Department of Planning, Housing and Infrastructure

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Statutory Review of the Crown Land Management Act 2016

Discussion paper

February 2024

Acknowledgement of Country

The Department of Planning, Housing and Infrastructure acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land, and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Statutory Review of the Crown Land Management Act 2016

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More information

This document has been prepared by the department's Crown Lands division.

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Contents

Introduction

Under section 13.6 of the *Crown Land Management Act 2016* (CLM Act), the Minister responsible for administering the CLM Act (currently the Minister for Lands and Property) is required to begin a review of the Act as soon as possible after 1 July 2023.

The review is to determine:

- whether the policy objectives of the CLM Act remain valid
- whether the terms of the CLM Act remain appropriate for securing those objectives.

The Minister has appointed the NSW Department of Planning, Housing and Infrastructure (the department) to undertake the review on his behalf. The terms of reference for the review are available in Appendix A of this paper or on the Crown Lands website.

To date, the review has involved extensive research on issues raised by stakeholders during the 5 years since the CLM Act's commencement. This includes through the review completed in 2021 by the former Crown Lands Commissioner, Professor Richard Bush, on the implementation of the CLM Act and through consultations undertaken as part of the development of *Crown land 2031*, the state strategic plan for Crown land.

The department's Crown Lands division has also conducted in-depth consultations with staff about their experiences working with the CLM Act and what they are hearing from stakeholders, including those who use and enjoy Crown land.

The information we have gathered so far has informed this discussion paper, which we are using to consult directly with communities and stakeholders on issues raised about key areas of the CLM Act and potential reform priorities and goals. We have posed questions throughout the paper to prompt feedback. A summary of these is provided in Appendix B of this paper.

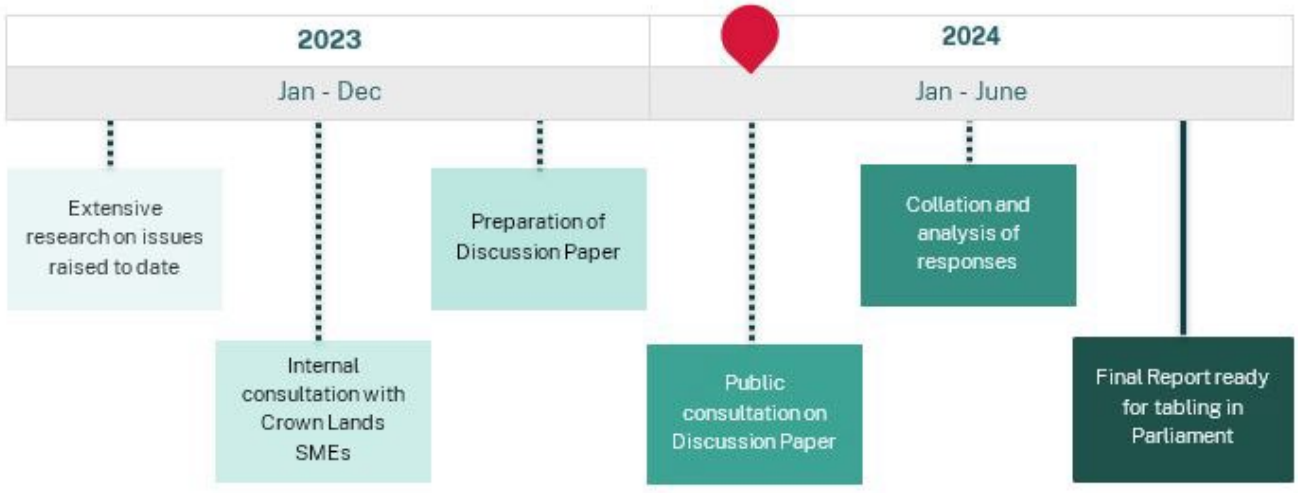

Figure 1. Timeline for the 2023–24 review of the CLM Act

Commons management

In NSW, commons are parcels of land, generally near regional towns, that have been set aside for the use of residents within the locality. Their use can include agistment of stock and firewood collection, as well as camping and other community recreation activities and facilities.

Commons are managed under separate legislation to Crown lands – the *Commons Management Act 1989* (NSW).

This review does not extend to the Commons Management Act. However, given the Minister and the department administer commons and Crown land concurrently, we have identified some opportunities to make managing commons easier, for instance, by aligning some requirements with the CLM Act. This paper notes these opportunities where relevant. You can also raise other opportunities as part of this consultation process.

Having your say

We want your feedback on the issues and key reform priorities and goals outlined in this paper.

Tell us what you think needs to change or stay the same in the CLM Act by:

- considering the consultation questions within this paper
- preparing a response to some or all the questions and raising any other issues you think are important
- submitting your response through the Crown Lands website at https://www.crownland.nsw.gov.au/review

Consultation on the discussion paper will run from **7 February 2024 to 19 March 2024**. The responses we receive will feed into a final report that the Minister will table in both houses of parliament by 1 July 2024.

You must submit your response to this discussion paper by 11.59 pm AEDT on 19 March 2024.

If you need help or advice with submitting your response, contact us by email at cl.enquiries@crownland.nsw.gov.au

Please note that responses to this paper may be shared publicly.

Background

About Crown land

Crown land is land held by the NSW Government on behalf of the people of NSW.

At around 38% of the state and covering more than 30.8 million hectares, Crown land is a vast public asset, most of which is in the far west of NSW and held under perpetual (ongoing) leases. The estate includes a range of different landscapes and ecosystems including western rangelands, forests, grasslands, mountainous terrain, waterways, stretches of coastline and the marine estate.

The department's Crown Lands division has primary responsibility for Crown land. It manages this responsibility with critical support from a network of professional and volunteer land managers. Crown land managers are appointed to care for and control the use of Crown land that is dedicated or reserved for specific purposes.

The following is a snapshot of the number of reserves and how they are managed[1]:

- **1,518 reserves are managed by 980 non-council land managers** split between the following entity types:
  - 699 reserves managed by 534 statutory land managers
  - 7 reserves managed by 5 local Aboriginal land councils
  - 738 reserves managed by 403 corporate land managers
  - 34 reserves managed by 8 administrators
  - 40 reserves managed by 29 statutory land managers that have defaulted to the Minister
- **6,531 reserves are managed by 128 council land managers**
- **19,103 reserves do not have a land manager** and instead:
  - 2,086 reserves have devolved to council
  - 17,017 reserves are managed by the Minister
- **250 reserves are managed by other government agencies**.

Crown land supports people in many ways. It encourages health and wellbeing by providing parks, recreation areas and sporting grounds, and it fosters strong communities by bringing people together at community centres, Scout and Girl Guide halls, surf clubs and cultural heritage sites.

Crown land provides economic benefits by promoting tourism activities and providing a home for showgrounds, racecourses and caravan parks. It provides social benefits through childcare centres, aged-care facilities and cemeteries.

Crown land also has strong spiritual, social, cultural and economic significance to the Aboriginal people of NSW. It is the only land that can be claimed under the *Aboriginal Land Rights Act 1983* (NSW) (Aboriginal Land Rights Act) and the *Native Title Act 1993* (Cth) (Native Title Act),

[1] As of 10 November 2023.

and there are many Aboriginal cultural sites on Crown land that are important to both Aboriginal people and the state.

These factors make Crown land key to our communities remaining thriving and resilient.

The *Crown Land Management Act 2016*

Establishment

In 2014, the NSW Government conducted the first major review of Crown land in more than 25 years, the Crown Lands Management Review. One of the key recommendations to come from the review was the establishment of a new consolidated piece of legislation for Crown land management. This recommendation was supported in the subsequent 2014 white paper on proposed legislative reform as well as the 2016 Parliamentary Inquiry into Crown Land in NSW.

As a result, the *Crown Land Management Act 2016* (CLM Act) was made, which combined 8 separate pieces of previous legislation.

