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PROPOSED BUNGENDORE HIGH SCHOOL

CLOL OBJECTION – SSDA-14394209

Crown Land Our Land Inc 150145 (**CLOL**) registered in October 2015, is a community organisation committed to greater recognition of NSW Crown Land as such, to foster understanding of its value, and the importance of upholding the Principles of Crown Land Management as provided for in NSW legislation.

As such, CLOL has made several major contributions to both official and public concerns. Our submission was No.149 to the NSW Upper House Inquiry of 2016, and we were witnesses at the Hearings. Later that year, Crown Lands Dept (**CL Dept**) invited us to join a community panel for consultation prior to finalising the then-new Crown Lands Management Act 2016 (**CLMA**).

Since then, CLOL has been recognised in a number of CL consultative projects as a "stakeholder" in regard to Crown Land issues of community concern. We have also continued our work via workshops at Parliament House, liaison /advice in the wider community, and with CLOL interaction linking groups as far afield as Tweeds Heads, Newcastle, Lane Cove, Willoughby, Wollongong, and now in southern NSW.

INTRO – WHY WE OBJECT

The Crown Land issues that arise in this State Significant Development Application No.14394209 (**SSDA**)are of grave concern for CLOL, and we submit these objections as matter of both principle, and priority. If, as this SSDA seems to assume, dedicated Crown Land can be simply "acquired" by bureaucratic fiat, to suit some other utterly unrelated departmental convenience, over-riding all principles of CL management and in defiance of the CLMA itself – then why have a Crown Lands Management Act at all ?

The new Bungendore High School (**BHS**) may be a relatively minor project to the Dept of Education (**DoE**) and its Schools Infrastructure division (**SINSW**) but the proposed site-plan, based on "compulsory acquisition" of land after subdivisions of two separate CL Reserves raises a pandora's box of questions that must resolved in regard to Crown Land law.

BACKGROUND – THE SITES INVOLVED

1. Bungendore Park - often mis-named "Mick Sherd Oval"

The location for this new BHS will be in what can be called the Majara Precinct, this being land on both east and west sides of, and including in the middle, the Majara St roadway between Turallo Terrace to the north, and Gibraltar St to the south.

The eastern land is in various lots, all backing onto the Bungendore railway line -the Station itself is just a few metres away. All lots are owned by Queanbeyan-Palerang Regional Council (**QPRC**). Council also owns the Majara roadway.

However on the west, the BHS land (Lot 701 / DP 1027107) is part of Bungendore Park D-1000193 -- 3/10/1884 (**the Park**). This is a 40,000 m2 area of open space dedicated in 1884 as Crown Land for public recreation. It is in fact a classic 200m x 200m "Town Square" and identified as such in maps of the early Bungendore settlement.

Site plans in the SSDA show how the roadway, plus a sizable subdivision taken from the eastern edge of the Park, are essential for the plan. Indeed the main building footprint straddles them both. Further land extending more than halfway along Turallo Terrace is also to be taken for use as basketball courts, cricket nets, and student play-space.

CLOL objects to the end result -- a large L-shape excision of approx 11,000m2, with the Park not only no longer a "Square", but its overall area reduced by at least 25%. And we also object on seeing how this BHS will cause even more CL loss – the SSDA indicates a major reduction in public access and use of the central sports Oval area, which has been one of the feature areas in Bungendore Park for many decades.

Named for local 1990's football hero Mick Sherd, this Oval (**MS Oval**) is now offered for "exclusive use" by BHS as part of its everyday "school curriculum". The timetable technically says all school hours - 8am to 5pm Monday to Friday for every week of the school year, and with possible weekend use for sports carnivals etc. Altogether this adds up to so much exclusion, it ultimately "disowns" public usage.

The result equates to near-total control by DoE of fully 60% of the land area of the Park. In effect, it turns a 200m x 200m square Crown Land "Town Square" into remnant areas at the edges and what's left to the west of MS Oval . Indeed, this central space has now been "re-positioned" as a rectangle to make room for BHS buildings in anticipation of approval for this SSDA. Given such rush to pre-emption in favour of school usage, CLOL has reason to fear that the Park will remain vulnerable to takeover-creep when a 450-student BHS needs more space to cope with future growth.

Which it surely will, because even with Park AND roadway, this cobbled-together BHS Majara site is still under-size.

2. Turallo Creek Reserve - aka Bungendore Common

NSW DoE has a set of standards for site selection re a new High School. These stipulate that it must be a single site, with a minimum site size of 4.0 ha. Yet taking it all together, with the QPRC lots, plus the Majara roadway, and at least 25% Park in subdivision, the whole Majara Precinct still adds up to 2.4 ha – almost 50% shortfall.

For this "State Significant Development" to proceed, more land would be needed.

CLOL objects to the SSDA answer – a second take-over of open space from another CL Reserve literally just across the road from BHS. While usually referred to with great pride as Bungendore Common (and it was indeed a 100+yo traditional "Common" until ceded to Crown Lands in 1981) and often just called the "off-leash dog area", this green hill is part of a larger riparian area (Lot 701 / DP 96240) that meanders around a small stream, known in full as Turallo Creek Reserve R-94996 -- 29/5/1981 (**TC Reserve**).

Both the Park and TC Reserve are council-managed by QPRC under CLMA.

So now plans for BHS include a rural component and an "Agricultural Plot" (**Ag-Plot**) in the shape of a triangular half-hectare subdivision on the north side of Turallo terrace where it curves towards the Creek, leaving bare metres of roadway entry for dog-owners to make their way in, up and back to a now-truncated off-leash area at the rear.

