NSW GOVERNMENT

Evaluation of the Crown Land Management Act 2016 Implementation

Findings and Recommendations

July 2021

Acknowledgement of Country

The Crown Land Commissioner acknowledges that Aboriginal people are the traditional custodians of this land and pays respect to their Elders – past, present and future.

We acknowledge Crown land has significant spiritual, social, cultural, environmental and economic importance to the Aboriginal people of NSW.

The Department of Planning, Industry and Environment has a key role in ensuring Aboriginal peoples' interests and rights in Crown land are recognised and realised through facilitating Aboriginal land rights, native title rights and Aboriginal peoples' interests and involvement in the management of Crown land.

'The Circle of Life', Artist: Nikita Herd-Brim

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Commissioner's Preface

I am pleased to provide my report on the implementation of the *Crown Land Management Act 2016* (the Act) that comes after almost a decade of review and reform initiatives. The department has been on a major journey of reform for the past three years, that is leading to significant improvement for our Crown estate.

I wish to acknowledge the vision and commitment of the Hon. Melinda Pavey, Minister for Water, Property and Housing and the Hon. Rob Stokes, Minister for Planning and Public Spaces, in driving these reforms and for the support they have provided in enabling my independent evaluation.

In February, I released a Discussion Paper to open a dialogue with the community on how the Crown estate is being managed following the commencement of the Act.

Community interest has been strong with over 85 submissions from stakeholders and feedback from 110 targeted meetings with external stakeholders and government staff. I would like to extend my gratitude to all who provided feedback. Your input has been vital in identifying areas in need of significant reform to deliver benefits for current and future generations.

The handing down of recommendations in this report coincides with the recent release of the State Strategic Plan for Crown land - *Crown land 2031*, which is the first strategic plan for the Crown estate in NSW. As we face never-ending changes to our economy, lifestyles and climate, I advocate that we continue to create practical options to overcome constraints and open new opportunities to realise the benefits of the estate through reforms to legislation.

I appreciate that some recommendations represent a shift in policy and may be considered challenging. Above all they are practical reforms that will demonstrate to the NSW Government how Crown land can be leveraged for the best public value now and into the future.

Professor Richard Bush, Crown Land Commissioner

Contents

Summary

In 2012, the NSW Government commenced a major review and reform of Crown land management. This was the first review in more than 25 years and necessary to align the governing arrangements for Crown land to the changing needs of the community.

The review culminated in the establishment of the *Crown Land Management Act 2016* (the Act). The primary aim was to create a simplified legislative framework to manage Crown land, achieved by streamlining existing requirements and reducing red tape, particularly for the management of Crown reserves and the administration of Western lands leases.

The Minister for Lands and Forestry in 2018, the Hon. Paul Toole, as part of the creation of the role of the Crown Land Commissioner, required an independent assessment of the reform. The Commissioner addresses this requirement through an independent evaluation of the Act and its implementation over the last three years since commencement in July 2018.

The objectives of this evaluation were: (1) to assess if the desired outcomes of the reform are being achieved; (2) to assess the success of the operationalisation of the Act by the department; and (3) to identify key inhibitors to the success of the reform from an external stakeholder perspective.

To inform the review, the Commissioner sought stakeholder feedback from submissions to the Discussion Paper and broader, targeted consultation, and hearing from over 150 stakeholders. Findings from the feedback and engagement have shaped the recommendations within this evaluation report.

Seven focus areas were identified as opportunities for improvement to the legislation, and its operationalisation, to enable the best use of the NSW Crown estate. Over 1,400 suggestions and comments were made during the consultation period and have been considered in developing the key findings and recommendations. A separate summary report will be provided to the department that captures all the findings.

This report calls out significant issues and provides solutions through specific recommendations. These recommendations were based on stakeholder feedback, departmental monitoring and metrics, departmental feedback and the Commissioner's independent observations and findings over the last two-and-a-half years.

The recommendations aim to remove constraints and create new opportunities. In short, these recommendations offer more streamlined and effective management of Crown land, helping reach the visions and aspirations for economic, social, cultural and environmental benefits for the people of NSW.

Introduction

Purpose

A key responsibility of the NSW Crown Land Commissioner is to undertake an independent evaluation of the implementation of the reform activities under the *Crown Land Management Act 2016* (the Act).

This evaluation identifies how effectively and efficiently the reform activities have achieved their intended objectives and benefits. This had a specific focus on how the Act has impacted external stakeholders, and aimed to determine:

- the extent to which the reform has achieved the desired outcomes for the community
- how successfully the Department of Planning, Industry and Environment – Crown Lands (the department), has operationalised the Act
- any other key factors affecting the success of the reform implementation.

Method

This evaluation has been carried out via a 'process and outcome evaluation'. The process used is outlined below (Figure 3). This was led by the Commissioner, with support from staff within the Office of Crown Land Commissioner.

