Preserving our heritage
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Draft Crown Land Management Regulation comments
Department of Industry Lands and Forestry,
PO Box 2185, Dangar NSW 2309

Via email - legislation@crownland.nsw.gov.au 14 October 2017

Submission on the draft Crown Land Management Regulation 2017

The Hunters Hill Trust wishes to make the following comments in relation to the draft Crown Lands Regulation 2017 (CLR 2017) and the Crown Land Management Act 2016 (CLM Act 2016). The Trust was established almost 50 years ago and has continued to advocate for protection of the built and natural heritage of our local government area and beyond.

The Act and the associated Regulation are very significant 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.

The Hunters Hill Trust believes that the community values Crown Lands for a range of widely recognised social, environmental, cultural and heritage reasons. It is important that Crown Land remains as a publicly-owned asset that is well managed for all its inherent values, including economic.

In particular, the role Crown Lands play in the preservation and maintenance of native flora and fauna in both rural and urban areas is increasingly critical to environmental and human health. These considerations should be embedded in the regulations governing the proposed transference of Crown Lands to Local Council control and the community must have confidence that the public interest is respected and protected.

The green open space and natural bushland that Crown Lands provide are under severe pressure from the current rapid development and increased density of population across Sydney and the State. Consequently, these spaces are increasingly important in providing a vital breathing space for urban living. In rural areas Crown Lands are under pressure from broad scale agriculture and communities are divided over how they are used and/or preserved, particularly in relation to land clearing and loss of native vegetation cover. It is clear that the Travelling Stock Routes and Reserves are highly valued and require long-term protection for their important heritage and biodiversity.

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

Effective Community Consultation:

The Trust welcomes the proposal for ongoing consultation but notes that the CLR 2017 does not deal in detail with community engagement strategies. 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 Regulation. We suggest there be also a requirement for formal recognition of community engagement to avoid consultation strategies being perceived as tokenistic. (Our experience of our Council's management of heritage listed parklands leaves us without confidence that public lands will be adequately protected once they are entirely under the control of local councils).

We note that there is no provision for communities to take action where breaches of the CLM Act 2016 have occurred. We recommend that 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 its Regulation. This is required to ensure that the community has effective input to both the decision-making process and action in the case of breaches of the regulations.

Environmental protection of Crown Lands:

Environmental protection of Crown Land is central to its management. There is a public expectation that such protection will constitute a major part of the new Crown Land managers' role under the CLR 2017. The Trust considers it essential that Ecologically Sustainable Development (ESD) principles should continue to underpin the use, lease or sale of land in the public interest as set out 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, 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 should apply to Crown Land Reserves and Dedications. Similarly, to prevent exploitation, the designated purposes for Crown Land should not be revoked when vested to a statutory corporation.

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. We reject the concept of 'like for like' compensation because it is open to abuse, and is cause for considerable concern in terms of biodiversity conservation.

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

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 accountable for 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 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 in order to prevent potential corrupt dealings.

There must be 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 they will be required to include it in their 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 urban development seems set to continue. Overall, the pressure will be high for Councils to convert community land to operational land for sale.
Conversion of Crown Land, its privatisation and development, may well have other consequences for the community beyond the loss of green space, natural heritage, assets such as caravan parks and recreational amenity which, once gone, cannot be replaced. We warn of the potential for a decline in quality of life and general wellbeing.

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 from its removal from public ownership. The potential for a greater loss of public lands is a major concern and requires greater community awareness of the government's intentions, particularly as there will be reduced ministerial oversight.

There is also a lack of detail in the draft Regulation in relation to changes to Council management of community land prior to development of Plans of Management. The Trust would wish to have clarification concerning the implications of this following our recent experience with Council's control, management and unsatisfactory implementation of Plans impacting on heritage and the environment within the Hunters Hill LGA.

Conclusion:

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 will be made publicly available. Failure to publish submissions implies a lack of transparency and that decisions concerning public lands are being determined without sufficient public scrutiny.

The Trust is concerned that there is insufficient awareness about the many major implications arising from both the Crown Land Management Act itself and the draft Regulation. We consider it crucial that adequate community engagement strategies are in place and request clarification of the procedures that will ensure communities are involved in decision-making concerning the future use, management and potential sale of their Crown Lands.

As stated above, the Hunters Hill Trust also considers it essential that the well-established principles of ESD continue to underpin the use, lease or sale of land in the public interest.
Thank you for providing the opportunity to express our concerns on these important matters, including your extension of the consultation period for submissions.

Yours faithfully
Alister Sharp PhD
President