This marginally increases the overall school area, but only to a **still-deficient 2.9 ha** – a hollow gain that comes at great expense to both Crown Land and the Bungendore community at large. The Common might be flood-prone open space, it's a prized part of Bungendore heritage, and much-loved as communal land. To complicate things further, it's also subject to a claim under the NSW Aboriginal Land Rights Act (**ALRA Claim**).

Alongside the Common, there will also be some impact on the Scouts who have a longstanding CL lease on land immediately adjoining this Ag-Plot. Site plans in the SSDA show amenity buildings intended for joint use with the Scouts.

We also note that this split-site land stratagem breaches DoE's "important" single-site rule. The result not only means a two-part school, but those parts are separated by a busy public road, Turallo Terrace, leading into McCusker Drive. The student-safety implications are daunting. Given current traffic patterns, plus recent "Structure Plan" approval for approx 1400 more dwellings this area, plus long-term another 3000-odd, CLOL fear dire adverse impact should BHS try to close/narrow the roadway here.

CLOL objects to this Majara Precinct+ Common land plan not only because it involves Crown land, but also because it is so complex, and triggers so many unwelcome outcomes for so many other people - the Community Centre, Abbeyfield, the Swimming Club, Scouts, families who use the Park for picnics, relaxation, holiday-makers, etc, etc, etc.

Communication and Consultation – big no-go

CLOL also objects to a near total failure in communication on the issues involved.

As CL Manager for both the Park, and TC Reserve, council's lack of transparency with the community has been an egregious abdication of responsibility. It has left everything at the mercy of the proponents – and DoE / SINSW have been recalcitrant about GIPA applications, quick to wave a big stick called "SSD", less than honest about traffic impacts, and (just one example) quick at fudging comments when asked about other easier, more appropriate sites.

In some cases SINSW have even denied in writing (including to QPRC) that any such alternative sites exist, despite knowing that the EOI process of Dec 2019- Jan 2020 is general knowledge. So also is the fact of an extended due-diligence period involving the the Ashby Estate , with land availability on Tarago Rd – a large, level site well within the 2.5kms proximity specified by DoE.

There has been a curious LACK of engagement from QPRC, 5to date singularly silent on the BHS matter. The only council communication CLOL is aware of is a statutory ad (Roads Act, s.38A) advising the intention to close parts of Majara St. This contains NO information or explanation re any ramifications involving BHS.

In short, the people of Bungendore have been left at serious disadvantage, with QPRC's failure-to-inform matched in infamy by council's own rush to respond in a weak-kneed huddle behind the DoE big-stick mantra called "SSDA".

CLOL considers the much-vaunted DoE online survey (result supposedly 80% in favour) as a swizz. Yes there were 700+ respondents and most did agree – but the main question was about having a high school per-se -- NOT about any specific site, and NOT a hint that plans might include such drastic change as the Majara St road closure. Not a word about demolishing the Community Centre, or losing a whole street-front, or partitioning the Park for sell-off, or the War Memorial put in a space-squeeze behind a school fence.

And there's been no community consultation in any way about the narrowing of Turallo Terrace or closing that roadway, nor about seeing the Common chopped in two, with a half-size off-leash area pushed way to the rear. In fact, even the consultants doing soil testing for this BHS proposal didn't know about this Turallo area until the last minute – so there's no borehole sampling for it – but their Report's App.18 in the SSDA anyway.

Having read the rationales offered with this SSDA, CLOL finds them larded with spiel. The skewed, error-ridden documentation raises as many questions as it answers, and the role of QPRC in regard to an inexplicable change of site reeks of collusion. CLOL could cheerfully, and correctly, call it ALL -- "objectionable".

CONCERNS – MATTERS THAT ARISE

Multiple Ownership

On p.2 of its School Site Guidelines, the DoE declares in no uncertain terms that "*it is important that the school site is* ***a single lot****… prior to the development of the school"* with reason given as being "*for ease of future development and* ***clarity of ownership****"*

CLOL objects to SSDA-14394209 because it fails on both counts. The single-site issue has been addressed above. The complexity of issues re ownership is obvious, given it involves not only closure of a Council-owned public road, demolition and replacement of a Community Centre, buying-out the old Palerang Council Chambers, purchase of two Council-owned lots previously promised to an aged care facility, and not least, the subdivision of land from TWO separate Crown Land Reserves, each with its own set of legal complications.

CLOL notes that on p.76 of the Environmental Impact Statement (**EIS**) the DoE coyly notes the "*the land is not currently owned by the applicant*" with no further comment as to how this will be handled to achieve the "clarity of ownership" so important to the Dept.

Failing the Fundamentals

Yet the truth is this: if the Crown Land ownership questions cannot be answered in favour of DoE, then this SSDA must fail. It is negated – a no-go waste of paper, because without that strip of Bungendore Park the new school buildings cannot be built; without that road closure the project is, to quote the DoE 's **own email, "not viable**".

And minus that area of TC Reserve, the overall land area is so far below the mandatory minimum that trying to proceed in breach of guidelines becomes an indefensible waste of time AND money, and (especially given the curious history of how such a complex site has been foist into consideration) would probably be ICAC-able.

CLOL notes that the CL ownership is not merely a matter of time, or timing. It involves strict legality with novel issues and conflicts of consideration between differing legislation. Such areas may well need to be tested in Court. Conditioning an approval will neither solve this problem, nor speed the process for either DoE or QPRC.

