ORDINARY MEETING OF COUNCIL TO BE HELD TUESDAY 10 JUNE 2014

CL07

Submission
Crown Lands Legislation – White Paper

ATTACHMENTS

Crown Lands Management

Review

NSW GOVERNMENT

Crown Lands Management Review

NSW GOVERNMENT | Trade & Investment

Title: Crown Lands Management Review

Authors: The Crown Lands Management Review – NSW Trade & Investment

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Disclaimer
Information contained in this publication is based on knowledge and understanding at the time of writing (March 2014) although the data provided is mostly from 2011/12 and is not sourced from audited financial reports. Because of advances in knowledge, users are reminded of the need to ensure that information on which they rely is up to date and to check the currency of the information with the appropriate officer of NSW Trade & Investment.

Job No: 12401

Contents

List of Tables

List of Figures

Letter from the Chair

The Hon Andrew Stoner MP

Deputy Premier, Minister for Trade & Investment

Minister for Regional Infrastructure & Services

Level 30, Governor Macquarie Tower, 1 Farrer Place

SYDNEY NSW 2000

Dear Deputy Premier

Crown land is a prized asset of NSW as it provides essential social, environmental, community and economic facilities for the people of NSW. In June 2012, you initiated a comprehensive review of NSW Crown Lands Management to examine its current activities and report on its future direction.

I am pleased to present the NSW Government with the *Crown Lands Management Review*, recommending a number of reforms to improve Crown land management in NSW. The Steering Committee had executive representation from eleven NSW Government departments and agencies, and met a number of times over the course of the Review, offering a depth and breadth of knowledge that has proven invaluable.

NSW has not undertaken a major reform of Crown land for over 25 years. We all recognise that the NSW Government's objectives and the needs of the community have changed markedly over this period and the management of Crown land has to change in order to better meet these new priorities.

This Review should be a pathway to NSW Crown land being more effectively managed in the structure of a public trading enterprise. This approach is necessary and we believe that a significant part of the Crown estate can be run more effectively, whilst not compromising the NSW Government's social, community and environmental objectives.

The current system has too much duplication in legislation and operations, delays in the timely implementation of good public policy, dated information management systems, unnecessary red tape, and the cooperation between Crown Lands Division and other NSW Government departments could be markedly improved. From the Committee's perspective, it is most important that the NSW Government consolidates legislation and facilitates opportunities for local councils to better and more easily manage lands that are used primarily by local communities.

Review and reform, especially when instigated after 25 years, will undoubtedly come with challenges. These will include consultation and coordination with other current government reviews, such as the Aboriginal Land Rights Act Review and the work of the local government reviews. Pleasingly, I understand that the necessary change in management approach to bring about such reform is already under way.

The Committee has been heartened by the responses received through consultation with parties across NSW who have taken the time and effort to communicate their views on potential Crown land reforms. The responses have been varied, but all of the parties seem to have a common vision that better management of the Crown estate is imperative for the economic good of NSW and the estate needs to be managed in a manner better suited to current priorities.

Finally, in the preparation of the Review, we owe a special debt of gratitude to the Review team at the NSW Department of Trade & Investment for their tireless dedication, energy and commitment since the inception of this Review.

Yours sincerely

Michael Carapiet

Executive summary

The NSW Crown estate covers 42 per cent of New South Wales, contributing to the social, environmental and economic fabric of the state. Despite its importance, the estate has not had a major review for more than 25 years. It is now time to take an objective look at how Crown land can be best used.

The Crown Lands Management Review started in June 2012. It aims to improve the management of Crown land and increase the benefits and returns from Crown land to the community. It shows the NSW Government's ongoing commitment to the effective management of the Crown estate.

The case for change

Like all Crown estates in Australia, approaches to Crown land management in NSW reflects more than 120 years of ownership and management arrangements: some no longer match the needs of current and future communities in terms of economic, social and environmental objectives. There is substantial duplication of legislation, overlapping administrative responsibilities between NSW Government agencies, inconsistencies in management and accounting for similar parcels of land, and a legacy of use that means some Crown land is no longer used for its original purpose.

Community and industry expectations in relation to the use and management of Crown land mean that the NSW Government, now more than ever, needs to simultaneously prioritise its investment in the estate to reflect community sentiment and to streamline inefficient processes.

The rationale for the existence of Crown land – that certain land should be retained by the Crown for public benefit – remains a sound principle. Making sure the Crown estate is managed efficiently into the future means that the businesses and community groups that operate on Crown land will face lower administrative costs and can reprioritise and reinvest their resources into other priority areas. It also means that investment in better and more efficient systems and processes is essential.

The geographic spread of the Crown estate means that approaches to management need to be flexible enough to accommodate the range of values present in the landscape and held by the community. For example, Crown land that is managed for local communities rather than the State may not need the current level of administrative oversight from the NSW Government. Councils often manage this land well with little involvement by the State, and in the 25 years since the last major review other regulatory instruments have evolved to support the underlying objectives of Crown lands legislation.

Terms of reference

The terms of reference for the Review were to identify and recommend:

- key public benefits (social, environmental and economic) derived from Crown land,
- the NSW Government's future role in the management and stewardship of Crown land,

- the basis of an appropriate return on the Crown estate, including opportunities to enhance revenue,
- business, financial and governance structures that enable achievement of desired outcomes within financial and resource constraints,
- opportunities for efficiency improvement and cost reduction, consistent with red tape reduction objectives and accountability,
- introduction by NSW Government of incentives to enable the Crown Lands Division to manage and develop the Crown estate in line with NSW Government objectives, and
- a contemporary legislative framework.

The Review was led by an inter-agency Steering Committee independently chaired by Mr Michael Carapiet.

Only Crown land administered by Crown Lands Division is considered in this Review. National parks, state forests and community lands held by councils are out of scope on the basis that they are special categories of public land managed for specific purposes by other entities.

Recommendations

The recommendations from this Review address each of the major reform opportunities for Crown land management. They are listed in Table 1.

In summary, the recommendations address issues around:

- the ownership of the Crown estate, depending on the balance of local and state uses and benefits,
- the governance of Crown land and the level of community involvement,
- the ownership of travelling stock reserves,
- administrative arrangements for managing Western Lands leases,
- the adequacy and transparency of Crown Lands Division's accounting systems,
- the amount of red tape and the need for multiple approvals for activities,
- overlaps in legislation and the need to rationalise the number and coverage of Acts that affect Crown land management, and
- the operation of Crown Lands Division and the shift needed for it to meet community expectations and adopt modernised business procedures.

Table 1: Recommendations from the Crown Lands Management Review

STATE AND LOCAL LAND

- Conduct a strategic assessment of NSW Government needs to determine which Crown land is required for core service delivery or has state or regional values.
- Conduct a pilot program, in consultation with the Division of Local Government, Department of Planning & Infrastructure and key stakeholders, to test and refine the state and local land criteria and to develop an implementation plan for the transfer of local land.
- Devolve land of local interest to local councils to meet local needs.
- Devolve Crown land to other NSW Government agencies if they are best placed to manage the values and risks associated with a parcel of land.

MANAGEMENT OF CROWN RESERVES

- Revise the reserves framework to better facilitate multiple use of land compatible with the reserve purpose.
- Move to a two-tier reserve management structure by removing reserve trusts.
- Allow councils to manage Crown reserves under the local government legislation.
- Support community member participation in the management of Crown land that encourages good governance.

REVIEW OF TRAVELLING STOCK RESERVES

- Local Land Services work with the relevant stakeholders to develop assessment criteria to review all TSRs and determine their future ownership and management.

WESTERN LANDS

- Review the eligibility criteria for conversion of Western Lands leases held for agriculture or cultivation and perpetual Western Lands grazing leases with current Cultivation Consents where the land has been developed.
- Allow conversion of perpetual Western Lands grazing leases on the same terms as Western Lands leases held for agriculture or cultivation, where there is a current Cultivation Consent over all or part of the land contained in the grazing lease and the land has been developed.
- Compare existing Crown land leasehold conversion processes.
- Permit certain additional land uses where appropriate on Western Lands leases.

RED TAPE

- Review activities requiring landowner consent from Crown Lands Division.
- Effective compliance arrangements for waterfront structures should be considered by the Marine Compliance Taskforce as part of the On-Water Compliance Review.
- Harmonise the management of submerged land in NSW.

LEGISLATION

- Develop new, consolidated Crown Lands legislation.
- Repeal eight or more existing Acts.
- Abolish commons as a discrete category of land.
- Amend the *Roads Act 1993* so that the Minister is no longer a roads authority.
- Responsibility for all roads used to provide access to the general public to rest with the other roads authorities under the *Roads Act 1993*.
- Remove the option to dedicate Crown land in the future.
- Remove the land assessment requirements currently contained in the *Crown Lands Act 1989*.

CROWN LAND VALUATION AND DIVIDENDS

- Benchmark return on assets against opportunity cost.
- Determine an additional land value as a measure of opportunity cost – the hypothetical fee simple unencumbered freehold value based on surrounding land use and zoning.
- Express the shortfall between a community-based organisation's ability to pay and the market rent as a community service obligation payment.
- Report on the level of contribution made by the NSW Government for the use of Crown land for community purposes.
- Develop specifications for new information systems based on needs identified by the Review, leveraging opportunities from the Enterprise Resources Planning (ERP) and other cutting-edge technologies.

ACCOUNTING ISSUES

- Establish and publish separate audited accounts and budget estimates for the Crown estate as a prelude to establishing Crown Lands Division as a Public Trading Enterprise.
- Critically review the proposed general ledger and financial reporting structure to ensure that they will meet all reporting and other requirements.
- Establish adequate internal systems and procedures for Crown Lands Division to ensure proper management of all business activities.

BUSINESS MODEL

- Establish Crown Lands Division as a Public Trading Enterprise through a staged transformation process.
- Upgrade Crown Land Division's information management systems to allow informed decision-making and comprehensive accounting.
- Develop appropriate benchmarks and key performance indicators to reflect the economic, social and environmental objectives required in the management of the Crown estate.

NEXT STEPS

- Release a White Paper for consultation on the proposed legislative changes.
- Develop a plan for further exploration and implementation of internal business and reporting reforms.

Implementation

Crown land is a valuable community resource that evokes a high level of public interest. Appropriate implementation and management processes will need to be designed and resourced. This should include comprehensive public and stakeholder consultation to build on the informal consultation with some stakeholders that has already taken place, noting that the framework proposed in this report has evolved through internal review and is largely principles-based.

Some of the reforms with the greatest potential to deliver on the NSW Government's reform agenda require legislative amendment and will be included in a White Paper for public consultation.

Many of the recommendations can and will be implemented through policy, including:

- conducting a strategic assessment of the NSW Government's needs,
- piloting the devolution of 'local land' to councils,
- developing mechanisms to report on the level of support provided to the community for the use of Crown land,
- developing new systems and increased transparency as a first step towards Crown Lands Division becoming a Public Trading Enterprise, and
- utilising Local Land Services to review travelling stock reserves.

The timeframe for implementing the recommendations will depend on the complexity and extent of changes proposed by this and other reviews, including changes to the planning and local government frameworks and the acceptance of those changes by the broader community, and whether the recommendations represent a cost-effective means of achieving meaningful gains.

Some recommendations may prove difficult to implement in the face of other constraints. In particular, the operation of the *Aboriginal Land Rights Act 1983* is the focus of a separate legislative review. The Commonwealth's native title legislation and the impacts of the *Aboriginal Land Rights Act 1983* on the implementation of some recommendations will be considered through that process.

Implementation of the proposed improvements will take time to finalise because the necessary changes in legislation and accounting processes, and growing the skills base, will require significant resourcing and cultural change. Therefore, this Review seeks to enable the NSW Government to determine the targets and benchmarks for the ongoing management of the Crown estate over the next twenty years.

Chapter 1: Introduction

The NSW Crown estate makes up about 42 per cent of the State. The estate has a wide range of uses, including commercial ventures (such as marinas, kiosks, restaurants and caravan parks), telecommunications, access, grazing and agriculture, residential, sporting and community purposes, tourism and industry, waterfront occupations, travelling stock routes, recreation facilities and green space, cemeteries, environmental protection, and government infrastructure and services.

The 33.6 million hectares that comprise the Crown estate are managed under 59,500 tenures (33 million hectares) and around 35,000 Crown reserves (2.7 million hectares) (see Figures 1 and 2). It is a complex arrangement: Crown Lands Division administers the land through a mix of contractual arrangements, tenures, leases and devolution to local trusts managed by community groups and local councils. In particular, multiple tenures can be issued over Crown reserves resulting in some double counting.

Appendix A includes maps of Crown land tenures, reserves and waterways.

Aims and terms of reference of the Crown Lands Management Review

This Review aims to improve the management of Crown land and increase the benefits and returns from Crown land to the NSW Government and the community. It is the first comprehensive review in 25 years, and has been under way since June 2012.

The Review covers only Crown land administered by Crown Lands Division. National parks, state forests and community lands held by local councils are out of scope on the basis that they are special categories of public land managed for specific purposes by other entities.

The terms of reference for the Review are to identify and recommend:

- key public benefits (social, environmental and economic) derived from Crown land,
- the NSW Government's future role in the management and stewardship of Crown land,
- the basis of an appropriate return on the Crown estate, including opportunities to enhance revenue,
- business, financial and governance structures that enable achievement of desired outcomes within financial and resource constraints,
- opportunities for efficiency improvement and cost reduction, consistent with red tape reduction objectives and accountability,
- introduction by NSW Government of incentives to enable the Crown Lands Division to manage and develop the Crown estate in line with NSW Government objectives, and
- a contemporary legislative framework.

The Review is led by an inter-agency Steering Committee independently chaired by Mr Michael Carapiet

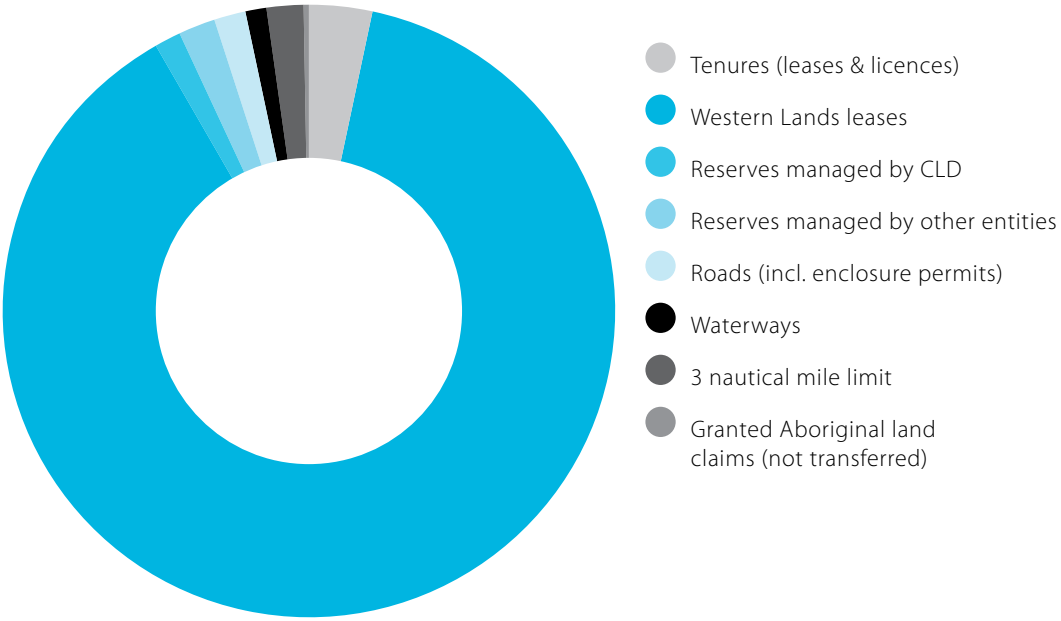


Figure 1: Current Crown estate by area (ha) (Total area 33.6 million ha) 2011–12 data

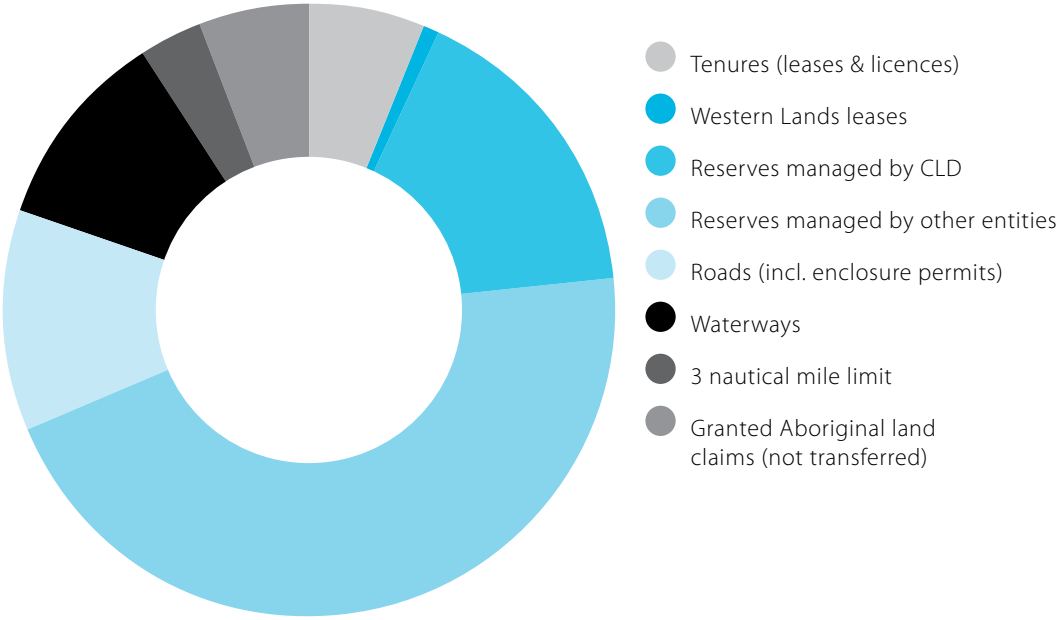


Figure 2: Current Crown estate by value set by accounting standards (Total value $10.989 billion) 2011–12 data

Table 2: Agency representation on Crown Lands Management Review Steering Committee

AGENCY	REPRESENTATIVE
Independent Chair	Mr Michael Carapiet
Department of Trade and Investment, Regional Infrastructure and Services	Mr Mark Paterson, Director General
Department of Premier and Cabinet	Ms Vicki D'Adam, Deputy Director General
Treasury	Mr Matt Roberts, Deputy Secretary
Department of Finance and Services	Ms Simone Constant, Executive Director
Office of Aboriginal Affairs	Mr Russell Couch, Group Manager
Division of Local Government	Mr Steve Orr, Deputy Chief Executive
Office of Environment and Heritage	Mr Bob Conroy, Acting Head
Department of Planning & Infrastructure	Mr Andrew Jackson, A/Deputy Director General
Transport for NSW / Roads and Maritime Services	Mr Tim Reardon, Deputy Director General
Department of Education and Communities	Ms Donna Rygate, CEO Office of Communities
Department of Primary Industries	Ms Renata Brooks, Deputy Director General
Department of Trade and Investment, Regional Infrastructure and Services	Mr Brad Mullard, Executive Director
Crown Lands Management Review Secretariat	Mr Austin Whitehead & Ms Lindsey Paget-Cooke

Context

The timing and implementation of the Crown Lands Management Review complements two other core NSW Government reform programs: the reform of the planning system, and the local government reviews. The outcomes of the review of the *Aboriginal Land Rights Act 1983* will also need to be considered.

The Crown Lands Management Review has relied on principles that have been established by NSW Government policy or that arise from other current reviews, in particular:

- the NSW Government's desire to devolve decision-making to local communities (NSW 2021) and for land to be managed by the most appropriate level of government (NSW Commission of Audit),
- the Property Asset Utilisation Taskforce (PAUT) recommendations that the NSW Government should hold property to support core services only, and that surplus property should be sold to realise funds to maintain the necessary capital base,
- the NSW Government's desire to cut red tape and reduce regulatory duplication, which is also a theme of the proposed local government reforms along with a desire for simpler and more flexible legislation (NSW 2021),
- the planning reform proposal to involve local communities upfront, at the strategic planning stage, rather than in the later stages of the development application, and

» the NSW Government's focus on genuinely understanding the needs of customers, simplifying access to services, and removing the need to deal with multiple agencies.

Crown Lands Management Review proposes that land be broadly treated as either 'state' or 'local' land:

» State land is land required for NSW Government purposes, either because it is required for core service provision or because it should be retained in public ownership due to some level of market failure.

» Local land is land with local values, needed for local purposes.

Ideally, this analysis of Crown land should feed directly into the Regional Strategic Planning processes proposed for the new planning system so that the best use of land can be identified through regional, subregional and local plans, and its development well regulated.

The Review is aware of the obligations relevant to 'cost shifting' that result from the NSW Government's endorsement of the *Intergovernmental Agreement to Guide NSW State-Local Government Relations on Strategic Partnerships* and the Review is not intended to breach that agreement.

Alignment with NSW Government goals and priorities

The reforms will deliver on the NSW Government's commitment and on the following key government priorities:

1. Improved transparency – better NSW Government decision-making through access to better and relevant information,
2. Reduced red tape – delivering efficiency gains to councils, stakeholders, the community and NSW Government,
3. Giving the community a greater say in decision making – providing flexibility to land managers to enable them to respond to changing community priorities,
4. Growing the economy – achieving appropriate returns for the people of NSW from the use and occupation of Crown land, and
5. Strategic investment in the estate to reflect changing government priorities.

The proposed Crown land reforms will assist in achieving various NSW 2021 Goals.

Chapter 2: State and local land

Key points

- Certain types of land need to be retained by the NSW Government.
- Decisions about land of local value and interest are best managed locally.
- Allowing councils to manage local land under the local government legislation will deliver efficiencies.
- Crown Lands Division adds marginal value to the management of local land, especially where this land is already managed by councils.
- Identification of NSW strategic land needs will complement the subregional planning process in the new planning framework.
- Further consultation is required to test the state and local land criteria and identify implementation issues associated with the proposed delineation between state and local land.

Background

A significant proportion of Crown reserves are managed by local councils or local community trusts (see Table 3). Although the reserves are managed locally for local benefits, the trusts cannot make significant decisions without ministerial approval, which is generally delegated to Crown Lands Division.

All other Crown reserves are managed directly by Crown Lands Division. These reserves tend to be less prominent and less frequently utilised, except when they are held under tenure. Management of these reserves is generally focused on liability management and preservation rather than pursuing opportunities for improvement.

Table 3: Delegation of management on Crown reserves, by number of reserves and hectares

MANAGEMENT TYPE	TRUST MANAGEMENT TYPE	RESERVES	HECTARES
No trust (i.e. managed by Crown Lands Division)		17993	2,382,721.5
Reserve trust	Nil (Crown Lands Division)	123	2,796.5
	Administrator	36	18,261.1
	Corporation*	885	70,318.4
	Council	5555	83,701.9
	Community trust	671	21,788.2
	Subtotal	**7270**	**196,866.1**
Livestock Health and Pest Authority (now Local Land Services)		6485	542,975.1
Devolved to councils		2135	14,359.2
Management unknown		800	52,987.5

MANAGEMENT TYPE	TRUST MANAGEMENT TYPE	RESERVES	HECTARES
Trusts over Commons		118	54,504.8
Vested in councils		46	351.5
School of Arts trust		25	4.2
Managed by other NSW department		23	991.5
Total		**34,987**	**3,245,761.5**

*Note: Corporations that manage Reserve Trusts include, for example, The Scout Association of Australia, NSW Branch, Girl Guides Association (New South Wales), Marine Rescue NSW, RSL Lifecare Ltd, and Camden Haven Community College

The Review has identified efficiency gains and improved governance for the Crown estate: these issues are addressed elsewhere in this report. This chapter discusses which land should continue to be held by the NSW Government and what tests or criteria could be adopted to determine this.

The Review has explored giving greater autonomy to councils over Crown land that predominantly benefits local communities rather than the broader public of NSW ('local land'), much of which they already manage on behalf of the NSW Government. It also recognises that there is a broader economic and social benefit to land being managed at the level where the value and interest lies. Essentially this would place management and, where possible, ownership of local assets with councils and remove inconsistencies in the management of Crown reserves and council-owned community land.

A conceptual approach to the implementation of the state and local land model is shown below in Figure 3.

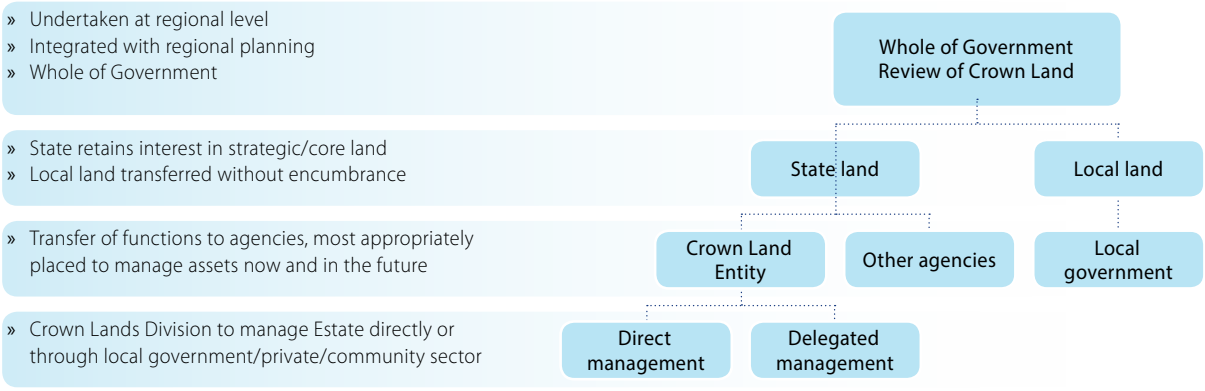


Figure 3: State and local land framework

Strategic assessment of government needs

The aim of a strategic assessment of government needs is to determine whether land held in the Crown estate is currently providing a core service that cannot be provided privately, or whether the land is required by any NSW Government agency for core service delivery in the future. Put more simply: which parcels of land should continue to be held as public land, or which land has any statewide or regional values, including but not limited to economic, social, environmental, heritage or tourism values?

The following criteria have been developed as a guide by which land could be classified as state land. It is recommended that these criteria be refined through further consultation with relevant stakeholders:

- land currently subject to leasehold tenure that is not reserved, except where the tenure is held by councils

  Reason: Tenured land generally benefits only the tenure holder rather than local communities, so it would be unlikely to fulfil the criteria for 'local' land. It also provides a return to the NSW Government.

- land required for critical infrastructure (e.g. coastal breakwalls and foreshore protection, harbours, telecommunication towers and infrastructure expansion)

  Reason: NSW Government has an obligation to ensure the provision of utilities across the state, so the NSW Government needs to retain land required for utilities infrastructure.

- land that is part of a system or network (e.g. environmental corridors, beaches, rivers, major walking trails)

  Reason: Networks by definition are contiguous or extend over large areas and can span more than one council area; beaches and rivers are significant natural features for which the NSW Government should retain responsibility in order to provide public access for the people of NSW.