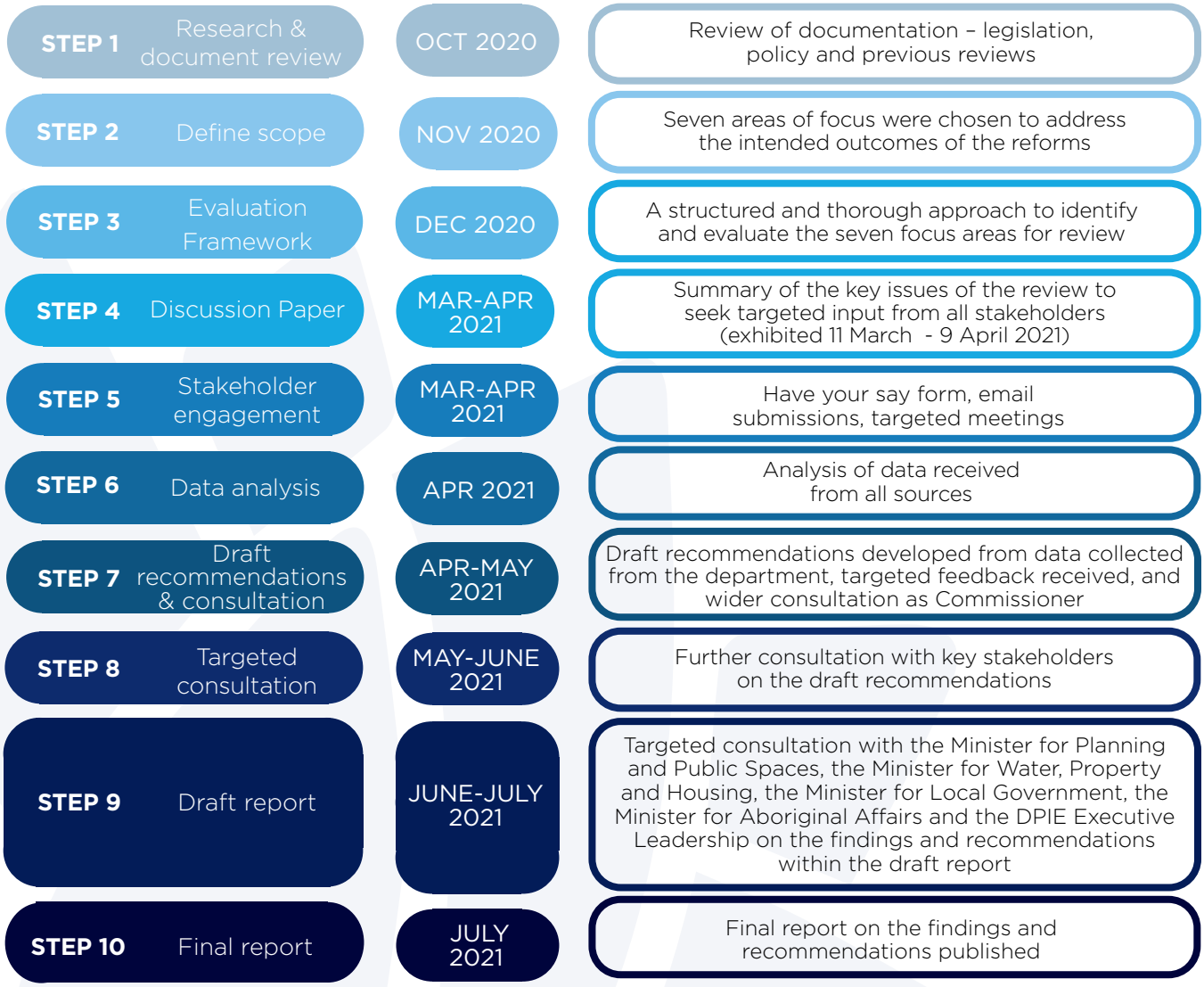


Figure 1: Process for the evaluation

Reviews into Crown land management

Over the past decade, there has been a consistent interest and focus from parliament and government into the management of Crown land. This emphasis has seen the undertaking of several reviews and multiple series of recommendations being put forward to government.

Three years into the implementation of the Act, it is important to analyse and understand the impacts of the reform to ensure the last 10 years of reviews have been meaningful and effective. During this evaluation, we have had meaningful feedback and discussions with Crown land stakeholders that have informed our recommendations. These recommendations further support and push forward the intent of the legislative reforms and ensure continual improvements to the legislation and the operations of the department to underpin and drive the best use of the NSW Crown estate.

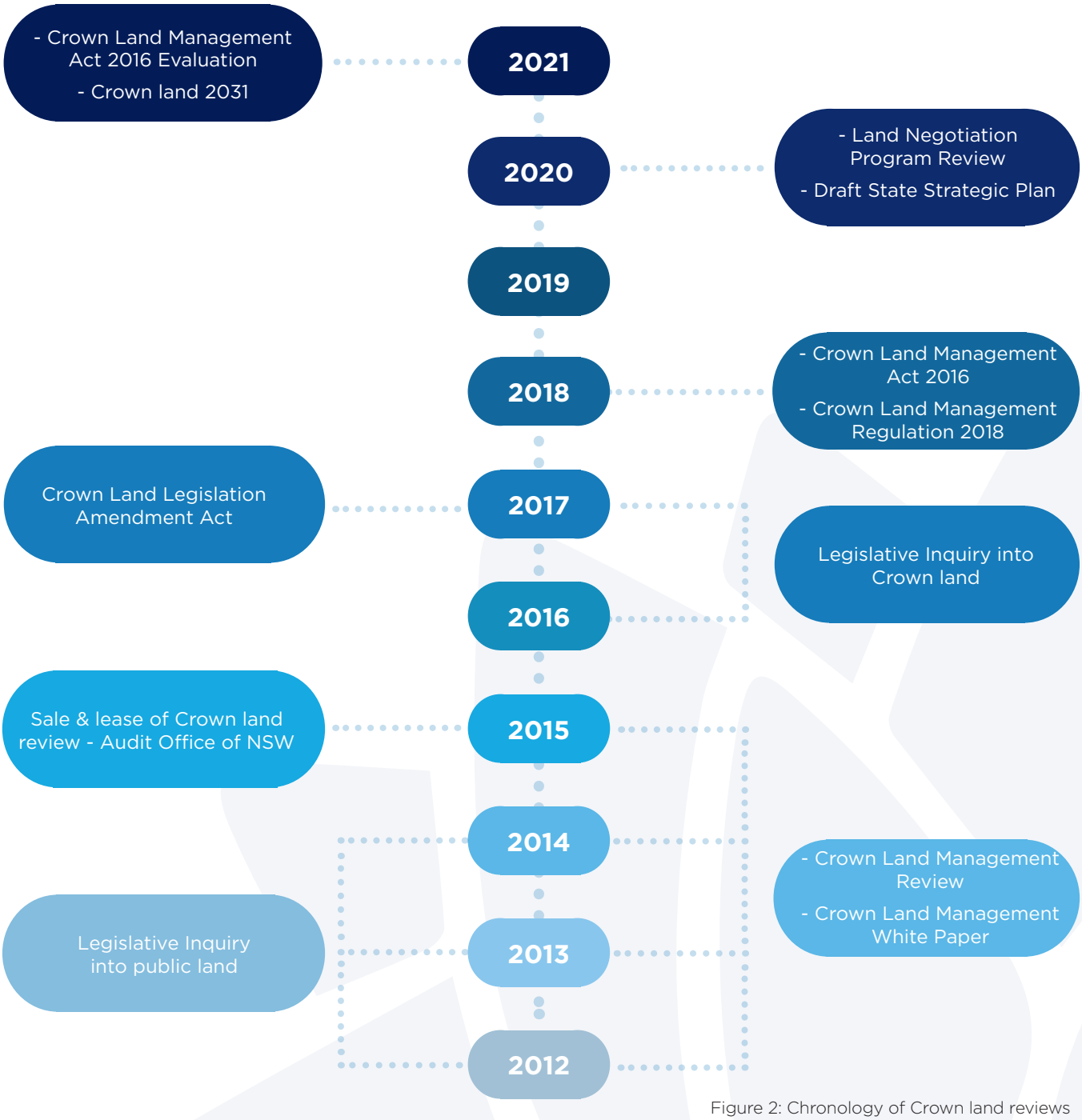


Figure 2: Chronology of Crown land reviews

Existing legislative and policy context

The *Crown Land Management Act 2016* came into effect in July 2018 - repealing the *Crown Lands Act 1989*, along with several other acts which were consolidated into the Act. The Act is supported by the *Crown Land Management Regulation 2018* (CLM Regulation), which provides detail on how certain areas of the Act are to be implemented. As well as the CLM Regulation, the Act required the creation of a Crown Land Community Engagement Strategy (CES) and a State Strategic Plan for Crown land.

The CES commenced on the same date the Act came into effect. It outlines when and how the community should be engaged, depending on the level of impact of a proposal on a community's use and enjoyment of Crown land.

Crown land 2031 is the recently announced State Strategic Plan for Crown land. The plan, finalised in June 2021, provides a 10 year vision for the estate, reflecting government and community aspirations to deliver social, environmental and economic benefits from Crown land.

It is important to recognise the complex interplay the Act has with other state and federal legislation, specifically:

- *Aboriginal Land Rights Act 1983*
- *Native Title Act 1993*
- *Local Government Act 1993*
- *Environmental Planning & Assessment Act 1979*
- *National Parks and Wildlife Act 1974*
- *Water Management Act 2000*
- *Natural Resources Access Regulator Act 2017*
- *Protection of the Environment Operations Act 1997*
- *Local Land Services Act 2013*
- *Roads Act 1993*
- *Commons Management Act 1989*

Due to the complex interplay of legislation, several of the above-mentioned acts are referenced throughout this report, including some recommended changes for consideration.

Key areas of focus for evaluation

To address the outcomes that the Crown land legislation reforms sought to achieve, seven areas of focus were chosen for this evaluation. Though stakeholders were welcome to make comments on any aspect of the reforms.

Innovation and the State Strategic Plan for Crown land

The State Strategic Plan for Crown land (*Crown land 2031*) sets ambitious priorities and outcomes for the management of Crown land to deliver public value into the future. It is critical the Act is fit for the future to enable innovative uses and achieve the strategic outcomes in *Crown land 2031*. Stakeholders were asked if the Act enables innovation and is fit for the future and were given the opportunity to provide innovative solutions for managing and activating Crown land.

