

**Submission
No 114**

INQUIRY INTO CROWN LAND IN NEW SOUTH WALES

Organisation: Shoalhaven City Council

Date received: 22 July 2016

The Director
General Purpose Standing Committee No. 6
Legislative Council
Parliament of New South Wales
Macquarie Street
SYDNEY NSW 2000

By email to: gpsc6@parliament.nsw.gov.au

Dear Sir

Inquiry into Crown Land

Shoalhaven City Council supports the recommendations in the 2014 Crown Lands White Paper whilst continuing with its endeavours to clarify issues which are of concern viz:

- The White Paper does not provide sufficient information on proposals for the management, accounting/reporting, asset responsibility and future asset development of Crown land;
- Crown land that is not identified in a site specific plan of management is currently managed in accordance with a generic plan of management under the Local Government Act. The core objectives in managing and developing Crown land transferred to Council will need to be identified and therefore site specific plans of management could be required. This will impose a burden on Council in terms of the resources to be deployed for the preparation of these plans of management;
- The development of assets on Crown Reserves represent a financial burden for Council in respect of on-going maintenance eg Mollymook Surf Life Saving Club, Jervis Bay Fishing Club, Marine Rescue;
- The requirements for reporting by Council to the Minister have not been identified;
- Council has established commercial activities on Crown Land eg Holiday Haven Tourist Parks, and relies on the financial performance of those assets to supplement traditional income streams for expenditure on non-income producing crown estate. The White Paper acknowledges the retention of "as yet unidentified" lands by the Crown and Council will be determined to ensure that assets already developed are retained by Council;
- "This new Crown lands legislation will not amend the Aboriginal Land Rights Act 1983, which is being considered in a separate review process. Crown land will continue to be available under the provisions of that Act as compensation for the

dispossession of Aboriginal people. In developing the new legislation, the requirements of the Commonwealth's native title legislation will need to be considered" (extract from the White Paper). It is not clear how lands which are the subject of Aboriginal Land Claims are to be managed nor is it apparent whether or not responsibility for undertaking a process resulting in the extinguishment of Native Title is to be transferred to local government;

- There is no discussion in the White Paper about funding implications for Councils. If a Council's property portfolio is to be increased, demand for financial and human resources to administer legislative requirements and to maintain assets will be heightened and Councils will have to deal with any funding implications.
- At an information session conducted by Crown Lands on 28 May it was announced that there is an intention to allow Councils to deal with road closures and openings without referral to Crown Lands. This initiative is supported but the issue of concern to Council is Section 38 (2) (b) of the Roads Act 1993 which provides that the land within a closed public road reverts to the Crown in circumstances where no construction has ever taken place and therefore funds generated from the sale of that land is not received by Council. Council is of the view that this section of the Roads Act should be repealed to ensure that funds generated from the sale of all public roads when such roads are closed, are received by Councils.

In addition, Shoalhaven City Council gratefully accepts the invitation to make a submission to the Upper House enquiry into Crown Land and in so doing, has pleasure in forwarding the attachment as Council's submission.

Finally I note that the Upper House enquiry is scheduled to hold a one day hearing in the Shoalhaven on 1 August 2016 and undertake to attend or nominate a delegate to attend for the purpose of providing further information as required.

Yours faithfully

Russ Pigg
General Manager

19/07/2016

SHOALHAVEN CITY COUNCIL AND CROWN LAND

The Shoalhaven LGA has a diverse mix of Crown land with which to undertake varying approaches to help the efficient management of public land to meet the needs of present and future generations.

The Shoalhaven is a major coastal and regional location with a unique mix of urban, peri-urban, rural and coastal environs and one of the biggest LGA's in NSW being 4,660sq.km in size. The LGA stretches from Berry in the North to Durras in the south. The LGA includes 160km of coastline and has an estimated resident population of over 100,000km.

The Shoalhaven contains 49 towns and villages spread throughout the LGA. Nowra/Bomaderry in the north of the city and Ulladulla in the south are the two main administrative and service centres.

The Shoalhaven is the second largest economy on the NSW south coast with an estimated Gross Regional Product of \$4.626 billion.

(REMPPLAN data incorporating Australian Bureau of Statistics (ABS) June 2015 Gross State Product, 2012 / 2013 National Input Output Tables and 2011 Census Place of Work Employment Data.).

