

**Submission
No 116**

INQUIRY INTO CROWN LAND IN NEW SOUTH WALES

Organisation: Nature Conservation Council of NSW and National Parks
Association of NSW

Date received: 22 July 2016



**Nature
Conservation
Council** The voice for
nature in NSW



General Purpose Standing Committee No.6
NSW Parliament House
Macquarie Street
Sydney NSW 2000

22 July 2016

Submission to the Inquiry into Crown Land

Dear Sir/Madam,

The Nature Conservation Council of NSW (**NCC**) is the peak environment organisation for New South Wales, representing more than 150 member societies across the state. Together we are committed to protecting and conserving the wildlife, landscapes and natural resources of NSW.

The National Parks Association of NSW (**NPA**) is a not-for-profit conservation charity formed in 1957, seeking to protect, connect and restore the integrity and diversity of natural systems in NSW. It is a community-based organisation with over 20,000 supporters from rural, remote and urban areas across the state.

We welcome the opportunity to make a submission to the Inquiry into Crown Land. Our organisations take an active interest in the management of Crown land due to its important environmental, cultural and social values.

Crown land is highly significant from an environmental conservation perspective because it contains significant native ecosystems and provides habitat connectivity across the landscape. In urban areas, Crown land contains important parcels of remnant vegetation. In other parts of the state, for example in the Central division where clearing for agricultural activities has been extensive, Crown land in travelling stock reserves and routes are often the areas with significant communities of native vegetation and fauna, and provide important linkages between protected areas. Often Crown land contains important vegetation in otherwise cleared landscapes, including endangered ecological communities and threatened species habitat.

Our members and supporters also take part in a wide variety of activities on parcels of Crown land. These include bushwalking (NPA is the largest bushwalking club in the State), bird watching, bush regeneration and other conservation activities. Our members also use beaches and parks that are Crown lands.

Other roles that NCC and its members play in relation to Crown land include:

1. NCC has an advisory role to Government on certain committees, with representatives on the Western Lands Advisory Council, Crown Holiday Parks Trust and the NSW Roadside Environment Committee.
2. Member groups carry out conservation activities on Crown lands e.g. bush regeneration or fauna surveys. These may be funded by the group itself or from grants from Government or the private sector.
3. Individual members of conservation groups serve on trusts, which administer some Crown reserves e.g. the Peel Trust.
4. Member groups may be involved in the preparation of Plans of Management for Crown land including parcels that are under the care, control and management of local councils.

Our **enclosed** submission responds to each of the four terms of reference, highlighting the important environmental, cultural and social values of Crown lands and the need to effectively manage Crown lands to retain these important values.

We also recommend that the committee considers previous submissions and reports we have prepared on Crown land as many of these will be relevant to the inquiry. These reports are available to download on our website: www.nature.org.au/campaigns/crown-lands-review/

We strongly urge the committee to recognise the important environmental, cultural and social values of Crown land and make recommendations for the proper protection and management of Crown land to ensure those values are conserved, now and for future generations.

Yours sincerely,

Kate Smolski
Chief Executive Officer
Nature Conservation Council of NSW

Kevin Evans
Chief Executive Officer
National Parks Association of NSW

SUBMISSION TO THE INQUIRY INTO CROWN LAND

NATURE CONSERVATION COUNCIL OF NSW AND NATIONAL PARKS ASSOCIATION OF NSW

1. EXECUTIVE SUMMARY	2
2. INTRODUCTION	3
3. THE EXTENT OF CROWN LAND AND THE BENEFITS OF ACTIVE USE AND MANAGEMENT OF THAT LAND TO NEW SOUTH WALES - [Terms of Reference (1a)]	3
3.1 What is Crown Land?	3
3.2 The Spatial Extent of Crown Land.....	3
3.3 The Extent and Significance of Crown Lands From a Conservation Perspective	5
3.3.1 Benefits of active use and management of Crown land for nature conservation	5
3.4 Case Study - Why Crown land in the Western Division of NSW needs active management of native vegetation clearing	6
3.4.1 Background	6
3.4.2 Proposed Legislative Changes	7
3.4.3 The Likely Outcomes of Proposed Legislative Changes.....	8
3.5 Case Study - Active Management of TSRs for Conservation Values in the Central Division.....	8
3.6 The benefits of active management and use of Crown land for Recreation	9
3.7 Recreation Opportunity Spectrum	10
4. THE ADEQUACY OF COMMUNITY INPUT AND CONSULTATION REGARDING THE COMMERCIAL USE AND DISPOSAL OF CROWN LAND - [Terms of Reference (1b)].....	11
4.1 The adequacy of community input and consultation regarding the commercial use and disposal of Crown land under current legislation.	11
4.1.1 Databases.....	11
4.1.2 Crown Reserves.....	11
4.1.3 Crown Roads	12
4.1.4 Travelling Stock Routes and Reserves (TSRs)	12
4.1.5 Consideration of Audit Office Report.....	12
4.2 The Crown Lands Review	12
4.2.1 Background	12
4.2.2 A business model is inappropriate for much Crown land	13
4.2.3 Local Land Pilot Study and the Land Stocktake	13
4.2.4 Potential Sale of Transferred Land.....	15
4.2.5 Travelling Stock Routes and Reserves (TSRs)	15
4.2.6 Land Management Principles.....	15
5. THE MOST APPROPRIATE AND EFFECTIVE MEASURES FOR PROTECTING CROWN LAND SO THAT IT IS PRESERVED AND ENHANCED FOR FUTURE GENERATIONS - [Terms of Reference (1c)]	16
5.1 General Considerations	16
5.1.2 Crown land and the Conservation Reserve System	16
5.1.3 Future Management of TSRs.....	16
6. THE EXTENT OF ABORIGINAL LAND CLAIMS OVER CROWN LAND AND OPPORTUNITIES TO INCREASE ABORIGINAL INVOLVEMENT IN THE MANAGEMENT OF CROWN LAND - [Terms of Reference (1d)]	17
7. FURTHER INFORMATION	17

