Crown Lands Management
Review
Crown Lands
Management Review
Contents

Letter from the Chair iv
Executive summary vii
Chapter 1: Introduction 1
Chapter 2: State and local land 5
Chapter 3: Management of Crown reserves 13
Chapter 4: Review of travelling stock reserves 17
Chapter 5: Western Lands 20
Chapter 6: Red tape 26
Chapter 7: Legislation 31
Chapter 8: Crown land valuation and dividends 36
Chapter 9: Accounting issues 43
Chapter 10: Business model 46
Chapter 11: Next steps 52
Appendix A: Crown land tenures, reserves and waterways 54

List of Tables

Table 1: Recommendations from the Crown Lands Management Review ix
Table 2: Agency representation on Crown Lands Management Review Steering Committee 3
Table 3: Delegation of management on Crown reserves, by number of reserves and hectares 5
Table 4: Western Lands leases and capacity to convert to freehold 21
Table 5: Effect of recent redeterminations on rent payable for selected NSW Crown tenures 40
Table 6: Key aspects of the proposed PTE structure 48
Table 7: Options framework for the transformation of Crown Lands Division to a Public Trading Enterprise (PTE) 50

List of Figures

Figure 1: Current Crown estate by area (ha) (Total area 33.6 million ha) 2011–12 data 2
Figure 2: Current Crown estate by value set by accounting standards (Total value $10.989 billion) 2011–12 data 2
Figure 3: State and local land framework 6
Figure 4: NSW Crown land by lease, licence or enclosure permit 54
Figure 5: NSW Crown reserves 54
Figure 6: NSW Crown waterways 55
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

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

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

<table>
<thead>
<tr>
<th>MANAGEMENT TYPE</th>
<th>TRUST MANAGEMENT TYPE</th>
<th>RESERVES</th>
<th>HECTARES</th>
</tr>
</thead>
<tbody>
<tr>
<td>No trust (i.e. managed by Crown Lands Division)</td>
<td></td>
<td>17993</td>
<td>2,382,721.5</td>
</tr>
<tr>
<td>Reserve trust</td>
<td>Nil (Crown Lands Division)</td>
<td>123</td>
<td>2,796.5</td>
</tr>
<tr>
<td>Administrator</td>
<td>36</td>
<td>18,261.1</td>
<td></td>
</tr>
<tr>
<td>Corporation*</td>
<td>885</td>
<td>70,318.4</td>
<td></td>
</tr>
<tr>
<td>Council</td>
<td>5555</td>
<td>83,701.9</td>
<td></td>
</tr>
<tr>
<td>Community trust</td>
<td>671</td>
<td>21,788.2</td>
<td></td>
</tr>
<tr>
<td>Subtotal</td>
<td>7270</td>
<td>196,866.1</td>
<td></td>
</tr>
<tr>
<td>Livestock Health and Pest Authority (now Local Land Services)</td>
<td>6485</td>
<td>542,975.1</td>
<td></td>
</tr>
<tr>
<td>Devolved to councils</td>
<td>2135</td>
<td>14,359.2</td>
<td></td>
</tr>
<tr>
<td>Management unknown</td>
<td>800</td>
<td>52,987.5</td>
<td></td>
</tr>
</tbody>
</table>
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 Fund1, 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

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

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 well-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. 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
- the benefit of an alternative investment (such as a hospital or school)
- 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

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

Crown Lands Division is progressively redetermining all rentals using a more consistent approach based on standardised valuation methods, which generally results 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. 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. 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

<table>
<thead>
<tr>
<th>GOVERNANCE ARRANGEMENTS</th>
</tr>
</thead>
<tbody>
<tr>
<td>» The Crown land management entity (CLM) would be established as a Public Trading Enterprise with legislation setting out its high-level purpose and mandate. The portfolio Minister to have shareholder responsibilities for CLM as well as having individual statutory responsibilities and functions.</td>
</tr>
<tr>
<td>» 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.</td>
</tr>
<tr>
<td>» 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.</td>
</tr>
<tr>
<td>» The CLM would not have direct employees; public servants would undertake its day-to-day activities.</td>
</tr>
<tr>
<td>» 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.</td>
</tr>
<tr>
<td>» 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.</td>
</tr>
<tr>
<td>» 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.</td>
</tr>
<tr>
<td>» 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.</td>
</tr>
</tbody>
</table>

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)

<table>
<thead>
<tr>
<th>INDICATIVE TIME FRAME</th>
<th>MORE COMMERCIALLY-FOCUSED CLD</th>
<th>PUBLIC TRADING ENTERPRISE</th>
<th>MATURE PUBLIC TRADING ENTERPRISE</th>
</tr>
</thead>
<tbody>
<tr>
<td>CONDITIONS FOR IMPLEMENTATION OF OPTION</td>
<td>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.</td>
<td>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.</td>
<td>Crown Land Manager (CLM) meets performance KPIs on an ongoing basis. CLM addresses performance risks on an ongoing basis.</td>
</tr>
<tr>
<td>FINANCIAL ARRANGEMENTS</td>
<td>Current arrangements. Negotiate annual dividend with Treasury for when becomes PTE.</td>
<td>Introduce statutory Crown Land Manager (CLM) fund administered by CLM with Treasury oversight. CLM retains all revenues and provides a dividend to Treasury.</td>
<td>CLM manages statutory fund. CLM retains all revenues and provides a dividend (which may be different to previous dividend) to Treasury.</td>
</tr>
</tbody>
</table>
### Governance Arrangements

<table>
<thead>
<tr>
<th>MORE COMMERCIALLY-FOCUSED CLD</th>
<th>PUBLIC TRADING ENTERPRISE</th>
<th>MATURE PUBLIC TRADING ENTERPRISE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current arrangements.</td>
<td>Minister appoints CEO to manage the affairs of CLM.</td>
<td>Introduce Board to oversee performance and reporting. Appointed by government.</td>
</tr>
<tr>
<td>Potentially greater autonomy for CLD through Ministerial delegation.</td>
<td>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.</td>
<td>CLM to be provided with more autonomy. Government to provide regular written directions to CLM on how it undertakes activities.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>PERFORMANCE AND REPORTING ARRANGEMENTS</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>CLD reports to Treasury and the public on performance. Benchmark KPIs against comparators.</td>
<td>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.</td>
<td>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.</td>
</tr>
</tbody>
</table>

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**

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

**Reference List**


Independent Local Government Review Panel, April 2013, Future Directions for NSW Local Government: twenty essential steps, 64 pages.  


Premier and Cabinet, NSW Government, September 2011, NSW 2021: A Plan to Make NSW Number One Again, 61 pages.  
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
SECRETARIAT

Austin Whitehead  
Senior Manager  
Strategic Policy and Economics  
T: 02 9338 6889  
E: austin.whitehead@industry.nsw.gov.au

Lindsey Paget-Cooke  
Policy Manager  
NSW Department of Primary Industries  
T: 02 9338 6756  
E: lindsey.paget-cooke@industry.nsw.gov.au