The Shoalhaven LGA contains a large land base of natural assets with 47% being held in National Parks, 11% in State Forest land and **7% (or 33,000 ha)** being Crown. Shoalhaven City Council manages:

- 2 Coastal Harbours;
- 12 Crown Holiday Parks;
- 1 State Park (Jervis Bay State Park);
- 2 Crown Lighthouses;
- 2 Crown Breakwaters;
- 111 Crown reserves under the trust management of Council;
- 59 Crown reserves under Council's care, control and management;
- 631 Crown land tenures;
- 11 Crown cemeteries; and
- Approximately 800km of Crown roads.

Shoalhaven Council believes that Crown land falls into several categories:

1. Management of Crown lands – showgrounds, land under trust.
2. Management of Crown lands used by Council for operational purposes – pipeline easements, caravan park operations, cemeteries.
3. Lands that form part of the natural environment and should substantially remain as such – nature corridors, riparian reserves and some waterfronts.

4. The adjoining lands to communities/towns and villages that act as a buffer and land bank for those communities – future expansion for housing, infrastructure, employment lands.
5. Lands that can be developed for the economic or social betterment of the local area/region.

Each of the five categories are critical to sustaining local communities/regions. Council will elaborate on submissions made in recent times on these matters and how opportunities can be created for the State and local communities to enhance their social and economic structures.

These comments will be made across each of the Terms of Reference.

Crown Land as an Economic Contributor to the NSW Economy

“Since colonial times the NSW economy has developed through the release and sale of Crown land. This approach continues to be relevant, and where Crown land does not have State or local values it may make sense to dispose of it.”

NSW Government 2015 – Response to Crown Lands Legislation White Paper

Crown Land makes up 7% of the land area of the Shoalhaven LGA. Shoalhaven City Council, like many regional and rural councils, had an expectation that certain Crown land will be available for urban and commercial/industrial expansion. Without access to Crown land for the purposes of expansion the Shoalhaven economy will become stagnant.

Shoalhaven City Council is appreciative of our natural assets. In addition to 7% of our land being Crown lands, 47% is National Park and another 11% is State Forest. In addition, it is expected that a large proportion of Crown land will have significant environmental and cultural values and should be protected in perpetuity for the people of NSW. However, it must be acknowledged that a balanced approach is required.

Council agrees with the sentiments in both the *Crown Lands Legislation White Paper* and the *Response to Crown Lands Legislation White Paper – Summary of Issues and Government Response* that a proportion of Crown land should be used for economic expansion.

Crown land of economic value needs to be released in order to drive economic development within NSW, especially in regional and rural areas.

THE EXTENT OF CROWN LAND AND THE BENEFITS OF ACTIVE USE AND MANAGEMENT OF THAT LAND TO NEW SOUTH WALES

Shoalhaven City Council as Land Manager

Council is an experienced, active manager of Crown land. Proceeds generated through economic activity, employment opportunities and the cumulative flow on effects contribute to local economies, the people of NSW (through having strong and viable

regional and rural areas) and back to Crown Lands. The suggested transition of Crown Lands into a Public Trading Enterprise is a backward step when there are already systems in place for Crown Lands to get a return on investment and where this system is effective in supporting local communities.

However there is a partnership process that would provide additional benefits to Crown Lands, local communities and economies and the people of NSW. (Please see below)

Activation of Crown Land for Whole of Community Benefit

Active management of Crown lands can lead to economic opportunities in rural and regional areas. This can be achieved through a number of mechanisms including licence, lease or sale of Crown land. What is clear is that economically important Crown land needs to be utilised for the benefit of local communities and the people of NSW. Not activating economically important Crown land costs NSW as an opportunity lost.

The Shoalhaven LGA consists of 49 towns and villages with two main urban centres being Nowra/Bomaderry in the north and Ulladulla in the south. The Crown is one of the major land owners within the Shoalhaven LGA. Historically Council expected that certain Crown land would be made available for town and village expansion and the creation of employment lands. There are 33,000 ha of Crown land within the Shoalhaven LGA much of which could be environmentally significant. However, Crown land located on the periphery of towns and villages, and even within existing towns and villages, needs to be examined for its economic potential and released for residential, commercial and industrial expansion wherever possible.