- iconic land, including major sporting venues (whether identified through the NSW heritage list, the NSW Stadia Strategy, or by some other method)

  Reason: 'Iconic' land is land that has significance for NSW as a whole, for example Hyde Park or the Sydney Cricket Ground.

- land within a certain distance of beaches, coasts and estuaries

  Reason: The NSW Government has an important role in coastal management and in ensuring that the public of NSW has access to coastal and estuarine areas.

- land within a certain distance of the central business zone of cities or towns with populations of more than (for example) 10,000

  Reason: This will maintain land in NSW Government ownership to preserve the ability to make strategic planning and policy decisions without the need to acquire prominent high-value land.

- land known to be subject to serious contamination or other significant liability

  Reason: It is not the NSW Government's intention to burden councils by transferring land with significant liabilities.

These state land criteria should be used only to produce a 'first cut' of land that should be retained as state land.

Where strategic assessment indicates that land should be retained as state land, the next step will be to determine which NSW Government agency is best placed to hold it. Where the framework indicates that NSW Government ownership of the land is not required to deliver value to the public of NSW, the question is: what should be done with it? This could include transfer to local councils or Aboriginal Land Councils.

Local land

The transfer of management and where possible ownership of land to councils would allow local interests and needs to be managed locally. The concept of divesting land to councils is not new. Section 76 of the *Crown Lands Act 1989* provides for the vesting of land in councils. However this provision has not often been used.

A broad-based or a site-specific approach could be adopted to determine which land should be classified as local land.

Broad-based approaches have been considered, including transferring to councils the management or ownership of all Crown reserves that are already administered by them through reserve trusts. However, whether or not a particular reserve is managed by a council could be a historical accident, and applying this approach is likely to lead to inconsistency across NSW. It could also prevent any Crown land not currently administered by local government being classified as 'local land'.

If a site-specific approach is preferred, the variation between councils (financial, political and geographic) means that it will be important to be clear about what kinds of Crown land are appropriate for transfer to councils. It is suggested that the following land characteristics (or criteria) could be adopted for this purpose:

- land that is providing a public good predominantly for people in the local area or in adjacent parts of neighbouring local government areas,
- land that is used for purposes that are consistent with the functions of local councils,
- land that is managed as a community asset by councils or some other body.

Applying these criteria, it is likely that land used for parks, gardens, local sports fields and recreation centres, community centres, swimming pools, tennis courts, tourist information centres and libraries would, in most cases, be considered to be local land. Land used for a range of other activities, for example Schools of Arts or scout halls, might also be classified as local land. It is likely that much of this land is already managed by councils. However in some cases the managers will be community trusts or community organisations and in others management could have defaulted to Crown Lands Division.

The case for 'local land'

The benefits to local communities of the local land approach include:

- the ability for councils to manage all local land in accordance with local government legislation,
- the capacity for councils to manage adjoining local land and community land as one entity,
- consistent legislative requirements for local land and council-owned community land,

- the removal of duplication in relation to requiring Minister's consent for activities such as granting leases on local land,
- the need for councils to report to Crown Lands Division only by exception,
- reduced administrative costs and simplified administrative processes,
- the flexibility to consider options for alternative use or disposal of local land, and re-investment, as part of councils' broader asset management portfolio, and
- increased flexibility to develop commercial opportunities and increase revenue from local land.

Councils are in a position to determine better uses of the land if they own it outright. This will include the possibility of disposing of some land and re-investing the proceeds to improve the amenity of the community land estate or mitigate any liabilities associated with the transfer of local land.

To be clear, this approach is not an exercise in cost shifting. It will transfer decision-making for local land to the most appropriate level of government and allow for community input through council consultative processes. In many cases, councils already manage and maintain local land, in which case there would be no new expenses.

It is not known whether all councils would be able to take advantage of this proposal. Councils' views are likely to depend on their current financial position. It could be difficult for councils with a weak financial position or high infrastructure backlog, or with sparsely populated areas with low land prices and sluggish markets. The model for transfer needs to ensure that it minimises the extent to which existing inequalities, either regional or council-specific, constrain engagement with the proposal.

This approach is not without its challenges to both councils and communities. It is for this reason that the transfer or divestment process should aim to provide maximum benefit to both the State and local governments. It should ensure that both levels of government are best placed to make accurate and informed decisions.

The current arrangements under Crown Lands Division's Public Reserves Management Fund[1], which provides for competitive grants and loans for works on Crown reserves, are linked to the existing status of land and will need to be revisited if the recommendations of this Review are endorsed. A review of the ongoing need for and benefit of the Fund might be required. Such a review could explore the suitability of other models to provide councils with access to alternative funding to help with the management of their estate.

Implementation of local land

Ideally, local land would be transferred to councils outright and the NSW Government would retain no interest in or control over that land. It is envisaged that much of the local land transferred would continue to be used for public purposes. Ownership in fee simple would provide councils with the flexibility to change the use of local land or to dispose of it in accordance with their asset management strategy, taking into account the needs of their communities.

1 The Public Reserves Management Fund (PRMF) is a statutory fund established under the *Public Reserves Management Fund Act 1987* to provide financial support for the development, maintenance and improvement of public reserves. PRMF funds are allocated each financial year to reserve managers through a robust assessment process.

If councils realised a significant windfall through the disposal of land that had been gifted to them, this might appear to be an unsatisfactory outcome for the taxpayer.

In principle, this could be addressed by a caveat giving the NSW Government a share of any 'excessive' windfall gain, but not of any 'normal' gain. However, it would reduce the benefits to councils and local communities by increasing regulatory burden and red tape on land that has been identified as being of limited state importance. It would also be inconsistent with the overall objective of the Review to reduce red tape.

In any case, it could well be wrong to assume that any gains by councils are at the expense of the taxpayer, because the realisation of assets by councils could result in the same or increased economic benefits accumulating across NSW.

The public's interest in local land would be protected by the community participation framework in the local government legislation. The local government legislation requires public consultation on all proposals to convert community land to operational land. It is expected that this protection will be continued in some manner in the new local government legislation. Local zoning and re-zoning provisions will provide similar safeguards.

It is suggested that packages of local land could be developed using the state and local land criteria. These packages are likely to include a mix of lands that are regarded as assets and lands that have liabilities. As already mentioned, outright ownership would enable councils to dispose of local land to meet any additional liabilities that they will be taking on.

If local land cannot be transferred to councils outright – for reasons of native title or other reasons – councils should be allowed to manage this land under the local government legislation rather than under the Crown land legislation (see Chapter 7). In these circumstances the only remaining NSW Government interest would be ownership of the land. Councils would be free to manage and use the land as they wished, subject to the provisions of their legislation and other state and federal statutory provisions, including those relating to Native Title.

A pilot program to test and refine the criteria and to develop an implementation plan that will take into account legislative and other constraints needs to be undertaken. This should involve the Department of Planning & Infrastructure, the Division of Local Government, councils from different parts of NSW, and other key stakeholders. This approach is consistent with the principles contained in the recently signed Intergovernmental Agreement to Guide NSW State–Local Government Relations on Strategic Partnerships.

To ensure that the greatest utility is achieved from both state and local land, alternative land uses should be considered and fed into the statewide strategic or local planning process in a timely fashion to inform community decision-making around appropriate land use and zoning.

It will take time for the NSW Government and councils to investigate and identify land parcels that would be suitable for transfer to local ownership.

Implications of native title and Aboriginal land rights

The pilot program will also need to consider how the identification of local land and its potential transfer to local government interacts with native title and Aboriginal land rights.

Native title

Approximately half of NSW is currently covered by registered native title applications for a determination of native title rights and interests by the Federal Court. Any proposed activity or development that could affect native title is a 'future act' that must be authorised under the *Native Title Act 1993* (Cth). Native title will only be 'affected' if it has not been extinguished.

The reservation of land for a public purpose will have partially (not wholly) extinguished native title in the land. If dealings in land occur (for example a lease, licence or sale) and it is subsequently found that native title had not been extinguished, the dealings are invalid, with certain narrow exceptions, and the land remains subject to native title until action is taken under the *Native Title Act 1993*. However, where land is subject to a reservation created on or before 23 December 1996, leases or licences that are consistent with the reserve purpose, or that do not have a greater impact on native title than the reserve purpose would have had, are valid.

Aboriginal land claims

Crown land management is also affected by the land claim provisions in the *Aboriginal Land Rights Act 1983*. That Act is currently being reviewed and changes to it are outside the scope of this Review.

The *Aboriginal Land Rights Act 1983* defines claimable land, in summary, as land that:

- is vested in her Majesty (Crown land except Crown land under contract for sale), and
- can be lawfully sold or leased or is reserved or dedicated under the Crown Lands Act, and
- is not at the date of the claim lawfully used or occupied, or
- is not in the opinion of the Minister at the date of the claim needed or likely to be needed as residential lands, or
- is not in the opinion of the Minister at the date of the claim needed or likely to be needed for an essential public purpose, or
- is not subject to a determination that native title exists

The proposed streamlining and modernising of the Crown Lands Act requirements in relation to Crown reserves, notification and other procedural matters will reduce the risk of unlawful use and occupation of Crown land and should reduce the complexity associated with management of future land claims.

The Review recommendations will not impact on land claims that have already been made.

Recommendations

- Conduct a strategic assessment of NSW Government needs to determine which Crown land is required for core service delivery or has state or regional values.
- Conduct a pilot program, in consultation with the Division of Local Government, Department of Planning & Infrastructure and key stakeholders, to test and refine the state and local land criteria and to develop an implementation plan for the transfer of local land.
- Devolve land of local interest to local councils to meet local needs.
- Devolve Crown land to other NSW Government agencies if they are best placed to manage the values and risks associated with a parcel of land.

Chapter 3: Management of Crown reserves

Key points

- The reserves framework should be revised to better facilitate multiple use of land compatible with the reserve purpose.
- The delegation of management (i.e. care and control) for a significant proportion of the Crown estate increases the NSW Government's and hence the taxpayer's exposure to risk.
- It is not necessary to have three tiers of governance for reserves: two tiers are sufficient, and the third tier, reserve trusts, can be removed.
- There should be options for community member participation in the management of Crown land that encourages effective governance.

Background

Crown land is managed for the benefit of the people of NSW in accordance with the principles set out in the Crown Lands Act, which include environmental protection, natural resource conservation, encouragement of public use and enjoyment, encouragement of multiple use, resource sustainability and that Crown land be used in the best interests of the State of NSW.

There are approximately 35,000 Crown reserves in NSW. There are around 1,100 external trusts who do much of the day-to-day management for over 7,000 reserves including community trust boards, local councils, the Lands Administration Ministerial Corporation and corporations. The remaining reserves are managed directly (i.e. there is no trust appointed) by the Minister (through Crown Lands Division), Livestock Health and Pest Authorities (now Local Land Services), councils and other government agencies.

While this arrangement is cost effective, there is ambiguity around who is responsible for what. The NSW Government ultimately retains a residual obligation to intervene when there are problems.

The system of management of reserves by community-based boards is resource intensive and over time has become burdensome and presents a relatively high risk. Reasons include increasing expectations of governance skills and expertise for board members and a decline in the numbers of community members willing or able to take on the increasing levels of complexity and responsibility involved.

Findings in relation to reserve purposes

Reserve 'purposes' are set out when a reserve is gazetted. It is a desirable tool for ensuring that land is managed in an appropriate way: this mechanism should be retained. However, the purpose also restricts the scope to use Crown land for compatible multiple purposes, as envisaged by the objects of the Crown Lands Act.

While there are mechanisms for authorising additional reserve purposes and also for overriding the reserve purposes, these mechanisms are a highly inefficient way of managing Crown land. It is proposed to revise the reserves framework to better facilitate multiple uses that are compatible with the reserve purpose.

How this framework interacts with management of local land by councils will need to be further considered as the local government reforms develop.

Findings in relation to reserve trusts

Community involvement is essential to the ongoing management of Crown reserves. Ensuring the right mechanisms exist to meet the growing demand for increased transparency and accountability have been priorities for this Review. In particular, the Review has looked at ways of improving the management and governance arrangements for Crown reserves. Community members should have the option to be involved in governance if they have the appropriate skills, or otherwise to participate in reserve management in other ways. It also makes sense to utilise other legislation where appropriate, which will happen if councils can manage local land in accordance with the local government legislation.

The Review has found that most of the management approaches that NSW could adopt are available in some form under the Crown Lands Act and related legislation. However, there are the following significant exceptions:

- NSW is locked into a three-tier management system, and legislative change will be required to move to a two-tier system.
- NSW legislation does not allow for the management of Crown land by councils under the local government legislation.

A number of shortcomings in the day-to-day management and governance of reserves have also been identified.

The three-tier management system

NSW is unusual in having a three-tier Crown reserve system. Other states mostly have Crown reserves and reserve managers, whereas the Crown Lands Act provides for Crown reserves, reserve trusts and reserve managers.

Reserve trusts were created in 1989 to provide some protection from liability for individuals administering Crown reserves. Legal advice indicates that similar protection can be afforded to managing bodies, so the second tier of reserve trusts is no longer needed.

Managers are appointed to Reserve trusts to deal with the day-to-day care, control and management of reserves: this system of appointment involves unnecessary red tape. Under the proposed model, Crown Lands Division would appoint managing bodies directly, which will be a simpler system. The role of reserve managers is not expected to change, but their method of appointment will be different.

Currently most Crown reserves have their own trusts and managers. The recently-constituted NSW Crown Holiday Parks Trust and local government are working examples of where a single trust effectively and efficiently manages many Crown reserves. This model could be used more widely to allow for the consistent management of groups of reserves that are used for similar purposes.

The move from a three-tier to a two-tier system will need to be underpinned by legislation and is likely to take several years to implement.

Managing Crown land under the local government legislation

Councils currently manage Crown reserves under the Crown Lands Act. This means that councils may be managing community land under the local government legislation and an adjacent Crown reserve under the Crown Lands Act. This causes unnecessary difficulties as the different management requirements are often not known or understood. Further, this can prevent these adjacent pieces of land being managed as one entity, and can complicate the development of plans of management.

The NSW Government seeks to simplify and make consistent the management of these very similar types of land wherever possible. The simplest and most obvious way of doing this is to allow councils to manage Crown land under local government legislation rather than under the Crown Lands Act.

An expanded management role for councils is proposed for land that benefits local communities rather than the broader public of NSW (see Chapter 2). This includes management under the local government legislation or outright transfer of local land to councils.

The rationalisation of the Crown estate in this way will streamline reserve management; allow local assets to be managed and owned by the most appropriate group, particularly where land is of primarily local significance; remove inconsistencies in the management by local councils of council-owned community land and Crown reserves; and reduce complexity and red tape.

The outcome will be that local land will be more directly managed for the benefit of local communities, who will have greater involvement in that management through consultation and advisory opportunities provided under the local government legislation.

Management and governance shortcomings

To address the identified shortcomings in day-to-day management and governance of reserves, the following aspects consistent with best practice will be considered in developing the framework for future management and governance:

- purpose and business objectives
- board structure and competencies
- ethical decision making
- audit and financial reporting
- reporting and transparency
- performance management
- risk management
- stakeholder engagement
- management information.

In particular, the new managing bodies should be required to have appropriate financial and governance expertise to reduce the level of risk to community members and the NSW Government. To continue community interest and involvement in the Crown estate, community advisory committees could be established (as currently provided for in the local government legislation), or community members could be involved in other ways.

Recommendations

- Revise the reserves framework to better facilitate multiple use of land compatible with the reserve purpose.
- Move to a two-tier reserve management structure by removing reserve trusts.
- Allow councils to manage Crown reserves under the local government legislation.
- Support community member participation in the management of Crown land that encourages good governance.

Chapter 4: Review of travelling stock reserves

Key points

- Many travelling stock reserves are no longer used for their original purpose.
- A detailed review is required to determine which travelling stock reserves are required for the delivery of core government services and to determine appropriate funding resources.
- The establishment of Local Land Services provides an opportunity to develop a regional process to consider the future use of the travelling stock reserve network consistent with the NSW Government's commitment to the devolution of decision-making to local communities.

Background

Travelling stock reserves (TSRs) were once used to move livestock from farms to markets or railheads. They include stock routes as well as fenced areas for camping or watering stock overnight. Some are still used today for grazing, especially as emergency refuges during floods, bushfire, drought (fodder), as well as some local agistment. TSRs are also used for public recreation, apiary sites and for conservation.

The 10,415 TSRs in NSW cover almost 2.1 million hectares and are managed by:

- Livestock Health and Pest Authorities (LHPAs), (now Local Land Services) (6,485 TSRs),
- Crown Lands Division (3,919 TSRs),
- councils (47 TSRs),
- other NSW Government agencies (five TSRs), and
- a not-for-profit organisation (one TSR).[2]

The use of TSRs has changed

The use of TSRs has changed: most are no longer being used for their original purpose. They are used for recreation, other social uses, access and heritage. TSRs also provide some insurance during drought and flood. Many are still important because of their location in over-cleared landscapes and because of significant Aboriginal cultural heritage and ecological values.

As part of the overall Crown Lands Management Review, a Crown land asset, activity and funding framework was applied to several Crown land case studies, including TSRs. The recommended next step was to examine TSRs on a case-by-case basis to determine whether specific parcels of land should be disposed of or retained by government where appropriate.

2 Statistics provided by Crown Lands Division, 16 May 2013

A process is needed to identify whether individual TSRs are still used for their original purpose or for other purposes, and to determine their future ownership and management. Local Land Services would be an appropriate body to do this because of the long history of Rural Lands Protection Boards and LHPAs in managing TSRs, the landscape perspective of Catchment Management Authorities (CMAs), the history of strong engagement with Aboriginal communities, and the local nature of the issues that need to be addressed. This would also be in line with the NSW Government's commitment through NSW 2021 to devolve decisions to local communities.

The assessment criteria for the proposed review will be developed by Local Land Services in consultation with Crown Lands Division, the Office of Environment and Heritage, the Office of Aboriginal Affairs, Local Aboriginal Land Councils and other relevant stakeholders.

Future management of TSRs

There are issues around ownership, governance, future use and the role of government. In particular, it needs to be determined whether the NSW Government should continue to own and control TSRs.

A pilot project to assess the values and management of the TSR network in the Hunter Valley was undertaken in 2009 by Crown Lands Division in partnership with the Hunter Central Rivers CMA and other stakeholders. One outcome of that project was the development of the Crown Land Assessment Support System, a method for identifying and assessing the significance of a wide range of values on TSRs. This system could be used to inform the proposed review.

A key outcome from the review will be that each TSR will in future be managed by the body with the greatest interest in it, which could include Local Land Services, National Parks, local councils, Aboriginal Land Councils, Roads and Maritime Services, State Rail, and adjacent landowners. Some TSRs may need to be kept in the Crown estate, for example where they provide access to neighbouring landowners, are needed for road or rail corridors, or form part of networks such as walking or horse trails.

Where TSRs are retained by the NSW Government for a public benefit, this would need to be funded through appropriately aligned funding streams. For example, TSRs that are retained because of their high biodiversity values should be funded through government (NSW and/or Commonwealth) grants for conservation work.

The NSW Independent Pricing and Regulatory Tribunal (IPART) is advising the Minister for Primary Industries on how the Local Land Services Boards should set their fees, including a recommended rating base. The IPART review includes consideration of TSRs (as a case study) and is likely to make recommendations on an appropriate cost recovery framework and cost sharing arrangements.

TSRs are subject to approximately 5,500 Aboriginal land claims under the *Aboriginal Land Rights Act 1983*, making up approximately 50 per cent of the TSR network. These interests will need to be considered, and any decision about the future use and management of TSRs will require negotiation with the NSW Aboriginal Land Council and relevant Local Aboriginal Land Councils.

Recommendation

» Local Land Services work with the relevant stakeholders to develop assessment criteria to review all TSRs and determine their future ownership and management.

Chapter 5: Western Lands

Key points

- The current arrangements for Western Lands grazing leases provide effective governance and cost recovery to preserve environmental values.
- It is neither necessary nor appropriate to provide for the broadscale conversion of Western Lands grazing leases to freehold.
- The costs to the NSW Government and leaseholders of allowing the broadscale conversion of Western Lands grazing leases to freehold would probably outweigh any material benefits.
- There is scope for converting perpetual Western Lands grazing leases that already have Cultivation Consents.
- There is an opportunity to streamline some existing processes and remove certain constraints to provide greater flexibility.
- The proposal to create a Western Region Authority could affect the role of the Western Lands Commissioner.
- The Western Division boundary does not need to be changed.

Background

Just over a third of NSW is in the Western Division, which includes:

- the local council areas of Bourke, Brewarrina, Central Darling, Cobar, Broken Hill, Wentworth and parts of Walgett, Balranald, Bogan, Hay and Carrathool, and
- the Unincorporated Area (which has no local government), which is the statutory responsibility of the Western Lands Commissioner.
- Most land in the Western Division is leasehold land issued for grazing under the *Western Lands Act 1901*. There is some cultivation – typically intensive cropping and cotton production – on the more-resilient, eastern margins of the Western Division. Leases have also been granted in urban areas for residential and business use.
- Leases can be converted to freehold if the landscape has been significantly altered from its natural state and there are limited remaining environmental values. Most residential leases have now been converted but there has been limited conversion of other leases (see Table 4).

Table 4: Western Lands leases and capacity to convert to freehold

LEASES BY PURPOSE	NUMBER OF LEASES	CAPABLE OF BEING CONVERTED TO FREEHOLD	NUMBER THAT HAVE BEEN CONVERTED TO FREEHOLD
Grazing / Pastoral	4,275	No	0
Grazing / Pastoral with an approved Cultivation Consent	975	No	0
Agriculture / Mixed Farming / Cultivation or Horticulture	522	Yes	28
Residential	2,112	Yes	1,700
Other – business, conservation, commercial	185	Yes	20

Most of the Western Division has extremely low population densities. Economic opportunities are traditionally limited, and this is a source of concern for local councils. The exception is mining, which contributes significantly to the economies of towns such as Cobar and Broken Hill.

Some of the issues relating to the Western Division are common to Crown land across the state, and are covered elsewhere in this report. However, conditions in the Western Division are sufficiently different to consider the following issues separately:

- the nature of the leasehold system,
- freehold conversion of grazing leases,
- conversion processes,
- streamlining measures,
- possible impacts of Western Local Land Services and the proposed Western Region Authority, and
- the Western Division boundary.

Continuing the leasehold system for Western Lands grazing leases

While some leaseholders are supportive of the current leasing arrangements[3], a small number of lessees and some councils[4] have recently sought NSW Government support for the conversion of perpetual Western Lands grazing leases to freehold. Arguments in favour of this include philosophical objections to leasehold and suggestions that economic development and use of land are impeded by the current arrangements. The Review examined these claims and has concluded:

- there is no evidence that the leasehold system in and of itself reduces economic viability,
- the perpetual nature of the leases enables lessees to trade and use their leases as security as if the land were freehold, and the land values on transfer reflect that[5],

3 The Western Lands Advisory Council has recently passed a resolution opposing the broadscale conversion of Western Lands grazing leases.
4 For example, Wentworth Shire has argued for the right to convert all grazing leases to freehold.
5 Note that the Australian Capital Territory issues long term leases for a period up to 99 years – this provides less security than the protections granted to Western lease holders yet those leases are essentially treated as freehold by banks for financing purposes.

- » lease conditions provide an effective regulatory regime, and
- » there are a number of unnecessarily complex or prescriptive provisions that could be removed to improve efficiency.

The Western Lands Act gives the Western Lands Commissioner the power to control stocking and grazing rates on grazing leases. Conditions on leases create a regulatory regime that would need to be replaced by other legislation. Lease conditions are currently the only statutory option.

Environmental issues

The semi-arid rangelands are particularly susceptible to land degradation. In the Eastern and Central Divisions recovery from drought and overstocking of native vegetation, which provides protection for the fragile soils, is much more rapid because of higher rainfall. In the Western Division damage takes much longer to repair, leaving the land vulnerable to erosion and resulting in the loss of the native grasslands and soil, and replacement with less desirable weed species including woody weeds. Other threats include climate variability and an increase in total grazing pressure from livestock and feral and native herbivores. There are also increasing numbers of absentee landholders and managers who may have less familiarity with land capability and land use limitations.

For these reasons there is a continuing need to protect this fragile, semi-arid environment through regulation.

Costs and benefits

The costs of administration and compliance with Western Lands leases are currently partially recovered through lease fees. An alternative regulatory approach to legislation is likely to be more costly for the NSW Government, and ultimately the community.

Other problematic aspects of broadscale freehold conversion include:

- » surveys and title issues,
- » the need to provide a legal road network in areas where this does not yet exist, and
- » determinations of a fair purchase price.

The costs of allowing broadscale conversion of Western Lands grazing leases is likely to far outweigh any benefits. Nevertheless, more detailed cost benefit analysis of the possible conversion scenarios is required.

Access issues

The right to access infrastructure has traditionally been created through conditions on leases and licences rather than as a legal right (e.g. an easement). Conditions typically include access for:

- » TSRs (including public watering places),
- » extractive industries (including those currently operated by councils),
- » shared infrastructure (e.g. dams, pipes and bores),
- » Darling Electricity Construction Authority, and
- » telecommunications infrastructure.

Freehold conversion of certain grazing leases

Although the Review does not support broadscale conversion of Western Lands grazing leases to freehold, there is one category of grazing lease where this can be justified.

Under the Western Lands Act, Cultivation Consents can be issued over leasehold lands with resilient soils suitable for cultivation. There are about 800 perpetual Western Lands grazing leases with an approved Cultivation Consent for some or all of the property. Most of these are located along the eastern fringe of the Western Division near Walgett, Condobolin, Balranald and some in the riverine areas of Bourke, Brewarrina, Menindee and Wentworth.

Once a cultivated property has its purpose changed from grazing to cultivation, the lease then becomes eligible for conversion to freehold on the basis that the residual environmental values that the Western Lands Act sought to protect are no longer present.

The Review proposes that perpetual Western Lands leases where a Cultivation Consent is in force and the land has been developed should become eligible for conversion to freehold on the same terms as conversion of agriculture and cultivation leases.

This is not intended to open the way for freeholding fragile rangelands. Rather, it will streamline existing processes to allow freehold conversion of lands that are considered resilient and have already been developed for cultivation. The number of perpetual Western Lands grazing leases that could be converted under this proposal will depend on the freehold conversion criteria which are discussed below.

Conversion processes

Requirements around the conversion process for agriculture and cultivation leases have caused some concern for lessees: it has been frustrating for lessees and a more flexible approach is needed. The issue of concern is the interpretation of the requirement that the use must be ecologically sustainable to mean that at least 75 per cent of the area of the lease must have been cleared and developed.

An alternative to setting a development threshold could be to look at the main use of land and require certain factors to be considered, such as the areas of land grazed versus the area cultivated, financial returns from the various activities, and the frequency of cropping. Legislative change to clarify 'ecological sustainability' and how it is assessed might also be needed.

