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CLOL OBJECTION

SSD-14394209 – AMENDMENT Sept 2022
BUNGENDORE HIGH SCHOOL Project

Crown Land Our Land Inc 150145 (**CLOL**) lodged a strong Objection to the original SSD submission of Sept 2021 re a new High School in the township of Bungendore NSW.

On reviewing the proposals in this Amendment dated 20 Sept 2022 we stand by the main points in that first Objection, and can only see that the one year delay has merely compounded the problems involved and made a bad situation worse. We urge the Assessors to revisit that 20-page document and read it in conjunction with the following comments re the current Amendment. as such.

Sadly, this Amendment does not even have the excuse of leading to some final good outcome for the community. Quite the reverse. Our 2021 concerns re an undersize site are now exacerbated to the point where CLOL believe that this revised and significantly smaller site plan is so deficient that the proposed Bungendore High School (BHS) can be categorised in context as "NOT FIT FOR PURPOSE".

Yet for a BHS catchment designated as maximum 450 students (a cohort CLOL believes to be mischievously understated given the residential growth spurt already underway in Bungendore and environs). Treasury predicts costs to be $71-million – the fifth most expensive school build in the whole of NSW, ever. And this for an "economy" construction based on a pre-fab manufactured modules. The mind boggles.

CLOL believes it is, quite simply, a disaster in the making. There are so many inherent site-associated problems that it is doomed to fail short term, and will leave a permanent legacy of bad planning to blight Bungendore now and long term. This applies both for the Crown Land aspects involved, and for the Bungendore community overall.

High School – YES.

The truth is –a new High School IS needed in Bungendore and CLOL totally supports this aim. But it must be a BHS that fits into the community – one that brings positive benefit both now and for the future.

Sadly, this cannot be said for the current plan – and recent events, culminating in these Amendments, only serve to highlight how far from "fitting in" SINSW seems to be. For instance – even after SRDP intervention, appropriate re-location of the Bush Balladeers monument has not been addressed and now presents as an intractable problem.

Consider the compulsory acquisitions as gazetted earlier this year, on 26 April 2022. Whilst legalities in the Land Acquisition (Just Terms Compensation) Act (LAJTC) allow this procedure – the fact that SINSW had to resort to such measure is a good indication of the degree of planning problems that arise at this location. CLOL condemns it as a bureaucrat misuse of power for unspecified and devious political purposes.

But worse - compulsory acquisition of well-used and much-loved community facilities is not best-practice in planning terms – and quite apart from giving rise to a deep sense of injustice, CLOL is aware that it has alienated so many people in Bungendore that there is now a widespread and vocal opposition to the location of a school on the Majara/Park site. We expect this will show up yet again in the strength of Objections received during the current second exhibition period.

So yes, in planning terms CLOL agrees that Bungendore does need a new high school. But not one obliterates Crown Land, not at this location. And not one that sabotages the fundamental heritage format of Bungendore Park as a true Town Square for public recreation, while also alienating the entire middle rection (ie the most usable section) of land that started as Commonage and has been in public use as much-loved Bungendore Common for about 185 years.

Quite apart from insult to the very idea that land dedicated, reserved, and actively USED for so long, and for such a fquintessential public purpose as public recreation – today's plan is for a school in TWO parts, separated by a busy public road, with this street set to become even busier as a direct result of the closure the Parkside block of Majara St – a plan that defies commonsense and is so far removed from any level of good PLANNING that it can only be justified as opportunistic land grab.

We know this from comments in SINSW emails of March/April 2021 which warn QPRC management that if the previous Council should vote against approval of the Majara closure, then this whole High School site-plan must fail.

And fail it should. In planning terms, the whole scenario is just not viable – and the more SINSW try to hedge around the issues, the more problems it confronts.

While CLOL know that technically the road closure has been effected by compulsory acquisition, we are also aware of what various APPs in this Amendment also say – that the land titles (for Majara, Park and Common) have not yet been registered.
They can be reversed.

Given the year's delay since SSDA-1439420 was lodged – and the troublesome issues still outstanding in this 2022 Amendment (parking and play-space agreements to name just two) it seems that, wisely, SINSW are not finalising titles until this assessment is complete. There is still time for good public PLANNING to prevail.

Adverse Complexities

There is no doubt that SINSW is between a rock and a hard place in regard to the SIZE of the site it'd acquired for BHS on Bungendore Park - particularly so for student facilities.

Other than two-fenced-off hard-surface basketball courts and two cricket nets hard against the railway fence, the Amendment site plan has various pockets of small open areas – but virtually no credible play-space of its own.

