

**Submission  
No 8**

## **EXAMINATION OF SELECTED AUDITOR-GENERAL'S FINANCIAL AUDIT REPORTS 2020**

**Organisation:** Department of Planning, Industry and Environment (DPIE)

**Date Received:** 4 June 2021



Mr Greg Piper MP  
Chair  
Legislative Assembly  
Public Accounts Committee  
Parliament of New South Wales  
Macquarie Street  
SYDNEY NSW 2000

**By email:** [pac@parliament.nsw.gov.au](mailto:pac@parliament.nsw.gov.au)

Dear Chair

Thank you for your correspondence to Mr Jim Betts, Secretary, Department of Planning, Industry and Environment, seeking further information on the Auditor-General's report on Planning, Industry and Environment, tabled in the NSW Parliament on 10 December 2020. The Secretary has asked me to respond on his behalf.

The Department of Planning, Industry and Environment – Crown Lands continues to work on the matters raised in the Auditor-General's report as a priority. Responses to the specific questions outlined in your letter are enclosed.

If you have any more questions, please contact [REDACTED], Deputy Secretary, Crown Lands, at the Department of Planning, Industry and Environment on [REDACTED]

Yours sincerely

[REDACTED]  
**Michael Wright**  
**Group Deputy Secretary**  
**Housing and Property**

Encl: Response to Public Accounts Committee questions

## **Further information on the Auditor-General's report on Planning, Industry and Environment**

### **1) Follow up questions relating to the increase of unprocessed Aboriginal land claims over Crown land by the Department:**

**The Auditor-General's report commented on the 36,769 unprocessed Aboriginal land claims remaining at 30 June 2020. Why is there such a large volume of unprocessed claims sitting with the Department?**

The Department recognises the importance of land to Aboriginal people and the importance of working with local Aboriginal land councils to achieve the objectives of the Aboriginal Land Rights Act. Crown Lands is working to unlock economic development and activation opportunities and improve social and cultural outcomes for Aboriginal communities through the land claims process.

In 2019-20, Crown Lands determined the most number of Aboriginal Land Claims (ALC) ever in any single year, and made the most land grants to LALCs in any single year.

However, there is no limit on the number of claims a local Aboriginal land council (LALC) or the NSW Aboriginal Land Council (NSWALC) can lodge at any given time. Even after a refusal, new claims can be made on the same parcels of land from the same LALC or NSWALC and at any point in time. There can be multiple claims over the same parcels of land.

This results in a significant number of claims under assessment at any point in time which remains a challenge. Claims can be lodged readily by a LALC. However, the assessment of claims is legally complex and prescriptive. As a result, the time required by the Department to fully assess and determine a claim can take several months.

As a result, as at 31 March 2021, despite the significant progress in the number of claims determined in 2019-20, there are now 37,522 undetermined ALCs.

**What are some of the factors that hinder the processing of these land claims? What processes and procedures could be implemented to clear the backlog of the unprocessed claims over the last ten years?**

The assessment of Aboriginal land claims is inherently complex and prescriptive as the process involves determining the chronology of use and occupation that has occurred at the site under claim. In the majority of assessments, information/evidence is required from third parties, both government and non-government, outside of the Department, which can take time to source.

The Aboriginal Land Claims Assessment Team (ALCAT) does not have any powers to compel third parties to provide information within a given timeframe. Lengthy delays can occur where third party stakeholders are asked to provide information/evidence and the assessment cannot progress without that information.

Process improvements have been implemented to speed up the assessment process and further opportunities continue to be explored.

An avenue currently being explored is macro data analysis, whereby data is extracted from Crown Lands' systems in the initial stages of the assessment to identify land that is likely to be claimable as well as any land that is likely to not be claimable. A focused approach is then taken to group these claims into bundles for detailed assessment and determination. An example of this is the Future Public Requirements (FPR) project. This project analysed extracted data to identify land reserved for future public requirements with no tenures over the land. This is an early indication that the land could be claimable Crown land. From this analysis, some 2250 parcels of land have been referenced out to external stakeholders. This referencing is now flowing back and the claims are being grouped into determination briefs.