The CLM Act commenced on 1 July 2018. It aims to deliver a modern, streamlined and transparent legislative framework to manage Crown land. Its key focus is to reduce red tape, complexity and duplication while supporting greater local decision-making and enhancing Aboriginal involvement in the management of Crown land.

The CLM Act is supported by the Crown Land Management Regulation 2018 (CLM Regulation). The Regulation is not part of this review, but the outcomes will inform future changes to it.

Achievements

The CLM Act introduced a range of reforms that have led to significant improvements in the way Crown land is used and managed in this state.

The concept of a 'state strategic plan' for Crown land in NSW was created under the CLM Act to provide the opportunity to use land in a more strategic, collaborative and innovative way. *Crown land 2031* is the first state first strategic plan for Crown lands and sets a foundation for a new and more flexible approach to the use and management of Crown land. Its focus is on identifying job creation and economic opportunities for NSW regional communities while recognising the importance of continuing to protect public ownership of the land.

The CLM Act is also the first Crown land legislation in NSW to recognise the operation of both state and federal land legislation – the Aboriginal Land Rights Act and the Native Title Act.[2] For native title, the CLM Act expressly requires local government (councils) and other land managers to recognise native title rights and interests and specifies these managers employ or engage a certified native title manager to support these rights and interests to be upheld.

Other key achievements of the CLM Act have been to:

- introduce governance standards to provide greater consistency for the various types of land managers and tenure holders

[2] These Acts are not part of this review and have their own review requirements.

- simplify administrative arrangements for non-council land managers, moving from a 3-tier to a 2-tier structure and removing red tape
- strengthen compliance and enforcement measures to better protect Crown land.

In addition, the CLM Act required the department to prepare and implement a strategy to ensure the community is engaged in a more meaningful way about the use and management of Crown land. The Crown Lands' Community Engagement Strategy (PDF 791 KB) sets out how we must involve the community as part of the decision-making process and provides for tailored and more inclusive engagement so that the Crown land decisions of greatest impact trigger an appropriate and effective level of public participation.

This statutory review provides an opportunity to ensure the CLM Act continues to provide a strong and accountable framework for using and managing Crown land and delivers positive outcomes for our people, our environment and our economy.

Crown land 2031 – a strategic plan for Crown land

Crown land 2031 (PDF 3.69 MB), the state strategic plan for Crown land, was finalised and released in June 2021. It is the result of extensive community engagement to understand how Crown land is valued and sets the vision, priorities and strategic approach for managing Crown land over the 10 years to 2031.

The aim of the plan is to better manage, use and activate Crown land to support local communities, tourism, Aboriginal land rights and interests and the environment.

Aligning Crown land management and the priorities of government with the aspirations of the community, *Crown land 2031* is being implemented through consecutive 3-year action plans. The first action plan – Crown land 2031 – First Action Plan (PDF 2.15 MB) – was released in April 2022.

The statutory review provides an important opportunity to consider where further reforms may be needed to ensure the priorities of *Crown land 2031* can be achieved.

Figure 2. *Crown land 2031* priorities

Key areas and issues

Objects and principles

Proposed reform priorities and goals

- Further modernise the objects of the CLM Act

The objects of an CLM Act outline its underlying purposes. Principles, where they exist in legislation, generally guide an Act's administration or application. The objects of the CLM Act are set out at the beginning of the Act in section 1.3 and the principles of Crown land management in section 1.4.

The CLM Act objects were updated from the former legislation, with a key change being the inclusion of object (e) (see the box 'Objects of the CLM Act – section 1.3' below). This object focuses on the use and co-management of Crown land by the Aboriginal people of NSW, which was a major reform.

Another important update was object (c), which explicitly recognises the need to integrate environmental, social, cultural heritage and economic considerations in decision-making about Crown land.

Other changes to the objects sought to preserve the intent of the previous legislation to achieve community benefits, while also reflecting the different Acts that were being consolidated.

Objects of the CLM Act – section 1.3

The objects of the CLM Act are to:

a) provide for the ownership, use and management of the Crown land of NSW

b) provide clarity concerning the law applicable to Crown land

c) require environmental, social, cultural heritage and economic considerations to be taken into account in decision-making about Crown land

d) provide for the consistent, efficient, fair and transparent management of Crown land for the benefit of the people of NSW

e) facilitate the use of Crown land by the Aboriginal people of NSW 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

f) provide for the management of Crown land having regard to the principles of Crown land management.

The principles of Crown land management were not updated, remaining the same as they were in former legislation (see the box 'Principles of Crown land management – section 1.4').

Principles of Crown land management – section 1.4

For the CLM Act, the principles of Crown land management are that:

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

Further modernise the objects of the CLM Act

Despite the objects of the CLM Act bringing a focus to Aboriginal interests, feedback from stakeholders since the Act's commencement suggests there is scope to improve the wording of object (e). The use of the terms 'co-management' and 'where appropriate' could imply a conditional and limited approach. Revised wording could make the objects of the CLM Act clearer in their intent to provide multiple ways for Aboriginal people to access and manage land, in line with their rights, interests and self-determination objectives.

In addition, the objects could be too detailed or there could be more than is necessary to describe the intended purpose of the CLM Act. There is also some repetition, which, while not directly inconsistent, does make understanding the objects more complex, particularly for less experienced land managers.

The principles of Crown land management were carried over from the former legislation, although they were not included in the original Crown Land Management Bill 2016. There were concerns about a loss of protections for Crown land if the principles were removed, given they had been part of the Crown land framework for more than 30 years. As a result, the principles were retained in the CLM Act without change.

The CLM Act does not refer to the principles of Crown land management beyond section 1.3, but they are referenced in *Crown land 2031*.

The Crown Land Commissioner's 2021 evaluation of the implementation of the CLM Act[3] highlighted a lack of alignment between the objects and principles, and at times there is also a potential for conflict between them. The commissioner also commented on the value of making a clear link between the principles and the priorities in *Crown land 2031*.

[3] Evaluation of the Crown Land Management Act 2016 Implementation (PDF 16.3 MB), Crown Land Commissioner (2021)

The review of the CLM Act provides an opportunity to consider whether the objects could be further modernised to make them easier to interpret and apply in decision-making and whether the principles of Crown land management are still relevant and should continue in their current form.

Consultation questions

Q1: Should the objects of the CLM Act be updated? If so, how should they change?

Q2: Are the principles of Crown land management still relevant, and is it appropriate to continue to include them in the CLM Act? Or should they be located outside of the Act, where they can be more easily maintained?

Crown land transactions

Proposed reform priorities and goals

- Use Crown land to help deliver NSW Government priorities
- Further modernise the administration of leases, licences and sales
- Make it easier to submit an application for development of Crown land
- Ensure notification methods are contemporary

Like other types of land and property, Crown land can be the subject of different kinds of transactions. These are managed under different parts of the CLM Act.

Part 4 deals with how land can be acquired or added to the Crown estate or how ownership can be transferred to councils or other government agencies (vesting) to deliver specific outcomes.

Part 5 deals with:

- leasing, including the maximum terms of leases
- licensing to authorise use or occupation
- sale of Crown land, including restrictions and conditions on sale
- restricting or allowing access through enclosure permits, easements and covenants
- granting specific types of rights, such as forestry or carbon rights.

The CLM Act also sets out how particular types of unique leases are dealt with, such as special leases in perpetuity and western lands leases. Schedules 1, 2, 3 and 4 outline how these leases are managed, including how leaseholders can apply to purchase certain types of perpetual leases.

The previous Acts and Regulations created inconsistency and confusion for those with leases, licences and other tenures. The introduction of Part 5 of the CLM Act introduced a standardised regime for managing all Crown land transactions, attempting to harmonise and provide greater certainty about requirements where possible.