Accessibility and usability

By consolidating several acts into one, the reforms sought to streamline legislation and processes to provide greater clarity, transparency and efficiency for managers of Crown land. We held discussions with stakeholders to understand if the Act was easier to understand, interpret and use. We also explored areas for reduced complexity and red tape.

Aboriginal connection

The objects of the Act specify the commitment to protecting the interests of Aboriginal people with regards to Crown land. This includes facilitating Aboriginal peoples' use of Crown land and emphasising the need to enable co-management of dedicated and reserved land.

We asked if the Act had enabled greater recognition and facilitation of Aboriginal peoples' rights and interests in Crown land, or facilitated the realisation of outcomes for native title holders. We also sought ideas on what could be improved to achieve better outcomes for Aboriginal people.

Western lands opportunities

One of the key reforms of the Act was to allow for the conversion of perpetual leases in the Western Division to freehold titles and to streamline approvals. We sought to determine if the new provisions are facilitating what they intended to achieve - flexible land management, increases to the productive use of agricultural land, sustainable economic growth and the protection of environmentally sensitive land.

Local council-managed Crown land

A key element of the reform was to ensure Crown land is managed at the most appropriate level of government. For locally-significant Crown land, this is typically the relevant local government area authority. The Act introduced a requirement for local councils to manage Crown land as if it is council-owned public land under the *Local Government Act 1993*. We sought to find out if the provisions in the Act enabled streamlined and better management of Crown land by local councils.

Enhanced community involvement

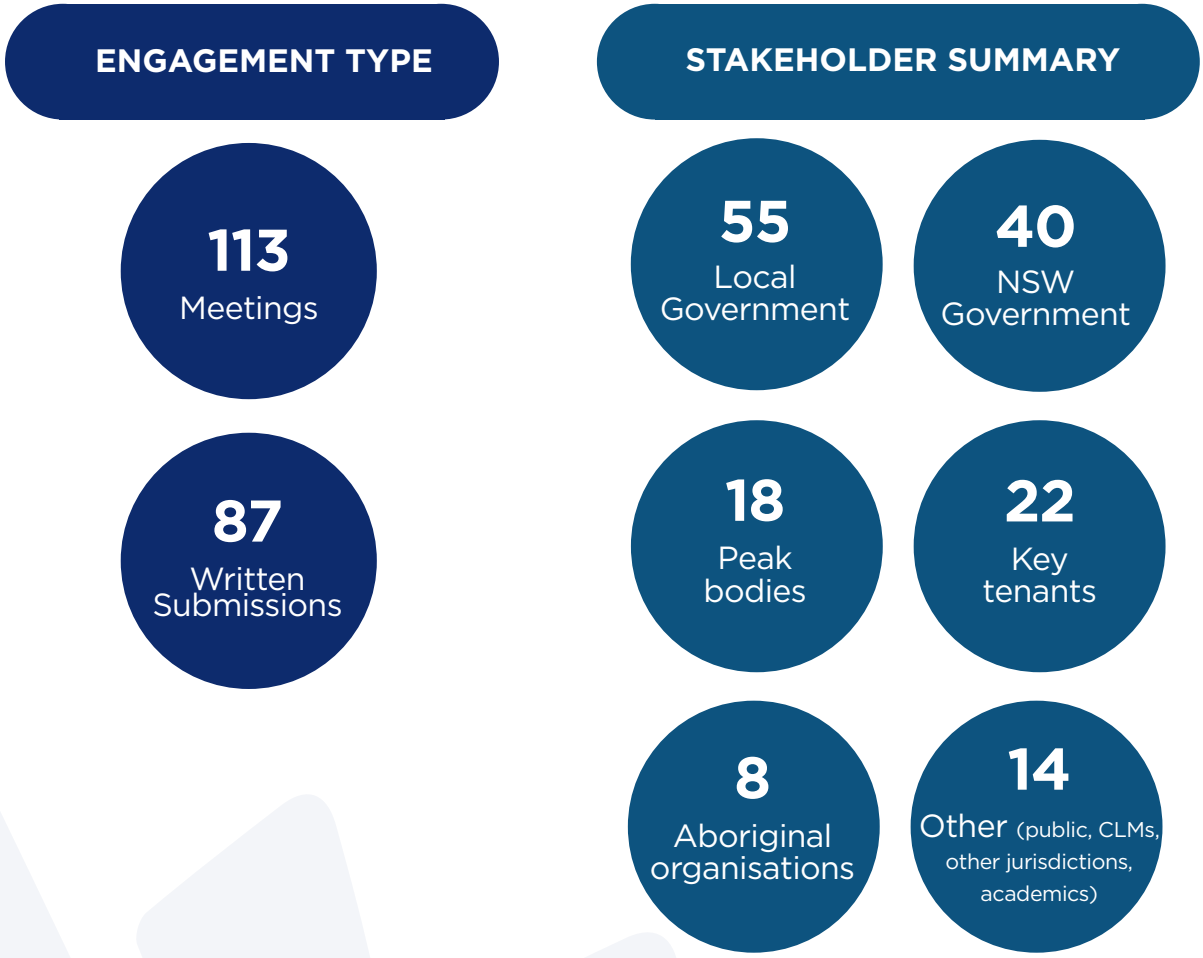
A new requirement under the Act is to enable more thorough and meaningful community involvement in the use and management of Crown land through the Community Engagement Strategy (CES). We investigated if the application of the CES had resulted in better outcomes for the community and the state, and if any improvements could be made.

Compliance and protection of land

The reforms intended to introduce modern and robust provisions for investigating and enforcing compliance with the Act. We sought to understand if these new provisions reflect current best practice and if they have been implemented to enable better compliance, protection and remediation of Crown land. We also identified compliance obligations on the department from additional pieces of legislation.

Sources of information

During the consultation stage of the evaluation we heard from over 150 stakeholders, including members of the public, community groups, Aboriginal organisations, local councils, private industry, peak bodies and agencies, and government departments.



Note: Some stakeholders attended meetings as well as providing written feedback

Figure 3: Summary of consultation.

Over 1,400 suggestions and comments were made during the consultation period and have been considered in developing the key findings and recommendations. A separate summary report will be provided to the department that captures all the findings.

Findings

The findings and recommendations within this report have been drawn from feedback from our stakeholders, monitoring data collected and provided by the department, feedback and comments from consultations with the department, and the Commissioner's observations and findings during engagement and consultation over the last two-and-a-half years. The core findings are arranged under seven key areas of focus.

Innovation & the State Strategic Plan for Crown land

Innovative uses and activation of Crown land requires safeguards that enable land managers and tenants to confidently operate and invest on Crown land.

Lease and licence templates, reduction of red tape, the introduction of the Commissioner and the State Strategic Plan (*Crown land 2031*) were areas where positive feedback was received. But delays in approval processes, lack of security of tenure and the inability to diversify uses on Crown land were highlighted as impediments to innovative uses of the estate.

Implementing *Crown land 2031*

A balanced approach to delivering social, cultural, environmental and economic objectives was identified as critical to ensuring the estate can deliver the outcomes of *Crown land 2031*. This is supported by the department's commitment to a Crown land public value framework by 2023.

The Principles of Crown land management in the Act do not align with the objects of the Act. As the principles stand, they do not explicitly require a triple bottom line to be considered in decision making. The objects of the Act could also go further to better recognise and drive outcomes for Aboriginal rights and interests.