For instance, CLOL objects to the gross misrepresentation on p.77 of the EIS whereby the CL land is lumped into "classification" and as such purported to be community land as if this is the only factor that needs to be taken into account for any acquisition process.

At one stage, SINSW was even under the delusion that QPRC could somehow "magic" such community land into "operational" and then have a quick, happy fire sale.

CLMA is quite specific in regard to Council-managed Crown land –

1.15 Dealings with Crown land generally subject to Act

(1) Crown land must not be occupied, used, sold, leased, licensed, dedicated, reserved or dealt with in any other way **unless** it is authorised by this Act.

(2) However, this Act does not affect the operation of another Act to the extent that it—

(a) makes special provision for particular Crown land or any particular kind of Crown land, or

(b) **authorises** Crown land to be dealt with in **any manner inconsistent** with this Act.

Nil mention of Crown Land – or CLMA 2016

In fact, this SSDA seems so negligent in regard the law which controls management of Crown Land that CLOL cannot find a mention of CLMA 2016 anywhere in the entire EIS. Not even once. Given the Park has been Crown Land since 1884, and TC Reserve has been CL for at least 40 years (and under the Commons Act for 100 years before transfer as CL in 12981.) such omission is inexcusable.

Right up front, CLMA declares when it comes to Crown Land, the law that applies is the Crown Land Management Act 2016. As startpoint, the two key sections are the Objects of the Act, and the Principles of Crown land managements. Together these are mandatory for Minister, managers and all involved with Crown land.

1.3 Objects of Act

The objects of this Act are—

(a) to provide for the ownership, use and management of the Crown land of New South Wales, **and**

(b) to provide clarity concerning the law applicable to Crown land, **and**

(c) to **require** environmental, social, cultural heritage and economic considerations to be taken into account in decision-making about Crown land, **and**

(d) to provide for the consistent, efficient, fair and transparent management of Crown land for the benefit of the people of New South Wales, **and**

(e) to facilitate the use of Crown land by the Aboriginal people of New South Wales because of the spiritual, social, cultural and economic importance of land to Aboriginal people and, where appropriate, to enable the co-management of dedicated or reserved Crown land, **and**

(f) to provide for the management of Crown land having regard to **the principles of Crown land management.**

1.4 Principles of Crown land management

For the purposes of this Act, the ***principles of Crown land management*** are—

(a) that environmental protection principles be observed in relation to the management and administration of Crown land, **and**

(b) that the natural resources of Crown land (including water, soil, flora, fauna and scenic quality) be conserved wherever possible, **and**

(c) that public use and enjoyment of appropriate Crown land be encouraged, **and**

(d) that, where appropriate, multiple use of Crown land be encouraged, **and**

(e) that, where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained in perpetuity, **and**

(f) that Crown land be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the State consistent with the above principles.

(NB *throughout this submission, any emphasis added is by CLOL to highlight its relevance.)*

To CLOL, it seems that DoE is so unfamiliar with dealings re CL dedications and reservations that that it has assumed procedures will be the same as for any other land. In some areas such absence might be overlooked as unfortunate, but in those sections which relate to the legalities of "Public Authority Engagement" (refer p.98, s.6.2), failure to include Crown Land is beyond any logical explanation.

In a context which involves two significant CL sites, Crown Land must surely be considered as much a "public authority" as Transport, John Holland Rail, QPRC or GANSW. But in this case, there is one huge difference -- engagement with CL is more than mere nicety. CL is a crucial land-holder, where the land involved is so pivotal that its ownership may well determine whether this SSDA can proceed – or fail.

In the Mecone EIS document (p.15) there is a misleading reference to Division 3.4 of CLMA which concerns CL managed by councils which seems to assume that the only CL concern is about classification as community land. CLOL objects to such major mistake. Although councils are to manage CL "as if it were" CL, Crown land is not, and under CLMA never can be "community land".

Further into the EIS, (section 5.3, p.77) section of CLMA Div 3.4 s.3.22(1) is quoted, but again Mecone seems oblivious to what the words "as if" might mean.

As CLOL goes on to read the EIS and its Appendices in detail, it becomes obvious that SINSW has not advised the relevant consultants that CLMA is in place and remains so even when action is undertaken via SEPP2011. For instance, to avoid any meaningful mention of "Crown Land" other than one brief paragraph, immediately followed by a longer discussion of koala habitat indicates lack of understanding of issues involved.

The two CL sites are crucial. Having the Park land join with the closed roadway to create a footprint for the main school buildings is what literally underpins the whole SSDA. So lack of attention to CL is a glaring gap. CLOL considers the tokenism on display as tantamount to culpable omission, if not fraud.

At very least, it acts as wilful misdirection, with the effect being equivalent to that classic cop-out of "nothing to see here".

On behalf of the Bungendore community, CLOL objects strongly, and recalls how Brereton J warned proponents in a Supreme Court CL matter (Talus Reserve, SC case no. 201500046210, decision Dec 2016) that when it comes to govt management of Crown Lands, failure-to-inform has ramifications, can involve penalties, and is done "*at peril*".

CONCERNS - Some Legal Considerations re Crown Land

To paraphrase the SINSW executive in its communication with QPRC in October 2020, CLOL "*are not lawyers, but….*" CLOL can say the same, but our **"but … "** comes from close contact with the CLMA since it became the new Act in November 2016.

After reading comments by QPRC, and then the tone of this SSDA, CLOL is convinced that either or both DoE and SINSW have been deluded by past success to assume that SEPP2011 lets the SSD process prevail over all other legislation. It doesn't. What it does pre-empt is "any other environmental instrument". Which CLMA is not.