Use Crown land to help deliver NSW Government priorities

The NSW Government has a range of key priorities, such as responding to and mitigating climate change impacts, conserving and protecting the environment and increasing the supply of housing. Some of these commitments will change the way we use, access and manage Crown land.

Part 5 of the CLM Act already supports using Crown land to mitigate the impacts of climate change by:

- providing a mechanism to enter into a renewable energy lease and licence on land that is already subject to an existing lease such as a western lands lease
- enabling the Minister to grant carbon sequestration rights on Crown land to reduce greenhouse gas emissions.

The review provides an opportunity to consider how the CLM Act could support other strategic uses of Crown land, including different tenure or partnership arrangements. For example, the CLM Act could support public/private partnerships to enable investment pathways for environmentally significant Crown land to be protected and conserved.

Consultation question

Q3: How could the CLM Act better support the strategic use of Crown land to meet important NSW Government priorities, such as through different tenure and partnership arrangements?

Further modernise the administration of leases, licenses, and sales

Perpetual leases

The concept of a perpetual or ongoing lease was first introduced in 1894 in the form of a tenure marketed as a 'homestead selection'. The purpose was to provide leaseholders with secure tenure and to enable them to apply all available capital to land improvements and primary production to foster the social and economic objectives of the state.

Over time, perpetual leases were issued for a variety of agricultural, business, social and residential uses across all areas of NSW, providing exclusive possession to the holders. Land under these perpetual leases is spread across the state, though there is a significant proportion in the Western Division of NSW. Some of the holders of these leases can apply to purchase their leases and become the freehold owners of the land. When assessing an application to purchase a perpetual lease, we consider social, environmental, economic and cultural factors.

Western lands leases

Section 5.9 of the CLM Act sets the conditions for selling land in the Western Division. These conditions include that the land must be:

- in an urban area or an area required for urban expansion
- within a distance from an urban area such that its sale would contribute to the economic growth of a region
- used predominantly for residential, business, industrial or community purposes

- substantially classed as 'moderate capability' under the Land and Soil Capability Assessment Scheme
- allowed to be cultivated or the lease authorises cultivation in more marginally classed land under the Land and Soil Capability Assessment Scheme.

Since the CLM Act commenced in 2018, we have received more than 589 applications to purchase Crown land in the Western Division. The total area purchased to date is approximately 1.6 million hectares. The review will enable us to assess the continued appropriateness of the conditions that must be met for selling land in the Western Division.

Consultation question

Q4: Are the conditions that must be met before Crown land in the Western Division of NSW can be purchased and converted to freehold land still appropriate? If not, what should change?

Special leases in perpetuity

The now-repealed *Crown Lands (Continued Tenures) Act 1989* provided a right to holders of a range of continued tenures to apply to purchase their leases. When the various pieces of Crown land legislation were consolidated in the CLM Act, these provisions were included in Schedules 1 and 4.

A particular type of perpetual lease, a 'special lease in perpetuity', was not included in the definition of the types of leases that could be purchased. This is despite the lease holders being able to purchase the land under previous legislation. As a result, holders of special leases in perpetuity are being treated inequitably compared to other perpetual leaseholders.

Given this, there may be value in considering whether all perpetual leaseholders should have the same right to apply to purchase their leases, as provided for under previous legislation. It should be noted that providing holders with the right to apply to purchase their perpetual lease does not guarantee the application will be granted. The Minister and the department would consider social, environmental, economic and cultural factors when deciding whether a lease can be purchased, as occurs for other perpetual leases.

Consultation question

Q5: What are your views on granting all perpetual leaseholders the same rights to apply to purchase their leases, including holders of special leases in perpetuity?

Make it easier to submit an application for development of Crown land

The NSW planning framework requires holders of a lease or licence for the use of Crown land and Crown land managers to gain consent from the Minister (landowner's consent) as part of an approval to develop Crown land.

Section 2.23 of the CLM Act outlines the kinds of development that the Minister is automatically taken to have given landowner's consent for, as it relates to dedicated or reserved Crown land. This is intended to reduce red tape for lease and licence holders and land managers as it allows them to

submit applications for low-impact, minor works without applying to the department for landowner's consent.

For proposed developments that are not low-impact minor works, lease and licence holders and land managers need to apply to the department for landowner's consent so that the developments can be assessed against:

- the objects of the CLM Act and the dedicated or reserved purpose of the land
- potential impacts on Aboriginal land rights and native title rights and interests.

Despite the intent of s 2.23, the number of applications for landowner's consent has not reduced and there are still delays in granting consent.

Anecdotally, this is due to people being confused about when they need to apply for landowner's consent and applying when it's not necessary and the limited kinds of development the Minister is taken to have given consent for, which may not be based on the right level of risk and impact.

In the Crown Land Commissioner's 2021 evaluation of the implementation of the CLM Act, some stakeholders indicated their belief that the consent process is complicated and should be captured by the planning process under the Environmental Planning and Assessment Act[4].

If the kinds of development where the Minister is taken to have already given consent are expanded, assessment against the objects of the CLM Act and the impacts on Aboriginal land rights and native title rights would need to be captured elsewhere in the development assessment process.

Consultation question

Q6: What changes could be considered to the CLM Act to make it easier to submit an application for certain development of dedicated or reserved Crown land? For example, could the kinds of development where the Minister is taken to have already given consent be expanded?

Ensure notification methods are contemporary

In certain circumstances, the CLM Act requires the department to notify the public about specific events, such as when approval has been provided for structures to be built on Crown land and cultivation of enclosed Crown roads. Currently, the CLM Act specifies that the department can issue notices in newspapers or display physical notices adjacent to structures.

Other NSW legislation no longer requires government departments to advertise in newspapers. Instead, many departments notify the public about specific events using government websites so that all information on a topic is easily accessible and available in the same place.

This review provides an opportunity to consider whether the CLM Act notifications should be updated to ensure they reflect modern-day communications.

[4] Evaluation of the Crown Land Management Act 2016 Implementation (PDF 16.3 MB), Crown Land Commissioner, pg. 14, (2021)

Consultation question

Q7: What is the best way to notify people about events, activities or changes that may have an impact on Crown land in their local area?

Community engagement strategy

Division 5.3 of the CLM Act requires us to develop and adhere to a community engagement strategy for Crown land transactions such as sales, leases, licences, permits and vestings.

This requirement was a cornerstone of the legislation when the CLM Act commenced. It aimed to ensure more meaningful engagement with the public where proposals will impact the community's use and enjoyment of Crown land. This new approach enabled the move from a traditional and limited notification approach to a more modern, best-practice approach.

Crown Lands' Community Engagement Strategy (PDF 791 KB) was released in 2018 and ensures community input is actively sought and considered before decisions are made about the management of Crown land. The strategy is a statutory document that must be followed by responsible parties, including the Minister, the department and Crown land managers who are not councils (council land managers follow the community engagement requirements of the NSW *Local Government Act 1993* (Local Government Act)).

The provisions within Division 5.3 of the CLM Act remain relevant for strengthening opportunities for community involvement in decisions about the use of Crown land and ensuring an appropriate level and method of consultation and engagement with the people of NSW.

However, a review of Crown Lands' Community Engagement Strategy itself is planned, and any feedback received through the CLM Act review will be considered as part of this.

Management of Crown land

Potential reform priorities and goals

- Further simplify the Crown land manager structure
- Increase flexibility for land managers to grant longer tenures
- Clarify the obligations of land managers around plans of management
- Improve compliance with governance and reporting requirements

Part 3 of the CLM Act covers managing dedicated or reserved Crown land. It includes provisions that enable the Minister (or the department as delegate) to appoint Crown land managers to care for, control and manage dedicated or reserved Crown land. It also outlines their functions.

Most land managers operate in a voluntary capacity (that is, they are unpaid). However, all land managers play a critical role in ensuring the Crown land they manage is appropriately maintained

and used so that it continues to be enjoyed by local communities and remains a valuable public asset to those communities and the state.

