

**Submission**

**No 086**

# **CONSULTATION ON THE MODERN MANAGEMENT OF COMMONS**

**Name:** The Convict Trail (Organisation)

**Date received:** 21/02/2017

---

Date: Tue, Feb 21, 2017 at 10:18 AM

Subject: RE: Recognising and Protecting the values of Commons

Dear Sir /Madam,

Please find below submission from The Convict Trail Project in support of the St Albans Common asking that the Government to abandon the repeal of the Commons Management Act 1989.

Please do not hesitate to contact me should you require any further information regarding our submission.

Kind regards

Glynn Jacobs

Project Director

Thank you for the opportunity to make a submission on the proposed changes to the Commons Management Act 1989. These proposed amendments to the Act, which amount to the abolition of commons across NSW and in particular the St Albans Common, are not supported by the Convict Trail Project Board and its members.

### **Background**

The St Albans Common is a unique and integral part of the St Albans community. It has been an ongoing, important part of the Macdonald Valley and St Albans since 1824. The common has provided employment, a lifeblood to local land owners for stock who have small holdings or in need of respite from drought, fire and flood. The St Albans Common has always been self-sustaining through sound financial management provided by volunteer Trustees in keeping with the Commons Management Act 1989. The St Albans Common has served the valley well since 1824 and has continuously proved to be of strong benefit to the community in its current form. The St. Albans Common is not Crown Land - it was granted to Commoners (community of St Albans) by Queen Victoria in 1824 for the specific purpose of grazing stock to assist farmers in this area with small land holdings. As such it should not have been included in the Crown Lands Management Bill. It has been successfully managed since 1824 by valley residents in accordance with the original deed of grant and at no cost to government. It is self-sufficient. Commoners (members of the St Albans community who take up membership) pay annual membership fees and agistment fees to the St Albans Common Trust. Trustees are not remunerated each trustee serves in a voluntary capacity. The members (The Commoners), undertake weed management and maintenance of the land, volunteering their time and energy. The common also provides an important habitat for wildlife including wallabies and koalas. The unique wetlands are a well-known haven for black swans and other water birds. The St Albans Common continues to make farming a viable option for smaller landholders. Without it, the little farming left in the Macdonald Valley would disappear.

### **Submission on the proposed Inclusion of Commons within the Crown Lands Management Act**

In November 2016, the NSW Legislative Council passed the Crown Lands Management Act 2016. As a result of concerns expressed by the Trustees and the broader St Albans/ Macdonald Valley Community, the Government elected to specifically excise Commons from the scope of the Crown Lands Management Act. Stated clearly in this decision was a recognition that Commons were not in fact "Crown Lands" but rather a unique and historically significant form of land tenure which has been regulated for nearly 200 years by bespoke legislation, most recently the Commons Management Act. The Amendments Bill is another attempt to now include Commons within the Crown Lands Management Act despite having previously been expressly considered by the NSW Legislative Council in November 2016 and ruled against. Bi-partisan statement by the Legislative Council on the exemption of Commons from the Crown Lands Management Act as "This is democracy in action" and an appropriate response to "real concerns raised across the State" (Refer Hansard Tuesday 8 November 2016 Legislative Council Proof pages 82 & 83 00:32), (00:38) and (00:40). To seek to now reverse that decision just three months later is an act of public betrayal. The reintroduction of a proposal which was so recently and categorically rejected by Parliament in circumstances where nothing has changed which would in any way warrant or justify a revisitation of that issue is fundamentally un-democratic.

### **Submission on the Proposed Abolition of the Common Roll, Commoners and the right to elect Trustees**

The functions of a common roll and the commoner lie at the very core of what constitutes a Common and are integral to both the historical significance of Commons as well as their operation and management. A person is eligible to be a commoner, in the case of the St Albans Common Trust, if, broadly, they are a resident or landowner in the Macdonald Valley. Only a commoner can be elected as a Trustee. This eligibility requirement was decreed by Queen Victoria under the original grant of the St Albans Common in 1853 (a copy of which is attached as Annexure A). In modern day terms, to be a commoner is to be a member. A key responsibility of a commoner is to vote for the

Trustees who in turn manage the Common. This is a very important characteristic of a Common as it ensures close community control, connection and involvement. It is important to clearly distinguish between the right to vote in regard to the appointment of Trustees who manage a Common and the right to use a Common. As stated above, the St Albans Common serves as a focal point for a number of appropriately regulated community uses, however the broader community does not have the right to nominate for the position of, or vote for, a Trustee. It is proposed under the Amendments Bill, the common roll and the function of the commoner will be abolished, so therefore will the right of the commoners (and indeed anyone else) to elect those who manage the St Albans Common Trust. In its place the Amendments Bill proposes that the persons who are to manage the St Albans Common will be appointed by the relevant Minister.