Crown Lands engages regularly with the NSWALC to discuss approaches to expedite the resolution of land claims, including situations where multiple claims have been placed over land.

One such strategy currently underway, is the LALC20 Project. Crown Lands has invited LALCs to identify around 20 priority claims for assessment. This practice assists Crown Lands to target its resources toward resolving claims that are aligned with the outcomes desired by LALCs. Through the LALC20 Project, LALCs have access to DPIE cluster advice including planning, biodiversity conservation and native title to assist with decision making.

Aboriginal Land Agreements are also an avenue available to LALCs to resolve a number of undetermined Aboriginal land claims by negotiation. Crown Lands is in the process of co-designing a program to support Aboriginal Land Agreements with Aboriginal stakeholders.

### **Can you provide a progress update on the unprocessed land claims?**

In 2019-20, Crown Lands determined the most Aboriginal land claims ever in any single year, and the most land grants to LALCs in any single year. 1,505 claims were processed in 2019-20; an increase of 45% on 2018-19 and 300% on claims processed in 2017-18. Of the 1505 claims processed, 280 were successful.

During 2019-20, 4,700 hectares of land was granted to 56 different LALCs.

From 1 July 2020 to 31 March 2021 there has been 1667 hectares of land granted to 27 different LALCs.

Despite this significant progress achieved, as at 31 March 2021, there were 37,522 undetermined ALCs.

### **Is there anything that can be done by other agencies/departments to speed up the process of Aboriginal land claims?**

Crown Lands is currently implementing the recommendations from the independent review of the Land Negotiation Program in consultation with NSWALC and LALCs. Improved governance arrangements have been established to oversee the implementation of the recommendations. A Governance Taskforce is also in place, made up of key representatives from DPIE, NSWALC and Aboriginal Affairs.

Significant engagement is occurring with NSWALC, LALCs, Aboriginal Affairs and the Registrar of the Aboriginal Land Rights Act to further develop relationships to support better outcomes for LALCs.

Greater priority needs to be given by other departments or agencies to provide responses within a reasonable time period when they are referenced for information regarding the assessment of Aboriginal land claims by ALCAT. Late responses from agencies can contribute to significant delay in the processing of Aboriginal land claims.

The Registrar, Aboriginal Land Rights Act, who is the responsible authority for registering new Aboriginal land claims, would benefit through having access to land titling information, whether by direct access or through the provision of a budget to pay for access. This would enable the Registrar to conduct checks of land claim applications which are made over freehold land or land reserved as National Park or State Forests, which is typically recorded in the second schedule of the title. The Registrar could then use provisions under the Act to refuse to refer that claim to the Minister for determination.

**Is the Department planning to allocate more resources to resolve this issue? What is the expected timeframe?**

The 2020-21 work program is focused on prioritising outcomes determined by LALCs rather than seeking to maximise the number of claims resolved. This approach supports real outcomes over numbers.

In 2020, additional staff, including a new ALCAT team in Newcastle, were added to the existing assessment staff increasing the total number of assessment and administration staff in the team by 150%. Initially, these extra staff were on temporary contract. However, in early May 2021 these positions were made permanent within the team.

**2) Follow up questions relating to the recognition of Crown land by the Department:**

**The Auditor-General reported a number of deficiencies in the recording of Crown land assets in CLID. How does the Department verify that all the Crown land data in the existing CLID system is accurate and complete?**

The Department is prioritising action to ensure the Crown land information database (CLID) is complete and accurate. The Department currently uses CLID to record Crown land in New South Wales managed and controlled by the Department and Crown land managers.

A major IT upgrade is underway with the implementation of the new CrownTracker IT system, which will improve data processes and data integrity.

The CrownTracker system implementation is expected to be completed by October 2021.

