

# ***Submission on *Crown Lands for the Future – Crown Lands Management Review Summary and Government Response****

June 2014

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## Opening:

Local Government NSW (LGNSW) is the peak body for councils in NSW. LGNSW represents all the 152 NSW general-purpose councils, the special-purpose county councils and the NSW Aboriginal Land Council.

LGNSW is a credible, professional organisation representing NSW councils and facilitating the development of an effective community-based system of Local Government in NSW. LGNSW represents the views of councils to NSW and Australian Governments; provides industrial relations and specialist services to councils; and promotes NSW councils to the community.

LGNSW welcomes the opportunity to make a submission on the *Crown Lands for the Future – Crown Lands Management Review Summary and Government Response*.

LGNSW is aware that Crown land still accounts for more than 40 per cent of the State, with tens of thousands of community groups, local businesses and farmers depending on Crown reserves across NSW. Crown reserves are set aside for the community for many purposes, including for environmental protection, heritage, recreation and sport. There are about 33,000 Crown reserves with a total area of 2.5 million hectares across NSW.

LGNSW strongly concurs with the statement that Crown land delivers many social, environmental and economic benefits to the people of NSW and supports the Government taking action to ensure these benefits continue well into the future.

LGNSW acknowledges that councils have had a significant and very long term role in managing Crown lands.

LGNSW recognises that the majority of councils welcome the overall thrust of examining how to transform Crown lands management, moving beyond colonial era thinking into the 21<sup>st</sup> century. Councils agree that the management of Crown land has become overly-complex, which makes it difficult for the community to manage their reserves and facilities operating on Crown land. With legislation dating as far back as 1890, it is time to introduce clearer, simpler and more contemporary legislation to better manage Crown land.

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.

On the other hand 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 tackled head-on as the devolving of Crown roads to councils would involve a massive shift of responsibilities and costs.

## Purpose:

The purpose of this submission is to detail LGNSW's considered position on those recommendations and related Government responses in the paper entitled *Crown Lands for*

*the Future – Crown Lands Management Review Summary and Government Response* that are most relevant to Local Government.

LGNSW has framed these positions based on:

- feedback from councils in the Crown Lands Information Sessions held in May 2014;
- feedback from councils that have supplied LGNSW with copies of their submissions;
- feedback from councils directly to the LGNSW Board and/or staff; and
- interim *Policy Statements* and other positions adopted by the LGNSW Board derived from those of LGNSW's predecessors.

There were six Crown Lands Information Sessions hosted by LGNSW and delivered by the Crown Lands Management Review team held in May 2014. The sessions were held in Tamworth, Wagga Wagga, Dubbo, Queanbeyan, Sydney and Coffs Harbour. These sessions involved 181 representatives from 88 councils.

Before turning to the detail of LGNSW's position on the relevant recommendations and responses, it is important to capture some of the process comments that have been made by councils to LGNSW.

Firstly, it is important to note that councils are very concerned about the deadline involved. They are concerned that NSW Government agencies could work for more than two years on a complex issue like a Crown Lands Management Review and then give councils barely 3 months to respond (28 March – 20 June).

Secondly, it is important to note that a significant minority of councils have expressed concern on why there has been no widespread EoI process for the Local Land Pilots. Many councils would have been interested in nominating to be involved in a Pilot had they been given the opportunity.

Thirdly, councils are very keen that LGNSW and representative councils have significant involvement in the following processes:

- 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 working party on Travelling Stock Routes (TSRs); and
- the future working party on Crown Roads.

## STATE AND LOCAL LAND

### Recommendation 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.**

### Government response on recommendation 1

**Supported in principle – further consultation required to undertake a whole of government stocktake of Crown land.**

### LGNSW comment on recommendation 1

**LGNSW supports recommendation 1 in principle, *subject to mutually agreed definitions of ‘core service delivery’ and ‘state or regional values’.***

A strategic review is a logical and necessary first step on a path to improved management of this vast array of sites, uses and users.

Therefore, LGNSW can agree to the recommendation and the Government response in principle, as long as ‘core service delivery’ and ‘state or regional values’ are adequately defined and the definitions find widespread support across the two spheres of government and in the wider community.

Councils and communities have understandable concerns that too narrow a definition of ‘core service delivery’ will potentially lead to erosion of the Crown land estate by opening the way for large scale asset disposal. This could be by way of sale to private interests or alienation through more extensive long term private leaseholds.

These concerns will be reinforced by asset sale and privatisation policies in other areas of government at both the state and national level.

Concerns may be further fuelled by the apparent departure from the Principles of Crown land management contained in s11 of the *Crowns Land Act (NSW) 1989*.

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

- a) that environmental protection principles be observed in relation to the management and administration of Crown land,
- b) that the natural resources of Crown land (including water, soil, flora, fauna and scenic quality) be conserved wherever possible,
- c) that public use and enjoyment of appropriate Crown land be encouraged,
- d) that, where appropriate, multiple use of Crown land be encouraged,
- e) that, where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained in perpetuity, and
- f) that Crown land be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the State consistent with the above principles.