1. EXECUTIVE SUMMARY

Public knowledge of and input into the management of Crown land is hampered by a lack of publicly available up-to-date data on the extent of Crown land and the tenures to which it is subject.

Crown land occupies approximately 42% of the State. It is highly significant from an environmental conservation perspective because it contains significant native ecosystems and provides habitat connectivity in many parts of the State. Strong laws are needed to protect these ecologically important areas, including restrictions on high impact activities and the clearing of native vegetation. There are broader environmental benefits of protecting and managing Crown land for its biodiversity, ecosystem and connectivity values including improving air and water quality, sequestration of carbon and maintaining soil fertility, particularly in the fragile, arid Western Division of NSW.

Active management of Crown Lands is also necessary to maintain access to and opportunities for recreation. The Recreation Opportunity Spectrum approach can be adopted to identify areas that are suitable for active recreation on Crown land.

We consider that there is inadequate community input and consultation regarding the commercial use and disposal of Crown land under the current Crown lands legislation. We also consider that community input and consultation in respect of these matters has been inadequate under the Crown Lands Review, particularly, in relation to the Local Land Pilot Project and the Land Stocktake.

We make a number of recommendations for appropriate and effective measures for protecting Crown land so that it is preserved and enhanced for future generations. These include that:

- Crown land should remain owned by the State on behalf of the people of NSW. We oppose transfer of Crown land to Councils and other bodies.
- It is crucial that the social, cultural or environmental values of Crown land are properly evaluated before further decisions are made about the future of Crown land.
- Crown land must be administered in an open, transparent and accountable manner that increases public participation in its management.
- Crown land management must recognise the importance of and protect ecosystems and the services they provide such as clean water and air, carbon sequestration and biodiversity as well as local landscape values.
- Agencies responsible for the administration of Crown land, including TSRs, must work co-operatively with other land managers including State Forests, NPWS and councils to promote conservation of biodiversity and protection of ecosystem services.

We also strongly support an increased Aboriginal involvement in the management of Crown land to promote conservation of its cultural and heritage values, as well as environmental values.

2. INTRODUCTION

The Nature Conservation Council of NSW (**NCC**) is the peak environment organisation for New South Wales, representing more than 150 member societies across the state. It is committed to protecting and conserving the wildlife, landscapes and natural resources of NSW.

The National Parks Association of NSW (**NPA**), formed in 1957, is a member of NCC. It is a community-based organisation with over 20,000 supporters from rural, remote and urban areas across the state. NPA promotes nature conservation of aquatic and terrestrial ecosystems and sound natural resource management. It has a particular interest in the protection of the State's biodiversity and its supporting ecological processes, both within and outside of the formal conservation reserve system. It promotes connectivity conservation, for example, through our involvement in the Great Eastern Ranges Initiative. NPA's interests extend to protection and management of the heritage values of natural and cultural landscapes. In addition to its interest in environmental and heritage conservation and management, NPA conducts numerous outdoor recreational activities and is the largest bushwalking organisation in NSW.

Both NCC and NPA have been active in seeking protection for and promoting public awareness of the environmental values of Crown land, including travelling stock reserves and travelling stock routes (TSRs).

3. THE EXTENT OF CROWN LAND AND THE BENEFITS OF ACTIVE USE AND MANAGEMENT OF THAT LAND TO NEW SOUTH WALES - [Terms of Reference (1a)]

3.1 What is Crown Land?

For the purposes of this Inquiry, we understand Crown land to be land owned by the State of NSW that is administered primarily under the Crown Lands legislation, comprising eight Acts. For administrative purposes, the State is divided into three areas: the Eastern, Central and Western Divisions.

Most Crown Land is currently administered by the Department of Primary Industries (DPI) but a number of other agencies have care, control and management of Crown land, including councils and the Local Land Services (**LLS**) which administers TSRs primarily in the Central Division under the *Local Land Services Act 2013* as well as the Crown land legislation. The majority of Crown land is held under lease in the Western Division of New South Wales (approximately 32 million ha).¹ Other tenures include licences, permits and trusts.

3.2 The Spatial Extent of Crown Land

In 2014, the Crown Lands Management Review (**CLMR**) stated that Crown Land comprised 33.6 million ha and made up 42% of the State.² These data applied to 2011-2012. The CLMR also contained:

- pie charts showing Crown estate by area of tenure types and value of tenure types for the period 2011-2012 without numeric values for individual tenures;³

¹ Department of Primary Industries http://www.crownland.nsw.gov.au/crown_land/western_region

² Crown Lands Management Review (CLMR) NSW Trade and Investment, 2014, p.1.

