council and the Minister. Our small community organisation was trying to enforce public law obligations on the Minister. The judge also found that we have no pecuniary interest in the headland. To use Neville Wran's famous aphorism: We have had the blowtorch applied to our belly. What of those entrusted with the management of Crown land? What are their bona fides? We wish your inquiry well in finding out.

The CHAIR: Thank you very much. That concludes our Newcastle hearing. I appreciate that so many people came to hear the evidence. I appreciate the resilience of the community over King Edward Park. That is something we see in local government areas across New South Wales. It is fantastic that you are fighting for that. The Committee will work on the requests made by witnesses on issues of great concern to the community.

Mr DAVID SHOEBRIDGE: The Minister and the Government will appear at a hearing at the end of the inquiry.

The CHAIR: Yes. The Committee may have put questions to you on notice. You have 21 days to answer them. The Committee may also put questions to you in writing, in light of your evidence. The Committee secretariat will assist you with that process. I thank you for your evidence and for your commitment to your local community.

Mr OSTINGA: Thank you.

Ms OSTINGA: Could I table this document?

The CHAIR: Yes. Thank you.

(The Committee adjourned at 12:09 pm)