



## **Crown Lands White Paper**

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Crown Lands Management Review

NSW Trade & Investment

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The main purpose of The Mosman Parks & Bushland Association Inc over its 50 year life has been to preserve and protect bushland, open space, parks, reserves and natural features in the Municipality of Mosman. The environment and biodiversity are important in themselves but in an age of increasing population and increasingly dense living the social and community need for parks and bushland becomes more important than ever.

### **Importance of Crown Lands in urban areas**

The Association's concerns are with Crown Lands in urban areas. We submit that although such lands may be small compared with the Western Lands, they have vital environmental and biodiversity values as well as social, educational and other public amenity values.

## **ISSUES FOR COMMENT**

### **1. Developing one new piece of legislation**

Clarity, simplification, removing duplication, reducing red tape and reporting requirements are excellent aims. We repeat our observation about urban and rural lands however. The needs may be very different and the legislation needs to ensure that the needs of these two different areas are considered to ensure appropriate focus.

### **2. Appropriateness of the Objects and Provisions for Crown Land Management in the 21<sup>st</sup> Century**

#### **Protecting the Natural Environment**

The value of Crown Lands in protecting the natural environment should be recognized in the legislation. This is an important consideration on a state wide basis. In the urban situation continuing protection of ecological values is critical for biodiversity.

The objects seem more concerned with economic considerations than they do with conservation and environment protection. The needs of the 21<sup>st</sup> century must be balanced against future needs. Crown lands are held in trust for present and future generations.

## 2.

(Object a) Include the "environment". To provide for the management of Crown land for the benefit of the environment and the people of NSW, present and future.

(Object b) To provide a system of management for Crown land that is consistent with ecological sustainability, efficient, fair and transparent.

(Object c) The integration of social, economic and environmental considerations in decisions seems to elevate economic considerations to the same level as the environmental and social considerations.

(Object e) To provide for the disposal of Crown Land for the benefit of the people of NSW. The legislation may provide provisions for the sale of Crown Land, but it **should not be an object**. The benefit to the people of NSW may be an immediate one of providing cash for a pressing government expenditure, but a perpetual benefit to future generations would need to be demonstrated as recompense for the loss of the land and its future use. Immediate benefit would have to be weighed carefully against future benefit.

(Object f) What is the best use for Crown Land and how would the best use be decided? Again, a present use must not be to the detriment of future needs and uses.

(Object g) Public use and enjoyment of Crown Land should be encouraged but only if it observes ecologically sustainable principles. As urban areas become more and more densely developed the availability of Crown Land for passive use and simple relaxation etc cannot be underestimated. Small or "remnant" parcels of land should not be undervalued for the contribution they make to the urban environment.

### **3. Proposal to allow local councils to manage Crown land under local government legislation rather than under the Crown Lands Act**

Mosman has a number of Reserve Lands Trusts whose management will be affected by the restructuring of management of the Trusts and by devolving these lands to local councils for management under the Local Government Act. The key to such devolvement of responsibility will be the continuation of the protection that these community lands will have under the Local Government Act. This Association supports maximum ongoing protection of environmental, heritage and community values. Assuming continuing protection under Local Government legislation, there are advantages of efficiency, and consistency that would result from local Crown reserves being managed by councils under the Local Government Act rather than under the Crown Lands Act.

Appropriate funding for ongoing management of the transferred land should be identified before a transfer occurs. Divestment of land without full community engagement and inappropriate economic use are not supported. A process for

identifying the public benefit should be clearly defined before any transfer occurs.

### **Unformed Roads that are to be designated Community Land in perpetuity**

Of interest to this Association is the management of unformed roads in urban areas. We note that the issue is discussed in the Review of Crown Lands Management but has not been raised in the White Paper.

In the Mosman Council area there are 101 unformed roads, legacy of subdivisions principally made before the 1920s. The unformed roads will never be built, mainly because of the topography. They are now surrogate parks and bush corridors except where neighbours or developers have been allowed to buy or lease part, or all, of the unformed road corridor for private purposes. This may be typical of other urban councils with similar topography.

