Submission No 76

INQUIRY INTO CROWN LAND IN NEW SOUTH WALES

Name: Name suppressed

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Dear Committee,

I write to express concern about what I see as a long history of poor management of Crown lands in NSW, and to propose an improved process.

The agency response for Crown lands, under its various names, has long seemingly treated such holdings as its resource, and it has not been effective or efficient in assessing, and where appropriate, transferring Crown holdings for conservation purposes. This seems to be due to the agency fearing that the more land it 'disposes of', the less reason the agency has to exist. The worst outcome that I have seen from this culture was the bungled transfer of the former Maroota State Forest to the NPWS. The parliament of 1974 decreed that the State Forest be degazetted and transferred to NPWS as a National Park. Instead, the then Department of Lands obfuscated the process for decades (as reported in two later Land & Environment Court judgements). This resulted in the lodgement of a claim over the land (and adjoining Crown holdings) under the Aboriginal Land Rights Act. The claim was refused on the grounds that the former State Forest was required for conservation in the public interest. This refusal was successfully appealed by the claimant on the basis that had the State been serious about conserving this area as NPWS estate, it would have insisted that the gazettal of the new National Park take place in a timely manner. Instead, the Department blocked the process. This very substantial area is now languishing unmanaged as a land claim in waiting, whilst subject to a conflicting Native Title claim by a party not allied with the local Land Council. The stalemate also means that potential negotiations between NPWS and the successful claimant(s) cannot progress.

In my 25 or so years in land management, I've seen too many similar situations of high conservation value Crown holdings neglected, and the transfer of these lands to NPWS or sometimes to local government, delayed and obfuscated, often leading to degradation of the conservation values. Sometimes it would seem that the Department deliberately delays such transfers in the hope that a 'better' use of the land will be found, and that this is more likely once the land has degraded through neglect. It seems to hope that the NPWS will lose interest in a parcel once it is too degraded, and that the land might instead be sold, and revenue generated.

In another case, I witnessed what should have been a simple transfer of vacant Crown land (without Aboriginal land claims) to the NPWS take ten years to yield a relatively small but significant reserve in northwestern Sydney. The major cause of the delay was the Department of Lands and the spurious, generic objections lodged by the Department of Minerals & Energy. Both of these agencies seem to function as obstacles to the conservation of public land.

There does not appear to have been a thorough, scientific basis for the management and allocation of Crown holdings State-wide. Even the Comprehensive Regional Assessments of the late 1990s (relating to conflict between forestry and conservation uses) failed to properly resolve the future of all Crown holdings in those regions, though some progress was made. Today, it remains that the agency administering Crown lands appears to be blocking uncontentious transfers of vacant holdings to NPWS. By uncontentious I refer to sites that would not have any other credible use by way of their remote location, being 'landlocked', being infertile (unsuitable for agriculture), and having major limitations to other uses e.g. acute bushfire hazard, extremely high conservation values, potable water catchment protection requirements.

In some cases, the agency responsible for mineral resources is also unreasonably blocking such transfers by enacting a policy of objecting to almost all land conservation on the basis that there might be a geological resource that would be 'locked up'. In most cases, such objections are unreasonable when seen in the context of the site's location and constraints, including legal constraints imposed by catchment protection. Essentially any land within the Triassic and Permian parts of the Sydney Geological Basin is claimed to have coal and/or coal seam gas resources, irrespective of whether the reservation of the affected land would in any credible way stop economic use of these resources, if they were even viable. In the aforementioned case that took 10 years to resolve, the Department of Minerals and Energy even listed as an objection, that the reserve might block the extraction of sand and loam resources, despite the fact that those resources comprised a mapped wetland protected under at least two planning instruments, and for which a mining consent would never be granted.

The most recent example of a failure of due process that I can provide relates to the formal request from the NPWS to take on the management of several, mostly small Crown portions in a potable water catchment. NPWS documented the areas that it wished to add to existing reserves, and provided justification for the request. Biodiversity values was one justification, but this was accompanied by concerns such as potable water catchment protection; reduction of reserve perimeter / rationalising boundaries; scenic amenity; and improved bushfire management. All of the lands are infertile, often remote, rugged, and with major constraints in terms of fire hazard. They are unsuitable for any other use, and in some cases represent small 'left overs' from earlier allocations, so amount to simply tidying the reserve boundaries. Yet, the Department of Lands has not even replied to this formal request after several years. This seems to be its way of operating: obfuscate and delay as much as possible until forced to act by political intervention. There is no public interest justification for such poor use of taxpayer resources. The problem doesn't seem to be as simple as a lack of resources – it seems to be a culture of not wanting to do its job – not wanting to release lands to other agencies, at least not unless there is a clear political and economic push to do so. This needs to be resolved.

