CROWN LANDS AMENDMENT (MULTIPLE LAND USE) BILL 2013

Bill introduced on motion by Mr Andrew Stoner, read a first time and printed.

Second Reading

Mr ANDREW STONER (Oxley—Deputy Premier, Minister for Trade and Investment, and Minister for Regional Infrastructure and Services) [3.15 p.m.]: I move:

That this bill be now read a second time.

The Crown Lands Amendment (Multiple Land Use) Bill 2013 amends the Crown Lands Act 1989 to ensure the legal validity of interests such as leases, licenses and permits which have been granted over reserved Crown land. The Crown Lands Act establishes a system for managing and regulating the use of Crown land for the benefit of the people of New South Wales. Crown land in New South Wales comprises around 34 million hectares of land or 42 per cent of the land area of the State. The Crown land estate plays an important role in supporting the New South Wales economy and is used for all kinds of community and business activities. Crown land that has been set aside for a public purpose is generally referred to as Crown reserve. There are around 35,000 Crown reserves in the State. These contain much of the State's natural, cultural and open space, for example, local parks, heritage sites, community halls, nature reserves, showgrounds, caravan parks and travelling stock routes.

Crown reserves are generally reserved for a specific or primary purpose but have commonly been managed to accommodate a wide variety of public and private purposes in accordance with the principles of the Crown Lands Act 1989. Section 11 (d) of the Act states that "where appropriate, multiple use of Crown land be encouraged". Consistent with this multiple-use principle, thousands of tenures have been issued over the years for community and commercial purposes over Crown reserves. Over time, tenures have been granted for multiple use or uses secondary to the primary purpose of Crown reserves. These tenures permit activities as diverse as mining, grazing and farming, marinas, telecommunication towers, sporting clubs and tourist parks. The underlying premise for the issue of these tenures is that they do not frustrate the primary purpose of the reserve.

In November 2012, the legal validity of many of these secondary use tenures was called into question by the New South Wales Court of Appeal in a decision referred to as the Goomallee Claim. The formal title of that case is *Minister Administering the Crown Lands Act 1989 v New South Wales Aboriginal Land Council*, 2012J NSWCA 358. In this case, the court found that a grazing licence granted over a parcel of Crown land reserved for the purpose of "public recreation" was unlawful. The court's view was that the licence was not for the same purpose as the reserve, or "in furtherance of or incidental to" the purpose of the reserve. The effect of the ruling is to potentially make many secondary use tenures across the State invalid. More broadly, the ruling undermines the multiple-use principle enshrined in the Crown Lands Act, which has guided the management and use of Crown reserves for many years.

I will spell out the undesirable consequences for the people of New South Wales if the effects of the court's decision are not addressed by the passing of this bill. The first is the number of tenures potentially affected and the land area and income streams that will be impacted, and the second is the compromise or the potential disruption of community and business activities

that are occurring on these sites. Information available from the Crown Land Division's database indicates that there are more than 8,000 secondary tenures issued by the New South Wales Government over Crown reserves in New South Wales. There is a good chance that up to 90 per cent of them are potentially subject to challenge because they are for purposes that are not "in furtherance of or incidental to" the primary purpose of the reserve.

These tenures cover Crown reserves of up to 12 million hectares in area, generating up to nearly $10 million in rent or lease fees annually. In addition, there are also thousands of secondary tenancies issued by reserve trust managers, such as councils and showground trusts, that may also be subject to legal challenge. The income generated by these activities provides a source of funding for the maintenance of those reserves and are the priority activities of government. Tenures can also serve as a management tool to enhance the primary purpose of the reserve. For example, a commercial food outlet such as a kiosk can encourage greater patronage of a public recreation area and assist in reserve maintenance through tenure conditions. The range of tenure types potentially affected by the court's decision is very broad. For example, many reserves have located upon them Country Women's Association halls, Meals on Wheels kitchens, men's sheds, preschools, libraries, council chambers, community centres, tourist information centres and State Emergency Services, Rural Fire Service and Marine Rescue facilities.

Additionally, many thousands of grazing licences are issued over public recreation reserves. Travelling stock routes, cemeteries and showgrounds may also be challenged. Bear in mind that this sort of grazing activity assists the Rural Fire Service in managing fuel loads over large areas of land. These could also be challenged, despite the fact that they may not materially harm the primary purpose of the reserve and, as I said, assist with hazard reduction as well as weed and pest control. Mobile phone tower sites are often located on Crown reserves. These facilities could also be undermined by the court's decision, despite their now being regarded as community service essentials and not necessarily foreseen in 1989, when the Crown Lands Act was legislated. The continuation of these activities is desirable if they are not causing material harm to the primary purpose of the reserve. However, in light of the court decision, these tenures are now vulnerable to challenge. This situation cannot be left unresolved, and will not be left unresolved by this Government.

