



# Nature Conservation Council

The voice for nature in NSW

Draft Crown Land Management Regulation comments  
Department of Industry Lands and Forestry  
PO Box 2185  
Dangar NSW 2309  
Via email - [legislation@crowmland.nsw.gov.au](mailto:legislation@crowmland.nsw.gov.au)

September 28, 2017

## **RE: Submission to Draft Crown Land Management Regulation**

Dear Sir/Madam,

Thank you for the opportunity to provide comment on the draft Crown Land Management Act Regulation 2017 (draft regulation).

The Nature Conservation Council of NSW (NCC) is the peak environment organisation for New South Wales, representing 150 member organisations. For over 60 years we have been committed to protecting and conserving the flora and fauna, landscapes and natural resources of NSW.

The National Parks Association of NSW (NPA) is a community-based organisation with over 20,000 supporters from rural, remote and urban areas across the state. The NPA promotes nature conservation and evidence-based natural resource management. We have particular interest in the protection of the State's biodiversity and supporting ecological services, both within and outside of the formal conservation reserve system.

### **Introduction**

The principal reason that we take an active interest in the management of Crown lands is because they encompass a wide range of natural habitats from sub-tidal and intertidal areas and coastal habitats to the arid habitats of western NSW. Crown lands contain endangered ecological communities and threatened species in many areas of the state. In urban areas, Crown lands often contain significant remnant vegetation. In certain parts of the state, for example, in the Central division where clearing for agricultural activities has been extensive, Crown land in travelling stock reserves and routes (TSRs) are often the areas with significant communities of native vegetation and fauna.

Another reason that we take an active interest in Crown land management is that our members take part in a wide variety of activities on parcels of Crown land. These include bushwalking (NPA is the largest bushwalking group in the State), bird watching, bush regeneration and other conservation activities. Our members also use beaches, riverside reserves and parks that are Crown lands.

Our primary aim in relation to Crown lands is to ensure that the biodiversity and ecosystem integrity and natural landscapes of Crown Lands are conserved and appropriately managed. We also have an active interest in ensuring that existing public uses and access to Crown land are maintained and that Crown lands, in particular, Crown reserves, are managed to maintain their social, cultural and environmental values.

Our organisations have taken a strong interest in the development of the Crown Land Management Act 2016 (CLM Act) and its implementation because of the significant environmental values contained within Crown lands across the state.

We continue to advocate the importance of Crown land remaining a publicly-owned asset that is well managed for its widely recognised environmental, cultural and social values.

This submission addresses a number of issues with the draft Regulation including omissions and improvements.

## **1. Omissions in the draft Regulation**

There are a number of key omissions in the draft Regulation that need to be addressed for the CLM Act to be implemented as understood by the community.

### **1.1 Relationship of *Biodiversity Conservation Act 2016* and *Local Land Services Act 2013* (LLS Act) in the management of Crown lands**

The draft Regulation fails to clarify how Crown lands may be affected by changes to clearing laws in NSW. The following issues need to be addressed:

- i) Eligibility to apply to clear native vegetation on Crown land;
- ii) Delegation by the Minister of decisions on whether to give written consent to clearing or establishing offsets for clearing;
- iii) The prohibition of the establishment of offsets (set asides) to compensate for clearing on private land contiguous with Crown lands; and
- iv) Adequate public consultation prior to any decision to permit clearing of native vegetation on Crown lands.

The draft Regulations must outline how Crown lands may be affected by land-clearing applications under LLS Act Part 5A; as well as any application of the Biodiversity Assessment Method or Biocertification under the *Biodiversity Conservation Act 2016*, which commenced in August 2017.

### **1.2 State land criteria**

The draft Regulation fails to identify criteria for land that must remain under state control because of broader environmental, heritage and social values.

While the draft Regulation outlines Local land criteria, this is not adequate in describing land of state significance with values connecting across local government boundaries.