³ CLMR NSW Trade and Investment, 2014 p.2.

- small scale maps showing Crown land tenures, Crown reserves and waterways throughout NSW⁴; and
- a table indicating who managed Crown Reserves and the area of land each manager managed.⁵

The source of data on the extent of Crown land as a whole is not identified or verified in the CLMR. For transparency and public accountability, this information should have been included. One indication that management of the Crown land's portfolio is suboptimal is acknowledgement that approximately 2.3% of Crown Reserves (800 reserves comprising almost 53,000 ha) had no known manager⁶.

The extent of Crown land at the present time in terms of:

- total area;
- total number of parcels; or
- tenure types

cannot be ascertained by the community because such data is not publicly available on the DPI or LLS websites. On-line databases such as the NSW Spatial Data Catalogue and the Central Register of Restriction, prepared by NSW Department of Finance and Services and Innovation also do not provide this information.

The absence of current up-to date publically available databases is inconsistent with the requirements of Part 3 of the *Crown Lands Act 1989*. For example:

Section 30 of the *Crown Lands Act 1989* provides:

- 1) The Minister shall cause to be instituted a programme for the assessment of Crown land.
- 2) The assessment shall consist of:
 - a) the preparation of an inventory of Crown land,
 - b) an assessment of the capabilities of the land, and
 - c) the identification of suitable uses for the land and, where practicable, the preferred use or uses.

Section 31 of the *Crown Lands Act 1989* provides:

- 1) The inventory of Crown land shall contain particulars of such physical characteristics of the land and such other matters affecting the land as the Minister considers necessary to assess the capabilities of the land.
- 2) The inventory shall be maintained to reflect changes in the particulars contained in it.
- 3) Information contained in the inventory may be made available to members of the public.

⁴ CLMR NSW Trade and Investment, 2014 Appendix A

⁵ CLMR NSW Trade and Investment, 2014 p.5.

⁶ CLMR NSW Trade and Investment, 2014 p.5.

3.3 The Extent and Significance of Crown Lands from a Conservation Perspective

In 2014, in response to the Crown Lands Legislation White Paper, NCC and NPA commissioned a report titled “The significance of Crown Lands in Biodiversity Conservation”. This report is annexed to our submissions to the Crown Lands Management Review White Paper, available on our website⁷. The report highlights the extent and significance of native vegetation, fauna and habitats as well as some other environmental values that occur on Crown land in NSW. Habitat types range from marine subtidal; coastal terrestrial, estuarine and freshwater habitats to the arid habitats of the Western Division.

Major conclusions of the report are:

- All Crown land types offer a range of important conservation values. These values include providing remnant vegetation and habitat for threatened species in highly cleared landscapes, habitat connectivity and irreplaceable coastal values.
- Crown leases and Crown reserves overwhelmingly offer high habitat connectivity, especially the Crown leases of the Western Division.
- Crown leases in the Central and Eastern divisions and Crown waterways contain extremely important vegetation remnants in heavily cleared landscapes, with many Crown leases forming part of remnants larger than 1,000ha.
- Significant records of threatened species have been found across all Crown land types, with Crown reserves showing the highest abundance of threatened species recorded.
- Most Crown lands within the Central Division [which includes TSRs] contain endangered ecological communities.
- Crown leases in the Western Division within Western CMA contain extremely high numbers of threatened species records while for most Crown land types in the Northern Rivers, Hunter-Central Rivers and Southern Rivers CMAs tend to have the highest occurrence of threatened species records.

We note that many of the State’s ecosystems are poorly represented in conservation reserves particularly west of the Great Dividing Range and in coastal lowlands⁸. Crown lands have the potential to fill in many of these gaps.

3.3.1 Benefits of active use and management of Crown land for nature conservation

As discussed above, Crown land has significant value for:

- the conservation of biodiversity, in particular it contains many threatened species and endangered ecological communities;
- providing habitat connectivity between areas that have been set aside for conservation; and

⁷ See our Submissions to the Crown Lands Review White Paper:

- www.nature.org.au/media/1788/ncc-submission-in-response-to-crown-lands-white-paper_final.pdf
- www.nature.org.au/media/1786/submission-by-npa-on-the-crown-lands-legislation-white-paper-and-the-crown-lands-management-review.pdf

⁸ NSW National Parks Establishment Plan 2008

- providing distinctive landscapes in parts of NSW which are otherwise substantially cleared.

These values are under threat from many factors including: land use pressures due to population increase, climate change, feral plant and animal species,⁹ overgrazing (TSRs in particular)¹⁰ and clearing of native vegetation¹¹. Active management to address these issues is essential to achieve conservation of biodiversity and the maintenance of habitat connectivity.

The benefits of active management of land for biodiversity and habitat connectivity include not just improving ecosystem health but also:

- improving water quality¹²
- improving air quality,¹³ including reducing carbon emissions through sequestration of carbon¹⁴
- reducing the likelihood of dryland salinity and desertification in arid parts of NSW.¹⁵

The NSW Government plays a key role in managing natural ecosystems on both public and private land through policy development and administration of laws and regulations. It must also meet the needs of a growing population and the demands for economic growth. These roles are difficult to reconcile.

Appropriate active management of Crown land can also augment the role of conservation reserves in managing threats to our natural environment including those due to loss of biodiversity, land use change and climate change.

