

RE-CREATION OF THE PLANNING SYSTEM IN NSW

Parks and Leisure Australia

NSW State Conference

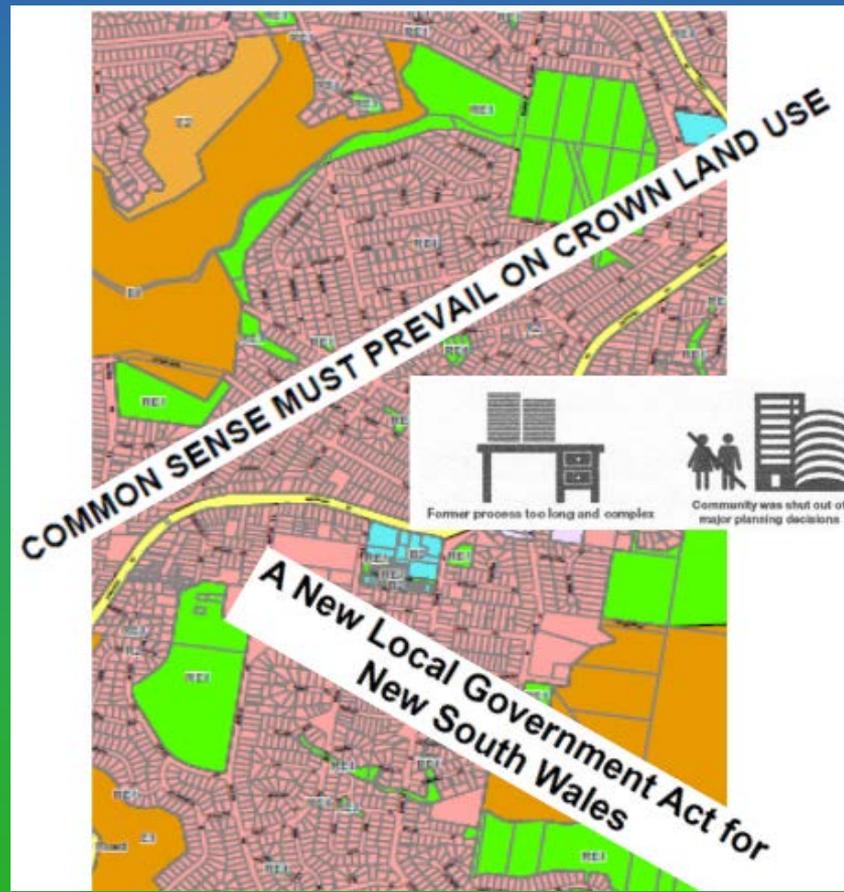
Cronulla

13-14 March 2014

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INTRODUCTION

The NSW planning and public land management system is undergoing a once-in-a-generation shakeup. Planning for, and provision and management of, open space and recreation opportunities will change as the result of new legislation in various stages of being passed through the NSW Parliament.

The purpose of this paper is to present an update on proposed changes to the *Environmental Planning and Assessment Act 1979*, *Local Government 1993* and the *Crown Lands Act 1989* as they affect management of public land for recreation.

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT



New South Wales

Planning Bill 2013

The Planning Bill 2013 proposes a hierarchy of plans:

NSW Planning Policies



Regional Growth Plans



Sub-regional Delivery Plans



Local Plans

EPA Act – zoning and development

- ❑ Permissible uses and developments in RE1 Public Recreation and E2 Environmental Conservation zones have generally been 'bedded down' in Local Environmental Plans which have been gazetted for most NSW Councils.
- ❑ Developments will be assessed as either exempt, complying, code, merit, or prohibited

EPA Act – developer contributions

- ❑ **Developer contributions for infrastructure are proposed to continue (Part 7 of Planning Bill 2013).**
- ❑ **Open space may be considered as either local or regional infrastructure.**
- ❑ **Infrastructure contributions may be either direct (based on nexus for local open space) or indirect (percentage of capital investment, or area of proposed development for local and regional open space).**
- ❑ **Local infrastructure plans will identify local and regional infrastructure to be funded by local and regional infrastructure contributions.**
- ❑ **Growth infrastructure plans will identify the regional open space to be funded by regional infrastructure contributions. These regional infrastructure contributions for regional open space will be paid into a Planning Growth Fund for the region.**

EPA Act – community engagement

- ❑ Planning and Infrastructure agency states that local communities will have a direct say in where houses, offices, shops and infrastructure, such as roads and parks are located and what areas should be protected
- ❑ A Community Participation Charter will be part of a planning process to set rules and plans for upfront planning of individual areas. The community appears not to get much of a say on individual developments
- ❑ Communities must be consulted on state policies, and regional and subregional plans
- ❑ Community Participation Guidelines are being prepared by Planning and Infrastructure to assist local Councils to prepare Community Participation Plans which will set out how and when the community can be involved in decision making

EPA Act – stakeholder engagement

- ❑ Training programs for local government and industry will be held ahead of the new legislation
- ❑ A Planning Advisory Service will help Council and the community to understand and implement the new planning system

LOCAL GOVERNMENT ACT



LOCAL GOVERNMENT ACTS TASKFORCE

Report to the Minister for Local Government
the Hon Don Page MP

A New Local Government Act for New South Wales and Review of the City of Sydney Act 1988

16 October 2013

LOCAL GOVERNMENT ACT

- ❑ The Minister for Local Government is considering the recommendations of the final report of the Local Government Acts Taskforce for a new Local Government Act for NSW, which was released in mid-January 2014.