The draft objects contained in the White Paper do not refer to these principles. The new Objects significantly reduce the emphasis on environmental protection and conservation and in so doing, reduce the scope of ‘core service delivery’.

LGNSW strongly believes that the principles of Crown land management from the 1989 Act need to be carried forward and used as the basis of any definition of core service delivery

Councils want significant input into determining the test of which Crown land has state or regional value especially for environmental purposes.

Part of any process for defining whether any parcel of land is deemed of state, regional or local significance should refer to the following principles:

- Maintain connectivity of parcels of land for ecological functioning and biodiversity (e.g. minimum habitat sizes, migration, etc.);
- Maintain public access routes and connectivity; and
- Ensure coordinated management of cross-boundary issues such as pests, weeds, and bushfires.

### **Recommendation 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.**

### **Government response on recommendation 2**

**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.**

### **LGNSW comment on recommendation 2**

#### **LGNSW supports recommendation 2 in principle**

Based on feedback from councils, LGNSW notes and highlights that there is broad support for concept of subsidiarity (that underpins the pilots to test and refine the state and local land criteria and to develop an implementation plan for the transfer of local land) as long as that eventual transfer is unencumbered.

The benefits associated with or flowing from the eventual transfer of local land as identified by councils are as follows:

- Removal of a duplication of approvals for uses, management plans, leases and licences (i.e. Ministerial sign-off etc.,) would be significant;
- Transferring title from Crown to councils would create greater flexibility assisting in optimising use of land;
- Transferring title from Crown to councils creates the opportunity to sell some parcels of land to generate funds to improve other higher value sites/parcels; and
- Removal of old expired Trustees, Trusteeships, Reserve Managers etc., would be a significant benefit.

For the eventual transfer of local land to be acceptable to councils there are a number of challenges need to be addressed and resolved to Local Government's satisfaction. These challenges are:

- The widespread concern despite Government comment to the contrary, that many sites/parcels of Crown land not presently in council management will be deemed of local significance and transferred to councils (the most significant and oft cited examples are Showgrounds and Racecourses; but there may be myriad of smaller sites in any given

LGA; these bring with them costs relating to - developing Plans of Management, meeting weeds management and fire management responsibilities, title transfer costs, DA costs)

- The need for the definitions of and tests for State, regional and local significance of land are determined transparently in collaboration between State and Local Government;
- The widespread concern with exclusion of sites/parcels of Crown land within certain unspecified distance of CBDs (this has met with universal dislike and fuels distrust);
- Concerns about Treasury generated legislation, regulation and guidelines that limit future sales or future revenue gains (i.e. the language of 'preventing windfall gains' fuels distrust; if a council has managed a reserve for over a century surely it has built up a form of equity that neutralises any notions of windfall gains);
- Concerns on the mechanics of transferring land to council and clarification as to whether this will be a blanket determination as 'community' or 'operational' land or site by site determination or some other method such as class by class;
- Clarification on how the costs associated with land transfer will be dealt with;
- The need for the guarantee not to transfer contaminated land be captured in legislation or some other binding way;
- Concerns with the need to hand some sites/parcels of Crown land presently in council management back to the NSW Government (e.g. an underutilised ex-Courthouse building; crown reserves with contaminated land that are already in council management);
- The place of 'shadow zoning' impacts on valuation and on parcels of Crown land to be sold for development by private interests
- Concern on how to handle sites/parcels of Crown land deemed of local significance that cross LGA boundaries;
- Concerns about the impact and manageability of Crown land under Native Title Claim and/or *Aboriginal Land Rights Act* claims especially as these processes are very drawn out; and
- Council questions on whether the *Local Government Act* would be the best mechanism.

LGNSW is aware that NSW Aboriginal Land Council's position on the pilots is as follows:

- NSWALC is concerned to ensure that the categorisation of land (state and local) must not undermine the objects of the *Aboriginal Land Rights Act 1983 (ALRA)*.
- NSWALC recommends that the Government, when assessing land, seeks to not simply investigate the transfer of 'local' land to Local Government, but as a priority negotiates with the Aboriginal Land Council network regarding the transfer of land to Aboriginal Land Councils.
- Criteria must not be limited to the criteria proposed in the interagency steering committee report and must include Aboriginal Land Council's interests in Crown land.
- Pilot programs must actively engage with the Aboriginal Land Council network

LGNSW recognises that the NSWALC position on local land transfer diverges from the position of the greater majority of other members. LGNSW suggests this is largely because councils are foremost seeking a contemporary way to manage those parts of the Crown estate that it has properly managed for decades (the 7,765 Crown reserves), while NSWALC is seeking to ensure land remains claimable when it is 'unused and not needed'. Local Government is seeking a mature relationship between the two spheres of Government in the dealing with local Crown land. While councils would certainly seek the right to dispose of parts of that transferred estate over the very long-run, the primary objective is not land sales. On the other points relating to the pilots, LGNSW commends to the Government consideration of the NSWALC positions on criteria and engagement in the work of the Pilots.