Innovative and blue-sky ideas for the Crown land estate were put forward during consultation. These ideas related to enabling activation of Crown land, allowing and promoting multiple uses and securing tenure and investment.

Security of tenure

Limitations within departmental policy and other legislation inhibit longer leases for tenants. Prior to the adoption of Plans of Management (PoM) councils are unable to provide long-term tenure. The requirements in the *Local Government Act 1993* (LG Act) also discourage leases of more than five years, as they are more difficult to process efficiently and approve. This has resulted in a number of Crown land tenants operating on short-term - or sometimes expired - leases and licences. Without long-term leases providing security of tenure, tenants are unable to secure investment funding to upgrade assets, implement leading-edge uses of Crown land, grow their businesses or plan for the future.

Inconsistencies exist between local councils that manage similar tenures. In some cases, tenants have stated a preference to deal directly with the department. Others raised concerns regarding delays and inconsistent information coming out of different regional department offices.

Multiple uses

Impediments exist that inhibit multiple and diverse uses on Crown land. Some stakeholders actively source non-Crown land sites when seeking land for development or new and innovative land uses. The key impediments relate to:

- restrictive leases requiring permissible uses and subleases to be written into lease agreements, which are difficult to change
- a lack of external transparency on permissible uses under each reserve purpose, or how purposes can be amended
- a poor understanding of native title requirements and no process in place to resolve native title in a timely manner
- the backlog of Aboriginal land claims
- an inability to easily devolve land to facilitate uses that support local communities.

There is also confusion and misalignment surrounding the several layers of land use categories required on Crown land. In some cases uses on a Crown reserve do not accurately align with the LEP zoning or reserve purpose.

Increased ability to use a parcel of Crown land for multiple activities or new and innovative uses, with appropriate safeguards, will help businesses diversify and grow. Effort could be applied to ensure revenue generated is captured for the purpose of reinvestment back into the Crown estate for asset management; and to enable the outcomes of *Crown land 2031* to be achieved.

Accessibility and usability

There is a need for greater transparency of departmental processes. Complexity and timeframes for approvals are also key concerns for many stakeholders. Proposals are generally submitted into a system that provides little certainty on timeframes, despite the efforts of departmental staff. This can deter private sector investment and obstruct projects and proposals from proceeding.

The legislation can be overly prescriptive and a number of clauses in the Act may be best placed within the *Crown Land Management Regulation 2018* (CLM Regulation). Opportunities exist to improve the framework, where the Act outlines principles and the Regulations and Rules provide guidance and parameters to implement those principles.

Approvals

There are extensive delays in approvals on Crown land for leases, licenses, Plans of Management (PoM), landowner's consents (LOCs) and road disposals. Processes are often complex, cumbersome and duplicative. The department is currently not sufficiently resourced to deal appropriately with backlogs of applications.

Lease and licenses

Average timeframes for leases and licences have improved since the commencement of the Act, however, significant delays are still being experienced. A lack of flexibility exists in the current leasing process, with a one size fits all approach being applied regardless of the lease term, whether a lease is up for renewal, or whether a new lease is being negotiated. No defined option currently exists for issuing a head lease for peak bodies that wish to consolidate leasing of multiple sites.

Plans of Management (PoM)

Many councils have experienced difficulties completing their PoM due to a lack of resourcing, in-house expertise, departmental approval timeframes and time constraints. On 3 June 2021, the department submitted regulatory amendments, which were approved, to exempt councils from having to complete their PoM by 30 June 2021. This also amended the process to ensure PoM would only be required where a change in classification or purpose was being proposed.

Landowner's consent (LOC)

The Act introduced deemed LOC for low risk activities, though LOC is still seen by stakeholders as a presumptive and cumbersome check of factors that should be able to be captured by the planning process under the *Environmental Planning and Assessment Act 1979*. A significant backlog of undetermined applications is on hand, with an average approval timeframe of 530 calendar days. Reasons for delays include a lack of clarity regarding compliance with the *Native Title Act 1993*, undetermined Aboriginal land claims, presumptive title, incomplete PoM and long wait times for approvals from other government agencies.

Additional specificity within the findings noted:

- inconsistent advice regarding when LOC is required and the detail required
- confusion over the order of approvals and duplications when other agencies' involvement is required for LOC
- LOC requires red tape when the major intent of the new Act was to reduce this.

Crown road disposals

Findings regarding the road disposal program identified clearly that the process of closing roads is complex and time consuming. More specifically feedback noted:

- the inconsistent provision of advice on the mechanism to close a road
- councils paying considerable costs to compulsorily acquire roads they are already maintaining
- a need for greater clarity on minor road re-alignment processes and road status/ownership
- the Act only preserves existing rights to a road of access for leaseholders and purchasers and does not protect access in new leases and purchases
- concerns of roads being sold off, preventing access to sacred indigenous sites, and inhibiting public access to public assets and waterways.

Training and Crown land manager resources

Training materials provided by the department to Crown land managers have been received positively. The Crown Land Manager Governance Development Program, delivered in collaboration with the Australian Institute of Company Directors, was viewed as very beneficial. Requests for ongoing resources and training, however, will need to be addressed to continue to build an understanding of the Act and its provisions.

Transparency, access to information and record keeping

Stakeholders do not have access to the information required to build a greater understanding of the estate. And outdated record keeping systems limit the ability of the department to be efficient and make data driven, informed decisions. An insufficient asset management system and no single, comprehensive database of all information is resulting in a continued reliance on manual processes and paper-based records.

To help address this, the department is currently implementing an IT system improvement program for release in November 2021. This IT solution, called CrownTracker will provide a single map-based workflow system that will improve the accuracy and efficiency of land administration tasks.

The proposed benefits of CrownTracker include:

- all approvals facilitated within a single interface
- the status of land parcels being re-calculated nightly and queries of land and all related accounts and workflows becoming instantaneous
- invoices and payments will be facilitated through the standard DPIE financial system
- Service level agreement reporting to ensure efficient business practice and accurate customer feedback.

Customer service

Many individual department staff make all attempts to provide appropriate levels of customer service. But difficulties are still experienced around the turnover of department staff, slow response times and inconsistencies or inaccuracies with provision of information.

Local councils often feel burdened by managing Crown land with little information or support to do so. Councils also feel that decisions about council-managed Crown land are made by the department with little explanation and reasoning.

A lack of investment and capacity building for close to two decades has led to impacts for customers, policy, process, systems and people. *Crown land 2031's* action plan commits to improving this in its initial focus areas, which aims to create a contemporary customer service framework for the department. The department has committed to recruiting a specialist business improvement team, which will have six objectives:

- root cause analysis to identify and implement business process, systems and policy improvements (including operational policy for legislative and regulation changes)
- reduce backlogs across customer servicing areas and implement process changes to streamline assessment
- risk based approach to applications
- align customer services and operational processing to deliver against the priorities in *Crown land 2031*
- improve customer experience and reduce statutory timeframes
- partner with Service NSW and Revenue NSW where appropriate to provide improved customer services and business processes.

Aboriginal connection

The Act and the department need to ensure the rights and interests of Aboriginal people in Crown land are facilitated and acknowledged through:

- the realisation of land rights through Aboriginal land claims (ALCs)
- the timely facilitation of native title outcomes through the use and activation of Crown land
- meaningful opportunities for Aboriginal co-management of dedicated or reserved Crown land.

The achievement of these outcomes is impeded, in some cases, by issues that sit outside the Act and the control of the department. The scale of unresolved land claims and related uncertainty for the Aboriginal community and the Crown land estate present as major challenges to Aboriginal interests in Crown land - as well as the interests of other stakeholders - and will require focus and commitment to be resolved.