And while there is no doubt that the Education Act s.125 (1) gives that Minister power to buy or otherwise acquire land, including CL, but in doing so must comply with the LA(JTC) Act. However there are other Acts that come into play – and CLMA is definitely one of them. Consider this:

5.3 Powers of Minister generally

(1) **Subject to this Act (particularly, Part 2),** the Minister can do anything with Crown land that a registered proprietor of land can do.

(2) Anything the Minister does with Crown land has the same effect as if its owner had done it.

(3) Without limiting subsection (1), the powers of the Minister include—

(a) selling, exchanging, transferring or in any other way disposing of or dealing with Crown land, and

(b) mortgaging Crown land or allowing it to be mortgaged, and

(c) granting easements, rights of way, leases, licences or permits over Crown land, and

(d) imposing, requiring or agreeing to covenants, conditions or other restrictions on use (or removing or releasing, or agreeing to remove or release, covenants, conditions or other restrictions on use) in connection with dealings involving Crown land.

(4) The appointment of a Crown land manager of dedicated or reserved Crown land does not limit the Minister's powers to deal with the land.

(5) This section **does not authorise the sale of Crown land that is dedicated or reserved for a public purpose**.

The relevance to SSDA 14394209 is that, so long as they remain dedicated or reserved, it is beyond power for the CL Minister to agree to any sale of either the Park, or TC Reserve. There is no option to negotiate, no "willing seller" -- CLMA s.5.3(5) above makes it unlawful for the CL Minister to consent. DoE has no option but to acquire.

The ONLY way these land areas could subdivided out to become part of the SSDA for BHS is by compulsory acquisition.

But there are rules about this – not only in the CLMA, but also the Land Acquisition (Just Terms Compensation) Act 1991 (**LA(JTC)**) itself .

In fact, there could unintended legal consequences for DoE to handle if it proceeds to force acquisition of the Park, and these not from the LA(JTC) so much, as when it comes to finding a way to remove the Park dedication, which could be, and may well be, "preserved" – refer LA(JTC) s.20 (1A).

CONCERNS – Considerations re Compulsory Acquisition

Section 8 of LA(JCT) says "This Act prevails" – only in regard to "the extent of any inconsistency, over the provisions of any other Act relating to the acquisition of an authority of the State". Here's how it proceeds --

Land Acquisition (Just Terms Compensation) Act

Division 2 Acquisition procedures

19 Compulsory acquisition by notice in Gazette

(1) An authority of the State that is authorised to acquire land by compulsory process may, with the approval of the Governor, declare, **by notice published in the Gazette**, that any land described in the notice is acquired by compulsory process.

(2) A copy of the acquisition notice is, if practicable, to be published—

(a) in at least one newspaper circulating in the district in which the land is situated (whether published in print or on a website), or

(b) on at least one website that, in the opinion of the authority, is appropriate to cause the notice to come to the attention of persons in the district in which the land concerned is situated.

(3) An acquisition notice may relate to **part only** of the land described in the relevant proposed acquisition notice.

20 Effect of acquisition notice

(1) On the date of publication in the Gazette of an acquisition notice, the land described in the notice is, **by force of this Act**—

(a) vested in the authority of the State acquiring the land, and

(b) freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land.

(1A) Subsection (1) **is subject to** any express provision of an Act that authorises the acquisition of land by compulsory process **but preserves** the operation of any trusts, restrictions, **dedications, reservations,** declarations, setting apart of or other matters relating to the land concerned.

There is no doubt that CL can be acquired by the Minister for Education– but there are other provisions to consider, even in LA(JTC) itself --.

Division 4 Miscellaneous provisions relating to acquisition

29 Acquisition of Crown land

(1) Land may be compulsorily acquired by an authority of the State under this Act **even though** it is Crown land.

(2) If Crown land is **subject to a dedication or reservation** that (by virtue of any Act) cannot be removed **except by an Act**, that land **may not be** compulsorily acquired. However, this prohibition does not apply **if** the dedication or reservation is **not affected** by the compulsory acquisition of the land.

(3) Nothing in this Act affects the acquisition by agreement of Crown land by an authority of the State.

Consider the following –

In effect, multiple laws mean that even if DoE does decide to pursue the unthinkable, to force the compulsory acquisition of a much-loved, much-used CL Park that has been dedicated for almost 140 years, then other Acts say that the land it acquires REMAINS dedicated for its original purpose of Public Recreation.

Therefore, in LA(JTC) both s.20 (1A) and s.29 (2) make it clear that, unless pre- revoked, a reservation/dedication goes with the land,. If so, this aspect is beyond control by either QPRC or DoE. Nor could the CL Minister assist after acquisition, since the CLMA then no longer applies.

None of this enables DoE to lawfully use the land for a school. RE-zoning is no help. It may apply to the QPRC properties, but is of no effect in terms of negating a dedicated "public purpose". This is a case where the otherwise irresistible over-ride powers in the SSD SEPP2011 are of no avail because neither CLMA nor the LA(JTC) Act (nor the Real Property Act) are "environmental instruments".

Ownership is one thing. Reserved status is another – and there is no easy way for it to be changed to public education just to suit the current SSDA, because reserved status is NOT a matter of classification, or of zoning. Likewise, the CLMA's big "as if" means there is no possibility of change for the Park to become "community land" – and even less for this to morph into "operational".

3.21 Management in accordance with Local Government Act 1993

(1) A council manager is authorised to **classify and manage** its dedicated or reserved Crown land **as if it were public land** within the meaning of the *Local Government Act 1993*, subject to this Division.