Another issue is that Western Lands leases eligible for conversion have to pay 100 per cent of the unimproved market value of the land. Other Crown tenures in NSW pay significantly less, for example some leaseholders have paid 3 per cent of the unencumbered land value for the conversion of perpetual leases to freehold in the Central Division where market rent was not applicable.

Streamlining measures

Red tape and delays have been a source of complaints for lessees wanting approval from the Western Lands Commissioner for new activities on a lease to facilitate land use diversification, to change lease conditions or to transfer leases. One solution is for new legislation to permit certain additional activities to occur on Western Lands leases without the need for approval, such as:

- fodder production, for example, up to a maximum of 50 hectares, provided that the fodder is for on-farm use only,
- conservation,
- film making, perhaps subject to certain time limits on filming,
- farm tourism, for example, limited to 20 guests at any one time and using only existing farm buildings and infrastructure, and
- feedlots, subject to limits on the number of animals (to align with current designated development limits), soil stability, drainage, and proximity to rivers, creeks or watercourses.

Other streamlining measures could include improving the processes for changing lease conditions and for undertaking the environmental assessments needed for activities such as change of lease purpose, mining proposals and Cultivation Consents.

Western Local Land Services and the proposed Western Region Authority

Two new bodies are proposed for the Western Lands Division:

- Western Local Land Services – to focus on agricultural industry development, natural resource management, biosecurity and emergency management (which commenced on 1 January 2014), and
- a Western Region Authority – proposed by the Independent Local Government Review Panel to bring together local councils, Aboriginal Land Councils, the Unincorporated Area, and some NSW and Commonwealth government agencies, to take a whole-of-government approach to address remote community issues.

The creation of these bodies might require a reassessment of the role of the Western Lands Commissioner. In particular, the Independent Local Government Review Panel has flagged that the Commissioner's responsibilities in the Unincorporated Area could transfer to the Western Regional Authority.

The Western Division boundary

It has been suggested that the Western Division boundary should be reviewed, particularly in Walgett Shire which straddles the Western Division boundary, with only the County of Finch being in the Western Division. Some residents of that County want to be able to convert Western Lands grazing leases to freehold. Of the 176 Western Lands leasehold properties in this area, 162 include at least one grazing/pastoral lease.

The Review believes that changing the boundary is not the solution: it would raise practical issues that would be difficult to resolve, including the lack of a legal road network in this area. Instead, the concerns of the County of Finch lessees can be addressed by the proposals to allow conversion of perpetual Western Lands grazing leases that have Cultivation Consents and to enable certain additional activities on all Western Lands leases without the need for consent.

The Kerin Western Lands Review came to a similar conclusion in 2000. Landholder surveys at that time found strong opposition to adjusting the Western Division boundary to include only semi-arid lands, and strong support for retaining the existing boundary but enabling land use diversity consistent with land capability.

Recommendations

- Review the eligibility criteria for conversion of Western Lands leases held for agriculture or cultivation and perpetual Western Lands grazing leases with current Cultivation Consents where the land has been developed.
- Allow conversion of perpetual Western Lands grazing leases on the same terms as Western Lands leases held for agriculture or cultivation where there is a current Cultivation Consent over all or part of the land contained in the grazing lease and the land has been developed.
- Compare existing Crown land leasehold conversion processes.
- Permit certain additional land uses where appropriate on Western Lands leases.

Chapter 6: Red tape

Key points

- The requirements for granting landowner's consent to proposed activities can cause delays for development proponents.
- There is an opportunity to harmonise the management of submerged land, which is currently the responsibility of both Crown Lands Division and Maritime Services in different locations.
- Efficiencies could be achieved by other agencies taking responsibility for compliance activities on Crown land.
- Steps should be taken to achieve consistent regulatory regimes for land managed by councils and council-owned community land.

Background

There have been frequent complaints about:

- the amount of red tape involved in the management of Crown land,
- duplication and overlap of services and functions with other areas of the NSW Government, and
- inconsistencies between the legislation, procedures and processes of various NSW Government agencies.

The Review team has met with other agencies (Planning & Infrastructure, Local Government, Environment & Heritage, Aboriginal Affairs and Transport for NSW) and with other divisions within NSW Trade & Investment, to identify and discuss red tape issues.

The main issues identified were:

- multiple consent requirements,
- compliance,
- different legislative requirements and policy approaches for community land and Crown reserves managed by councils, and
- the need to harmonise the management of submerged lands.

Multiple consent requirements for proposed developments on Crown land

A number of statutory consents, licences, permits or approvals may be required from Crown Lands Division and other agencies in addition to council approval for proposed developments.

Crown Lands Division is required under the planning legislation to give landowner's consent where a lessee is applying for development consent. This has in the past been a cause of delays in granting development consent. In many cases Crown Lands Division will also then grant a licence or permit to undertake the development or activity once development consent has been granted by the council.

The new planning framework includes a proposal for a 'one-stop shop' within the Department of Planning & Infrastructure that would deal with all approvals required in respect of a development application. It is proposed that project managers will be appointed to help speed up the assessment process and resolve contentious aspects of proposals. Crown Lands Division has asked the Department of Planning & Infrastructure to consider including its landowner's consent as part of the one-stop shop framework.

Another approach would be to change the planning legislation so that landowner's consent could be automatic in some situations, and not required at all in others. For example, works on river banks where the Office of Water has issued a licence might no longer need landowner's consent from Crown Lands Division.

A project initiated on the North Coast has resulted in an innovative approach to cut red tape in relation to development proposals requiring consents from multiple agencies (see box).

Example: The North Coast Domestic Foreshore Infrastructure Project

Crown Lands Division worked with relevant local councils and DPI Fisheries to streamline the procedure for approving waterway structures in the Tweed, Richmond and Clarence rivers. The agencies worked together to map areas as red, amber or green, based on agreed criteria.

Proposed development in a green area is automatically granted landowner consent from Crown Lands Division, and the necessary permit from DPI Fisheries. Proposals in red areas are refused landowner consent by Crown Lands Division, which cuts off the proposal at an early stage. Only proposals in amber areas need to have a full merit assessment from the relevant council and agencies.

Other approaches to reduce red tape in relation to multiple consent requirements could include:

- Developing guidelines to advise councils of activities on Crown land for which landowner's consent will be given, to provide more certainty for council staff and development proponents.
- Reducing the level of assessment required by Crown Lands Division for particular development proposals, which would align with the new planning system's emphasis on exempt and complying development and the proposed new code-compliant development.
- Allowing Crown Lands Division to rely on environmental assessments by other agencies rather than duplicating effort by undertaking its own assessments.

It is recommended that activities requiring landowner's consent from Crown Lands Division be reviewed, with a view to providing greater certainty as to which activities are likely to be given consent. As a short-term practical measure it is also suggested that where multiple approvals are required, information on the requirements of the relevant agencies could be made easily accessible online and in print.

Compliance

Two particular issues were identified through the Review:

1. Compliance on inter-tidal Crown land adjoining national parks

   Activities taking place on Crown land (often without permission) can affect the public's enjoyment and the environmental values of adjacent national parks. It is difficult for Crown Lands Division to monitor activities taking place on this land, whereas National Parks and Wildlife rangers are frequently on site. These rangers could be authorised as inspectors under the Crown lands legislation, or these lands could be transferred to the Office of Environment and Heritage.

2. Unauthorised structures in waterways

   With the exception of North Coast rivers and parts of the Hawkesbury, most waterway structures in NSW have not been identified and mapped. Once this has happened the structures need to be assessed, licences issued for those that can be approved, and compliance action taken for those that cannot. All this needs resources.

   A Domestic Waterfront Facilities Project will be established to examine and report on the management of unauthorised domestic waterfront facilities in NSW. The Steering Committee for this project will include DPI Fisheries, relevant councils, Crown Lands Division and Transport for NSW (Maritime Services). The project will include developing a policy framework to determine which types of structure should not be approved and then carrying out an audit of existing structures.

   In addition, the Marine Compliance Taskforce will consider how best to perform the necessary compliance activities for waterfront structures as part of the On-Water Compliance Review. Maritime Services is wel-resourced (both in terms of staff and boats) to perform compliance activities on waterways, so for them to exercise compliance functions on behalf of Crown Lands Division would be a considerable efficiency measure.

Inconsistent legislative requirements and policy approaches for community land and Crown reserves managed by councils

Council-owned community land is managed under the local government legislation. Councils also manage many Crown reserve trusts under the Crown Lands Act. The provisions of these two Acts are different, which can be confusing for the public and problematic for council officers, particularly where community land is next to a Crown reserve. For example, there are different requirements for:

- Minister's consent and the length of tenures that can be granted, and
- plans of management – the local government legislation requires plans for all community land, which is not the case for Crown reserves.

The Review is in favour of consistent management arrangements for community land and Crown reserves managed by councils, and has held discussions with the Division of Local Government about these and other issues. The Local Government Review Taskforce supports this approach and has, for example, proposed that plans of management should no longer be required for all community land.

One of the recommendations from this Review is that councils should be able to manage Crown land under the local government legislation (see Chapter 3), which would comprehensively address this issue. It will otherwise be necessary to align provisions in the new Crown lands legislation with those in the new local government legislation. The provisions for plans of management would need to be more flexible, and to include the ability to prepare joint plans covering Crown reserves and community land.

The management of submerged lands

The Crown estate includes much of the submerged land of NSW waterways. Submerged land includes:

- land within three nautical miles (5.5 kilometres) of the shore,
- the ocean floor,
- most coastal estuaries,
- many large riverbeds, and
- some coastal wetlands.

Maritime Services owns and manages the beds of Sydney Harbour, Port Botany, Port Kembla and the Port of Newcastle. It is also the agency responsible for navigation, boating safety and moorings. Crown Lands Division manages the estate more broadly, and currently dredges waters outside the major shipping ports, an activity that is primarily related to boating safety.

The two agencies have significant overlap in their management responsibilities, and some functions could be better aligned. This has been frustrating for individuals and organisations that have to deal with both agencies. For example, there are differences in the lease and licence agreements for the occupation and use of submerged lands depending on whether they are administered by Crown Lands Division or by Maritime Services. Crown Lands Division has traditionally granted licences (which do not give exclusive possession) whereas Maritime Services generally grants leases.

Furthermore, Maritime Services is better resourced and has more flexibility in how it allocates resources to meet its policy priorities. The results are that Maritime Services has, for example:

- the ability to have a stronger approach to on-water compliance,
- the capability to direct revenue from its Waterways Fund (received from rents and licence fees) to pay for infrastructure and maintenance, and
- the ability to generate additional revenue, for example it can impose additional levies from the registration of boats and trailers for particular purposes.

A harmonisation strategy will initially align property management policies and coordinate management of adjacent leases held by the same lessee. It could also consider the transfer of some functions, for example dredging, to Maritime Services. Other issues to be considered are: the feasibility of single-agency management of all submerged lands, including Domestic Waterfront Tenures; the development of a ports strategy to cover the lands managed by Maritime Services and Crown Lands Division; and the possibility of one agency owning all NSW submerged lands.

Recommendations

- Review activities requiring landowner consent from Crown Lands Division.
- Effective compliance arrangements for waterfront structures should be considered by the Marine Compliance Taskforce as part of the On-Water Compliance Review.
- Harmonise the management of submerged land in NSW.

Chapter 7: Legislation

Key points

- Crown lands legislation needs reviewing: at least eight Acts can be consolidated and repealed.
- Commons are no longer relevant.
- The Minister's role in the administration of public roads is inappropriate and should be changed.
- There is no longer a need for the separate category of dedicated land.
- The land assessment provisions in the *Crown Lands Act 1989* are not appropriate and should not be included in the new legislation.

Consolidated legislation

The core Crown lands legislation (the *Crown Lands Act 1989*, the *Crown Lands (Continued Tenures) Act 1989* and the *Western Lands Act 1901*) is out-dated, complex and unnecessarily onerous in many respects. Additionally, there is significant overlap and duplication between the *Crown Lands Act 1989* and the *Western Lands Act 1901*. These result in inefficiencies, unnecessary requirements and a lack of clarity for stakeholders and the NSW Government.

A new Act is proposed to incorporate the provisions of the three core Acts that are still relevant, and remove unnecessary and duplicating provisions. In particular, the legislation will not duplicate provisions or mechanisms available under other legislation such as the local government and planning legislation, or the *Conveyancing Act 1919*.

The aim is to provide the simplest possible legislative framework to manage Crown land. The legislation will include strong governance and compliance provisions, and provisions to support the new financial, funding and business models resulting from this Review.

The new legislation should be developed as a matter of urgency: the intent is to achieve a simpler system as soon as possible.

As well as the core legislation there are a number of other Acts administered by Crown Lands Division that could be incorporated into the new Act, including:

- the *Public Reserves Management Fund Act 1987*
- the *Commons Management Act 1989*
- the *Trustees of Schools of Arts Enabling Act 1902*
- the *Wentworth Irrigation Act 1890*
- the *Hay Irrigation Act 1902*

Additionally, the following Acts could be considered for repeal as part of the Review:

- the *Irrigation Areas (Reduction of Rents) Act 1974*
- the *Murrumbidgee Irrigation Areas Occupiers Relief Act 1934*
- the *Wagga Wagga Racecourse Act 1993*
- the *Hawkesbury Racecourse Act 1996*
- the *Orange Show Ground Act 1897*

Commons

The *Commons Management Act 1989* provides for the management of public land set aside for use as a common, for the benefit of enrolled commoners. Originally commons provided additional agricultural or grazing land for local inhabitants, and the Act refers to land being set aside 'as a common or for pasturage'. There are currently approximately 130 commons.

The provisions of the Commons Management Act are similar in many respects to the reserve trust provisions in the Crown Lands Act. The concept of commons as a category of land is out-dated: commons could either be converted to Crown land or sold to existing commoners or other individuals or bodies. The Commons Management Act already gives the Minister the power to revoke commons and to deal with the land as if it were Crown land, without the payment of compensation. Under this proposal, the Commons Management Act would be repealed.

Schools of Arts

The *Trustees of Schools of Arts Enabling Act 1902* provides powers for trustees of land held for Schools of Arts, mechanics institutes and literary institutes to deal with that land. The unusual feature of the Act is that schools and institutes were established on private as well as public land, and the Act applies to both types of land.

There are 141 schools and institutes: 72 are on private land, and 69 are on public land. In most cases, these are used for general community purposes, including recreation, rather than for their original purpose of promoting knowledge of arts and sciences among tradespeople.

The Trustees of Schools of Arts Enabling Act is no longer needed. Its functions are covered by the *Trustee Act 1925*, and in some cases, the *Incorporated Associations Act 2009*.

It is recommended that Schools of Arts that are managed by councils should be transferred to those councils. Schools of Arts on public land that are not managed by councils should be converted to Crown land, and those on private land should continue to be held by the existing trustees under the provisions of the *Trustee Act 1925*.

Wentworth Irrigation Act 1890 and Hay Irrigation Act 1902

Under the two Irrigation Acts, certain land in the Hay and Murrumbidgee irrigation areas is held by the Lands Administration Ministerial Corporation and leased to farmers. Land in adjacent irrigation areas is Crown land administered under the Crown Lands Act and the Crown Lands (Continued Tenures) Act. Some additional remnant land in the Hay and Murrumbidgee areas is also held by the Ministerial Corporation.

The provisions in the Irrigation Acts should be included in the new legislation, with the Ministerial Corporation continuing to own the land. The new legislation should provide an easy and fair process for transferring the land to the current lessees, and lessees should be encouraged to purchase their land. Remnant land could become Crown land if there are no interested purchasers.

Crown Lands (Continued Tenures) Act 1989

As part of this process of developing the new legislation it could be possible to change the status of some of the tenures falling under the Crown Land (Continued Tenures) Act, to make them consistent with tenures in the Crown Lands Act and the Western Lands Act.

The possibility of having a single process for the conversion of leasehold Crown land to freehold (rather than seven as at present) is also being considered.

Crown roads

Public roads in NSW are administered by Transport for NSW, Crown Lands Division (on behalf of the Minister), and local councils. The Minister administering the Crown Lands Act has been the roads authority for all Crown roads only since the *Roads Act 1993* commenced. The Minister is also responsible for parts of the Act relating to the opening and closing of public roads and acquiring land for the opening of a road.

This gives the Minister a general duty of care to ensure that Crown roads are in a safe condition. As well, the Minister's consent is required where users of Crown roads want to repair, maintain or do construction works. This creates unacceptable risks because Crown Lands Division does not have the resources or technical expertise to undertake or direct activities on roads.

Transfer roads to councils or Transport for NSW

The Review considers that roads used to provide access to the general public should be the responsibility of either councils or Transport for NSW, who have been responsible for roads for the past century, are resourced for this purpose, and have the necessary expertise.

This will result in councils being responsible for all local roads, which is appropriate as roads are one of the core functions of local councils.

Having a single authority for all local roads will help councils with their strategic planning and create greater certainty. Councils will also benefit from no longer having to seek consent from Crown Lands Division to undertake works. It will also be clear who is responsible for maintaining a particular road. Councils will be responsible for maintaining and upgrading all local roads, funded from general rates and other sources.

From the NSW Government's perspective, roads will be managed by the bodies best equipped to maintain and upgrade them, and the public will know who is responsible for their management.

Councils could be concerned about the costs involved, when many councils cannot afford to maintain the roads they already have. However, councils will have the added flexibility of disposing of other Crown land that they gain as local land. They could also choose which roads they will and will not maintain. The Mid-Western

Regional Council has such a policy, which states that the council will only provide a maintained road network within the limit of funds available as determined in its Road Network Strategic Plan and includes a register of roads that will not be maintained.

Discussions will be required with Transport for NSW, the Division of Local Government and possibly Local Government NSW to explore the possibility of amending the *Roads Act 1993* to remove the Minister's responsibilities for public roads.

Unformed Crown roads stay with Crown Lands Division

Crown Lands Division should retain control of other Crown roads, which are generally unconstructed and unformed. These might in future be referred to as Crown access reserves to avoid confusion. These access reserves could continue to be disposed of under the road closure program or retained by the NSW Government if they are needed for core functions or have specific values that need to be protected.

The requirements for selling access reserves, together with appropriate powers needed to manage the remaining reserves, should be included in the new Crown lands legislation rather than in the Roads Act. Legislative provisions relating to Crown roads can then be streamlined and confined to one Act rather than two.

Dedicated land

The Crown Lands Act contains provisions for the dedication of land, in addition to the reservation of land. There is not much practical difference between these two categories of land, other than dedicated land traditionally being regarded as more 'secure' because changing the purpose of or revoking a dedication requires tabling in both houses of Parliament.

There is limited benefit in retaining both categories of land and it is therefore recommended that no further land should be dedicated in the future. It could also be considered what benefits and risks there might be in changing the status of existing dedicated land to reserved land.

Land assessment

The Crown Lands Act provides for a land assessment before Crown land can be sold, leased, dedicated or reserved. However, the assessment process may be waived if it is in the public interest and the principles of Crown land management are considered. Although land assessments were carried out when the provisions were first introduced in 1989, more recently Crown Lands Division has been using non-legislative assessment processes instead, which are considered more appropriate.

As well, the land assessment process duplicates the planning framework to a large degree, and it is considered that the planning framework is the more appropriate vehicle for determining land use.

It is therefore recommended that the new legislation should not include land assessment provisions, and that non-legislative assessment processes should be used instead as is the case currently.

Recommendations

- Develop new, consolidated Crown lands legislation.
- Repeal eight or more existing Acts.
- Abolish commons as a discrete category of land.
- Amend the *Roads Act 1993* so that the Minister is no longer a roads authority.
- Responsibility for all roads used to provide access to the general public to rest with the other roads authorities under the *Roads Act 1993*.
- Remove the option to dedicate Crown land in the future.
- Remove the land assessment requirements currently contained in the *Crown Lands Act 1989*.

Chapter 8: Crown land valuation and dividends

Key points

- The community is largely unaware of the economic value of Crown land or the costs associated with the management of the Crown estate.
- Meaningful reporting on land values is difficult, as is calculating and reporting on the value of social and environmental factors.
- NSW Government should undertake to review existing uses of Crown land to determine if they remain appropriate.
- There is significant potential to increase cost recovery and dividends to NSW Government to fund other community services.
- The community is likely to be sensitive to any changes in valuation or rental recovery.

Background

The value of the Crown estate to the NSW Government and the broader community is unclear. There are multiple and sometimes conflicting social, environmental and economic benefits from using the estate and accurate values for these benefits have been elusive.

Typically, the following questions cannot be answered definitively in relation to a given parcel of Crown land:

1. Is the current use of the land optimal, and if not would an alternative use deliver greater benefit?
2. Does the land warrant a greater level of investment in management?
3. Should the NSW Government continue to hold or sell the land?
4. Is the rent received for the use of the land appropriate?
5. What is the level of the NSW Government's subsidisation of a particular user or group and is that subsidy appropriate?

Being unable to answer these questions indicates that the NSW Government is making decisions based on incomplete information. For example, rents are sometimes not set at a market rate so the government is unable to fully capture and report on the value of the financial support (i.e. subsidy) it provides to Crown land users such as community groups, not-for-profit organisations and sporting associations. Without better valuations, one result could be that land use does not support NSW Government and community priorities.

Current approach to economic valuation of Crown assets

A complex mix of advice from NSW Treasury, historical and legislative complexities, past government decisions, and the sheer scale of the valuation program have led to the following approach:

- Conservative land valuations, for example in some instances the value of tenured land is calculated by multiplying the annual rent by 20.

» Reserves are valued with reference to adjoining property use, with rebates or waivers to reduce the overall property rent back to a price that is affordable for the local community user.

These valuations do not generally consider any improvements made to the land.

Treasury Policy TPP 07-1 *Valuation of Physical Non Current Assets at Fair Value* requires property, plant and equipment to be recognised and valued at fair value having regard to the highest and best feasible use.[6]

This approach recognises that Crown land is managed by the NSW Government for community purposes (directly or through local trusts) or it is used for commercial purposes such as agriculture and mining. A drawback of continuing to apply TPP 07-1 is that it will not provide the ability to reflect true market value or allow opportunity cost to be identified.

Market value and opportunity cost

Business decisions about Crown land are made by Crown Lands Division: they are subject to NSW Government policy, and can result in different outcomes to private decisions about freehold land. For example, Crown Lands Division might decide the highest and best use of a parcel of land according to TPP 07-1 is for a nature reserve or public space, whereas a purely commercial decision might see the same land developed for commercial or residential purposes. While Crown Lands Division's decision delivers on community or environmental values, it reduces the financial value and earning potential of the land in question.

This reduction in value is referred to as the 'opportunity cost' (see box below), which can be subjective and hard to estimate accurately.

Opportunity Cost

Hyde Park in Sydney is valued by the NSW Valuer General at around $19 million, which represents the 'fair value' of the land based on current use. If the land were valued as land available for commercial development rather than open space, the value might be closer to $300 million. The opportunity cost of the current use is:

the foregone return on the $300 million 'sale' value **plus**

the benefit of an alternative investment (such as a hospital or school) **minus**

additional costs (such as loss of amenity)

The opportunity cost provides guidance on the value the community places on open spaces. An additional opportunity cost could also be the failure to realise a benefit of increasing economic productivity from the land.

A better understanding of opportunity costs and market value of the Crown estate will allow the community to be better informed to argue the value of community benefits as governments allocate limited resources to where they can be most effective in the long term.

6 The PAUT identified a need to review the current valuation policy and is in the process of finalising an updated version.

Following its work with the Department of Finance and Services in the review of TPP07-1, the advisory company Jones Lang LaSalle was asked to develop the concept of opportunity cost further and to advise on the practical implementation of such a method. Their advice was to collect two values for the land:

- an 'as is' value in line with current practice (this is the *status quo*), and
- a hypothetical unencumbered freehold value ('fee simple'), based on surrounding land use.

Given the extent of the Crown estate, Jones Lang LaSalle also recommended that this approach should be initiated in high-value council areas where the opportunity cost is likely to be highest.

Being able to measure opportunity cost would allow the NSW Government and the community to assess any financial trade-offs associated with existing use, and to consider whether and when to change use or realise value. Reporting on opportunity cost would also give the community confidence that the Crown estate's management is optimised, so this should be a priority for Crown Lands Division.

Further accounting implications are considered in Chapter 9.

Valuations used by Crown Lands Division

There are two different types of valuation for land under tenures:

- CLE (the Crown estate value): this is based on a mass valuation that includes the capitalisation of market rent over 20 years and market value by category within council areas. It is the official valuation used by the NSW Valuer General.
- Valnet: the NSW Valuer General prepares a market valuation based on adjoining property values, which is applied pro-rata.

While CLE is consistent with TPP 07-1, Valnet can provide a better approximation of opportunity cost because it looks at adjacent land values and applies them across individual parcels of land at a per-square-metre-equivalent rate based on unimproved values.

Review of existing use

When tenures approach expiry, Crown Lands Division reviews continuing use and occupation on a reactive basis (where the current tenant seeks an extension) or a proactive basis (where the site has been identified for a higher purpose).

The existing uses of Crown reserves are also reviewed when plans of management are being prepared, or otherwise as required.

In many cases the legislative encumbrances to changing an existing use will be complex, requiring lengthy negotiation and in some cases litigation. It should also be noted there is very often a strong community association with reserves and their existing purposes.

Given the extent of the Crown estate, parcel by parcel reviews of existing use will result only in incremental change, and there has in the past been no incentive to undertake any broadscale review.

In some jurisdictions facing extreme demand for land, governments are actively considering how state lands can be best utilised in a modern context. For example, Singapore's government is redeveloping golf courses for residential and business development in the central business district due to extreme land shortages. In NSW, the Property Asset Utilisation Taskforce has overseen the identification of a significant sales portfolio of land that the NSW Government no longer needs.

On paper, valuing Crown land based on 'highest and best use' could realise significant returns to the NSW Government, through both disposals and increased revenues. However, an accurate valuation requires assessment on a case-by-case basis.

A proactive approach to potential alternative use should be adopted as a matter of standard business practice, as is common in the private sector. Bearing in mind the historical nature of current use on the Crown estate, it is likely that alternative uses could be more appropriate in some/many cases. However there is a risk that a proposed new use could be inconsistent with existing government instruments or land zoning, so any alternate uses would need to be considered within the broader planning context. There may also be governance issues if land use is changed.

Return on land assets

The Crown Lands Act requires any restrictions on use to be considered when assessing rents. There are sound commercial and natural justice arguments for this requirement, but the effect is to confine the value of land to a particular level of use that could be well below the 'highest and best use' for the land as zoned. Rents are then calculated on the basis of that reduced value.

The determination of rent by Crown Lands Division depends on the legislative requirements of the Crown Lands Act and the Western Lands Act, the commercial nature of the lease or licence, the extent of Crown equity (for perpetual leases), the value of rent (less than $5,000 or more than $5,000 per annum), and market assessment. If a market assessment is used to determine rent, it is discounted having regard to the restrictions placed on use set out in any lease or licence and in accordance with TPP 07-1.