Native title determinations

Native title is not determined by the department, yet the current and potential future land rights of Aboriginal people must be taken into consideration when managing Crown land. Unresolved native title claims affect a large portion of the Crown estate. This is also experienced on Crown land where no claim has been made, or uncertainty around extinguishment of native title exists.

Native title is often the key consideration for new initiatives on Crown land. Unresolved native title can hinder the future use of the Crown estate, as there is little capacity to expand or revise a Crown reserve purpose until native title has been resolved. As a result, the risk and uncertainty is deterring activation of Crown land where an undetermined native title claim exists. Implementing ways to expedite claims is necessary if greater recognition of pre-existing Aboriginal rights and interests and more effective use of the Crown estate for the whole community is to be achieved. The department can also support the negotiation of Indigenous land use agreements (ILUAs) to provide greater certainty for potential investors.

It was also suggested that where a determination has been made that recognises native title, more support for local councils to work with native title groups to settle ILUAs under the *Native Title Act 1993* could be beneficial.

Interaction of land rights legislation

The Act is the first Crown land legislation to recognise the operation of the NSW *Aboriginal Land Rights Act 1983* and the federal *Native Title Act 1993*. But the interactions between the three acts are unclear and could be better communicated.

To address this issue, the Act requires a greater recognition of Aboriginal rights and interests. Multiple jurisdictions in Australia have revised their Crown land legislation to promote traditional owner self-determination and recognise Aboriginal Australian's knowledge of, and rights and interests in, public land and its management.

The commitment in the NSW *Crown land 2031* strategy to accelerate the realisation of Aboriginal land rights and facilitation of native title outcomes, in partnership with Aboriginal people is a positive shift.

Aboriginal land claims

There is an ongoing lack of progress in delivering land outcomes to Aboriginal people under the *Aboriginal Land Rights Act 1983*. There are over 37,000 Aboriginal land claims (ALCs) still under investigation in NSW, causing uncertainty for Crown land managers and tenants across an extensive part of the estate. The uncertainty this creates is a major factor contributing to investor hesitancy on Crown land subject to unresolved claims. Current or prospective tenure holders consider the department, as landlord, to be responsible for resolving ALCs and any related costs.

Some ALCs have been lodged over land that is ineligible under the current legislative framework. This creates inefficiencies that impact Aboriginal Land Councils, local councils and the state, with effort directed towards processes that will not materially assist the recognition of rights for Aboriginal people. Local Aboriginal Land Councils (LALCs) are under-resourced and underinformed when making ALCs. To manage and prioritise ALCs, LALCs require better spatial information on the Crown estate, along with more support for capability and resourcing.

In 2016 the department commenced the Land Negotiation Program (LNP), to expedite the resolution of land claims. It is currently being reshaped following a separate independent review. To ensure LALCs can provide informed consent to any negotiated ALAs, it is critical that they have access to independent advice.

The Registrar of the *Aboriginal Land Rights Act 1983* and their office is tasked with receiving and registering ALCs made by the NSW Aboriginal Land Council (NSWALC) and any of the 120 LALCs in NSW, as well as maintaining the formal register. The current system of submitting and processing ALCs used by the Office of the Registrar of the *Aboriginal Land Rights Act 1983* (ORALRA) is inefficient, due to both outdated systems and insufficient resourcing. The Registrar is not currently able to purchase title searches, which is an integral part of their work.

Western lands

The overwhelming majority of Crown land sits within the Western Division and greatly contributes to the state's economy and agricultural activity. The Act allowed for the conversion of certain perpetual leases in the Western Division to freehold titles and encouraged leaseholders to diversify their activities through streamlined approvals.

Conversions to freehold

Over 150 properties have been approved for freehold conversion since commencement of the Act. The market land value for these transactions totalled over $185 million. A majority of these conversions were transacted for 3 per cent of market value.

The Office of the Crown Land Commissioner was not able to determine through this review what factors determined the sale price. It is important to understand whether the community and state are receiving appropriate compensation from the program.

Additionally:

- no data exists to determine whether converted land has seen an increase in productivity or a diversification of land-use
- no additional safeguards on converted land to ensure environmentally sustainable practices are in place
- historical, existing and future access to or need for land for public uses may not be fully considered in the eligibility criteria for freehold conversions.

Further work may be needed to support Aboriginal rights, cultures and heritage during the freehold conversion process. Any function of the Act that creates a limitation of connection to land in the Western Division deserves further consideration. Concern over the loss of access rights to land in the Western Division also exists.

Local lands

Councils made up the highest proportion of respondents to the Discussion Paper. Significant issues included cost shifting from the state to councils, time and resourcing constraints to complete PoM and difficulties on how to manage native title. Tenure holders also raised concerns with the inconsistent approaches to management from different councils.

Plans of Management (PoM)

Many councils were supportive of adopting PoM, required under the Act, acknowledging that these provide certainty in the future uses of land. The requirement to prepare PoM for all community land by June 2021, however, created a significant administrative and cost burden. Key concerns from councils included:

- limited timeframes, a lack of resourcing and in-house expertise to prepare PoM
- frustration over the long and drawn out process involved in getting each step of the process approved by the department. Delays in the initial approvals for classifications and categorisations have prevented councils from getting on with the rest of the process
- on small lots where there is limited activity, a PoM adds no value.

Government recently took steps to alleviate concerns with the recent *Crown Land Management Amendment (Plan of Management) Regulation 2021,* which stipulates that councils do not have a deadline for the completion of their PoM. Councils can now complete PoM as soon as practicable without holding public hearings.

Native title

The Act has created a greater awareness within councils of the importance of native title interests - but councils are still having difficulties in understanding how to meet new native title requirements. Many councils are frustrated with the ongoing delays to the issuing of native title certificates. This has resulted in projects and proposals on Crown land not being able to commence. Some curiosity exists from local councils about whether ILUAs under the *Native Title Act 1993* could be used more effectively in the future.

Management by councils

Key peak bodies representing tenure holders on Crown land are concerned with the inconsistent management of the Crown land tenures between local councils. Difficulties are being faced with the issue and management of tenures, a lack of maintenance and upgrades for Crown land assets, and poor or infrequent communication with tenure holders regarding decisions about relevant land and assets.

Community involvement

The role of the Community Engagement Strategy (CES) in decision making and how it relates to planning approvals was queried. More clarity is needed to explain how the CES is used for decision-making. Concern exists that, as it is currently structured, coordinated and high frequency community feedback under the provisions of the CES has the capacity to distort the decision process by overriding other considerations and objective analyses. It is important that the CES is structured to balance the risks of proposals during engagement in conjunction with the opportunities the proposal can create.

Some applications of the CES would be expected to be followed by a development application or planning proposal, which would also require engagement under the *Environmental Planning and Assessment Act 1979*. An amended CES that defines clearly the focus on the use and enjoyment of Crown land, could provide the appropriate differentiation from the planning assessment outcomes.

Protection of land

The Act's reforms sought to ensure robust provisions were provided to investigate potential offences on Crown land. This should enable enhanced compliance to provide better protection of the estate from damage and inappropriate use. Though there is insufficient resourcing to carry out effective compliance and enforcement activities against Crown land offences.

There is a need for greater compliance capacity within the department. More focus is also required on improved environmental outcomes for the estate. Specific issues include:

- a backlog of unaddressed compliance issues and unlawful matters on Crown land, including unauthorised structures and activities, biosecurity issues, illegal hunting, poor property maintenance, illegal dumping and unauthorised camping
- local councils are often required to enforce compliance on state-managed Crown land
- no provisions for enforcement of breach of tenure conditions, other than forfeiture of tenure.