The current land manager structure was introduced when the CLM Act commenced. It replaced a more complex structure established under the previous *Crown Land Act 1989* (repealed), which required establishing a trust and then a trust manager. The land manager structure is simpler than the reserve trust structure and aligns NSW with other Australian jurisdictions.

The current structure also enables councils to be appointed as land managers and gives them the power to manage Crown land primarily under the Local Government Act, although they still have obligations under the CLM Act. This allows councils to manage Crown land in alignment with other public land they manage, creating greater efficiencies for councils.

Apart from a local council, land managers can be:

- a local Aboriginal land council under the Aboriginal Land Rights Act
- a prescribed body corporate for the purposes of a provision of the Native Title Act
- statutory land managers constituted under Schedule 5 of the CLM Act
- the Lands Administration Ministerial Corporation
- associations under the NSW *Associations Incorporation Act 2009*
- companies under the *Corporations Act 2001* (Cth)
- any other bodies corporate or corporations constituted by or under another Act
- heads of government sector agencies.

Further simplify the Crown land manager structure

Types of land manager

The current Crown land manager structure under the CLM Act was introduced to make the process of appointing land managers easier and less cumbersome. However, the structure can still be considered complex. It comprises 2 types of land managers – council managers and other managers. 'Other managers' is then divided into 2 categories – categories 1 and 2.

When it was drafted, the CLM Act intentionally separated council land managers from other land managers to provide a clear distinction between their powers and obligations. This was because council land managers must largely manage Crown land under the Local Government Act, with only some key obligations under the CLM Act.

However, having different types of managers and then different categories in the CLM Act may make it difficult for land managers to easily understand where they fit and what their powers and obligations are.

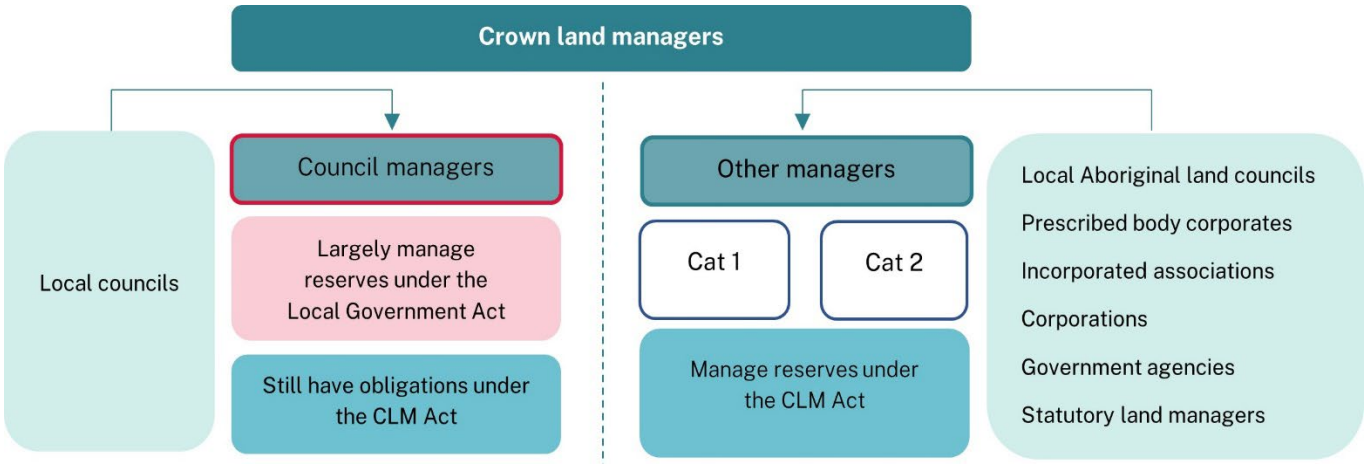

Figure 3. Current Crown land manager structure

The review provides an opportunity to further streamline the land manager structure to give better clarity about what land managers can and cannot do under the CLM Act.

Consultation question

Q8: What are your views about the Crown land manager structure? Does the CLM Act outline the powers and obligations of land managers in a sufficiently clear way? How could it be improved?

Categories of land manager

There are 2 categories for non-council Crown land managers under the CLM Act. Category 1 land managers are expected to have greater governance and land management expertise than category 2 land managers, but the difference between the categories is limited to:

- the duration of tenures (leases and licences) they can grant without ministerial consent
- their native title obligations.

Category 1 land managers can grant tenures without ministerial consent for up to 10 years while category 2 land managers must seek ministerial consent before granting any tenures, except for short-term licences (up to 12 months). Category 1 land managers have the same native title obligations as council land managers under Part 8 of the CLM Act, which includes having to engage and seek advice from a qualified native title manager. Category 2 land managers do not have these obligations as they can rely on the department for this advice.

The 2-tiered land manager categories were primarily established to provide more autonomy to category 1 land managers. However, there are no clear criteria for the appointment of either category of land manager, which has likely contributed to the small number of entities (less than 10) that have been appointed to category 1 since the CLM Act's commencement.

If not appointed as category 1, land managers are automatically appointed as category 2. Category 2 land managers are generally volunteer or less experienced land managers who manage smaller and less complex reserves.

It was originally thought that category 2 entities would be able to move up to category 1 should their governance and land management knowledge and abilities sufficiently increase. However, there is

no evidence that any category 2 land managers have been promoted to category 1 since the CLM Act's commencement, so this intent has not been achieved.

The review enables consideration of whether:

- the manager categories and their associated powers and obligations are fit for purpose
- the description of and criteria associated with these categories and with the land manager categorisation and appointment process should be clearer and more transparent.

It also enables consideration of whether there is room for expansion of the categories to better meet future needs. For instance, creating a category of land manager for Aboriginal entities could help encourage more of these entities to become Crown land managers[5]. Such a category could potentially involve different incentives such as being able to keep all, or a percentage of, fees collected from use of the land or access to targeted resources and training and networking opportunities.

Consultation question

Q9: What are your views on the powers and obligations of the 2 current categories of land managers? What changes, if any, would you like to see regarding these powers and obligations or to the categorisation and appointment of Crown land managers?

Q10: What are your views about expanding or introducing new land manager categories or clarifying the scope of the existing categories?

Increase flexibility for land managers to grant longer tenures

Category 1 land managers need to have ministerial consent to issue tenures for periods of more than 10 years. This has the potential to create red tape and can prevent them from effectively managing the land to meet the needs of their communities.

Council land managers, on the other hand, can grant leases or licences for up to 21 years (under the Local Government Act) without ministerial consent. This provides councils with greater autonomy than category 1 land managers in decision-making about Crown land reserves. However, this may still be considered less than ideal in terms of providing long-term security for tenure holders, where appropriate.

Given both category 1 and council land managers have the same native title obligations under the CLM Act, it may be appropriate to also align their powers to grant tenures. This would eliminate any inequity and confusion for land managers and those seeking to lease Crown land.

Consideration could also be given to providing other categories of land managers greater flexibility to grant leases and licences without having to seek ministerial approval.

[5] Local Aboriginal land councils under the Aboriginal Land Rights Act and prescribed bodies corporate for the purposes of the Native Title Act are recognised under the CLM Act as 'qualified persons' to be appointed as land managers. Currently, there are 120 local Aboriginal land councils across NSW. Of these, approximately 5 are Aboriginal land councils that collectively manage 7 Crown land reserves. Overall, of the more than 980 land managers that manage dedicated or reserved Crown land, only around 25 are recognised by the department as Aboriginal land managers.

Complementary opportunity for commons management

Only short-term licences can be issued over commons. However, it may be beneficial in certain instances to allow the department to issue tenures for longer periods. For example, if a local community or council is unable or unwilling to form a common trust board, issuing longer-term tenures such as long-term grazing leases might provide a way to ensure the land is properly managed.