(2) Accordingly, a council manager is also authorised to manage its dedicated or reserved Crown land **as if it were community land** or operational land, but **only** as permitted or required by this Division.

Note— *The term **public land** (as defined by the Local Government Act 1993) excludes land to which this Act applies even if it is vested in or under the control of a local council. The Act also requires local councils to classify their public lands as either community land or operational land and manage the land accordingly*

A similar situation applies in regard to compulsory acquisition of TC Reserve – with the added complication of an ongoing (ie unresolved) ALRA Claim by the local Ngambri Aboriginal Land Council.

At the end of the above complications (and CLOL predicts the legalities involved could be even more complex than indicated here) DoE may well have a prime parcel of former Crown land that it cannot lawfully use for an "educational establishment" like BHS, rendering this whole SSDA process a waste of time and money. CLOL certainly objects to such mismanagement.

However, for the sake of discussing this SSDA in terms of outcome, let's assume DoE do decide to proceed with compulsory acquisition. Another major question comes into play. CLOL now asks --HOW will the subdivision process be handled in terms of the separating out each "public purpose" Vs the portion of each landholding it applies to ? How will this then affect the DoE demand for consolidation into a single site when different lots will be governed by differing use-constraints ?

CLOL assumes that DoE intends to leave the remainder of both Park and TC Reserve as CL, which then continue to be dedicated/reserved for "public recreation". How is this supposed to happen ? More critically - how will DoE get around the problem of residual dedication/reservation over its newly-acquired subdivided sections of former CL ? Somehow this ongoing control will need to be altered, or extinguished. Approaching it as a "secondary interest" is unlikely to succeed, and may no longer even be an option.

It is a sad fact (which CLOL deplores) that despite being both key land-owner AND the ultimate legislative authority for each of the subject sites under CLMA, the CL Minister was not considered relevant enough to be a "Stakeholder" in re this SSDA-14394209.

The warning of Brereton J in the Talus matter might apply here – "*acquire, at peril*".

Possible Option #1 – Disappear the Dedication ?

As explained above, there is nothing that the Minister for Education, SEPP 2011, or this SSDA can do to remove the dedication from the Park, or the reservation from TC Reserve. For the latter, a reservation can be altered or removed by the CL Minister with a decision published in the Gazette – but any such action must abide by CLMA in all respects, and this includes those Principles of Crown Land Management with their strong requirements in terms of the Public Interest. It is unlikely that the current proposal for 30% sell-off of the Park, or a make-space Ag-Plot would comply.

Where the CL reserve is a dedication, as for the Park (D-1000193) the procedures for removal involved a radically higher bar, and with higher stakes in regard to meeting the Principles of CL Management. For instance, should the CL Minister consider there is a case to end the dedication, before any such decision can take effect, the gazette Notice must be tabled in both the Upper and Lower House of NSW Parliament for 10 days. No removal can proceed unless it can gain effective approval from BOTH Houses.

2.7 Revocation of dedication

(1) The Minister may, by notice published in the Gazette, revoke the dedication (or part of the dedication) of dedicated Crown land.

(2) However, a notice revoking a dedication **must not** be published **unless**—

(a) the Minister has caused a proposal to revoke the dedication to be published in the Gazette (the ***revocation proposal***), **and**

(b) a copy of the revocation proposal is tabled in each House of Parliament within 10 sitting days after its publication, **and**

(c) notice of a resolution disallowing the revocation proposal is not duly given under **subsections (3) and (4)** or, if it is, the resolution is not passed or the notice of the resolution is withdrawn or lapses.

(3) **Either House of Parliament** may pass a resolution **disallowing the revocation** proposal after the copy of the proposal is tabled in that House.

(4) Notice of a disallowance resolution must be given within 14 sitting days after the revocation proposal is tabled in the House.

(citation of CLMA s2.7 continues)

(5) A dedication of land may be revoked even if—

(a) after dedication, a Crown grant has issued or a folio of the Register has been or is created, or

(b) before dedication, the land had been alienated by the Crown and subsequently resumed, purchased or acquired in any other way by the Crown.

(6) This section extends to land that has **ceased to be Crown land but remains subject to a dedication**.

To the best of CLOL knowledge, such de-dedication has never happened; and if ever, this would have been prior to living memory. If it were to happen, the CLMA clauses s2.7 (1) (2) (3) (4) still apply. Given political realities, plus the strength of long-standing community "ownership" towards "OUR" Bungendore Park, any such attempt is unlikely to succeed.

Another Option #2 – Alter the Dedication ?

Appropriate multi-use is one of the Principles of CL Management -

1.4 Principles of Crown land management

For the purposes of this Act, the ***principles of Crown land management*** are—

(c) that public use and enjoyment of appropriate Crown land be encouraged, **and**

(d) that, where appropriate, multiple use of Crown land be encouraged, …..

The CLMA has a number of provisions that, subject to ministerial approval, allow mixed usage of a reserve or dedication. Would this be an easier way forward whereby DoE can in effect add "public education" as a secondary use to the dedicated purpose of "public recreation" but without alteration or compromise to the original gazettal ?

There are two ways a CL Minister can alter the dedicated purpose – either by adding an "Additional" purpose (via Notice in the gazette) or by allowing a "secondary" interest. Either way, that interest must comply with the following considerations --

2.19 Secondary interests in dedicated or reserved Crown land

(1) ……...