The department has experienced an increase in compliance cases since the Act came into effect. This may be attributed to new programs, improved systems and training in reporting compliance breaches. Information on sites monitored or inspected as part of compliance programs since the commencement of the Act was not available from the department.

Environmental management

There exists a need for better environmental protection and safeguards for Crown land. This includes more attention placed on the Travelling Stock Reserve network, biosecurity management, a greater understanding of Crown land's existing high conservation value land and land subject to sea level rise, coastal processes and river erosion. Strengthening the environmental protection clauses in the Act and more pro-activeness by the department is needed to ensure the Act's objectives are met.

The need to identify Crown land with sufficient conservation attributes that warrant priority transfer to the National Park estate was also raised. This suggestion, however, touches on other concerns regarding retaining public access and usability of Crown land and waters.

There is a need for easier and faster pathways that facilitate and enable environmental restoration works on Crown land and waters through more streamlined approval processes. Environmental protection, restoration, rehydration or enhancement work can require the approval (and/or concurrence) of multiple authorities and departments, including the Environment Protection Authority (EPA), Natural Resource Access Regulator (NRAR), the Department of Primary Industries - Fisheries, Environment Energy & Science and Crown Lands. Some case studies indicate the cost of these approvals can be 30 times the cost of works.

There is no detailed understanding on the preparedness of the department to adapt to climate change impacts such as vegetation loss, biodiversity impacts, coastal hazards, sea level rise at the land/water interface and other extreme weather events. Climate change resilience planning is not fully incorporated into legislation and policies. Additionally, the Act could facilitate innovative adaptation strategies and incentivise lessees to incorporate environmentally-sound and/or climate resilient features into their assets and operations.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Recommendations

Objects and principles of the Act

The issue: The objects and principles of the Act are not currently aligned, nor do they facilitate realisation of the priorities and outcomes in *Crown land 2031.* In particular, feedback in this area was raised by environmental stakeholders as well as stakeholders representing Aboriginal groups.

The existing objects and principles of the Act are:

Objects	Principles
(a) to provide for the ownership, use and management of the Crown land of New South Wales, and (b) to provide clarity concerning the law applicable to Crown land, and (c) to require environmental, social, cultural heritage and economic considerations to be taken into account in decision-making about Crown land, and (d) to provide for the consistent, efficient, fair and transparent management of Crown land for the benefit of the people of New South Wales, and (e) to facilitate the use of Crown land by the Aboriginal people of New South Wales because of the spiritual, social, cultural and economic importance of land to Aboriginal people and, where appropriate, to enable the co-management of dedicated or reserved Crown land, and (f) to provide for the management of Crown land having regard to the principles of Crown land management.	(a) that environmental protection principles be observed in relation to the management and administration of Crown land, and (b) that the natural resources of Crown land (including water, soil, flora, fauna and scenic quality) be conserved wherever possible, and (c) that public use and enjoyment of appropriate Crown land be encouraged, and (d) that, where appropriate, multiple use of Crown land be encouraged, and (e) that, where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained in perpetuity, and (f) that Crown land be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the State consistent with the above principles.

Below are strategic recommendations to be further investigated by the department.

Recommendations

1. Consider amending the objects and principles in the Act to:
   a. provide better consistency between the objects and principles
   b. include Aboriginal rights and interests in objects – aligned with the *Aboriginal Land Rights Act 1983* (ALR Act)
   c. enable delivery of *Crown land 2031's* priorities – add additional section to Division 12.4 of the Act outlining the implementation requirements of *Crown land 2031* to deliver tangible outcomes.

Transfer of Crown land to councils

The issue: Councils are often required to compulsorily acquire Crown roads (even though this is not required under the Act) through a complex and timely process. In many cases, councils have been maintaining and managing the same land for public purposes for many years. Councils also highlighted difficulties in the process of having Crown land devolved in them to deliver essential public purpose projects that are needed for their communities.

Below are strategic recommendations to be further investigated by the department.

Recommendations

2. Formation of an inter-agency working group between the department and local government to investigate and strategise the transfer of Crown land (including Crown roads) to council for essential public purposes. Safeguards should be included to ensure this does not result in situations where a council can complete this process only to seek substantial financial benefit through subsequent sales.
3. Develop a framework to enable partnership agreements between state and local authorities to deliver essential public purpose projects, e.g. education, health, housing in rural and regional NSW.

Community Engagement Strategy (CES)

The issue: Feedback highlighted concerns regarding the CES's role in decision making and its relevance when a planning approval process is required. Ideally, a CES should be focused on considering the impacts of a proposal on the use and enjoyment of Crown land, rather than being used as a de-facto planning assessment tool.

Below are strategic recommendations to be further investigated by the department.

Recommendations

4. Undertake further work to better clarify aspects of the CES and the role of community engagement in decision making:
    a. refine current operational practices that ensure information from written submissions, public meetings and engagement with other government agencies is collected and summarised in a consistent way that ensures it contributes to decision making
    b. where a planning or other formal process applies, the public notification and consultation requirements of that process should not be duplicated by the CES. Amending the CES to that effect would provide better clarity in the role of the strategy.

Transparency and accountability

The issue: Management of records and data appears to be inconsistent and not aligned with correct and contemporary government practices. There is a need to improve internal administration, provide greater transparency over the Crown estate and develop a more contemporary regulatory framework for Crown land.

Extensive feedback from all stakeholder groups highlighted impediments to understanding and making decisions on Crown land without access to information on the estate. Feedback also noted that the existing Act and CLM Regulation are overly prescriptive. It was suggested a principle-based approach to Crown land management would provide for greater flexibility and ability to derive public value from the estate, in line with *Crown land 2031.*

The role and functions of the Crown Land Commissioner need the appropriate legislative structure to instill community confidence in independence and effectiveness. Feedback indicated strong support and recognition of the value of having an independent Commissioner, and their office, to inquire and advocate on behalf of stakeholders and the community. Government stakeholders, in particular, noted the benefits of independence when dealing with controversial and sensitive land management issues. Feedback questioned the rigorous independence of the role within the existing governance arrangements.

Below are strategic recommendations to be further investigated by the department.

Recommendations

5. Provide public access to spatial layers that hold information about the Crown estate.
6. Consider a review of the Act and CLM Regulation that provides a more contemporary legislative framework, where the Act outlines principles and the Regulation provides guidance and parameters to implement those principles. This suggestion is made with two main drivers in mind:
    a. with an increased focus on land utilisation and diversification of use to deliver public value, Crown Lands needs a piece of legislation that facilitates that drive and ambition
    b. future-proofing the framework by removing the overly prescriptive elements of the Act, thereby providing greater flexibility as required.
7. Amend the Act to provide clarification of the role and independent functions of the NSW Crown Land Commissioner:
    a. create and insert a Division in the Act that outlines functions of the Commissioner that are comparable to the Information Commissioner. See *Government Information (Information Commissioner) Act 2009* Part 3 Functions of Commissioner.
    b. consider that the Commissioner be appointed for a minimum term of five years
    c. consider establishment of the Office of the Crown Land Commissioner as a separate agency under the *Government Sector Employment Act 2013* (NSW) and making the Commissioner the head of that agency, creation of stand-alone functions and powers rather than relying on delegation from the Minister.

Security of tenure

The issue: Council Crown Land Managers (council CLMs) are in most cases prevented from issuing long term leases without a Plan of Management in place. As a result, councils often opt for five-year lease terms which mitigate the need for the tender and advertising processes required for long term leases under the *Local Government Act 1993*.

