



SYDNEY COASTAL COUNCILS GROUP INC.

councils **caring** for the coastal environment

SUBMISSION

Crown Lands Legislation White Paper

June 2014

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YEARS
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To: Crown Lands Management Review
NSW Trade & Investment
PO Box 2185
DANGAR 2309
Submitted via email: crownlands.whitepaper@trade.nsw.gov.au

Prepared by: Sydney Coastal Councils Group Incorporated (SCCG)

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1. Sydney Coastal Councils Group Incorporated (SCCG)

We are a voluntary Regional Organisation of Councils (ROC) representing 15 Sydney coastal councils (www.sydneycostalcouncils.com.au/). We are the peak NSW ROC representing coastal councils and the third largest based upon population¹. We have 25 years' experience leading sustainable coastal management.

We harness the individual and collective knowledge of our Member Councils, a suite of technical and academic experts as well as other stakeholders. Engagement is undertaken through a range of communications including meetings, workshops, information sessions and publications.

Accordingly, we are able to play a key role in the development of a strategic and sustainable system for managing Crown lands, especially those in coastal² locations.

2. Scope and structure of this submission

This submission focuses upon the area in which we have specific knowledge and expertise, namely the urban coastal environment. It responds to the **Crown Lands Legislation White Paper** ('Paper') prepared by NSW Trade & Investment.

Under *Section 1.4 Issues for comment* of the Paper, views are sought on specific questions. Table 1 below lists each question and our response. For some questions, we provide comment on related matters rather than a direct answer to the question. We also make general comments and recommendations as a preamble to the table.

3. Crown lands – key principles and response to Issues

Crown lands comprise important collective assets including beaches, estuaries and waterways. Ownership or control of those assets must not be shifted to private interests at the expense of community, environmental or cultural values. Private interests by their very nature are self serving, usually geared to profit making and may prioritise short-term exploitation over long-term stewardship. Commercialisation of Crown land should not be favoured where there are environmental considerations or a loss of community value. A balance must be drawn between community assets and private use, without one undermining the integrity of the other.

Land-use decisions, especially in relation to vast areas such as Crown lands, can facilitate the creation and maintenance of healthy communities, both now and for future generations. Environmental and social values must be considered in Crown lands planning. Decisions must be made which embody the results of effective community consultation (of sufficient duration) where the community is fully apprised of the benefits and costs of a particular course of conduct. Community participation can then serve as a catalyst for

¹ Gooding, A. 2012. A Comparative Analysis of Regional Organisations of Councils in NSW and Western Australia, Australian Centre of Excellence for Local Government, University of Technology Sydney.

² A reference to 'coast' or 'coastal' in this Submission includes estuaries.

behaviour that reinforces the overarching management goals and objectives for Crown lands.

The Crown lands estate must be managed holistically, using a place-based values approach to maximise community benefits. A values analysis is a cognitive-behavioural study which identifies how people perceive and experience a place. It gives a voice to meanings and values that may not otherwise be expressed in decision making processes. Values³ influence behaviour, attitude and thus interactions and relationships: there is a strong and direct connection between self-identity, place, and how individuals perceive and value the environment. It is important to understand a community's values for individual and collective parcels of Crown land and how they contribute to community or cultural identity. All social, physical and environmental elements of the land must be considered. It is upon these premises that we formulate our responses hereunder.

A focus in the Review of the Crown lands legislation upon reducing regulation should be approached cautiously. Depending upon the context, certain regulatory barriers are an indispensable democratic vehicle for implementing the protections propounded by the legislative instrument. Administrative procedures, rules and regulations etc. are not inherently good or bad except in so far as they do or do not achieve the objectives of the instrument.

Table 1. List of Issues for Comment, Crown Lands Legislation White Paper, and the SCCG's response to each issue.

