Crown Land Our Land

Inc No.1501459

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

GPSCNo.6 - CROWN LANDS INQUIRY
HEARING - Macquarie Room, 15 August 2016

CLOL Submission -- KEY RECOMMENDATIONS

Note: in this List, *The Principles of Crown Land Management (PCLM)* prevail throughout.
It is assumed that all information is integrated into development of CL's new IT regime.

IMMEDIATE - and urgent !

1. DEFER all consideration of new Legislation until the BASICS of Crown Lands governance and management are in place -- without these, any change is doomed to fail.
2. FUNDAMENTAL STARTPOINT - a comprehensive AUDIT of all holdings in Crown Lands (CL) Estate as-is, at 2016-17. In short - know what's there to deal with.
3. Set a TIMEFRAME - 18 months at most. Results revealed by recent 4 x Pilot Programs suggest this will require major COMMUNITY CONSULTATION.
4. Then ORGANISE CL into CATEGORIES - identify ALL relevant descriptors and/or classifications needed to properly describe all CL landholdings throughout NSW. This to include differentials such as urban/rural/town/village/CBD/community/commercial/ agricultural/pastoral/horticultural/water-facililties/Council-based services/ etc.
5. CROSS-REFERENCE this by categorising current management status, inc relevant dates - ie lease, licence, stock route, cemetery, coastal, environmental, Reserve, Trust, Common, etc. May include "undetermined" - but MUST include legal status, either as a Court matter, or "subject to Aboriginal Land Claim No xxxx".
6. Evaluate results and establish PRIORITY RANKINGS for CL landholdings -
   A. that must re retained in perpetuity, no matter what
   B. that must not be sold without specific parliamentary approval
   C. that must be set aside long-term for "future public purposes"
   D. that can be set aside for land-banking in the mid-term
   E. that can be reassessed in the short-term for use or sale
   F. that is no longer relevant as CL and can be released for private use
   G. that is available & ready now for orderly disposal as-such
7. NOW -- start SIGNAGE STRATEGY to visibly identify all CL as-such, for the A-B-C groups, ie by name/category/priority *(this already required by CLAct 1989)*
8. Do State-wide COMMUNICATION CAMPAIGN, to include MAPS re the above info. Start with CL Dept and Councils, but extend to social media & wider COMMUNITY.

GENERAL -but important !

These are not necessarily in order of priority.

9. The CLAct 1989 is so important --there must be PENALTIES for non-compliance or rebate-rorts. These must apply to all levels of Govt, as well as to infringements, fraud or false dealing by public - especially re leases, licences and other commercial dealing.
10. This [9] may require a definition of what constitutes 'CORRUPTION" of the CLAct.
11. The current CLAct needs provision for PUBLIC STANDING - parallel to the EP&A Act, whereby "any person" can appeal a matter of public concern re CLAct or CL land.
12. In interim, CL Dept must appoint an independent PUBLIC ADVOCATE to take complaints and provide avenues of response and/or redress. This role should be formalised in any new Act or Amendment.
13. The Model Litigant Policy must be circulated, with explanation as mandatory, to all CL stakeholders - Ministerial, Dept, Councils and the public through CL website etc.
14. As matter of urgency, set up ongoing training program for Councils and staff - also includes Crs at Trustees of CL Reserves. Start via liaison with Victorian provider, Public Lands Consultancy p/l.
15. Independent Review of CL Dept etc input to current "major matters" inc at Supreme/LEC Courts - Talus Reserve (2 matters), Tweed Heads-Gold Coast Airport, Stuart Park, Trumper-Paddington Bowls, Gosford DA for DOMA-ATO, Yasmar lease.
16. etc for printing RIGHT TO BE HEARD, RIGHT change needed for Govt Property Portfolio
17. Install CL Ombudsman to represent community
18.
19. Enterprise Trading
20.
21. Remove s.34A - makes a mockery of CL Act and PCLManagement
22.
23. Penalties for CKL breaches.
24. Dfdfhg
25. Jhjghk
26. Bgfjth
27.