Initial pilots should be simulated desk top exercises. It is apparent that that the complexities of Crown land ownership and management are not fully understood by the relevant government agencies and other stakeholders. Desk top pilots would be a risk free way of exposing the complexity, implications and ramifications of the proposed changes, helping to ensure that there will be no unintended consequences. Caution is warranted by the far reaching significance of the proposed reforms.

The desk top pilots among other things should specifically examine and report on the financial implications for councils, as required by the *Intergovernmental Agreement to Guide NSW State-Local Government Relations on Strategic Partnerships*.

In light of council feedback and in the interest of proper project planning, LGNSW strongly advocates that the Pilots need to be conducted very methodically, thoroughly documented and properly evaluated so that there is a strong basis for roll-out to other councils.

### **Recommendation 3**

**Devolve land of local interest to local councils to meet local needs.**

#### **Government response on recommendation 3**

**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.**

#### **LGNSW comment on recommendation 3**

**LGNSW supports recommendation 3 in principle, provided the challenges outlined in respect to recommendation 2 have been met and shown to have been met.**

In light of council feedback and in the interest of proper project planning, LGNSW strongly suggest that there is the need for a second round of consultations and/or briefings after the completion of the Local Land Pilots and their evaluation.

As mentioned above, it is imperative the roll-out to councils after the pilots include training on the lessons of the pilots.

### **Recommendation 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.**

#### **Government response on recommendation 4**

**Supported in principle – Further consultation with agencies is required to develop and undertake this process.**

#### **LGNSW comment on recommendation 4**

**LGNSW supports recommendation 4 in principle**



While this issue is not directly Local Government's responsibility, LGNSW notes in principle support to the extent that the logic of this proposal mirrors the logic of devolving land of local interest to councils. However, there is a question about whether there are inefficiencies in devolving responsibilities for property management to multiple agencies rather than having it consolidated in an 'expert' agency.

## REVIEW OF TRAVELLING STOCK ROUTES

### Recommendation 5

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

### Government response on recommendation 5

**Supported – Work will commence in 2014 on a pilot program with Local Land Services. Community consultation will occur through the pilot process.**

### LGNSW comment on recommendation 5

**LGNSW supports recommendation 5 in principle, provided LGNSW is directly involved representing Local Government interests in the TSR pilot process.**

LGNSW notes that the 10,415 TSRs in NSW cover almost 2.1 million hectares and are managed by:

- 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)

LGNSW acknowledges that TSRs date back to the 1800s, often along traditional Aboriginal pathways through the landscape. Travelling stock routes are roads along which livestock can legally be driven, and usually have wide verges on which cattle can graze. Travelling stock reserves include stock routes as well as fenced areas for camping with or watering stock overnight. TSRs continue to provide invaluable insurance during drought and flood.

LGNSW notes although the main purpose of the TSR network was originally for droving stock, the network is now recognised for its environmental, economic, cultural and social importance. LGNSW recognises that the use of some TSRs has changed: many are no longer being used for their original purpose. They may be used for recreational or other social uses, or for access and heritage purposes. Many are still important because of their location in over-cleared landscapes and because of significant Aboriginal cultural heritage and ecological values. Together with the equivalent network in Queensland, TSRs form a unique and iconic continental scale corridor of publicly owned remnant vegetation.

LGNSW acknowledges that TSRs have benefits in following areas:

- Economic uses. They provide emergency feed and agistment during times of drought, fire and flood and allow movement of stock by foot. Grazing of stock on TSRs, if carefully managed, can support biodiversity conservation work.
- Importance to biodiversity. They protect endangered ecological communities and threatened species in heavily cleared areas, and may play an important role in connectivity conservation and helping native species to cope with climate change. Effective management of the TSR network could enable the NSW Government to make significant progress towards a range of state, national and international biodiversity targets.
- Cultural tourism. Rich culture and heritage, connecting Australians to Aboriginal and European history, culture, values and resources.
- Social benefits. Providing a location for a range of recreational activities, and attracting the interest of Community groups.

LGNSW acknowledges that the administration of NSW TSRs is complex, and differs between the geographic divisions of NSW. TSRs in the NSW Western Division are held by private land holders and leaseholders under the *Crown Land Act 1989*. The requirement to provide access to travelling stock is a condition of the relevant leases. Management of these TSR's is the primary responsibility of the landholder. TSR's in the central and eastern divisions of NSW are generally held in trust by Local Land Services (LLSs).

LGNSW notes the Review supports a recommendation 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, Councils, Aboriginal Land Councils, Roads and Maritime Services, State Rail, and adjacent landowners.

In LGNSW's view 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 NSW and/or Commonwealth grants for conservation work. LGNSW's predecessors have advocated in the past for the retention and long term protection of TSRs for future generations and that the overall management of TSRs be regarded as a contiguous estate with significant environmental and cultural values and managed as such rather than as separate parcels of land.

LGNSW's predecessors also advocated in the past that the NSW Government provide adequate public funding for the overall management of the TSR estate augmenting the rates charged to district landholders and recognising the wider community benefits derive from TSRs including for cultural heritage, natural habitat for wildlife and for the livelihood of graziers in NSW.

LGNSW notes while many 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, many may best be managed by other agencies.

