LOCAL GOVERNMENT NSW

INQUIRY INTO CROWN LAND IN NSW
29 JULY 2016
SUPPLEMENTARY QUESTIONS
QUESTIONS FOR LOCAL GOVERNMENT NSW (LGNSW)
LGNSW RESPONSE

1. In his evidence, the Minister advised that the proposed legislation would contain an 'opt-in' clause where local councils would not be obliged to have additional crown land (and the consequent responsibilities and costs) transferred to them if they did not choose to do so.

(a) What is your response to this proposal?

LGNSW supports having an opt-in clause. As stated in our submission, while the majority of councils would welcome the transfer of crown reserves they already manage, councils must have the opportunity to accept or reject parcels of land individually. This applies to both land currently under council management and other crown land that may be offered to councils. This approach is necessary to ensure that the acquisition of crown land and its ongoing management aligns with the community strategic plan and vision for the future for the Local Government Area. The decision to accept or reject the opportunity to take ownership of land would involve a number of considerations, such as community needs, current use and potential costs. Councils must be able to examine and assess these issues closely to ensure there is no cost shifting or other unintended consequences, before they decide to accept ownership of such land.

(b) Is a simple stand-alone opt-in mechanism sufficient, or should other provisions also be specified such as total cost recovery?

Along with an opt-in provision, there must be provisions to ensure that councils are given full disclosure of all relevant information about any parcel of crown land that is being offered so that they can make an informed decision. For example, councils need disclosure of:

- the state of the land, for example, the condition of internal roads and other assets;
- Aboriginal land rights claims and Aboriginal heritage sites;
- other heritage sites or restrictions;
- contaminated sites;
- the extent of any noxious weed or feral animal infestation; and
- any bushfire hazard reduction requirements.

If any transfer of ownership of crown land to councils is to be optional, the issue of full cost recovery is one for consideration by a council. In some circumstances councils may only accept a parcel if they can see the potential for full cost recovery from the site or they can extract cost recovery from the NSW Government. In other circumstances councils may determine that the community benefit derived from ownership will outweigh full cost recovery on the transfer.

Full cost recovery is only really an issue when it comes to forced transfer of ownership to councils.

2. When councils are estimating the cost to them of managing and maintaining crown land for which they are responsible, what factors do councils take into consideration?

A combination of operational, governance, administrative and regulatory costs generally make up councils' expenses involved in managing and maintaining crown land. Depending on the use and location of the crown land asset, these costs might include:

- Operational e.g. maintenance of roads, fences, grounds/parks, and buildings, weed and feral pest control, machinery, water, electricity, signage etc ;
- Governance e.g. development of a plan of management (including community consultation costs) and ongoing monitoring of this plan, risk management and insurance costs;
- Administration e.g. customer service, back office and management costs.
- Regulatory e.g. regulatory compliance associated with the ownership, management and use of the land, for example, environmental, bushfire, local government and health related regulatory requirements.

3. What is your estimate of the cost to councils of managing and maintaining crown land in NSW?

LGNSW is not in a position to provide an estimate of these costs and it is not aware of any sources of aggregate data.

The costs to individual councils would vary widely, depending on the area under management, the nature of individual parcels of land, the type and intensity of usage, community standards and the potential for cost recovery.

Individual councils are best placed to give an estimate for their particular council, this would give an indication of the range of costs.

4. With regards to Plans of Management can you provide the following information:

(a) Do Plans of Management provide the best mechanism for the management of crown land?

Many councils have plans of management in place for the crown land they manage, although it is not a mandatory requirement under the Crown Lands Act. This is consistent with the practice required under the Local Government Act for council owned community land. Having plans of management or a similar relevant asset management plan allows for all of the public reserves within a council's portfolio to be managed consistently, regardless of whether they are crown reserves or community land.

(b) What crown land is best served by the development of a Plan of Management?

All land needs managing, and it would seem reasonable to expect that all crown land should be subject to some form of Plan of Management. Plans need to be in place to at least provide for conservation, noxious weed and feral pest control, bush fire management, public amenity and sustainable natural resource management.

As noted previously, many councils use plans of management as a tool for managing crown lands for which they are responsible.

LGNSW is not sufficiently familiar with the Plan of Management practices for crown lands administered by state agencies or community based trusts to provide comment on their practices.

(c) What crown land does not need a mechanism such as a Plan of Management?

Refer to (b).

(d) What is the best consultation period for developing Plans of Management?

The appropriate length of the consultation period would depend on the individual asset, the nature and extent of land covered by the plan of management and the needs and

expectations of the local community and user groups. The Local Government Act (s38(2)) specifies a minimum public notice period of “not less than 28 days” for draft plans of management. Section 38(3) of the Act also specifies a submission period of “not less than 42 days” to allow the public to make submissions to the council.

(e) What are the best consultation methods for developing Plans of Management?

