

Crown Land Commissioner Review: application of the Community Engagement Strategy

Background

The Crown Land Commissioner's role is to provide advice and make inquiries into matters arising out of the administration of the *Crown Land Management Act 2016*, including the Community Engagement Strategy (CES).

The CES under the *Crown Land Management Act 2016* directs that all proposed leases—excluding purchasable leases—trigger engagement requirements, and that the NSW Department of Planning, Industry and Environment—Crown lands carry out an assessment to determine the level of impact the lease could have on the community and the land. This impact can be assessed as 'minimal', 'moderate' or 'high', each of which have different consequences for the level of community engagement required.

The proposed lease of the Katoomba Airfield site triggered the application of the CES and the proposal was assessed as being of 'high impact'. Given the assessment as high impact, in accordance with the CES, the department was required to carry out engagement at the 'inform', 'consult' and 'participate' levels.

Following concerns raised regarding the public consultation process conducted by the department in relation to a lease proposal at Katoomba Airfield, the Secretary of the NSW Department of Planning, Industry and Environment requested that the Crown Land Commissioner inquire into the process by which this matter was considered.

The Terms of Reference for the review

On 28 April 2020 the Secretary of the NSW Department of Planning, Industry and Environment requested the Crown Lands Commissioner to conduct a review of the community engagement and decision making process relating to the department's consideration of a proposal to lease Crown land located at Medlow Bath, around 10 kilometres from the township of Katoomba.

The Commissioner was asked to review the application of the CES against the requirements of the published community engagement strategy and make any recommendations in relation to possible improvements to be adopted in the future for similar processes.

Terms of reference for the independent review are on the department's website.

www.industry.nsw.gov.au/lands/public/on-exhibition/proposed-lease-of-katoomba-airfield

In line with the Terms of Reference, the Commissioner:

1. reviewed the consultation process related to the lease application between 1 January 2019 and 10 January 2020 including but not limited to the format of public meetings and how submissions were invited and how the submissions were assessed
2. determined any material differences between that process and either the published CES or legislative requirements
3. made recommendations in relation to possible improvements to be adopted in future similar processes.

The review was specifically of the process leading up to a decision. Consideration of any decision was outside the scope of this review.

The review

The review was desktop based and was not a reopening of the consultation or decision-making process. Therefore, there was no consultation with the public in conducting the review.

The documents or records required were sourced and provided to the Commissioner by the department legal branch. Documents that were considered in preparing the review:

- all departmental documentation relevant to Katoomba lease application covering the date range in the Terms of Reference, including but not limited to internally developed and externally facing documentation and correspondence relating to:
 - any community engagement practices regarding the lease application
 - any correspondence to the applicant regarding community engagement practices or the CES
 - decisions about community engagement practices
 - decisions relating to the application of the CES
 - activities undertaken relating to the application of the CES
- public submissions received by the department in relation to application of the CES

Additional documentation was also provided to the Commissioner by the department legal branch in response to direct questions raised by the Commissioner throughout the review.

Review assessment and recommendations

The review made assessment against five criteria:

- format of public meetings
- how submissions were invited
- how submissions were assessed
- material differences between the published CES and the process used
- use of CES guidance material

Areas for improvement were identified regarding:

- format of public meetings
- how submissions were assessed
- material differences between the published CES and the process used
- use of CES guidance material

The conclusions and findings of the Commissioners review are set out in the table at Appendix A.

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Appendix A - Review findings: application of the Community Engagement Strategy, Katoomba Airfield lease application

Element	Evidence/information from evidence	Assessment	Recommendation
1. Format of public meeting	<p>Summary of Consultation Outcomes document:</p> <ul style="list-style-type: none"> four drop-in community information sessions held in Katoomba; two sessions on Wednesday 19 June 2019 and a further two sessions Tuesday 25 June 2019 two targeted stakeholder meetings with representatives of community interest groups on Wednesday 19 June 2019 and Tuesday 25 June 2019 	<p>Outcome: Areas for improvement identified</p> <p>The mandatory statutory requirements to create the opportunity for the public to participate and provide feedback on the lease proposal were met.</p> <p>However, the Summary of Consultation Outcomes document contains no summary of concerns or considerations identified through the public meetings.</p> <p>The Summary of Consultation Outcomes document ought to have summarised the outcomes of the public meetings or made clear that concerns or considerations raised in these forums were consistent with the written submissions.</p> <p>It is noted that the department considered engaging independent external expertise to assist in conducting the public meetings, however, decided on internal assistance.</p>	<p>1.1. That any dealing assessed as 'High Impact' under the CES, triggers need for independent facilitation and summarising of participation activities, unless otherwise justified.</p> <p>1.2. The future format of public meetings and level of participation required under the CES should ensure that the proponent and community are afforded the opportunity to present their views through a participation event, in accordance with the CES guidelines.</p> <p>1.3. That the information gained from public meetings is collected and summarised in a way that ensures it clearly contributes to decision making under the <i>Crown Land Management Act 2016</i>.</p>