Where the care and control of certain TSRs is handed to Local Government, this should also be funded by appropriate funding streams so that the cost burdens are not shifted from the Crown to the local community.

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

LGNSW acknowledges that 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 these TSRs will require negotiation with the relevant Local Aboriginal Land Councils.

Councils wish to see LGNSW involved in the future working party on TSRs, looking at both those that remain functional and those that serve other purposes such as places of Aboriginal

cultural heritage or connectivity for ecological functioning and biodiversity (e.g. minimum habitat sizes, migration, etc.).

LGNSW agrees that Local Land Services are the appropriate body to take the leading role in undertaking this process because of the long history of their predecessors in managing TSRs from both a pastoral and a land care perspective.

LGNSW supports:

- That 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;
- That the history of strong engagement with Aboriginal communities, and the local nature of the issues be addressed; and
- That the assessment criteria for the proposed review should be developed by Local Land Services in consultation with Crown Lands Division, the Office of Environment and Heritage, the Office of Aboriginal Affairs, NSW Aboriginal Land Council, and LGNSW.

LGNSW notes that a pilot project to assess the values and management of the TSR network in the Hunter Valley was undertaken in 2009 by the 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.

## **BUSINESS MODEL**

### **Recommendation 6**

**Establish Crown Lands Division as a Public Trading Enterprise through a staged transformation process.**

### **Government response on recommendation 6**

**Supported – Crown Lands Division to undertake.**

### **LGNSW comment on recommendation 6**

**LGNSW opposes recommendation 6.**

LGNSW is aware many councils and many in the community consider it inappropriate for the Crown Lands Division to be transformed into a Public Trading Enterprise. LGNSW would also strongly suggest that it appears unnecessary for achieving the proposed objects of the new Act.

LGNSW is aware that NSW Aboriginal Land Council's position on becoming a Public Trading Enterprise is as follows: 'any move to a Public Trading Enterprise, or a separate corporate entity, must not undermine Aboriginal Land Council's rights to claim Crown land under the *Aboriginal Land Rights Act 1983 (ALRA)*'. LGNSW understands this concern and supports this position.

NSW Treasury defines Public Trading Enterprises and State Owned Corporations as:

#### **Public Trading Enterprise (PTE)**

PTEs are public sector entities which are principally engaged in trading activities that could, in principle, be provided through the market place without compromising the Government's social and economic objectives. PTEs raise the majority of their income from user charges.

PTEs have undergone "commercialisation" reforms to varying degrees. They have also generally addressed issues of competitive neutrality in input markets, for example, by paying a fee for government-guaranteed debt.

#### **State Owned Corporation (SOC)**

State Owned Corporations (SOCs) are Public Trading or Financial Enterprises which have been corporatised. Corporatisation involves the establishment of a corporate governance structure which mirrors as far as possible that of a public-listed company, essentially creating an "arm's length" relationship between the SOC board/management and the government as owner or shareholder.

It is important to note that there is little difference between them other than governance structure. The term PTE does not necessarily imply a 'softer' commercial edge than a SOC.

Many in Local Government have already been concerned about the increasing commercialisation of the Crown Lands Division and its predecessor agencies over the past decade. Councils and community groups have frequently objected to increasing rents, fees and charges being demanded for community use of Crown land.

The transformation of the Crown Lands Agency into a PTE would reinforce and firmly imbed the commercialisation agenda with broad concern that economic objectives would or could ultimately subjugate social and environmental objectives. NSW Budget imperatives may dictate that Crown Lands PTE would have to be completely self-funding or even provide a positive financial return to the NSW Government.

The potential implications include:

- Stronger motivation to sell off or lease larger parcels of Crown land (eroding the Crown lands estate);
- Increased rents fees and charges for community activities on Crown land; and
- Increased alienation of Crown land from the general public.

This is not to say that the NSW Government should not seek to raise revenue from Crown Land. This is important for the maintenance and improvement of Crown land. It is entirely appropriate that market rents be extracted for the private or commercial use of Crown land. It is also appropriate for certain Crown lands to be sold where it is in the best interests of the people of NSW and does not conflict with objectives.

The challenge, as always, is getting the right balance between economic, social and environmental objectives. Unfortunately, the proposal to transform the Crown Lands Agency into a PTE/SOC, along with a number of other recommendations, conveys the impression that the Crown estate is dominantly perceived as an economic asset.

#### **Recommendation 7**

**Upgrade Crown Lands Division's information management systems to allow informed decision-making and comprehensive accounting.**

#### **Government response on recommendation 7**

**Supported – Crown Lands Division to undertake.**

#### **LGNSW comment on recommendation 7**

**LGNSW supports recommendation 7.**

While this issue is not of direct concern to Local Government, LGNSW agrees it is rational to upgrade the Crown Lands Division's information management systems. Consideration will need to be given to how the upgraded systems interface with other information management systems used by Local Government or other Crown Land managers for management and reporting purposes (as foreshadowed by Recommendation 13).