Councils are inherently engaged with their communities on a daily basis and use a variety of methods for consulting their communities. The degree and sophistication of consultation should be proportionate to the matters under consideration and the needs of the community. These will vary from council to council depending on the nature and extent of the plan of management (i.e. land area and type/category involved), the communities of interest within the council area, as well as council’s consultation policy/objectives and resources. Engagement techniques used by councils include community surveys, letterbox drops, signage, council website (Your Say), advertisements in local papers, media releases, community meetings and drop-in sessions and online feedback forms. Councils will be best-placed to comment on what they consider to be effective consultation methods. The International Association for Public Participation Australasia (IAP2) also contains well-recognised resources.

(f) What are the best mechanisms to appeal a Plan of Management?

It is understood that the mechanism to appeal a Plan of Management would be via the Land and Environment Court, as is the case involving any appeal process to provisions under the Local Government Act.

LGNSW is not sufficiently familiar with these broader legal processes to provide substantive comment.

(g) What are the best mechanisms to amend a Plan of Management?

Under Section 41 of the Local Government Act a Plan of Management can be amended by adopting a new Plan of Management. This would in turn involve the same processes of public notification applicable to the making of a new plan. These provisions were introduced under the Local Government and Environmental Planning and Assessment Amendment (Transfer of Functions) Act 2001, which amended the Local Government Act to include sections 25-47F relating to community land. They are therefore considered to be still a current and relevant mechanism for amending a Plan of Management.

(h) Do you have suggested improvements for the development of Plans of Management?

LGNSW does not have the relevant knowledge or expertise to comment on the specific processes involved in appealing or amending plans of management, nor to make suggestions on how such processes could be improved.

(i) Is there a better way to manage the crowns asset?

Plans of management appear to be a good starting point for managing the use of crown land, as they are already widely recognised and accepted (by councils) as a tool for managing any type of asset or entity that creates value for its owner/manager. However, the complex portfolio of crown assets, with its diversity of uses and locations across the state, will require a commitment of adequate resources and provisions for periodic monitoring against the objectives of any plan of management.

Transferring ownership of crown land currently managed by councils, to councils, would also improve the effectiveness of crown land management, for example, by streamlining decision making.

LGNSW is of the view that crown land that is primarily of local benefit and value is best owned and managed at the local level. Councils are best placed to determine which land fits this category. This is consistent with the principal of subsidiarity.

In the absence of regional entities with the capacity to own or manage crown land, parcels that are of regional significance should be managed by the NSW Government in close consultation with regional stakeholders.

Crown land of state significance, should remain in the ownership of the state.

(j) What community consultation should take place prior to the sale of any crown land parcel?

LGNSW's submission and subsequent responses have been based on the potential transfer of crown land to local government where the land essentially remains in public ownership.

When considering the sale of crown land into private ownership, public consultation must be part of the process. Probity considerations such as transparency and public notification should apply when selling crown land, just as they do in the process that applies to councils for converting community land to operational land. The Local Government Act 1993 requires councils to give a minimum of 28 days public notification when they are classifying or reclassifying public land.

5. How do you ensure local indigenous communities are consulted during the development of a Plan of Management?

Councils in NSW ensure that Aboriginal communities are consulted in the development of a Plan of Management for crown lands. Councils consult with an array of Aboriginal people within the local government area about land matters. These groups include:

- Independent Aboriginal Elders
- Local Aboriginal land council
- Native Title Holders
- Community members that have cultural knowledge relating to Aboriginal lands and are not part of any of the above.

Plans of Management encourage a consultative strategy to address land management issues with the traditional Aboriginal custodians including access and protection of heritage sites, cross cultural training, visitor management and interpretation of heritage values.

Councils that are developing a plan of management for crown lands in NSW:

- Conduct community information days for Aboriginal communities and land councils.
- Conduct meetings at the local Aboriginal land council inviting all the other Aboriginal community members that have a vested interest in a Plan of Management of crown land.
- Some councils consult with their local Aboriginal advisory committees on land matters and seek advice on the best way to include Aboriginal people and communities in development of plan of management for crown land.

Councils in NSW have an Aboriginal heritage strategy in place; this is a guide for council on how to manage land matters.

6. How do you identify and protect sites with indigenous importance on crown land?

Aboriginal sites and places of significance have legal protection under the *National Parks and Wildlife Act, 1974* and the *Environmental Planning and Assessment Act 1979* (EP&A Act).

Steps that councils take to identify and protect sites of Aboriginal significance:

- First council finds out whether there are any recorded sites on the land. Councils consult with their local Aboriginal land council and Aboriginal Elders, and National Parks and Wildlife Service data base for Aboriginal sites of significance.
- Council commissions studies of the local government area to assist in identifying sensitive landscapes and all recorded Aboriginal sites.
- Commission a comprehensive Aboriginal heritage assessment (including an archaeological survey and assessments).
- Some councils in NSW have an Aboriginal Heritage Adviser who assists with potential Aboriginal heritage and sites of significance. Councils' Aboriginal liaison officers also assist with identifying sites of significance.