Tenures and rental determinations

There are opportunities to increase rents where the use is more commercial, to better reflect the opportunity cost of retaining the asset in Crown ownership. Table 5 shows the rent payable for the use of Crown land and the value of NSW Government concessions (including drought waivers and pensioner rebates). It also shows the results of recent redeterminations of rent.

Table 5: Effect of recent redeterminations on rent payable for selected NSW Crown tenures

TENURE	BASE RENTAL (EXCL. REBATES & WAIVERS)	BASE REBATE	ACTUAL RENT PAID	REDETERMINED RENTAL	INCREASE FROM BASE RENTAL
Bowling Club (Western Sydney)	$7,712	29%	$5,745	$25,000	224%
Golf Club (Northern Sydney)	$4,650	42.86%	$1,992	$85,000	1,728%
Pony Club (Western Sydney)	$23,483	50%	$11,742	$60,000	156%
Bowling Club (Northern Sydney)	$13,367	Nil	$13,367	$80,000	499%
Sailing Club (Eastern Sydney)	$41,690	50%	$20,845	$75,000	80%

Crown Lands Division is progressively redetermining all rentals using a more consistent approach based on standardised valuation methods, which is generally resulting in an increased return to the Crown for the use of public assets.

Crown Lands Division is currently redetermining the rental for 60 high-value tenures based on recent rental valuations that were provided by external valuation contractors. A further 100 high-value tenures have been selected for the next round of redeterminations. Commercial lease conditions are being implemented where appropriate to protect the rental paid to the Crown from one redetermination period to the next. Difficulties encountered by individual tenure holders in the implementation of significant increases in rent through the redetermination process are assisted through phase-in options.

These redeterminations confirm that Crown land has traditionally been undervalued.[7] As a result of the redeterminations, the NSW Government will need to consider the future level of rebate which could be expressed as a community service obligation payment as discussed below.

Rebates and waivers

The Review supports the ongoing provision of rebates and waivers to users who provide a community service, provided those rebates are calculated transparently and consistently. The use of Crown land by non-commercial users such as surf lifesaving clubs and community halls for community purposes at rates equivalent to the community's ability to pay is well-established, but this is not widely understood or reported. The result is that the NSW Government's ability to make informed decisions about whether to continue subsidising a particular activity at the expense of other priorities is constrained.

One way of addressing this issue would be to charge all lessees full market rent and to offset this by a community service obligation payment equivalent to the appropriate level of rebate. This approach ensures market rent is paid, and rebates are allowed where they support community services. Land use can be changed if the current use is not delivering a community service. This could result in additional administrative costs and some groups might not receive the same level of rebate they have traditionally received.

7 As rents are re-determined the increased value is captured in accordance with TPP 07-1

Reserves

The revenue generated by Crown reserve trusts from leases or licences over reserves is re-invested into the management and maintenance of the reserve. This is different from the revenue generated from tenures issued by Crown Lands Division, which generally flows to Treasury (Consolidated Fund).

Options for improved business practice and revenue generation are discussed in greater detail in Chapter 10.

Financial systems and reporting

It is not currently possible to report on opportunity cost, or to make visible the level of support provided to users of the Crown estate, thereby informing the public about how the resource is being used and at what cost. This information would enable the community and the NSW Government to make more deliberate and informed decisions about the appropriate use of Crown land.

In many instances it will be difficult to increase rental return to reflect market values and rates for particular land uses. This should not be seen as a reason for not improving transparency and reporting, as improved financial reporting mechanisms will enable the NSW Government to more effectively calculate and report on the opportunity cost of holding land, and on expenditure associated with the management of the Crown estate.

The Crown Land Information Database (CLID) is the operational system used in day-to-day management of the Crown estate. It reports on valuations, rents, discounts and distributions for individual parcels of land. CLID was not designed as an accounting system, nor was it designed to record expenditure against individual assets, given the volume of tenures and the resources available.[8] There is currently no efficient way to collect the data and thereby determine the costs associated with the provision of services to customers for their use of Crown land.

Under the current financial and operating reporting framework, it is difficult to account for the cost-recovery of fees. For example, the recent decision on Domestic Water Front tenures rejected Crown Lands Division's assessment of administration fees, partly due to the lack of capacity to provide detailed supporting evidence. Unless changes are made to data capture and systems to support financial reporting, implementation of the cost-recovery framework or providing a rate of return against most asset types will prove unrealisable.

The newly-adopted Enterprise Resource Planning (SAP ByDesign) software and a reallocation of resources have the capacity to help Crown Lands Division move to a more program-based model where there is appropriate accounting of both income and expenditure. This will provide a platform to define longer term information needs, develop specifications for an improved information system, and ultimately assist in the application of an effective cost recovery framework. It will also enable the provision of evidence to financial regulators in relation to the cost of service delivery.

Further detailed analysis is required to identify and design the information management systems required to manage the estate more effectively, possibly in conjunction with the Department of Finance and Services.

8 The operation and maintenance of CLID is the responsibility of two contractors – this represents a major ongoing risk to Government and needs to be addressed.

Recommendations

- Benchmark return on assets against opportunity cost.
- Determine an additional land value as a measure of opportunity cost – the hypothetical fee simple unencumbered freehold value based on surrounding land use and zoning.
- Express the shortfall between a community-based organisation's ability to pay and the market rent as a community service obligation payment.
- Report on the level of contribution made by the NSW Government for the use of Crown land for community purposes.
- Develop specifications for new information systems based on needs identified by the Review, leveraging opportunities from the Enterprise Resource Planning (ERP) and other cutting-edge technologies.

Chapter 9: Accounting issues

Key points

- Useful management accounting cannot be produced without investment in systems.
- There needs to be a clear delineation between reporting for the purposes of meeting the appropriate accounting standards and for the operational management of the Crown estate.
- Policy decisions need to be informed by a range of metrics and should not be driven predominantly by accounting issues.
- Accounting for the transfer of local land to councils will need careful consideration to minimise any unacceptable impact on the accounts of the NSW Government.
- Consideration should be given to Crown Lands Division preparing and publishing its own audited financial statement and becoming a separate entity, in order to achieve greater transparency.

Background

As a result of previous Treasury statutory reporting requirements, the financial data for the Crown estate has traditionally been kept in the Crown Lands Reserve Trust and in five other separate reporting entities, under separate arrangements within NSW Trade & Investment's accounting system, namely:

- the NSW Trade & Investment accounts, comprising the staff and administrative operating costs (Crown Lands Division),
- the Public Reserves Management Fund (PRMF),
- the Crown Leaseholds Entity (CLE), comprising the estate assets and liabilities as well as revenues,
- Land Development Working Account (LDWA), and
- Crown Land Homesites Program (CLHP).

The lack of a cohesive financial structure has been detrimental to enhancing financial performance and effective financial planning.

To comply with accounting standards, the Crown estate financial accounts record any movement of land into or out of the Crown estate (for land controlled by Crown Lands Division). This is the major cause of the variability in financial aggregates between one year and another.

Examples of how land transactions are treated for accounting purposes include:

- for a Crown reserve created under trust management, the land transfer (fair) value is treated as an expense in the NSW Government's accounts,
- Crown land transferred to Aboriginal Land Councils is shown in the accounts as an expense,
- the sale of Crown land, for example for Crown roads or perpetual leases are shown as a profit or loss on sale,

- land transferred to new or expanded Crown reserves for example under trust management or to local councils as Crown roads is shown as an expense, and
- Crown land handed back by reserve trustees to Crown Lands Division is shown in the accounts as income.

The location and value of Crown land is also a major consideration. Where per-hectare values are low, large changes in the size of the Crown estate do not result in correspondingly large financial changes. On the other hand, movement of Crown land in the Eastern Division can result in significant financial changes due to the higher per-hectare values.

In accounting for these changes land is valued at its 'fair value' in accordance with Australian Accounting Standards. The following examples show the variation in the per-hectare average valuation across council areas:

- Western division (Central Darling) – $10 per hectare
- Sutherland Shire – $324,035 per hectare
- Blue Mountains – $57,548 per hectare
- Coffs Harbour – $10,820 per hectare.

Consolidated accounts

There are currently no publicly available consolidated accounts that provide information about the value of the Crown estate, transactions affecting value, or the returns on it. This is due to:

- a lack of shared understanding of what constitutes the Crown estate and who has management and control in an accounting sense,
- limitations on the capacity of underlying systems to generate analysis of data to answer relevant questions, and
- complex financial arrangements that require reporting against separate entities.

As a result, it is not easy for the community or policy makers to see the extent to which land is being sold, transferred or redeveloped, or the extent to which revenue from Crown land supports community purposes or broader NSW Government activity.

Greater clarity would result from moving Crown Lands Division into a separate entity. This would also assist negotiation with Treasury to determine appropriate levels of community service obligation payments, and dividends (see Chapter 10).

In future, details of these land transfers should be reported separately and managed along with the more traditional income and expense items.

Care, control and management of land

In accordance with accounting standards, only Crown land under the care, control and management of Crown Lands Division is recognised in the financial accounts. Crown reserves managed by councils are included in councils' financial accounts and are not recognised in the NSW Government's accounts.

Of the total Crown estate of $11 billion, approximately $6 billion is included in NSW Trade & Investment's accounts, while almost half of the Crown estate on an area and dollar basis is included in councils' accounts.

Efforts are continuing to improve the accounting treatment and quality of data held by other agencies to ensure that agencies are recording Crown land that they control on their asset register. This will have the flow-on effect of improving the accuracy of the Government Property Register.

The recommendation of this Review to transfer Crown land to the most appropriate land manager (whether another NSW Government agency or council) is consistent with the current accounting treatment. Further, the fact that some $5 billion is currently recorded in council balance sheets will minimise the impact on NSW Government accounts of transferring management of local land to councils.

The provision of advice to relevant agencies and land users, and the reconciliation of Crown land asset details, will be an ongoing task that needs to be acknowledged in the future Crown Lands Division business model. Improved communication of accounting and management standards and expectations would also be a feature of this work.

Recommendations

- Establish and publish separate audited accounts and budget estimates for the Crown estate as a prelude to establishing Crown Lands Division as a Public Trading Enterprise.
- Critically review the proposed general ledger and financial reporting structure to ensure that they will meet all reporting and other requirements.
- Establish adequate internal systems and procedures for Crown Lands Division to ensure proper management of all business activities.

Chapter 10: Business model

Key points

- The existing business model is no longer adequate for the delivery of current NSW Government objectives.
- A new business model has the potential to achieve substantial benefits for the NSW Government and communities.
- The limited capacity of the information management and financial systems is a major impediment to the optimal performance of Crown land.
- A staged approach to move from the current model to a Public Trading Enterprise is recommended.
- New and revised commercial and non-commercial performance indicators and benchmarks are needed to provide both guidance and feedback on the new model.

Background

The Review considered a range of different business models to determine which would be most suitable for Crown Lands Division in the future. These included:

- the existing Crown land management model,
- a more commercially-focused Crown Lands Division,
- a Public Trading Enterprise (PTE), and
- a state-owned corporation.

The Review concluded that a PTE would provide the most appropriate model for Crown Lands Division in the future.

Issues with the current business model

The NSW Government has created a plan for economic growth, infrastructure renovation, quality services and strengthening of local environment and communities, with a strong focus on transparency and accountability in NSW Government decisions (NSW 2021). The current business model does not adequately support this plan.

The current business model faces multiple unclear responsibilities in relation to commercial and non-commercial objectives. It is difficult to manage the trade-off between achieving long-run strategic goals and short-run responsiveness, and there is no clear performance accountability, including comprehensive financial accounting and reporting on the Crown land portfolio.

The current business model has evolved from the perspective of managing NSW's land assets within the requirements of the Crown Lands Act and related legislation. Although occasional changes have been made, these have typically been in response to government and legislative demands on the organisation rather than to improve business management.

The weaknesses in the existing information management systems and financial structure present a significant impediment to the performance of any future business model, regardless of the model chosen. These weaknesses include the complex financial structure of Crown Lands Division and disparate recording and administration systems that do not adequately link data on assets and financial transactions (see Chapter 9). The underlying deficiencies with the current information management system will not be addressed by SAP by Design alone; a tailored system will be required.

A major review and overhaul of the financial structure and the information management systems is required as part of a change management plan. This would enable improved accounting, decision making and performance assessment.

Business model options

The state-owned corporation option provided some advantages, including: the opportunity to seek maximum economic returns from the use of Crown land; clear reporting on returns and performance against benchmarks; greater transparency in relation to subsidies for non-commercial activities; and a clear mandate to manage risks including greater flexibility for managing internal risk.

However that model has the potential for conflict with the NSW Government's social and environmental goals, depending on the nature of the land portfolio assigned to the state-owned corporation. If the portfolio is substantially commercial or held for strategic purposes, this might not be a major problem.

There is also the risk that performance could be compromised if the NSW Government fails to provide sufficient funding for community service obligations or requires extraordinary dividends. A transparent performance reporting and accounting system would identify these external impacts on the state-owned corporation's business and the financial risk impacts that might result from these decisions.

A more commercially-focused Crown Lands Division would be an improvement on the existing model in that it would enhance the transparency of the financial and performance reporting. It would also help to ensure that management focused on the commercial outcomes of the Crown land portfolio. However, funding arrangements would still be unclear due it remaining within the NSW Government. As well, the lack of autonomy and commercial incentives would potentially result in suboptimal management of Crown land. These issues make this model unsuitable.

The recommended model: a Public Trading Enterprise

The PTE model has a number of advantages, particularly in relation to providing autonomy and flexibility for management, the potential for improved commercial activity, and greater transparency and accountability of performance. Key aspects of the PTE structure are shown in Table 6.

Under a PTE structure, management will be given clear and non-conflicting objectives, thus enabling it to be held accountable for both commercial performance and the delivery of social and environmental programs. Social and environmental expenditures (such as community service obligations) will be funded through the budget process, thereby making investments in these programs transparent and enhancing accountability. A PTE would still report to the NSW Government and key agencies while delivering a better return on the portfolio of Crown land in NSW.

Although it is the preferred option, the report did identify some potential challenges to implementation of the PTE model and that there could be significant implementation costs.

Table 6: Key aspects of the proposed PTE structure

GOVERNANCE ARRANGEMENTS
» The Crown land management entity (CLM) would be established as a Public Trading Enterprise with legislation setting out its high-level purpose and mandate.[10] The portfolio Minister to have shareholder responsibilities for CLM as well as having individual statutory responsibilities and functions.
» A CEO would manage CLM on a day-to-day basis, and would be subject to the written published directions of the Minister in the exercise of the functions of the CLM. The CEO will report to the Director General. » An independent Board may be established once CLM becomes a mature PTE. However it is considered that a Board with its associated reporting requirements would distract its management from implementing the significant changes required to transform its operations to a PTE without offsetting benefits greater than the costs from having a Board.
» The CLM would not have direct employees; public servants would undertake its day-to-day activities.
» The relevant Minister (and government department) as a shareholder will set CLM's mandate and regularly review CLM performance and approve policies. The Treasurer will negotiate the funding model and financial key performance indicators with the relevant Minister.
» Cabinet would approve a performance framework for CLM including: goals for disposal or acquisition of Crown land; guidelines for setting benchmarks; and dividends to be paid to Treasury.
» Treasury, in conjunction with CLM, would set annual performance benchmarks for CLM under the performance framework. Benchmarks would include: total income; total expenses; earnings before interest and taxes; operating profit before income taxes; capital expenditure; target dividend; return on average assets; return on average equity; net debt; asset value; revenue and net proceeds from land sales; known liability; maintenance to address known liabilities; customer complaints; and other social and environmental benchmarks.
» CLM would have the authority to lease and licence Crown land on behalf of the Crown without the Minister's approval (within prescribed limits). It would only have the authority to sell or otherwise dispose of land with the approval of the Minister.

10 New legislation is only required to establish Crown Lands Division as a Public Trading Enterprise if additional functions are required to perform its functions.

FINANCIAL MODEL

» A statutory CLM fund would be established. » All appropriations, fees, rents, land sale proceeds and other revenues received by CLM would be paid into the statutory CLM fund; and all expenses incurred by Crown Lands (including an annual dividend to Treasury) would be paid out of the fund. » Parliament would make an annual appropriation (Community Service Obligation) to CLM reflecting the social and environmental externalities associated with Crown land use (i.e. the implicit subsidy for the management of land that is not of a purely commercial nature); and the otherwise unfunded costs of other CLM functions.
» Any surplus or loss in one financial year would be rolled over to the next financial year.
» CLM would pay an annual dividend to Treasury in accordance with its dividend benchmarks. » A 6 per cent return on the estimated VALNET value of fully commercial land and assets should be pursued. This return could be increased to an equity based return (in the order of 9 per cent) over time as the financial reporting of CLM becomes more mature.
» The Crown would retain ownership of the Crown land and asset portfolio.

RISK MANAGEMENT

» CLM would operate under the NSW Government Commercial Policy Framework.
» CLM would undertake a corporate planning process including preparing a business plan in consultation with Treasury.
» CLM would sign an annual Statement of Business Intent representing an agreement with Government on CLM's goals and objectives for the next 12 months and following years.
» CLM would report to Treasury on a quarterly basis on its financial and other performance.
» There will also be internal risk management processes including quarterly reporting to the relevant CLM Minister on financial and non-financial performance.
» CLM would be required to publish an annual report detailing: 12-month and historical financial and non-financial performance against performance framework benchmarks, the performance framework itself and any Ministerial directions.

Implementation

The Review recommends a staged process rather than an immediate move to a PTE, noting the substantial amount of work and resources required to address current weaknesses in the information management systems and financial structure.

Their report identifies three stages of transformation:

- moving to a more commercially-focused Crown Lands Division,
- establishing a PTE, and
- moving to a mature PTE.

An options framework for these three stages, which also includes approximate timing for each stage, is shown in Table 7.

A more commercially-focused Crown Lands Division will be achieved when key performance indicators have been set and when Crown Lands Division is able to transparently report its costs and revenues quarterly to Treasury. Most of the steps required in the transition to a more commercially-focused Crown Lands Division can be achieved through internal processes and discussion with Treasury. Some changes have already occurred, for example, the creation of centralised business centres and a more commercial approach to leases. This stage should not require legislative change.

The transformation to a PTE can be achieved when Crown Lands Division has met its key performance indicators for at least one year, has the skills to meet and report on its key performance indicators, and has the ability to manage risks on an ongoing basis. Whether a PTE requires legislative provisions will be assessed as the model is developed and the need for new functions or powers are identified.

A PTE can be considered to be mature when Crown Lands Division is capable of meeting its key performance indicators and managing performance risks on an ongoing basis. The main organisational difference is that the mature PTE will have an independent board. It will need to be considered whether that is necessary or appropriate for the management of Crown land.

The proposed gradual progression will avoid major disruption to the operations of Crown Lands Division and facilitate the development of the appropriate governance, performance and financial structures prior to moving to a PTE.

Table 7: Options framework for the transformation of Crown Lands Division to a Public Trading Enterprise (PTE)

	MORE COMMERCIALLY-FOCUSED CLD	PUBLIC TRADING ENTERPRISE	MATURE PUBLIC TRADING ENTERPRISE
INDICATIVE TIME FRAME	Q2, FY 2014–15	FY 2016–17	FY 2020–21
CONDITIONS FOR IMPLEMENTATION OF OPTION	KPIs specified and set by negotiation between CLD and Treasury. CLD fully implement SAP system to allow for transparent reporting of costs and revenues. CLD report on costs and revenues. CLD reports to Treasury quarterly on its performance.	CLD meets KPIs for a period of at least one year. Government considers CLD to have the skills to meet specified KPIs and potential ability to manage risks on an ongoing basis.	Crown Land Manager (CLM) meets performance KPIs on an ongoing basis. CLM addresses performance risks on an ongoing basis.
FINANCIAL ARRANGEMENTS	Current arrangements. Negotiate annual dividend with Treasury for when becomes PTE.	Introduce statutory Crown Land Manager (CLM) fund administered by CLM with Treasury oversight. CLM retains all revenues and provides a dividend to Treasury.	CLM manages statutory fund. CLM retains all revenues and provides a dividend (which may be different to previous dividend) to Treasury.

	MORE COMMERCIALLY-FOCUSED CLD	PUBLIC TRADING ENTERPRISE	MATURE PUBLIC TRADING ENTERPRISE
GOVERNANCE ARRANGEMENTS	Current arrangements. Potentially greater autonomy for CLD through Ministerial delegation.	Minister appoints CEO to manage the affairs of CLM. CEO manages affairs of CLM at arm's length from Government. Reports to Director General of relevant Department. Government to provide written directions to CLM on how it undertakes activities and required mandate. Existing review of Crown land legislation to assist with determining and defining mandate.	Introduce Board to oversee performance and reporting. Appointed by government. CLM to be provided with more autonomy. Government to provide regular written directions to CLM on how it undertakes activities.
PERFORMANCE AND REPORTING ARRANGEMENTS	CLD reports to Treasury and the public on performance. Benchmark KPIs against comparators.	Shareholding Ministers sign Statement of Business Intent. KPIs to be benchmarked against performance of other jurisdictions and private sector. CEO incentives to be aligned with CLM performance framework.	Shareholding Ministers sign Statement of Business Intent. KPIs to be benchmarked against performance of other jurisdictions and private sector. CEO incentives to be aligned with CLM performance framework.

Note: KPI = Key performance indicators; CLD = Crown Lands Division; CLM = Crown Land Manager

Recommendations

- Establish Crown Lands Division as a Public Trading Enterprise through a staged transformation process.
- Upgrade Crown Land Division's information management systems to allow informed decision-making and comprehensive accounting.
- Develop appropriate benchmarks and key performance indicators to reflect the economic, social and environmental objectives required in the management of the Crown estate.

Chapter 11: Next steps

Key Points

- External consultation has so far been limited.
- The release of a Crown Lands Legislation White Paper will provide an opportunity to test and progress the proposed changes to the legislation.

Future consultation

In implementing the Review recommendations the NSW Government will need to ensure it more fully understands the consequences of the proposed changes.

To some extent this will require a significant investment in new information and financial management systems, prioritisation and redeployment of resources. It will also rely on considerable stakeholder and community input.

To date the Review has largely been confined to consultation within the NSW Government. There have been informal discussions with the stakeholders listed below, but these discussions have sought to explore issues relevant to their interests only.

- Boating Industry Association
- Campervan and Motor Home Club of Australia
- Caravan and Camping Industry Association
- Clubs NSW
- Harness Racing NSW
- Independent Local Government Review Panel
- Local Government NSW (formerly Local Government & Shires Association)
- Local Land Boards
- Nature Conservation Council of NSW
- NSW Aboriginal Land Council
- NSW Farmers' Association
- Office of the Registrar, Aboriginal Land Rights Act
- Western Lands Advisory Council

Importantly, consultation with the broader public is required to develop a deeper understanding of the potential consequences of implementing the Review's recommendations. In particular, detailed consultation with Local Government NSW and councils on the concept of 'local' land (see Chapter 2) will be facilitated through the development of the pilot program. A White Paper detailing the proposed legislative changes to the relevant Crown lands legislation will be available for comment on the NSW Government's Crown Lands website.

It is also critical to recognise that the NSW Government is undertaking major reviews of the planning system and the local government framework. The final position adopted by the NSW Government on these major reforms will have flow on affects for the outcomes of the Crown Lands Management Review and the management of

Crown land in NSW. While every effort has been taken to maintain awareness of the potential outcomes from these reviews and seek consistency in approach, it is not possible to speculate the final positions that might result from these processes.

Recommendations

- Release a Crown Lands Legislation White Paper for consultation on the proposed legislative changes.
- Develop a plan for further exploration and implementation of internal business and reporting reforms.