Key recommendations:

- ❑ Plans of Management which are currently prepared for all community land may be replaced by an asset management planning and delivery program framework.
- ❑ Proposed uses of Council-owned public land may be determined either by Council resolution, through the asset management planning and delivery program, zoning, and/or by a public hearing.

LOCAL GOVERNMENT ACT

The Taskforce's recommendations for public land are:

3.3.14 Public Land

The Taskforce recommends

- (1) councils be required to strategically manage council-owned public land as assets through the IPR framework
- (2) balancing reasonable protections for public land use and disposal by retaining the classification regime of public land as either community or operational land and require a council resolution at the time of acquiring or purchasing land to specify the classification, category and proposed use or uses
- (3) a proposed change in the use or disposal of community land be addressed through the council's Asset Management Planning and Delivery Program
- (4) a public hearing be held by an independent person where it is proposed to change the existing dominant use or to dispose of community land, with the results of the public hearing to be reported to and considered by the council before a decision is made
- (5) any use of a public hearing or other consultation process under the Act be specified in the council's Community Engagement Strategy

LOCAL GOVERNMENT ACT

(6) recognising the LEP zoning processes and restrictions applying to council owned public land

(7) simplifying and reducing the categories and sub-categories of use to which community land may be applied through the Asset Management Planning process so as to identify and accommodate other ancillary or compatible uses appropriate to the current and future needs of the community

(8) ceasing the need for separate plans of management for community land to be prepared and maintained, and in lieu, utilise the Asset Management Planning and Delivery Program of the IPR process

(9) ceasing the need for a separate report to be obtained from the Department of Planning and the need for ministerial approval where council proposes to grant a lease, licence or other estate over community land in excess of the current 5 years, where an objection has been received by the council

(10) proposed leases and licences be addressed as part of the council's Asset Management Plan and adopted Community Engagement Strategy with the 30 year maximum term to remain unchanged.

LOCAL GOVERNMENT ACT

Next steps:

- ❑ Submissions on the Local Government Acts Taskforce's final report '*A New Local Government Act for New South Wales and Review of the City of Sydney Act 1988*' close on Friday 4 April 2014. For more details visit www.dlg.nsw.gov.au
- ❑ Division of Local Government advise the next steps are that the government will consider submissions on the Taskforce's report received by 4 April, and decide whether and if so how to change the Local Government Act. Any changes to be timed taking into account the next state government election in March 2015 and local government elections in September 2016

CROWN LANDS ACT – Crown land management review

- ❑ Crown Lands Act is being reviewed to address the NSW government's view that the current Crown lands legislative framework imposes significant constraints on the management of Crown land which make it difficult for the government to deliver the outcomes sought for the community.
- ❑ The Steering Committee's report is with the government which is considering its response, with no timetable for release of the report.

CROWN LANDS ACT – secondary uses of Crown land

- ❑ For many years, Crown reserves have been used for multiple use(s) which are secondary to the primary purpose of the Crown reserve, e.g. a Crown reserve for Public Recreation may be occupied by a surf club, café/kiosk, men's shed, pre-school etc.
- ❑ In November 2012 *Minister Administering the Crown Lands Act 1989 v NSW Aboriginal Land Council* ("the Goomallee claim") found that a grazing licence granted over a parcel of land reserved for the purpose of public recreation was unlawful, because grazing was not for the same purpose as, or incidental to, public recreation. As a result many secondary use tenures would become invalid.

CROWN LANDS ACT – secondary uses of Crown land



Barry O'Farrell MP
Premier of NSW
Minister for Western Sydney

MEDIA RELEASE

Thursday 17 October 2013

COMMON SENSE MUST PREVAIL ON CROWN LAND USE

- ❑ **The Crown Lands Amendment (Multiple Land Use) Bill 2013 amended the *Crown Lands Act 1989* (new Section 34AA) to allow secondary interests by lease, licence, permit etc. in addition to the reserved public purpose of Crown reserves if they are in the public interest and would not harm the reserve's primary purpose.**
- ❑ **"Harm" of secondary interests to Crown reserves is measured by several considerations, including % of the reserve affected; frequency and duration of activity; current condition of reserve; and the geographical, environmental and social context of the reserve.**

CROWN LANDS ACT – secondary uses of Crown land

- ❑ Crown land which was reserved for a public purpose of Public Recreation can now legitimately be used for secondary uses which may or may not be for a public purpose, or be ancillary to the reserved purpose. The secondary interest may be incompatible with the reserved purpose, as long as it doesn't harm the reserved purpose. This change opens up the possibility of a range of acceptable future uses of Crown reserves for public recreation such as for grazing of animals (Section 34AA(4)).
- ❑ Proposed secondary uses may be challenged by giving notice to the Minister for Primary Industries.

CONCLUSION

- ❑ Some proposed legislation is not clear yet, but will have implications for our work
- ❑ Suggest when changes to the Local Government Act, Planning Act and Crown Lands Act come into force that seminar/training sessions for PLA members are held.