Feedback received from tenants highlighted that this is inhibiting substantial investment on Crown land as the lease lengths restrict amortising of investment. Tenants and peak industry bodies raised concerns that there are also inconsistent dealings and leasing arrangements across different Category 2 and council CLMs. A more refined strategic approach to leasing and licensing is required to provide better and more consistent governance that appropriately aligns with both state and local needs.

Suggestions were made to appoint peak industry bodies as Category 1 CLMs to provide more consistent leasing arrangements and to enable greater strategic planning across their multiple sites. Racing NSW was suggested as an appropriate industry group to pilot this new approach, as they represent a highly integrated and regulated industry with a strong corporate governance framework and the ability to better align the goals and aspirations of the industry.

Another suggestion raised was to enable peak bodies to obtain head leases on behalf of their local branches across NSW. This new approach with peak bodies such as Surf Live Saving NSW and Marine Rescue NSW will provide more consistent leasing arrangements and better customer service to these emergency service organisations that operate across multiple sites throughout NSW.

Overleaf are detailed and strategic recommendations suggested to be implemented and investigated by the department.

Recommendations

8. Enable a more streamlined pathway where leases on Crown land from either the department or a local council are dealt with consistently. This will enable councils to issue longer leases by permitting 25+15 year term leases or longer terms up to 99 years, commensurate with the level of investment.
9. Amend the CLM Regulation to:
   a. include a new sub-clause to cl.75 to
      I. permit council CLMs to grant leases of 40 years (25+15)
      II. use s.3.20 of the Act to disapply relevant areas of the LG Act which inhibit councils from granting the 25 (+15 year) lease
      III. insert provisions to allow sub-leases for ancillary and compatible uses
   b. remove the requirement for council CLMs to go to tender and exhibit all leases over five years
   c. only require council CLMs to exhibit leases for new proposals (not lease renewals)
   d. remove requirement for leases to be granted by the Minister if an objection is held.
10. Work collaboratively with key stakeholders to determine how security of tenure can be improved. Specifically, it is suggested that the department:
   a. expand the use of Category 1 land managers, commencing with the peak body, Racing NSW
   b. enters into a head lease arrangement (including the authority to sub-lease) across all, or groupings of facilities, commencing with Surf Life Saving NSW and Marine Rescue NSW
   c. undertakes analysis regarding the measurable success of the two-tier (Category 1 and Category 2) Crown Land Manager system. Specifically exploring whether further flexibility or options to establish a third category of management responsibility is required.
11. Develop a modernised, consistent approach to leasing through a review of Crown land policy and guidelines and the creation of an interdepartmental leasing group.

Enable multiple uses

The issue: The legislation and procedures often do not enable and encourage multiple uses on a site. This is counterproductive to the recognised need to enable multiple, diverse and innovative uses on Crown land in order to improve the viability and longevity of primary uses and provide better services for the community. The need for more strategic and better alignment with state and local planning legislation is required.

Extensive feedback was received from tenants, Crown Land Managers and councils regarding the difficulties experienced in enabling multiple uses through changing or adding a use and inflexible lease terms.

Stakeholders highlighted a misalignment, in some cases, between the Local Environment Plan land use zonings under the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the Crown land reserve purposes required under the *Crown Land Management Act 2016* (the Act). There are also currently 541 different reserve purposes being used on Crown land.

Below is a detailed recommendation regarding subleasing, as well as strategic recommendations regarding the interplay of permissible uses in the EP&A Act and the Act, which require further investigation by the department.

Recommendations

12. Consider using the CLM Regulation to amend cl.47C of the LG Act so that in addition to the purposes for which a sublease can be entered into under cl.47C(1), council managed Crown land may be sublet for a purpose that is an ancillary or compatible use to the purpose for which the land was to be used under the lease.
13. Simplify and clarify the process for changing uses, subleasing and allow flexibility in lease terms.
14. Improve the interaction of the Local Environmental Plan (LEP) and reserve purpose by:
    a. the department reviewing the reserve purposes with a view to consolidating the purposes from 541 back down to a manageable number, aligning with the parent land use classifications within the Standard LEP Instrument. This information should be made publicly available
    b. amending the requirement for a parcel of council managed Crown land to be used in accordance with its reserve purpose – include the use of a parcel of Crown land for any permissible use under the LEP, broadening the flexibility within LEPs to allow a range of uses on Crown land.

Improve approval processes

The issue: There are delays in receiving landowner's consent for development applications (DA) on or adjoining Crown land. This is a recurrent theme that tenants and Crown Land Managers highlighted as a key impediment that is obstructing projects and proposals from proceeding.

The requirement for landowner's consent is also viewed as duplication of the processes under the EP&A Act.

Furthermore, the EP&A Act enables a fast tracked approval process for Crown development however only for a limited a group of prescribed persons that are stipulated in the *Environmental Planning & Assessment Regulation* (EP&A Regulation), which does not include the majority of Crown land tenants and Crown Land Managers.

A revised approach to approval processes for Crown land is required, with clear alignment and consideration given to planning governance.

Below are detailed recommendations which are suggested to be implemented by the department.

Recommendations

15. Consider enabling all Category 1 Crown Land Managers and lessees of Crown land to be able to submit Crown development applications.

16. Consider amending the Act to delete clause 2.23(2)(a) to allow all existing council Crown land managers, leaseholders or licensees to lodge DAs without the need for additional Crown land consent. Review remaining deemed consent provisions in clause 2.32(2).

17. Where adjoining landowner consent is required, consider establishing a fast track process to ensure the department does not slow the assessment process.

18. Consider amending the EP&A Regulation (using s.4.64 of the EP&A Act) to insert a new provision under cl.226(1) to add (f) Category 1 Crown Land Managers and lessees of Crown land to the list of prescribed persons who can be the Crown and submit a Crown development application.

Note: Separate provisions in Part 6 of the EP&A Act deal with what is known as Crown building work. They obviate the need for a construction certificate and an occupation certificate where building work is carried out by the Crown. The proposal is that Category 1 Crown Land Managers and lessees of Crown land would not be prescribed as the Crown for the purpose of the Crown building works provisions, meaning they would still be required to obtain a construction certificate for the proposed works.

Plans of Management (PoM)

The issue: Current requirements for completion of Plans of Management (PoM) occur under two pieces of legislation, both the *Local Government Act 1993* and the *Crown Land Management Act 2016* (the Act). This creates duplication in the legislative frameworks and also complicates the leasing process, particularly for innovative use proposals.

Furthermore the safeguards and other benefits associated with having a PoM should be able to be delivered by local government as part of its normal remit under the local government's Local Environment Plan (LEP). To enable this to happen, a rationalisation and alignment of Crown land reserve purpose categories with the land uses under the LEP is required.

While some councils were supportive of preparing PoM, some councils also questioned the need for PoM which require extensive resources to prepare, particularly on small sites where a PoM may not add value. Councils and tenants highlighted the difficulties with dealing with so many different reserve purposes that sometimes conflicted with LEP land use zonings.

Note: Recent regulatory amendments by the department, exempt councils from having to complete PoM by a prescribed date. The amendments however still require a PoM to be prepared if a change in classification or purpose is proposed.

Below are strategic recommendation for further investigation by the department.

Recommendations:

19. Consider empowering and placing trust into local government by amending the Act to remove the requirement for council CLMs to prepare a plan of management, unless directed by the Minister, to reduce red tape and administrative burden.

20. The department reviews the reserve purposes with a view to consolidating them from 541 down to a manageable number, aligning with the parent land use classifications within the Standard LEP Instrument. This information should be made publicly available. Note: this item is also outlined under Multiple Uses – Recommendation 14a.


