



NSW Crown Lands  
PO Box 2185  
Dangar NSW 2309  
[cl.enquiries@crowland.nsw.gov.au](mailto:cl.enquiries@crowland.nsw.gov.au)

26 March 2024

**Ref No:** F2005/00756

Dear NSW Crown Lands team,

## **RE: Statutory review of the Crown Land Management Act 2016**

Thank you for the opportunity to comment on the statutory review of Crown Land Management Act 2016 (CLM Act). Council has reviewed the discussion paper and provides the following comments addressing the relevant consultation questions contained in the review brief.

The majority of the comments provided in this submission are based on Council's understanding and experience as a Crown Land Manager and on concerns raised by the community and other non-council Crown Land Managers. Given this perspective, it is suggested that a greater focus of the CLM Act review should be on enforcement and compliance of the existing provisions of the Act and the introduction of mandatory management provisions and mechanisms to ensure appropriate actions are being undertaken where and when required.

### **Q1. Objectives of the CLM Act**

The review seeks feedback on opportunities to modernise the objects of the CLM Act. It is noted that the current object (c) of the Act explicitly recognises the need to integrate environmental, social, cultural heritage and economic considerations in decision-making. However, focusing on all four of these dimensions simultaneously can be complex and may lead to trade-offs. To modernise this object of the Act, the role of sustainability should be brought to the fore in the management of Crown land.

This focus is also important when considering climate change as the major challenge in land management as it relates to environmental stewardship, social equity and economic viability over a long-term horizon. Addressing these challenges effectively requires a holistic approach that has sustainability as the basis for informing and guiding environmental, social, cultural heritage and economic considerations.

Recommendation: that object (c) be reworded to focus on sustainability as a leading consideration that steers and guides the existing environmental, social, cultural heritage and economic dimensions of the object to secure reliable and resilient land management.

## Q6. Development Applications

With respect to seeking Minister's consent for development applications, Council currently finds the requirements of Section 2.23 of the CLM Act for Minister's consent for development application to be particularly onerous.

Section 2.23 of the CLM Act permits Crown Land Managers or the holder of a lease or licence over land managed by Crown Land Managers to make a development application for repair and maintenance and restoration so long as it does not involve:

*2(i) alter the footprint of the building by adding or removing more than one square metre.*

*2 (iii) involve excavation of the land*

Most works undertaken by Council that are minor in nature often require urgent action for emergency repairs, improved safety, and community accessibility. These works are often requested after an incident or community request. These works may also be as simple as plans to improve access to a building such as installing a ramp for disabled access or more involved plans for carrying out excavations for improved drainage works.

Accordingly, in managing crown land as reserve manager, Council has found that the current caveats contained in Section 2.23, sub-section (2) (a) (i) (iii), as listed above, particularly restrictive especially when repair, maintenance and restoration works involve some minor additions to building footprint and excavation of land.

In comparison, under the Exempt and Complying Development Codes State Environmental Planning Policy SEPP 2008, excavations (cut or fill) less than or equal to 600mm below or above ground level are allowed as exempt development.

Recommendation: that excavation should be allowed for repair, maintenance, restoration or renovation works in any future amendment to the CLM Act consistent with the definition of excavation as exempt development under the Code SEPP.

Similarly, the majority of works for public authorities on public land would otherwise be exempt development under the Transport and Infrastructure SEPP 2021. These exempt development provisions should be incorporated into any future amendments to CLM Act arising from this review.

In late 2023, Council provided a submission on recently exhibited [Proposed Exempt And Complying Development Framework For Cemeteries](#), exhibited by Department of Planning and Environment (now DPHI). This proposed exempt and complying development framework for cemeteries is expected to create tailored, fast-track approval pathways for minor ancillary works within existing cemeteries. It would have, among other things, provisions to facilitate general maintenance, the upgrade of amenities and the replacement of damaged or deteriorated fabric.

In particular, the proposed cemetery framework provides clear definitions and standards on what constitutes minor ancillary works via exempt development. These include minor building alterations and additions though to earthworks and landscaping. Provisions such as these would make it easier for crown land managers to carry out minor works to support ongoing maintenance and operations in accordance with current development standards and community accessibility needs.

Recommendation: that the relevant provisions in the proposed exempt and complying development framework for cemeteries; Codes SEPP and Transport and Infrastructure SEPP be assessed and incorporated in the current review of section 2.23 of the CLM Act, especially where this applies to Councils as crown land managers.

### **Q7. Community Notification of changes/activities on Crown land.**

Council notes similarities between community engagement requirements under the Crown Land Management Act and requirements contained in Council's Community Engagement Strategy. Council accepts that notifications in print media such as newspapers are largely now superseded following the suspension of print editions of most local community newspapers three years ago and the rise of social media platforms and other more direct engagement strategies. Crown Lands, as the department responsible for the management of land held by the NSW Government on behalf of the public, should select appropriate ways to ensure that decisions about Crown land are made in an open and transparent way and that communities affected by Crown Land proposals are adequately contacted.