Reference List

Finance & Services, NSW Government, September 2012, Property Asset Utilisation Taskforce Report, 235 pages.
www.services.nsw.gov.au/sites/default/files/pdfs/PAUT-Report-FINAL-%28Nov12%29.pdf

General Purpose Standing Committee No.5, legislative Council, 15 May 2013, Upper House Inquiry 'Management of Public Land in New South Wales', 420 pages.
www.parliament.nsw.gov.au/Prod/Parlment/committee.nsf/0/74da1cd968beb279ca257b6c00012c86/$FILE/Final%20Report%20-%20Management%20of%20Public%20land%20in%20NSW.pdf

Gonski D and Schott K, 4 May 2012, NSW Commission of Audit Final Report - Government Expenditure, 425 pages.
www.nsw.gov.au/sites/default/files/uploads/common/CommissionofAudit-FinalReport_RPT_v01.pdf

Independent Local Government Review Panel, April 2013, Future Directions for NSW Local Government: twenty essential steps, 64 pages.
www.localgovernmentreview.nsw.gov.au/documents/LGR/Future%20Directions%20Paper.pdf

Independent Local Government Review Panel, April 2013, Strengthening NSW Remote Communities – The Options, 24 pages.
www.localgovernmentreview.nsw.gov.au/documents/LGR/Strengthening%20NSW%20Remote%20Communities.pdf

Local Government Acts Taskforce, 4 April 2013, A New Local Government Act for NSW, Discussion Paper, 84 pages.
www.dlg.nsw.gov.au/dlg/dlghome/documents/information/A%20New%20Local%20Government%20Act%20For%20NSW%20-%20Discussion%20Paper%20-%20April%202013.pdf

NSW Government, April 2013, A New Planning System for NSW - White Paper, 212 pages.
https://majorprojects.affinitylive.com/public/50e8717a9968716223532455eb67e51e/White-Paper-full-document.pdf

Premier and Cabinet, NSW Government, September 2011, NSW 2021: A Plan to Make NSW Number One Again, 61 pages.
www.2021.nsw.gov.au/sites/default/files/NSW2021_WEB%20VERSION.pdf

Appendix A: Crown land tenures, reserves and waterways

Figure 4: NSW Crown land by lease, licence or enclosure permit

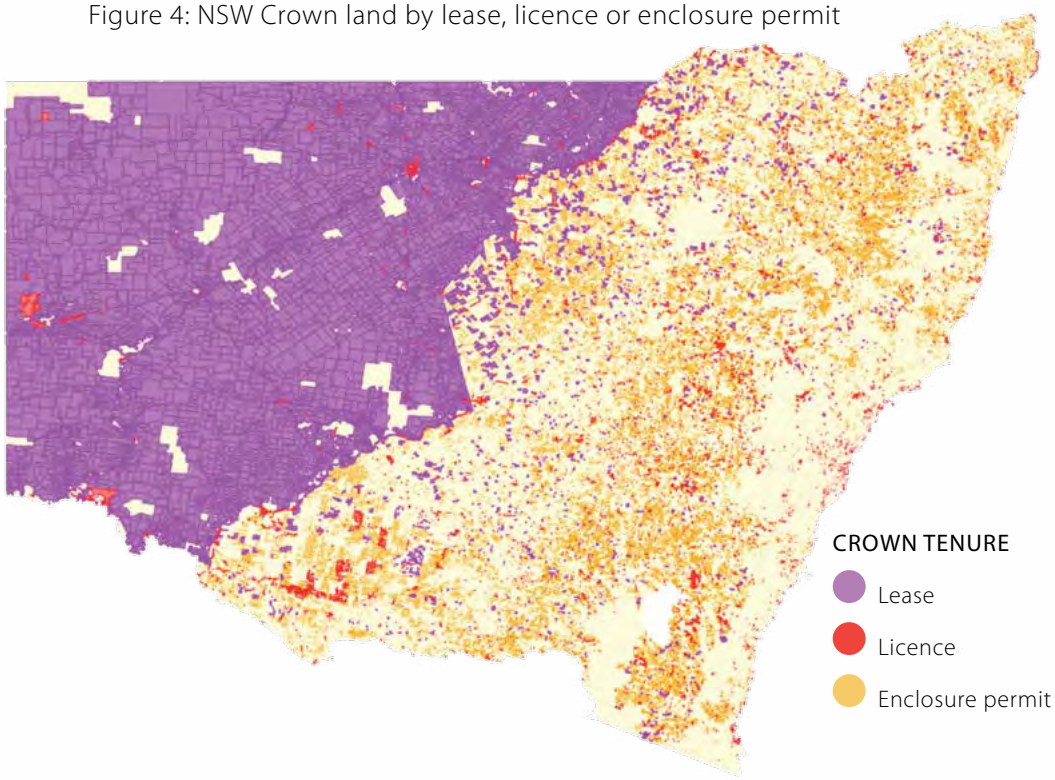


Figure 5: NSW Crown reserves

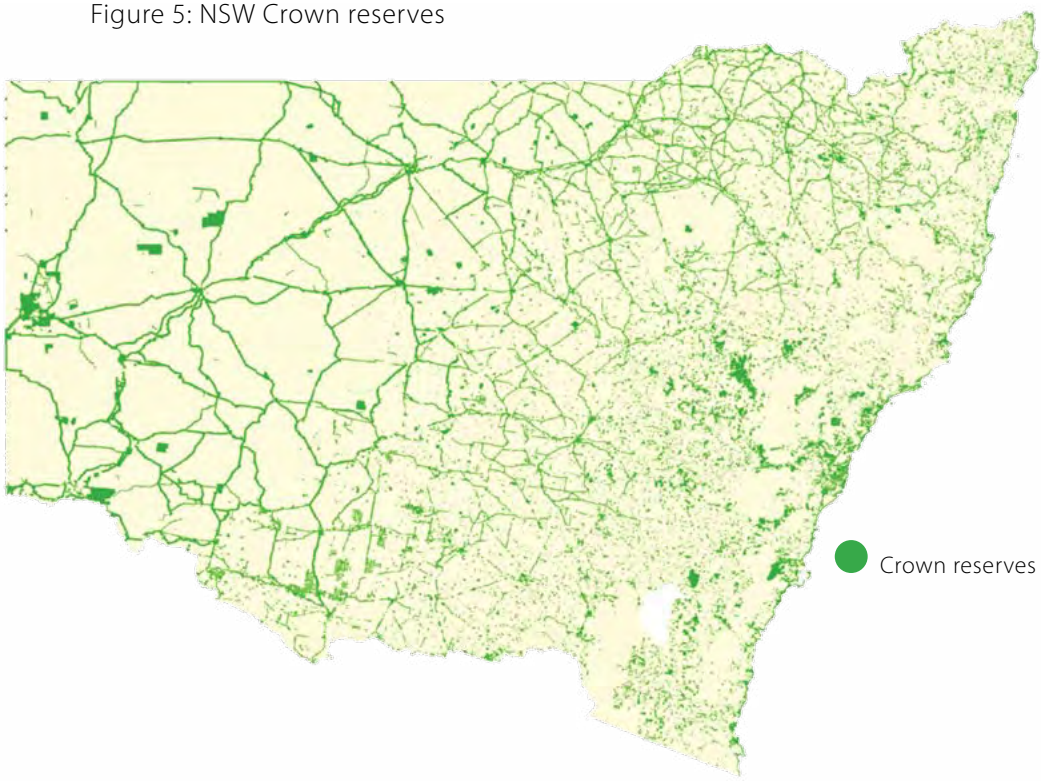
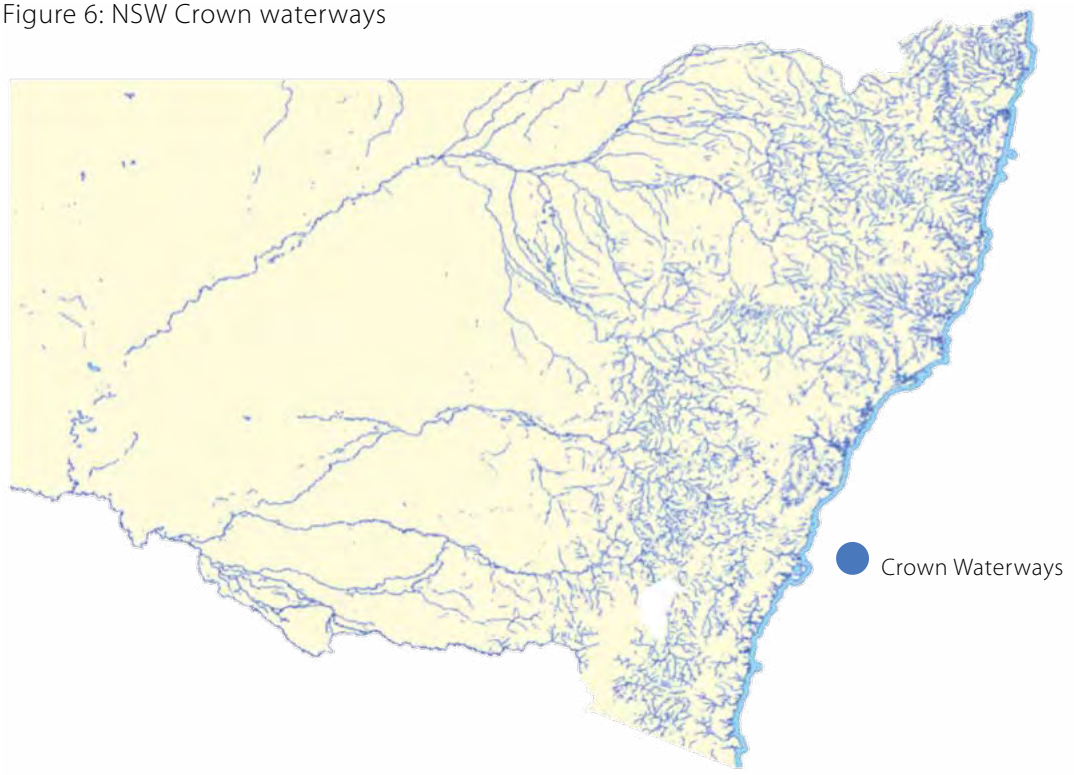


Figure 6: NSW Crown waterways



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Crown Lands for the Future

Crown Lands Management Review Summary and Government Response

NSW GOVERNMENT

jn 12402 NOV 13

INTRODUCTION: OUR CROWN LAND

An Estate with diverse uses and values

The NSW Crown Estate is large and diverse – making up about 42 per cent of the State – and holds tremendous importance for the social, environmental and economic health of NSW.

Crown Lands Division of NSW Trade & Investment is responsible for administering and providing appropriate sustainable and commercial management of the Crown Estate.

The Crown Estate has a wide range of uses, including:

- commercial ventures including marinas, kiosks, restaurants and aged care facilities;
- grazing and agriculture;
- most beaches, estuaries and waterways;
- Crown roads;
- recreational areas such as ovals, tennis courts, golf courses, bowling greens and walking tracks;
- community and cultural facilities including community halls, showgrounds, racecourses, cemeteries and lighthouses; and
- tourism facilities such as caravan parks.

Crown Lands Division has many other responsibilities, including the oversight and management of regional port infrastructure, bushfire management, weed and pest control, enclosure and disposal of Crown roads and investigating native title and Aboriginal land rights claims.

Working closely with the community, partners and stakeholder groups in shaping the future management of the Crown Estate is a key priority of the NSW Government.

FOUNDATION FOR CONSULTATION

“A vital resource for the people of NSW”

Every day, individuals and families right across NSW enjoy visiting the thousands of parks, beaches, waterways and sports grounds on Crown land.

Communities, businesses and farmers in our great State also rely on access to Crown land that is home to local clubs, community halls, showgrounds, racecourses, holiday parks, golf courses, farms, access roads and grazing paddocks.

However, the current legislation governing Crown land dates back to 1890 and the management of Crown land has not kept pace with the changing needs of the community.

The Crown Lands Management Review provides a great opportunity to ensure that the benefits enjoyed by the individuals, families, communities, businesses and farmers who access Crown land are maximised.

The Review also sets the path to build an organisation that prioritises local decision-making and is equipped to meet the needs of local communities now and into the future.

We are getting to work right away on some of the Review’s recommendations, such as issuing a White Paper to consolidate eight pieces of legislation into one new, contemporary Act.

But other proposals require consultation with stakeholders and local communities before we can proceed with them.

The NSW Government will be conducting extensive consultation across the State to ensure any decisions are made with the right level of local input, local experience and local knowledge.

The Hon. Andrew Stoner MP

Deputy Premier
Minister for Trade & Investment
Minister for Regional Infrastructure & Services

A SHARED VISION FOR BETTER CROWN LAND MANAGEMENT

> A better way to manage Crown land to deliver benefits for communities right across NSW

In June 2012, the NSW Government initiated a comprehensive review of NSW Crown Land Management to examine its current activities and report on its future direction.

The Steering Committee had executive representation from 11 NSW Government departments and agencies, offering a depth and breadth of knowledge that has proven invaluable.

NSW has not undertaken a major reform of Crown land for over 25 years. To better meet the NSW Government's objectives and the interests of the community, the management of Crown land has to change.

The Crown Lands Management Review recommends a range of reforms to improve the management of Crown land in NSW.

These include legislative reform, restructuring Crown Lands Division as a Public Trading Enterprise and empowering local government to better and more easily manage lands that are valued primarily by local communities.

Review and reform, especially after 25 years, has its challenges and the Review recommendations need to be coordinated with other current government reviews, such as the Aboriginal Land Rights Act Review and the work of the Local Government Acts Taskforce.

Better management of the Crown Estate is imperative for the overall good of NSW. The Review recommendations are an essential step towards achieving this outcome and meeting the priorities of Government.

Michael Carapiet

Chair Crown Lands Management Review

FOR THE FUTURE, FOR OUR COMMUNITIES

> Effective future ownership, governance and management

The way Crown land is managed today is a legacy of the past, resulting in complex legislation and management practices that impede decision-making and optimal outcomes for the people of NSW.

The Inter-agency Steering Committee, independently chaired by Mr Michael Carapiet, was asked to review the management of the Crown Estate and make recommendations on its effective future ownership, governance and management.

This Review will help to improve the management of Crown land and increase the benefits and returns from Crown land to the community.

The Crown Lands Management Review recommendations address issues relevant to:

- ownership of the Crown Estate depending on the balance of local and state uses and benefits;
- governance of Crown land;
- management of travelling stock reserves;
- administrative arrangements for managing Western Lands Division leases;
- the existing amount of red tape and multiple approvals;
- overlaps in legislation, and the need to rationalise the number of Acts that affect Crown land management;
- the community's awareness of the value and the cost of maintaining Crown land;
- the adequacy and transparency of Crown Lands Division's accounting systems; and
- the improvement of Crown Lands Division business operations.

Meeting NSW 2021 goals

The Review delivers on the NSW Government's commitment to achieve the following key priorities:

- Improved transparency – better decision-making through access to better and relevant information;
- Reduced red tape – delivering efficiency gains to local government, stakeholders and the community;
- Giving the community a greater say in decision making and land management – providing flexibility to land managers to respond to changing community priorities;
- Growing the economy – achieving appropriate returns for the people of NSW from the use and occupation of Crown land; and
- Strategic investment in the Crown Estate to reflect changing Government and community priorities.

UNLOCKING THE POTENTIAL OF STATE AND LOCAL LAND

> Improving local outcomes for communities

A new approach for management

The NSW Government should retain Crown land of state significance. However, decision-making about the management of local land should be devolved to a local level.

Local government can manage local land more efficiently under its own legislation, rather than under the Crown Lands Act.

A stocktake of the Crown Estate will determine which NSW Government department or agency will be responsible for the future management of state significant Crown land and will complement the regional planning process, which is part of the NSW Government's new planning framework.

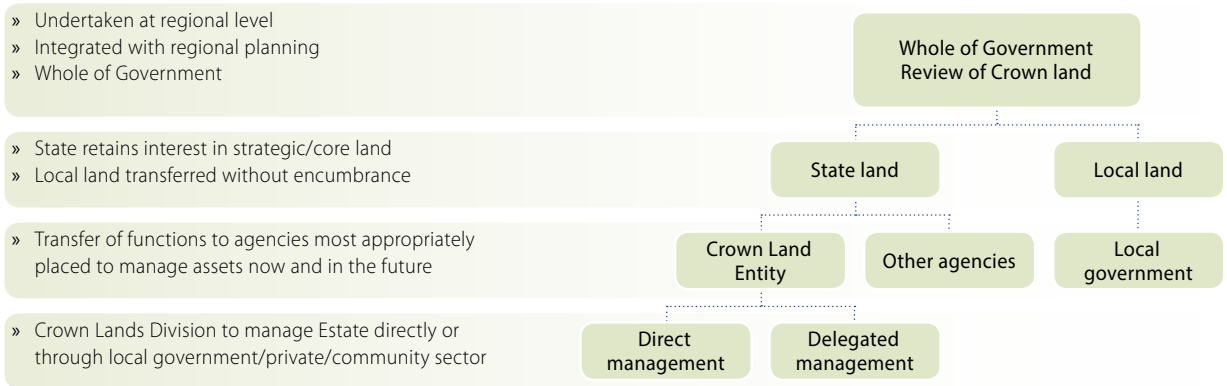
Further consultation is needed to develop criteria for the classification of state and local land.

This diagram outlines one approach to the implementation of the state and local land model.

Recommendations

- Conduct a strategic assessment of NSW Government needs to determine which Crown land is required for core service delivery or has state or regional values. [Supported in principle]
- Conduct a pilot program, in consultation with the Division of Local Government, Department of Planning & Infrastructure and key stakeholders, to test and refine the state and local land criteria and to develop an implementation plan for the transfer of local land. [Supported in principle]
- Devolve land of local interest to local councils to meet local needs. [Supported in principle]
- Devolve Crown land to other NSW Government agencies if they are best placed to manage the values and risks associated with a parcel of land. [Supported in principle]

"Returning decision making to the local community"



UNLOCKING THE POTENTIAL OF STATE AND LOCAL LAND

Review of travelling stock reserves

Many travelling stock reserves (TSRs) are no longer used for their original purpose.

In future, the ongoing management of TSRs should be by the relevant body with the greatest interest in the land, which could include local government, Aboriginal Land Councils or Local Land Services.

Local Land Services is ideally placed to consider the future management and use of TSRs. This is an opportunity to return decision making to the local community and help to strengthen local environments.

Recommendation

» Local Land Services work with the relevant stakeholders to develop assessment criteria to review all TSRs and determine their future ownership and management. [Supported]

A BETTER BUSINESS MODEL

> A robust and relevant framework for the future

"A new way of doing business that benefits NSW"

A business model for the future

The existing business model used by Crown Lands Division is no longer adequate for the delivery of current NSW Government objectives or to meet the challenges outlined in the Crown Lands Managment Review.

It is recommended that Crown Lands Division progresses to a Public Trading Enterprise; introduces modern information management and accounting systems; and develops key performance indicators to measure benchmark management outcomes.

This new way of doing business will improve accountability and transparency, reduce risks and allow Government to better allocate resources to deliver policy priorities and to satisfy community expectations.

Recommendations

- Establish Crown Lands Division as a Public Trading Enterprise through a staged transformation process. [Supported]
- Upgrade Crown Lands Division's information management systems to allow informed decision-making and comprehensive accounting. [Supported]
- Develop appropriate benchmarks and key performance indicators to reflect the economic, social and environmental objectives required in the management of the Crown Estate. [Supported]

The value of Crown land

Currently, meaningful reporting on land values is difficult, and calculating and reporting on the value of social and environmental factors is also problematic.

As a result, the community is largely unaware of the economic value or benefit of Crown land or the costs associated with the management of the Crown Estate.

New and improved measures of valuation and accurate reporting of value of current uses will allow the community to consider the ongoing validity of current land use and help them decide if they should persist at the cost of other, possibly higher value, community uses. There is significant potential for the Government to consider alternative uses and therefore a fair approach to cost recovery and dividends to fund valuable community services.

Recommendations

- Benchmark return on assets against opportunity cost. [Supported]
- Determine an additional land value as a measure of opportunity cost – the hypothetical fee simple unencumbered freehold value based on surrounding land use and zoning. [Supported]
- Express the shortfall between a community-based organisation's ability to pay and the market rent as a community service obligation payment. [Supported]
- Report on the level of contribution made by the NSW Government for the use of Crown land for community purposes. [Supported]
- Develop specifications for new information systems based on needs identified by the Review, leveraging opportunities from the Enterprise Resource Planning (ERP) and other cutting-edge technologies. [Supported]

A BETTER BUSINESS MODEL

Strengthening financial management systems

Changing demands on Crown land means that many of the existing systems and processes no longer provide the most effective and efficient management of the Crown Estate.

Improved financial management and reporting systems will provide greater clarity on the contribution of Crown land revenues to the community and to the NSW Government.

Recommendations

- Establish and publish separate audited accounts and budget estimates for the Crown Estate as a prelude to establishing Crown Lands Division as a Public Trading Enterprise. [Supported]
- Critically review the proposed general ledger and financial reporting structure to ensure that they will meet all reporting and other requirements. [Supported]
- Establish adequate internal systems and procedures for Crown Lands Division to ensure proper management of all business activities. [Supported]

"Opportunities exist to better integrate public land management across Government."

CONTEMPORARY LEGISLATION AND BETTER OUTCOMES

Consolidated Crown lands legislation

Cutting red tape

Red tape causes delays, duplication and inefficiencies in the current Crown land management system.

Opportunities may exist to better integrate public land management across Government, in particular harmonising submerged land management between agencies; transferring compliance activities to other agencies; and streamlining regulation of Crown land managed by local government and local government-owned community land.

Recommendations

- Review activities requiring landowner consent from Crown Lands Division. [Supported in principle]
- Effective compliance arrangements for waterfront structures should be considered by the Marine Compliance Taskforce as part of the On-Water Compliance Review. [Supported]
- Harmonise the management of submerged land in NSW. [Supported]

Streamlining legislation for better outcomes

Legislation covering Crown land should be consolidated into a single Act, to reduce complexity and remove unnecessary duplication.

Streamlining legislation and removing unnecessary approvals will improve efficiency and reduce unnecessary delays.

Recommendations

- Develop new, consolidated Crown lands legislation. [Supported in principle]
- Repeal eight or more existing Acts. [Supported in principle]
- Abolish commons as a discrete category of land. [Supported in principle]
- Amend the *Roads Act 1993* so that the Minister is no longer a roads authority. [Supported in principle]
- Responsibility for all roads used to provide access to the general public to rest with the other roads authorities under the *Roads Act 1993*. [Supported in principle]
- Remove the option to dedicate Crown land in the future. [Not supported]
- Remove the land assessment requirements currently contained in the *Crown Lands Act 1989*. [Supported in principle]

CONTEMPORARY LEGISLATION AND POSITIVE OUTCOMES

Strengthening local decision making

Ensuring better outcomes for Western Lands leaseholders

Over a third of NSW falls within the Western Division and most of it is leasehold land for grazing, with some cultivation for cropping.

Most of the Western Division has extremely low population densities and economic opportunities are limited outside mining localities.

There is an opportunity to streamline and improve processes to provide greater flexibility to Western Division leaseholders. This will include allowing conversion of certain grazing leases to freehold.

Recommendations

- Review the eligibility criteria for conversion of Western Lands leases held for agriculture or cultivation and perpetual Western Lands grazing leases with current Cultivation Consents where the land has been developed. [Supported in principle]
- Allow conversion of perpetual Western Lands grazing leases on the same terms as Western Lands leases held for agriculture or cultivation, where there is a current Cultivation Consent over all or part of the land contained in the grazing lease and the land has been developed. [Supported in principle]
- Compare existing Crown land leasehold conversion processes. [Supported in principle]
- Permit certain additional land uses where appropriate on Western Lands leases. [Supported in principle]

Improving the management of Crown reserves

NSW is the only state in Australia to have a three-tier Crown reserve system, which includes the additional layer of reserve trusts. This complex governance arrangement is unnecessary and cumbersome and NSW should be brought into line with the other states.

Requiring local government to manage Crown reserves under the Crown Lands Act while managing other land under the Local Government Act results in inconsistencies and overlapping reporting requirements. Allowing councils to manage Crown land under local government legislation would address these issues.

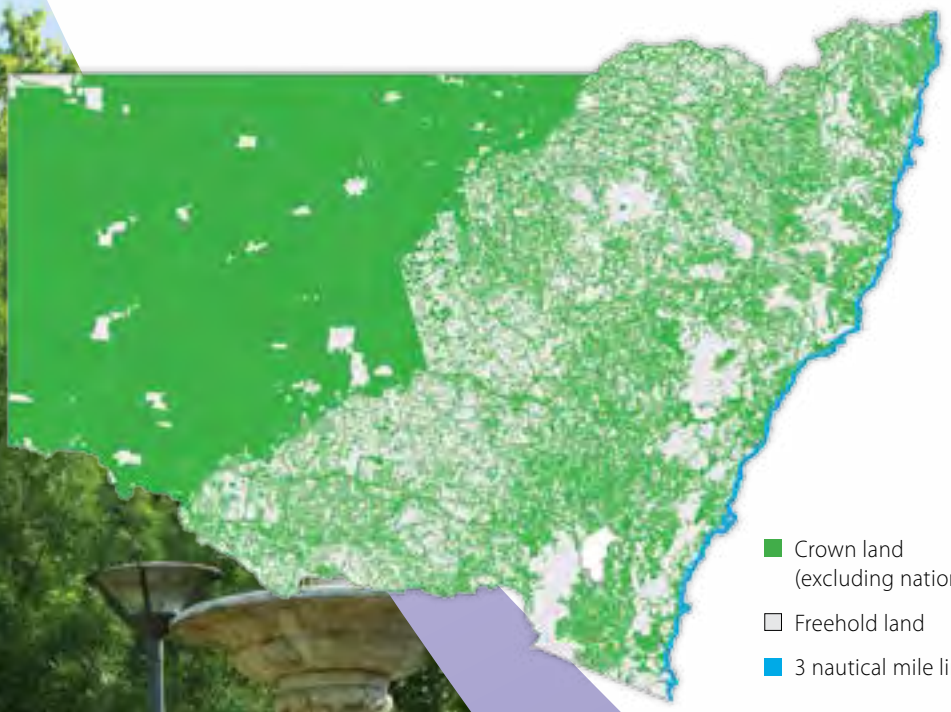
Community participation in the management of Crown land is highly valued. Crown Lands Division will work with community members to identify opportunities to improve governance.

Recommendations

- Revise the reserves framework to better facilitate multiple use of land compatible with the reserve purpose. [Supported in principle]
- Move to a two-tier reserve management structure by removing reserve trusts. [Supported in principle]
- Allow councils to manage reserves under the local government legislation. [Supported in principle]
- Support community member participation in the management of Crown land that encourages good governance. [Supported in principle]

RECOMMENDATION	GOVERNMENT RESPONSE
STATE AND LOCAL LAND	
1. Conduct a strategic assessment of NSW Government needs to determine which Crown land is required for core service delivery or has state or regional values.	**Supported in principle** – further consultation required to undertake a whole of government stocktake of Crown land.
2. Conduct a pilot program, in consultation with the Division of Local Government, Department of Planning & Infrastructure and key stakeholders, to test and refine the state and local land criteria and to develop an implementation plan for the transfer of local land.	**Supported in principle** – The pilot design parameters require further consultation with local government stakeholders. Community consultation will be undertaken as part of the pilot. The NSW Government will need to consider the outcomes of the pilot and local community feedback before progressing on the implementation of the policy.
3. Devolve land of local interest to local councils to meet local needs.	**Supported in principle** – The NSW Government is committed to the *Intergovernmental Agreement to Guide NSW State-Local Government Relations on Strategic Partnerships*, particularly in relation to cost-shifting. Consultation with Local Government NSW and other local government stakeholders will be required in the first instance. If supported by local government stakeholders, this will be progressed through a pilot program in the first instance. Community consultation will be undertaken as part of the pilot process. Some forward thinking local councils have already approached Crown Lands Division with similar proposals.
4. Devolve Crown land to other NSW Government agencies if they are best placed to manage the values and risks associated with a parcel of land.	**Supported in principle** – Further consultation with agencies is required to develop and undertake this process.
REVIEW OF TRAVELLING STOCK ROUTES	
5. Local Land Services work with the relevant stakeholders to develop assessment criteria to review all TSRs and determine their future ownership and management.	**Supported** – Work will commence in 2014 on a pilot program with Local Land Services. Community consultation will occur through the pilot process.
BUSINESS MODEL	
6. Establish Crown Lands Division as a Public Trading Enterprise through a staged transformation process.	**Supported** – Crown Lands Division to undertake.
7. Upgrade Crown Lands Division's information management systems to allow informed decision-making and comprehensive accounting.	**Supported** – Crown Lands Division to undertake.
8. Develop appropriate benchmarks and key performance indicators to reflect the economic, social and environmental objectives required in the management of the Crown Estate.	**Supported** – Crown Lands Division to undertake.
CROWN LAND VALUATION AND DIVIDENDS	
9. Benchmark return on assets against opportunity cost.	**Supported** – Crown Lands Division to undertake.
10. Determine an additional land value as a measure of opportunity cost – the hypothetical fee simple unencumbered freehold value based on surrounding land use and zoning.	**Supported** – Crown Lands Division to undertake.
11. Express the shortfall between a community-based organisation's ability to pay and the market rent as a community service obligation payment.	**Supported** – Crown Lands Division to undertake. There is no intention to require community organisations to pay market rents. This process will simply improve transparency by measuring the subsidy that the NSW Government is providing to community organisations on Crown land.
12. Report on the level of contribution made by the NSW Government for the use of Crown land for community purposes.	**Supported** – Crown Lands Division to undertake. There is no intention to require community organisations to pay market rents. This process will simply improve transparency by measuring the subsidy that the NSW Government is providing to community organisations on Crown land.
13. Develop specifications for new information systems based on needs identified by the Review, leveraging opportunities from the Enterprise Resource Planning (ERP) and other cutting-edge technologies.	**Supported** – Crown Lands Division to undertake.
ACCOUNTING ISSUES	
14. Establish and publish separate audited accounts and budget estimates for the Crown Estate as a prelude to establishing Crown Lands Division as a Public Trading Enterprise.	**Supported** – Crown Lands Division to undertake.
15. Critically review the proposed general ledger and financial reporting structure to ensure that they will meet all reporting and other requirements.	**Supported** – Crown Lands Division to undertake.
16. Establish adequate internal systems and procedures for Crown Lands Division to ensure proper management of all business activities.	**Supported** – Crown Lands Division to undertake.