| ISSUE | | RESPONSE | |
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| PROPOSED LEGISLATION | | | |
| 1. | How would developing one new piece of legislation to manage the Crown land estate benefit the community? | 1.1 | We support in principle a single all-encompassing and integrated legislative instrument that streamlines processes and reduces administrative time and cost <u>PROVIDED</u> the new instrument: <ul style="list-style-type: none"> • reinforces environmental and community protections • is clear, concise and sufficiently detailed to be readily understood and applied by decision makers, the community and other stakeholders • articulates logical requirements, soundly based, which are capable of consistent application • includes the objectives in 2. below. |
| | | 1.2 | The nature and effect of the new legislative provisions be clearly communicated to stakeholders via a variety of media including workshops, explanatory memoranda and factsheets. |
| 2. | Are the objects and provisions proposed for the new legislation appropriate to support Crown land management in the 21st Century? | 2.1 | Yes, in part. The Objects ⁴ should also provide: <ul style="list-style-type: none"> a) The promotion of Crown land as a common asset and managed for the benefit of the people of NSW considered as a whole b) The protection, enhancement, conservation, maintenance and restoration of the environment, its associated ecosystems, ecological processes and biological diversity, and its water quality |

³ Values means those beliefs which have significance for a cultural group and can include political, religious and spiritual or moral beliefs.

⁴ A reference to Objects hereafter means a reference to this expanded list of objects.

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| | | <ul style="list-style-type: none"> c) Identification and protection of environmentally sensitive areas and areas of cultural heritage d) Social, economic and environmental considerations as a mandatory consideration in the management of Crown lands under the paradigm of ecologically sustainable development as defined in section 6(2) of the <i>Protection of the Environment Administration Act 1991</i> e) Stewardship of community resources f) Public access except where such access is contrary to b) above g) The use of Crown land to help build resilient communities and improve connectedness h) An inclusive management process that strengthens capacity to plan, act, monitor and report i) Recognition of the role and active participation and involvement of the community, as a partner with government, in management of Crown land j) Development of a <u>Community Participation Charter</u> which includes an obligation to publish the nature and results of community participation, submissions received, the reasons for a decision and how participation influenced the decision k) Development of a <u>Vision Statement</u> - the high level outcomes envisaged for a geographical place (especially in relation to environmental objectives and natural resources, including water, natural hazards, air quality, biodiversity and energy resources) illustrated both spatially and with words that describe the future for Crown lands within that place and who is responsible for each outcome l) State-wide monitoring and reporting of performance against comprehensive indicators m) Crown land is not to be disposed unless, after a rigorous independent assessment, disposal is determined to be overwhelmingly in the community interest considered as a whole and considering the principles and programs detailed in section 6(2) of the <i>Protection of the Environment Administration Act 1991</i>. <p>2.2 To manage Crown lands into the 21st Century, community values of and priorities for the use of Crown lands be determined before crafting new legislation.</p> <p>2.3 The manner of assessing whether and action is in the interest of a relevant community be clearly articulated and subject to community consultation.</p> |
| IMPROVED MANAGEMENT ARRANGEMENTS FOR CROWN RESERVES | | |
| 3. | Do you have any comments on the proposal to allow local councils to manage Crown land under local government legislation rather than under the Crown Lands Act? | <p>3.1 Councils be adequately resourced to effectively manage Crown land including, but not limited to:</p> <ul style="list-style-type: none"> a) Funds to facilitate the protection, enhancement, conservation, maintenance and restoration of Crown land b) Training in relation to the duties and functions of Councils under the proposed new legislation c) Communication tools to engage and communicate effectively in relation to management of Crown land within and outside Council |