Recommendation: that Crown Lands utilise methods such as social media, Precincts Committees, exhibition at local Libraries, onsite signage and fliers to achieve a multi-pronged community notification approach.

In addition, there may also be opportunities for Council to assist Crown lands to help inform the community about crown land events and changes via Council's numerous communication methods.

### **Q12. Plans of Management**

While Council is supportive of Plan of Managements (PoMs) for managing complex sites, the timeframes and resources involved in developing a PoM are significantly onerous for Councils. In most cases the development of a PoM requires external technical input and expertise as Council does not have adequate in-house resources and expertise to undertake the process. Additionally, the turnaround time for Department's review and Ministers consent contributes to the extended PoM time frame especially where council can expect to consult with the Department at least three times over the course of a PoM's preparation.

The community engagement requirements of the CLM Act as effected by Section 5.5 of the CLM Act, and specified within the [Crown Lands Community Engagement Strategy](#), currently stipulate a 42-day exhibition period. This 42 day exhibition is well in excess of Council's standard exhibition requirements for plans and strategies which are 28 days as outlined in [Council's Community Engagement Strategy](#) (CES). The Crown Land's community engagement strategy substantially extends Council's standard exhibition period which adds to the lengthy timeframes of the PoM approval process. This is especially onerous for Council when exhibitions relate to minor amendments to PoMs that have minimal impact on the local community. Minor amendments to PoMs are becoming common activities for Council.

Council notes that in the Crown Lands Community Engagement Strategy that the 42 days also applies to State-level strategic plans that have more significant high level, state-wide impacts than, for example, a local Council PoM for a park. In this context, it would be reasonable to reduce the proposed 42 day exhibition period proposed under the current review of the CLM Act for smaller local impact projects such as park PoMs.

Recommendation: that the exhibition period for plans and strategies for smaller local impact projects be reduced to 28 days.

### **Q13. Management of leased Crown Land**

Council notes that under Section 3.33 of the existing CLM Act, the Minister may direct an applicable Crown land manager to prepare a draft plan of management for dedicated or reserved Crown land under the manager's care and control. Alternatively, PoMs can be prepared by an applicable Crown land manager on the manager's own initiative but with the consent of the

Minister. Notwithstanding these provisions of Section 3.33, it should be noted that 25 percent (161.85ha) of the Randwick LGA is currently under non-Council crown land management yet Council is not aware of any PoM having been prepared for these non-Council sites (despite receiving indications from crown land managers of these sites that PoMs are being developed).

Council regularly receives contact from residents about activities occurring on non-Council Crown land but because Council does not have any jurisdiction over these lands Council can only pass on this information to the Crown lands office. Similarly, leased non-Council Crown Land in the Randwick LGA often contains sensitive environments, many with listed vegetation species or communities, heritage conservation areas and sensitive coastal areas.

Recommendation: that lessees of private/non-Council Crown land be required under the CLM Act to prepare PoMs through the services of appropriately qualified and experienced consultants. These PoMs should be prepared to the satisfaction of the Crown and consideration should be given to introducing a streamlined template to assist this process. Councils in which these sites are located should be provided with a copy of the PoM once approved.

The triggers for non-council crown land managers to prepare PoMs could include one or more of the following sensitive land criteria:

- Location in the coastal zone as defined under the section 5 of the Coastal Management Act
- Existence of threatened species of vegetation communities under the NSW Biodiversity Conservation Act
- Existence of state or local heritage items or conservation areas under Council Local environment Plans of the NSW Heritage act
- Located in areas containing Aboriginal objects or places under NPWS Act
- Located in sites containing identified contaminated land.

The preparation and provision of PoMs by private lessees and managers of non-Council Crown lands would support these Crown land lessees and managers to meet legislative requirements and respond strategically, consistently, and effectively to complex and site-specific conditions and requirements. Such plans of management could also outline and provide considerations and provisions for public access.

Council notes that the [Coastal Crown Land \(CCL\) Guidelines](#) were released in October last year which were developed to assist coastal Crown Land managers in the preparation of plans of management under the Crown Land Management Act. While council is supportive of the guidelines, Council is unsure as to how non-Council Crown Land Managers will implement these guidelines without a site-specific plan of management in place.

The need for PoMs on non-Council Crown lands is especially important where issues may arise on the interface between Council managed and non-Council managed Crown land. An example of a recent interface issue arose in Randwick LGA where landfill material from a private Crown land leased area was deposited on Council land during storm events, therefore becoming the responsibility of Council to clean up. In this example, an updated CLM Act can include provisions on how to manage the interface areas between Crown and Council land. Additionally, a PoM for non-Council Crown land can assist in regulating non-ancillary activities that might be proposed that would potentially impact on Council managed Crown land.

