

LGNSW Submission

**Statutory Review
of Crown Land
Management Act
(2016)**

March 2024



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.

OVERVIEW OF THE LOCAL GOVERNMENT SECTOR



Local government in NSW employs **55,000 people**



Local government in NSW is responsible for about **90% of the state's roads and bridges**



Local government in NSW looks after more than **\$177 billion** of community assets



NSW councils manage an estimated **4 million tonnes of waste** each year



Local government in NSW spends more than **\$2.2 billion** each year on caring for the environment



NSW councils own and manage more than **600 museums, galleries, theatres and art centres**



NSW has more than **350 council-run libraries** that attract tens of millions of visits each year



NSW has more than **400 public swimming and ocean pools**

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INTRODUCTION

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils, county 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 take part in the [Statutory Review of the Crown Lands Management Act 2016](#) (CLM Act). LGNSW commends the Department of Planning, Housing and Infrastructure (the Department) for undertaking this review on a timely basis. We also appreciate the consultation that has been conducted with LGNSW, councils and other stakeholders.

LGNSW has actively participated in the Crown lands reform process. This includes constructively participating in the development and implementation of the CLM Act, through to development of the Draft Strategic Plan and now the Statutory Review of the CLM Act.

This submission was endorsed by the LGNSW Board in May 2024.

GENERAL COMMENTS

Local government is a major partner in the management of Crown land and plays a critical role in the implementation of the CLM Act. Councils currently manage over 8600 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 ongoing CLM Act implementation task is vast.

Local government has generally been supportive of the Crown lands reforms and actively participated in the development of the CLM Act because it promised to improve and simplify the Crown land management for councils. It was expected to:

- enable councils to manage their Crown land reserves as if they were council owned land under the *Local Government Act 1993*
- 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 CLM Act have largely been related to the unanticipated costs and responsibility burdens it has imposed on councils. Primarily:

- the requirement for councils to prepare Plans of Management (PoMs) for the Crown reserves they manage (originally with an unachievable deadline of 20 June 2021). Thankfully, the deadline was later removed in favour of a more graduated process that is more workable for councils, and
- the transfer of responsibility for the management of Native Title to councils and the requirement for each council to have a Native Title manager.

In addition, 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 of existing infrastructure.

Many councils are also disappointed with the apparent abandonment of the Land Negotiation Program as it relates to local government. 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 CLM Act and related reform processes.

However, the issue of Native Title management burden remains the major point of contention. Councils continue to struggle with the complexity of the Native Title Act and the NSW Aboriginal Land Rights Act in relation to Crown reserves they manage and fear potential liabilities. It is acknowledged that the Department continues to provide training and resources to assist councils, but this has not resolved the problem.

Local government calls for a fundamental amendment of the CLM Act to transfer responsibility for Native Title management back to the State Government. This position is discussed further later in the submission.

LGNSW responses to the Discussion paper questions are provided below. LGNSW Annual Conference Resolutions relating to Crown lands are provided in **Appendix A**.

CONSULTATION QUESTIONS

Objects and Principles

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

LGNSW Comment:

LGNSW is of the view that the current objects of the CLM Act are fit for purpose and is not aware of any compelling reasons for change from a local government perspective. LGNSW is aware that other stakeholders may have different views.

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?

LGNSW Comment:

The CLM principles appear to be basically sound. However, LGNSW agrees with the former Crown Land Commissioners finding that there are aspects of the Crown Land

principles that could conflict with the objects. For example, Principles b) and e) below could conflict with legitimate Crown land objectives that provide for land uses such as camping and caravanning on Crown land, the release Crown lands for housing, or other social and economic uses of Crown lands:

b) the natural resources of Crown land (including water, soil, flora, fauna and scenic quality) be conserved wherever possible

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

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?

LGNSW Comment:

LGNSW has not identified any specific provisions of the CLM Act that would present an obstacle to more effective partnership and tenure arrangement. However, councils have indicated that obstacles may result from the complex interaction with other Acts, such as, the Local Government Act, Native Title Act, Aboriginal Land Rights Act, Forestry Act, Conveyancing Act and Roads Act.

LGNSW supports the allocation of suitable Crown land under long term leases for the provision of public, social and emergency housing by government agencies or recognised public and social housing providers.