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Aboriginal land rights & native title in partnership with Aboriginal people

The issue: Impediments exist to the fulfillment of outcomes for Aboriginal land rights and native title in NSW. Significant feedback from a broad range of stakeholders raised concerns over the time taken to resolve land claims and native title matters and called for the urgent need for reforms to facilitate self determination for Aboriginal people as well as increase certainty over the remaining estate. Note: It should be noted though some impediments sit outside the control of the Act and the influence of the department.

Feedback also highlighted there are currently limited opportunities for Aboriginal people to co-manage Crown land or be appointed as Crown Land Managers and that a more pro-active approach is required.

Overleaf are strategic recommendations for implementation by the department as well as recommendations for government regarding the resourcing of the Office of the Aboriginal Land Rights Registrar.

Note: The *Aboriginal Land Rights Act 1983* is currently undergoing a five year statutory review by Aboriginal Affairs NSW. Some of the below recommendations will be relevant to that review.

Recommendations

21. Form a working group that includes the DPIE Native Title legal team to develop a fee for service online Native Title Certificate application process. This system should be supplemented by human resources commensurate with efficient processing of applications.

22. Provide a dedicated team to support a pilot collaboration between local government, Native Title groups and LALCs to develop and settle ILUAs and Aboriginal Land Agreements for local government managed Crown land and local government owned land. Constructive discussions around early implementation of a pilot program have commenced in the Kyogle and Richmond Valley local government areas, where strong working relationships exist between the local government, LALCs and Native Title groups. There are numerous other local government areas across NSW that will also benefit from this approach.

23. Ensure the *Crown land 2031* implementation plan focuses on introducing a program of Aboriginal CLMs and co-management opportunities on Crown land. This should include partnering with New South Wales Aboriginal Land Council to:

    a. provide increased decision making delegation to departmental staff to speed up determinations
    b. pro-actively identify categories of land claims that are certain to be refused, and remove these from the register
    c. the department collaborates with Aboriginal Affairs NSW to undertake significant policy work to:

        i. clearly define "essential public purpose" with regards to the ALR Act, with a view to use this new differentiation of land to enable bulk transfers of land claims

        ii. identify which land is required for a public purpose that can be owned or managed by Local Aboriginal Land Councils.

24. Government to consider improving the resourcing made available to the Office of the Aboriginal Land Rights Registrar. Specifically:

    a. increase the resources available to the Office of the Registrar (both human resources and improved data systems), to support the land claim and land agreement responsibilities and processes - including, but not limited to, providing spatial analysis capability to the Office in the form of software and skilled human resources
    b. formation of a working group between the department and the Registrar to ensure datasets on land claims from both agencies are consistent
    c. formation of a working group between Crown Lands, the Registrar, the NSW Aboriginal Land Council and the Department of Customer Service, to modernise the current process for lodging land claims, registering land agreements, and processing Aboriginal land claim search requests.

Compliance capacity

The issue: The non-compliant use of Crown land is a documented problem. In particular, councils and other state government agencies noted their concerns with a lack of resources and appropriate expertise within the department for compliance work on Crown land.

Below are strategic recommendations for further investigation by the department.

Recommendations

25. Consider developing an Memorandum of Understanding that defines and delegates appropriate compliance functions between the Local Land Services, the Environmental Protection Authority, and the Natural Resources Access Regulator. This approach should consider:

    a. the interplay between the Act, the *Local Land Services Act 2016*, the *Protection of the Environment Operations Act 1997*, the *Natural Resources Access Regulator Act 2017,* and include the *Commons Management Act 1989*

    b. identifying the resourcing levels required to ensure principles of a modern regulator are upheld under any Memorandum of Understanding.

Improved environmental outcomes

The issue: There is a need for a more proactive approach to achieving environmental outcomes on Crown land, which can be facilitated through the removal of legislative impediments. Currently environmental protection, restoration, rehydration or enhancement works require the approval or concurrence of multiple authorities and departments. Greater coordination and flexibility is required for future approaches to environmental management of Crown land.

Key feedback in this area was received from state government agencies as well as environmental groups and companies, with suggestions provided on mechanisms to enable environmental protection, remediation and rehabilitation works on Crown land.

Below are detailed recommendations, which are suggested to be implemented collaboratively by the divisions of the department administering the relevant legislation including the *Crown Land Management Act 2016 (the Act),* the *Environmental Planning & Assessment Act 1979* and the *Water Management Act 2000.*

Recommendations

26. Simplify the assessment and approval requirements for environmental works to a single approval. To assist this process the following suggested changes, or policy changes that have similar effect, should be considered:

    a. delete s.2.23(2)(a) of the Act

    b. insert the words "alteration, restoration or renovation" into s.2.23(2)(g)

    c. amendment to s.2.23(2)(g)(iii) of the Act to insert the words "rehabilitation or landscape rehydration" after the word "protection"

    d. add the words "rehabilitation or landscape rehydration" to the definition of environmental protection works in the Local Environmental Plan Standard Instrument, with associated definition clarifications

    e. amend the principles of Crown land management in the Act to include rehabilitation and rehydration in order to facilitate greater focus on the restoration of the environment

    f. amend the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 to provide a greater degree of certainty to allow environmental protection, restoration and rehydration works on Crown land and waterways that is carried out in accordance with an approved code to be completed as either exempt of complying development

    g. remove the NRAR dual approval requirements for works on waterways (i.e. licence/ permit from Crown land and a Controlled Activity Approval from NRAR under the Water Management Act 2000)

    h. as a protection against non-Code Compliant Works, the Crown should retain the power to force landowners or lessees to remediate or remove non-Code Compliant Works and enforce penalties.

Western lands lease conversions

The issue: No data exists to understand if the Western lands lease conversion program is stimulating productivity and growth for the region. Further consideration should also be given as to whether the triple bottom line and intergenerational needs have been appropriately considered for the Western lands lease conversion program to ensure it is delivering outcomes in the best interest of the state and the communities at large.

While feedback from farmers showed support of the lease conversion process, a number of different stakeholders raised concerns over whether the appropriate safeguards were in place for the program to protect land that may be needed for other uses both now and into the future. In particular stakeholders representing Aboriginal groups and recreational fishers highlighted issues regarding the loss of access to sacred sites and waterways in land that was being converted under the current conversion program.

Below are strategic recommendations to be further investigated by the department.

Recommendations

27. The department establish methodologies to assess whether the sale of Western lands leases is achieving the intent of the legislation to stimulate productivity and growth whilst also ensuring Western lands resources are sustained in perpetuity.

28. Government requests that the Valuer General reviews the Western lands lease conversion program and provides advice on whether the current sale formula of 3% of market value represents a reasonable return to the community. Factors to be considered include (but are not limited to) the contributions being made over past generations of leaseholders, the intergenerational opportunities presented by future emerging environmental and economic demands and the intergenerational expectations of the Crown estate.

Next steps

This report and its recommendations have been provided to the relevant Ministers administering the *Crown Land Management Act 2016,* as well as the department for its consideration and implementation. A separate findings report has also been provided to the department. This report fulfills the Crown Land Commissioner's requirements to undertake a review of the implementation of the *Crown Land Management Act 2016*.

Several recommendations put forward for consideration provide specific commentary regarding legislative change. The department will be expected to use its subject matter experts to identify improvements that can be achieved through internal policy changes. The department will need to take a leading role in navigating areas that require intergovernmental, cross-agency and stakeholder input.

This review has included consultation with, and feedback from, a wide variety of stakeholders. The Crown Land Commissioner is grateful for the valuable input received from all stakeholders throughout the evaluation process.


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