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CLOL Submission -- SUMMARY OF KEY POINTS

Brief Background

The Crown Lands Act 1989 (CLAct) and its Reserve Trust system was intended as remedy for decades of rorts and rip-offs of CL under direct Council control. For various (political) reasons this change was introduced without support - and no training. The first CL Handbook was not published until 2007, and in 2016 remains unprinted. Some Councils don't even know it exists. Many of the problem sites as revealed in submissions to this Inquiry date back to this lack of know-how. Lack of training was highlighted by a former CL officer with 33yrs experience as a main cause behind confusion, non-compliance and a climate of impunity - refer Mr Ross Harris of Moree Plains Shire Council (Dubbo Hearing, pp 48-61).

In short - the CLAct is not the problem. Failure to implement it is the KEY ISSUE.

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

This failure applies big-time to Topic [A]. While the CL Dept can, and in the first Hearing did, quote metrics as to land areas as such, it has yet to do a fit-for-purpose audit of all CL in NSW. Yet the very first OBJECT of the CLAct (s.10) calls for a "PROPER ASSESSMENT "of Crown land. As Mr Harris also pointed out, until such time as such Assessment is done, NO legislation can succeed. CLOL further maintains that, if the intention is to move to an "Enterprise" model, such basic information is an essential PRE- REQUISITE for good business practice. How can any management change be soundly based when you don't "*know what you're managing*" !

How can anyone assess "the benefits of active use" when so much about CL in NSW remains un-mapped, uncharted, un-described, un-defined. Even the Carapiet Review (p.7) called for *"strategic assessment"* in regard to *"core services"*, this with regard to *"statewide or regional values, including but not limited to economic, social, environmental, heritage or tourism values"*. At the moment CL Dept data can't even identify items on the State Heritage Register.

For whatever reason, the management of CL has been inconsistent, incompetent, even culpable for over 26 years. It has been shuffled around as add-on to this or that Ministerial Portfolio - Trade & Industry, Primary Industries - even with Minster for Planning, Tony Kelly. CL staffing has been slashed by 30% - and then decimated again. The loss of corporate memory has been dire. Again, Mr Harris demonstrates this point - refer p.52 where he says "*in 1989... there were 18 people working in the Lands office at Moree. There are now less than two...*" . His opinion re new legislation was clear: without inventory/resourcing would be "setting out to fail". CLOL agrees.

TOPIC [B] the adequacy of community input and consultation regarding the commercial use and disposal of Crown land.

Input and consultation is a two-way street. The community gave massive response to the 2014 White Paper process. The outcome was overwhelmingly AGAINST proposed changes - and this has been ignored. In fact, in the first Sydney Hearing, the Govt declared its intention of tabling the new CL Bill without even the courtesy of an "Exposure Draft". We trust this Inquiry's Report will put a pause to such arrogance. It is an insult to the word "consultation".

The abject failure of CL Dept in terms of communication is one reason why CLOL has been established. Its in-adequacy is typified by lack of signage on CL Reserves (breach of CLAct) and the Handbook scenario. It is also shown in comments by several Councils, inc Tweed Shire as to how 4 x Pilot Programs have been handled - with NO community consultation whatsoever. In fact, the whole process has been done in secrecy and stealth - such "mushroom management" is the opposite of what's appropriate for Crown lands - or as-required in the CL Handbook.

However it does reveal a big gap in the CLAct, especially in a digital era - token 14-day press notifications, and NO community right to communication, no right to have comments/objections heard, and no standing to raise issues or challenge decisions. The current attitude seems to assume that although this is public land - the PUBLIC don't get a say - and certainly not in regard to "commercial use" or "disposal". Leases and licences are treated as "commercial in confidence" by Councils and CL Dept alike. One exception to this involves waiting for a DA re the CL site, then appealing to the Land & Environment Court. Quite apart from the huge cost involved, taking a CL-based challenge to the Supreme Court is nigh-impossible.

CLOL submits this question of "STANDING" is vital, and one that must be addressed ASAP. Hard experience has proved that request/appeals to the Attorney General or to ICAC, are useless.