These state significant criteria were published in a Department of Industry - Lands (DPI Lands) fact sheet but have not appeared in the draft Regulation.<sup>1</sup>

The criteria for state significance is land within the Crown Estate that:

- currently provides, or is required for, planned core government services and infrastructure;
- is part of a state or regionally significant system or network;
- is of high environmental value at a state or regional scale and is required for addition to the conservation network, including land identified for future reservation;
- is iconic or contains an iconic asset;
- has or contains an item of state or heritage importance;
- includes beaches, coasts, estuaries and adjoining, contiguous foreshore lands;

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<sup>1</sup> DPI Lands, October 2016. Best owners for the land: local interests to be managed locally

- produces or has the identified and earmarked potential to produce significant income for the state.

We understand that the environmental and heritage assessment of Crown land included such considerations as landscape linkages providing connectivity for biodiversity movements. More detail on this issue is provided later in the submission.

### 1.3 Travelling Stock Routes and Reserves (TSRs)

The draft Regulation fails to clarify how the CLM Act will affect the future management of TSRs. The following issues need to be addressed:

- The interaction between the CLM Act and LLS Act Part 5A and Part 6;
- The general application of CLM Act provisions to TSRs as Crown reserves;
- The effect of different parts of the CLM Act on TSRs in Western Division compared to those in the Central and Eastern Divisions; and
- Identification of any changes to the management of TSRs.

### 1.4 Retention of ecologically sustainable development (ESD) principles

The objects of the CLM Act require that environmental, social, cultural heritage and economic considerations to be taken into account in decision-making about Crown land.

*The Western Lands Act includes the aim 'to ensure that land in the Western Division is used in accordance with the principles of ecologically sustainable development referred to in section 6 (2) of the Protection of the Environment Administration Act 1991'*

The environmental principles under the CLM Act and the Regulation should specifically include the above referenced ESD principles. These are entirely appropriate and consistent with the use, lease or sale of land in the public interest.

Part 5 of the draft Regulations should be amended to require that Western Lands are managed consistently with ESD principles.

Clause 40 should also contain this requirement.

### 1.5 Changes in Land form

The Regulations fail to give direction on approvals needed for structures such as levee banks, drains, roads and tracks and other works that cause a significant change in the landscape. These works can impact on drainage patterns and flood flow both locally and downstream. This can be significant where upper catchment creeks are blocked or diverted as well as in floodplain areas.

These problems have been highlighted in recent reporting on the operation and compliance of water management in the Murray-Darling.

Any approvals required for such works on Crown land should be cross referenced in the Regulations to ensure adequate legislative protection and to recognise the principles of the CLM Act.

### 1.6 Community Engagement Strategies

Throughout the process of developing the new CLM Act there was an undertaking to improve transparency through clear strategies for community engagement.

The Auditor General Report 2016<sup>2</sup> recommended that:

*'By July 2017:*

*Improve consultation with stakeholders to provide opportunities for involvement in decision-making about Crown land sales and leases, especially in cases where a change to the way the land is used is proposed.'*

The CLM Act Division 5.3 lays out the approval, content, requirements of approval and compliance with community engagement strategies, however, there is no direction on the development process of the strategies.

We recommend that Part 4 of the Regulation include a clause on a development process that includes community advice on the elements of a community engagement strategy.

#### 1.7 Crown land management principles and rules

The draft Regulation fails to give effect to the management principles as set out at section 1.4 of the CLM Act. Decision-makers and land managers must be required to refer to the principles at key decision points.

The CLM Act provides for new Crown land management rules that apply to the management of dedicated or reserved Crown lands at section 3.15. These are to be published in the Government Gazette.

The draft Regulation fails to provide further direction.

We recommend that the Regulation requires the Crown land management rules to give effect to the Crown land management principles.

#### 1.8 Guidelines for draft Plans of Management

The Regulation should require consultation on guidelines for draft Plans of Management before commencement through the Government Gazette.

#### 1.9 Crown Land Commissioners

The draft Regulation fails to provide detail on the function, appointment and procedures for the role of Crown Land Commissioners.

The position of Western Lands Commissioner and Western Lands Advisory Council must be retained through the Regulation with the repeal of the *Western Lands Act*.

#### 1.10 Open standing to enforce breaches

The draft regulation fails to provide for 'open standing' to enforce the law through civil proceedings in the land and Environment Court, this should change.