(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.**

This CLMA dotpoint list (a) to (f) is so compelling that it occurs twice in the Act – s.2.19 as above for secondary interests as-such, or the same wording in s.2.14 for "*Additional purposes for dedicated or reserved Crown land*" where any additional purpose has a further condition that it "**does not limit** any existing purpose".

For DoE and the Park, the limitations that will apply if this SSDA gains approval on the basis of either altering, or adding to, the existing dedication, are obvious. The result for "public recreation" will be so dominant as to make a mockery of the above list. CLOL would go further, to say that it would turn both the Objects and Principles of Crown Land into a joke – yet more grounds for this objection.

A new High School in Bungendore may be in the public interest, but the location plan in this SSDA is NOT. It has adverse impact, and indisputably does great "material harm" to both the fabric and the function of both.

Another Option #3 - Long-term Leasing ?

CLOL understands that, contrary to its policy of requiring clarity of title, DoE have discussed the possibility of a long lease to gain control of the subdivided Park land. Under current CL Regulations governing Council management of Reserves and Dedications, this won't work - refer DPIE Fact Sheet p.2 DOC 19/16495.

Reason – as of now, QPRC has no Plan of Management (**PoM**)in place for Bungendore Park – not even a generalised PoM that covers CL parks overall. In fact, there is not even a finalised list of "categories" for its CL Reserves and this is a mandatory prerequisite prior to preparation of any "initial" PoM process.

This same lack applies re TC Reserve, and probably explains why this area's recent "management plan" comes with an explicit proviso that it is NOT a PoM.

Result – these Guidelines on pre-PoM leasing have strict term limits. Is DoE aware that the longest period possible for leasing land at the Park, is a non-extendable FIVE years ? This is the MAXIMUM LEASE now allowed for Council-managed Reserves and Dedications for which there is NO PoM.

(Where lease negotiations are documented as starting prior to mid-2019, the term may be longer, perhaps to max. 21 years. Of course, this exception is irrelevant re BHS .)

Note: *lack of PoM is also a problem should DoE seek to alter or add to the "public purpose", since any such change must be in line with what's already in a relevant PoM. And the PoM process can take anything from 18 months to 3 or 4 years to complete.*

CLMA CONCERNS: Secondary Interests Must BE Secondary

CLOL sees no way this DoE proposal can co-exist with a dedicated Bungendore Park, even an altered dedication allowing for a "secondary" interest for an educational purpose. The current proposal is simply too big to qualify.

Consider – permanent occupation involving 25% of the entire land area is, in context, a big proportion by any standard. And while a secondary use does not have to be similar to the main use, as a matter of law, it must NOT result in any "**material harm**" in regard to that original use. This SSDA makes such a dramatic difference to both the Park, and TC Reserve, and so curtails their use for the public purpose of PUBLIC recreation, that "material harm" is a polite description.

Mick Sherd Oval becomes a weekday monopoly.

Such take-over, be it by "alteration" of purpose or by subdivision is then exacerbated by the agreement re Mick Sherd Oval that gives exclusive use 8am to 5pm for five days a week, leaving a central 30% of the Park as only available for public recreation at nights (scarcely a viable use after dark, especially given the local climate) and at weekends. This use is explicitly for school curriculum, not just sports. And public access "out of hours" seems to depend on whether BHS does or doesn't need the Oval for some school event, sports carnival or the like.

According to CLOL calculations – and this is confirmed by space/allocation diagrams in the architect and landscape plans etc - public recreation is left with the "left-overs" while effective control of at least 60% of the entire Park.

ANOTHER CONCERN – Comparable Costs Count

CLOL is also aware that SINSW has recently been able to expedite progress on a directly comparable project – the 500-student High School at Jerrabomberra.

This is a one-owner, single site, with land ready to build, and with ample space for a 500-student High School now, and room to expand. It is on the western edge of Jerrabomberra some at some remove from Jerra Primary School, but within the stipulated 2.5kms distance. There's one big difference – Jerra High School has a budget of $24 million, while the BHS cost estimate is upwards of $34 --37 million.

This location is directly comparable to the Tarago Rd site. CLOL sees the suitability of the site , the speed with which it's underway, and the cost differential – it adds up to a 3-way indictment of this SSDA, and what has gone wrong at Bungendore.

MORE CONCERN - War Memorial Spaced Out

CLOL objects to the unintended consequences of what happens when the BHS fence is put around MS Oval. Instead of having the whole Park as its curtilage, suddenly the Bungendore War Memorial will become a stranded survival, set in a narrow strip about 16m wide to be left along Gibraltar St.

In effect, its footprint does a space shrink, from 4000m2 down to about 40m2.

Behind the existing backdrop of 4 mature pines, the new Mick Sherd fence presents as a barrier that acts as unmistakable visual marker saying "BHS – school territory".

CLOL knows that DoE originally saw this heritage-listed item as a nuisance in the school environment, and planned its removal elsewhere. After much community protest, this SSDA retention shows how a Memorial can be downgraded to mere memento.

CLOL objects to this as crass disrespect, not only because it demeans a fine commemorative Arch, but also as an affront to the courage , sacrifice and service it stands for. This is marble arch is way beyond the ordinary expectations for a small rural village – it is magnificence on a grand scale, and the Bungendore community are right to be duly proud. They also have every right to expect that its setting should be protected, and continue to reflect that symbolic splendour.

To suggest that allowing access to a school loudspeaker system on Anzac Day can somehow "compensate" for such casual downgrade is an insult. It's certainly no compensation.

HERITAGE CONCERN – Haphazards in This HIS

Reminded by the above comments re the War Memorial, CLOL places on record here a scathing objection to Appendix 7, the Heritage Impact Statement (**HIS**).