Consultation question

Q11: What are your views on Crown land managers and council land managers having more flexibility to grant longer-term leases and licences on Crown land without ministerial consent? Should the powers of category 1 land managers to grant tenures be aligned with council land managers, given that their native title obligations are aligned?

Clarify the obligations of land managers around plans of management

General requirements

The CLM Act introduced the ability for councils to manage their Crown reserves as public land under the Local Government Act. Most of this land is 'community land' under the Local Government Act, meaning that councils are required to have plans of management in place for the land, a requirement of both the Local Government Act and the CLM Act.

The Minister can also request that a non-council manager prepare a plan of management. This is done rarely, and there are only a handful of reserves with a plan in place that are not managed by councils.

For councils, the CLM Act originally required that they adopt plans of management within 3 years of the Act's operation. In 2021, an amendment exempted councils from this timeline and from the requirement to hold public hearings on plans. However, it required that they obtain ministerial consent before adopting a plan.

Many councils have now submitted plans for the Crown reserves they manage, which is a significant achievement. However, there are still around 2,000 reserves managed collectively by more than 30 councils that still do not have plans in place.

The review provides a way to ensure that the CLM Act provisions around plans of management are clear and reflect the provisions of the CLM Regulation. It is also an opportunity to consider whether any further reforms are required. For example, councils and other land managers that have a plan of management in place could be provided with more autonomy or a plan of management could only be required for specific types of dedicated or reserved Crown land, such as those that are high value or high profile, regardless of the type or category of land manager involved.

Consultation question

Q12: What further reforms, if any, should be considered to the requirements of the CLM Act around plans of management? Should requirements around when a plan is needed or who should be required to submit a plan be amended? Should content specifications be streamlined? Should there be incentives attached to having a plan in place, such as greater autonomy?

Reserve purpose

The CLM Act does not specify what information plans of management must contain or their purpose. However, the department's guidance on these plans states that a plan of management is intended to set the direction and provide a framework for the strategic and operational use and management of the land.

The Local Government Act requires that plans of management include information about any conditions or restrictions that apply to the land and must not contain provisions that are inconsistent with these. This means plans of management for Crown land should include information about and consider the purpose or purposes for which the land has been reserved or dedicated. However, there is no corresponding requirement under the CLM Act.

The department has managed this oversight by ensuring that education and training for land managers includes advice on the importance of dedicated and reserved Crown land being used in alignment with its purpose. Providing better clarification of this obligation in the CLM Act could align with and support these efforts.

Consultation question

Q13: How could the CLM Act better ensure the purpose or purposes of dedicated or reserved Crown land are considered in any plan of management for the land?

Improve compliance with governance and reporting requirements

Governance requirements

Statutory land managers are a type of corporate Crown land manager established under the CLM Act to allow small groups of individuals to care for, control and manage Crown land. These groups make up most statutory land managers, who normally manage a single reserve as a category 2 land manager.

The legislative framework also enables the Minister to combine statutory land managers to take advantage of operational efficiencies, allow for more profitable sites to cross-subsidise less profitable ones, attract high-calibre board members, retain paid staff and provide an improved customer experience and service. However, this intent has only been realised for a few of the less than 10 statutory land managers that are category 1 land managers.

Under Schedule 5 of the CLM Act, the Minister has the authority to:

- create, suspend and dissolve statutory land managers, which includes the appointment of administrators
- appoint a board
- appoint a chair to the board for a category 1 non-council land manager
- determine board remuneration.

The current governance-related statutory land manager provisions within the CLM Act are lengthy and may not clearly define the statutory land manager structure. There may be a need to simplify and streamline the CLM Act as it relates to the more administrative provisions for statutory land managers and be clearer about the status of a statutory land manager as a legal entity.

On the other hand, the CLM Act may need to give more detail about the role of administrators when replacing a board if the structure of the statutory land manager involved is complex and when dissolving statutory land managers, so that appropriate controls for managing assets are in place.

Consultation question

Q14: What changes do you think are required around the governance obligations of statutory land managers under the CLM Act? How could the CLM Act better support statutory land manager boards and directors to meet their governance obligations?

Reporting obligations

All Crown land managers have reporting obligations. Non-council Crown land managers must provide annual reports and follow the content requirements outlined in the CLM Regulation.

Annual reporting helps us determine whether a Crown land manager is appropriately controlling and managing the land, financial resources and other assets it is responsible for. It also allows us to review the reserve's operations and identify reserves that may need assistance.

Council land managers must comply with the reporting requirements of the Local Government Act. Land managers managing Crown land on which a cemetery is operated must report under the *Cemeteries and Crematoria Act 2013*.

Statutory land managers may also have to meet additional financial reporting requirements. As separate legal entities under the CLM Act, statutory land managers are incorporated, which has benefits such as protecting members from being personally liable for the entity's debts and enabling the entity to set up a bank account. But this structure also means that under the NSW *Government Sector Finance Act 2018*, statutory land managers have the same financial reporting obligations as any NSW Government department or statutory corporation, unless they are exempt under the Government Sector Finance Regulation 2018, which sets a threshold for reporting based on income, assets and liabilities.

Reporting under the Government Sector Finance Act is a costly and complex process that provides an overview of the activities and financial position of NSW Government agencies for auditing by the NSW Audit Office.

Statutory land managers can vary from complex and profitable businesses with paid staff to smaller operations run only by volunteers on reserves that generate no revenue and have little infrastructure.

Currently, only the smallest statutory land managers are exempt from these reporting requirements, yet many of the statutory land managers still captured under current asset and revenue criteria have similar risk profiles, resources and capability constraints as those that are exempt.

The administrative and financial burden imposed by the CLM Act and the Government Sector Finance Act reporting frameworks:

- is unmanageable for many volunteer boards, who mostly manage only one reserve
- is not in proportion to the reduced risks associated with smaller operations
- diverts resources away from other 'care, control and management' activities
- makes statutory land manager board roles less attractive in an already competitive and declining volunteer market
- makes it difficult for agencies to support compliance and may impose unnecessary costs for the NSW Government in managing public land.

From a reporting perspective, there could be value in categorising statutory land managers based on risk. This will stop smaller statutory land managers from being disadvantaged while ensuring there is appropriate mitigation of risks and oversight of compliance.

Complementary opportunity for commons

Like category 2 statutory land managers, commons trust boards are often volunteers from small communities. Commons trust boards also have difficulty complying with their reporting obligations. We are considering whether a more-risk based approach to financial reporting for common trust boards will better support proper financial reporting and management.

Consultation questions

Q15: What changes, if any, should be made to the statutory land manager structure to address current issues around reporting?

Q16: How could reporting requirements be simplified to alleviate the financial and administrative burden on statutory land managers, while appropriately managing risk?

Dedicated and reserved Crown land

Proposed reform priorities and goals

- Increase the understanding of how Crown land can be used
- Simplify the transfer of land to native title holders under agreements

Part 2 of the CLM Act deals with the dedication or reservation of Crown land by the Minister. It outlines the circumstances under which the land can be dedicated or reserved and how such land can be used. It also details how dedications or reservations can be cancelled or revoked.

Dedicated Crown land and reserved Crown land are essentially the same. The key difference is proposals for dedicating land and revoking a dedication must be tabled in both houses of parliament. This makes it a long-lasting way to set Crown land aside. When reserving land, or revoking a reservation, the Minister is only required to place a notice in the Government Gazette.

The Minister can only dedicate or reserve Crown land for a purpose consistent with the objects of the CLM Act or if it's in the public interest. This can include a wide range of purposes, including environmental and heritage protection, recreation and sport, open space, community halls, special events and government services.

The purpose of a dedication or reservation is important because it indicates how the land can be used and what activities can be undertaken on it. It also provides an efficient way for future activities to be undertaken validly under the Native Title Act, where relevant[6]. Revocation of, or substantive changes to the purpose of, any dedications or reservations could permanently compromise this current source of validity and have other implications.

