

LGNSW Draft Submission to the General Purpose Standing Committee No.6 – Inquiry into Crown Land

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1. Opening

Local Government NSW (LGNSW) is the peak body for councils in NSW, representing NSW general-purpose councils and associate members including special-purpose county councils and the NSW Aboriginal Land Council. In essence, LGNSW is the organisation for all things local government in NSW. LGNSW facilitates the development of an effective community based system of local government in the State.

LGNSW thanks the General Purpose Standing Committee No. 6 for the opportunity to make a formal submission to the Inquiry into Crown Lands.

Councils have a significant role in managing the Crown estate at a local level. Councils manage 7,765 crown reserves – the majority of which they have managed for many decades. These are important to the physical and social wellbeing of local people. Many play important environmental and economic roles.

2. Terms of Reference/Comments

This submission makes specific comment on the Inquiry's four Terms of Reference and expands this by outlining LGNSW's general position regarding the management of Crown lands in NSW. The submission is focussed on lands that are currently under the care, control and management of local government and other lands that may be transferred into local government ownership in future.

The following comments are made with regard to the Terms of Reference:

(a) the extent of Crown land and the benefits of active use and management of that land to New South Wales

Crown land represents over 40% of the land area of the NSW and is made up of nearly 600,000 individual parcels of land.

The diverse portfolio of land held in the Crown land estate has a wide range of purposes including conservation, recreation, tourism, forestry, grazing and other commercial uses. Rents earned from commercial uses help fund the management of the Crown lands estate.

Councils currently manage 7,765 parcels of that land. The Crown land managed by councils delivers a wide range of social, environmental and economic benefits to communities. Land currently managed by councils is most commonly open space and provides for a range of activities including passive and active recreation, sports facilities, caravan and camping parks and other public amenities. It also includes parcels of land on which heritage items are situated and areas of conservation land. Activities or uses of a commercial nature are typically subject to leases and rents that reflect private benefit, with the income earned by councils partially returned to the NSW Government, and the balance reinvested in reserve infrastructure and maintenance.

(b) the adequacy of community input and consultation regarding the commercial use and disposal of Crown land.

While some stakeholders have raised concerns that Crown land transferred to local government may be sold off to the private sector, it is expected that most land that may be transferred to councils would be transferred as community land. Community land cannot be sold or leased for a period of more than 30 years and must have a plan of management. This protects the land for community purposes.

The process for disposal of Community Land would require its conversion initially to Operational Land, which requires a rigorous a process that includes extensive community consultation. Any such conversion would require strong justification and the process provides protection from short term opportunism.

(c) the most appropriate and effective measures for protecting Crown land so that it is preserved and enhanced for future generations.

Given the diversity of holdings and land uses it is challenging to specify the most effective measures for protecting the Crown land estate as a whole. There needs to be numerous specific strategies dealing with the different types of land and land use. There is also a need for local and regional sub strategies.

LGNSW considers that the objective of protecting Crown land will be best served by responsibility and ownership sitting with the spheres of government and community that have the most stake in it. For example, land that is primarily of local value and significance may be best protected by transfer to local government. Similarly, land that is primarily of value to Aboriginal communities should be transferred to Local Aboriginal Land Councils.

Furthermore, land which is of high environmental value would be best protected by being incorporated into National Parks or dedicated conservation reserves. LGNSW also maintains that land of high public amenity value should not be alienated from the public.

In the ongoing process for determining the future of the Crown land estate, councils are very keen that LGNSW and representative councils have significant involvement in:

- determining which Crown land has state or regional value especially for environmental purposes;
- determining appropriate benchmarks and key performance indicators to reflect the economic, social and environmental objectives required for the Crown Estate;
- the future of Travelling Stock Routes (TSRs); and
- the future of Crown Roads.

(d) the extent of Aboriginal Land Claims over Crown land and opportunities to increase Aboriginal involvement in the management of Crown land.

The primary concern of the NSW Aboriginal Land Council (NSWALC) is to ensure land remains claimable when it becomes surplus to Government needs. LGNSW's comments relevant to this Term of Reference are detailed in section 5 of this submission.

3. Crown Lands Reform Process

LGNSW has been formally engaged in the Crown lands review process since late 2013. To date LGNSW has been involved in and focused on:

- i) the Local Land Pilot; and
- ii) the proposed reform of Crown Land legislation and management.

In 2014, LGNSW hosted six Crown Lands Information Sessions in regional locations, delivered by the Crown Lands Management Review team. These sessions involved 181 representatives from 88 councils.

LGNSW subsequently made submissions to the:

- Crown Lands for the Future – Crown Lands Management Review Summary and Government Response; and
- Crown Lands Legislation – White Paper.

These submissions can be found on the [LGNSW website](#).