I will also clarify for the House how this bill relates to the Aboriginal Land Rights Act 1983 under which the Goomallee claim was lodged in the first place. Under that Act, Aboriginal land councils have the right to make a claim over Crown lands, including Crown reserves, if they are not being lawfully used or occupied. In the Goomallee claim the Government submitted that the existence of a grazing licence was evidence of the land being lawfully used and occupied. However, the court found that the licence was evidence of non-lawful use and occupation. This is because the court ruled it was for a purpose different from and not "incidental to or in furtherance of" the reserve. As a result, the court ordered that the land be granted to the Aboriginal land council in question.

I emphasise that, although this bill was precipitated by a claim under the Aboriginal Land Rights Act, it is not the primary purpose of the bill to frustrate the land claims process or affect the rights of land councils. The primary purpose of the bill is to restore the multiple use principle contained in the Crown Lands Act and to ensure the legal validity of all secondary tenures affected by the decision, most of which are not under Aboriginal land claim. I also add that, if the bill is passed it contains special provisions that will enable all claims under the Aboriginal Land Rights Act that existed prior to the Goomallee decision to proceed as if the

bill had never been passed. In other words, existing claims will still be determined in line with the court's interpretation of the Goomallee claim. However, new claims lodged after the Goomallee decision of 9 November 2012 will not be able to rely on the Goomallee decision.

I will now highlight some of the specific elements of the bill. The bill will validate all existing secondary tenures but only if they are not causing, or likely to cause, material harm to the primary purpose of the reserve. The bill also includes a dispute resolution mechanism that will require persons who wish to prevent harmful activities from occurring under a tenure to first make application to the Minister before rushing off to court. In considering such an application, the Minister may place additional conditions on the tenure to prevent the harmful activity from continuing in the future. For example, the councils at Byron Bay, Ballina, Coffs Harbour and Clarence have located Marine Rescue facilities on public recreation reserves. If someone complains about these facilities the Minister could consider the complaint and any evidence submitted and undertake independent investigations. The Minister could then place additional conditions on the tenure to prevent disruption to the amenity of the reserve.

It is important to note that the bill does not prevent the participants to any dispute resolution process from exercising any existing rights to appeal the Minister's decision. This dispute resolution approach is considered appropriate in two ways. First, it provides practical ways of resolving disputes about secondary uses of reserved land without invalidating the entire tenure and thereby impacting negatively on business or community services. Secondly, it minimises litigation and provides a cost-effective and accessible way of managing disputes about competing community, private and public interests. A period of six months will be provided for parties to make submissions to the Minister regarding the alleged harm. This period allows for the department to assess the matter, to develop appropriate management responses and for the Minister to make a decision. During this time the tenure would continue to be valid and operations could continue. If the Minister fails to make a decision within the prescribed period then the tenure would not be automatically invalidated but would be open to legal challenge.

The bill is to apply retrospectively to existing tenures that, in light of the recent court decision, may arguably have been invalidly granted, as well as to future tenures granted over Crown reserves. The Government has carefully considered this retrospective approach and believes it is the appropriate course of action. The alternative would have been to add additional purposes to more than 8,000 Crown reserves and to revoke and re-issue each of the secondary tenures. That response is estimated to cost at least $4 million to the taxpayer via government expenses for those government-issued tenures alone. The process would consume significant resources and take several years to complete. Significant further costs and disruption would also be imposed on reserve trust managers, tenure holders and the New South Wales Government for the revocation and re-issue of trust-issued tenures.

The Government's view is that the uncertainty for tenure holders during such an extended administrative process would significantly jeopardise the ongoing community and business activity on Crown reserves. As noted earlier, safeguards will be put in place to ensure that tenures that are materially harming, or could materially harm, the reserve purpose will be able to be identified. The amendments to the Crown Lands Act will also provide for versatility and innovation in the use of the Crown land estate. As noted earlier, there are contemporary uses, such as mobile phone towers, that may not have been anticipated when the reserve was created that do not cause material harm to the reserve purpose. There are also legacy users on Crown reserves such as community and emergency services organisations. These facilities

would be regarded as an appropriate use of Crown land from the community's perspective, but may fail the legal test established in that Goomallee court case of "ancillary to, in furtherance of, or incidental to the reserve purpose" under the current provisions.

In summary, this bill will provide certainty for all land users and continuity for activities across the Crown reserves. It reflects the important multiple use principle in the Crown Lands Act that encourages the use of Crown reserves for multiple community and economic purposes. As noted earlier, safeguards will be put in place to ensure that tenures that are materially harming, or could materially harm, the reserve purpose will be identifiable. The bill is essential to the lawful and effective administration of Crown reserves. It will provide certainty for government, the community, business and Aboriginal land councils regarding the lawful use of Crown land. Most importantly, it will enable the economic and social value of the Crown estate to be maximised. I commend the bill to the House.

Debate adjourned on motion by Mr Richard Amery and set down as an order of the day for a future day.