We are concerned that proposed changes to native vegetation laws outlined in the draft *Local Land Services Amendment Bill 2016* and *Biodiversity Conservation Bill 2016* will change the way native vegetation is managed in the future, including on Crown land. We are particularly concerned about the impacts increased clearing of native vegetation could have on the high conservation values of TSRs and Crown leases in the Central Division as well as on the fragile ecosystems of the Western Division.

3.4 Case Study - Why Crown land in the Western Division of NSW needs active management of native vegetation clearing

3.4.1 Background

The *Western Lands Act 1901* was an outcome of the *1901 Royal Commission to Inquire into the Condition of the Crown Tenants, Western Division of New South Wales*. The Royal Commission's report investigated the causes of severe land degradation and erosion in the Western Division finding the overstocking of cattle and rabbits had exacerbated the impacts of drought. Consequently, many leaseholds had been abandoned. *The Western Lands Act 1901* established the Western Lands Board consisting of three commissioners who could impose conditions on leases.

⁹ Environment Protection Authority (2015) State of the Environment Report

¹⁰ Davidson et al. (2005)

¹¹ Environment Protection Authority *loc.cit.*

¹² Australia's Native Vegetation Framework COAG Standing Council on Environment and Water (2012) Summary p.3.

¹³ *ibid*

¹⁴ Australia's Native Vegetation Framework COAG Standing Council on Environment and Water (2012) p.7.

¹⁵ DPI http://www.crownland.nsw.gov.au/crown_lands/western_region

Conditions regulating stocking rates under the *Western Lands Act 1901* have been augmented by legislation regulating the clearing of native vegetation, most recently, the *Native Vegetation Act 2003*. Active management of both stocking rates and clearing of native vegetation has resulted in approximately 95% of the vegetation in the Western Division being retained.¹⁶

Clearing of native vegetation can lead to dry land salinity by affecting groundwater levels¹⁷ causing erosion that exposes saline subsoils.¹⁸ It can also cause desertification.¹⁹ Changes in the level of the water table occur slowly and dryland salinity may not become apparent for many years.²⁰

3.4.2 Proposed Legislative Changes

Despite the statement by the CLMR that “current arrangements for Western Lands grazing leases provide effective governance and cost recovery to preserve environmental values”,²¹ the Government proposes to repeal the *Western Lands Act 1901*, thereby, removing provisions referring to ecologically sustainable development (ESD). Currently, one of objects of that Act is to “ensure that land in the Western Division is used in accordance with the principles of ecologically sustainable development”²² and a lease cannot be converted to freehold unless the Minister is satisfied that the proposed future use of the land is ecologically sustainable.²³

The Government has indicated that it intends to retain controls on the stocking rates on leasehold land in the Western Division²⁴ but how this will be done and whether it will occur on leaseholds that are converted to freehold is unknown. The CLMR proposed converting to freehold perpetual grazing leases that already have cultivation consents which have been acted on.²⁵ This is supported by Government.²⁶

Further, proposed changes to the native vegetation laws will impact on the management of land in the Western Division. The *Local Land Services Bill 2016* and *Biodiversity Conservation Bill 2016* set out a proposed new regime for the clearing of native vegetation in NSW that is likely to increase broad scale land clearing in the Western Division as well as elsewhere in the State.

Currently, land clearing in the Western Division under the NV Act is subject to the Environmental Outcomes Assessment Methodology, which imposes the ‘maintain or improve’ principle²⁷ requiring consideration of the impact of land clearing on salinity, soil erosion and water quality as well as biodiversity. Under the proposed self-assessable codes, for example, which allow up to five hundred ha to be cleared in a three year period, there are no requirements to consider the impacts of vegetation clearing on soils and water.

¹⁶ DPI http://www.crownland.nsw.gov.au/crown_land/western_region

¹⁷ OEH Dryland salinity <http://www.environment.nsw.gov.au/salinity/solutions/dryland.htm>

¹⁸ *ibid*

¹⁹ H. E. Dregne (1986) Desertification of Arid Lands In *Physics of desertification*, ed. F. El-Baz and M. H. A. Hassan. Dordrecht, The Netherlands: Martinus, Nijhoff.

²⁰ Environment Protection Authority State of the Environment Report (2015) p.86.

²¹ CLMR P.20.

²² Section 2 *Western Lands Act 1901*

²³ Section 40A *Western Lands Act 1901*

²⁴ Crown Lands Legislation White Paper (2014) NSW Trade & Investment p.5.

²⁵ CLMR p.ix

²⁶ Response to Crown Lands Legislation White Paper Summary of Issues and Government Response (2015) NSW Department of Industry, Skills and Regional Development p.15.

²⁷ Native Vegetation Act s. 14(3)

3.4.3 The Likely Outcomes of Proposed Legislative Changes

Weakening of restrictions on clearing of native vegetation in the Western Division as well as removing requirements to consider and apply the principles of ESD could lead to even more serious degradation of Crown land than occurred in the late 19th Century because modelling of climate change predicts drier conditions and more frequent droughts in southern Australia.²⁸ We do not consider that maintaining restrictions on stocking rates alone enough to reduce the risk of ecological collapse.