In this Amendment the BHS project is relying on some future shared-use agreement re the use of Crown Land – namely the Mick Sherd Oval area of Bungendore Park. SINSW offer no details as to how or when this will occur – and CLOL note that conditions in a Consent cannot be based on any third/other-party co-operation beyond the power of the Applicant to ensure. We await further information on shared-use.

SINSW seem to be hoping it can come to some arrangement with the Crown Land manager involved, namely QPRC. However this will not be so easy now there is a cohort of new Councillors elected in Dec 2021 with clear policies to support a new BHS, but to do so in a way that protects the public interest, and in particular for the Bungendore area - public access and recreation at Bungendore Park.

Councillors are also keenly aware that not only does QPRC have a general duty of care to the community in this scenario, but that there is also a statutory duty to see full compliance with the "secondary use" rules in CLMA 2016 - see later in this submission for detail re these. CLOL has no doubt that this would certainly apply to any joint-use arrangement that might be agreed between BHS and QPRC in regard to school use of Mick Sherd Oval by students, both secondary and primary.

Of course, the current Council has strong motivation (as well as civic responsibility) to make sure that any use-sharing is fair for all concerned – and this includes the Bungendore community in its widest sense - for instance, those tourist visitors who bring business to the township while they enjoy the peaceful village ambience of Bungendore Park – and the low-key heritage character of its neighbourhood.

In short, times have changed. SINSW can no longer rely on the former blind eye mode of unquestioning acceptance that came from the previous QPRC management and councillors. The number of Councillor workshops held this year by SINSW attest to this concern.

Last year's requirement (as lodged in the SSDA) that BHS would have "exclusive use" of the Oval, all day every school-day is no longer stated as such. However this Amendment retains echoes of such expectation, and in one part even suggests that it should be up to BHS to "allow" the public to use the Oval as such times as it's not needed for the students. In effect this assumes that BHS can somehow become part-time manager of dedicated Crown land. CLOL finds this assumption appalling, and would strenuously object if an such exclusionary arrangement were ever allowed.

CLOL also objects to the way SINSW (and this Amendment) treat the Common. The compulsory acquisition takes a 4,500m2 "triangle" out of the whole area, leaving the flood-prone left-over land for the reserve purpose of "public recreation". This arbitrary takeover is bureaucratic bullying of the worst kind.

Apart from the psychic insult to a community that has loved and used its "Common" since the earliest days of Bungendore settlement, CLOL is aware of legal issues related to this land which may be applicable in regard to the actual acquisition process. Not only was the Proposed Acquisition Notice (PAN) deficient in several areas, the actual acquisition was rushed through at the last possible date for gazettal, 26 April 2022 and several aspects were not in place on that date

Two Aboriginal Land Claims under the NSW Aboriginal Land Rights Act (ALRA) had been lodged years earlier by the Ngambri re the Common. The Crown Lands EIS Advice (find it in the SSDA online list of "Agency Advice (7)" +) identifies these claims, and warns that no change in the status of such Crown land can occur until they are withdrawn or otherwise completed – usually meaning, approved.

Although gazettal was done on 26 April, these claims were not actually finalised in line with mandatory ALRA requirements until 10 May 2022 – two weeks later than the last day the PAN applied. CLOL believes this fortnight's delay may invalidate the gazettal or trigger both ALRA and CLMA legalities. If so, we would fiercely object to what would then be an illegal acquisition.

Such circumstance would certainly disrupt any consideration re the current Amendment proposals in regard to the Common as an Ag-plot component in the BHS proposal.

Sadly, this is not the only legal matter which may need to be considered by the assessors. CLOL is also aware of zoning issues whereby a recent LEC decision re EP&A 4.38(3) suggests that prohibition re constructing an "educational establishment" on land zoned RE-1 may apply, so that claims of partial exclusion are not viable in the context of Park and/or Common. Result-- a re-zoning process would be essential before any further consideration of this BHS Amendment could proceed.

Meantime, the electoral comment earlier on p.3 is based on Local Govt election results, and should come as no surprise to this SSD assessment team given both the number, and especially the CONTENT, of Objections lodged in last year's Exhibition.

A revisit to those 300-odd submissions of Sept-Oct 2021 reveals that almost all on BOTH sides say much the same thing – YES, we agree – we want a High School .

Most who wrote something specific in support, focussed on the time factor, being keen (even adamant) that the new BHS must be built ASAP and ready to open first-term 2023. There seemed to be a belief that because the Majara/Park site involved council-owned or govt land, that this would speed admin and ensure early construction. The Micronex Summary in APP-1 misses out on this "timeline" aspect. We object to the omission.