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

There is a two-word response to Topic [C] - good governance. The current CLAct 1989 is good law - that has never been given a chance. The Principles of Crown Land Management (s.11) are precisely what this Topic calls for. In them, our Crown Land Estate already has "the most appropriate and effective measures" for protecting it now, and enhancing it into the future - particularly with the force of s.6 and s12 which make the Act, and PCLM, both mandatory.

The next-best protection is also in the CLAct - s.10 and amplified in s.30, both about assessment. But the enforcer for this is the requirement that CL be identified as such. Another aspect of this is open-access to information. Already, submissions and transcripts are full of please for "more" of almost everything need-to-know about CL - mapping, descriptors, gazettal info, reserve numbers, public purpose definitions etc etc. When the community knows what it has AS Crown Land - then it can have real "ownership"- and a real stake in protecting this. Communication about the CL Estate will also help, as will consultation and the training programs that should have been underway years ago - such as those in Victoria for Councils, corporates, and communities alike.

As well, CLOL trusts that the proposed upgrade to CL digital data-management goes some way to assist with this. But the real answer lies in buying time to "know what you've got", so that the next change can be for long-term good, not a knee-jerk collapse into chaos.

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

As Object #2 in our Constitution shows, Crown Land Our Land Inc fully supports Aboriginal involvement in CL matters. We understand that the Aboriginal Lands Right Act 1983 (ALRA) was specifically aimed at redressing the inequities of land deprivations suffered by the original inhabitants of NSW. We are appalled at a backlog that exceeds 29,000 claims - even moreso at the shameful number which have succeeded, but remain unprocessed by CL administration.

Input to this Inquiry re Topic [D] has been illuminating. Our best suggestion is to keep asking **WHY**. Why the horrendous backlog? Why fail to advise the Talus Trustee that an ALC claim had been lodged ? Why ditto re WCC ? Why allow leases to be re-made for land already subject to Claim? Why deny potential for quick resolution by link with a current Court matter? Why fail to advise the Supreme Court that ALC 36628 existed until forced to acknowledge this by outside circumstances - ie CLOL members ?

In regard to the unresolved land claims, CLOL is aware of an "unintended ramification" that will certainly complicate Govt plans. The very fact these exist will probably preclude ANY legal dealings with these sites until such time as the ALC is determined, one way or t'other. This means that the aim of handing over most of CL to direct Council control must fail at law for 29,000+ sites, - unless the Govt intends either (a) to expedite all claims to decision before giving to Council or (b) to extinguish the ALRAct at the same time as it radically re-makes the CLAct.

NOTE: The Inquiry is probably aware of the legal precedent for the above situation. It's this - some years ago, a Govt entity in northern NSW decided to "get around" an ALC claim by making commercial arrangements such that the Aboriginal component would be excluded, hoping thereby to negate the land claim. This went to appeal - the decision not only reaffirmed the ALC, but awarded the claimants all commercial profits derived via use of that land from the date of lodging the claim.

There is another legal decision pending which the Inquiry should know about - that concerning the Crown Lands Amendment (Multiple Land Use) Act 2013. It is part of the Talus matter currently in the Supreme Court, where Brereton J referred to it as akin to "*driving a semi trailer though the CLAct*". This amendment (inc the egregious s.34A) is also quite superfluous - s.11(d) has provided for multi-use since 1989, saying

> *(d) that, where appropriate, multiple use of Crown Land be encouraged.*

CONCLUSION

CLOL emphasises that our submission is not about a few random complaints. The issues are multiple, and systemic. They are not just contrary to both the spirit, and the rules in the CLAct, but also in breach of the Model Litigant Policy, mandatory for good governance by all tiers of government.in NSW. The relevance of this goes to the heart of "rule of law".

If a Govt is complicit in ignoring, or colludes in breaking, its own law - and this is no ordinary law, but one with constitutional force to protect the public interest - what can the "public" do? CLOL looks to the Inquiry for people-friendly answers. Crown Land IS our land.