**What are the processes and procedures in place to ensure all the Crown land data is accurate and complete before the data migration to the new CrownTracker system?**

The following processes and initiatives are in place to ensure data accuracy and completeness:

- business process owners are responsible for ensuring all transactional information (leasing, licencing, acquisitions, vesting, etc) is entered in CLID in a timely manner and in line with approved policies and procedures
- delegate approvals under the *Crown Land Management Act 2016* are recorded in CLID and audited annually to ensure the appropriate level of approval has been applied
- publishing of gazettals are managed centrally, providing a quality assurance check that all information is accurate and entered into CLID in a timely manner
- compliance reports are sent to managers monthly to review and action incomplete workflows in CLID.

**What are the checks performed by the Department to ensure all the Crown land data in the new CrownTracker system is accurate and complete?**

CrownTracker is a spatially enabled workflow system to manage all transactions over Crown land. System-wide controls to help ensure data is accurate and complete include:

- all business-critical workflows that effect Crown Accounts (tenures, reserve, Aboriginal Land Claims, etc.) require at least two levels of approval: Group Leader and Delegate Approval.
- spatial enablement of functions within CrownTracker means end users will be able to view and confirm the reasonableness of spatial boundaries of tenures, reserves etc. Previously, the disjointed nature of the two legacy applications, CLID and CrownView, prevented this seamless quality assurance.
- testing during the migration of all CLID data to CrownTracker during cutover will be undertaken to ensure completeness and accuracy of migration.

**Is the Department expected to complete the CLID replacement project by 30 June 2021?**

No, the completion date of the project is aligned to release 3 of CrownTracker which is anticipated for October 2021.

The ICT Steering Committee and Group Deputy Secretary of Housing and Property have approved a proposal to extend the delivery from June to October 2021, with a hypercare support period to December 2021. This extended implementation period is intended to mitigate change risks associated with introducing a new operating system to all staff and decommissioning the old CLID legacy system.

**3) Follow up questions relating to the financial reporting of Crown land managers (CLMs):**

**The Auditor-General's report recommended that the Department, in consultation with NSW Treasury, develop an appropriate statutory reporting framework for CLMs. Can you provide a progress update on this?**

NSW Treasury, in collaboration with the Department, established a reporting exemption criterion for non-council Crown land managers (CLMs). Financial thresholds were defined and resulted in two project streams:

**Stream 1. Non-exempt from auditing**

34 CLMs were identified as meeting one or more of the following thresholds:

- a) the assets, liabilities, income, expenses, commitments and contingent liabilities of the Department or statutory body are each less than \$5,000,000
- b) the total cash or cash equivalents held by the Department or statutory body is less than \$2,500,000
- c) the income of the Department or statutory body, derived from sources other than money paid out of the Consolidated Fund or money provided by other relevant agencies, is less than \$100,000.

The Department engaged accountancy firm Deloitte to assist the 34 non-exempt CLMs to produce General Purpose Financial Statements (GPFS). It was determined three of the 34

would remain on hold, thus reducing the focus cohort to 31. During the initial engagement with the 31 non-exempt CLMs, it was ascertained that 21 (Group 1) engaged the services of accountants or bookkeepers and the remaining ten (Group 2) did not. This finding has increased the complexity of producing the GPFS for this cohort. Deloitte is engaging with Group 1 to review the prepared GPFS prior to the CLMs endorsement for the Department to submit to Audit Office NSW (AO) by the extended deadline.

The original deadline for submission of the GPFS to the AO was 28 February 2021 but it has been extended due to the complexity and variances in the CLMs, with the AO granting an extension until 31 May 2021.

## **Stream 2. Exempt from auditing**

In December 2020, letters were sent to Stream 2 which consisted of 230 Statutory Land Managers (SLM) and 49 Common Trusts with outstanding annual reports reminding them of their responsibilities to submit an annual report.

Direct engagement began January 2021 and continued over the following four months and consisted of making telephone contact with the defined SLMs and Common Trusts. As at May 2021, this stream of the project has been completed. Phase 2 is currently in the scoping stage with a focus on production of a BAU framework for this cohort.

