

INQUIRY INTO CROWN LAND IN NEW SOUTH WALES

Organisation: Blue Mountains City Council

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City & Community Outcomes

Reference File: F00341 – 16/152000

The Director
General Purpose Standing Committee No.6
Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Sir/Madam

SUBJECT Submission to GPSC No.6 inquiry into Crown Land

Blue Mountains City Council (Council) supports the NSW Government's proposal to reform the management and legislation pertaining to Crown Lands and welcomes the opportunity to make the following submission for the consideration of the General Purpose Standing Committee No.6 in relation to this matter.

Council makes the following responses in relation to the Terms of Reference included within correspondence received from the NSW Government by Council on 1 July 2016.

1. a) the extent of Crown Land and the benefits of active use and management of that land in NSW,

Whilst it is acknowledged that visitors and the community of the Blue Mountains area experience a broad range of social and environmental benefits through the active use and management of Crown Land, the administration and ongoing maintenance of this land on behalf of the NSW Government is a significant cost burden to Council.

The NSW Department of Industry's "Response to Crown Lands Legislation White Paper", released in October 2015, states "The Government is driving a program to improve the sustainability of, capacity and integrity of local government. This will increase the abilities of councils to manage Crown land". This statement does not adequately address how the increasing costs of managing Crown land will be addressed into the future, which is a matter of significant concern; given that Crown land may be transferred to Council through proposed changes to the current legislation.

Recommendation: A workable approach to the future management of Crown lands must be developed to ensure that current benefits of active use can be continued in a financially sustainable manner without additional costs to Councils or their communities.

b) the adequacy of community input and consultation regarding the commercial use and disposal of Crown land,

Crown land is currently subject to multiple pieces of legislation, which results in inconstant and sometimes confusing community consultation processes. Council would support the development of a single piece of legislation that would simplify this process. Any new legislation would need to include provisions which are unambiguous and clearly articulate how representations from the community can be made in relation to the commercial use and disposal of Crown land.

Council would support the autonomy of Councils to manage the commercial leasing and licensing of Crown land currently under its care and control through provisions similar to those within the current Local Government Act 1993. The current legislation requires Ministerial approval, which is an additional layer of administration that can result in delays and uncertainty of tenure for sitting or prospective tenants.

Recommendation: The current requirements in relation to community consultation for the commercial and change of use and disposal of Crown land are inconstant, which can lead to confusion resulting in less than optimal community input. A single piece of legislation governing Crown lands must be developed which is unambiguous and clearly articulates how representations from the community can be made in relation to the commercial use and disposal of Crown land.

c) the most appropriate and effective measures for protecting Crown land so that it is preserved and enhanced for future generations,

In principle, Council supports the NSW Governments proposal to amend the Crown Lands Act to create a more streamlined framework within which to manage Crown Land. However Council believes that this legislation needs to be drafted in active consultation with Councils which will ensure the inclusion of effective measures to preserve and enhance Crown land for future generations.

The NSW Government should also ensure that amendments to the current legislation recognise and address the significant costs already incurred by Council in the management of Crown land to ensure the sufficient resources to implement and administer the most appropriate and effective measures for protecting Crown land so that it is preserved and enhanced for future generations.

Recommendation: Amendments to the current legislation governing Crown lands must be undertaken through active consultation with affected Local Governments. In addition, the NSW Government should ensure that any changes to this legislation recognise and address the significant costs incurred by Councils to ensure the future resources to implement effective measures for protecting Crown land for future generations.

d) the extent of Aboriginal Land Claims over Crown land and the opportunities to increase Aboriginal involvement in the management of Crown Land

Council respects the right of Land Councils to claim Crown land under the NSW Aboriginal Land Rights Act 1983, though the Council also recognises that there is an inherent tension that exists between the Local Aboriginal Land Council and the interests of Aboriginal Traditional Owners.

Council acknowledges the local Traditional Owners of the Blue Mountains and has an active program to build relationships in managing Country on Crown Land with the Traditional Owners through Native Titles, and other processes. Any framework which seeks to better engage Aboriginal people in the management of Crown Land should, as far as possible, be based on recognition of Aboriginal cultural structures, and endeavour to mitigate the long-standing tension between Land Council's and the Aboriginal cultural interests of Traditional Owners. It should also take into consideration, the needs of displaced and/or historic Aboriginal communities, being those communities with little or no access to their traditional Country, often due to being forcibly removed, but who have developed a strong relationship with the Country in which they now reside.

