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using the law to protect the natural and built environment

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18 May 2009

Crown Land Act Review
Department of Primary Industries and Water
GPO Box 44
Hobart TAS 7001

By email: CLARP.enquiries@dpiw.tas.gov.au

Dear Sir / Madam

Crown Lands Act Review

Thank you for the opportunity to comment on the issues paper regarding the review of the *Crown Lands Act 1976*.

The Environmental Defenders Office (***EDO***) is a non-profit, community based legal service specialising in environmental and planning law. Our specific comments relate primarily to the integration of the management of Crown land with the Resource Management and Planning System (***RMPS***).

Should a public benefits test be included in the new legislation? Is the current public benefits test appropriate? If not, how could it be improved?

Public benefit test

The EDO supports the decision to dispose of, or grant a lease or licence over, Crown land being subject to an overriding public benefit test. Such a test is best explicitly outlined in the legislation (or regulations) to ensure consistency and transparency.

The public benefits test currently applied under DPIW policy is a useful starting point. We propose that other factors to be considered include:

- Objectives of the Act (see below);
- Present and future need for public land in the area;
- Current public benefits enjoyed in relation to the land;
- Track record of the proposed purchasers, lessee, licensee;
- Any other factor that the Minister considers relevant.

Owner consent

The issues paper notes that the requirements for owner consent under s.52 of the *Land Use Planning and Approvals Act 1993* (***LUPAA***) are more stringent for

Crown land than for privately owned land. We believe that this is appropriate. Given the public purpose served by Crown land, it is critical that the Minister (through Crown Land Services) be required to make an active decision to consent to a development application.

If all that is required is notification of an intent to apply for a development permit, there is a risk that Crown Land Services will miss the notification and therefore miss an opportunity to indicate at the outset that the Crown considers the development to be inappropriate.

Should leases and licences be assessed on the basis of RMPS (or other) objectives?

The EDO believes that any decision regarding disposal of, or granting a lease or licence over, Crown land should be subject to the RMPS objectives and the more specific objectives of the Act (see below).

There is no basis for the RMPS objectives applying only to public reserved Crown land. Regardless of its reserve status, Crown land is a public asset set aside to fulfil government purposes. Dealings with Crown land should therefore be assessed against the criteria of fair, orderly and sustainable development.

Should there be an opportunity for public input into the lease or license of Crown land?

Local knowledge and experience is particularly important in relation to an assessment of the public benefit of Crown land. For this reason, we strongly support the introduction of a provision similar to s.178 of the *Local Government Act 1993*, requiring public notification and involvement in decisions regarding the disposal or leasing of Crown land. The provision should also allow for interested parties to appeal against decisions dealing with Crown land.

Unlike s.178A of the *Local Government Act 1993*, we do not believe that the grounds of appeal should be restricted to public access issues. Decisions in relation to Crown land should be open to challenge on the basis that the decision does not satisfy the public benefit test.

There may be situations where public input is unnecessary given the minimal impacts of a proposed dealing. The Act could include some specific exemptions from the public notification requirements, such as for short term licences or developments with minimal disturbance. If a list of exemptions is contemplated, the Act must require the Minister to be satisfied that an exemption applies before making a decision without public notification.

A more strategic approach to dealing with Crown land is also warranted. A strategic review of public assets, similar to the CLAC review process, could identify Crown land that is available for lease or licence and invite tenders for the most appropriate use of the land. Such an approach would be preferable to the ad hoc "first come, first served" approach in terms of achieving orderly and sustainable use of public land.

Should the Act specify lease or licence terms?

We support standard conditions which must be included in lease and licence documents being set out in the legislation. We would also support these conditions including a duty of care requirement such as that provided in s.199 of the *Lands Act 1994* (Qld)

199 Duty of care condition

(1) All leases, licences and permits are subject to the condition that the lessee, licensee or permittee has the responsibility for a duty of care for the land.

(2) If a lease is issued for agricultural, grazing or pastoral purposes, the lessee's duty of care includes that the lessee must take all reasonable steps to do the following in relation to the lease land—

(a) avoid causing or contributing to land salinity that—

(i) reduces its productivity; or

(ii) damages any other land;

(b) conserve soil;

(c) conserve water resources;

(d) protect riparian vegetation;

(e) maintain pastures dominated by perennial and productive species;

(f) maintain native grassland free of encroachment from woody vegetation;

(g) manage any declared pest;

(h) conserve biodiversity.

How could applications for developments on land governed by more than one Act be more efficiently dealt with?

The assessment of Level 2 activities under the *Environmental Management and Pollution Control Act 1994* is a useful example of the integrated assessment of projects governed by more than one piece of legislation.

Development applications over Crown land could be made under LUPAA and referred to Crown Land Services in the same way that applications for Level 2 activities are referred to the EPA. Crown Land Services would then be required to assess the proposal against its public benefit test and make a recommendation to the relevant planning authority. If CLS refuse to endorse the development, Council cannot issue a permit for the proposal. If CLS believe that the development meets the public benefit test, they can recommend permit conditions. The ultimate decision regarding approval, however, lies with the planning authority (assessing the proposal against the relevant planning scheme).

The ultimate decision in relation to the permit can then be appealed to the Resource Management and Planning Appeal Tribunal.

Is there potential to form land management partnerships with community groups? If so, how could such partnerships work?

We support exploring the options for forming partnerships between government agencies, councils, non-government organisations and community groups to manage Crown land. The provisions regarding formation of a Conservation Management Trust for land reserved under ss.31-34 of the *National Parks and Reserves Management Act* are a good example of how such partnerships could be implemented.

Could overarching principles replace more detailed CLA Schedule 4 objectives?

As discussed, we support the adoption of the RMPS objectives as a guide for all dealings with Crown land. However, as with other Acts within the suite of RMPS legislation (e.g. LUPAA, EMPCA), those objectives could be supplemented with specific Crown land management objectives.

The objectives set out in section 4 of the *Lands Act 1994* (Qld), and those outlined on page 31 of the Issues Paper, are good examples of legislation-specific objectives to provide overriding guidance for Crown land management decisions.

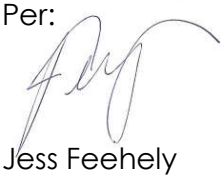
Penalty and enforcement provisions

We support strengthening the penalties imposed under the Crown Lands Act to ensure that these penalties act as a deterrent to offending behaviour. Daily penalties for ongoing offences should also be introduced.

Conviction for an offence under the Act should be a factor considered in assessing whether to grant a lease or licence to an applicant.

The EDO appreciates the opportunity to make these comments. Please do not hesitate to contact us if you wish to discuss anything raised in this submission.

Kind regards,
Environmental Defenders Office (Tas) Inc
Per:



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