CLOL has done its own analysis of the 70-odd submissions supporting a new BHS at the Majara/Park location and we have specific details re those in support. Of these, at least two-thirds were generalised statements in favour of "a" high school, with NO comment whatsoever re planning considerations . Few wrote anything at all about location, size, structure or format. At least a dozen are barely one sentence long. Several simply go tickbox for "yes" or " I agree'.

In contrast, over 200 Objectors insist didn't just say "NO" – they went on to explain why not, often in great detail. They called for best outcome, not time-saving compromise. They want a BHS well-planned now, and with room to grow – not a political stitch-up, squeezed between a public park, a landgrab and a heritage railway station, separated by a busy road into two parts, with miniscule open space, big parking problems, and a main entry area that's a traffic chokepoint on schooldays.

Traffic Issues set to be a Major Problem

The community says – we know what it's like already in Gibraltar St every school-day morning -- and that's just to cope with 500+ primary kids and parents cars. Five years ago kiss'n'drop was a friendly interaction – in 2022 there are just so many more children coming in from the surrounding region. It can be chaos.

With BHS added, it's not only going to DOUBLE student numbers – there'll be 58 fewer carpark spaces and even LESS road space than there is now, just by closing that whole Park-side stretch of Majara. But it gets worse – the Amendment shows a whole new, larger roundabout, taking more park spaces, and with one exit being straight into the school main entry – not good traffic planning just for a start.

But look at the site plan. See the way it's an L-shape, linking Gibraltar to Majara southwards – and no other way in or out. But this is the access way that a fleet of school buses will have to navigate along with cars. .

The neat drawings of tidy cars that appear in the Amendment don't even come close to explaining how this reduced roadway will operate when such a confined area has to cope with the combined convergence of 1000 students – and anything up to 500 cars

A guesstimate has to be given here, because the Amendment glosses over these issues with a pious hope that BHS can discourage DIY student drivers and require them to bike in from 20kms away – notwithstanding that at both Queanbeyan High Schools such "policy" is ignored daily by student-drivers – with consequent parking dilemmas daily for the senior students involved. There is no reason to expect Bungendore to be any different. The traffic Report that comes with the Amendment (APP-4a Transport Assessment Addendum) gives little indication it's even aware of such ramifications.

CLOL has no hesitation in condemning this self-inflicted chokepoint as more bad planning that arises as a direct result of bad location choice. We urge the assessors to insist that SINSW address these car-related factors and to provide far more depth and detail, whatever required to see them in both current and FUTURE context.

It's all very well to do a media spiel about a feel-good "Education Precinct" – but when you double school numbers, you more than double the traffic issues.

The assessors also need to note that seeking to put 90-degree angle parking along both sides of Turallo Terrace is not viable as a condition of consent, since this land is NOT part of the SINSW , and it also involves agreement of a third party – QPRC.

In short - this presents SINSW with an insoluble problem as the constraints of this BHS location mean that the only solution to these parking issues rely on asserting some kind of access rights to car-space use on land it does not own – public roadways.

<u>Problems with Play-space</u>

SINSW also faces severe limitations on any claims to play space in regard to use of the neighbouring open space in Bungendore Park. While we realise that the previous plan to have exclusive all-school-day use of a fenced Mick Sherd Oval no longer applies,

This Amendment seems to assume that the assessors will allow this development application to proceed with play-space provision to be based on some unspecified form of agreement with QPRC. If this is so, CLOL strenuously objects, and insists that any such arrangement must be clarified in detail before approval – and for the same 3rdparty reasons, they cannot be left to conditioning.

However, there is an even stronger rationale for our objections in this case – the Crown Land Management Act 2016 (CLMA). As part of Bungendore Park, Mick Sherd Oval is Crown Land dedicated for Public Recreation, and there are strict rules as to what "public recreation" is, and also as to what level of use can be "shared".

So until SINSW formalises its intentions in regard to such shared use, and includes such specifics as part of the Amendment, there is no way this aspect can be evaluated by an CLOL as an objector – or assessed by Planning.

As a corollary to this – no matter what use-pattern SINSW comes up with, there is no way it can authorise a breach of the CLM, or compel a Crown Land manager to accept such plan. In fact, it would be illegal for QPRC illegal to do so.

At this point it is worth reporting that, in preparing for installation of the demountables SINSW plan to use for the opening of a BHS next year, the play-space (often called an "oval" – but really just open land) at Bungendore Primary has recently been fenced off.