LGNSW is opposed to the transfer of this land in freehold to the private sector. This is consistent with the LGNSW 2023 Conference Resolutions, which seek to:

5. Ensure no further privatisation of public housing and/or Crown land;
6. Ensure affordable housing is held in perpetuity; by not-for-profit Community Housing Providers, or in public operation and ownership and;
7. Ensure all new public and affordable housing delivers on local community and planning expectations.

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?

LGNSW Comment:

Most of the lands in question are in the unincorporated zone and outside the jurisdiction of local government.

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?

LGNSW Comment:

LGNSW agrees that that the current distinction is inequitable and supports amendment of the CLM Act to provide consistency.

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?

LGNSW Comment:

No comment.

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?

LGNSW Comment:

Any changes should allow councils to determine the best method for notices to be published so as to bring the notices to the attention of the persons to whom they are directed. Any amendments should be consistent with the provisions for notification in the Local Government Act and the Local Government Regulation 2021.

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?

LGNSW Comment:

From a local government perspective, the current land manager structure is logical and appropriate. Council managers should take precedence in a distinct category as they largely manage reserves under the Local Government Act and councils are a democratically accountable tier of government.

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?

LGNSW Comment:

It is appropriate that that powers and obligations are scaled to reflect status and capability of different land managers. It is noted that the powers and obligations of current Category 1 and 2 categories of land managers do not apply to local government.

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

LGNSW Comment:

The current categories appear adequate although LGNSW can see that cases could be made for Government and Government-related entities to be placed in a distinct category with similar powers as local government.

Aboriginal Land Councils could also be placed in a separate category in recognition of their standing and interests in relation to Crown lands.

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?

LGNSW Comment:

LGNSW supports councils having more flexibility to grant longer term leases and licences on Crown lands.

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?

LGNSW Comment:

The text that precedes this question states:

“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”.

These changes are supported. Anything that makes the process simpler or requires fewer resources is supported. However, it does require councils being able to access guidance on how to determine what is high value or high profile. Councils also need a more streamlined process to access information to identify land that is subject to a dedication or is reserved.

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?

LGNSW Comment:

The CLM Act and the Local Government Act already set out the requirements for councils very clearly.

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 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?

LGNSW Comment:

Questions 14, 15 and 16 do not apply to local government land managers. Council land managers comply with the reporting requirements of the Local Government Act.

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?

LGNSW Comment:

LGNSW notes Tweed Shire Council’s response that no specific legislative changes are required, but a list of gazetted additional reserve purposes published on the Department’s portal would be helpful.

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?

LGNSW Comment:

Local government has concerns about automatic cancellation or revocation of the of the Crown land dedication or reservation. Opportunities for maintaining the dedicated or reserve purpose within the Native Title transfer should be investigated.

Native Title 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?

LGNSW Comment:

Despite training and other support provided by the Department, councils still find this responsibility very onerous. For example, Tweed Shire Council, a relatively large regional council, advises that the responsibility is above the capability and capacity of council staff. Tweed advises that council does not have the resources required to manage this responsibility to the degree required. This view reflects that of numerous councils across NSW. Councils maintain that more funding and assistance is required for councils to adequately service this responsibility or that the CLM Act be amended to transfer responsibility for Native Title management back to the State.

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?

LGNSW Comment:

Refer to comments on Native Title management – Q21, Q22 and Q23.

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?

LGNSW Comment:

Councils consider this to be too onerous. This is not supported as it will add to regulatory burden and costs.

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?

LGNSW Comment:

The functions of Native Title managers should be carried out by a centralised agency. Requiring all 128 councils to employ or engage a native title manager means that there is a duplication of resources across councils which could be concentrated more efficiently in one agency. A central agency will also reduce the likelihood that inconsistent advice is being provided.

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?

LGNSW Comment:

This is a service that should be provided by a centralised agency. This is because councils need to easily access information on the reservations and dedications that apply to Crown land to ascertain if the land is being lawfully used. Being able to access

one trusted agency will improve councils' confidence in their decision making which will assist Aboriginal land rights to be resolved in a timelier manner.

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?