RECOMMENDATION	GOVERNMENT RESPONSE
LEGISLATION	
17. Develop new, consolidated Crown lands legislation.	**Supported in principle** – Public consultation on this proposal will occur through the Crown Lands Legislation White Paper.
18. Repeal eight or more existing Acts.	**Supported in principle** – Public consultation on this proposal will occur through the Crown Lands Legislation White Paper.
19. Abolish commons as a discrete category of land.	**Supported in principle** – Public consultation on this proposal will occur through the Crown Lands Legislation White Paper.
20. Amend the *Roads Act 1993* so that the Minister is no longer a roads authority.	**Supported in principle** – The NSW Government is mindful of the Final Report by the Local Government Taskforce in relation to the maintenance and renewal backlog in local government owned infrastructure. NSW Trade & Investment will undertake further consultation with Transport for NSW, Roads & Maritime Services and local government stakeholders before progressing this proposal.
21. Responsibility for all roads used to provide access to the general public to rest with the other roads authorities under the *Roads Act 1993*.	**Supported in principle** – The NSW Government is mindful of the Final Report by the Local Government Taskforce in relation to the maintenance and renewal backlog in local government owned infrastructure. NSW Trade & Investment will undertake further consultation with Transport for NSW, Roads & Maritime Services and local government stakeholders before progressing this proposal.
22. Remove the option to dedicate Crown land in the future.	**Not supported** – Significant streamlining or efficiencies are not guaranteed by simply removing the legal option to dedicate land. Administrative streamlining will be pursued through the continuous improvement program within Crown Lands Division.
23. Remove the land assessment requirements currently contained in the *Crown Lands Act 1989*.	**Supported in principle** – Public consultation on this proposal will occur through the Crown Lands Legislation White Paper.
RED TAPE	
24. Review activities requiring landowner consent from Crown Lands Division.	**Supported in principle** – Public consultation on this proposal will occur through the Crown Land Legislation White Paper. Key stakeholders will also be consulted on this proposal.
25. Effective compliance arrangements for waterfront structures should be considered by the Marine Compliance Taskforce as part of the On-Water Compliance Review.	**Supported** – NSW Trade & Investment is working with Transport for NSW and Roads & Maritime Services to prioritise activities.
26. Harmonise the management of submerged land in NSW.	**Supported** – NSW Trade & Investment is working with Transport for NSW and Roads & Maritime Services to prioritise activities.
WESTERN LANDS	
27. Review the eligibility criteria for conversion of Western Lands leases held for agriculture or cultivation and perpetual Western Lands grazing leases with current Cultivation Consents where the land has been developed.	**Supported in principle** – Public consultation on this proposal will occur through the Crown Land Legislation White Paper. Key stakeholders will also be consulted on this proposal.
28. Allow conversion of perpetual Western Lands grazing leases on the same terms as Western Lands leases held for agriculture or cultivation, where there is a current Cultivation Consent over all or part of the land contained in the grazing lease and the land has been developed.	**Supported in principle** – Public consultation on this proposal will occur through the Crown Land Legislation White Paper. Key stakeholders will also be consulted on this proposal.
29. Compare existing Crown land leasehold conversion processes.	**Supported in principle** – Public consultation on this proposal will occur through the Crown Land Legislation White Paper. Key stakeholders will also be consulted on this proposal.
30. Permit certain additional land uses where appropriate on Western Lands leases.	**Supported in principle** – Public consultation on this proposal will occur through the Crown Land Legislation White Paper. Key stakeholders will also be consulted on this proposal.
MANAGEMENT OF CROWN RESERVES	
31. Revise the reserves framework to better facilitate multiple use of land compatible with the reserve purpose.	**Supported in principle** – Public consultation on this proposal will occur through the Crown Lands Legislation White Paper.
32. Move to a two-tier reserve management structure by removing reserve trusts.	**Supported in principle** – Public consultation on this proposal will occur through the Crown Lands Legislation White Paper.
33. Allow councils to manage reserves under the local government legislation.	**Supported in principle** – Public consultation on this proposal will occur through the Crown Lands Legislation White Paper. Local Government NSW will also be consulted on this proposal.
34. Support community member participation in the management of Crown land that encourages good governance.	**Supported in principle** – Public consultation on this proposal will occur through the Crown Lands Legislation White Paper.
NEXT STEPS	
35. Release a White Paper for consultation on the proposed legislative changes.	**Supported** – Immediate action Crown Lands Division to undertake.
36. Develop a plan for further exploration and implementation of internal business and reporting reforms.	**Supported** – Immediate action Crown Lands Division to undertake.



- Crown land (excluding national parks and state forests)
- Freehold land
- 3 nautical mile limit

Crown Lands Division of NSW Trade & Investment

1300 886 235 www.crownland.nsw.gov.au

*Note: information and data contained in this document is referenced from the Crown Lands Management Review 2014.

Crown Lands Legislation

White Paper

NSW GOVERNMENT

Crown Lands Legislation White Paper

NSW GOVERNMENT | Trade & Investment

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Foreword

Every day, individuals and families right across NSW enjoy visiting the thousands of parks, beaches, waterways and sports grounds on Crown land.

Communities, businesses and farmers in our great State also rely on access to Crown land that is home to local clubs, community halls, showgrounds, racecourses, holiday parks, golf courses, farms, access roads and grazing paddocks.

However, the current legislation governing Crown land dates back to 1890 and the management of Crown land has not kept pace with the changing needs of the community.

The Crown Lands Management Review started in June 2012 with the aim of improving the management of Crown land and increasing the benefits and returns to the community.

The Review proposed one new piece of contemporary legislation to replace the eight existing acts.

This White Paper sets out a range of legislative proposals which will support Crown land management in the 21st century.

Streamlining the existing legislation will remove unnecessary duplication and red tape. The new legislation will be simpler and easier to understand, which will make it accessible to the many and varied users of Crown land.

I encourage you to read the White Paper and have your say on the legislative proposals. The NSW Government values the input of local communities and key stakeholders, and all submissions will be considered when developing the new Crown lands legislation.

The Hon. Andrew Stoner MP

Deputy Premier
Minister for Trade & Investment
Minister for Regional Infrastructure & Services

Contents

Call for submissions

NSW Trade & Investment is inviting comments on the proposals in this White Paper.

The White Paper sets out recommendations to:

- create simpler legislation to support Crown land management in the 21st century
- help grow the NSW economy through the more effective management of Crown land
- continue the key objective of managing Crown land for the benefit of the people of NSW
- reduce red tape for the community and stakeholders
- streamline and speed up administration
- cement the role of local communities in the management of Crown land.

Public notice of the White Paper will appear in the NSW G*overnment Gazette*, *The Land*, the *Sydney Morning Herald* and the *Telegraph*. The White Paper will be available at www.crownland.nsw.gov.au

You can submit your comments in writing to NSW Trade & Investment in any of the following ways:

Post:

Crown Lands Management Review
NSW Trade & Investment
PO Box 2185 DANGAR NSW 2309

Email:

crownlands.whitepaper@trade.nsw.gov.au

The closing date for submissions is 20 June 2014 at 5.00 pm.

What happens to submissions?

NSW Trade & Investment will review all submissions received by the closing date. A summary of submissions will be published, which will generally identify the individuals and bodies who made submissions.

Please advise NSW Trade & Investment if you do not want to be identified in the summary. Your request will be respected, unless legislation (for example the *NSW Government Information (Public Access) Act 2009*) requires disclosure.

Submissions received will be taken into account when developing the new Crown lands legislation.

1. Introduction

Crown land is an important asset for the community of NSW, providing opportunities for a vast range of community and economic activities, and preserving important heritage and environmental values.

What is Crown land?

The proposals in this White Paper cover only Crown land administered by NSW Trade & Investment Crown Lands Division, which comprises some 42 per cent of NSW.

Crown land for the purposes of this White Paper includes:

- Crown land held under lease, licence or permit,
- Crown reserves managed by local councils and community trusts,
- Crown land retained in public ownership for environmental purposes,
- land within the Crown public roads network,
- many non-tidal waterways and most tidal waterways, and
- other unallocated Crown land.

National parks, state forests and community lands held by local councils were not part of the Crown Lands Management Review and are not covered in this White Paper: they are special categories of public land managed for specific purposes by other entities.

1.1 The need for legislative change

There is a need to ensure that Crown land can be used for its optimal purpose, that those who manage it are empowered to do so as efficiently as possible, and that there is sufficient flexibility to provide for changing community standards and expectations on how Crown land is managed into the future.

Crown land is currently administered under eight different pieces of legislation, which together create a complex web of overlapping and confusing requirements. This is to a large extent an inevitable but unintended consequence of legislative change since the 1890s.

This arrangement can be a source of frustration for the NSW community and adds administrative costs without delivering benefits. The recent Crown Lands Management Review identified problems such as:

- delays and backlogs resulting from multiple layers of decision-making and consent requirements which do not add value,
- lack of clarity for the community about which government agency controls particular land,
- inconsistent provisions in different legislation for similar land and activities, and
- requirements duplicated in more than one Act.

1.2 The way forward

This White Paper proposes that the best way to support the management of the Crown estate in the twenty-first century is to develop one new piece of legislation to replace the following eight Acts:

- *Crown Lands Act 1989*
- *Crown Lands (Continued Tenures) Act 1989*
- *Western Lands Act 1901*
- *Commons Management Act 1989*
- *Trustees of Schools of Arts Enabling Act 1902*
- *Public Reserves Management Fund Act 1987*
- *Wentworth Irrigation Act 1890*
- *Hay Irrigation Act 1902*.

This was a key recommendation arising from a comprehensive Crown Lands Management Review (see Appendix 1). Although it would be possible to update each individual Act, this would be unlikely to remove the duplication and complexities that result from having multiple Acts, or to address consistency issues.

There are also a number of Acts that could be repealed because they are no longer necessary (see Chapters 9.4 and 9.5):

- *Wagga Wagga Racecourse Act 1993*
- *Hawkesbury Racecourse Act 1996*
- *Orange Show Ground Act 1897*
- *Irrigation Areas (Reduction of Rents) Act 1974*
- *Murrumbidgee Irrigation Areas Occupiers Relief Act 1934*.

This new Crown lands legislation will not amend the *Aboriginal Land Rights Act 1983*, which is being considered in a separate review process. Crown land will continue to be available under the provisions of that Act as compensation for the dispossession of Aboriginal people.

In developing the new legislation, the requirements of the Commonwealth's native title legislation will need to be considered.

The new Crown lands legislation will be consistent with, but will not duplicate, the proposed new local government and planning frameworks and the existing environmental legislation.

1.3 Benefits of change

- The new legislation will be simpler and more direct than the current suite of Crown lands legislation, and will be easier for non-lawyers to understand.

» The aim is to provide the simplest possible legislative framework to manage Crown land by streamlining existing legislative requirements and reducing red tape, particularly for the management of Crown reserves and the administration of Western Lands leases. The new legislation will also achieve the specific outcomes below.

Allow use of Crown land by the people of NSW

Existing provisions to manage Crown land for the benefit of the people of NSW will continue, including provisions to reserve land for public access and use, and provisions for public use and multiple use of Crown land where appropriate.

Simplifying the provisions for the management of Crown land will make it easier for the community to benefit from Crown land under tenures and reserves.

Underpin effective management and protection of Crown land

Effective management and protection of Crown land will continue to be a core concern for the NSW Government. This will be reflected in the objects of the new Act.

The new legislation will feature simpler, more transparent structures and processes. For example, it will:

» reduce the current three-tier Crown reserve management system to two tiers,

» simplify the various types of land ownership, and

» be consistent with other legislative frameworks, particularly the local government and planning frameworks, and will not include provisions that duplicate other legislation.

Environmental protection measures in the existing legislation, including provisions to prevent overstocking and overgrazing on Western Lands grazing leases, will be continued. Provisions that duplicate the protections in other legislation (such as the *Native Vegetation Act 2003*) will not be retained.

Practical and effective enforcement provisions and a bigger 'compliance toolbox' are also proposed. For example, remediation and removal notices will be provided for. This will enable action to be taken to more easily protect Crown land and to remediate any damage.

Streamline decision-making at the local level

Thousands of Crown reserves are currently managed by local communities under trust arrangements, which require councils and community trusts to comply with complex, duplicative and sometimes contradictory requirements.

It is proposed that this will be streamlined so that Crown land will be managed by the most appropriate level of government. Land with primarily local uses and values will be managed by councils under the local government legislation, using the same procedures that apply to land already owned by councils. These include the community engagement processes that are part of the Integrated Planning and Reporting systems used by councils.

This change will reduce the complexity and red tape for councils and allow local communities to have more of a say about how public land in their local area is managed. Proposals to reduce reporting requirements will also help.

Reduce red tape and transaction costs

Simplified Crown lands legislation will reduce the delays and frustration currently experienced by individuals, reserve trusts, communities and councils. In particular, getting approval for activities on Crown land often involves unnecessary paperwork and delay.

In the new legislation, consent and notification requirements will be streamlined to ensure the most effective consultation mechanisms are supported and unnecessary bureaucracy is removed.

Duplication of provisions in other legislation will also be removed.

The existing requirements for councils and other reserve trusts and managers to report to the NSW Government will be considerably reduced, with the emphasis shifted to local accountability to the community.

Opportunities to diversify or expand activities will be provided to leaseholders of Western Lands leases in rural areas by removing approval requirements to undertake additional activities, subject to certain conditions. Western Lands grazing leaseholders with current cultivation consents will be able to apply to convert their leases to freehold, subject to meeting certain requirements.

There are seven different processes under the existing legislation for converting leases to freehold on application. This includes leases administered under the Continued Tenures Act, the two Irrigation Acts and the Western Lands Act. The proposed changes could introduce a common approach to how Crown land is sold to leaseholders, or if that is not practicable a more streamlined approach.

1.4 Issues for comment

Public comment is invited on all the recommendations and proposals in the White Paper. In particular, your views are sought on any or all of the following questions, which are repeated throughout the document in the relevant sections.

Proposed legislation

1. How would developing one new piece of legislation to manage the Crown land estate benefit the community?
2. Are the objects and provisions proposed for the new legislation appropriate to support Crown land management in the 21st Century?

Improved management arrangements for Crown reserves

3. Do you have any comments on the proposal to allow local councils to manage Crown land under local government legislation rather than under the Crown Lands Act?
4. What are your views about the proposed new management structure for Crown reserves?
5. Do you have any further suggestions to improve the governance standards for Crown reserves?

Other streamlining measures

6. Are there any additional activities that should be considered as 'low impact' activities in order to streamline landowner's consent?
7. Are there any other ways to streamline arrangements between the State and local governments?
8. In addition to the suggestions provided, are there any other ways to ensure that the public is notified of the proposed use or disposal of Crown land - and their views taken into account – that would be appropriate to include in the new legislation?

Better provisions for tenures and rents

9. Do you support the concept of a consistent, market based approach to rents, with rebates and waivers for hardship and public benefits for certain uses of Crown land applied where appropriate?
10. Is five years a reasonable amount of time to give tenure holders who currently pay below the statutory minimum rent to move to paying the minimum level of rent as required under the new legislation.
11. To avoid rent arrears issues for incoming tenure-holders, should the new legislation automatically transfer any rental debt to a new tenure-holder on settlement, or require any outstanding arrears to be paid prior to transfer or settlement?
12. What kinds of lease conditions should be considered 'essential', for the purposes of providing for civil penalties?
13. Should Crown land be able to be used for all forms of carbon sequestration activities?

Greater flexibility for Western Lands leases

14. What additional activities do you think should be permitted on Western Lands leases without the need for approval?
15. Bearing in mind the fragile nature of much land in the Western Division, in what situations do you think it would be appropriate to allow Western Lands leases to be converted to freehold?

Stronger enforcement provisions

16. What are your views about the proposal to strengthen the compliance framework for Crown lands?
17. Do you have any suggestions or comments about proposals for the following:
    - Auditing
    - Officer powers
    - Offences and penalties
    - Other provisions

Minor legislation

18. Do you support the repeal of the minor legislation listed?
19. Do you see any disadvantages that would need to be addressed?

2. Existing legislation

The NSW Crown estate is administered under three core pieces of legislation:

- *Crown Lands Act 1989* (Crown Lands Act)
- *Crown Lands (Continued Tenures) Act 1989* (Continued Tenures Act)
- *Western Lands Act 1901* (Western Lands Act)

There are strong similarities between these three Acts, the most obvious being that they all include tenure provisions.

The Crown Lands Act and the Western Lands Act are complex and detailed, largely because both Acts have evolved over many decades. They are also outdated in many respects. The interaction between the two Acts is complicated and many of the provisions of the Crown Lands Act also apply to land in the Western Division. This results in inefficiencies, duplication and a lack of clarity.

The following Acts are also overdue for review:

- *Public Reserves Management Fund Act 1987* (PRMF Act)
- *Commons Management Act 1989* (Commons Act)
- *Trustees of Schools of Arts Enabling Act 1902* (Schools of Arts Act)
- *Wentworth Irrigation Act 1890 and the Hay Irrigation Act 1902* (Irrigation Acts).

Crown Lands Act

The Crown Lands Act is essentially concerned with the allocation and management of Crown land, including the administration of tenures and Crown reserves, and also deals with the acquisition and sale of Crown land.

Crown reserves are parcels of Crown land set aside for public use, such as recreation and sporting facilities, green space, beaches and foreshores, cemeteries, environmental protection, holiday accommodation, infrastructure or Government services. Many reserves are used for multiple purposes. There are currently around 35,000 Crown reserves.

Tenures allow the occupation of Crown land for specific purposes, including commercial ventures (such as marinas, kiosks, restaurants, and caravan parks), telecommunications, access, grazing and agriculture, residential, sporting and community purposes, tourism and industry, and waterfront occupations. There are more than 59,500 tenures over Crown land, including around 20,000 over Crown reserves.

Western Lands Act

The Western Lands Act establishes the Western Lands Commissioner and the Western Lands Advisory Council, and provides for the administration of Western Lands leases. The Western Division covers just over a third of NSW and there are around 6,400 Western Lands leases.

Continued Tenures Act

The Continued Tenures Act created a number of tenure types (perpetual leases, term leases, special leases, permissive occupancies and incomplete purchases) to consolidate the much larger range of tenures that existed under former legislation. There are currently in the region of 2,000 leases and around 3,800 permissive occupancies.

Public Reserves Management Fund Act

The PRMF Act is administered by Crown Lands Division and facilitates the management and upgrading of Crown reserves through the operation of a fund that provides grants and loans for these purposes.

Commons Act

The Commons Act provides for the management of public land set aside for use as a common for the benefit of enrolled commoners (see Chapter 9.1). Historically, commons provided agricultural or grazing land adjacent to towns or mines for local residents, usually for grazing small quantities of stock to provide milk and food.

Commons are generally Crown land or other land held for a public purpose. The provisions for trusts and trust boards in the Commons Act are similar in many respects to the reserve management provisions in the Crown Lands Act, except that commons exist for the benefit of commoners rather than the broader public. There are currently around 130 commons.

Schools of Arts Act

The Schools of Arts Act provides powers for trustees of land used for schools of arts, mechanics institutes and literary institutes to deal with that land (see Chapter 9.2). Schools and institutes were established on private as well as public (i.e. Crown) land, and the Act applies to both types of land. There are currently 141 remaining schools and institutes, 72 on private land and 69 on public land. In most cases, these are now used for general community purposes, including recreation, rather than for their original purpose of promoting knowledge of arts and sciences among tradespeople.

Irrigation Acts

The Irrigation Acts provide for the ownership of certain land in the Wentworth and Hay areas by the Lands Administration Ministerial Corporation, a statutory corporation created to help the Minister administer the Crown Lands Act, and for the leasing of that land to farmers (see Chapter 9.3). The Acts allow lessees to apply to convert their leases to freehold, which many have done. There are currently around 140 leases remaining unconverted under these two Acts.

3. An overview of the proposed legislation

The new Act will include provisions in relation to:

- objects
- powers
- land ownership
- tenures
- sale and disposal of land
- Crown reserves
- compliance and enforcement
- administrative and miscellaneous matters.

The new legislation will apply to all land currently administered under the Crown Lands Act, the Continued Tenures Act and the Western Lands Act. Some land currently regulated under the minor Crown land legislation will also be consolidated into the new Act (see Chapter 9).

Where possible, the legislation will replace inconsistent provisions in the existing Acts with standard provisions. For example, the requirements for granting leases under the two Irrigation Acts are different to those in the Crown Lands Act. Reconciling the differences between inconsistent provisions will make the new legislation easier to understand and simpler to administer.

Specific provisions will be included where necessary. For example, certain requirements will continue for Western Lands leases and tenures under the Continued Tenures Act and the Irrigation Acts that are unique to those leases.

The legislation will also include robust enforcement provisions to provide a consistent compliance framework (see Chapter 8). This will address unclear and inadequate provisions in some of the existing Acts.

In the new legislative framework, provisions will be allocated more appropriately between the Act, its schedules, the Regulation and departmental policies than is the case in the existing legislation. This will include moving relevant provisions from the Crown Lands (General Reserves) By-Law 2006 into the new Regulation and repealing the By-Law.

Comprehensive transitional provisions will be included in the new Act to make sure that all necessary requirements are carried across from the existing legislation.

It is proposed that the new legislation will include the provisions outlined below.

Objects

The new Act will preserve the overarching intent to achieve community benefits and will include objects that reflect the different Acts that are being consolidated. The following objects are proposed:

a. To provide for the management of Crown land for the benefit of the people of NSW

b. To provide a system of management for Crown land that is efficient, fair and transparent

c. To integrate social, economic and environmental considerations in decisions

d. To provide for the management of Crown land by local government, other entities and the community as well as by the NSW Government

e. To provide that the disposal of Crown land be for the benefit of the people of NSW

f. To ensure that Crown land is put to its best use in the public interest

g. To encourage public use, enjoyment and, where appropriate, multiple use of Crown land

h. To preserve cultural heritage (Aboriginal and non-Aboriginal) on Crown land

i. To encourage Aboriginal use, and where appropriate co-management, of Crown land

j. To provide an appropriate system of land tenure and to facilitate diversification of land use in the Western Division of NSW.

Powers

To be consistent with the current legislation, the new Act will continue to provide for the Minister to have certain powers, including the power to deal with and do work on land, enter into commercial contracts, grant leases and licences, create easements, and grant any interest over a Crown reserve provided that this is in the public interest.

The new Act will define the powers to be given to the Lands Administration Ministerial Corporation.

The legislation will also provide that the Minister can appoint commissioners (such as the Western Lands Commissioner), and establish advisory committees and councils, which could include the Western Lands Advisory Council and any other advisory committees or councils that are considered necessary for the management of Crown reserves.

Land ownership

The existing Acts provide for a number of different ways of owning or holding land, some of which were created for specific purposes, and most of which are no longer necessary (see Chapter 5.1). This is a good opportunity to review and reduce the number of options, which create uncertainty and legal complexity. The new legislation will rationalise how land can be owned.

Tenures

The new Act will contain comprehensive provisions relating to tenures (i.e. leases and licences), including in relation to rents, forfeiture and surrender.

It is likely that leases and licences granted for commercial purposes will in future be more similar to commercial leases and licences granted in the private sector. These leases and licences would essentially operate outside the Crown lands legislation (see Chapter 6.2).

There are some provisions that relate only to Western Lands leases that will need to be included in the new legislation, for example in relation to lease conditions, over-stocking, cultivation consents, freehold conversion and the road access program. Similarly, some provisions specific to the Irrigation Acts will be retained.

Provisions for continued tenures will be included as savings and transitional provisions.

Sale and disposal of land

The new legislation will retain existing provisions for the sale or other disposal of Crown land where it is in the public interest, including more transparent and streamlined requirements for notification and advertising of proposed sales, leases and other disposals.

Crown reserves

The legislation will continue to provide for the reservation and dedication of land and the management of reserves. It will clearly define the method of appointment for Crown reserve managers, and their role, powers and governance arrangements.

The new Act will also include provisions to continue a Public Reserves Management Fund to raise funds to provide loans and grants for maintenance and improvements to reserves. This will make it possible to repeal the PRMF Act.

The legislation will continue to support multiple use of reserves. The approval requirements for proposed actions on reserves will be streamlined, as will notification and advertising requirements.

Compliance and enforcement

The legislation will include compliance tools to suit different degrees of non-compliance with the legislation. This will include provisions for auditing, remediation and removal orders, and stop-work orders.

Appropriate offences and penalties for damage to and unlawful use of Crown land will be included, as well as more effective powers of investigation for authorised officers and more appropriate provisions for commencing court action.

Administrative and miscellaneous matters

The new Act will include administrative and miscellaneous provisions such as the power to make regulations and provisions relating to the delegation of powers by the Minister and the Director General.

Questions:

1. How would developing one new piece of legislation to manage the Crown land estate benefit the community?
2. Are the objects and provisions proposed for the new legislation appropriate to support Crown land management in the 21st Century?

4. Improved management arrangements for Crown reserves

Summary

The current management arrangements for Crown reserves are unnecessarily complicated and restrictive. The new legislation will:

- remove duplication and red tape by allowing councils to manage Crown reserves under the local government legislation
- simplify the management structure for reserves by replacing reserve trusts and reserve trust managers with reserve managers
- allow governance standards to be set for reserve managers
- reduce the number of approvals and reporting requirements.

4.1 Streamlining the management of Crown reserves by councils

There are 7,765 Crown reserves managed by councils, either as reserve trusts or through direct management. This number includes 46 trusts over commons and one School of Arts trust. The total area of reserves managed by councils is approximately 116,275 hectares.

Councils manage Crown reserves under the Crown Lands Act; but they manage their own community land under the Local Government Act. This is confusing, and particularly causes problems where councils are managing a parcel of community land and an adjacent Crown reserve.

The two Acts have different management requirements, which means that adjacent land cannot be managed as one entity and that one plan of management cannot cover both a Crown reserve and community land.

For example, there are different requirements for Minister's consent to tenures on community land and Crown reserves. As well, the requirements for plans of management in the Crown Lands Act are less prescriptive than under the Local Government Act, and plans are not compulsory for Crown reserves whereas they currently are for community land.

Another issue is that councils are not always aware of the distinction between different parcels of land they are managing, so they can inadvertently apply the wrong legislation. The current situation can be equally confusing for local communities.

As well, all reserve trusts are required to provide annual reports on the reserves they manage to NSW Trade & Investment. Where reserve trusts are managed by councils, this duplicates councils' own reporting requirements to the Minister for Local Government and raises questions about whether the NSW Government or councils have ultimate liability for these reserves.

Allowing councils to manage Crown reserves under local government legislation rather than under the Crown Lands Act will produce multiple benefits, including streamlining the management of reserves, removing inconsistencies in the management by councils of community land and Crown reserves, and reducing complexity and red tape.