Recommendation: That the local Traditional Owners are recognised and the NSW Government place an emphasis upon the importance of their active engagement in any decision-making process in relation to matters of Crown land.

General: Further to the above, the proposed amendment of the Crown lands Act 1989 will have a significant impact upon Councils and the communities they represent and therefore it is important that the NSW Government draft Crown lands bill be exhibited for comment by NSW Council's to ensure a workable and financial sustainable outcome is achieved for all stakeholders.

Please also find attached previous correspondence from Council responding to the NSW Governments Crown Lands White Paper, which Council considers would be relevant for the Committee to review in relation to this matter.

If you require further information on this matter, then please contact Andy Turner, Manager, Community and Economic Outcomes on 4780 5000 or at aturner@bmcc.nsw.gov.au

Yours faithfully

 LUKE NICHOLLS
Director, City & Community Outcomes

26 June 2014



Crown Lands Review
NSW Trade and Investment
PO Box 2185
DANGAR ISLAND 2309 NSW

F02042 14/101446

Crownlands.whitepaper@trade.nsw.gov.au

Attn: Ms Alison Stone
Executive General Manager
Crown Lands

Dear Ms Stone

Subject: Submission to Crown Lands White Paper

I refer to your letter of 7 April 2014 inviting a submission from Blue Mountains City Council (the Council) on the Crown Lands Legislation White Paper, as prepared by NSW Trade and Investment. This letter includes the Council's comments on the White Paper. In view of the importance of this matter to the Council, a one week extension to the closing date of 20 June 2014 was sought, and granted, in order to have the submission endorsed at the Council meeting on 24 June 2014.

In making the submission the Council has reviewed the supporting documentation included with the White Paper, more specifically:

- Crown Lands Management Review
- Crown Lands for the Future - Crown Lands Management Review Summary and Government Response; and
- Frequently Asked Questions – Crown Lands Management Review

General Comments

The Council acknowledges the scope of the reforms, and agrees in principle with the need for a review of legislation applying to Crown Lands in order to reduce complexity and to simplify management procedures. However, Council is concerned that there is very little detail included in the White Paper for legislation of such potential significance to Council operations. There is some detail in the supporting documents, but it is understood that comments are only being sought on the White Paper at this stage, and not the supporting documentation.

The Council considers that more meaningful engagement would have been achieved by making it clear that comments are being sought on the White Paper and the supporting documentation, since these reports are necessary for an informed understanding of the proposals and recommendations included in the White Paper.

More Specific Comments – Key Principles

Management of Crown lands

One of the most significant elements of the proposed reforms included in the White Paper is for local councils to become the management authority for many Crown Lands. This will occur through the introduction of two categories of Crown land, being State lands and Local lands. Local lands will be transferred to Council to be managed under the current arrangements for public lands that apply through the Local Government Act. The Council understands that such a system may simplify the management of Council lands and will serve to correct some of the anomalies that occur in the current system. Nevertheless, Council has concerns about this aspect of the reforms, as follows:

i) Cost Shifting

There is logic to simplifying the management of Crown lands, particularly as Councils may already be responsible for managing many of them. However, the cost and resource implications for all Councils in managing such lands are not addressed in the White Paper or in the supporting documents. The documents and accompanying covering letter both advise that the proposed changes are not an exercise in cost shifting and refer to the "intergovernmental Agreement to Guide NSW State-local Government Relations on Strategic Partnerships". However, in practice it is likely that there will be an increased cost burden on Council to manage the lands by assuming their formal responsibility. There is no information in the White Paper or supporting documents about funding packages to Councils to assist in managing the range of local lands that they will be responsible for, although there is an acknowledgement in this document that some Councils may find it difficult to take on the role of managing additional lands.

The *Crown Management Review* proposes that "local lands" could be transferred to Council in fee simple, and acknowledges that Council could then be in a position to sell some of these lands. However, the practicalities of doing this remain unclear, and in many cases any attempts to do so is likely to result in a backlash from the community, particularly if they are transferred to Council as "Community Land" under the Local Government Act following the process for vesting land in councils and governed by Division 7 of the Crown Lands Act. The *Crown Management Review* document also refers to the possibility of the *Crown Lands Division Public Reserves Management Fund* being reviewed to provide access to more funding. However this is not considered an adequate response to the increased cost burden that will accrue to Councils as a result of any increased management responsibilities.

