

Draft Crown Land Community Engagement Strategy Submissions
Department of Industry – Crown Land and Water
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Dear Sir/Madam

Draft Crown Land Community Engagement Strategy Submission

Thank you for the opportunity to comment on the Draft Crown Land Community Engagement Strategy (CES) and Draft Community Engagement Guidance and Resources. This is a joint submission by the Nature Conservation Council of NSW (NCC) and the National Parks Association of NSW (NPA) and focuses solely on the Community Engagement Strategy.

Background

NCC and the environment groups we represent have been winning protections for nature in NSW for more than 60 years. We have been at the centre of many of the state's iconic conservation battles, and have notched up countless wins for nature and local communities.

The 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.

Both NCC and NPA take an active interest in the management of Crown land because it encompasses a wide range of natural habitats from sub-tidal and intertidal areas and coastal habitats to the arid habitats of western NSW. Crown land contains endangered ecological communities and threatened species in many areas of the state. Crown land often contains significant remnant vegetation in both urban and rural areas. In the Central Division where clearing for agricultural activities has been extensive, Crown land in travelling stock reserves and routes (TSRs) often retains significant communities of native vegetation and fauna.

Our members also 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 land.

Our primary aim in relation to Crown land is to ensure that its natural landscapes, biodiversity and ecosystem integrity are conserved and appropriately managed. We also seek to ensure that Crown land remains in public ownership and that existing public uses and access to Crown land are maintained. It is particularly important that the social, cultural and environmental values of Crown Reserves are maintained.

Our concerns with the draft Crown Land Community Engagement Strategy

NCC and NPA have three primary concerns with the draft Crown Land Community Engagement Strategy (CES). These relate to the restrictive nature of the trigger for community consultation, the breadth of Crown land excluded from community consultation, and the nature of community engagement for proposals assessed as having a low impact. Given our concerns related to these three issues we recommend that the draft CES is revised and amended in accordance with the following recommendations:

- (1) the “current use and enjoyment” trigger for community engagement is replaced with a broader test that recognises the long-term values and significance of Crown lands including environmental, social, cultural heritage or economic values of the land
- (2) the exceptions and exemptions to community engagement be significantly reduced
- (3) the three levels of community engagement be replaced with two levels of community engagement to exclude information provision alone as a mechanism for community engagement
- (4) the Strategy and regulation require land managers to consider public submissions in decision-making.

(1) Current Use Trigger

The “current use and enjoyment” trigger fails to include the environmental values of Crown land including the protection of threatened species (of which there are over 1000 in NSW) and threatened ecological communities (of which there are 100 in NSW), corridor connection and cultural and heritage values, and should be replaced with a broader test that includes the long-term values and significance of Crown lands. NCC and NPA believe that the trigger for community engagement should be consistent with the objects of the *Crown Land Management Act 2016 (CLM Act 2016)*, which include

- (c) *“...to require environmental, social, cultural heritage and economic considerations to be taken into account in decision-making about Crown land, and*
- (d) *to provide for the consistent, efficient, fair and transparent management of Crown land for the benefit of the people of New South Wales, and ...*
- (f) *to provide for the management of Crown land having regard to the principles of Crown land management.”*

The trigger should also be consistent with the principles of land management:

- (a) *“that environmental protection principles be observed in relation to the management and administration of Crown land, and*

- (b) that the natural resources of Crown land (including water, soil, flora, fauna and scenic quality) be conserved wherever possible, and*
- (c) that public use and enjoyment of appropriate Crown land be encouraged, and*
- (d) that, where appropriate, multiple use of Crown land be encouraged, and*
- (e) that, where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained in perpetuity, and*
- (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 trigger proposed is inconsistent with the objects of the 2016 Act cited above because:

- It singles out one of the principles of land management and ignores equally important objects. Including implementation of all the principles of land management in managing Crown land that should be triggers for community engagement.
- The land management principle that “public use and enjoyment of appropriate Crown land be encouraged” only applies to a restricted set of Crown land that is considered “appropriate” for public use and enjoyment. This would exclude the majority of Crown land including that reserved for environmental conservation, cultural heritage or agricultural purposes.
- We consider that the trigger effectively excludes community engagement in relation to Crown land that is not heavily used by the community even when it is likely that the proposed dealing or action will significantly impact the environmental, social, cultural heritage or economic values of land.
- By effectively excluding public comment on Crown land that is not heavily used by people and that is not considered to be appropriate for public use and enjoyment, the trigger does not provide “consistent, efficient, fair or transparent management” of Crown land.