#### **Recommendation 8**

**Develop appropriate benchmarks and key performance indicators to reflect the economic, social and environmental objectives required in the management of the Crown Estate.**

#### **Government response on recommendation 8**

**Supported – Crown Lands Division to undertake.**

#### **LGNSW comment on recommendation 8**

**LGNSW supports recommendation 8.**

The challenge here will be:

- being clear on what the economic, social and environmental objectives actually are, and whether any take precedence in decision-making. This will also be a critical foundation for the pilot projects as they attempt to assess whether land is best maintained under the control of the Crown or devolved; and
- developing the appropriate indicators and weightings. This must be undertaken with all stakeholders. From the stakeholders that are involved in other parts of the Crown land management reform it appears to LGNSW the stakeholders at a minimum are as follows: LGNSW, the Office of Environment and Heritage, the Office of Aboriginal Affairs, Local Land Services, NSW Aboriginal Land Council, Roads and Maritime Services, Department of Planning & Environment, Trade & Investment NSW, Department of Primary Industries and Crown Lands Division.

## **CROWN LAND VALUATION AND DIVIDENDS**

### **Recommendation 9**

**Benchmark return on assets against opportunity cost.**

### **Government response on recommendation 9**

**Supported – Crown Lands Division to undertake.**

### **Recommendation 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.**

### **Government response on recommendation 10**

**Supported – Crown Lands Division to undertake.**

### **LGNSW comment on recommendations 9 and 10**

**LGNSW opposes recommendations 9 and 10.**

LGNSW is strongly of the view that recommendations 9 & 10 would be generally inappropriate for Crown land that is dedicated for public recreation or conservation purposes.

While all land has an intrinsic value as a scarce resource (they don't make any more of it), its value is significantly determined by permitted use (e.g. current zoning) which is green space/parklands. This is the way land is currently valued for rating and taxation purposes, such land has negligible value. The public has reason and the right to expect that Crown land dedicated for such purposes is to remain that way in perpetuity and so be valued accordingly.

To determine opportunity cost on the market value of surrounding developable land would inflate economic opportunity costs, setting unachievable and meaningless benchmarks. This approach would also represent a threat to Crown land that has potentially high market value.

The proposition becomes clearly absurd when you consider applying it to land such as Hyde Park or Bondi Beach.

The other obvious flaw in this approach is its failure to adequately represent social and environmental values.

Moving in this direction would further reinforce fears that Crown land is primarily being viewed as an economic asset.

### **Recommendation 11**

**Express the shortfall between a community-based organisation's ability to pay and the market rent as a community service obligation payment.**

### **Government response on recommendation 11**

**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.**



**Recommendation 12**

**Report on the level of contribution made by the NSW Government for the use of Crown land for community purposes.**

**Government response on recommendation 12**

**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.**

**LGNSW comment on recommendations 11 and 12**

**LGNSW supports recommendations 11 and 12, in principle.**

This is consistent with council management and reporting practices.

However, there is a danger that governments may cap or otherwise limit CSOs and this may be exacerbated where market rents are high or rapidly escalating.

**Recommendation 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.**

**Government response on recommendation 13**

**Supported – Crown Lands Division to undertake.**

**LGNSW comment on recommendation 13**

**LGNSW supports recommendation 13.**

While this issue is not of direct concern to Local Government, LGNSW agrees it is reasonable for the Crown Lands Division to develop specifications for new information systems.

## **ACCOUNTING ISSUES**

### **Recommendation 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.**

#### **Government response on recommendation 14**

**Supported – Crown Lands Division to undertake.**

#### **LGNSW comment on recommendation 14**

**LGNSW opposes recommendation 14.**

As LGNSW opposed recommendation 6 on transforming the Crown Lands Division into a Public Trading Enterprise, we must similarly oppose matters such as this which are a prelude to that transformation. As explained we are aware that Local Government and communities consider it inappropriate for the Crown Lands Division to be transformed into a Public Trading Enterprise. Moreover, it appears unnecessary for achieving the proposed objects of the new Act.

### **Recommendation 15**

**Critically review the proposed general ledger and financial reporting structure to ensure that they will meet all reporting and other requirements.**

#### **Government response on recommendation 15**

**Supported – Crown Lands Division to undertake.**

### **Recommendation 16**

**Establish adequate internal systems and procedures for Crown Lands Division to ensure proper management of all business activities.**

#### **Government response on recommendation 16**

**Supported – Crown Lands Division to undertake.**

#### **LGNSW comment on recommendations 15 and 16**

**LGNSW supports recommendations 15 and 16.**

While these matters are not of direct concern to Local Government, LGNSW agrees it is a reasonable strategy for the Crown Lands Division to review and improve ledgers, reporting structures, internal systems and procedures.