I propose a model in which such transfers of tenure cannot be obstructed by the Department of Lands, and in which there is a sound basis to assessing the best use of Crown holdings. A relatively simple and transparent decision-making 'tree' can be established to examine what resources and constraints an area of land may have. Where there is insufficient data, resources should be allocated to fill gaps to a satisfactory level. In many cases that I'm aware of, very little data is required, as it is readily apparent that no use other than conservation could be made of those lands. A process similar to the Comprehensive Regional Assessments would be useful, and would allow agencies with interests in lands to make their case for its management. To ensure that conflicting interests are managed sensibly, all such proposed uses or objections to uses should be clearly documented and subject to scientific scrutiny. This may even entail establishing an equivalent of the NSW Scientific Committee to review assessments and make recommendations, or else making a similar role within the Natural Resources Council. The aim of the process should be to assess, to the level appropriate for each site and its context, whether the land warrants being retained by the State for a future economic use e.g. public school, road, mine; whether it should be reserved under the NPWS or local government as a conservation resource; granted to Aboriginal interests (possibly with covenants to protect some values); or sold. In my experience, a lot of Crown land isn't allocated to a particular purpose but is just left unmanaged. Some rationalisation and sale of unused Crown road reserves has occurred, and some Crown grazing leases have been sold as freehold, but more resources are necessary to ensure the process is suitably thorough, and that all options for 'disposal' are given appropriate consideration. This includes engagement with Aboriginal interests. However, as some Aboriginal interests have economic agendas no different to other parties, the disposal of Crown lands in such cases must consider what the owner would do or seek to do with the property. In some cases, irrespective of the owner, covenants may need to be put in place to protect various values in the public interest, rather than simply granting unrestrained freehold title.

The assessment of Crown lands must include State Forest that was reserved from logging through the CRA and Regional Forest Agreements. Forestry Corporation have no interest in managing State Forest from which they cannot extract a forestry use. Staff inform me that reserved bushland within State Forest is a burden on their enterprise, and that they would like to see it transferred to the NPWS. In some rare cases, transfer to local government may be more appropriate e.g. smaller holdings in and near urban areas or where conservation values wouldn't warrant NPWS management. Transfer of reserved State Forest to NPWS or other public conservation tenure does not conflict with the RFAs as there would be no loss of forestry resource and no negative economic impact on the forestry industry. However, funds would need to be allocated to the NPWS to manage these additional lands, and in particular, to manage pest species and to remediate damage from recreational vehicles. As it stands, there are substantial areas, indeed entire native State Forests, that were reserved from logging through the CRA/RFA, yet are of no use to Forestry Corporation, and would be better managed by the NPWS.

Because Forestry Corporation has no interest in and makes no revenue from those lands, they tend to neglect them, meaning they are no different to vacant Crown land that is also generally neglected.

Given the CRA/RFA assessed those lands and reserved them, and that there is no forestry interest in them, they should be transferred to NPWS and/or councils. The only barrier to this might be if there are credible mineralogical resources involved, and their viability may warrant protecting through limiting gazettal of conservation estate to minimum depth or to State Conservation Area status where appropriate. Where there are Aboriginal interests in the land, this should be engaged with through a joint management structure that promotes re-engagement with 'country' and a role, preferably funded, in its protection and interpretation.

I urge this Committee to review the culture of the agency administering Crown lands, and its process for assessing and transferring lands. It is in the public interest to properly assess Crown holdings to determine their best purpose, and to devolve them out of the 'on hold' bucket that most Crown land tends to be. Where there are Aboriginal land claims, these should be resolved promptly. Most Crown land won't be required for a use other than conservation or for future infrastructure. Only areas that are required for future non-conservation use might be retained under the agency administering Crown lands. Otherwise they should be conserved directly or through trusteeship to local government; or if lacking sufficiently high and prohibitive conservation values, sold or returned to Aboriginal ownership. I believe that an effective investigation of the process of assessing and transferring Crown land, particularly for conservation, must also resolve the problem of the now Department of Industry (Resources & Energy) making ambit objections to all such transfers. Any objections to reservation of land must be based on credible grounds, and all such objections must be reviewed in the context of relevant law and policy. Those objections must not be allowed to unreasonably delay the assessment and transfer process. Sensible timeframes should be established for the assessment, referral, decision-making, and transfer processes.

Kind regards,

Consultant ecologist and environmental planner