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<sup>2</sup> NSW Auditor-General's Report, Sept 2016. Sale and lease of Crown land, Department of Industry – Lands p 4

## 2. Recommended Improvements to the Regulation

### 2.1 **Clause 26** Local land criteria

We in principle object to this clause in the Regulation because it gives effect to the divestment of Crown land to Local Government thus transferring the management and ownership so that it ceases to be Crown land.

Without this Regulation there will be no ability to transfer land to councils under the CLM Act.

The Regulatory Impact Statement (RIS) refers to the Local Land Pilot developed to test the concept of devolving Crown land to councils.<sup>3</sup> We have communicated concerns to the DPI Lands about the lack of transparency with this process. There has been no report on the results of the Local Land Pilot released to the public.

The RIS states that it has been unable to quantify the benefits of transferring land to councils and compare them against the costs of the program.<sup>4</sup>

In the event of this Regulation being maintained, we recommend the following additions to the Local land criteria:

Clause 26 3) The land has been assessed to contain no significant environmental or heritage values that are:

- i) part of a state or regionally significant biodiversity corridor;
- ii) of high environmental value at a state or regional scale;
- iii) iconic or part of an iconic asset;
- iv) of high environmental value at a state or regional scale and is required for addition to the conservation network, including land identified for future reservation;
- v) beaches, coasts, estuaries and adjoining, contiguous foreshore lands, wetlands and riparian zones; or
- vi) an item of state or heritage importance.

Clause 26 4) Land vested in local councils must be protected by legal mechanisms if it contains:

- vii) endangered ecological communities;
- viii) threatened and migratory species habitat; or
- ix) wetlands and riparian zones.

### 2.2 **Clause 28** Vesting of Crown land in statutory corporations

We in principle object to this clause in the Regulation because it gives effect to the divestment of Crown land to statutory corporations thus transferring the management and ownership so that it ceases to be Crown land. This also revokes the land's dedication or reservation (CLM Act s4.14 (3) (b)).

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<sup>3</sup> CIE, August 2017. Final Report Crown Land Regulation 2017. Regulatory Impact Statement p 31

<sup>4</sup> Ibid p 32

There are currently no provisions to vest Crown land with statutory corporations.

The RIS has not been able to quantify the benefits of vesting land to statutory corporations.<sup>5</sup>

In the event of this Regulation being maintained, we recommend the following changes:

Clause 28 a) the corporation acts consistently with the purposes for which the land is dedicated, reserved or used.

### 2.3 **Clause 30** Sale or disposal of Western lands

We strongly object to the draft Regulation that allows for land in the Western Division within a 20km radius of an urban area to be sold or disposed.

The RIS highlights the concerns about the environmental impact because land in the Western Division is '*often environmentally very fragile*'<sup>6</sup>

We consider the area should be reduced to within 5km of an urban area and that very clear provisions for environmental assessment be included in the consideration of disposal of Western lands.

The CLM Act allows for the Regulation to make provision for the classification or identification of land for an urban area, an area required for urban expansion, a rural area used predominantly for residential, business, industrial or community purposes. (CLM Act s5.9 (2) (a)).

This classification should preclude environmentally sensitive areas from development. The Regulation should direct the Department in regard to management of environmental risk.

### 2.4 **Clause 31** Short-term licences

Short-term licences should not be granted if the use is inconsistent with the purpose of the dedication or reserve purpose. A short-term licence should be in the public interest and cause no material harm to the purpose for which the land is dedicated or reserved.

We recommend that the consideration of 'material harm' should include cumulative impact of past, present and likely future uses and environmental pressures.

We also recommend that Regulations prescribe conditions or limits on grazing – related to sustainability and avoidance of harm to land, soil, water, and biodiversity

### 2.5 **Clause 32** Licenses for unauthorised use or occupation of Crown lands

We object to this Regulation because it retrospectively approves illegal activities.

The RIS identifies that there are no data on the extent of illegal use of Crown land. The benefits of this Regulation cannot be quantified.<sup>7</sup>

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<sup>5</sup> Ibid p 33

<sup>6</sup> Ibid p 37

In the event of this Regulation being maintained, we recommend the following addition:

if remediation is inadequate or not occurring the Minister may rehabilitate the land and recover the costs as compensation.