Retention of Crown Land

Any proposal to transfer public land into the hands of commercial operators needs to be properly and carefully managed. Much of the Crown land within the Shoalhaven LGA is on the foreshore of beaches, rivers and estuaries and other areas which are valued highly by the local community.

Attempts to sell these lands to developers or commercial interests are more than likely contrary to the public interest and would prove detrimental to the amenity of the Shoalhaven. It is critical to residents and visitors alike that the Shoalhaven's natural attributes are not diminished in any way and certainly not be exposed to threats of being excessively and intrusively built out. The focus of such developments must be based on sustainability and environmental sensitivity.

THE ADEQUACY OF COMMUNITY INPUT AND CONSULTATION REGARDING THE COMMERCIAL USE AND DISPOSAL OF CROWN LAND.

The Shoalhaven Local Environmental Plan 2014 (SLEP) commenced on Tuesday 22nd April 2014. The purpose of the SLEP is to guide planning decisions for the Shoalhaven through the establishment of zoning and development controls providing a framework for the way land can be used. The SLEP was adopted only after extensive community

consultation. All land, including Crown land, within the Shoalhaven has a current zoning under the SLEP.

Shoalhaven City Council has consulted with the community in regards to other strategic planning documents including the Shoalhaven City Council Growth Management Strategy and other settlement strategies.

The community has provided input into both the SLEP and zonings and into growth/settlement strategies identifying areas of potential expansion within the Shoalhaven LGA. Both of these processes have identified Crown lands required for future expansion.

In addition to Council processes, Crown Lands operates in accordance to their governing legislation and undertakes their own community consultation processes. There would appear to be adequate community consultation, by Crown Lands and local government, in regards to the use and disposal of Crown land.

Any change in land use or tenure of Crown land should be subject to rigorous community consultation and scrutiny.

THE MOST APPROPRIATE AND EFFECTIVE MEASURE FOR PROTECTING CROWN LAND SO THAT IT IS PRESERVED AND ENHANCED FOR FUTURE GENERATIONS.

As Crown Lands have stated, 'The Crown estate is not static. Land continually moves in and out of the estate for all sorts of reasons.' A reasonable person would interpret this statement to mean that Crown land is managed for a variety of reasons – economic, social, cultural and environmental.

Subject to the local Council's financial capacity the management of the Crown estate, excluding "State Land", will best be handled at a local level with the community fully engaged through consultation processes which are already in place in local government.

The capacity to manage the Crown estate with greater clarity and transparency is demanded by State Government and is in line with contemporary thinking.

The proposed new management structure set out in the Crown Lands White Paper 2014 where land of local interest is to be devolved to local Council to meet local needs is fully supported by Council.

Shoalhaven City Council is also concerned with protection of lands of economic importance – those earmarked for potential expansion. The release of Crown lands is required in certain areas to meet the objectives of the growth management strategy and the Illawarra-Shoalhaven Regional Plan. Council has also acknowledged that much of the Crown land in and around the Shoalhaven, including areas identified for potential expansion, may contain to date unknown environmental assets. These will need to be preserved and enhanced for future generations. But those areas that are available for urban expansion also need to be protected so that they can be developed at the appropriate time. The proportion of Crown land in the Shoalhaven that is required for urban expansion is extremely small when compared to the proportion of the Crown land contained within the City.

Rural and regional areas require Crown land for residential, commercial and industrial expansion as well as being required for infrastructure and recreational needs. Without the ability to expand, these areas are economically and socially constrained. Growth in rural and regional areas creates employment. Employment in turn creates higher levels of social stability and equity. Vibrant towns are a rich part of the character of NSW. Vibrant towns also need to be preserved and enhanced for future generations. Crown lands that have been identified as areas of potential expansion/development should be preserved for this purpose.

A mechanism that enables Crown lands preserved for expansion/development to be released in a timely manner should be developed.