As a result the primary kids are being sent across Gibraltar St to play on Mick Sherd Oval – and the QPRC online booking schedule for this now shows "blocked out" time from 10.15 am to 2pm every weekday from 18 Sept 2022 through until 20 Sept 2023.

It is an interesting question as to whether such monopolisation of daytime use by a single organisation is in keeping with caselaw re public access, or open to challenge as a breach of the CLMA secondary use rules.

In regard to this as a guide for future planning, reports are coming in about what's now happening with this inrush of school kids. It seems that many of the older students gravitate further afield from the Oval and assume they have can monopolise the new Playground area along Butmaroo St. to the extent that mums with toddlers and prams no longer feel free to be there.

If such creeping take-over of "public recreation" facilities is already happening now at a primary level, consider the real risk when it also involves 450 secondary students being let loose to use an unfenced area like Mick Sherd Oval – with no way for Planning to write a supervision plan, or any other conditions to control the matter.

CLOL points out that CLMA has strict provisions in regard to what is permissible as "secondary use", and that these limits have the support of case law, ranging from Rutledge in 1959 to the more recent Talus case of 2015/16. (Note that caselaw says that that "secondary" means just that - secondary, not half & half. As a rule of thumb, it generally equates to about 10% of space, time, frequency or other impact – which definitely calls into question the current school usage pattern. At Mick Sherd Oval.)

It is also if interest to note that the CLMA rates these requirements as so important that they are repeated twice in the same legislation.

Both are worth quoting here - the first relates to adding an extra use to the designated purpose; the second has to do with a more temporary arrangement –

Crown Land Management Act 2016 No 58 - NSW Legislation

2.14 Additional purposes for dedicated or reserved Crown land

(1) The Minister may, by notice published in the Gazette, authorise dedicated or reserved Crown land to be used for one or more additional purposes.

(2) Before doing so, the Minister must be satisfied that the use of the dedicated or reserved Crown land for each additional purpose—

(a) would be in the public interest, and

(b) would not be likely to materially harm the use of the land for any of the purposes (an ***existing purpose***) for which it is dedicated or reserved.

(3) Without limitation, the following considerations are relevant to the question of whether the use of dedicated or reserved Crown land for an additional purpose would not be likely to materially harm its use for an existing purpose—

(a) the proportion of the area of the land that may be affected by the additional purpose,

(b) if the activities to be conducted for the additional purpose will be intermittent, the frequency and duration of the impacts of those activities,

(c) the degree of permanence of likely harm and in particular whether that harm is irreversible,

(d) the current condition of the land,

(e) the geographical, environmental and social context of the land,

(f) any other considerations that may be prescribed by the regulations.

AND

2.19 Secondary interests in dedicated or reserved Crown land

(1) The Minister's power to grant a lease, licence, permit, easement or right of way (a ***secondary interest***) over dedicated or reserved Crown land is not limited by its dedication or reservation, except as provided by this section.

(2) The Minister cannot grant a secondary interest over dedicated or reserved Crown land unless satisfied that the use of the land under the secondary interest—

(a) would be in the public interest, and

(b) would not be likely to materially harm its use for the purposes for which it is dedicated or reserved.

(3) Without limitation, the following considerations are relevant to the question of whether the use of dedicated or reserved Crown land under a secondary interest would not be likely to materially harm its use for the purposes for which it is dedicated or reserved—

(a) the proportion of the area of the land that may be affected by the secondary interest,

(b) if the activities to be conducted under the secondary interest will be intermittent, the frequency and duration of the impacts of those activities,

(c) the degree of permanence of likely harm and in particular whether that harm is irreversible,

(d) the current condition of the land,

(e) the geographical, environmental and social context of the land,

(f) any other considerations that may be prescribed by the regulations.

ends

For instance, SINSW may now have "ownership" re the east end of Bungendore Park, but the remainder is still Crown land under the above rules. As statutory manager, QPRC has no legal powers to re-interpret or vary these. Indeed, neither does SINSW, nor a planning assessor, because the CLMA is not an "environ mental instrument" and therefore cannot be overruled by considerations of a SEPP.

The fundamental folly of this SSD and its Amendment is that any Planning decisions can only apply to the subject site involved in the application, yet so many of the other contributory factors involve outside areas, action or agreements, all beyond the scope of SINSW to control.

And this means that the overall outcomes are also something that both SINSW and the SSD Amendment have to take into account – in particular the social impacts

SOCIAL FACTORS - Cumulative Impacts

CLOL is aware of the SOCIAL IMPACT REVIEW as prepared on behalf of community group , Save Bungendore Park Inc. We support her evaluation in full and have no hesitation is adding it as further reason for objection

Several sections are of special relevance to CLOL in regard to this the BHS SSD and its focus in regard to community rights and responsibilities.