4. LGNSW Position

LGNSW's position can be summarised broadly as follows:

- Crown land delivers many environmental, social and economic benefits to the people of NSW.
- LGNSW supports action to ensure these benefits continue into the future.
- The majority of councils welcome the overall thrust of examining how to transform Crown lands management, moving beyond colonial thinking into the 21st century.
- Councils agree that the management of Crown land has become overly-complex. Having one piece of legislation to cover the Crown estate would:
 - help streamline the processes involved in Crown land tenure;
 - provide a simpler framework for both legal practitioners and Crown land managers involved in, for example lease approvals and plans of management; and
 - may result in lower administrative costs.
- Councils have had a significant and very long term role in managing Crown lands.
- While the majority of councils would welcome the transfer of the 7,765 Crown reserves they already manage and have managed for many decades, there is a need to examine the issues closely to ensure there are no unintended disadvantages.
- The suggestion of devolving other 'land of local interest to local councils' needs to be approached very cautiously to ensure there is no cost shifting and to ensure councils can assess and accept or reject parcels of land individually.
- The idea of amending the *Roads Act 1993* so that the Minister is no longer a roads authority needs to be strongly resisted as this would involve a massive shift of responsibilities and costs.
- The local government sector thinks it inappropriate for the Crown Lands Division to be transformed into a Public Trading Enterprise.

5. NSW Aboriginal Land Council's position

LGNSW is mindful that NSW Aboriginal Land Council's (NSWALC) position on the sale or other disposal of Crown land diverges from the position of many councils. This is largely because councils are foremost seeking a contemporary way to manage those parts of the Crown estate that they have properly managed for decades (the 7,765 Crown reserves), whereas NSWALC is seeking to ensure land remains claimable when it is surplus to Government needs.

NSWALC's position on the sale or other disposal of Crown land is as follows:

- NSWALC is concerned that the Government is preferencing the disposal of Crown land rather than transfer of land under the *Aboriginal Land Rights Act 1983* (ALRA).
- In any processes regarding the disposal of Crown land, there must be provisions to ensure that when land becomes surplus to the Government's needs, that the land is first brought to the attention of Aboriginal Land Councils so that a claim can be made to support the objects and intent of the ALRA.
- NSWALC opposes any changes to land ownership that removes land from being claimable under the ALRA and opposes the sale of Crown land under Local Government legislation.

LGNSW has recommended the Government clarify whether it is preferencing the disposal of Crown land rather than transfer of land under the ALRA, as both disposal and transfer under the ALRA appear to remain options. LGNSW has also noted it will be important that any legislation takes into consideration the rights of Aboriginal people and is consistent with the *Aboriginal Land Rights Act 1983* (NSW), the *Native Title Act 1993* (Cth) and the *National Parks and Wildlife Act 1974* (NSW) under which Aboriginal sites are registered. The reform process should not interfere with legitimate Aboriginal land claims and every effort must be taken by the State Government to expedite the processing of the thousands of unresolved claims.

6. NSW Government proposals regarding management of Crown Lands

The NSW Government released its response to the submissions on the Crown Lands Legislation White Paper in October 2015.

Key proposals from the Government's response which were generally consistent with LGNSW's submission include the following:

- The Act will explicitly recognise the need to integrate environmental, social, cultural heritage and economic considerations in decision making about Crown land (*LGNSW advocated this approach and agrees with the thrust of the response*).
- The new legislation will remove red tape (*LGNSW argued for this and agrees*).
- Councils will not be charged rent for reserves they manage (*LGNSW advocated for this and welcomes this as an explicit outcome*).
- Land of primarily local value can be made available to councils as community land and councils will deal with it under the *Local Government Act* requirements regarding community land (*LGNSW advocated this approach and agrees with the thrust of the response*).
- Land that councils can demonstrate is used for operational or local utility purposes, such as reserves used for depots or waste sites, can be transferred as operational land (*LGNSW advocated for this and agrees*).
- The misconception that councils were to take over management of all reserves currently managed by community trusts is dispelled. (*LGNSW is pleased this misconception has been dispelled*).

The success of the Local Land Pilot involving the then Corowa Shire, Tamworth Regional, Tweed Shire and Warringah councils was also recognised in the response. The draft local land

criteria were tested and further refined as a result of this pilot, and these criteria can be used as a decision-making tool to guide councils in determining the benefits to local communities from councils owning or managing parcels of land.

On the basis of this Pilot, the DPI proposes to continue working in collaboration with councils on identifying land of local and state significance. Determining the best manager for such land will be site specific and on a case by case basis through discussions between DPI – Lands and council. It is understood that two of the Local Land Pilots have involved three-way negotiations between councils, state government and local Aboriginal land councils (*LGNSW supported the Local Land Pilot project and agrees with the thrust*).

LGNSW also understands that the Department of Primary Industries (DPI) will be providing training to councils on dealing with Native Title issues. This is important.

7. Conclusion

Crown land delivers many social, environmental and economic benefits to the people of NSW, and councils have had a significant and very long term role in managing Crown lands for many years. The majority of councils have welcomed the overall thrust of examining how to transform Crown lands management, moving beyond colonial era thinking into the 21st century.