

## **INQUIRY INTO CROWN LAND IN NEW SOUTH WALES**

**Organisation:** Dirawong Reserve Trust Board

**Date received:** 22 July 2016

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# Dirawong Reserve Trust

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21 July 2016

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

**By web upload**

Dear Mr Green,

## **Submission: Inquiry into Crown land**

I write on behalf of the Dirawong Reserve Trust Board, charged with the management of the Dirawong Reserve, which had been nominated as a reserve of State Significance. We wish to express concerns about the contemplated wide-ranging reforms to the management of Crown land by the NSW Government and welcome the opportunity provided by your Standing Committee to raise them.

In summary, the Crown land reforms are not considered to be in the best interests of the community nor promote best practice in terms of land management having regard to the real potential for privatisation and development, the devolution of responsibility to local councils and associated risks, the lack of clarity in regards to the standing of existing Reserve Trusts, and the noticeable absence of the results of the land stocktake and details of the draft Crown Land Bill.

Particulars of our concerns why the reform process should be reconsidered are as follows:

### **1. Commodification issue**

We are concerned that Crown land appears to be at risk from privatisation, commercialisation and development. With the existing Crown land government entity being earmarked as a Public Trading Enterprise<sup>1</sup> with a commercial focus, our fears appear well founded. Moreover, Crown land classified as 'local' land in the anticipated land stocktake, would provide local government "increased flexibility to develop commercial opportunities and increase revenue"<sup>2</sup>.

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<sup>1</sup> NSW Trade & Investment, 2014. *Crown Lands Management Review*. NSW Trade & Investment, Sydney.

<sup>2</sup> Ibid. Page 9.

We believe public land is not there to provide a windfall to private interests for private profits but is there for the people, and support the principle expressed previously: “the basic approach should be to retain Crown land in public ownership in perpetuity”<sup>3</sup>. Additional community input and consultation is required before the government makes ultimate decisions about the commercial use and disposal of Crown land.

## **2. Keep Reserve Trusts**

*A large number of community trusts and local groups expressed a strong desire to retain community management of ‘their’ reserves and identified benefits of the current system, including community involvement and a focus on environmental protection. It is clear that these trusts and groups have a high degree of commitment to their reserves.*<sup>4</sup>

Reserve No. 140012 – the Dirawong Reserve – managed by our Trust, was dedicated for conservation of Aboriginal heritage, preservation of native flora, preservation of fauna, and public recreation. It has an areal extent of some 290 ha at Evans Head on the far north coast of NSW. The Dirawong Reserve Trust is a committed team dedicated to the care, control and management of the Reserve. The Trust Board has vast experience and expertise in natural area management with three of its seven members possessing PhD qualifications.

We strongly support the ethic expressed in the opening quotation to this section above. Furthermore, we believe that the most appropriate and effective measure for protecting Crown land so that it is preserved and enhanced for future generations is via continuance of the existing Reserve Trust network.

However we note with grave concern that Reserve Trust Boards are to be removed<sup>5 6</sup>, and in our opinion, without adequate consultation.

## **3. Transfer of lands to local councils: Contra arguments**

Current State government policy appears to be about devolving land management to local government, reducing red and green tape, and cost shifting. The Crown land reforms and the coastal management reforms (through the Department of Planning and Environment) are but two examples. The resultant cost burdens may put at risk the financial viability of some councils, increasing the likelihood of them being forced to liquidate land assets such as land transferred to them under the Crown land reforms. We think the State government should provide full cost recovery to local councils as compensation for devolved responsibilities.

The trustworthiness of Local Councils has also been called into question and risks associated with the potential transference of Crown lands to them identified:

*There was a general wariness of Local Councils, including concerns that Local Councils:*

- *could impose higher rents for the use of reserves to cover potential increased resourcing requirements*

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<sup>3</sup> NSW Government, 2015. *Response to Crown Lands Legislation White Paper: Summary of Issues and Government Response*, NSW Department of Industry, Skills and Regional Development, Sydney. Page 20.

<sup>4</sup> Ibid. Page 8.

<sup>5</sup> NSW Trade & Investment, 2014. *Crown Lands Management Review*. NSW Trade & Investment, Sydney.

<sup>6</sup> NSW Trade & Investment, 2014. *Crown Lands Legislation White Paper*, NSW Trade & Investment, Sydney

- could seek to change the classification of reserves from community to operational land in order to sell it
- could be open to pressure from developers and other groups
- may not have the same level of interest in small community reserves that those communities have
- could reduce the level of community involvement under the LGA which will reduce community volunteering
- may not be effective in protecting community land under the processes in the LGA <sup>7</sup>

Other risks of local council involvement under the Crown land reforms include: “councils are not always aware of the distinction between different parcels of land they are managing” <sup>8</sup>; “[Some] Councils noted that they currently rely on volunteers to administer a number of reserves, and would not have the capacity to undertake the management and maintenance work that is currently done by volunteers” <sup>9</sup>; and, “Some Local Councils expressed a preference for community members to be involved in an **advisory rather than a management capacity**” <sup>10</sup> (Emphasis added).