The first is the perceptive differentiation between "inclosed" land, and land not only open to the public – but seen to be so. There is no mistaking the visual message conveyed by standard school fencing in NSW – a high metal palisade says "KEEP OUT" in no uncertain terms . If allowed along the BHS boundary with Mick Sherd Oval it would present as visual deterrent akin to a prison. CLOL appreciates that lesser, and lower, wire mesh fencing will be use d to delineate that side of the site.

However, just behind is Block B, with virtually a window wall of ground to ceiling glass. Some future perception of security risk may motivate SINSW to decide on ia switch to palisade fencing, and with it the prison look. If there is to be any BHS consent, then CLOL urges that conditions be added to ensure this cannot occur.

The Ziller comments regarding "mitigation which lacks tangibility" are of particular relevance and reinforce the points made by CLOL throughout this Objection. When mitigations such as providing play-space, or traffic changes, or parking. provision on a public road, rely on delivery by another party – then they are little more than a wish list and unenforceable so far as the development, consent or conditions are concerned. The phase "no more status than that of suggestion" is apt indeed.

CLOL also thanks Dr Ziller for her feet-on-the-ground grasp of why a flood-prone much smaller Warren Little Oval, much more than a walk away on the other side of the Creek could never be an acceptable substitute location for Bungendore Park.

For SINSW to assume such equivalence defies commonsense.

CLOL also welcomes the way Dr Ziller explains that there are different level in impacts re social infrastructure…. how depriving Bungendore township of its community pool, community centre, community health hub, community library plus all the associated services and programs gone for what may well be years on end, is more than losing mere physicalities. Other social factors come into play.

Apart from the loss or significant disruptions in group interactions, health services and well-being, there is a loss in social continuity – a communal breakdown in morale, trust and expectations for young and old alike, literally the whole community. In contrast, and useful as it is, the school serves a single social group .

<u>BHS Location – NO.</u>

CLOL has no doubt that Bungendore does need a new high school. But not one at this location. In social impact terms, far from ameliorating adverse impacts, the current Amendment intensifies the disastrous effects. Instead of merely disrupting community facilities and services with promise of a soon-as rapid rebuild – the new plan does away with them completely.

The truncated site and compacted buildings leave no room for any community sharing.- and the Amendment submission now explicitly disowns any responsibility in the matter. It seems the Bungendore community is be deprived of its centuries-old one and ONLY civic centre, to lose vital community services for years, possibly forever.

The demolition of Bungendore Park as no longer a true "town square", the carve-up of the Common, the excision of Majara St as a road-way in the grid - these are far more than mere loss of "place". If allowed to proceed, they will act as visible evidence of the ongoing downgrades to the social and cultural values that this community has hitherto taken such pride in.

Hitherto, Bungendore has a history of low-key rural harmony. Yet the mass of Objections submitted in October 2021 show how widely the current Majara/Park plan is seen as a social catastrophe The conflict caused is rejection of a gratuitous imposition that defies commonsense, when locals KNOW there are other locations available. In short, it "fails the pub test".

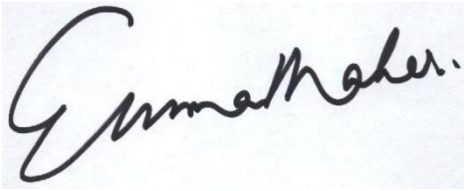
Then there's the social and financial despair of a community that's invested so much of itself, (both in time and money) to make sure it has some family-friendly services, only to find these commandeered by big Government, then cast aside - leaving ordinary folk with no guarantees of replacement as to funding, location, facilities, access or timing – if ever. Such uncertainty exacerbates the adverse social impact

The cumulative adverse impact is not just the combined loss of so many actual facilities, but an irreversible social insult that sees the century-old heart of a heritage village treated like a convenient landgrab. Psychologists can now identify such dispossession as quantifiable social trauma – a violence against the community psyche Refer interview on ABC -RN, Breakfast on 10 October 2022.

In this review of the Amendment to SSD 14394209, the various problems involved, the unanswered questions re shred use and joint agreements, and above all the social impact issues re a Bungendore High School as proposed CLOL, can find much to query, little to commend. In plain terms, it's bad planning.

There's a simple rule for such assessment: when in doubt - DON'T.

Thank you.
Submitted on behalf of Crown Land Our Land Inc,



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