Severe land degradation resulting from the clearing of native vegetation would negatively impact not only biodiversity, habitat connectivity but also soil fertility and water quality²⁹ in already severely degraded inland rivers. Therefore, it would have potentially disastrous consequences for agriculture and communities in the Western Division. It is likely to lead to significant increases in public expenditure on drought relief in the future with more frequent droughts exacerbating declines in soil fertility, increased dry land salinity and desertification which could lead to the abandonment of leases as occurred in the late 19th Century.

We consider that reducing active management of Crown land in the Western Division by reducing controls of the clearing of native vegetation and removing requirements to consider and apply the principles of ESD would at best provide very short term economic benefits to some farmers but is not in the public interest. In the longer term it could lead to potential catastrophic outcomes for agriculture, biodiversity and ecosystem services, increased carbon emissions and increased public expenditure on drought relief.

3.5 Case Study - Active Management of TSRs for Conservation Values in the Central Division

Over 170 years ago, a network of Crown land was set aside in NSW to walk stock between properties and to markets. These corridors comprised two components:

- Travelling stock reserves that are usually wider and at least partially fenced; and
- Travelling stock routes that are usually more linear and located along roadsides.^{30,31}

The routes of TSR often followed traditional Aboriginal travel lines.³²

The TSR network has reduced in extent since it was first established. Use of TSRs for their original purpose has declined in many areas especially where access due to major traffic infrastructure occurs e.g. Hume Highway and now occurs mostly inland and west of the Newell Highway,³³ especially when feed is sparse e.g. after fire, flood or during drought.³⁴

²⁸ Bureau of Meteorology (2014) State of the Climate 2014 <http://www.bom.gov.au/state-of-the-climate>

²⁹ OEH Why is native vegetation important <http://www.environment.nsw.gov.au/vegetation/importance.htm>

³⁰ Ian Davidson, Allan Scammell, Peter O'Shannassy, Michael Mullins and Shaun Learmouth (2005) Travelling stock reserves: refuges for stock and biodiversity? *Ecological Management and Restoration* 6(1): 5-15.

³¹ They are collectively referred to as TSRs in this submission.

³² Bev Smiles, Cathy Merchant and Kirstin Proft (2011) The NSW travelling stock routes and reserves network *Heritage – Habitat – Livelihood*, published by NPA p. 18

³³ Ian Davidson, pers comm.

³⁴ Bev Smiles, Cathy Merchant and Kirstin Proft (2011) The NSW travelling stock routes and reserves network *Heritage – Habitat – Livelihood*, published by NPA p.8

In many parts of the Central Division, in contrast to the Western Division, native vegetation has been extensively cleared. Much of the remaining native vegetation is located on TSRs. In 2006, it was estimated that about 80% of TSRs contained vegetation of high conservation value.³⁵

Vegetation surveys in the Riverina and south-west slopes of NSW found that TSRs were floristically diverse containing many threatened species and endangered ecological communities. Compared to the surrounding farmland TSRs contained much more native vegetation e.g. native grasses and forbs³⁶. Davidson et al (2005) explained the high biodiversity of many TSRs by:

- the grazing regime which they have experienced historically - periodic, sometimes intense short term grazing with rest periods in between – as opposed to the “set stocking” usually practiced on private land which allows no rest period and that often lead to elimination of palatable perennial species;
- there has been no [or very limited] fertilizer use on TSRs; and
- they have never [or seldom] been ploughed for crops.

We consider that the high biodiversity of many TSRs will only be retained if there is active management of grazing to ensure that it is intermittent and of short duration; and that current controls on the clearing of native vegetation are maintained.

We strongly oppose the issuing of 5 year grazing permits TSRs because “set stocking”, which allows the vegetation no respite from grazing, is likely to result in degradation of native vegetation quality and structure, or even lead to the loss of some species, including threatened species.

We also are very concerned that the proposed weakening of controls on the clearing of native vegetation under the *Local Land Services Amendment Bill 2016* and the *Biodiversity Conservation Bill 2016* will also potentially negatively impact the biodiversity and connectivity values of TSRs.

Actively managing TSRs to maintain their biodiversity and habitat connectivity will also provide the benefits of:

- protecting the cultural significance of TSRs for both Aboriginal and non-Aboriginal people;
- maintaining opportunities they provide for recreational activities including bird watching and fishing; and
- providing ecosystems services such as clean water and carbon sequestration.

3.6 The benefits of active management and use of Crown land for Recreation

Crown land is widely used for a wide range of active and passive recreational activities including: going to the beach, jogging, bushwalking, fishing, kayaking and bird watching. Crown land must be managed to ensure that public enjoyment of and access to Crown land for these activities is maintained.

³⁵ Department of Environment and Conservation NSW (2006) *NSW State of Environment Report*, DEC: Sydney, Australia

³⁶ *Ibid* Davidson et. al *op. cit.*

There are multiple benefits of both active and passive recreation. These include:

- health benefits associated with many forms of recreation including walking, jogging and swimming;
- an increased appreciation of nature through activities such as bushwalking and bird watching;
- relaxation; and
- social interaction.

In urban areas, Crown land containing green space and remnant bushland are becoming rarer but more intensively used as population and housing densities increase and more people live in apartments without backyards.

3.7 Recreation Opportunity Spectrum

NPA is working on an approach to enhance recreation opportunities while protecting the environment and ensuring government and local communities receive income from public land. Crown land has potential to play a key role in this plan.