## **LEGISLATION**

### **Recommendation 17**

**Develop new, consolidated Crown lands legislation.**

### **Government response on recommendation 17**

**Supported in principle – Public consultation on this proposal will occur through the Crown Lands Legislation White Paper.**

### **Recommendation 18**

**Repeal eight or more existing Acts.**

### **Government response on recommendation 18**

**Supported in principle – Public consultation on this proposal will occur through the Crown Lands Legislation White Paper.**

### **Recommendation 19**

**Abolish commons as a discrete category of land.**

### **Government response on recommendation 19**

**Supported in principle – Public consultation on this proposal will occur through the Crown Lands Legislation White Paper.**

### **LGNSW comment on recommendations 17, 18 and 19**

**LGNSW supports recommendations 17, 18 and 19, provided it is done with care and due diligence.**

LGNSW strongly believes having one piece of legislation to cover the Crown estate would help facilitate the processes involved in Crown land tenure, provide a simpler framework for both legal practitioners and Crown land managers and may result in cheaper administrative costs to the wider public.

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.

### **Recommendation 20**

**Amend the *Roads Act 1993* so that the Minister is no longer a roads authority.**

### **Government response on recommendation 20**

**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.**

### **Recommendation 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*.**

#### **Government response on recommendation 21**

**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.**

#### **LGNSW comment on recommendations 20 and 21**

**LGNSW opposes recommendations 20 and 21.**

LGNSW vehemently opposes the recommendations to (i) alter Minister for Lands' responsibilities in the Roads Act and (ii) to shift responsibility for all 'roads used to provide to general public' to road authorities, especially Local Government.

Under existing legislation and road management arrangements in NSW, Local Government is responsible for almost 164,000 km or 90% by length of all public roads in NSW excluding Crown roads. This total includes over 18,000 km of regional roads and 145,000 km of local roads.

If enacted the recommendations would increase the length of the local road network by an estimated 167,000 km, potentially more than doubling the local road network. This estimate is based on information provided by the then Minister for Land and Water Conservation Richard Amery MP in the 1999 review of the *Roads Act 1993*, which at the time stated that Crown roads represented about 45% of all NSW public roads (although it is unclear whether this figure includes so-called 'paper roads' which may not be included in any transfer).

It is well documented both through Local Government sector and independently sourced research, including for example the recent Independent Local Government Review Panel *Revitalising Local Government* and the TCorp *Financial Sustainability of the New South Wales Local Government Sector* reports that councils in NSW already face a massive infrastructure funding shortfall. This research has shown councils in NSW have an infrastructure backlog of \$7.2bn and an annual maintenance gap of \$389m on their existing assets, largely local roads.

An increase in the local road network along the lines suggested in the report, doubling the local road network if consistent with previous estimates, without the concurrence of Local Government, would clearly create a totally unsustainable and financially crippling cost shift for councils in NSW. The financial implications alone would also place in doubt and require a major re-casting of recent Local Government reform discussions. The likely below-standard condition of crown road assets would also provide councils with significantly increased risk and liability issues.

It is noted that the Department of Lands has consistently stated that they have never been funded for their role as road authority and have no capacity to carry out the duties of a roads authority. However the funding and resourcing argument may be equally applied to councils

who are similarly under-funded for their existing road responsibilities and certainly have no financial or resource capacity to absorb additional responsibilities for all Crown Roads.

Indeed in 2004 the NSW Coalition, then in opposition, introduced the Roads Amendment (Transfer of Crown Roads) Bill which sought requirements for consultation and concurrence for the transfer of crown roads to Local Government. In his second reading speech on 20 Nov 2003, the member for Upper Hunter George Souris supported the clear position of Local Government on this issue:

“Local Government is very much the poor cousin as far as the *Roads Act* is concerned. Local Government is simply asking for that same level of consultation and concurrence. In many cases these roads are unproven tracks that require improvement to all-weather passages and ongoing maintenance. That is a significant burden to impose by dedication. The constant transfer of unfunded mandates is part of the overall problem Local Government faces in its dealings with the State Government. In this case it is the dedication of Crown roads to Local Government and the subsequent costs.

This bill confers on Local Government the same powers as are ascribed to agencies such as the Roads and Traffic Authority; that is, the right to consultation, negotiation and concurrence. That is only reasonable. If that does not occur, these dedications represent a significant cost-shifting exercise from the State Government to the lower tier of government. That is unfair on ratepayers and unfair on people who are part of that local community, whether they are residents or land-holders. One way or another they will suffer, either because the council is committed to this expenditure and therefore cannot fund other worthwhile community activities such as libraries and other things, or because as property owners the burden through the rating structure will impact heavily on them.

This is a plea on behalf of Local Government to the State Government for more consultation, to take the third tier of government more genuinely and to enter into meaningful and appropriate partnerships in sharing the responsibility of governments in this State. It is entirely appropriate to provide for consultation and concurrence by Local Government.” [NSW Parliament Hansard – November 20 2003]

In addition to the above mentioned fundamental high level objections, in the event that roads are transferred to councils, there are minimum principles /protocols which should be followed as part of any transfer. These should include:

- Transfers must not be transferred without concurrence or consultation with councils;
- There are requirements for guidelines/standards for transfers along the lines of that contained in the “Protocol for Transfer of assets and asset management functions between Roads and Maritime Services and other roads authorities” [<http://www.rms.nsw.gov.au/doingbusinesswithus/lgr/downloads/information/transfer-of-assets.html>]. This would include an agreed minimum standard for a road prior to transfer.
- Any transfer to include full title, i.e. full transfer of ownership not just a ‘management’ responsibility. This will avoid any future complications or need for ongoing role for the Department in the management of roads, and provides council with flexibility to address future issues as they arise.