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Element	Evidence/information from evidence	Assessment	Recommendation
		It is noted the proponent did not attend the public meetings.	
2. How submissions were invited	<p>Summary of Consultation Outcomes document:</p> <ul style="list-style-type: none"> A 56-day public exhibition and submission process, commencing on Sunday 9 June 2019 and closing at midnight on Sunday 4 August 2019. This included a two-week extension to the standard exhibition period, due to it coinciding with NSW school holidays Submissions were received either as responses through an online form, as the body text of an email to the department, as an attachment to an email to the department, or via post. 	<p>Outcomes: Satisfactory.</p> <p>The period provided for public submissions exceeded the mandatory statutory requirement. Multiple options were made available for the public to make a submission:</p> <ul style="list-style-type: none"> online form email to the department written correspondence via post to the department 	Nil
3. How submissions were assessed	<p>Summary of Consultation outcomes document:</p> <p>The following criteria were listed as used to assess submissions:</p> <ul style="list-style-type: none"> an overall assessment of the sentiment in feedback. detailed feedback to understand the value and current use of site, consisting of the following: key themes relating to the lease proposal; 	<p>Outcome: Areas for improvement identified</p> <p>The analysis, or summary, of the written submissions was adequate to enable the department to identify the environmental, social, cultural heritage and economic considerations to be taken into account when deciding whether to enter into the lease with the applicant.</p>	3.1. Information from written submissions, public meetings and engagement with other Government agencies is collected and summarised in a way that ensures it contributes, in a transparent and accountable way, to decision making under the <i>Crown Land Management Act 2016</i> .

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Element	Evidence/information from evidence	Assessment	Recommendation
	<p>submissions supporting the lease proposal; submissions opposing the lease proposal; submissions offering conditional support for the lease proposal; neutral submissions.</p>	<p>However, in addition to the written submissions, the department also conducted four drop-in community information sessions, two targeted stakeholder meetings and direct consultation with other government agencies. No summary of any concerns or considerations identified through these other forms of consultation has been completed.</p>	
<p>4. Material differences between the published CES and the process used</p>	<p>LBN19/2191 Summary of Consultation Outcomes document B3 - Crown Land Leases Engagement Assessment Template</p>	<p>Outcome: Areas for improvement identified</p> <p>The department undertook a detailed analysis of the outcomes of the written submission process. However, based on B3 - Crown Land Leases Engagement Assessment Template, it ought to also have analysed the outcomes of the other forms of consultation and to have conducted a rigorous evaluation or assessment of the outcomes of all forms of consultation. There is no evidence to demonstrate this rigorous evaluation occurred.</p> <p>As per Step 9 of B3, many important factors must be considered when making decisions whether to grant a lease, or otherwise deal with Crown land. There is no evidence that a</p>	<p>4.1. The department clarify its Guidance and Resources advice in Step 9 and related Step 10 of B3, to emphasise that the department must undertake a balancing analysis for considering the many important factors outlined in Step 9 of B3 that include, but are not limited to the outcomes of the community engagement process.</p> <p>4.2. To assist those completing Step 9 and Step 10 of B3, at minimum the guidance material reflects, or address, these questions when summarising the engagement and determining the engagement findings:</p> <ul style="list-style-type: none"> - Have we tested whether the feedback provided is legitimate? - Did the engagement reveal additional issues that have not previously been considered?

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		<p>'balancing exercise' occurred and contributed to decision making.</p> <p>The department has not used engagement outcomes to assess whether special conditions could be applied to the lease application, which is a requirement of Step 9 of B3.</p> <p>Attachment B to LBN19/2191 states that <i>"Based on the largely negative response received from the community, DPIE — Crown Lands are not able to progress your application to lease in its current form"</i>.</p> <p>Making a decision to not progress any dealing, based only on negative community feedback, does not meet the requirements of Step 9 of B3.</p>	<ul style="list-style-type: none"> - What other evidence, if any, is available about the likely magnitude of the adverse impact the proposed lease will have in light of those additional issues? - Did the engagement provide evidence feedback that current community use and enjoyment would be adversely impacted? - What other evidence is available about the likely magnitude of the adverse impact on current community use and enjoyment? - Are there strategies or conditions which could minimise the adverse impact on current community use and enjoyment? If so, are those strategies practical? <p>4.3. In accordance with Step 9 of B3, the department should demonstrate that they have used engagement outcomes to assess whether special conditions could be applied to accommodate feedback.</p>
<p>5. Use of departmental guidance material</p>	<p>Internal documentation B3 - Crown Land Leases Engagement Assessment Template</p>	<p>Outcome: Areas for improvement identified</p> <p>As outlined in Section 4 above, there are discrepancies between how the community engagement was undertaken, and the advice contained in the departments CES guidance material. The inclusion of more prescriptive advice to the guidance</p>	<p>5.1. The department update any guidance or resources that refer to the CES for all forms of dealings, to emphasise the requirements of the department to conduct a 'balancing exercise' that considers the many important factors outlined of Step 9 of B3.</p>

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Element	Evidence/information from evidence	Assessment	Recommendation
		material could have assisted staff in the preparation of a more complete package information to assist decision makers.	5.2. The update of the guidance material be supplemented by staff training specific to the application of this material.
6. Use of Departmental Guidance Material	Community Engagement Form Crown Land Leases, Part A and Part B B3 - Crown Land Leases Engagement Assessment Template	Outcome: Areas for improvement identified The internal document 'Community Engagement Form Crown Land Leases, Part A and Part B' does not make full use of the B3 document when it comes to 'Local Considerations'.	6.1. The internal document Community Engagement Form Crown Land Leases Part A and Part B be updated to include the questions that assist with assessment of local considerations at Step 4 of the B3 document.

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