Our motivation is firstly that national parks and other conservation reserves are coming under increasing pressure to accommodate activities the impacts of which are inconsistent with the reserves' primary objective of conservation of natural ecosystems and ecosystem processes. This has led to increased (and we argue unnecessary) conflict between user groups, for example, in relation to horse-riding, mountain-biking, four wheel driving and trail bike riding. Secondly, Crown land as the largest area of public land, together with the approximately two million hectares of State forests currently managed for logging, could play a key role in providing alternative sites and a broader spectrum of opportunities for outdoor recreation and nature-based adventure tourism than conservation reserves can offer.

We are adapting the Recreation Opportunity Spectrum (**ROS**)³⁷, a planning tool developed in the USA, for use in NSW. The ROS is based on the simple premise that the satisfaction that a recreation user derives from their chosen activity is based on the degree to which their expectations are met. Failure to consider the compatibility of different recreation activities and to plan these activities in the landscape will lead to conflict—as we see currently in NSW. One of the factors ROS uses is proximity to roads to determine the degree of accessibility (or isolation) of an area, and therefore its suitability for different types of recreation.

Crown land has enormous potential to be a key part of recreation and tourism planning using the ROS, and therefore, also significantly benefitting NSW financially from increased tourism and recreation opportunities for the growing population. Importantly, the ROS also allows land managers to predict where impacts will occur in the landscape (i.e. where the higher impact activities are occurring) and therefore could be an important mechanism for protecting Crown land while simultaneously providing for its greater use.

³⁷ Buist, Leon J.; Hoots, Thomas A. (1982) Recreation Opportunity Spectrum Approach to Resource Planning 80(2): 84-86(3)

4. THE ADEQUACY OF COMMUNITY INPUT AND CONSULTATION REGARDING THE COMMERCIAL USE AND DISPOSAL OF CROWN LAND - [Terms of Reference (1b)]

4.1 The adequacy of community input and consultation regarding the commercial use and disposal of Crown land under current legislation.

There is a widespread community perception that the commercial use and disposal of Crown land, including TSRs, is not currently conducted in a transparent and publically accountable manner and that there is inadequate community input and consultation in relation to them.

4.1.1 Databases

We have discussed above the lack of a publicly available database showing the current extent of Crown land. We consider that in addition to such a database the following information should also be publicly available:

- all commercial tenures over Crown land;
- the area of Crown land that has been leased, sold or otherwise disposed of by tenure type, in the previous financial year;
- how income from commercial use and disposal of Crown land is spent for the previous financial year

This information is essential for DPI and LLS to be publicly accountable and for community to make informed input in relation to commercial use of Crown land and its disposal.

4.1.2 Crown Reserves

Many of the community's concerns about the commercial use of Crown land relate to Crown reserves and the potential for commercial uses to:

- restrict the community's access to and use and enjoyment of Crown reserves, or
- diminish the Crown reserve's environmental, social, cultural or heritage values; or
- undermine the purpose for which the Crown land was reserved.

To address these concerns we consider that it should be mandatory for all Crown reserves that:

- a draft plan of management be prepared that sets out what activities and development are permissible and what leases and other commercial tenures are authorised and that community be consulted in relation to the draft plan;
- the community be consulted where a new or additional commercial use of a Crown reserve is proposed; and
- the public be consulted in respect of any sale or disposal of a Crown reserve, including transfers to a Council or another Government body.

4.1.3 Crown Roads

We consider that there has been inadequate community input and consultation in relation to the program relating to the closure of undeveloped Crown roads and facilitation of their sale. It is unclear what consideration has been given to the environmental values of undeveloped Crown roads and to the access they provide for recreational activities, including fishing and bushwalking. This is despite the requirement to take into consideration the land management principles in s 11. *Crown Lands Act 1989* when Crown land is being sold. Sales have continued to occur despite strong objection from the community.

Advertising proposed closure and sale of undeveloped Crown roads in the one advertisement removes the opportunity for the community to comment on whether sale of the roads is appropriate before Crown roads are sold.

4.1.4 Travelling Stock Routes and Reserves (TSRs)

LLS does not clearly acknowledge that TSRs remain subject to the provisions of the *Crown Lands Act* when granting interests over them, in particular, the requirement to take into account the management principles under s 11³⁸.

4.1.5 Consideration of Audit Office Report

We note that the NSW Audit Office is currently conducting an audit into the sale and lease of Crown land³⁹ which will examine how well the Department of Primary Industry ensures:

- compliance with statutory requirements and policy
- rigorous and transparent decision making
- appropriate engagement with stakeholders and the community.

It is our understanding that the Audit Office is due to hand down its report in August and we strongly recommend that this committee take into account the findings of the Audit Office as part of this Inquiry.

4.2 The Crown Lands Review

4.2.1 Background

The Government announced, in June 2012, that it was undertaking a comprehensive review of the NSW Crown land. However, public consultation on the Crown Lands Legislation White Paper in 2014 (the White Paper) was the first and only opportunity that the public had to provide input into this Review, and specifically the proposals put forward with respect to the commercial use and disposal of Crown land.

Submissions on the White Paper were not made publically available. The Response to Crown Lands Legislation White Paper: Summary of Issues and Government Response (the Response document) was released in October 2015.

³⁸ Local Land Services NSW (2015) Travelling Stock Reserves State Planning Framework 2016-2019 p.7.