LGNSW has reservations with the suggestion by the Crown Lands Management Review team that in the event of Crown roads being transferred, Local Government can maintain an asset

management policy of selecting roads it will not maintain. We believe this practice may not absolve councils from legal responsibility and is of potentially dubious legal standing if challenged.

If despite the evidence of the folly of pursuing these recommendations the NSW Government does proceed, it needs to be noted that councils wish to see LGNSW involved in the future working party on Crown Roads.

In the course this working party's work it will be important to deal with the following issues raised by councils:

- Given that the Crown Lands Division hasn't been able to get paper roads resolved in 5-10 years, it seems unlikely a similar approach will work for Crown Roads and alternatives approaches need to be canvassed;
- Actual Crown roads often do not align with those on the title;
- There needs to be a guarantee on the standards of roads transferred; and
- Road closure fees are an issue.

As an ancillary issue, member councils have also raised concerns regarding the existing application of Section 38 (2) (b) of the *Roads Act 1993* which provides that land within a closed public road reverts to the Crown in circumstances where no construction has ever taken place and therefore funds generated from the sale of that land is not received by council. LGNSW therefore considers that arising from the overall review of Crown lands management, the opportunity should be taken to address this section of legislation to ensure that funds generated from the sale of all public roads when such roads are closed are received by councils.

#### **Recommendation 22**

**Remove the option to dedicate Crown land in the future.**

#### **Government response on recommendation 22**

**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.**

#### **LGNSW comment on recommendation 22**

**LGNSW opposes recommendation 22 and supports the Government response on recommendation 22.**

It is unclear what the motive or benefits there are in removing this provision. LGNSW suggests retaining it until it is clear the provision is clearly not needed or otherwise presents a hindrance.

#### **Recommendation 23**

**Remove the land assessment requirements currently contained in the *Crown Lands Act 1989*.**

#### **Government response on recommendation 23**

**Supported in principle – Public consultation on this proposal will occur through the Crown Lands Legislation White Paper.**

**LGNSW comment on recommendation 23**  
**LGNSW supports recommendation 23.**

LGNSW supports a strategic approach to assessing land parcels is a valid approach, however the White Paper refers to the 'new planning framework' which is now uncertain. LGNSW recommends that this issue be considered as part of the pilot, which would allow the concept to be trialled and evaluated for its practical merits. It may be found that a new planning framework is suitable or it may be found that there are many 'unique' considerations or parcels and that it's not worth discontinuing the existing land assessments, but perhaps softening the requirements to provide flexibility?

## **RED TAPE**

### **Recommendation 24**

**Review activities requiring landowner consent from Crown Lands Division.**

#### **Government response on recommendation 24**

**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.**

#### **LGNSW comment on recommendation 24**

**LGNSW supports recommendation 24.**

### **Recommendation 25**

**Effective compliance arrangements for waterfront structures should be considered by the Marine Compliance Taskforce as part of the On-Water Compliance Review.**

#### **Government response on recommendation 25**

**Supported – NSW Trade & Investment is working with Transport for NSW and Roads & Maritime Services to prioritise activities.**

#### **LGNSW comment on recommendation 25**

**LGNSW supports recommendation 25.**

The role of Local Government is somewhat unclear in this process. LGNSW agrees that Roads and Maritime NSW is best placed to progress this recommendation.

However there is concern that a burden of identification/mapping, assessment, licensing and compliance actions relating to structures may fall upon councils without adequate technical or financial resources to perform them, that needs to be addressed by NSW Trade & Investment is working with Transport for NSW and Roads & Maritime Services.

### **Recommendation 26**

**Harmonise the management of submerged land in NSW.**

#### **Government response on recommendation 26**

**Supported – NSW Trade & Investment is working with Transport for NSW and Roads & Maritime Services to prioritise activities.**

#### **LGNSW comment on recommendation 26**

**LGNSW supports recommendation 26.**

LGNSW's initial investigations suggest that this recommendation largely does not involve Local Government, although we agree that from an efficiency perspective the harmonisation of management of submerged land within a single agency makes sense.



## **WESTERN LANDS**

In the absence of feedback from member councils and any input from bodies representing Western Land leaseholders, LGNSW will not offer comment on recommendations 27- 30 and the Government response to those recommendations.

## **MANAGEMENT OF CROWN RESERVES**

### **Recommendation 31**

**Revise the reserves framework to better facilitate multiple use of land compatible with the reserve purpose.**

### **Government response on recommendation 31**

**Supported in principle – Public consultation on this proposal will occur through the Crown Lands Legislation White Paper.**

### **LGNSW comment on recommendation 31**

**LGNSW supports recommendation 31.**

LGNSW supports the need to revise the reserves framework to better facilitate multiple use of land compatible with the reserve purpose. The variety of concerns that were raised by a councils and other stakeholders in the discussions leading up to and on the Crown Lands Amendment (Multiple Land Use) Bill 2013 and in response to this report, certainly suggests more work is required on how to legitimately facilitate multiple use of land compatible with the reserve purpose.