## **Q21. Council land Managers seeking written advice from native title Manager**

Under Section 8.6 (1) Council must engage or employ Native Title Managers (NT Managers) and obtain the written advice from the appointed NT Managers that Council complies with NT legislation when undertaking certain listed activities (see section 8.7). Council is also required to



pay compensation or indemnify the State against compensation liabilities for acts undertaken by Council that affect native title (see Section 8, 12 & 13).

Randwick Council has good relations with the La Perouse Local Aboriginal Land Council (LALC) including promoting Aboriginal cultural heritage, respect for elders and community members, commitment to positive outcomes for Traditional Owners, advancing self-determination, and providing professional and accountable service. This close relationship with the LALC has led to more inclusive, respectful, and successful outcomes, particularly, when undertaking native title managers' reporting on activities and tenures that impact upon native title rights on Crown Land under the CLM Act.

Council also diligently notifies the NTSCorp Limited (that is, the Native Title Service Provider for Aboriginal Traditional Owners in New South Wales), of all "Future Acts" activities that might affect native title on Crown Land to ensure that all statutory procedures are met. In view of these considerations, it is pertinent that Council retains its accredited Native Title Managers given Council's local knowledge in reporting on activities that might affect native title rights on Crown Land in the Randwick local government area.

### **Q23. Aboriginal heritage values recognised in the management of Crown Land**

Recognition of Aboriginal Place and requirements for Aboriginal Heritage Impact Permits (AHIPs) for any works to a site that may desecrate an Aboriginal place or object are governed under the National Parks and Wildlife Service Act (NPWS Act).

Under this legislation section 86(4) prohibits a person from harming or desecrating an Aboriginal Place. Desecrate can be defined as to deface, damage, pollute, destroy or to otherwise mistreat in a manner to cause outrage. While these prohibitions do not cover maintenance works, capital works improvements may fall under this category and require an AHIP. If a permit has not been sought and works are determined to be intentional, penalties can extend to two years jail for an individual and executive liability for a corporation.

Recommendation: The review should consider how non-Council Crown land managers are made aware of the existence of Aboriginal Places on the lands under their care and control, and what processes they have in place to address the requirements arising from the Aboriginal Place listing and AHIPs.

### **Q24. Compliance and Enforcement**

Council regularly receives submissions and questions from residents regarding activities on leased crown land. This includes concerns relating to protected vegetation, excavation and land works. Council understands that authorised officers under the CLM Act undertake enforcement and compliance on Crown lands. However, the recommendation in the discussion paper for police to be involved in compliance raises the following considerations:

- Police officers may lack specialised knowledge in environmental matters or understanding of the environmental issues at hand. Identifying illegal activities related to vegetation or landfill requires expertise beyond general law enforcement training.
- Environmental regulations can be nuanced and intricate. Police officers may struggle to interpret and enforce environmental laws related to vegetation, land use, and waste management.
- Whether police officers have the requisite training and resources to apply a more collaborative, educational and community engagement approach to address environmental violations beyond merely law enforcement.

## **Q26. CLM Act interactions with other legislation.**

Managing a Crown land site requires a good understanding of not only the CLM Act but also a wide range of applicable related legislation. These include, most notably, the Heritage Act covering heritage significance and listings; National Parks and Wildlife Act covering Aboriginal items and places; the Coastal management Act covering coastal management zones; and the NSW Biodiversity Conservation Act and Commonwealth Environmental Protection and Biodiversity Conservation Act covering listed threatened vegetation species and communities. The review also considers how the CLM Act interacts with other legislation and whether there are areas for reform that could improve the management of Crown lands.

Council officers have a good knowledge of these regulatory instruments given the public nature of their role at the local level and community engagement functions. Council officers are also highly familiar with the plan of management process and how this process incorporates land use restrictions that arise from other legislation as they apply to Crown land sites.

In this context, Crown Lands should explore the possibility of assisting non-council land managers to increase their awareness and understanding of the provisions of all of these other legal instruments in managing non-Council Crown land. In particular, non-council land managers would be able to consider how the requirements of the CLM Act and other legislation interact to better ensure that the purposes for which land is dedicated or reserved are considered as part of a plan of management.

Thank you for the opportunity to comment on the review of the Crown Land Management Act.

Should you require any further information regarding this submission please contact David Ongkili Coordinator Strategic Planning on 9093 0793 or [david.ongkili@randwick.nsw.gov.au](mailto:david.ongkili@randwick.nsw.gov.au)

Yours sincerely,

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**Kerry Kyriacou**

Director City Planning