LGNSW Comment:

All the suggestions in the discussion paper to further refine and strengthen protections for Crown land should be adopted. Recent media on the difficulties to protect Crown land against illegal land clearances (see for example [The illegal destruction of trees is running rampant across Sydney and Melbourne \(smh.com.au\)](https://www.smh.com.au/news/nature/the-illegal-destruction-of-trees-is-running-rampant-across-sydney-and-melbourne-20210511-p5a111.html)) and the failure to successfully prosecute environmental offences taking place on Crown land (see [Chia v Ku-ring-gai Council](https://www.nswccca.com.au/cases-and-decisions/ku-ring-gai-council-v-new-south-wales-2021-189) [2021] NSWCCA 189) reinforce that more needs to be done.

Finance and Administration

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?

LGNSW Comment:

LGNSW supports principles to guide the determination of rents for Crown lands. However, LGNSW does not agree that all rents should be primarily determined by market value and the application of market rents. Full market rents should only apply to private usage and commercial activities. Lands leased for charitable and community purposes should be charged discounted or concessional rents. Pricing principles should include social equity and accessibility. It is appropriate that rents or royalties applying to extractive industries are set at the market rate.

Other

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

LGNSW Comment:

Nil

CONCLUSION

LGNSW welcomes the review of the CLM Act and we commend the Department on the on recognising the persistent problems surrounding the management of Crown lands. As noted above, LGNSW is of the view that that many of the current difficulties associated with Crown land management primarily relate to under resourcing implementation of the CLM Act. However, councils continue to struggle with Native Title management and local government calls for a fundamental amendment of the CLM Act to transfer responsibility for Native Title management, back to the State Government.

For further information on this submission, please contact Shaun McBride, Chief Economist, on 02 9242 4072 or email shaun.mcbride@lgnsw.org.au

APPENDIX A LGNSW Conference Resolutions

2023 Resolutions

39: Shoalhaven City Council

5. Ensure no further privatisation of public housing and/or crown land;
6. Ensure affordable housing is held in perpetuity; by not-for-profit Community Housing Provider, or in public operation and ownership; and
7. Ensure all new public and affordable housing delivers on local community and planning expectations.

124 Clarence Valley Council - Native title compensation within and across LGAs

That Local Government NSW lobbies the NSW Government to

1. Prepare a policy and associated legislation or other regulatory mechanism/s that provide a consistent process for assessing, valuing and resolving native title compensation within and across LGAs, and
2. Establish a native title network for NSW council staff to connect, share information and discuss local government issues regarding native title.

2022 Resolutions

26 Rous County Council

...

(ii) requests that the NSW Government amends the State Environmental Planning Policy (Transport and Infrastructure) 2021 so that flood mitigation authorities do not have to seek regulatory approval from NSW Crown Lands or NSW Department of Primary Industries to undertake routine maintenance of its infrastructure. This acknowledges that any environmental impact can be addressed through the authority's responsibilities under the Environmental Planning and Assessment Act 1979,

59 Warrumbungle Shire Council - Causeways

That Local Government NSW seeks from the NSW State Government:

1. Practical, sensible and affordable solutions in the management of causeways in waterways including the cooperation and collaboration of a number of state agencies such as Crown Lands and Fisheries; and
2. Acceptance of a process whereby the Crown accepts responsibility for the land and waterways under its control and does not seek to transfer that responsibility onto councils without appropriate funding.

64 Cessnock City Council - Crown land roads funding

That Local Government NSW calls on the State Government to fund Crown Lands Department to plan for, resource and repair Crown Roads and all Crown land assets and infrastructure that are damaged in a Natural Disaster.

105 Byron Shire Council - Liability for native title compensation

That Local Government NSW calls on the NSW Government to reverse the cost shift onto Local Government for liability for Native Title Compensation by deleting 'Division 8.4 - Compensation responsibilities' from the Crown Lands Management Act 2016.

124 Bega Valley Shire Council - Processing of Aboriginal Land Claims and Native Title Claims

That Local Government NSW:

1. advocates to both the State and Federal Government for prioritisation of the NSWALC blanket Aboriginal Land Claims and Native Title Claims currently in the Federal Court which in effect prevents partnering opportunities, development/enhancement and investment on Crown land and Aboriginal Land.
2. advocates for removal of native title requirements for land owned by Local Aboriginal Land Councils.