Although the historic information is of general interest, the standard of heritage assessment is dismal. Its treatment belittles the value of the War Memorial, describing this as being merely of "local" interest, and set in more curtilage than it "deserves" given the "arch and plantings only comprise a small footprint" The writer then goes to downgrade Bungendore Park as "not significant" and deride its size as "excessive curtilage". There seems to be no understanding of the Park's heritage value as a Town Square*, and nothing re its role in a traditional grid pattern from circa 1840's.

*(*Somewhere in the EIS but tellingly, not in the HIS, there is a map which shows this.)*

The HIS is also errs in regard the role of Bungendore Common in Bungendore's development and "community identity", which pre-dates by decades any alleged start in 1901. It is outrageous to see this community asset dismissed (HIS p.44) in the most condescending tone CLOL has ever encountered in such context. It is not even mentioned as "Turallo Creek Reserve " – the official name.

To then deride the heritage impact of a much-loved communal area as "simply unused open space" is beyond comprehension. The writer is either the victim of a desperately bad brief (and if so, CLOL objects) or never set eyes on the site.

CLOL also notes that in this whole 48-page HIS Report, there is not a single reference to Crown land - yet Bungendore Park has been dedicated Crown land since 1884, a year before the railway arrived, and with it the growth from small settlement to village., wit town planning underway. Surely this status has notable heritage significance. The dedication is clearly marked on the Parish Map of 1900 (HIS p.33) – but there are much earlier maps available. Similar amnesia applies re the longevity of the Common, aka TC Reserve. Such omissions are inexcusable.

In short, CLOL objects to a facile grab-bag of what seems to be desktop evaluation based on google maps and info cribbed from Palerang LEPs, Trove, and the SHR.

When TWO Streetfronts Vanish – It's a Major Civic Loss

This SSDA fails on many factors specified in CLMA – it will materially harm the current purpose of being a Park for "public recreation"; once built, BHS will be irreversible; it does diminish, or ignore, and this in large measure, the geographical, environmental and social context of the land.

BHS might be a "second" user at the Park, but none of the above is remotely "secondary". Above all, there will be a huge, and irretrievable, reduction in actual space. But CLOL has another objection in terms of what this loss of land means re **spatial presence.**

Civic character comes from what you can see around you – those familiar local vistas that let you "feel at home" where you live. Streetscape is integral to community relationship. Yet this SSDA will deprive the Park of TWO street-fronts. This is double material harm.

Any relationship with Majara St is gone, obliterated under the two-part two-storey construction that occupies about 2/3rds of the entire Park width. Around the corner in Turallo Terrace, fully 120m of BHS subdivision stretches halfway down that side of the Park, where it comes so close to the tennis court extension that the only open space left for the Park is a 7m gap barely wide enough for a proper access pathway.

To compound this alienation along Turallo Terrace, the dominant features of BHS plans in this area include a massive 2-storey concrete wall (for the gym) and a long line of 2m high fencing (for basketball courts and cricket batting nets . Any sense of connection to the "Park" is gone here too.

CONCERN – Visual Dominance Exceeds Footprint

CLOL also objects to the SSDA for the sheer bulk and scale of the buildings proposed in this currently low-key context. Official entrance to the Park is from Butmaroo St. Looking from there, the main school structures will loom over every other element you can see, to be easily the most eye-dominant element in the entire landscape.

Consider: the Park is 200m wide – and three-quarters of this whole width is occupied by two-storey construction - the main building is 90m long, then a 40m roofed walkway, and then another 46.25m gym and library etc. And yes, there is some articulation in the floorplan, but not enough to counteract the overwhelming impact of a roofline which is admitted as being 15-33% higher than the maximum permissible in this area.

The two-storey bulk of the buildings will overwhelm the landscape and visually dominate the entire Park domain. And yes, CLOL realises that DCP rules don't count when it comes to a SSDA, but those rules are almost irrelevant here.

There are NO other buildings like this in this area, none. The only 2-storey nearby is St. Joseph's Convent, but this is a modest federation, far smaller in size than BHS, and sits on lower land. The "Victorian" Royal Hotel is too far away to count.

CONCERNS – Basic Errors in the EIS

CLOL objects to the slipshod way the EIS for this SSDA has been prepared – some errors are serious, some laughable.

CLOL objects to any claim that this two-storey school is acceptable because it matches other two storey buildings in the area and we note the Palerang Council Chambers at 10 Majara St is given as example. This is an outright lie - that building is one-storey, and always has been. While there are a couple of two-storey's nearby (the convent, which sits low thanks to slope of land, and further away, the Royal Hotel) their modest scale pales into insignificance when compared to the 30m & 90m-wide over-height bulk of BHS as proposed in this SSDA.

This whole heritage precinct is low-key domestic. It is self-serving fudge for the EIS and/or architects to suggest that their intrusive, industrial-size school format is in "rural harmony" with, or in any way compatible with, this "village" neighbourhood.

The 5-day-a-week agreement re MS Oval means the school has "exclusive use" of the Park's main recreational area for at least half of all usable daytime.

Then there are the idiot glitches. One EIS example is s 7.1.3 on p.105. It refers to a "shared future playing field to the north", and goes on to list a "north-south pedestrian connection between Burroway Road and the playing field". Neither exist.

But it's no joking matter when an EIS gets such basics so wrong. MS Oval sits to the WEST of where BHS will be. And again there is NO Burroway Road anywhere in or near the village of Bungendore. But guess what – 3 Burroway Rd, postcode 2127 is location for Wentworth Point Public School – 297 kms to the north by google-map's fastest route. In another there are whole paragraphs headed "Palerang" instead of Bungendore.