The CLM Act introduced the ability to dedicate or reserve Crown land for more than one purpose, making the land more accessible and increasing its use by local communities.

Increase the understanding of how Crown land can be used

For dedicated or reserved Crown land to be used lawfully, its use must:

- align with the purpose or purposes for which the land has been dedicated or reserved
- be complementary (incidental or ancillary) to this purpose or purposes or be a use that has been authorised under the CLM Act or other legislation.

However, there is no formal guidance or parameters on the purposes for which Crown land can be set aside in this way by the Minister or what may constitute an acceptable use of the land for each purpose.

This broad, non-prescriptive approach to the allocation of purposes has led to inconsistency and confusion around the use of the reserves since at least 1990. The Crown estate is now a mixture of dedicated and reserved Crown land with very specific purposes that relate directly to the use of the land, such as for a 'racecourse', and very broad purposes that can be interpreted differently, such as for 'public recreation'.

[6] Where the reserve was in place on or before 23 December 1996.

Differing views on whether activities that have historically occurred on certain reserves are 'acceptable' in terms of the reserve's purpose are similarly causing uncertainty for stakeholders.

In some instances, the legally 'acceptable' and 'unacceptable' use of a reserve may not be aligned with community expectations, which have changed since the dedication and reservation system was first established.

In addition, the Crown estate is overlapped by various land use zones in relevant local environmental plans under the NSW *Environmental Planning and Assessment Act 1979*. The Native Title Act can also influence the way dedicated or reserved Crown land can be used, depending on the year it was dedicated or reserved and its stated purpose.

There may be value in providing greater clarity in the CLM Act about the purposes for which Crown land can be dedicated or reserved to improve transparency about how it can be used and occupied. This could also increase consistency of use across the state and better support land managers to ensure the land is used appropriately.

Consultation question

Q17: How could the CLM Act better support an improved understanding of the purposes for which Crown land can be dedicated or reserved?

Simplify the transfer of land to native title holders under agreements

Indigenous land use agreements under the Native Title Act can include the provision to transfer certain dedicated or reserved Crown land to a native title holder. Once an agreement is approved, the dedication or reservation must be withdrawn or revoked to enable the land transfer to occur. It typically takes a minimum of 15 weeks to revoke a dedication and 4 weeks to revoke a reservation.

The review provides an opportunity to consider how to simplify this process and improve the implementation of approved native title agreements.

For example, the requirements of the CLM Act around the revocation of Crown land dedications or reservations could be set aside where land is being transferred under an approved native title agreement, with the revocation recognised as automatic under these circumstances. This is consistent with the automatic revocation of dedications and reservations upon the transfer of land to an Aboriginal land council under the state Aboriginal Land Rights Act.

Consultation question

Q18: What are your views on enabling a Crown land dedication or reservation under the CLM Act to be automatically cancelled or revoked where the land has been approved for transfer to a native title holder under the Native Title Act? Are there other ways that the CLM Act can improve the smooth transfer of Crown land to native title holders under an approved agreement?

Native title rights and interests and Aboriginal land rights

Proposed reform priorities and goals

- Improve land manager compliance with the native title regime
- Clarify any exemption for land managers from seeking native title advice
- Include consideration of Aboriginal land claims in land manager obligations

Native title is how Australian law recognises the rights and interests that Aboriginal people hold in the lands and waters under their traditional laws and customs.

Part 8 of the CLM Act outlines the obligations of council and category 1 Crown land managers to support compliance with the Native Title Act as it relates to the use and management of Crown land.

Introducing these obligations was a way to ensure native title rights and interests that exist in Crown land are protected while enabling councils and category 1 land managers to have more autonomy with decision-making around the use of the land they manage. There were no equivalent provisions in the repealed *Crown Lands Act 1989* – previously, all types of land managers (then reserve trust managers) needed the Minister's consent to undertake most transactions and activities involving the land they managed.

Part 8 includes a requirement for councils and category 1 land managers to engage a native title manager. Native title managers must provide written advice to the land manager who engaged them for certain land management transactions and activities.

Only persons who maintain qualifications or have completed the training delivered by the department on native title manager responsibilities can provide advice as a native title manager.

Improve land manager compliance with the native title regime

The introduction of native title manager requirements has raised some challenges for land managers. These have mainly been associated with the complexity of the native title regime, the time and effort required for land managers to build an understanding of their obligations, and the engagement and retention of qualified native title managers by councils and category 1 land managers.

Feedback from participants in the training delivered by the department is that it has been highly successful in helping council and category 1 land managers understand that native title rights and interests exist in Crown land and how to comply with the requirements of the Native Title Act.

However, there is still a lack of clarity around the responsibility of land managers to adhere to advice from their native title managers and the role of the department in ensuring compliance with this.

While the CLM Act requires that council and category 1 land managers seek advice from a native title manager, it does not require them to provide evidence of the advice to the department. For example, plans of management do not have to include this advice as an attachment, meaning the department has little oversight of what advice has been sought from a native title manager, if any, and whether planned activities for use of the land will comply with the Native Title Act.

Under s 8.7(1), the CLM Act requires land managers to comply with any requirements of the Native Title Act for certain actions concerning the land. These include:

- granting leases, licences, permits, forestry rights, easements or rights of way over the land
- mortgaging the land or allowing it to be mortgaged
- imposing, requiring or agreeing to covenants, conditions or other restrictions on use in connection with dealings involving the land (or removing or agreeing to remove such covenants, conditions or restrictions)
- approving or submitting for approval a plan of management for the land that authorises or permits any of the kinds of dealings referred to above.

Restricting the requirement to seek native title advice to only these particular actions, rather than requiring land managers to do this for all acts, runs the risk that land managers may take actions or make decisions that are not compliant with the Native Title Act. For example, building a retaining wall for environmental protection on Crown land is an act that can affect native title, but it is not one of the acts listed that requires written native title manager advice.

Consultation questions

Q19: What are your views on, or experience of, the requirement for some Crown land managers to engage and retain a native title manager?

Q20: What do you think about clarifying the role of the Minister (or the department as their delegate) in ensuring advice from native title managers is sought and complied with?

Q21: What do you think about council and category 1 land managers being responsible for seeking written advice from native title managers for all acts or activities to be undertaken on the Crown land they manage that may affect native title?

Clarify any exemption for land managers from seeking native title advice

The CLM Act introduced new provisions under Division 8.2 that enabled the Minister (or the department as their delegate) to issue a native title certificate. This certificate would indicate that, to the best of the department's knowledge, there was adequate evidence that native title has been extinguished or does not exist for particular Crown land. This is different from a determination of native title, which can only be made by the Federal Court.

A native title certificate would have the effect of exempting a council or category 1 land manager from having to seek written advice from their native title manager before they undertake an act that might affect native title. However, any requirements of native title legislation are unaffected by the native title certificate. The certificates were only intended to be issued on rare occasions when it may be relevant and evidence is available before native title is formally determined.

The native title certificate provisions of the CLM Act have not been implemented because of the sensitivities associated with acknowledging that native title has been extinguished on Crown land, rather than recognised and protected.

The report on the implementation of the CLM Act by the former Crown Land Commissioner[7] indicated not using the native title certificate provisions of the Act is creating issues for some council land managers. They cannot commence projects and proposals on Crown land until either a certificate is issued, or native title has been determined.

The review enables consideration of the continued relevance of these provisions and whether some other form of exemption to seek native title advice is required or appropriate.

Consultation question

Q22: What are your views on issuing native title certificates to exempt relevant Crown land managers from having to seek advice from a native title manager? Should this option be replaced with some other form of exemption, or removed altogether?

Include consideration of Aboriginal land claims in land manager obligations

The Aboriginal Land Rights Act recognises the historic dispossession of land without compensation. It facilitates the vesting of land in local Aboriginal land councils constituted in NSW under this legislation to support Aboriginal communities' social and economic development.

