

Submission

No 071

**CONSULTATION ON THE MODERN
MANAGEMENT OF COMMONS**

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It saddens me to have to yet again find time to re-iterate my disappointment and anger at the Department of Lands continued attempts to appropriate 1100 hectares of land known as the St Albans Common from the Commoners (the Macdonald Valley community).

For a small scale farmer, such as myself, time is precious. I have spent three days nursing an injured cow around the clock, all of today attending a local fire caused by lightning strikes in yesterday's storm and tomorrow I will spend some of my time helping the local Bushcare Group regenerate the banks of the Macdonald River at the local park which is very popular with families and tourists and is situated fourteen kilometres from my property. As I am a Commoner I also spend time, along with other Commoners, in weed management on the Common and work-bees organised to attend to maintenance and repairs of fences, cattle yards and other works required to ensure the health and safety of stock and handlers. This I do in addition to the farm work and domestic work. So please forgive me if my frustration and anger oozes as I write to oppose the proposed revocation or repealing of the Commons Management Act 1989.

I have read the "Comprehensive Review of NSW Crown Land Management - Recognising and protecting the values of commons" fact sheet/proposal and found it lacked detail and any real recognition and understanding of the key values of working Commons, such as the St Albans Common, let alone demonstrate how the so called "proposal" would "protect" those values;

- What values and whose interests are being protected by the forced acquisition by the State to take land that is in Fee Simple Title and convert it to Crown Land?
- What values and whose interests are being protected by abolishing the Trust and replacing it with Land Managers?
- What values and whose interests are being protected by wiping out Commoners, Commoners' roll and their right to elect one of their own as Trustees to manage, on behalf of the Commoners, the land entrusted to them as long ago as 1824 for the same purpose it continues to be used today?

The "proposal" published by Department of Industry – Lands fails to demonstrate how it will protect key values of Commons. It in fact fails to understand, or at least articulate the fundamental values or principles pertinent to Commons in law or in the historical context. I therefore re-iterate my opposition to any proposal that would result in the repeal of the Commons Management Act and the designation of the St Albans Common as Crown Land. The 'rich history of Commons and Commoners' will definitely be extinguished if the St Albans Common, and other working Commons, were to be designated Crown land as 2 expressed in the "proposal". No notation by the Minister of the day on a certificate of title will substitute the **Commoners' rights to control and manage land** (through their elected Trustees) – land that was granted to the Commoners to manage in trust, in perpetuity for purposes specified.

Equally unacceptable is the proposed transfer of the function of Trustees **to Land Manager appointed by the Minister** of the day. After the scathing report into entrenched Crown land mismanagement in NSW from the NSW Auditor General released one month before the infamous Crown Land Management Bill 2016 was debated by the Legislative Council, it is somewhat surprising to find that the "proposal" to replace the election of Trustees by Commoners with Ministerial appointments of Land Managers persists. Far from improving management and making it more transparent, this leaves much room for corruption and undue influence. It is a proposal that is counter to the recommendations of the NSW Auditor General who found in her independent investigation significant evidence to suggest that governance and decision making processes by the Department of Crown Lands is inadequate and that negotiations have been alarmingly risky and not transparent. This is the same Department that would be briefing the Minister. How could this be an improvement on a democratic model that elects local people with local knowledge and that know both the people and the land better than any public servant that is worked off their feet?

Environmental benefits of retaining St Albans Common in community control (by the Commoners).

The St Albans community, under the stewardship of elected Trustees, has successfully managed an environmentally important area for more than 160 years. The 1100 Ha, that is St Albans Common, comprises mostly of native bushland, with grazing pastures along the narrow valley floor. The area provides a critical buffer to the Greater Blue Mountains World Heritage Area. It is one of the most pristine bushlands around Sydney. This is no accident - the St Albans community and individual landholders have an excellent record, over many years, in protecting the rich biodiversity of the Valley from invasive plant and animal species. Their restoration work in this area has been acknowledged and lauded by a number of government agencies such as Department of Parks & Wildlife; Greater Sydney Local Land Services; Hawkesbury City Council (who awarded the local community association with the first Environmental Australia Day Award) and others.

Many rare plants and animal species are found in the Macdonald Valley and the neighbouring Greater Blue Mountains World Heritage Area. Protected species include: Gang-gang and Glossy Black Cockatoo, Brush-tailed Rock Wallaby, New Holland Mouse, Koala, Turquoise Parrot, Adams Emerald Dragon Fly, Yellow-bellied Glider, Spotted-tailed Quoll, Broad-headed Snake, Lace Monitor, Green and Golden Bell Frog and the Cumberland Land Snail are just some of the threatened species.

The broader public does derive benefit from the St Albans Common as is

The St Albans Common includes a significant wetland which provides a significant habitat for bird and marine life. The wetland covers over 30 ha and was listed as Open Herb Swamp type in the study of Significant Wetlands of the Hawkesbury-Nepean River Valley carried out in the 1990s by ecologists P& J Smith. Hence it is now listed as in SREP 20. Furthermore, the wetland was listed as an Endangered Ecological Community under in Part 3 of Schedule 1 of 3 the Biodiversity Act. Listing of endangered ecological communities is provided for by Part 2 of this Act.