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| | | <p>d) Mapping and other related technical tools.</p> <p>3.2 Consultation take place with individual Councils regarding the Crown land intended to be managed by them.</p> <p>3.3 Rights and responsibilities in relation to matters in existence before but arise after any change in manager (e.g. contamination) be clearly articulated.</p> |
| 4. | What are your views about the proposed new management structure for Crown reserves? | <p>4.1 If, under new legislation, Crown land is to be managed under local government legislation, that management continue to align with the Objects in 2.1 above. Local government legislation must not circumvent protections afforded to Crown land e.g. a change of purpose which is inconsistent with the community interest.</p> <p>4.2 As with all actions and initiatives proposed, adequate resources be provided, see for example 3.1 above.</p> <p>4.3 The minimum skills, qualifications and experience necessary as a precondition of appointment as a Crown reserve manager be established and the appointment of such managers undertaken transparently, equitably and upon merit.</p> |
| 5. | Do you have any further suggestions to improve the governance standards for Crown reserves? | <p>5.1 Principles of best practice governance be established and enforced. See for example The ASX Corporate Governance Council Principles of Good Corporate Governance and Best Practice Recommendations.</p> <p>5.2 Deliver on appropriate NSW 2021 Goals, for example:</p> <p>Goal 6 - Strengthen the NSW skill base</p> <p>Goal 22 – Protect our Natural Environment</p> <p>Goal 23 - Increase opportunities for people to look after their own neighbourhoods and environment</p> <p>Goal 24 – Make it easier for people to be involved in their communities</p> <p>Goal 25 – Increase opportunities for seniors in NSW to fully participate in community life</p> <p>Goal 26 – Fostering opportunity and partnership with Aboriginal people</p> <p>Goal 27 – Enhance cultural, creative, sporting and recreation opportunities</p> <p>Goal 30 – Restore trust in State and Local Government as a service provider</p> <p>Goal 31 – Improve government transparency by increasing access to government information</p> <p>Goal 32 – Involve the community in decision making on government policy, services and projects</p> |
| OTHER STREAMLINING MEASURES | | |
| 6. | Are there any additional activities that should be considered as 'low impact' activities in order to streamline landowner's consent? | <p>6.1 What constitutes 'low impact' activities be clearly defined. Community consultation take place in this regard.</p> <p>6.2 Low impact activities be genuinely low impact, not high impact activities deemed low impact.</p> <p>6.3 The criteria which a proponent must establish to evidence low impact activities must be clearly defined in the legislation. There be community consultation in this regard.</p> |
| 7. | Are there any other ways to streamline arrangements | <p>7.1 Strategic relationships with Regional Organisations of Councils be established to facilitate relationships and outcomes between State and</p> |

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| | between the State and local governments? | <p>Local governments.</p> <p>7.2 Information be made available regarding how the proposed legislation will be integrated with existing reviews such as the Local Government Review, Coastal Reforms and the Planning Review.</p> <p>7.3 The State government give strategic direction to Local Government:</p> <p>a) where Local Government is obliged to manage Crown land in accordance with State government policy (e.g. land between the low and high water marks); and</p> <p>b) to facilitate the holistic management of the whole of the Crown lands estate.</p> |
| 8. | In addition to the suggestions provided, are there any other ways to ensure that the public is notified of the proposed use or disposal of Crown land - and their views taken into account – that would be appropriate to include in the new legislation? | <p>8.1 When seeking to dispose of Crown land, the principles to be applied:</p> <p>a) in determining whether a disposal is in the community interest,</p> <p>b) the nature of community consultation; and</p> <p>C) publication of information regarding the application and its progress etc</p> <p>be clearly articulated. There be community consultation in formulating such principles.</p> <p>8.2 A community participation charter be developed – see 2.1 above.</p> <p>8.3 In addition to traditional methods, notification of the proposed disposal of Crown land should utilise innovative communication means such as online digital media which is promoted and readily accessible.</p> |