This will also devolve management of Crown reserves for the benefit of local communities, who will have greater involvement through the consultation and advisory opportunities provided under the local government legislation. For example, the final Local Government Acts Taskforce Report recommends holding public hearings where it is proposed to change the dominant use of community land, or to sell it.

Crown reserves managed under the local government legislation will retain their reserve purpose unless the use of those reserves changes through processes under the local government legislation.

4.2 New management structure for Crown reserves

NSW currently has a three-tier management structure consisting of Crown reserves, reserve trusts, and reserve trust managers. This arrangement is complex and confusing, especially for reserve trust managers.

The formation of reserve trusts is provided for in the Crown Lands Act. The role of reserve trusts is to care for, control and manage reserves, but a reserve trust can delegate any of its functions, with the Minister's consent, to any other person or body.

To put in place management by a reserve trust under the current legislative provisions, the Minister must:

- first reserve a parcel of Crown land for a public purpose
- then establish a reserve trust over it, which is charged with care, control and management of the land and granted a fee simple estate over the land for the purposes of Part 5 of the Crown Lands Act only
- finally, appoint a reserve trust manager, which could include a council, corporation or a trust board comprised of community members.

NSW is unusual in having a three-tier Crown reserve system: other states and territories mostly have only Crown reserves and reserve managers.

The requirement for reserve trusts was added to the Crown lands legislation in 1989 as a way of providing some protection from liability for individuals administering Crown reserves. It is possible to provide the same protection for individual board members by establishing the new Crown reserve managers as corporations where they are not already incorporated.

As there are no apparent benefits of the three-tier structure, it is proposed to move to a two-tier structure by removing reserve trusts and reserve trust managers and having all reserves administered by Crown reserve managers. This change is illustrated in Figure 1.

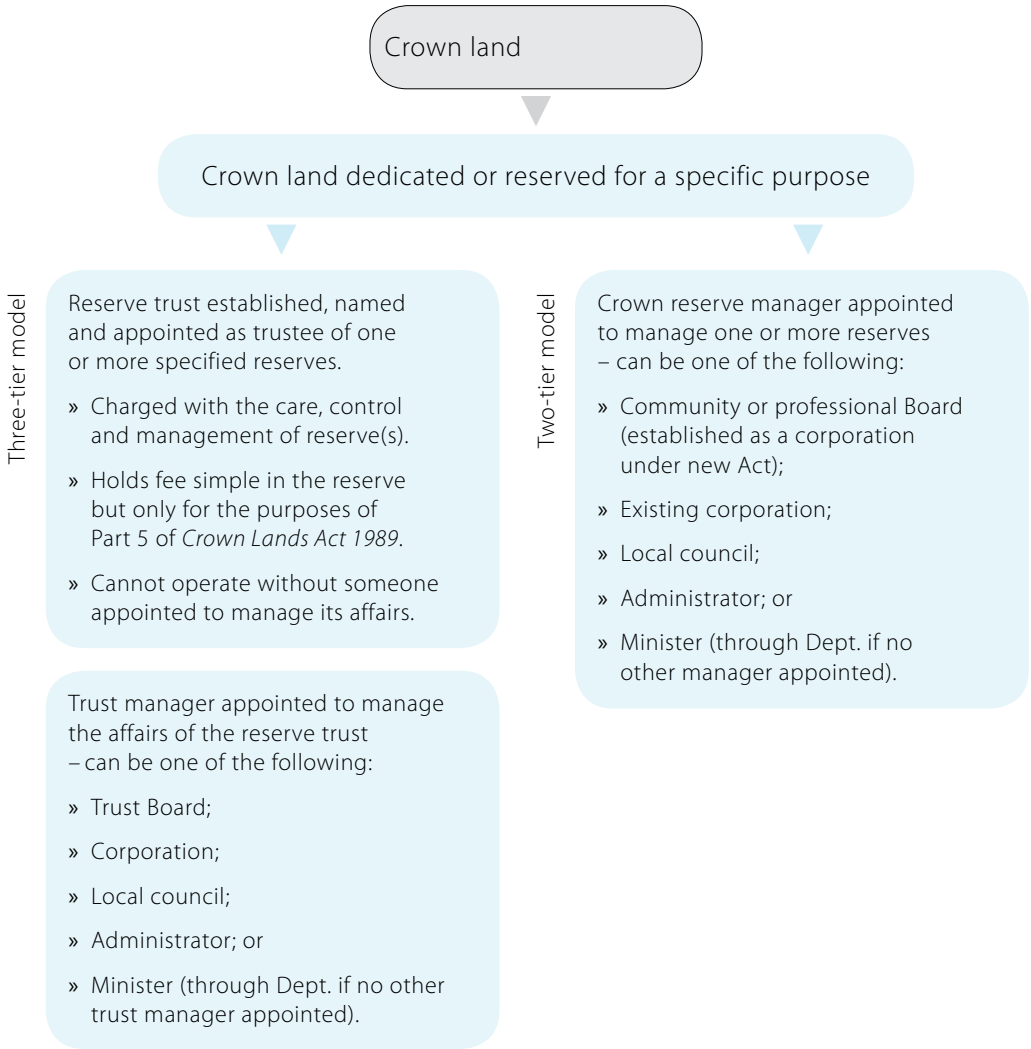
In most cases, Crown reserve managers will continue to be responsible for the day-to-day management of reserves. The legislation will set out the role and responsibilities of Crown reserve managers to issue leases and licences over reserves and to take on day-to-day management and operations.

Currently, individual Crown reserves can have their own trust and manager, or a single trust can manage a number of Crown reserves. It is proposed that the new legislation and management structure will continue to allow for both arrangements.

Streamlining management structures will make it easier for multiple reserves to be managed by a single Crown reserve manager. For example, it makes sense for a council to be appointed once as the manager of a number of reserves, rather than being appointed separately for each reserve.

The simplest way of transitioning from the existing management structure would be for the legislation to provide that existing reserve trusts and reserve trust managers will automatically be converted to a single Crown reserve manager when the new legislation commences. It may still be necessary for the new Act to contain transitional provisions for reserve trusts.

Figure 1: Existing and proposed management structures for Crown reserves



4.3 Stronger management requirements for Crown reserves

There are currently some 650 community trusts appointed to manage Crown reserves. Community input to reserve management is an important principle of Crown land management and will continue in the new legislation, which will provide for both governing and advisory structures.

In recognition of the increasing expectations of governing bodies, the legislation will allow for governance standards to be set for Crown reserve managers.

4.4 Fewer approval and reporting requirements for Crown reserves

Changes are proposed to approval and reporting requirements to further streamline management processes. The Minister will be given flexibility to determine the extent of control to be exercised over the work of a Crown reserve manager. This could include requiring the Minister's approval to the granting of tenures and the allocation of funds, and the nature and extent of reporting requirements.

The level of approval and reporting requirements will be tailored to match the complexity of the reserve management task and the competence and professional expertise of the Crown reserve manager.

For example, where reserves with primarily local significance are managed by councils under the local government legislation, approval might be required only for significant proposals. There would be no need for any reporting requirements, but the Minister would retain a right to request information about a particular reserve and councils would still have reporting obligations under the local government legislation.

Landowner's consent is required under the planning legislation for proposals by a third party to carry out activities on a Crown reserve. See Chapter 5.4 for proposals in relation to this specific type of approval.

Some of the other streamlining measures discussed in Chapter 5 will also be relevant to Crown reserves.

Questions:

3. Do you have any comments on the proposal to allow local councils to manage Crown land under local government legislation rather than under the Crown Lands Act?
4. What are your views about the proposed new management structure for Crown reserves?
5. Do you have any further suggestions to improve the governance standards for Crown reserves?

5. Other streamlining measures

Summary

Many provisions in the existing legislation can be streamlined to reduce unnecessary red tape. Other provisions can be removed entirely because they are no longer needed. Historical arrangements will be transitioned into the new legislation to avoid disruption.

Streamlining measures include:

- simplifying land ownership options to reduce the number of ways in which Crown land can be held
- removing the existing land assessment requirements
- streamlining requirements for landowner's consent to enable a development application to be made under the planning legislation
- providing more transparent, simple and accessible processes to notify the community about proposals for the use or disposal of Crown land
- abolishing land districts.

5.1 Simplify land ownership options

There are several different ways in which land subject to the current legislation can be held by or on behalf of the Crown. There are historical reasons for this multiplicity of land ownership options, many of which are no longer relevant.

Current types of land ownership include:

- Crown land vested in Her Majesty, with the State of NSW recorded on the land title
- dedicated land held by trustees including councils
- land in the name of the Minister
- land held in the name of another Minister or public authority and dealt with as if it were Crown land.

It is confusing and unnecessary to have so many different types of land ownership. For example, the deemed ownership given to a reserve trust to allow it to grant leases and licences is a complex mechanism. It is not necessary provided that Crown reserve managers are given adequate statutory powers to grant leases and licences.

Having different types of ownership can create administrative inefficiencies. For example, under existing legislation, the Minister can grant easements over Crown land but not over some other types of ownership, such as land gifted to the Crown.

The aim is to bring all land to be managed under the new legislation into a single, simplified framework. The new legislation will rationalise the options for land ownership and provide that the management arrangements for Crown reserves will be the same regardless of the type of ownership.

5.2 Abolish land assessment requirements

The Crown Lands Act requires a land assessment before Crown land can be sold, leased, dedicated or reserved. The assessment process can currently be waived if the proposed action is in the public interest and the principles of Crown land management have been considered.

Land assessment requirements were intended to ensure that consideration is given to the appropriate use of land. Parcel-by-parcel assessment is time consuming, inefficient, and not aligned to broader planning processes.

A more strategic approach would see Crown land assessed as part of the process of developing local plans under the new planning framework, meaning that a separate statutory process under the Crown lands legislation would not be necessary. The local plan process would inform decisions at the strategic level, while the Minister would still need to take into account any relevant considerations before approving a proposed change of use.

5.3 Landowner's consent

There are many situations where multiple consents, including planning approval, are required for particular activities. For example, an application to build a jetty can involve landowner's consent from Crown Lands Division to lodge a development application, as well as approvals from Fisheries NSW (in relation to fish habitat protection), Roads and Maritime Services (in relation to navigation) and the council (planning approval). A tenure over the land in question would then need to be granted by Crown Lands Division.

The current situation results in unnecessary delay and frustration for proponents as well as duplication of effort by councils and government agencies.

To address this, streamlined processes will be introduced to enable landowner's consent to be given more quickly. This approach could apply to low-impact activities, for example the erection of pump sheds, shade sails over playgrounds, and rainwater tanks, provided these are consistent with the existing use of the land. It could also be used where detailed assessments of a proposal are already carried out by councils or other government agencies as part of the consent process.

5.4 Notification requirements

The Crown Lands Act and other relevant Acts contain detailed provisions for notification of the reservation and revocation of Crown reserves, and proposed dealings with Crown land such as a sale or lease.

These safeguards are important, but the existing provisions are unnecessarily complex and confusing. For example, the Crown Lands Act requires reserve trusts to advertise any proposal to sell, lease or mortgage a reserve. They then have to get approval from the Minister, and the Minister's intention to consent to the proposal also has to be advertised.

There are some cases, for example where proposed dealings will be publicised in other ways, where additional notification under the Crown lands legislation might not be necessary and will merely result in delay and red tape.

The arrangements for informing the public about proposals for the use or disposal of Crown land need to be transparent, simple and accessible. The current provisions do not achieve this because the processes are so complex.

In future, the focus for notification should be on providing for effective community engagement, and on developing more modern notification processes. In allowing for consultation on proposals, a balance will need to be struck between efficient administration and providing the opportunity for input where people have a legitimate interest.

It is proposed to include more streamlined and flexible provisions in the new legislation, which could include:

- creating an online portal that the public can access to find out about any proposals
- clarifying when the opportunities for community engagement arise and how the community can have input, which may be through processes under other legislation, such as the strategic planning process under the proposed planning framework
- requiring only one notification in relation to a proposal.

5.5 Land boards and land districts

The Crown Lands Act divides the State of NSW into land districts and until recently provided that there would be a local land board for every land district. The role of the land boards included hearing referrals and appeals to it under the Crown Lands Act and some other Acts. The Minister could also refer matters to a local land board for inquiry and report.

The NSW Civil and Administrative Tribunal (NCAT) commenced on 1 January 2014, consolidating the jurisdiction of a number of tribunals including local land boards. This new body will have some of the appeals function of the land boards. The land boards were abolished when the NCAT commenced.

Therefore the new legislation will not include provisions relating to land boards or land districts, but it will still be open to the Minister to initiate inquiries.

Questions:

6. Are there any additional activities that should be considered as 'low impact' activities in order to streamline landowner's consent?
7. Are there any other ways to streamline arrangements between the State and local governments?
8. In addition to the suggestions provided, are there any other ways to ensure that the public is notified of the proposed use or disposal of Crown land – and their views taken into account – that would be appropriate to include in the new legislation?

6. Better provisions for tenures and rents

Summary

The existing Acts and regulations contain various provisions for different types of tenures (i.e. leases and licences), rent requirements and other aspects including forfeiture and surrender of tenures. These provisions are not consistent across the different pieces of legislation.

Proposals in relation to tenures and rents include:

- having consistent provisions for tenures, except where specific provisions are required for certain types of tenure
- treating large-scale commercial tenures like equivalent tenures in the private sector, in relation to lease conditions, market rent and appeal provisions
- adopting market rent as the default position and applying rebates and waivers where appropriate
- allowing the Minister to issue licences where Crown land is being used without permission
- addressing rent arrears and breach of tenure conditions
- providing for the sale of Crown land to lessees
- converting all permissive occupancies under the Continued Tenures Act to licences
- allowing the Minister the right to grant or approve broad carbon rights.

6.1 Consistent provisions for tenures

The types of leases and licences issued under the existing Acts are in many cases inconsistent. This is generally for historical reasons, including different drafting styles and policy drivers.

The intention is, where possible, to have standard provisions that can apply to all tenures. This is likely to be achieved through a combination of provisions in the Act and the use of standard lease and licence templates. Additional provisions will be included to deal with special circumstances that are not otherwise addressed in legislation.

It is also sensible to include provisions in the legislation that would otherwise have to be included in large numbers of individual leases and licences as conditions, for example where many tenures share the same arrangements for rental redetermination.

To avoid duplicating provisions available elsewhere, the new legislation will include only those tenure provisions that are not adequately covered by the common law, the *Conveyancing Act 1919* or the *Real Property Act 1900*, such as:

- the Minister's power to grant tenures and impose conditions
- creating perpetual Western Lands leases
- stocking and grazing on Western Lands leases
- forfeiture and surrender.

Another consistency issue relates to the different arrangements for leases and licences granted under the Crown Lands Act and those granted under other legislation such as the Local Government Act. These issues should to a large extent be addressed by allowing councils to manage Crown reserves under the local government legislation. However, it is intended to make conditions consistent with those in other legislation where relevant.

There are also differences between tenures on submerged lands administered by Crown Lands Division and those managed by Roads and Maritime Services. The two agencies are keen to harmonise the management of submerged land, but this is likely to involve policy rather than legislative change in most cases.

6.2 Commercial tenures

In the private sector, leases and licences rely on the common law, relevant provisions in the *Conveyancing Act 1919* and the *Real Property Act 1900*, and the conditions attached to each individual lease or licence. Tenures granted over Crown land rely on all of these but are additionally bound by provisions in the Crown Lands Act.

The requirements of the Crown Lands Act are, in many cases, not appropriate for large-scale commercial tenures, for example leases for caravan parks, marinas and commercial buildings.

In recent years, most tenures granted over Crown land for commercial activities have been prepared along the same lines as private commercial leases, i.e. most conditions are set out in the leases or licences. Therefore there is not much difference between a commercial lease over Crown land and over private land.

In recognition of this, the new legislation will clearly state that leases and licences can exclude the operation of provisions of the Crown Lands Act where those provisions would otherwise be in conflict with lease or licence conditions. For example, a commercial tenure might include different requirements for rent redetermination to the provisions in the Crown Lands Act.

This approach is less suited to generic types of tenure over Crown land, where consistent provisions need to apply to large numbers of leases or licences, such as domestic waterfront tenures, enclosure permits and grazing licences.

6.3 Rents

The overall objective of managing Crown land for the benefit of the community should guide the determination of rents charged. The legislation will enshrine the use of market rent as the default position with rebates and waivers applied where appropriate.

There is no proposal to change the arrangements for calculating rents for Western Lands leases or for current tenures under the Irrigation Acts.

Another objective is to ensure a consistent approach to statutory minimum rents (currently $454 per annum). It is proposed to retain the current provisions in the Crown Lands Act that set minimum rents. It is further proposed to implement transitional arrangements for tenure holders who currently pay below the statutory minimum rent, for example over a five year period. This will ensure that a consistent approach to rent is applied across NSW. It is important to note that rebates and waivers will continue

to be available to reduce the actual rent payable, based on considerations including hardship and the public benefits of certain uses of Crown land. This is consistent with the approach adopted by the Independent Pricing and Regulatory Tribunal.

The current legislation includes provisions for the redetermination of rent and for appeals against redeterminations (except for Western Lands leases). Currently objections to rent redeterminations can be made to the Minister and there is then a right of appeal to the NCAT (formerly local land boards) and/or the Land and Environment Court.

Redetermination provisions will be continued where they currently apply, or where redetermination is specified in tenure agreements.

For large-scale commercial tenures, it is proposed that appeals against rent redetermination should in the first instance be through dispute resolution mechanisms provided for in the tenure agreement, as is the case in the private sector.

Where rents are set for classes of tenures, the right of appeal will be by way of an objection to the Minister.

6.4 Use of Crown land without permission

Crown land is frequently used by individuals or organisations without permission. In many cases these uses would be approved if a licence was sought.

To address this issue, it is proposed to include in the new legislation a power for the Minister to issue a licence for the use of land where a user has not applied for one, that will require the payment of rent. This will create equity by ensuring that all users of Crown land pay equally for the privilege.

6.5 Rent arrears

It is important to ensure that where a lease or licence (linked to a freehold parcel) changes hands, any rent arrears accrued by the existing lessee or licensee are provided for to avoid issues for incoming tenure-holders.

To address this, the new legislation could take a number of approaches, including:

a. automatically transferring any rental debt to a new tenure-holder on settlement, as is the case currently under the Crown Lands Act, or

b. requiring any outstanding arrears to be paid prior to transfer or settlement.

6.6 Enforcement in relation to leases and licences

Both the Crown Lands Act and the Western Lands Act provide for the forfeiture of a lease or licence. Another remedy available for the breach of tenure conditions is civil action for remedies including damages for loss resulting from breach of contract.

In addition, the Western Lands Act provides for the Western Lands Commissioner to serve a notice requiring a lessee to rectify breaches of their lease conditions. If the lessee fails to do so, the breach of certain conditions can give rise to a criminal offence.

While it might not be appropriate to make the breach of tenure conditions a criminal offence outside of the Western Division, the new legislation could provide for civil penalties that can be equally effective in terms of their deterrence value.

Certain conditions of leases and licences could be specified as 'essential' and breach of those conditions could result in civil penalties or the issue of remediation directions. Other breaches could be dealt with through dispute resolution.

This proposal requires more consideration, particularly in relation to which conditions should be specified as 'essential', and how this would be done.

6.7 Sale of Crown land to lessees

The right of lessees to purchase Crown leases has traditionally been referred to as freehold conversion. The right to convert only applies to certain types of lease, but any lessee can apply to the Minister at any time to purchase their lease.

The Acts that will be consolidated into the new legislation contain seven different processes for converting the following types of Crown lease to freehold:

- Western Lands residential leases (except Lightning Ridge residential leases)
- other Western Lands leases (except Western Lands grazing leases)
- perpetual leases in the Eastern and Central divisions
- continued tenures not in special land districts
- perpetual continued tenures in special land districts
- Wentworth Irrigation leases
- Hay Irrigation leases.

The principle when selling Crown land in the future will be to apply a market value, but to allow a range of equity conditions to be applied to reduce the sale price.

Those lessees with existing rights to purchase will retain those rights.

6.8 Permissive occupancies

As already noted there are currently around 3,800 permissive occupancies created and regulated under the Continued Tenures Act.

These forms of tenure can be revoked by the Minister or a reserve trust at any time, so they are no different to licences under the Crown Lands Act. There is no reason to retain permissive occupancies as a separate tenure, so it is proposed that all existing permissive occupancies will become licences.

6.9 Carbon sequestration and forestry rights

The Crown Lands Act and the Western Lands Act both contain provisions relating to the grant of carbon sequestration and forestry rights. These provisions allow the Minister to grant forestry rights over Crown reserves and perpetual lessees with the Minister's consent.

These provisions currently relate only to carbon sequestration arising from forestry activities, which was the only activity approved under the NSW Government's former Greenhouse Gas Abatement Scheme. However, the Commonwealth Government's current Carbon Farming Initiative applies to a wider range of activities including soil carbon measures.

It is proposed to include broad provisions in the new legislation to facilitate all forms of carbon sequestration activities, which will benefit tenure holders.

Questions:

9. Do you support the concept of a consistent, market based approach to rents, with rebates and waivers for hardship and public benefits for certain uses of Crown land applied where appropriate?
10. Is five years a reasonable amount of time to give tenure holders who currently pay below the statutory minimum rent to move to paying the minimum level of rent as required under the new legislation.
11. To avoid rent arrears issues for incoming tenure-holders, should the new legislation automatically transfer any rental debt to a new tenure-holder on settlement, or require any outstanding arrears to be paid prior to transfer or settlement?
12. What kinds of lease conditions should be considered 'essential', for the purposes of providing for civil penalties?
13. Should Crown land be able to be used for all forms of carbon sequestration activities?

7. Greater flexibility for Western Lands leases

Summary

The Western Division is mainly property held under Western Lands leases issued under the Western Lands Act, together with a small amount of freehold land.

Crown land in the Western Division makes up around 88 per cent of the total Crown estate.

Most of the Western Division is classified as a semi-arid rangeland that is mainly suitable for livestock grazing, although some areas have more resilient land that is suitable for cultivation and other intensive agricultural activities.

Rangelands are particularly sensitive to disturbance (including drought and overgrazing) and are slow to recover. It is important to continue to protect this fragile environment.

There is an opportunity to introduce greater flexibility into land management in the semi-arid parts of the Western Division, without weakening the protections provided by the leasehold system.

Flexibility measures proposed include:

- allowing lessees of Western Lands grazing leases that have current cultivation consents to apply for freehold conversion
- reviewing the requirement that the land use proposed following conversion must be ecologically sustainable
- allowing certain activities to occur on Western Lands leases in rural areas without the need for approval
- creating certain streamlining measures.

7.1 Conversion of Western Lands grazing leases to freehold

Western Lands leases granted for residential or business use can currently be converted to freehold. Leases granted for agriculture or cultivation can also be converted, but only where the landscape has been significantly altered and there are limited environmental values. Grazing leases cannot currently be converted.

Some Western Lands lessees have argued that economic development in the Western Division is constrained by the current leasehold system and that conversion of grazing leases to freehold should be allowed.

On the other hand, the view of the Western Lands Advisory Council is that perpetual leases are appropriate and effective in limiting damage to sensitive rangelands. As well, the stocking and grazing conditions that can be attached to Western Lands grazing leases are not provided for in other NSW environmental legislation. It is also worth noting that other Australian jurisdictions and relevant overseas jurisdictions have leasehold systems for their rangelands.

However, it is proposed that one category of Western Lands grazing leases should be eligible for conversion in the future. These are perpetual Western Lands grazing leases that have a current cultivation consent over part or all of the lease area and where that land has been developed. There are currently around 800 cultivation consents over Western Lands leases, mostly in the eastern parts of the Western Division.

The fact that a cultivation consent has been granted indicates that the land is sufficiently robust to be suitable for cultivation and that the environmental risks are lower than in the more fragile areas of the Western Division.

Under this proposal, lessees will be required to show that their proposed land use will be ecologically sustainable, as is the case for the conversion of other Western Lands leases.

7.2 Issues with the ecological sustainability requirement

For conversion of Western Lands leases granted for agriculture/cultivation, the current interpretation of the 'ecological sustainability' requirement is that at least 75 per cent of the area of the lease has been cleared and developed. Lessees have expressed concerns about the current interpretation.

To address these concerns, the requirement and its interpretation will be reviewed. The test could be changed or made more flexible.

Other approaches could include:

- using land capability rather than ecological sustainability to determine eligibility
- relying on land system and land unit mapping
- requiring applicants to obtain an independent assessment of the values of the land they are applying to convert.

Any approach would need to consider the dominant land use and the type of activity proposed.

7.3 Flexibility and streamlining measures

It is proposed that the current leasehold system be more flexible to reduce unnecessary red tape and delays. Although procedures improved considerably after the Kerin Review (1998 – 2000), there is still room for improvement.

One proposal that will eliminate red tape and facilitate diversification is to permit certain additional activities to occur on Western Lands leases in rural areas without the need for approval.

For example, this might include uses such as farm tourism using existing farm buildings and infrastructure, or fodder production up to a maximum of 50 hectares for on-farm use only.

These additional uses and any constraints attaching to them would be included in regulations or in a schedule to the Act. Any proposals for additional uses received in submissions will be considered for inclusion.

The following streamlining measures are also proposed:

- relaxation of the current requirements for approval to transfer a lease
- the requirements for transferring a Western Lands lease to a company will be simplified
- the new legislation will not include requirements for fencing, which will remove duplication with the *Dividing Fences Act 1991*.

Questions:

14. What additional activities do you think should be permitted on Western Lands leases without the need for approval?
15. Bearing in mind the fragile nature of much land in the Western Division, in what situations do you think it would be appropriate to allow Western Lands leases to be converted to freehold?

8. Stronger enforcement provisions

Summary

Compliance is a broad term that generally includes a hierarchy of responses or tools to suit different degrees of non-compliance with legislation. These tools can include:

- audit processes that provide guidance on how to comply with legislation
- powers to issue directions or notices to do or not do certain things to comply with the legislation
- penalty notices and prosecutions for serious breaches of legislation.

An effective compliance framework is an important part of all legislation. It is needed to ensure that the Government's intentions are carried out.

It is generally more effective to encourage voluntary compliance with legislative requirements, but there will always be the need for strong penalties in cases of willful non-compliance.

Consideration should also be given to whether compliance functions on Crown land can be shared with other NSW Government agencies or other bodies.

The new legislation will include:

- an auditing framework
- appropriate powers for departmental officers
- clearly-expressed offences and penalty levels that will act as a deterrent
- a realistic limitation period in which to bring proceedings
- the introduction of civil penalties
- powers to order remediation and removal and to issue stop-work orders.

8.1 Enforcement provisions in existing legislation

The Crown Lands Act, Commons Act and Western Lands Act create certain offences and provide for the appointment and powers of authorised inspectors and persons.

The Hay Irrigation Act does not contain enforcement provisions, but the powers of entry and inspection in the Crown Lands Act are applied.

The Continued Tenures Act, the Schools of Arts Act, the PRMF Act and the Wentworth Irrigation Act do not contain any enforcement provisions. The Continued Tenures Act and the two Irrigation Acts provide for offences with a low maximum penalty level to be created by regulation but no offences have been created in this way. Some offence provisions in the Crown Lands Act also apply to some continued tenures.