The first Draft study of Bungendore traffic was titled as "Queanbeyan Traffic Assessment" – and maps in the final Draft dated Feb 2021 was even then STILL showing Majara St as open for motorists. These errors have been tied up somewhat in the SSDA document Appendix 6-a "TRAFFIC ASSESSMENT".

However, there has been no correction for the fundamental flaw in both Drafts – to whit, that the Study was done by one person on one day, this being a slow Thursday (which we know from the record in the singularly car-free photos) and with the data based on an assumption that Majara St would remain open for through traffic.

The real-life results are so unrelated to the BHS scenario proposed in this SSDA that CLOL objects if App.6a is given any credence in regard to this SSDA.

Another key error throughout this EIS is its frequent focus on re-zoning, as if changing this to include education will somehow be the magic bullet to solve all the issues in "the public purpose of public recreation" at the Park and TC reserve. It won't.

As mentioned earlier, CLMA is NOT an "environmental instrument" and as such, it is NOT subject to any controls in SEPP2011. This distinction is important, since it's an error that both QPRC and DoE seem to make often.

Somehow, the words "State Significant Development" are deemed to have such legal force that they can justify almost anything, no matter how far removed from ordinary planning rules. If it's environmental, they do. But when it's Crown Land – they don't.

To be clear about this: zoning is an environmental rule used to manage land areas by the various controls on land use. "Use" is about HOW. "Purpose" is about WHY – the outcome/s to be achieved as a result of specific land use. When, under CLMA, certain land is given site-status as "reserve" or "dedication" this means it is set aside from sale for some defined "public purpose". Councils have no power to change this.

Is there a Real Risk of LEAD Contamination ?

CLOL concludes by advising that while our OBJECTIONS in the foregoing submission focus on Crown Land per-se, we are well aware of many other problems in regards to other issues. We conclude this submission with reference to just one – last month's bombshell announcement by Transport NSW.

It seems that recent Transport NSW investigations have revealed elevated lead levels along the Bungendore rail corridor – with two areas close to the proposed BHS site being of grave concern.

The first is the carpark in Bungendore Station forecourt, with only the Stationmasters Cottage and yard at 16 Majara St to separate it from the BHS main entrance at the proposed new Gibraltar St roundabout. This exact forecourt area is designated in the SSDA as a site available for school parking. Such proximity cannot be ignored – the area is already identified as dangerous and safety screening has now been erected to prevent public access.

There is also serious concern as to what this might mean for Bungendore Primary School (**BPS**) located just across the road. It certainly calls into question both the timing, and the feasibility factors for any BPS "upgrade" plans as currently outlined in the BHS proposal.

From what Transport NSW revealed in its webinar on these investigations, train speed and the rolling movement of open ore-wagons probably mean a second danger-zone will be along the rail-track itself. This prediction is in line with the situation that confronted John Holland Rail in the major lead investigation at Tarago rail yards last year. Likelihood of risk seems inevitable. Site-plans in the SSDA clearly show how the close this eastern section of the Majara precinct is to the north-bound rail corridor, with the tracks running just metres away, parallel to and directly behind the back boundary of the proposed BHS.

CLOL joins with the Bungendore community in TOTAL objection to any school site where there is even the slightest hint of lead contamination, historic or otherwise. We believe that unless and until Transport NSW results show no such risk, there is a moral imperative to put this entire SSDA on hold. It must be safety-first, no matter what delay ensues. And if this is not possible, then we urge a swift site-change.

DoE should immediately end all work on the Majara precinct and re-activate negotiations with the owners at Tarago Rd.

A Viable Alternative – and Still Available !

To summarise – the key CLOL objection to SSDA-14394209 is this –
LOCATION – LOCATION – LOCATION.

But now, and along with the general Bungendore community, CLOL is aware that in mid-June 2020 Property NSW was on the brink of finalising agreement for a thoroughly suitable High School site just along Tarago Rd.

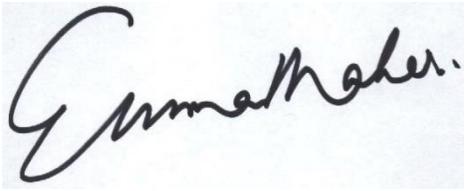
That location is within the 2.5kms zone, is in the heart of future residential development, and has been through six months of due process, and fulfilled every requirement – as much size as required, good space, level ground format, proximity, traffic access, suitable for agricultural studies if needed, plenty of room for own-sports facilities but also close to the new Sports Hub. It ticks all the boxes - a single site, from a willing seller at a fair price.

CLOL objects that the current crazy, convoluted CL-destroying site-consolidation scheme is even being attempted via SSDA when such easy, viable alternative is ready and waiting. The situation is even more ludicrous when you realise this whole SSDA is based on 2.9 ha patchwork of land which doesn't come within cooey of DoE site-size mandates of at least 4 ha minimum for a "Rural/Regional Secondary High School".

If that Tarago Rd land is as shovel-ready as it looks (and from what we read in GIPA-supplied Property NSW reports, this is so) then there is every chance that the current building plans can be adapted quickly, construction fast-tracked, and the new school at least open by the target deadline of February 2023, with landscaping and such for completion later that year.

CLOL looks forward to that, and wishes Bungendore "Happy New High School" – at a new location with no Crown Land complications. May it happen soon.

Submitted on behalf of Crown Land Our Land Inc,



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