In addition to this the **St Albans wetland**, like other wetlands, **is a significant source of blue carbon which benefits not only the community of St Albans but the entire Sydney metropolis** which is continuing to spread and urban development intensify. Blue carbon is the carbon stored and sequestered in coastal ecosystems such as mangrove forests, seagrass meadows or intertidal saltmarshes. These valuable ecosystems hold vast carbon reservoirs; they sequester atmospheric CO₂ through primary production, and then deposit it in their sediments. The rates of carbon sequestration and storage are comparable to (and often higher than) the sequestration rates in carbon-rich terrestrial ecosystems such as tropical rainforests or peatlands.

Cultural values

St Albans Common Trust has found a balance of managing grazing, passive recreation (for the general public in a controlled manner) and environmental impacts on a fragile ecosystem. Yes these can improve. Yes as a community we could look at opening up the Common to more low impact uses. In fact there have been some calls for this in recent years. But this can be achieved with out taking away ownership and control from the local community. The St Albans community is in the best position to manage the St Albans Common. It has detailed knowledge of the land and the people; it can and does respond to constantly changing conditions; it has demonstrated commitment and aptitude for more than 160 years; the community has a broad skill set that enables it to adapt to new challenges and the community is tightly knit and supportive. Most importantly, St Albans Common is considered a very special place that has a living history that we can all be part of and contribute to keeping it alive.

The 'proposal' suggests that the Department has failed to appreciate the community sentiment expressed in previous "consultations" or in the sentiments that led to the Save the St Albans Common campaign waged in November 2016.

The St Albans community deeply identify with the values imbued in of the origins of the Commons. It has placed much energy, time and commitment to maintaining the democratic principles and values so I am confident that it will not allow myopic visions from wresting this historic asset from community hands.

Better Accountability can be achieved without repealing the commons Management Act

Currently accountability is mostly unidirectional – from the Trustees to the Minister.

Accountability can be greatly enhanced. The current Commons Management Act provides for reporting and accountability to the Minister (via the Department) in a prescribed manner. There is limited accountability from the Trustees to the Commoners. The current legislation requires Trustees to hold an annual general meeting. Special meetings can be called if conditions are met.

An improvement would be to ensure that accountability is not uni-directional but that Trustees are required to be more accountable to the Commoners as well as to the Minister. This would ensure there are more practical checks and balances in the management of a public asset.

Some requirements such as publishing quarterly reports and the members roll would facilitate the practice of good governance as would the requirement to work to a land management plan.

The management requirements of Commons should be simple and above all transparent and democratic.

Protection of values for the benefit of the general community

The inclusion of other values expressed in the “proposal”, namely protection of aboriginal artefacts, heritage items from the early days of the colony, and environmental values can be accommodated in the existing legislation which already makes reference to environmental protection. In fact, it would be welcomed if environmental values could be strengthened.

Land management plans, developed in partnership with key partners such as DPI Greater Sydney Local Land Services and National Parks and Wildlife, can ensure even better environmental protection is afforded in land use management.

The St Albans community has an excellent record of working with multiple partners on projects that benefit current and future generations in our community and beyond.

It is puzzling that the ‘proposal’ is stated to be in part a response to concerns that “Commons are held for the sole benefit of a particular group of people, unlike ordinary Crown land reserves.” Crown land reserves have been sold to private interest behind closed doors! This was one of the alarming findings of the NSW Auditor General’s Report to Parliament in 2016. Designating the St Albans Common as Crown land seems to ignore the importance of such findings.

Some concerns, such as “new residents are often unaware of any rights to be entered into the roll of commoners” raised in the “proposal” can be addressed without revoking or repealing the Commons Management Act. One cannot be blamed for thinking that the justification for the key thrust of the proposal – to remove ownership (convert Fee in Simple Title to Crown land) and community control (by removing democratic election of Trustees by the Commoners) of Commons – is not convincing at best. One cannot be blamed in concluding that rather than make a case the ‘proposal’ has scraped the bottom of the barrel for excuses.

Continuity – Commoners continue to provide the cultural and historical link that is of cultural significance

The ‘proposal’ states “the comprehensive review of NSW Crown Land Management that began in 2012 recognised that the traditional rationale for commons has changed.” This sentiment was also expressed in the White Paper.

The rationale, in many cases may have changed. However the St Albans Common continues to be relevant and, I repeat, it has been operating, without interruption, since 1824, for that very purpose for which it was established.

The Commoners (members of The Common) provide substantial assistance in the management of stock, infrastructure and weed management in a voluntary capacity on a regular basis.