BETTER PROVISIONS FOR TENURES AND RENTS

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| 9. | Do you support the concept of a consistent, market based approach to rents, with rebates and waivers for hardship and public benefits for certain uses of Crown land applied where appropriate? | <p>9.1 Standard lease and licence templates be capable of carrying into effect the Objects of the new legislation.</p> <p>9.2 The Objects of the legislation be paramount to commercial considerations in relation to prospective leases. Leases also be consistent with the vision for Crown land (see 2.1) above.</p> <p>9.3 The true value of the leasehold estate be considered in determining rent, including value to the community over and above economic value. Many community values and ecosystem services flowing from Crown land are not readily capable of economic valuation and are unlikely to be captured in a market determination. There be a robust method to ensure such value is not lost.</p> <p>9.4 The basis upon which rebates and waivers will apply be articulated in detail and be informed by community consultation.</p> <p>9.5 Minimum rents at least be equal to the cost of managing the tenancy.</p> <p>9.6 Tenants possess insurance including cover for damage to Crown lands.</p> <p>9.7 Leases incorporate effective 'make good provisions' (a) where a Lessee is permitted to make alterations or additions to the leased premises, and (b) for any damage occasioned.</p> <p>9.8 If the legislation contains a provision entitling the Minister to issue a licence for the use of land which is being occupied without approval, there be</p> |
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| | | <p>accompanying effective rent recovery provisions and the essential elements of a lease (12.1 below) form part of that licence.</p> <p>9.9 Leases be subject to a public tender.</p> <p>9.10 A searchable public register of all Leases and their salient terms and conditions be established.</p> <p>9.11 For land which includes places of cultural significance, Lessees comply with The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance, 2013.</p> |
| 10. | Is five years a reasonable amount of time to give tenure holders who currently pay below the statutory minimum rent to move to paying the minimum level of rent as required under the new legislation? | <p>10.1 Depending upon the particular circumstances, five years may be too little or too much time. For example, there may be no objective basis on market considerations why a tenant holder is paying below the minimum statutory rent.</p> <p>10.2 The legislation provide a framework for assessment of hardship claims. There be community consultation in formulating such principles.</p> |
| 11. | To avoid rent arrears issues for incoming tenure-holders, should the new legislation automatically transfer any rental debt to a new tenure-holder on settlement, or require any outstanding arrears to be paid prior to transfer or settlement? | <p>11.1 Arrears and all other costs be paid on or before transfer as a condition of the transfer.</p> |
| 12. | What kinds of lease conditions should be considered 'essential', for the purposes of providing for civil penalties? | <p>12.1 The following covenants be essential:</p> <ul style="list-style-type: none"> a) to pay rent b) to pay rates, taxes and other outgoings c) the use, repair and maintenance of the land d) provisions relating to assignment / transfer e) adherence to the Objects of the new legislation, <i>mutatis mutandis</i>. <p>12.2 Guidance be sought from commercial leases.</p> |
| 13. | Should Crown land be able to be used for all forms of carbon sequestration activities? | <p>13.1 Carbon sequestration activities be assessed against criteria which align with the Objects of the legislation.</p> |
| GREATER FLEXIBILITY FOR WESTERN LANDS LEASES | | |
| 14. | What additional activities do you think should be permitted on Western Lands leases without the need for approval? | <p>14.1 All activities be consistent with the Objects.</p> <p>14.2 The ambit of activities being considered as not requiring approval be the subject of community consultation. Reasons should be given as to why an activity will not require approval.</p> |
| 15. | Bearing in mind the fragile nature of much land in the Western Division, in what situations do you think it would be appropriate to allow Western Lands leases to be converted to freehold? | <p>15.1 The rationale as to why leases should be converted to freehold is not explained in the White Paper. This information is required before effective consultation can take place.</p> <p>15.2 The concept of 'fragile nature of land' must be defined.</p> <p>15.3 The true value of leases must be assessed <i>a priori</i> to any decision being made. For example, water rights may attach to the land which significantly</p> |

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| | | increases the value of a lease. |
| STRONGER ENFORCEMENT PROVISIONS | | |
| 16. | What are your views about the proposal to strengthen the compliance framework for Crown lands? | <p>16.1 A robust compliance framework is essential to the proper functioning of the legislation. Outcomes may be achievable through a mix of positive and negative incentives.</p> <p>16.2 The compliance framework be supported by enforcement officers (and other mechanisms) who will apply it consistently and rigorously.</p> <p>16.3 Details be provided of the parties who will benefit from financial penalties.</p> <p>16.4 Details be provided of what parties (a) can issue and recover financial penalties, and (b) will be obliged to enforce and recover financial penalties.</p> <p>16.5 The compliance framework recognise all values the community attributes to Crown land.</p> |
| 17. | Do you have any suggestions or comments about proposals for the following: Auditing Office powers Offences and penalties Other provisions | <p>17.1 Best practice reporting and auditing requirements be enshrined in the legislation and include annual reporting to Parliament.</p> <p>17.2 As a minimum, powers analogous to those under the <i>Protection of the Environment Operations Act 1997</i> apply. The conferral of additional powers be considered.</p> <p>17.3 The time limit for bringing prosecutions be extended as suggested from six months to at least two years.</p> <p>17.4 Penalties and offences reflect the gravity of the breach considered against the Objects of the legislation and the community values of Crown land, as well as any damage incurred and the cost of restoration/remediation.</p> |
| MINOR LEGISLATION | | |
| 18. | Do you support the repeal of the minor legislation listed? | 18.1 Repeal of minor legislation is of utility where the Objects of the legislation are more effectively carried out. |
| 19. | Do you see any disadvantages that would need to be addressed? | 18.2 See 18.1. |

Thank you in anticipation for considering our submission. We look forward to participating further in the consultation process and request your advice as to how our submission was taken into account when developing the new Crown lands legislation.

Yours sincerely,

SYDNEY COASTAL COUNCILS GROUP INC.

Per: Cr. Cathy Griffin
Chairperson



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