The Crown Lands Act creates two broad categories of offences – those that relate to things that must not be done on Crown land and those that involve obstructing authorised inspectors in the performance of their duties. These latter offences currently attract a maximum penalty of $11,000 whereas the public land offences have maximum penalties of between $550 and $2200.

The Commons Act contains fewer offences than the Crown Lands Act, and these offences carry maximum penalties ranging from $220 to $2200.

It is generally considered that the Crown Lands Act and the Commons Act do not currently provide an effective enforcement framework. In particular, the wording of some of the offences is problematic.

Part 11 of the Western Lands Act contains the most effective enforcement provisions in any of the legislation relating to Crown land. These provisions allow the Western Lands Commissioner (or any delegated officer) to serve notices on lessees to rectify contraventions of lease conditions, and create offences for the breach of certain lease conditions. The maximum penalty for these offences is $11,000. The Western Lands Act also provides for the issue of remediation notices.

The enforcement provisions in the Crown Lands Act, including those relating to authorised inspectors, also apply to Crown land in the Western Division that is not subject to Western Lands leases.

Offences under the Crown Lands Act, Commons Act and Western Lands Act can be brought in the local court only, but the limitation periods in the three Acts are different. For example, proceedings under the Western Lands Act must be started not later than 12 months after the time when the matter giving rise to the proceedings occurred, while the Crown Lands Act requires proceedings to be started not later than six months from the date of the offence.

As an alternative to enforcement action, leases granted under the Crown Lands Act, the Continued Tenures Act and the Western Lands Act can all be forfeited for failure to pay rent and for breach of lease conditions.

8.2 Compliance issues on Crown land

The main compliance issue in the Western Division is overstocking and overgrazing. The Western Lands Commissioner can issue destocking notices, but in most cases it is possible to reach voluntary, informal agreements with lessees to reduce stock numbers without having to issue a notice. To help identify overstocking and other breaches of lease conditions, the Commissioner implements a Rangelands Condition Assessment Program that involves inspecting approximately 140 properties each year. Other significant compliance issues in the Western Division include boundary fence disputes and access issues.

There are issues with the management of commons, including over-grazing and the erection of unauthorised structures.

Currently there are no compliance powers over commons except for the power to see the books of the trust boards and to conduct an investigation of trust affairs, and a power to make a regulation creating an offence.

In general the most significant compliance issues arising on Crown land relate to:

- Crown roads – access, structures, vegetation clearing, cultivation and construction
- waterways – illegal structures, extraction, mooring and occupation
- Crown reserves – occupation, structures, rubbish, vegetation clearing and the removal of timber, extraction, cultivation, exploration and mining, tenure conditions.

More than half of all alleged breaches relate to Crown roads.

The most significant impediments to effective compliance action are: the six-month limitation period; not being able to issue remediation directions; low penalty levels that do not act as a deterrent; and the difficulty of identifying offenders in certain cases.

As noted above, the existing enforcement provisions in the Crown Lands Act are not adequate. Some provisions are poorly worded and government has been unable to use them to bring prosecutions.

As well, not all situations are covered by the existing offences in the Crown Lands Act. Additional offences are required to deal effectively with these situations, for example in relation to boats illegally moored on waterways.

In some cases, provisions in the Crown Lands Act duplicate or overlap with provisions in other legislation. For example it is possible to prosecute a person for clearing native vegetation on a Crown reserve under the Crown Lands Act as well as under the *Native Vegetation Act 2003*, but the provisions in the two Acts are not consistent.

In many cases, the most effective way of rectifying an offence would be to require remediation of a piece of Crown land, but currently the Crown Lands Act does not provide for remediation notices or stop-work orders. Although remediation outcomes have, on occasion, resulted from prosecutions, this has only been by agreement.

A clear power to order the removal of illegal structures and substances from Crown land is also required.

8.3 Improved provisions for the new legislation

The enforcement provisions under the existing legislation are in many ways outdated and are less comprehensive than those found in most other legislation regulating the management of public land.

The provisions in the new legislation will be more up to date, effective and flexible.

8.3.1 Auditing

Auditing is widely regarded as an important part of the compliance 'toolbox'. Auditing is often an effective way of improving compliance with legislative requirements, because it encourages people to raise standards without taking punitive action.

Auditing can be done without express provisions in legislation, but it provides additional purpose and clarity for provisions to be included in legislation.

As already noted, the Western Lands Commissioner runs an annual audit program to monitor compliance with the terms and conditions included in Western Lands leases. Including auditing provisions in the new legislation will enable the extension of auditing activities in the future.

8.3.2 Officer powers

The current benchmark for effective provisions relating to the appointment, powers and protection of authorised officers is the *Protection of the Environment Operations Act 1997* (POEO Act). The powers in the POEO Act to require information and records, to question and identify persons, and to enter and inspect property and vehicles were imported into the *Coastal Protection Act 1979* through amendments made in 2010, together with provisions to protect officers acting in the course of their duties from threats and intimidation. These powers and protections currently apply to beaches but not to other Crown land.

It is important to have 'best practice' powers to be able to use the offence provisions effectively. It would also be desirable to have consistent provisions applying across all land falling under the new legislation. Therefore consideration should be given to including all or most of the POEO Act powers in the new legislation.

8.3.3 Offences and penalties

The offences in the existing legislation will be reviewed, and a new suite of offences developed to cover all relevant aspects of the new, consolidated legislation.

In relation to penalties, there needs to be a consistent approach so that offences with similar levels of seriousness attract the same or similar penalties. It should also be considered to what extent it is appropriate for penalties under the new Act to be consistent with penalties under other relevant legislation.

Continuing offence provisions will be included so that an offence that continues for more than one day will incur an additional penalty for each additional day. There will also be higher penalties for corporations than for individuals.

Provision will be made for penalty notice offences, with the prescribed penalties to be included in the Regulation.

The NSW Department of Attorney General and Justice will be consulted in the development of appropriate offences and penalties.

The current situation, in which prosecutions can only be brought in the local court, is not appropriate. Local courts are often not equipped to deal with the complexity of issues and the severity of some offences that arise in relation to Crown land. Also, penalties in the local court are generally limited to $11,000. Other legislation allows prosecutions to be brought in either the local court or in the Land and Environment Court, and it should be considered whether the new legislation should adopt this approach.

As already noted, the current six-month time limit for bringing proceedings is unrealistic and does not take into account that an offence might not be discovered immediately, or the time required to gather the necessary evidence. In many cases, due to the size and scale of the estate, the Government only becomes aware of an incident several weeks or even months after it has occurred. A number of breaches have run out of time before prosecutions could be started.

It is therefore considered that a longer limitation period should be included in the new legislation, and that the time limit should commence from the date of knowledge of the alleged offence. It is proposed that proceedings should be able to be brought within two years of the Minister becoming aware of the offence, which is consistent with other relevant legislation.

8.3.4 Other provisions

It is proposed that the new legislation will allow authorised officers to issue stop-work orders, remediation notices and removal notices, and that the courts should be able to make restoration orders as well as, or instead of, imposing a penalty.

A stop-work order could be issued where an activity is being carried out on Crown land without permission, or where an activity poses a threat to public safety or the environment. Remediation could include the restoration

or remediation of Crown land to its former condition where damage or contamination has occurred. A removal direction could be issued to make a person remove materials and structures unlawfully placed on Crown land.

As already discussed in Chapter 6.6, the new legislation could provide for civil penalties for the breach of certain conditions in leases and licences other than Western Lands leases.

8.4 Compliance-sharing with other agencies

Enforcement could also be improved by other NSW Government agencies taking on compliance functions under the Crown lands legislation, which could result in significant efficiencies.

For example, Roads and Maritime Services has greater resources for compliance on waterways than Crown Lands Division. Therefore the On-Water Compliance Taskforce has been asked to consider the benefits and logistics of Roads and Maritime Services staff members being appointed as authorised officers under the Crown lands legislation.

Another possibility that could be considered, in consultation with the Office of Environment and Heritage, is for national parks rangers to take on compliance activities on intertidal Crown land that adjoins national parks.

For interagency compliance to be effective, officers from other agencies taking on compliance in respect of Crown land would be fully trained in the offences arising under the Crown lands legislation.

Questions:

16. What are your views about the proposal to strengthen the compliance framework for Crown lands?
17. Do you have any suggestions or comments about proposals for the following:
    - Auditing
    - Officer powers
    - Offences and penalties
    - Other provisions.

9. What will happen to the minor legislation?

Summary

There are a number of minor Acts that are no longer required and should be repealed. The required provisions can be continued in the new legislation through transitional provisions.

Some affected land could be converted to Crown land, in which case the general provisions of the new legislation will apply to it.

Some land used for Schools of Arts could be transferred to councils and managed under the local government legislation. Other Schools of Arts land might stay in private ownership.

Some Acts might simply no longer be required, in which case they can be repealed without any further action.

Proposals for each of the minor Acts are:

- repeal the Commons Act and convert commons to Crown land
- transitional arrangements will be developed for the Schools of Arts Act
- repeal the Irrigation Acts and include provisions in the new legislation to continue the tenures under those Acts until such time as they are converted to freehold
- repeal the Wagga Wagga and Hawkesbury Racecourse Acts because they have fulfilled their purpose
- repeal the Orange Show Ground Act and administer the showground under the new legislation
- repeal the two Acts that provide for rent reductions and occupiers relief in irrigation areas because similar arrangements are provided elsewhere in the legislation.

9.1 Commons Management Act 1989

The only real difference between commons and Crown reserves is that commons are held for the sole benefit of a group of commoners whereas Crown reserves are held for the benefit of the broader public.

Some commons are owned by commons trusts, while others are Crown land. Regardless of ownership, the Minister retains a number of controls over commons, including the power to appoint a local authority to manage a trust and a consent role in relation to land transactions and plans of management. Many of these powers are similar to the Minister's powers under the Crown Lands Act.

Many commons are used for various forms of grazing, farming and agistment. However, there are almost as many additional uses as there are commons, and many commons are used for a number of activities. A wide range of public uses such as horse riding, camping, golf and archery take place on around 50 commons. Other activities occurring on commons include mining, public utilities and film making. Many commons have environmental and Aboriginal or other heritage values.

The Commons Act requires all commons to have a trust. Commons trusts must be managed by a trust board, a local authority (i.e. a council) or an administrator. Trust boards consist of elected commoners. Records indicate that ten commons currently have no trust.

Commons trusts are required to submit annual reports to the Minister concerning their activities for that year. Trust board elections are required every three years. These requirements are not always met, which means that the public cannot have confidence in the management arrangements for all commons. It appears that as many as 40 trusts may not have a current board.

There have also been management issues with a number of commons which have required intervention by the NSW Government. For example, many commons are overgrazed and contain unauthorised structures, while others have inadequate fencing. As well, government officers are often called on to mediate disputes between commoners (for example regarding stock ownership) or between commoners and members of the broader community.

The concept of commons could be considered to be outdated because the traditional rationale for commons no longer exists. Also, public land should provide benefits to the broader community rather than primarily to small groups of commoners. The Commons Act currently contains provisions allowing the Minister to revoke commons without paying compensation. It is therefore proposed that commons should be abolished as a separate category of land and the Act repealed.

Possible options for the future use of commons include:

- converting commons to Crown land and managing them as Crown reserves
- converting commons to Crown land, with commoners continuing to use the land through lease or licence arrangements
- disposing of commons to commoners, adjoining landowners or otherwise.

9.2 Trustees of Schools of Arts Enabling Act 1902

Land held for Schools of Arts, Mechanics Institutes and Literary Institutes is held in the names of its trusts and trustees. As noted earlier, some of this land is private land and some is public land, and the Act provides powers for trustees to deal with this land.

When the Act was created there was no legislation that provided trustees with practical powers to deal with land. The Act now has limited value because similar provisions are contained in other legislation including the *Trustee Act 1925* and the *Incorporated Associations Act 2009*.

In 2012 a policy to deal with land containing Schools of Arts, Mechanics Institutes and Literary Institutes with a view to ultimately repealing the Act was adopted. All known trusts, including councils, were informed of this policy and of the options on offer (see below). On the basis of responses received, only around ten per cent of public and private trusts wanted to remain under the Act.

Public land

Public trusts were given the option of transferring land to councils or to the Crown, or maintaining the status quo. Similar numbers of trusts indicated a preference for transfer to councils and transfer to the Crown. A larger number said they wanted to transfer but did not specify a preference.

It is proposed that where public land is already managed by councils, it could be offered to those councils. Other public land should be consolidated into the Crown estate.

Private land

Private trusts were given the option of transferring land to councils, becoming full legal owners themselves, or maintaining the status quo.

It is proposed that where councils are trusts or are managing private land under the Act, the land should be offered to those councils. The vesting of private trust land is already provided for by section 54B of the *Local Government Act 1993*.

Other private land could continue to be held by the existing trustees under the provisions of the *Trustee Act 1925*, or those trustees could be given the land outright.

9.3 Irrigation Acts

Under the two Irrigation Acts, certain land in the former Hay and Curlwaa irrigation areas is held by the Lands Administration Ministerial Corporation and leased to farmers. As well as leasehold land, the Irrigation Acts also regulate some additional remnant land in the same areas.

Land in adjacent areas is Crown land administered under the Crown Lands Act and the Continued Tenures Act. This means that the rules for leasehold land in the same locality will differ depending on which legislation applies to the land, because the provisions of the various Acts are not consistent. For example, there are different processes for converting leases to freehold and also different rent provisions.

It is considered that the remaining lessees should be encouraged to convert their leases to freehold. This is possible under both Irrigation Acts but take-up has been low to date.

It is therefore proposed to repeal the Irrigation Acts, and to include transitional provisions in the new Crown lands legislation. This would include continuing the existing conversion rights of lessees under these Acts.

9.4 Racecourse and Showground Acts

The *Wagga Wagga Racecourse Act 1993* and the *Hawkesbury Racecourse Act 1996* give the trustees of the Murrumbidgee and Hawkesbury Turf Clubs the status of a reserve trust under the Crown Lands Act. The main purpose of these Acts was to allow the Turf Clubs to own assets once they were corporatised.

Both Turf Clubs are now incorporated and their assets have been transferred to the Clubs. There is no continuing need for the Acts and they can therefore be repealed.

Orange showground is held under a private trust set up under a private Act, the *Orange Show Ground Act 1897*, and a private deed. However, the Minister has powers of consent in relation to any proposed sale or mortgage, the power to require reports and the power to appoint new trustees. Orange Council is the current trustee and manager of the showground.

The powers the Minister has under this Act are similar to the Minister's powers over Crown reserves under the Crown Lands Act. Other showgrounds are mostly Crown reserves and do not have their own legislation. There does not appear to be any reason to treat this land any differently to any other Crown reserve and it is therefore proposed that the Act be repealed and the showground administered under the Crown lands legislation.

9.5 Acts providing for rent reductions and occupiers relief in irrigation areas

The *Irrigation Areas (Reduction of Rents) Act 1974* was created to provide rent reductions to eligible pensioners on some leases falling under the Continued Tenures Act and the Wentworth Irrigation Act.

The *Murrumbidgee Irrigation Areas Occupiers Relief Act 1934* applies to leases in the Yanco and Marool irrigation areas, and allows rents and debts relating to irrigation farm leases or purchases to be reduced.

It appears that these Acts are now rarely used to grant rent reductions as this can also be done under other Crown lands legislation. It is proposed that the ability to provide rent relief and rebates will continue to be available under the new legislation and these Acts are therefore no longer required. Therefore the Acts should be repealed.

Questions:

18. Do you support the repeal of the minor legislation listed?
19. Do you see any disadvantages that would need to be addressed?

Appendix 1: The Crown Lands Management Review

In June 2012 the NSW Government embarked on a comprehensive review of Crown land management, the first in more than 25 years.

The Crown Lands Management Review was carried out by NSW Trade & Investment and overseen by a Steering Committee that included representatives from other NSW Government agencies and an independent Chair, Mr Michael Carapiet.

The specific aims of the Review were to identify and recommend:

- key public benefits (social, environmental and economic) derived from Crown land
- the NSW Government's future role in the management and stewardship of Crown land
- the basis of an appropriate return on the Crown land estate, including opportunities to enhance revenue
- business, financial and governance structures that enable achievement of desired outcomes within financial and resource constraints
- opportunities for efficiency improvement and cost reduction, consistent with red tape reduction objectives and accountability
- introduction by the NSW Government of incentives to enable the department to manage and develop the Crown land estate in line with NSW Government objectives
- a contemporary legislative framework.

The Crown Lands Management Review adopted principles established by NSW Government policy or arising from other current reviews, in particular:

- the NSW Government's intention to devolve decision-making to local communities and for land to be managed by the most appropriate level of government
- that government should only hold property to support core functions and services
- the NSW Government's commitment to cut red tape and reduce regulatory duplication, which is also a theme of the proposed local government reforms along with a desire for simpler and more flexible legislation
- the planning reform proposal to involve local communities up-front at the strategic planning stage, rather than in the later stages of the development application process
- the need for a genuine customer focus, i.e. understanding the needs of customers, simplifying access to services and removing the need to deal with multiple agencies.

The Review report proposes a range of reforms to improve the management of the Crown estate, including the development of a contemporary legislative framework.

22 May 2014

Crown Lands Management Review
NSW Trade & Investment
PO Box 2185
DANGAR NSW 2309

CROWN LANDS LEGISLATION WHITE PAPER – SUBMISSION FROM GRIFFITH CITY COUNCIL

Griffith City Council, as Trustee of a large number of Crown Land Reserves recognises the importance within our community and the significant value and benefit that our community derives from this land. We welcome the opportunity to comment on the Crown Lands Legislation White Paper.

In summary, Council sees some important opportunities presented in the White Paper, provided certain risks to Council can be managed. A significant opportunity to rationalise the ownership and management of the portfolio of Crown land is presented, along with some important and long overdue reforms to outdated and unnecessary legislative requirements. On the other hand, Council will need to be assured that any benefits arising from changes in the LGA remain in the LGA and there be no net cost shift to Council.

Legislation

The current system of multiple Acts underpinning the management of Crown Land creates delays in processes, frustration and added costs for both Council and the community.

The necessity to have landowners consent for proposed activities on Crown land for the lodgement of Development Applications, lease/licensing of Crown land for a permitted purpose, prolongs the process unnecessarily. When Council itself considers any proposal, it must meet Local Environmental Planning requirements and be permitted under the Local Government Act.

Council, as the local consenting authority and Trustee of certain Crown Land, is in the best position to manage its own process, adhering to planning regulations, zoning and required advertising, therefore removing the necessity to refer to the Crown and further delay the process. As Trustee of certain Crown Reserves Council should be delegated authority from the Crown to endorse applications for development and approve lease/licenses over Crown Reserve.

Allowing Council to manage Crown reserves under the Local Government Legislation would eliminate the doubling up of processes; reduce delays and the financial burden that these delays cause.

Council has its own reporting requirements, financial and otherwise under the Local Government Act, with Crown Land over which Council has control included in this reporting process. A Plan of Management (POM) for Community Land and an adjoining Crown

Reserve is another example of inconsistent approaches under the Local Government Act and Crown Lands Act. A POM sets out current and future planning of a parcel of public land and Council should have the ability to manage both community land and Crown Land under the Local Government Act and, on the proviso that the requirements for a POM are streamlined, produce one POM if the land is being utilised for a similar purpose.

Land assessment requirements for amendment of a reserve purpose are outdated and cause unnecessary issues when dealing locally with Crown land. When reviewing the Local Environmental Plan (LEP) all land use is assessed, with a lengthy public consultation process, seeking comments and discussion on the best possible use for each parcel of land. The land assessment process is a duplication of the LEP. The reserve purpose categories of land should be consistent with the gazetted zoning which would therefore allow multiple uses of Crown land and not be restricted by a Crown Land assessment and purpose.

Council would support consolidating the Crown Lands Act, Continued Tenures Act and Western Lands Act into one Act therefore eliminating duplication and having to deal with multiple rules and regulations and reduce the number of approvals and reporting requirements. Also, the review or repeal of other minor Acts and provision to be made in the new legislation is favoured.

Local Land

Council manages large portions of land within its local government area and parcels of Crown land as the appointed Trustee, of which there is ongoing financial and liability issues associated with the land. Griffith City Council would give consideration to the transfer of Crown land to Council on a case by case basis, with priority to those parcels of land of which we are currently the Trustee, of local significance and which continues to benefit the community.

Council is best placed to make strategic decisions regarding local land and the opportunity for transfer of this land as freehold land, would reduce the administrative process and allow Council to deal with the land as best suits the community whether that be by leasing, disposing of the land and reinvesting in other land, or an alternate strategic use for the land.

The possibility of land being transferred to Local Aboriginal Land Councils, for example, is noted. Griffith City Council welcomes the opportunity to collaborate with the Griffith LALC should the use or transfer of land show potential benefit for projects where there is a common interest.

The criteria which determine land as State land require further consideration. Of particular concern to Council is the arbitrary criterion of land being in proximity to the City CBD being identified as State land. Griffith City Council requires that this criterion be more flexible and its identification as State land be based only on a justifiable strategic purpose.

Pilot Program

The devolution of other Crown land to council through the conduct of a pilot program has Councils ‘in principle’ support.

Transferring local land as freehold land to Councils, with the opportunity to sell those parcels that are surplus to community needs, would allow Council to utilise those sanctioned funds on improvements of other higher valued community Reserves.

The transfer of a Crown Reserve should not be limited to its location e.g. central business district. Reserves located within these areas, deemed not essential to community needs, could be 'unlocked' and utilised for economic growth in the city.

Council does have concern as to available resources within the Crown Lands Division to undertake the transfer of land and at what cost would the transfer be undertaken and who would be responsible for those costs.

Griffith City Council opposes any arbitrary or otherwise unjustified dividend paid to the Crown through land transfers. Council also opposes any situation whereby funds raised through the sale of surplus Crown land, or land transferred to Council by the Crown, are not fully available to the City of Griffith.

Tenures and Rentals

The introduction of minimum Crown Land rentals has assisted Council with implementing standard lease/licence fees to non-profit organisations. Council has the ability to resolve to reduce lease/licence fees and provide internal rent subsidies on a case by case basis and to not charge ordinary rates for non-profit organisations, under the Local Government Act.

Council has in other cases relied on rental valuations completed by a qualified Property Valuer to determine appropriate rentals. This is considered the best practice and to meet current market trends.

In cases of reassignment of leases/licenses it has been found with local experience that not all transfers of structures on Crown Land between third parties is dealt with via a contract of sale and therefore the issue of rental arrears is not taken into account at the time. Council considers that the debt lies with the initial lessee/licensee to finalise prior to approval to the reassignment of an agreement. The existing lessee/licensee will continue to accrue interest on any unpaid rents with Council having the option to not approve the transfer of the agreement or enter into a new agreement until all outstanding arrears are paid.

The standard Crown Lands lease/licence template has worked well within the Griffith area although there is varying opinions on when a lease should be used over a licence in the case of part lots being licenced. This is more relevant when there is a large scale development and financial outlay. Legal advice is that a lease should be issued in preference to a licence agreement in this situation and may need to be considered as part of the Crown Lands review.

To require subdivision of the land to permit a lease in place of a licence is a further financial burden on the applicant and could initiate other requirements that a subdivision of land necessitates and further costs to the applicant.

The question of 'essential' lease conditions for the purpose of providing for civil penalties, a Council, under the Environmental Assessment Act, has the ability to serve penalty notices for breaches of conditions of a Development Consent. This is more compelling and removes the need for litigation for failure and breach of a lease.

The failure to pay lease fees and other matters can be dealt with as part of essential lease conditions and dealt with through normal debt recovery etc.

Carbon Sequestration

The Griffith community has the benefit of a large native vegetation escarpment that is Crown land in close proximity to residential areas and utilised on a daily basis for public recreation

and other purposes and contains some items of State heritage significance. The area plays an important role in our community and the potential to utilise this area and other Crown land as carbon offsets would also be of benefit to our community, whilst protecting the future of the land. Council, when its Local Environmental Plan was reviewed, confirmed that native vegetation areas are significant. Protection of these areas for the long term benefit of the community is high priority.

Compliance

A review of the compliance framework for Crown land is overdue and significant improvements are needed with training of officers and enforcement penalties with higher commitment of the officers needed.

Within the Griffith area there has been a noticed reluctance of Crown lands officers to enforce laws under the Crown Lands Act, a lack of expertise in dealing with offenders and failure to proceed to court in those matters that cannot be successfully negotiated or for repeat offenders.

Whilst Council has the necessary expertise, Council does not have the staff or financial capacity to take on any additional compliance work on behalf of the Crown and would strongly oppose any move to include this area under local government control.

Therefore, improvement in training and knowledge of compliance staff responsible for Crown land should be a priority and form part of the new legislation with stronger controls and penalties to apply.

Council would welcome a review of this area.

Roads

The proposal for Council's to be responsible for the administration of all Council ***owned*** roads is preferred and to deal directly with proposed road closures and openings for those roads. Permanent closure applications for council owned roads are dealt with by council in the first instance, with public consultation allowing suitable time to received submissions and deal with those submissions, prior to application to the Minister for approval to close a council owned public road.

The Crown and Council carry out duplicated procedures in closing roads and a review of these provisions is welcome.

The proposal for the transfer of Crown roads to Councils should be considered on a case by case basis and Council would require the right of refusal to accept the transfer of a Crown road. The reference to Council responsibility for maintaining and upgrading of all local roads, funded from general rates and other resources is a cost shifting exercise by the Crown. Crown roads in rural areas are generally in poor condition and not maintained satisfactorily by the Crown. Council has a limited budget with income from rates capped by the State, and to take over the control of more roads within the City will be another financial burden on the community.

Council in accepting certain Crown roads assumes the ongoing liability for those roads and costs of maintaining. The transfer of any Crown road would need to be offset by the sale of other Crown roads and sanctioning of those funds for ongoing maintenance of these roads within the LGA.

Council would need to consider the strategic requirement of each road prior to transfer.

The Crown Lands Management Review states that the Minister has a duty of care to ensure Crown roads are in a safe condition. The Ministers consent is further required where users of Crown roads want to repair, maintain or do construction works, creating unacceptable risks, as the Crown does not have the technical expertise to undertake or direct activities on roads.

The condition of Crown roads prior to transfer, how this is dealt with and how this be defined would need to be agreed by both Council and the Crown.

Travelling Stock Reserves

A review of the Travelling Stock Reserves (TSR) by Local Land Services to determine the future of these reserves and appropriate funding resources is supported. TSR's not required for their original intent may also be utilised as carbon or biodiversity 'offset' corridors for the benefit the local community. TSR's may still remain crucial in times of drought or floods and a thorough investigation is needed prior to any consideration of disposing of these important parcels of land.

I thank you again for the opportunity to comment on the Crown Lands Legislation White Paper and should you require further information please contact me on (02) 6962 8134.

Yours sincerely

BRETT STONESTREET
GENERAL MANAGER