The responsibility for determining Aboriginal land claims lies with the Minister administering the CLM Act. The department assesses claims and provides the Minister with relevant information to help determine whether the land is claimable under the statutory criteria.

Native title managers receive training about Aboriginal land claims as part of becoming qualified. However, nothing in the CLM Act requires a council or category 1 land manager to seek written advice about activities that may impact compliance with the Aboriginal Land Rights Act – only with the native title regime.

Requiring council and category 1 land managers to seek written advice before making decisions that could affect current or future Aboriginal land claims could improve decision-making and record-keeping for land managers. It could also help the department administer and assess Aboriginal land claims.

Consultation question

Q23: What do you think about council or category 1 land managers being responsible for getting written advice about activities on the land they manage that may affect Aboriginal land rights and not just native title rights?

[7] Evaluation of the Crown Land Management Act 2016 Implementation (PDF 16.3 MB), Crown Land Commissioner, pg. 20, (2021)

Protection, compliance and enforcement

Proposed reform priorities and goals

- Further refine and strengthen protections for Crown land

Parts 9, 10 and 11 of the CLM Act outline the regulatory powers used to protect Crown land against illegal activity that can threaten the environmental value or public enjoyment of Crown land. This can include unauthorised development on Crown land and waterways, dumping, clearing of vegetation, storage of personal materials and antisocial activities.

The CLM Act introduced a range of measures in response to feedback on the need for a stronger compliance and enforcement regime for Crown land. These measures focused on:

- imposing stronger penalties for illegal activity
- introducing remediation, stop-work orders and other powers
- ensuring effective court actions.

The CLM Act also enables a broad pool of officers to be authorised to undertake compliance activities and includes safeguards to ensure that these powers are exercised appropriately.

Complementary opportunity for commons

The Commons Management Act does not provide a sufficiently robust compliance and enforcement framework. Commons are largely required to self-manage issues surrounding compliance and enforcement through civil and criminal channels, using plans of management to support these activities. At times, these can be complex channels for commons trust volunteers to follow, with limited opportunities for the department to provide support. There may be an opportunity to better support commons trust boards by supporting compliance and enforcement activities under the CLM Act.

Further refine and strengthen protections for Crown land

While current compliance and enforcement measures under the CLM Act are strong, the review could help refine them to ensure they meet best-practice standards and provide adequate protection of Crown land into the future.

Table 1 lists key issues and potential reforms that could be considered in this area.

Table 1. Key issues and potential reforms relating to compliance

Issue	Potential reform
Inability to undertake enforcement activities when land that is part of the Crown estate is administered under other legislation, such as Crown roads	Broaden the applicability of compliance and enforcement measures under the CLM Act when land that is part of the Crown estate is managed under other legislation that does not have adequate protections for the land

Issue	Potential reform
Damage, including pollution, contamination or encroachment on Crown land that is caused by a source that is external to the land may not be sufficiently covered	Expand the scope of notices and orders to include surrounding land to address external sources of damage to Crown land
The list of qualified persons that can be appointed as an authorised officer under the CLM Act does not include a member of the NSW Police Force	Expand the list of qualified persons that can be appointed as an authorised officer to include members of other relevant government sector agencies, such as the NSW Police Force
Insufficient time under the statute of limitations to identify and investigate compliance issues and, where necessary, to take action	Increase the statute of limitations regarding compliance matters to align with other legislation (for example, to 3 years)
Unable to take proactive action when someone will, or already has, breached the CLM Act	Expand the enforcement options within civil proceedings to seek a 'remedy' or to 'restrain' breaches of the CLM Act so that entities or individuals can be compelled to take action
Insufficient enforcement options for a remediation order	Make it an offence to disregard a remediation order or obstruct remediation work, enabling the issuing of a penalty notice to enforce compliance
Unclear if there is authority to remove unauthorised materials from any structure on Crown land	Broaden powers to remove unauthorised materials from any structure located on Crown land, regardless of whether the structure is legal or illegal
Insufficient tools to deal with the full range of compliance matters, including at the lower end of the spectrum	Enhance powers for managing breaches of leases and licence conditions to align with best practice

Consultation question

Q24: Are there other ways in which the identified compliance and enforcement issues could be addressed, or are there other gaps in CLM Act measures to protect land in the Crown estate that have not been identified?

Financial and administration matters

Proposed reform priorities and goals

- Improve consistency of how rents and royalties are set and reviewed

Part 12 of the CLM Act covers the administration of the Act, including financial matters and the strategic use of Crown land.

Crown land provides a direct economic return to the NSW Government through rents, royalties, licence fees and other charges and from the proceeds of land sales. Division 12.3 of the CLM Act enables the Minister to set and charge fees and accept payments relating to these and other sources of Crown land revenue. It also provides the Minister with options for recovering money when payments are overdue.

This income helps to provide financial support for the development, maintenance and protection of Crown land and reduce Crown Lands' reliance on funding from consolidated revenue.

The CLM Act introduced new general principles for rent determinations and redeterminations and an ability to object to a redetermination of rent.

Financial support for Crown land managers through dedicated, legislated funds has been a long-standing feature of the public land management framework in NSW that was continued under the CLM Act. The Crown Reserves Improvement Fund replaced the former Public Reserves Management Fund and was established under Division 12.5 of the CLM Act.

The CLM Act also introduced the requirement under Division 12.4 for the preparation of a 10-year state strategic plan for how Crown land will be managed and used.

Improve consistency of how rents and royalties are set and reviewed

Most Crown land tenures (such as leases, licences and permits) are subject to payment of an annual rent. The NSW Government applies consistent, fair and transparent methods to redetermine rent based on the type and purpose of the tenure. Rents are determined by the market value of the land including its zoning and use. Under the CLM Act, leases and licences are subject to a market rent review every 3 to 5 years, depending on their tenure.

Licences issued for extracting materials for commercial purposes also attract royalty payments on the materials removed, in addition to an annual rent. The royalty amount is usually based on the type and volume of materials extracted.

Regular review and redetermination of rents, royalties and fees helps ensure that the amounts charged reflect market value and that an appropriate share of the proceeds from the use and occupation of Crown land is returned to the people of NSW via the NSW Government.

A reasonable financial return could be established from extractive industry activities on Crown land by adopting general principles to guide the determination and redetermination of royalties – like those for rent under Division 6.3 of the CLM Act. The ability to object to royalty determinations and redeterminations would also provide greater clarity, transparency and fairness for licence holders.

Consultation question

Q25: What are your views on establishing principles to guide the determination and redetermination of royalties and enabling objections to royalty amounts, as with rents?

Crown Reserves Improvement Fund

Division 12.5 of the CLM Act deals with the Crown Reserves Improvement Fund. The fund is a self-sustaining grant program supported by income generated from loan repayments and interest, leases and licences on Crown land and levies from coastal Crown caravan parks. It provides funds to Crown land managers for repairs, maintenance and improvements including pest and weed control, new recreational infrastructure and environmental initiatives.

The fund is administered in line with the legislative and policy framework that applies to all NSW Government grants programs, which includes the Grants Administration Guide, the Government Sector Finance Act and the *Government Information (Public Access) Act 2009*.

More than $200 million has been allocated through the Crown Reserves Improvement Fund and Public Reserves Management Fund over the last 10 years. In 2022–23 the Crown Reserves Improvement Fund funded 267 projects totalling $17.947 million. Funding is allocated annually through a competitive process. The total value of applications normally exceeds available funding by 4 to 5 times.

We consider the provisions of the CLM Act sufficient to continue to support the successful administration of the fund.

State strategic plan

Division 12.4 of the CLM Act introduced the requirement for the department to develop a state strategic plan to establish how Crown land will be managed and maintained.

