

**Submission
No 246**

INQUIRY INTO CROWN LAND IN NEW SOUTH WALES

Organisation: Mosman Council

Date received: 22 July 2016

22 July 2016

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

Dear Sir / Madam;

Re: Inquiry into Crown Land

I refer to the invitation of 1 July 2016 to make a submission to the NSW Legislative Council's General Purpose Standing Committee No.6 inquiry into Crown land in NSW, in particular:

- (a) the extent of Crown land and the benefits of active use and management of that land to NSW,
- (b) the adequacy of community input and consultation regarding 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, and
- (d) the extent of Aboriginal Land Claims over Crown land and opportunities to increase Aboriginal involvement in the management of Crown land.

It is understood that this parliamentary inquiry is a continuation of the Crown Lands Management Review which commenced in 2012. Many of the issues identified above were addressed in Council's submission to NSW Trade & Investment in respect of the Crown Lands Legislation Whitepaper issued for exhibition in 2014. I enclose a copy of Council's submission dated 20 June 2014 for your consideration.

Thank you for the opportunity to make a submission in respect of this inquiry. Should you require any further information please contact me.

Yours sincerely

Kelly Lynch
SENIOR STRATEGIC PLANNER

Enc
Mosman Council Submission of 20 June 2014 on Crown Lands Legislation White Paper

20 June 2014

Crown Lands Management Review
NSW Trade & Investment
PO Box 2185
DANGAR NSW 2309

Dear Sir/Madam

Re: Submission on Crown Lands Legislation White Paper

I refer to the Department's call for submissions on the Crown Lands Legislation White Paper. Mosman Council is the Trust Manager for various Crown reserves in its local government area and has extensive experience in the preparation and implementation of plans of management under both the *Crown Lands Act* and the *Local Government Act*, management of reserves as Trust Manager and administration relating to that role.

In general terms Council supports the recommendation by the Crown Lands Management Review to review Crown lands legislation. The proposed consolidation of eight Acts into one, the removal of duplicate reporting requirements and streamlining the management of Crown reserves by councils are all benefits that would result from this review.

The White Paper sets out recommendations for change across a number of areas, however, I will focus this submission on particular issues of most relevance and concern to Mosman:

- Objects of the Act
- What 'management' of Crown reserves will mean to councils
- Land ownership and land owners' consent
- Lease conditions
- Procedural fairness

Proposed legislation

There are too many proposed objects of the Act making them unnecessarily confusing. Multiple objects have the same intent, for example a, d, e and g all relate to the management of Crown land. The principle of consolidating eight Acts into one is a positive one. The detail of what would be in the new Act remains unclear. New legislation needs to deal with the 'what' not the 'how'. It should not be prescriptive about how something should be done just that it should be done.

The proposed changes to the management of Crown reserves would necessitate amendments to the *Local Government Act* to "*allow councils to manage reserves under the local government legislation*". The result of this would obviously be at least two Acts governing Crown land. Amendments to the *Local Government Act 1993* would need to include requirements (including

matters relating to consultation) that are consistent with the *Crown Lands Act* otherwise the purpose of having a single Act to refer to will not be achieved.

Management arrangements for Crown Reserves

Reference to 'management' of Crown reserves needs defining. If the State is devolving itself of responsibility it should be all aspects of management including compliance, enforcement and revenue. The White Paper refers to councils managing Crown reserves under the *Local Government Act* however there is no detail about how this would work in practice. No mention is made of transitional arrangements.

The Crown Land Management Review recommends land with predominantly local values to be owned or managed by councils. Transfer of ownership is not explicit in the White Paper despite there being a recommendation of the Crown Lands Management Review to "*Devolve land of local interest to local councils to meet local needs*". The criteria for determining local interest and the mechanism for transfer to local councils would be part of a pilot program, the details of which are still unknown. This step in the process is integral to councils' understanding of the implications of new management arrangements for Crown reserves in their area. Parts of Crown reserves that have been removed from Council's management (eg Rawson Park telecommunication facilities and tennis courts) should be returned to Council as the Trust Manager.

Land ownership, assessment, landowner's consent and notification requirements

The White Paper is vague about what the "streamlined processes" would be to enable landowner's consent to be given more quickly; therefore, it is difficult to comment on what is proposed. There are examples in the past where Council has had to wait 12 months for a response from Crown Lands. Minimum timeframes should be set to ensure more streamlined processes.

In regard to notification requirements it is considered that the Act/Regulation should specify what needs to be notified not how it is to be done.

Tenures and rents

The White Paper suggests that the conditions of a lease could be changed so that they could be inconsistent with a PoM. This would result in a less than transparent process with the public unaware of the inconsistency and would lessen the importance of the PoM.

There is no discussion as to what would happen with the Public Reserve Management Fund (PRMF) and the requirement for 15% of rental received by the Reserves Lands Trust to be paid into the fund as directed by the Minister administering the *Crown Lands Act*. Also, funding currently received under the PRMF, such as annual income directions, should continue to be forthcoming.

Enforcement

Any review should ensure that it meets procedural fairness. A degree of discretion should be incorporated into the legislation.

General comments

The White Paper reads more as a discussion paper rather than a White Paper. Effective consultation and informed feedback is difficult on this type of document. A Green Paper is needed to include the detail of amendments sought.

The White Paper does not include some fundamental detail such as criteria and definitions for determining, among other things, reserves with local values, and what levels of commercial activity would be appropriate for the reserve purpose. These would be determined with further consultation with the community, Local Government NSW and other local government stakeholders. The issue of what constitutes local and State land is fundamental to understanding how the new legislation would work and what the implications would be for Mosman (and councils generally).

There are various references to the Minister's role. The criteria and timeframes for where the Minister may be involved in certain issues should be explicit.

The comments I have presented above, are substantially taken from a report adopted by Council at its meeting on 3 June 2014. In summary I make the following points:

- Further consideration needs to be given to the objects of the new Act
- Consultation with councils is needed on required changes to the *Local Government Act* that would result from the White Paper recommendations
- Streamlining processes should ensure timeframe commitments for responses from the State
- Allowing potential inconsistencies between conditions of leases and PoMs is not supported
- Changes to enforcement should ensure procedural fairness. Enforcement and compliance should be part of the package of what "management" means for councils
- A detailed Green Paper should be prepared to generate more informed discussion and responses from stakeholders and the community.

Thank you for the opportunity to comment of the White Paper. If you have any questions please contact _____ on _____

Yours sincerely

Veronica Lee
GENERAL MANAGER

Per:

(Linda Kelly, Manager Urban Planning)