### **Recommendation 32**

**Move to a two-tier reserve management structure by removing reserve trusts.**

### **Government response on recommendation 32**

**Supported in principle – Public consultation on this proposal will occur through the Crown Lands Legislation White Paper.**

### **LGNSW comment on recommendation 32**

**LGNSW supports recommendation 32.**

LGNSW supports the need to remove reserve trusts and move to a two-tier reserve management structure. In response to this report, the majority of councils appear comfortable with this reform.

However, LGNSW notes that the requirement for reserve trusts was added to the Crown land legislation in 1989 as a way of providing some protection from liability for individuals administering Crown reserves. Any new management System for Crown reserves must contain the same protections. Also, it will need to be clarified what the impact of incorporating Crown reserve managers will have.

### **Recommendation 33**

**Allow councils to manage reserves under the Local Government legislation.**

### **Government response on recommendation 33**

**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.**

### **LGNSW comment on recommendation 33**

**LGNSW supports recommendation 33.**

LGNSW supports the move to allow councils to manage reserves under the Local Government legislation. In response to this report, the majority of councils appear comfortable with recommendation 33.

It does need to be noted that LGNSW has and will continue to argue that managing land under the *Local Government Act 1993* especially Chapter 6 Part 2 needs reform to reduce the technicalities and enhance council autonomy and flexibility. As LGNSW noted in its response to the Local Government Acts Taskforce Stage II Discussion Paper:

“Public Land Management is an emotive issue that generates significant community interest. It is vital that councils are provided with a framework to effectively, efficiently and transparently manage their depots, community buildings, parks and reserves and other areas of public land. The current provisions in Chapter 6 Part 2 relating to the classification and reclassification and management of public land have both strengths and weaknesses. The regime has positive aspects protecting both community assets and councils; however it has become mired in technicalities relating to Plans of Management that reduce councils’ autonomy and flexibility. It should be retained subject to a thorough revision. Taking this into account, LGNSW strongly supports the Taskforce proposal to strategically manage council owned public land assets through the IPR framework. This will focus attention on the management of assets, including the relevant costs associated with the management, protection, enhancement and replacement of the asset. LGNSW would generally support a review of the prescribed uses of public land and the removal of the classification of land as either community or operational as long as it does not reduce the level of protection of land currently identified as community.”

#### **Recommendation 34**

**Support community member participation in the management of Crown land that encourages good governance.**

#### **Government response on recommendation 34**

**Supported in principle – Public consultation on this proposal will occur through the Crown Lands Legislation White Paper.**

#### **LGNSW comment on recommendation 34**

**LGNSW supports recommendation 34.**

The majority of councils are supportive of recommendation 34.

## **NEXT STEPS**

### **Recommendation 35**

**Release a White Paper for consultation on the proposed legislative changes.**

### **Government response on recommendation 35**

**Supported – Immediate action Crown Lands Division to undertake.**

### **LGNSW comment on recommendation 35**

**LGNSW supports recommendation 35.**

LGNSW has responded separately to the White Paper.

### **Recommendation 36**

**Develop a plan for further exploration and implementation of internal business and reporting reforms.**

### **Government response on recommendation 36**

**Supported – Immediate action Crown Lands Division to undertake.**

### **LGNSW comment on recommendation 36**

**LGNSW supports recommendation 36.**

While this issue is not of direct concern to Local Government, LGNSW agrees it is appropriate for the Crown Lands Division to develop a plan exploring internal business and reporting reforms.

## Concluding comment

LGNSW strongly agrees that Crown land delivers many social, environmental and economic benefits to the people of NSW and supports the Government taking the present action to ensure these benefits continue well into the future.

LGNSW acknowledges that councils have had a significant and very long term role in managing Crown lands.

LGNSW recognises that the majority of councils welcome the overall thrust of examining how to transform Crown lands management, moving beyond colonial era thinking into the 21<sup>st</sup> century.

### LGNSW supports:

- Conducting a strategic assessment of NSW Government needs to determine which Crown land is required for core service delivery or has state or regional values subject to mutually agreed definitions of 'core service delivery' and 'state or regional values';
- Conducting a pilot program to test and refine the state and local land criteria and to develop an implementation plan for the transfer of local land;
- Local Land Services working with the relevant stakeholders to develop assessment criteria to review all TSRs and determine their future ownership and management;
- Developing new, consolidated Crown lands legislation and repealing eight or more existing Acts;
- Revising the reserves framework to better facilitate multiple use of land compatible with the reserve purpose;
- Moving to a two-tier reserve management structure by removing reserve trusts; and
- Allowing councils to manage reserves under the Local Government legislation.

### LGNSW does not support:

- Establishing Crown Lands Division as a Public Trading Enterprise; and
- Amending the *Roads Act 1993* so that the Minister is no longer a roads authority, with the responsibility for all roads used to provide access to the general public to rest with the other roads authorities under the *Roads Act 1993*.

LGNSW must have significant involvement in the following:

- 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 working party on Travelling Stock Routes (TSRs); and
- the future working party on Crown Roads.