We are of the view that the trigger for community engagement must be broadened to be consistent with relevant objects of the *CLM Act 2016*. We suggest that community engagement should occur when a dealing or action is likely to have a significant impact on the environmental, social, cultural heritage or economic values of the land including Aboriginal culture and heritage.

(2) Exclusions, exemptions and waivers from application of the CES

While acknowledging that community engagement and consultation requirements of other legislation will apply in a number of circumstances, the exclusions, exemptions and waivers mean that members of the public will be prohibited from commenting on many Crown land decisions and these exclusions should be significantly reduced to ensure appropriate community engagement on matters affecting the future use of Crown land that may significantly impact the environment, social, cultural heritage or economic values of land. We are concerned that the current suite of exclusions, exemptions and waivers:

- (1) reduce transparency of Crown land dealings and actions
- (2) reduce the accountability of managers of Crown land

- (3) fail to address the shortcomings identified by the Auditor-General¹ with respect to giving “meaningful opportunities” for the community to give input into decision-making about Crown land dealings and actions, and
- (4) are out of step with community expectations to input into government decision-making that may or will have a significant impact on matters of public interest.

Specifically, we recommend that the public in general and local communities in particular, be provided with the opportunity to be consulted on the following Crown land matters, irrespective of whether they will also be subject of consultation under separate legislation:

- (1) A long-term lease or licence is proposed for renewal, transfer or re-grant
- (2) A short-term lease or licence is proposed for a purpose inconsistent with the dedicated or reserve purpose
- (3) New waterfront licences – these are likely to result in further alienation of the waterfront where there is no public access for historical reasons and should be subject to community consultation
- (4) Applications for an enclosure permit that includes a watercourse or to allow for grazing – these applications have the potential to negatively impact on cultural heritage (including Aboriginal cultural heritage) and ecosystems including threatened species and threatened ecological communities
- (5) Changing or revoking of a reserve purpose even though community engagement may occur elsewhere – this already applies in other areas of land use planning and approval, and concurrent consultation would address concerns of duplication
- (6) Exemptions for dealings to permit unauthorised occupation – this could encourage unlawful occupation of Crown land and be seen to legitimise occupation
- (7) Sale of Crown land to lessees – we are unable to reference the section in the Act that provides for automatic exemption
- (8) Public interest matters and applications and dealings to purchase Crown land under leasehold irrespective of where the Crown land is located within the state and including Travelling Stock Reserves. With respect to the latter, it is noted that no justification is provided for the exclusion of TSR from community engagement and that there appears to be no provision for mandatory community consultation under the *Local Land Services Act* as it applies to TSRs managed under this Act.

We also oppose the waiving of community engagement requirements “to enable the undertaking of approved NSW Government priorities that require Crown land” (this is vague and unnecessarily broad giving government unreasonable scope to exclude the public from consultation on the future use of Crown land) and “where the Minister is satisfied that a Crown Land Manager (CLM) does not have the capacity to undertake the engagement” (government should be required to support CLM to undertake consultation where they lack either the financial or other capacity).

¹ Auditor-General’s Report “Sale and Lease of Crown Land” (2017)

(3) Tiers of community engagement

The CES provides for different types of community engagement based on whether a Crown land proposal is deemed to have low, medium or high impact. It appears as though proposals that will only have a low impact will simply require a release of information to the public but no requirement for the calling for submissions or participatory engagement. The provision of information does not constitute consultation. The minimum level of community engagement required under the CES should be the publication of information and the calling for submissions, with a requirement that these be considered by CLM. This should not be used to diminish the range of Crown land matters on which community engagement is required.

Thank you for the opportunity to provide a submission on these important documents. Please do not hesitate to contact NCC on ncc@nature.org.au or (02) 9516 1488 or NPA on npansw@npansw.org.au or (02) 9299 0000 should you require any further information.

Yours sincerely



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