We continue to pay fees for the agistment of cattle on the St Albans Common, participate in regular musters where beasts are checked and drenched or vaccinated to ensure that they are in good health, take part in regular working bees organised by the Trustees to improve facilities such as repairing herding yards, installing water troughs, repairing fences and implementing weed management strategies. Both the musters and working bees are day long events and are well attended. The voluntary effort involved in the working bees alone would total 300-400 hours for each event. Working bees are held at least quarterly (mostly focusing on weed management) with additional working bees when other works are required. In the course of one year, members of the common contribute a considerable number of unpaid work towards land management and animal welfare. In addition to this the Trustees manage the business of the Common on a voluntary basis and two herds people assist in maintaining a check on the animals agisted on the Common.

The St Albans Common enables local small scale farming to be viable and retain the rural scenic characteristics of the area.

Many people in our community (well over 100) depend on the Common for the agistment of additional stock as the land available in the narrow Valley is limited as is the carrying capacity.

The presence of a well maintained Common provides not only a means to enable small, local family farmers to be able to make a living but also provides the rural characteristics for which this Valley is noted and which attracts tourists (from Sydney and further a field). The land in this area is classified as “Scenic, rural environment” in the local government Local Environmental Plan. A scenic rural landscape requires maintenance – and the Commoners have demonstrated that they have done this effectively for many years.

It is true that the current legislation governing Crown land dates back to 1890 however I do not agree with the assertion that the management of Crown land has not kept pace with the changing needs of the community. This may be true of some cases but it is not, in my opinion or that of many in our community, of the Macdonald Valley. The St Albans Common has strong community support because it meets the needs of the community. Many local farmers and businesses rely on access to the Common as it now operates. The Trustees have ensured that the common serves the broader interests of the community. An example of this is the annual carp fishing competition (open to the public) that has been run for a number of years and has had both social and environmental benefits. Last year more than 100 people attended the celebration of the 160th Anniversary of the St Albans Common. This was both a celebration dinner and a fund raiser. This is a very high attendance rate for such a small community as ours.

That our Common dates back well more than one century is not a reason for removing it from the history books. Instead we should be valuing this unique link with our history. Heritage is not only found in tangible objects, it is also expressed through our laws and our use of the environment. Many who live in this Valley are proud to have such a strong link with the past and many tourists are intrigued. The Common is one of the unique experiences of this Valley, not just for the environmental aspects but also because it is a Common, established under very old laws and continues to operate as it did 162 years ago.

For the above reasons I strongly object to the abolishment of the Commons Management Act and any measures introduced to dispense with the Commoner Roll (and their role and function) and the election of Trustees by the Commoners.

I am offended by the suggestion that the “proposal” is a re-think of the legislation that the government rushed through in great haste in November 2016.

“The updated proposal balances legislative recognition of the rich history and ongoing importance of commons and the role of commons trusts with the need to ensure that the values of commons are protected for all the people of NSW”. I find little comfort in such general words following the introduction of the Crown Land management Bill

2016 that enables the transfer of what was Crown land for the public benefit to other agencies that can then sell or lease that land and for it to be forever lost to the public.

Lets have a real consultation this time

We have been assured that “key issues raised in submissions will be taken into account when developing the final proposal for commons in NSW.”

I sincerely hope that this is so because as a community we have already been betrayed twice in this regard. Our submissions in response to the White Paper, and that of the Trustees, appear to have been totally ignored. After more than two years later the legislation was rushed through Parliament in the last weeks of Parliamentary sitting without the expected draft Bill being made available for us or the legislators to consider. Our pleas and our arguments expressed to our political representatives and members of the Legislative Council before the second reading of the Crowns Management Bill 2016 appeared to have been heard from the words spoken by all sides of politics on the floor of the House in the early hours of 9 November 2016. However those words seem not to have been noticed or have been ignored by the Department as the ‘proposal’ differs little from the key intentions of the Bill introduced in November.

A draft exposure Bill is a minimum expectation of good governance. The ‘proposal’ was not detailed but it did state that “the final proposal will be included in a further Bill that will be introduced into Parliament in the first half of 2017”.

I strongly urge the Department and Minister to commit to a detailed final proposal and a DRAFT BILL being made available to the public for comment and that the public be given ample time to respond.

In summary, I reiterate my endorsement of the submission of the Trustees of the St Albans Common Trust to the Department of Industry – Lands in relation to the NSW Government’s updated proposal for Commons (2017).

I understand that there may be some Commons that are no longer functioning as they are meant to be or for their original purpose. My submission is based on my only experience of Commons, the St Albans Common, of which I am a member. I do not believe that the ‘one size fits all’ approach is the best response and therefore I urge the Department and Minister to give serious consideration to the proposal set forth in the submission of the Trustees of the St Albans Common Trust that the Commons Management Act be retained, with a limited application to “eligible” Commons as listed in a new Schedule. An “eligible Common” 7 would be a functioning Common in good standing under the Commons Management Act whose management and operations are carried on in a manner consistent with purposes as specified. Relevant purposes would embrace those suggested by the Department of Industry- Lands i.e. a common, community use and protection of cultural, heritage and environmental values. This approach would satisfy both the St Albans common and any other functioning Common.

I am aware that I will be identified in the summary of submissions list.

Yours sincerely

Vera Zaccari

Commoner