Overall, the first state strategic plan has been useful for prioritising the strategic direction of Crown land, delivering greater public value from the Crown land estate and understanding what the community values about the Crown land estate. The provisions of the CLM Act remain adequate for this purpose.

Other matters

This review is not limited to the issues raised in this paper. If there are other matters that you would like us to know about or other issues you would like to raise, please share them.

This could include any feedback about how the CLM Act interacts with other relevant legislation. For instance, councils appointed as land managers have the power to manage Crown land primarily under the Local Government Act, while still having obligations under the CLM Act. As another example, many cemeteries are on Crown land and the relevant land managers are subject to requirements under the *Cemeteries and Crematoria Act 2013* (NSW) as well as the CLM Act.

Consultation question

Q26: Do you have comments on any other matters or issues, or any feedback about how the CLM Act interacts with other relevant legislation?

Appendix A – Statutory review terms of reference

Background

In 2014, the NSW Government conducted the first major review of Crown land in more than 25 years – the Crown Lands Management Review. One of the review's key recommendations was the establishment of a new consolidated piece of legislation for Crown land management. This recommendation was upheld in the subsequent 2014 white paper on proposed legislative reform as well as the 2016 report of the Parliamentary Inquiry into Crown Land in NSW.

As a result, the *Crown Land Management Act 2016* (CLM Act) was made, which amalgamated 8 separate pieces of legislation.

Commencing on 1 July 2018, the CLM Act aimed to deliver a modern, streamlined, and transparent legislative framework to manage Crown land. Its key focus was to reduce red tape, complexity and duplication while supporting greater local decision-making and enhancing Aboriginal involvement in the management of Crown land.

The CLM Act also mandated the preparation of a state strategic plan for Crown land. *Crown land 2031* was finalised and released in June 2021 and sets the vision, priorities, and strategic approach for the management of Crown land in NSW over the next 10 years. Aligning Crown land management and the priorities of government with the aspirations of the community, *Crown land 2031* is being implemented through 3-year action plans, with the first plan released in April 2022.

The CLM Act is supported by the Crown Land Management Regulation 2018, which also commenced on 1 July 2018.

Review requirements

Under section 13.6 of the CLM Act, the Minister administering the CLM Act (the Minister for Lands and Property) is required to begin a review of the CLM Act as soon as possible after 1 July 2023.

The review is to determine:

- whether the policy objectives of the CLM Act remain valid
- whether the terms of the CLM Act remain appropriate for securing those objectives.

Scope

The review requires that the objects of the CLM Act are examined. The 6 objects are as follows (section 1.3):

- to provide for the ownership, use and management of the Crown land of New South Wales

- to provide clarity concerning the law applicable to Crown land
- to require environmental, social, cultural heritage and economic considerations to be taken into account in decision-making about Crown land
- to provide for the consistent, efficient, fair and transparent management of Crown land for the benefit of the people of New South Wales
- 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
- to provide for the management of Crown land having regard to the principles of Crown land management.

Object (f) refers to the principles of Crown land management, which are as follows (section 1.4):

- that environmental protection principles be observed in relation to the management and administration of Crown land
- that the natural resources of Crown land (including water, soil, flora, fauna and scenic quality) be conserved wherever possible
- that public use and enjoyment of appropriate Crown land be encouraged
- that, where appropriate, multiple use of Crown land be encouraged
- 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
- 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.

Process

The Minister has requested that Crown Lands & Public Spaces within the Department of Planning and Environment (now the Department of Planning, Housing and Infrastructure) undertake the review of the CLM Act on his behalf.

The review of the CLM Act will involve Crown Lands & Public Spaces:

- preparing and releasing a discussion paper to support public consultation
- analysing submissions received
- preparing a final report on the review findings and recommendations.

Final report

As required under section 13.6 of the CLM Act, the Minister for Lands and Property will table a final report on the outcome of the review in each House of Parliament by 1 July 2024.

Appendix B – Summary of consultation questions

Objects and principles

Q1: Should the objects of the CLM Act be updated? If so, how should they change?

Q2: Are the principles of Crown land management still relevant, and is it appropriate to continue to include them in the CLM Act? Or should they be located outside of the Act, where they can be more easily maintained?

Crown land transactions

Q3: How could the CLM Act better support the strategic use of Crown land to meet important NSW Government priorities, such as through different tenure and partnership arrangements?

Q4: Are the conditions that must be met before Crown land in the Western Division of NSW can be purchased and converted to freehold land still appropriate? If not, what should change?

Q5: What are your views on granting all perpetual leaseholders the same rights to apply to purchase their leases, including holders of special leases in perpetuity?

Q6: What changes could be considered to the CLM Act to make it easier to submit an application for certain development of dedicated or reserved Crown land? For example, could the kinds of development where the Minister is taken to have already given consent be expanded?

Q7: What is the best way to notify people about events, activities or changes that may have an impact on Crown land in their local area?

Management of Crown land

Q8: What are your views about the Crown land manager structure? Does the CLM Act outline the powers and obligations of land managers in a sufficiently clear way? How could it be improved?

Q9: What are your views on the powers and obligations of the 2 current categories of land managers? What changes, if any, would you like to see regarding these powers and obligations or to the categorisation and appointment of Crown land managers?

Q10: What are your views about expanding or introducing new land manager categories or clarifying the scope of the existing categories?

Q11: What are your views on Crown land managers and council land managers having more flexibility to grant longer-term leases and licences on Crown land without ministerial consent? Should the powers of category 1 land managers to grant tenures be aligned with council land managers, given that their native title obligations are aligned?

Q12: What further reforms, if any, should be considered to the requirements of the CLM Act around plans of management? Should requirements around when a plan is needed or who should be required to submit a plan be amended? Should content specifications be

streamlined? Should there be incentives attached to having a plan in place, such as greater autonomy?

Q13: How could the CLM Act better ensure the purpose or purposes of dedicated or reserved Crown land are considered in any plan of management for the land?

Q14: What changes do you think are required around the governance obligations of statutory land managers under the CLM Act? How could the CLM Act better support statutory land manager boards and directors to meet their governance obligations?

Q15: What changes, if any, should be made to the current statutory land manager structure to address current issues around reporting?

Q16: How could reporting requirements be simplified to alleviate the financial and administrative burden on statutory land managers, while appropriately managing risk?

Dedicated and reserved Crown land

Q17: How could the CLM Act better support an improved understanding of the purposes for which Crown land can be dedicated or reserved?

Q18: What are your views on enabling a Crown land dedication or reservation under the CLM Act to be automatically cancelled or revoked where the land has been approved for transfer to a native title holder under the *Native Title Act 1993* (Cth)? Are there other ways that the CLM Act can improve the smooth transfer of Crown land to native title holders under an approved agreement?

Native title rights and interests and Aboriginal land rights

Q19: What are your views on, or experience of, the requirement for some Crown land managers to engage and retain a native title manager?

Q20: What do you think about clarifying the role of the Minister (or the department as their delegate) in ensuring advice from native title managers is sought and complied with?

Q21: What do you think about council and category 1 land managers being responsible for seeking written advice from native title managers for all acts or activities to be undertaken on the Crown land they manage that may affect native title?

Q22: What are your views on issuing native title certificates to exempt relevant Crown land managers from having to seek advice from a native title manager? Should this option be replaced with some other form of exemption, or removed altogether?

Q23: What do you think about council or category 1 land managers being responsible for getting written advice about activities on the land they manage that may affect Aboriginal land rights and not just native title rights?

Protection, compliance and enforcement

Q24: Are there other ways in which the identified compliance and enforcement issues could be addressed, or are there other gaps in CLM Act measures to protect land in the Crown estate that have not been identified?

Financial and administration matters

Q25: What are your views on establishing principles to guide the determination and redetermination of royalties and enabling objections to royalty amounts, as with rents?

Other matters

Q:26: Do you have comments on any other matters or issues, or any feedback about how the CLM Act interacts with other relevant legislation?