Management of the Crown Estate – Other Needs for Funding

The challenges for local government to fund ongoing needs of Crown land are compounded by the impacts of climate change and severe weather include:

- Undertake repairs of coastal erosion caused by natural disasters (storms and flood events);
- For example: The August 2015 East Coast Low resulted in over \$600,000 of damage to natural areas that are not eligible and defined as essential infrastructure. The June 2016 East Coast Low impact was more severe and it is estimated that approximately \$1M is required in the short term and \$7M in medium/long term to undertake necessary remediation of damaged assets and severe erosion.
- Weed and pest management/control – government funding is declining;
- Maintenance of important public access infrastructure within and to the Crown estate; and

THE EXTENT OF ABORIGINAL LAND CLAIMS OVER CROWN LAND AND OPPORTUNITIES TO INCREASE ABORIGINAL INVOLVEMENT IN THE MANAGEMENT OF CROWN LAND.

Shoalhaven City Council will make comment on the extent of Aboriginal Land Claims over Crown land and opportunities to increase *Aboriginal involvement in the management of Aboriginal land*.

There are approximately 28,000 outstanding land claims in NSW.

(NSW Aboriginal Land Council (23/3/16) *Answers to questions on notice and supplementary questions – NSW Aboriginal Land Council, Inquiry into Economic Development in Aboriginal Communities*).

Each outstanding land claim represents a stifled opportunity – for Aboriginal communities, for regional and rural areas and for the people of NSW. The social and

economic opportunities inherent in land claims are best described in the *NSW Aboriginal Land Council – Economic Development Policy (2014:4)*:

“Economic development has been a thread throughout the history of the Aboriginal Land Rights Act 1983. The growth of the NSW Aboriginal Land Council Account, the claiming of land and the focus on the governance foundations of Aboriginal Land Councils over those thirty years have delivered a platform for true economic self-reliance.

It is the view of the NSW Aboriginal land (sic) Council that it is now time to take the next step, and further invest in economic development to realise the full aspirations of Aboriginal Land Rights and the Aboriginal peoples of NSW.”

With the introduction of the Aboriginal Land Rights Act and Native Title legislation, the amount of land assets held within Aboriginal communities is quite significant. It must be reinforced that one of the core objectives of the Aboriginal Land Rights Act 1983 was to use the benefits accrued from land dealings to improve cultural, social and economic outcomes for Aboriginal communities.

The 2015 Illawarra-Shoalhaven Regional Plan seeks to ‘strengthen the economic self-determination of Aboriginal communities’ through a ‘strategic assessment of land held by the region’s Local Aboriginal Land Council to identify priority sites for further investigation of their economic opportunities’. There are many development opportunities (residential, industrial, health, educational, recreational etc) located in regional areas that could be enabled should land be available.

The Government also has to work with LALC’S and Councils to facilitate processes where economic outcomes can be achieved to everyone’s benefit.

In most regional areas of NSW, especially coastal areas, Crown lands historically formed part of the town/village peripheral land stock for expansion of the urban area, future sporting fields, extensions of water and sewer infrastructure and employment land stocks. With land claims being successful on many of these Crown lands, local government has recently struggled to “acquire” lands that previously were assumed to be available for these purposes.

A potential way forward would be the speedy resolution of land claims so that Council and other developers can negotiate directly with the land owner.

SPECIFIC ISSUES TO FURTHER INFORM THE UPPER HOUSE INQUIRY INTO CROWN LAND

1. A disparity exists between Crown land (Council is Trust Manager or has Care Control and Management responsibilities) and Natural Areas (owned and managed by Council) where land management objectives do not align even though environmental values are the same.
2. Community Land Care and Bush Care groups (volunteers) are currently required to obtain a lease or licence from Crown Lands in order to undertake environmental works such as pest, plant and animal control that are improving public land.
3. Crown Lands reporting requirements are onerous.

4. Extremely generalised classification of Crown lands viz “Reserve for Public Recreation”, is open to interpretation by trust managers, councillors and the public and has the potential to create conflicts of use and management strategies eg allowing traffic in an environmentally sensitive foreshore reserve.
5. Councils are expected to accept management responsibility for more of the Crown estate with little or no financial support.
6. There is a perception that Climate change remains largely ignored in the management of the Crown estate. Crown lands comprising foreshore and access to it could become eroded or permanently inundated in the future and future generations could lose valuable public access to water bodies. A uniform approach to the possible effects of climate change based on strong and reliable science should be considered and government at all levels should consistently apply best practice to mitigate the impacts predicted.