

# **LGNSW Submission Evaluation of Crown Lands Management Act 2016**

Discussion Paper

April 2021

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## 1. Introduction

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to comment on the Crown Land Commissioner's Evaluation of the *Crown Lands Management Act (2016) (CLMA)*. We also appreciate the face to face consultation that the evaluation team has conducted with LGNSW, individual councils and other stakeholders. LGNSW understands that this has been an extensive program and commends the Commissioner on this.

LGNSW has actively participated in the Crown lands reform process. This includes constructively participating in the development and implementation of the CLMA through to development of the Draft Strategic Plan.

## 2. General Comments

LGNSW made a submission on the draft State Strategic Plan for Crown Land in 2020. The positions presented in that [submission](#) are relevant to the evaluation and the key issues raised still represent the primary concerns of councils, although it is acknowledged that progress has been made on some matters.

Local government is a major partner in the management of Crown land and plays a critical role in the successful implementation of the CLMA. Councils currently manage over 7,750 Crown reserves in NSW. Next to the NSW Government, local government is the major stakeholder in Crown lands management. Nearly all councils manage several Crown reserves. Around 25 councils manage 70 or more reserves and 9 councils manage over 100 reserves each. The implementation task is vast.

Local government has generally been supportive of the Crown lands reforms and actively participated in the development of the CLMA because a primary objective was that it would ultimately simplify Crown land management for councils i.e.:

- enable councils to manage their Crown land reserves as if they were council-owned land under the Local Government Act 1993 (LGA)
- remove the requirement for councils to gain the approval of the Minister for Lands' for property dealings
- provide for the voluntary transfer of Crown land ownership to councils where the land is assessed as being primarily of local significance.

Local Government concerns about the CLMA have largely related to implementation of the Act rather than the Act itself.

Unfortunately, implementation of the reforms is imposing unanticipated cost and responsibility burdens on councils. These primarily derive from the requirement for councils to prepare Plans of Management (POMs) for the Crown reserves they manage and the transfer of responsibility for the management of Native Title, however there are some other significant issues.

## 3. Plans of Management (POMs)

The requirement for preparation of POMs for Crown reserves is imposing large additional costs on councils. The State Government provided only \$7 million, an average of \$54,000 per council, over 2 years to assist councils with the costs of preparing POMs. With an estimated 3,500 POMs to be prepared, this averaged a mere \$2,000 per plan. Councils report that this is

a fraction of the true cost given the complexity of the task, the need for extensive public consultation and the need to engage additional staff or consultants where councils lack the capacity or expertise.

Councils had advised that the original 30 June 2021 deadline for the completion of all new POMs was unrealistic and unachievable. LGNSW is pleased to note that this has recently been extended.

#### **4. Native Title Management**

The CLMA requires each council have a Native Title “Manager” to deal with the complex requirements of the Native Titles Act and the NSW Aboriginal Land Rights Act in relation to Crown reserves managed by councils. While the Department of Planning, Industry and Environment (DPIE) - Crown Lands and DPIE- Local Government have jointly organised training, workbooks and other resources, many councils lack confidence in the training and their capacity to manage the complexity of Native Title. In most cases councils will not have the resources to dedicate a staff member as a full time expert Native Title Manager, the function will be typically added to the responsibilities of an existing position. This model of devolved responsibility appears to be inefficient and vulnerable to errors. Councils are particularly concerned about potential legal liabilities.

LGNSW recommends that alternative approaches to the way that responsibility for management of Native Title is exercised be investigated. One approach might involve formation of a centralised specialist Native Title unit within Crown Lands to support councils (and other Crown Land Managers).

#### **5. Aboriginal Land Claims**

Councils continue to express concerns about the backlog in the determination of aboriginal land claims. The uncertainty that lingers over thousands of parcels of land stifles investment by councils, community organisations and businesses. This extends to maintaining and renewing existing infrastructure.

It is encouraging that this and associated problems have been recognised by DPIE-Crown Lands and we note that a recent review has highlighted several areas for improvement. LGNSW is of the view that the backlog is to a large extent the result of many years of inadequate resourcing. There is an urgent need to clear the backlog.

Councils have also called for amendments to the Aboriginal Land Rights Act to streamline council acquisition of land held by Local Aboriginal Land Councils (LALCs) for infrastructure, but only where the LALC approves the acquisition.

#### **6. Land Negotiation Program**

Councils have been critical at the apparent lack of progress of the Land Negotiation Program. This program was intended to enable voluntary title transfers of locally significant land between the state, councils and Aboriginal Land Councils. This was a key element in local government support for the CLMA and related reform processes. There is a need to restore credibility by expediting a number of strategic voluntary transfers to councils. Councils would also like to see the transfer conditions be relaxed to provide more flexibility to councils and enable them to optimise the use of the land.

#### **7. Conclusion**

LGNSW welcomes the evaluation of the CLMA and we commend the Commissioner on recognising the persistent problems surrounding the management of Crown lands. As noted above, LGNSW tends to the view that the underlying problems primarily relate to under resourcing implementation of the CLMA rather than the Act itself. This is evident in the primary concerns of local government:

- Plans of Management
- Native Title Management
- Aboriginal Land Claims
- Land Negotiations Program.

LGNSW will be pleased to provide further, more detailed comment on the draft recommendations of the review process.

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