#### 4. Native title and Aboriginal involvement in the management of Crown land

One of the decisive factors for establishing the Dirawong Reserve in 1987 was for the conservation of Aboriginal heritage. Following lodgement of a native title claim in 1996, the Bandjalang people hold native title rights and interests pursuant to determination orders made by Justice Jagot in the Federal Court of Australia on 2 December 2013 <sup>11</sup>. The consent determination area includes the Dirawong Reserve and other lands.

The Trust notes with concern that there was Traditional Owner representation on the Trust for many years but that this has lapsed in recent times. Given the high cultural and social significance of the Dirawong Reserve to the Bandjalang People we have the view that there should be formal Traditional Owner representation on the Trust Board.

#### 5. Land stocktake: Where is it?

We note that a stocktake of the Crown Land estate is underway to classify land into ‘local’ and ‘state’ land. We further note that: “The [local land] pilot program was completed in July 2015 and a report has been delivered to Government for consideration” <sup>12</sup>. And in the case of state land: “The aim of the stocktake is to refine State criteria to identify State significant land. This process will inform the identification of land for retention along with management options for land” <sup>13</sup>.

<sup>7</sup> NSW Government, 2015. *Response to Crown Lands Legislation White Paper: Summary of Issues and Government Response*, NSW Department of Industry, Skills and Regional Development, Sydney Page 7.

<sup>8</sup> NSW Trade & Investment, 2014. *Crown Lands Legislation White Paper*, NSW Trade & Investment, Sydney. Page 13.

<sup>9</sup> NSW Government, 2015. *Response to Crown Lands Legislation White Paper: Summary of Issues and Government Response*, NSW Department of Industry, Skills and Regional Development, Sydney. Page 8.

<sup>10</sup> Ibid. Page 8.

<sup>11</sup> Bandjalang People #1: Federal Court number NSD6034/1998; NNTT number NC96/16.

<sup>12</sup> NSW Government, 2015. *Response to Crown Lands Legislation White Paper: Summary of Issues and Government Response*, NSW Department of Industry, Skills and Regional Development, Sydney. Page 23.

<sup>13</sup> Ibid. Page 23.

We believe that the results of the land stocktake need to be released urgently. In the meantime, there should be an immediate moratorium on any sale of Crown land or on any form of development.

## 6. Crown Land Bill: Where is it?

We understand that new Crown lands legislation has been drafted but has yet to go to parliament. We strongly urge the release of a public consultation draft of the proposed Bill before it is tabled in parliament in the interests of transparency, accountability and due democratic process.

In the meantime, there should be an immediate moratorium on any sale of Crown land or on any form of development until such time as the draft Bill has been released and submissions called.

## 7. Transitioning of Trusts to community land manager: Confusion and ambiguity

We note that:

*It is **proposed** that the legislation will provide for existing community trusts to become new corporate Crown Land Managers and community trust board members to continue as board members: the legislation will not transfer control of reserves to Councils.*

*[But] **Councils may ultimately take control of some land** which is identified as having local rather than State significance **where Local Councils believe that this will benefit their constituents** <sup>14</sup>. (Emphasis added).*

On the other hand, Crown reserve managers under the proposed reforms can only be a "Community or professional Board (established as a corporation under new Act); Existing corporation; Local council; Administrator; or Minister (through Dept. if no other manager appointed)"<sup>15</sup>. So where does this leave the Dirawong Reserve Trust?

Again this situation points to the importance and critical need to see the results of the land stocktake in conjunction with the draft Bill as a matter of urgency to allay fears and to provide certainty going forward to Reserve Trust Boards such as the Dirawong Trust Board.

## 8. Native title: Clarity required

Will any attempt be made to extinguish native title rights and interests already determined for Crown land such as the Dirawong Reserve? What does the draft Bill say on this issue? Once more the draft Bill needs to be released for public consultation before it goes to parliament.

## Conclusion

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<sup>14</sup> Ibid. Page 8.

<sup>15</sup> NSW Trade & Investment, 2014. *Crown Lands Legislation White Paper*, NSW Trade & Investment, Sydney. Page 15.



Our concerns regarding the current Crown land reforms outlined above point to a breakdown in communication between the State government and the community, particularly Reserve Trust Boards such as the Dirawong Trust. The State government has charged Reserve Trust Boards with the important responsibility for managing a valuable community asset and a higher level of communication and consultation would have been expected. Confusion over reform outcomes and the lack of clarity has created uncertainty affecting medium and longer-term decision-making in how Reserve Trusts manage their part of the Crown land estate.

The Dirawong Reserve Trust Board thanks the General Purpose Standing Committee No. 6 for providing the opportunity to make this submission and confirms its willingness to appear at the Inquiry hearing in Ballina on 3 August 2016.

Yours sincerely,

Dr Neville Bofinger  
Honorary Secretary  
Dirawong Reserve Trust Board