### **Submission on the Proposed Election of Trustees versus appointment by the Minister**

Under the new proposed regime of Ministerial appointment any interested person could seek appointment to the St Albans land management committee, regardless of any prior connection to the land or place or community. The proposed approach completely ignores the local community of St Albans, its historic links to the St Albans Common lands and the very real potential for adverse effects from self interest groups dictating the use of land in a historic area. The rationale behind the proposal appears to be that local use is somehow elitist and exclusive. The facts clearly indicate otherwise. The St Albans Common lands are used for a range of appropriate community events. The Trustees of the St Albans Commons Trust are the custodians of the St Albans Common on behalf of everybody and they take this responsibility extremely seriously. Managers appointed by the Minister may have little or no connection with the culture and history of the community. St Albans Common is held as a sacred trust for the benefit of more than the enrolled Commoners. While the St Albans Common Roll has approximately 135 Commoners, in a little over a week in November 2016 approximately 6,000 concerned members of the local and wider community signed a petition to protect it. The Convict Trail Project agrees that the existing Trustees should continue to manage the St Albans Common. The regime currently enshrined in the Commons Management Act where Commoners inscribed on the Common Roll democratically electing the trustees should be retained as these rights lie at the very core of what constitutes a Common.

### **Submission on the Proposed Revocation of Title**

Currently the land tenure of the St Albans Common is characterised as a Fee Simple Torrens Title represented by Real Property Act Certificates of Title in the name of the St Albans Common Trust. The Amendments Bill seeks to revoke the St Albans Common Trust's right of Title and in its place vest title and ownership in the Crown coupled only with a short notation on title that the land is reserved for use as a common and such other purposes as the Minister sees fit. There is no administrative, policy or legal basis for this appropriation of a community asset which is currently represented by an unencumbered valid title under the Torrens system. The Convict Trail Project understands that the Trustees of the St Albans Common agree with the proposed notification regime but only on the basis that it is intended to provide greater clarity and certainty of the important historical and social role played by Commons not only in the past but for the benefit of future generations. However this is in the context of the title to the land remaining in the name of the St Albans Common Trust, and not being transferred to the State as Crown Land under the Crown Lands Management Act, as has been proposed. There is no basis in either public policy or administrative efficiency justifies the unilateral vesting of legal ownership of the St Albans Common lands in the Crown.

### **Submission - General**

The proposed regulatory framework for Commons such as the St Albans Common and the foundations upon which the Amendments Bill is premised displays a fundamental misunderstanding of the role and significance of the community, from a social, cultural, environmental and historical perspective, in the management of the St Albans Common. There is very considerable historical, cultural and community significance attached to the St Albans Common Trust and all that goes with it, such as the Common Roll, the functional notion of Commoner and the election of Trustees. The origins of Commons in NSW can be traced back as far as 1804 and in England back to 1235. There is a very strong, deep and powerful connection between the St Albans/ Macdonald Valley community and the St Albans Common Trust. This connection underpins its orderly control and management and the passion, belief and conviction that was harnessed to bring about the decision not to include Commons within the scope of the Crown Lands Management Act in the first place.

This connection goes beyond simple land management raising a range of important cultural and heritage considerations, key amongst which is that heritage status can attach not only to the built environment but also to land and culturally important and historical institutions such as the St Albans Common. The concept of "living

heritage” is neither new nor novel. Administrative expediency can never justify riding roughshod over heritage and cultural significant social institutions. The proposed new framework for the future management of the St Albans Common Trust will fundamentally and irrevocably break that connection and in so doing all the history and culture that goes with it. There is no policy or administrative advantage that can in any way justify such action. Management of the St Albans Common will inevitably be bureaucratised when the link between its community, its culture and its land is broken. The Amendment Bill will affect this break. The St Albans Common lands will not, in the future, be managed by elected local commoner Trustees but by whoever campaigns or lobbies most effectively and successfully for grant of those rights by the Minister of the day. This leaves it vulnerable to corruption and undue influence.

### **Conclusion**

The St Albans Common is a well-run functioning Common of significant historical, social, environmental, cultural and heritage significance. It is acknowledged that, with the passage of time and increasing urbanisation, some Commons may no longer be effectively operating, as Commons and therefore it is appropriate, from a policy perspective, to review their operations and status. However, the St Albans Common Trust is not one of those and so to adopt a “one size fits all” approach is inappropriate. The Convict Trail Project believes that the future management of the St Albans Common, is best achieved by keeping the overarching legislative framework provided by the Commons Management Act and making selective amendments to ensure that the administration of Commons such as the St Albans Common, while consistent with modern best practice, does not abandon nearly 200 years of historical, social, environmental, cultural and heritage significance. This significance has come about by the personal exertion and financial sacrifice of the Commoners over this extended time period with no government funding.

Land the subject of Commons has never been Crown Land and it is not relevant to categorise or regulate it as such in the manner proposed. To do so will be to forever extinguish 200 years of Commons Trust culture, community and heritage from the history of NSW for no substantive reason or benefit. The Board and Management of the Convict Trail Project is firmly opposed to any changes to the Commons Management Act 1989. The St. Albans Common is not Crown Land - it was granted to Commoners (community of St Albans) by Queen Victoria in 1824 for the specific purpose of grazing stock to assist farmers in this area with small land holdings and should be protected as such.

Kind regards

Glynn Jacobs Project Director