Where an unformed road has specific values - environmental, heritage or social and community - which need to be protected, the process by which it can be transferred to Council to become community land could be simplified. It would be preferable if its management were transferred from under the Roads Act to the Local Government Act.

**The aim is to maximise the protection of the unformed roads by converting them into Community Land in perpetuity. It does require that the protections afforded to Community Land are not weakened in future Local Government legislation.**

The current steps to make an unformed road into a public reserve are:

The road is advertised under the Road Act and following consultation, the Roads Minister may determine that the road is closed (s33-38 Road Act)

The land is then Crown Land and the Minister for Crown Lands advertises the proposal and makes a decision as to whether the responsibility for the land can be transferred to the council. The land is then transferred to Council. The Council prepares a draft "plan of management" which is exhibited. When finalised, the land is safely under council management as a bush reserve or public park.

The Mosman Parks & Bushland Association suggests that the conversion of unformed local roads with environmental, heritage or community value to community land could be effectively achieved without the involvement of the Crown Lands Act provisions.

Consideration should be given to amending The Roads Act 1993 - Sect 38 (2) (b) from

“ in the case of a public road that was previously vested in a council, other than a public road in respect of which no construction has ever taken place), remains vested in the council, and To “in the case of a public road that was previously vested in a council remains vested in the council other than a public road in respect of which no construction has ever taken place unless the council has declared the land to be “community land” under the Local Government Act,

#### **4. Proposed new management structure for Crown reserves**

The new management structure proposed in the White Paper is to establish a 2 tier rather than a 3 tier structure. We consider that there are some fundamental problems in the structure and have recommended some changes to improve the model to ensure that Crown lands are valued and well managed.

The three tier model sets up a trust and describes the basic parameters for the operations of that trust. Notably the Trust is charged with the care, control and management of the land in question and holds the land in fee simple for purposes of Part 5 of the Crown Land Act. The three tier model then identifies various groups and organisations that will manage the trusts affairs.

Under the two tier system the trust and its responsibilities are eliminated and the focus is on the various groups and organizations that will manage the land. This system focuses on management. Nothing is said about care and control. The question of a fee simple/ownership is eliminated. This is not satisfactory.

The management structure must operate with some clear guidelines or guiding principles, care being a very important principle. In addition the structure is silent on the question of control which suggests that it may be easier to change the uses of Crown Land more simply and without the necessary checks and balances. The lack of “ownership” through a fee simple for certain uses, suggests that it will be easier to change the use of Crown Land.

#### **Our recommendation for the 2 tier system**

If the 2 tier system is to go forward it must be amended to include reference to care, control and management as necessary functions/responsibilities of any organization charged with managing any Crown Lands. Consideration should also be given to limiting the uses that the managing organisations can allow. This could be achieved by incorporating the ‘Fee simple’ approach of the 3 tier system.

#### **5. Governance standards for Crown reserves**

The White Paper states that “ *The level of approval and reporting requirements will be tailored to match the complexity of the reserve management task and the competence and professional expertise of the Crown reserve manager.* ”

5.

We consider there are major problems with such an approach which relies on subjective considerations and offers little rigour. To tie approval and reporting requirements to a staff member is particularly unsatisfactory as staff members change. This approach dilutes the importance or significance of the land itself.

Approval and reporting requirements should be determined having regard to a transparent set of objective guidelines or "heads of consideration" which would be referred to in all cases. This would be a similar situation to that provided by S79 C of the EP&A Act for considering development applications. We recommend that a set of such heads of consideration are developed and applied consistently so that the system is both transparent and its requirements recognised and understood.

#### **6. Streamlining measures**

##### **Abolishing Land Assessment Requirements**

The new legislation should not abrogate responsibility for land assessment to local government. Existing assessment requirements should be strengthened. Where land has been dedicated the risks of changing that land to reserved land should be carefully considered.

#### **7. Better provision for tenures and rents**

Changes to conditions and leases could result in inconsistencies with Plans of Management and a weakening of the importance of a PoM. This will result in less transparency and public confusion.

Thank you for the opportunity to comment.



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20<sup>th</sup> June 2014