³⁹ See <http://www.audit.nsw.gov.au/further-audit-information/proposed-topics-for-2016-17/sale-and-lease-of-crown-land>

The Response document *inter alia* summarises submissions. In doing so, it glosses over many issues which were raised, and in our opinion gives a misleading impression of the content of some submissions. For example, the summary of issues says that there were few comments in relation to the repeal of the *Western Lands Act 1901*.⁴⁰ However, it does not mention specific concerns relating to the repeal of provisions requiring the application of the principles of ESD.

The White Paper and the Response document provide insufficient detail for the outcomes of the Review to be fully understood. In particular, the White paper did not contain a copy of draft legislation.

4.2.2 A business model is inappropriate for much Crown land

We are concerned by proposals in the White Paper and the draft TSR Management Plan that Crown land should be managed respectively as a trading enterprise or on a user pay basis. We consider that many uses of Crown land including environmental conservation and many forms of public recreation should be recognised as significant uses of Crown land for the public benefit and that they are not appropriate for lease or licence arrangements or user fees. We support the payment of non-market rents by not-for-profit organisations carrying out activities that are in the public interest.

We do, however, consider that any sale or commercial tenure of Crown should be at full market rate provided that the public has the opportunity to comment on the proposed transaction and that there has been a transparent assessment of social cultural and environmental values of the land.

There is no single accepted technique for putting an economic value on environmental, cultural and social values. This often leads to economic factors being given primacy in decision-making. We strongly advocate that decision-making in respect of all Crown Lands should be in accordance with the principles of ESD as defined in s. 6(2) of the *Protection of the Environment Administration Act 1991* to ensure adequate consideration of environmental, social and cultural matters. Environmental benefits, which natural ecosystems provide such as clean water and sequestration of carbon, must be considered in addition to the inherent value in maintaining healthy, biodiverse natural ecosystems. The role of Crown land as part of climate change impact mitigation must also be recognised.

Consideration of the principles of ESD in all decision-making in respect of both commercial use and disposal of Crown land would partially address a major flaw in the Crown Lands Review to date. Although a term of reference of the Crown Lands Management Review was “to identify and recommend [on] key public benefits (social, environmental and economic) derived from Crown land”, this was not done.

4.2.3 Local Land Pilot Study and the Land Stocktake

As part of the Crown Lands Review, a Local Land Pilot Study was conducted involving four Councils. We understand the Study investigated issues to do with transfer of land to Councils that is assessed as being of “local” rather than “State” significance.

We understand that Land Stocktake is currently underway to identify land to be retained as “State” land i.e. future Crown land, and land that could be transferred to local councils to manage under the *Local Government Act 1993*.

⁴⁰ NSW Department of Industry, Skills and Regional Development

There has been a lack of community input and consultation in relation to both the Land Stocktake and Local Land Pilot Projects. It is outrageous that the community has had no say in the criteria that will determine Crown land as either State or Local land.

We are very concerned about proposals to have land identified as “local land” transferred to the ownership and management of councils. We understand that DPI intends to transfer land as “Community land” to councils.

We support current requirements for management of community land currently in Part 2, Division 2 of the *Local Government Act 1993* and consider they require appropriate consideration of environmental matters. They include:

- 1) mandatory plans of management for community land;
- 2) consideration in plans of management of issues such as the presence of threatened species, endangered ecological communities and significant natural features;
- 3) core objectives for management of community land categories such as natural areas, wetlands and bushland; and
- 4) restrictions on leasing and licensing of natural areas.

Section 8 of that Act imposes on council a requirement “to properly manage, develop, protect, restore, enhance and conserve the environment of the area for which it is responsible, in a manner that is consistent with and promotes the principles of ecologically sustainable development”.

Currently, the *Local Government Act 1993* is also under review so we do not know how land under the care, control and management of Councils will be administered and managed in the future under that Act. However, the Government has indicated that it intends “streamlining of public land management”⁴¹ which we consider is likely to result in weakening of provisions that relate to environmental protection and public land management currently in the *Local Government Act 1993* (discussed above). The Government has not given a commitment to retain the two categories of public land currently recognised under the Act – “community” and “operational” land nor to the retention of requirements with respect to the application of ESD.

We would have even more serious concerns about any proposal to transfer ownership of Crown Lands to Council if:

- the environmental protections and controls for community land were removed;
- “community land” ceased to be a distinct category of land;
- requirements relating to ESD were removed from the *Local Government Act*.

⁴¹ NSW Government Response Independent Local Government Review Panel recommendations Local Government Acts Taskforce recommendations (2014)

4.2.4 Potential Sale of Transferred Land

We are very concerned that Councils or other bodies may seek to take windfall gains by selling Crown land that is transferred to their ownership. DPI has advised that it intends to transfer land to Councils classified as “community land”. Although Councils cannot sell “community” land they can reclassify it to “operational” land and sell it once reclassified. It is acknowledged that the reclassification process does require public notification and consultation. Nevertheless, we do not consider that simply transferring land as “community” land is sufficient to protect land from being sold as there are many instances councils of reclassifying “community” land to “operational” despite strong community protest. We suggest that councils be required to seek the approval of the Minister for Crown Lands for reclassification of land transferred as “community” land and for council also be required to give reasons to the Minister why the land is no longer required as “community” land.