Data compiled by the GSF Project Team demonstrates the effectiveness of the direct engagement phase. The data is as follows:

- of the total 230 identified exempt SLMs with outstanding annual reports as at November 2020, 84 (36%) were found to have submitted their annual report prior to February 2021 commencement of the direct engagement phase
- as at the commencement of direct engagement, 146 (63%) were yet to initiate an Annual Report
- as at May 2021, 55% of the overdue annual reports have now been logged via the portal. Of these, 32% are complete and 23% in progress but not yet completed.

## **What are some of the challenges in developing the statutory reporting framework for CLMs?**

Most of our CLMs are community-based groups staffed by volunteers who provide their time and skills free of charge to benefit their community. During the direct engagement with the CLMs in Stream 2, 33.5% stated the main reason they had yet to submit their Annual Report was lack of capacity or capability. This data combined those with limited time available and those that expressed limited computer literacy, noting that for 2019-2020 reporting year CLMs were required to submit annual reports through the Crown Land Manager Portal (the portal).

A further 13% stated the main reason they had yet to submit their Annual Report was they had limited understanding of the annual reporting requirement.

CLM board members are motivated by a desire to volunteer and provide community service. Each member brings diverse skills and experience, but it cannot be assumed to include business and/or accounting skills or access to computers, computer literacy or online capability. A further challenge is the ageing CLM volunteer base, with a lack of succession already becoming evident.

Crown Lands has increased the online training opportunities for Crown land managers, but the diverse/remote locations of the CL reserves limit face to face interactions with CLM boards to facilitate education.

The recent years of drought, bushfires, floods and COVID has also impacted volunteers' capacity to readily participate in their appointed Crown land manager functions.

### **How does the compliance reporting project help in resolving this issue?**

The establishment of the compliance reporting project (the Project):

- has demonstrated the diversity of the CL Reserve portfolio and in turn the diverse makeup of CLM boards
- has led to direct engagement with CLMs and seen an increase in reporting compliance

The Deloitte engagement is also educating the non-exempt CLMs to bring their financial statements in line with the GSF Act.

### **What are some of the issues encountered by the project team?**

The Project team in both Stream 1 and Stream 2 encountered the following issues:

- the standard of documentation expected of public sector organisations exceeds the standard achieved by volunteer-based organisations
- volunteers have limited capacity to incorporate the added responsibilities of a CLM into their lives, resulting in deadlines not being met
- limited capabilities of some CLMs, in particular financial skills and experience
- Crown Lands works with high numbers of ageing CLM volunteers with limited computer literacy and limited opportunities for succession planning
- challenges in establishing and maintaining regular contact with volunteers as their availability to respond is often limited and outside standard business hours.

### **The report stated that the majority of the CLMs are administered by volunteers and will require significant support from the Department to provide a compliant financial report. What are the processes in place for the CLMs to obtain support from the Department?**

The Department has taken the following actions towards building mechanisms to support CLMs to meet their reporting requirements:

- the Department has funded external accounting firm Deloitte to support the identified 31 non-exempt CLMs and their accounting agents to produce GPFS for audit submission
- established a dedicated team to liaise directly with CLMs on reporting requirements
- set as an objective of the project team to develop a BAU framework
- began scoping a fit for purpose accounting resource
- increased CLM education through *CLM Governance Development Program*.

### **Is there anything that other agencies (including NSW Treasury) can help to resolve this issue?**

Assistance to resolve this issue would be:



- legislative and policy review to help align and nuance reporting requirements with the diverse CLM composition
- a risk-based governance and oversight framework
- support for Crown Lands to seek amendments to reporting thresholds.

**Is the Department planning to allocate more resources to resolve this issue? What is the expected timeframe?**

Initially, one permanent and four temporary staff members have been recruited to the project for an initial 6-month period ending June 2021. The Project team has now been extended to 31 December 2021. Further review is underway to assess the public value for money to achieve current required compliance.