2021 Resolutions

9 Hay Shire Council - Cost shifting onto local government.

That Local Government NSW calls upon the State Government to undertake an urgent review into the cost shifting from the State to local government, particularly in the areas of emergency services, external audit, **crown land management**, planning, companion animals, underground petroleum storage systems, disaster recovery, waste management and now COVID-19 Health Order compliance.

2020 Resolutions

39 Blue Mountains City Council - Crown Lands and Plans of Management

That councils at the Local Government NSW Annual Conference:

1. Seek the NSW Government fully fund the costs associated with transfer of management of Crown Lands to local councils, including the costs of developing and implementing Plans of Management for Crown Land Reserves;
2. Seek the NSW Government recognise the difficulties being encountered by local government of NSW in meeting the requirements of the Crown Lands Management Act 2016 and extend the timeframe for adoption of Plans of Management for public reserves for which councils are appointed as Crown Land Manager; and
3. Seek the NSW Government improve training and support provided for appointed Native Title Managers within local government of NSW.

Snowy Valleys Council (covered by resolution 8) Local and State Government bushfire management of Crown Lands

That Local Government NSW lobbies the NSW Government to partner with councils and commit funding to better plan for bushfire management of Crown Lands, with a particular emphasis on the control of vegetation and weeds (in accordance with the Biosecurity Act 2015) to help mitigate the bushfire risk to community.

9 Tenterfield Shire Council - Cultural burning to facilitate fire management

That Local Government NSW calls upon the NSW Government to support cultural burning on Crown Lands, National Parks and State Forest held lands in every State of Australia, and the training and employment of indigenous people to carry out this important task.

Greater Hume Council (Covered by 39) Management of Crown Lands

That Local Government NSW urgently requests the NSW Government to adequately resource the NSW Department of Planning, Industry and Environment so that Crown Land matters can be dealt with so as to reduce the large backlog of applications.

Shoalhaven City Council (Covered by 39) Support for the completion of Crown Land Management Plans

That Local Government calls on the NSW Government to provide greater funding to councils to complete Crown Land Management Plans

2019 Resolutions

55 LGNSW Board – Crown lands management

That Local Government NSW calls on the NSW Government to provide increased assistance to councils to enable them to effectively perform their new roles and responsibilities under the Crown Lands Management Act (2016). Specifically, the Government is requested to:

- a) Fully fund the development and implementation of Plans of Management for Crown Lands Reserves within each local government area;
- b) Extend the 30 June 2021 deadline for councils to prepare the Plans of Management for Council Reserves as required under the new Crown Land Management Act 2016;
- c) Fully fund the costs of training staff to assess native title matters associated with management of Crown land and any related costs resulting from the need to engage expert advice and guidance;
- d) Expedite the Crown Land Review Program so that ownership of more land agreed to be primarily of local significance is transferred to councils;
- e) Provide additional funding for the implementation of the Biosecurity Act 2015 for land being transferred to councils and a statement of Biosecurity Risks be provided to councils prior to the handover; and
- f) Stop charging councils commercial rents for crown land used for council purposes (eg: easements) to enable councils to apply the savings to Crown land management.

This issue was also raised by Blue Mountains City, Kyogle, Wagga Wagga City, Federation, Cowra, Kyogle, Uralla Shire and Central Coast Councils – see Appendix A

Blue Mountains City Council – Management of Crown Land

That Local Government NSW seeks that the NSW Government fully fund costs associated with:

1. The transfer of management of Crown lands to local councils, including the costs of developing and implementing Plans of Management for Crown Lands Reserves within each LGA; and
2. Training of staff to assess native title matters associated with management of Crown Land.

Kyogle Council – Crown land, forests, parks fuel load reduction

That Local Government NSW requests the NSW Government to set upper limits on fuel loads in all Crown land forests, including State Forests and National Parks, and mandates hazard reduction programs to achieve these.

Wagga Wagga City Council – Commercial rates for Crown land

That Local Government NSW and member councils advocate that the NSW Government stop charging local councils commercial rates for Crown land for council purposes (e.g.: easements) where there is a significant benefit to the community

Federation Council – Crown lands

That the NSW Government accelerates the Crown Land Review Program and allow a more efficient process for transfer of current Crown land to freehold land.