4.2.5 Travelling Stock Routes and Reserves (TSRs)

Although the public did have the opportunity to comment on the draft NSW Travelling Stock Reserves State Planning Framework 2016-19 in late 2015, it is concerning that:

- five year grazing permits were being advertised before that draft document was placed on public exhibition;
- the Government has not reported back to the community on public submissions to that draft document; and
- the Government has not indicated what it proposes in respect to the future management of TSRs following receipt of submissions.

4.2.6 Land Management Principles

The Government proposes to repeal the land management principles currently in the *Crown Lands Act* 1989.⁴² These require consideration of a number of factors including environmental matters before land can be sold or leased.

We consider that:

- consideration of the social, cultural and environmental values of Crown land should be mandatory before land they are leased or licensed and sold to ensure that the public benefit of Crown land is preserved for future generations; and
- there should be increased public input into this process.

⁴² *Crown Lands Act* 1989 s. 11

5. THE MOST APPROPRIATE AND EFFECTIVE MEASURES FOR PROTECTING CROWN LAND SO THAT IT IS PRESERVED AND ENHANCED FOR FUTURE GENERATIONS - [Terms of Reference (1c)]

5.1 General Considerations

- If Crown land is to remain a valuable public resource it must stay in public ownership by the State on behalf of the people of NSW.
- It is crucial that the social, cultural or environmental values of Crown land are properly evaluated before further decisions are made about the future of Crown land, including TSRs.
- Crown land must be administered in an open, transparent and accountable manner that increases public participation in their management.
- Crown land management must recognise the importance of and protect ecosystems and the services they provide such as clean water and air, carbon sequestration and biodiversity as well as local landscape values.
- Rather than repealing the Crown land principles currently in s 11 of the *Crown Lands Act 1989*, those principles should be retained and amended to require decision-making in respect of management and administration of Crown Land take into consideration the principles of ESD and also require public input into the assessment of the social, cultural and environmental values of Crown land.
- Agencies responsible for the administration of Crown land, including TSRs, must work co-operatively with other land managers including State Forests, NPWS and councils to promote conservation of biodiversity and protection of ecosystem services.
- Both DPI and LLS must be adequately resourced and have staff with appropriate expertise to identify and manage high conservation value Crown land.

5.1.2 Crown land and the Conservation Reserve System

The NSW National Parks Establishment Plan 2008 should be the principle document guiding consideration of what Crown land would be most appropriate for addition to the conservation reserve system under the *National Parks and Wildlife Act 1974* (the reserve system). It points out that ecosystems west of the Great Dividing Range as well as coastal lowlands are under-represented in the reserve system. Crown land, including TSRs, contains some of the best examples of these ecosystems. Addition of Crown land to the reserve system can also play other vital roles such as improving provisions for access to conservation reserves and connecting portions of the reserve system.

5.1.3 Future Management of TSRs

We consider that it is in the public interest to retain the TSR network and manage it primarily both for the movement (droving) of stock as well as for the conservation of biodiversity and habitat connectivity. Additional benefits of such a management regime include the provision of ecosystem services such as clean air and water, as well as the protection of Aboriginal and non-Aboriginal cultural values and provision of opportunities for recreation.

We consider that TSRs of high conservation value, adjoining or adjacent to conservation reserves administered under the NPW Act should be considered for inclusion in the reserve system on a case-by-case basis. Where part of a TSR is incorporated in a conservation reserve replacement land should be acquired to fill in the gap in the TSR network.

The provision of stockyards to hold stock overnight outside the areas of high biodiversity will reduce impacts e.g. grazing pressure on sensitive areas enabling some TSRs to be managed primarily for conservation of biodiversity, whilst still enabling stock movement along the TSR system.

We strongly oppose the issuing of five year grazing permits over TSRs because of the likelihood that biodiversity will be significantly negatively impacted.

6. THE EXTENT OF ABORIGINAL LAND CLAIMS OVER CROWN LAND AND OPPORTUNITIES TO INCREASE ABORIGINAL INVOLVEMENT IN THE MANAGEMENT OF CROWN LAND - [Terms of Reference (1d)]

We strongly support an increased Aboriginal involvement in the management of Crown land to promote conservation of its cultural and heritage values as well as environmental values.

The implications of proposed changes to Crown land management to pending or future Aboriginal Land Claims is unclear, particularly, the proposals to:

- transfer land to councils or other Government agencies
- sell undeveloped Crown roads and other Crown land.

It is essential that Crown land is properly managed to protect its important environmental, social and cultural values pending the resolution of outstanding land claims.

7. FURTHER INFORMATION

Our organisations have a long history in advocating for the effective protection and management of Crown lands, particularly for its important environmental, social and cultural values.

Additional background material is available on our website:

www.nature.org.au/campaigns/crown-lands-review/

In particular, we suggest the committee reviews the following material:

- [Nature Conservation Council of NSW - Submission to the Crown Lands Legislation White Paper](#)
- [National Parks Association of NSW - Submission to the Crown Lands Legislation White Paper](#)
- [The Unseen Conservation Estate - Tenure Security and Conservation Management of Crown Lands in NSW \(June 2005\)](#)
- [Our heritage under the hammer - The imminent fire sale of Crown leasehold lands in NSW, their outstanding conservation values, and how they can be saved \(December 2005\)](#)
- [The NSW travelling stock routes and reserves network: Heritage – Habitat – Livelihood \(June 2011\)](#)