Recommendation: The resource and cost implications for Council of the proposal need to be understood in more detail, and the implications for each Council area considered in terms of the specific lands that are intended to be classified as "Local lands", as a result of which the Council commits to the process on the basis that there will be no forced transfers or cost shifting .

ii) Identifying Local Lands. The process for identifying which lands will be identified as State and Local lands is unclear, although some proposed criteria is included in the supporting documents. It is not clear whether a register of proposed Local lands will be prepared by the Crown Lands Office, or whether Councils will have some input into this process.

The criteria to be used for assessment is critical in ensuring a valid process is used, and recognition is given to the need for Local land to have means of raising revenue to enable effective management. Reference to "core" lands being maintained in State management

should not infer that all lands that have commercial income such as caravan parks remain in the State portfolio, even if managed by councils, and all lands with little or no income raising potential are classified as "Local lands" and devolved to councils.

In this regard, in 2002 the NSW Government together with Blue Mountains City Council undertook a review and Rationalisation of Public Lands. This process identified a number of the Crown Reserves for Recreation, particularly those along the eastern and western escarpment of the Blue Mountains, as being of State significance and appropriate for consideration for inclusion into the NPWS estate as extension to Blue Mountains National Park or as State Recreation Areas. As a result of this exercise significant parcels of Crown land have already been transferred to NPWS control. Following this experience and extensive asset management planning work undertaken since that time, Council believes that we are in a good position to actively assist in identifying the Crown Lands that are most appropriately managed by the State Government and which ones are best managed by Council.

Recommendation: Council input into the lands proposed to be classified as "local lands" should be sought;

III) Participation in Pilot Program The Council would be interested in involvement in any "pilot scheme", foreshadowed by the White Paper and associated documentation as one means of testing some of the proposals. Given the range and extent of Crown lands administered by the Council, spread over a geographically dispersed area, we consider that we are well placed to be considered for inclusion in the "pilot program" proposed to help develop criteria for "Local land", and develop implementation measures for the transfer of Local land. The community of the Blue Mountains are also very engaged and participatory, and would provide useful input to any pilot community consultation program.

Recommendation: Blue Mountains City Council is selected for participation in the "Pilot Program" proposed by the White Paper.

iv) Right of Veto for Council in accepting Local Lands. Further, the supporting documentation states that there will be no forced transfer of lands to Councils. Council is strongly of the view that this should be the case, whether or not a particular piece of land fits the criteria to be considered "Local land". It is important that councils have this right of veto because otherwise they would be required to manage land that may have a number of serious constraints, such as environmental, public health and safety or other risk management issues that may require significant financial or other resources to address and manage.

Recommendation: Council retains a right of veto to decline any land proposed to be transferred as a result of the new legislation.

iv) Lands to be transferred to Council as "Local lands"

Once an agreed process for identifying "local lands" has been established and once the lands to be transferred have been agreed, the following considerations should apply to the transfer of these lands to Council for management:

- a) All lands transferred to Council for ownership should be transferred to Councils ownership in "fee simple", and should be transferred free of any encumbrances.
- b) They should preferably be transferred as Unclassified under the Local Government Act, or (if necessary) as Operational Land under the Local Government Act. Council

would then undertake its own classification and categorization process as required. In general, Council does not believe that it is appropriate to automatically transfer land as Community Land under the Local Government Act, unless the values and use of the land clearly merits this classification.

- c) Should there be any native title claims on the lands to be transferred these should be extinguished prior to transfer;
- d) In the case of the transfer of Crown Reserves or lands that are identified as a specific purpose (e.g. cemeteries), it is not clear if these categories are to be transferred.
- e) As another example of the above point, the implications of any changes for land that is identified as a "Crown road" is not clear. This point is particularly significant in view of the "cost shifting" concerns referred to previously, as any additional road that Councils are required to maintain and operate has significant cost implications.

v) Other legislative implications

The relationship of the proposal to other relevant legislative changes is not clear. For example the recent proposed amendments to the Local Government legislation relating to control and management of public land, and having regard to the recent postponement of the new Planning legislation which makes it uncertain to predict what the new planning legislation will include when it eventually is introduced into Parliament.

Blue Mountains City Council trusts that these matters will be given consideration in the finalisation of the new Crown lands legislation. Please contact Mr Andy Turner, Manager, City Planning (phone no: 4780 5513) if you wish to discuss this letter.

Yours sincerely

ROBERT GREENWOOD

General Manager