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Submission

Draft *Crown Land Regulation 2017*

Submitted to:

Draft Crown Land Management Regulation comments
Department of Industry Lands and Forestry
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The Better Planning Network Inc. (BPN) is an incorporated, volunteer-based, not-for-profit association established in 2012 in response to the then O'Farrell Government's proposed overhaul of NSW planning legislation. Our aim is to advocate for a robust and visionary NSW planning system designed to achieve Ecologically Sustainable Development as defined in the *Protection of the Environment Administration Act 1991 (NSW).*

Introduction

Both the draft Crown Lands Regulation 2017 (CLR 2017) and the Crown Land Management Act 2016 (CLM Act 2016) are significant for Better Planning Network (BPN) members and affiliates because they will affect the future management, use and potential transfer or sale of publicly owned land across NSW. The CLR 2017 has been written as an extension of the CLM Act 2016 and the regulations need to be considered in relation to the Act and its intentions.

Communities value Crown Lands for a variety of social, cultural and economic reasons and in particular, the role Crown Lands play in the preservation of flora and fauna in both rural and urban areas. These considerations should be imbedded in the regulations governing the proposed transference of Crown Lands to Local Council control.

The green space and natural bushland that Crown Lands provide are under pressure from the current rapid development and increased density of population across Sydney and the State. At the same time these spaces are increasingly important in providing a vital outlet for urban living. In rural areas Crown Lands are under pressure from broad scale agriculture and communities are divided over their use or preservation.

Whereas the submissions in response to the White Paper for the CLM Act 2016 were not published, we request that the submissions to the draft CLR 2017 are made public. Failure to publish submissions implies a lack of transparency and that decisions concerning public lands are being determined behind closed doors.

Comment

The following are areas of major concern in the draft Crown Lands Regulation 2017:

1) Effective Community Consultation:

The BPN welcomes the proposal for ongoing consultation but notes that the CLR 2017 does not deal in detail with community engagement strategies. We seek clarification of the procedures to involve communities in decision-making concerning the use, lease and sale of Crown Lands.

Owing to the variety and complexity of Crown Lands across NSW, it is difficult for communities to determine how the new regulations will apply to their specific circumstances. Currently, neither CLM Act 2016 nor the CLR 2017 has any requirement for Local Councils to identify and fully audit the Crown Lands that they manage. This is fundamental information, and should be in place prior to any implementation of the Act and its Regulations.

We also note that there is no provision for, or guarantee of, action to be taken as a result of community engagement. This needs to be specified in the regulations to avoid consultation strategies being perceived as tokenistic.

Similarly, there is no allowance for communities to take action where breaches of the CLM Act 2016 have occurred. Neither the CLM Act 2016 nor CLR 2017 provide for ‘open standing’, to bring civil proceedings in the Land and Environment Court to remedy or restrain a breach of the Act or regulations.

As the regulations stand, the community has no effective power in the either the decision – making process or should breeches occur.

2) **Environmental protection of Crown Lands:**

Environmental protection of Crown Land is central to its management. There is a public expectation that environmental protection would constitute a major part of the new Crown Land managers' role under the CLR 2017. Ecologically sustainable development principles should continue to underpin the use, lease or sale of land in the public interest as were set out in the in the *Protection of the Environment Administration Act 1991 (NSW*).

The criteria for land designated as being of State Significance, such as National Parks and Reserves, and which will continue to be managed by the State Government, need to be clarified and made public. There are also questionable variations in the handling of other types of land holdings. While the CLM Act 2016 now recognises the intrinsic value and historical significance of Commons, the same does not apply to Crown Land Reserves and Dedications. Similarly the designated purposes for Crown Land are revoked when vested to a statutory corporation. In these cases the vested Crown Lands are open to exploitation.

Crown Lands often preserve local ecosystems and provide vital habitat linkages between conservation reserves. These should be identified from the start and priority given to their maintenance and protection.

The CLR 2017 needs to clarify how Crown Lands may be affected by land-clearing applications. The rural land clearing regulations suggest that native vegetation may be cleared on Crown Land with areas set aside in compensation. Determining like for like is open to abuse and is cause for considerable concern.

Finally and importantly, penalties for breaches of the regulations are insufficient to deter or meet the cost of restitution should Crown Lands be damaged in any way.

3) **Management and vesting of Crown Land:**

The transfer of local Crown Land to Local Councils and its management under the *Local Government Act 1993 (NSW*) is a major aspect of the CLM Act 2016 and CLR 2017 and has raised a number of issues of concern. Local Councils should be held to the management of the land for the public good, especially as there have been documented cases of illegal leasing and privatisation. The regulations should be clear and enforceable and, while a Councils can apply penalties, they should be subject to penalties themselves should they be responsible for breaches of the regulations.

It is presumed that the majority of Crown Land vested to local councils will be designated community land, but operational land that can be sold may also be vested. Although there are procedures for reclassifying land as operational under the Local Government Act, these have not prevented questionable alienation of community land in the past. The regulations protecting community land for community purposes need to be strengthened under the CLM Act 2016 and CLR 2017.

Further, there is no provision for the maintenance of land by the Government after it has been vested. All income derived from vested land will be retained by Councils and Councils will be required to include it in its asset management. There will be management costs including developing a Plan of Management for each individual reserve. Yet the need to provide more infrastructure for communities affected by increased building development continues. Overall, the pressure will be high for Councils to convert community land to operational for sale.

Conversion of Crown Land, its privatisation and development, may well have other consequences for the community with the loss of green space and recreational outlets which, once gone, cannot be replaced. There is also the potential for a decline in quality of life and property values.

It is hard to avoid the conclusion that the Crown Lands Management Act 2016 and Crown Lands Management Regulation 2017 allow the State Government to divest itself of its responsibilities in regard to Crown Land management in order to facilitate privatisation and further development without any real benefit to the communities across NSW.

This submission will be distributed to our network of members, affiliates and supporters.