#### 2.6 **Clause 37** Prescribed assessment principles for the granting of consent to remove covenants and restrictions

We strongly object to this draft Regulation and the proposal in CLM Act s 5.57 that covenants and restrictions can be removed if Crown lands are to be sold.

The purpose of the covenants and restrictions is to protect important values on Crown lands. This protection must be in perpetuity. This draft Regulation does not meet the principles of the CLM Act, particularly: s1.4 (f) that Crown land be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the State consistent with the above principles.

The principles include environmental protection, conservation of natural resources, encouragement of public use and enjoyment, both the land and its resources be sustained in perpetuity.

Without this draft Regulation the Minister cannot consent to the removal of a restriction or covenant on Crown land that was imposed under s77B of the Crown Lands Act 1989.

We object to removal of environmental and heritage covenants and restrictions.

In the event of this Regulation being maintained, we recommend that the assessment principles be altered so that:

- x) Natural and cultural values must be maintained;
- xi) Habitat connectivity must be maintained;
- xii) There must be no increase in the number or severity of threats to biodiversity;
- xiii) That equivalent measure must be in place to protect any public values.

#### 2.7 **Clause 40** Purchase applications

We recommend the following changes to this draft Regulation:

- xiv) That the title refer specifically to Western Crown lands;
- xv) That protected areas, TSRs, and other significant public or environmental values, including conservation potential, are exempted from sale;
- xvi) That perverse outcomes are prevented such as additional clearing of endangered ecological communities under the LLS Act, loss of genuine protection of offsets, loss of covenants and restrictions, loss of land management under ESD principles.

When converting grazing leases to freehold it is critical that the Regulation provide a definition of the word 'substantial' as appears in s5.9 (1) (e) & (f).

The threshold for 'substantial' should require a minimum absolute area of land within the holding to be within the eligible land classes, and that this area be at least sufficient in size to support a

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<sup>7</sup> Ibid p 38

farming enterprise on a sustainable basis without degrading the remaining portion(s) of the holding.

This is necessary because of the environmental sensitivity of land in the Western Division, and given that only about one third of leased land is mapped within the eligible land classes.

Having a clear definition of 'substantial' will remove any perception of corrupt conduct in the exercise of the necessary discretions.

Any sale of Western Division land must demonstrate consistency with ESD principles.

#### 2.8 **Clause 43** Approved activities

We support the retention of the current regulation of cultivation under 10 ha permits for fodder production.

We do not support the draft Regulation to increase this area 10-fold to 100 ha permits. Nor do we support the draft Regulation to permit 1,000 ha of pasture improvement.

This is at odds with the environmentally sensitive nature of the Western Division lands.

The wording in the draft Regulation for requirements for the approved activity of cultivation must remove the words '*or more*' so that the Regulation states that '*only one*' of the purposes can be carried out.

#### 2.9 **Clause 59** Circumstances in which cultivation consent is not required

We do not support draft Regulation cl 59 (7).

Cultivation of fodder crops should not exceed the current permitted area of 10 ha.

We do not support draft Regulation cl 59 (8)

Land cultivated for the formation of road or construction of tank drains for water diversion must be part of a consent under appropriate planning legislation. The Regulation should refer to these requirements, as stated earlier in this submission.

#### 2.10 **Clause 70** Exemption for granting of short-term licences

We object to this draft Regulation because it allows council managers to grant short-term licences over community land prior to the development of a plan of management.

The CLM Act s3.23 requires council managers to establish a plan of management within 3 years of the commencement of the Act. This draft Regulation allows the nature and use of the land to be changed prior to a plan of management.<sup>8</sup>

Without this Regulation no short-term licences could be issued until the plan of management is in place so no dealings for new purposes could occur.

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<sup>8</sup> Ibid p 71

We support that no Regulation allow this exemption.

Thank you for the opportunity to provide a submission in to this important issue. Please do not hesitate to contact Kate Smolski on [ncc@nature.org.au](mailto:ncc@nature.org.au) or (02) 9516 1488 should you require any further information.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Kate Smolski', written in a cursive style.

Kate Smolski  
CEO  
Nature Conservation Council of NSW

A handwritten signature in black ink, appearing to read 'Alix Goodwin', written in a cursive style.

Alix Goodwin  
CEO  
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