**Submission No 95**

# INQUIRY INTO CROWN LAND IN NEW SOUTH WALES

**Organisation**: Moree Plains Shire Council

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Moree Plains
SHIRE

20 July 2016

The Director
General Purpose Standing Committee No.6
Legislative Council
Parliament House
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SYDNEY NSW 2000

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Dear Sir/Madam

**RE: Moree Plains Shire Council - Submission**
**General Purpose Standing Committee No. 6 - Inquiry into Crown Land**

Moree Plains Shire, covering an area of approximately 18,000 square kilometres, is located in north west NSW, approximately 350 kilometres inland from the coast. The Shire has a highly productive and lucrative agricultural base, however the challenges of climate, markets, and technological change require council to be vigilant regarding impacts that may have an adverse effect on the economy and sustainability of the Shire.

In this regard council wishes to take the opportunity to address the issues being considered by the Senate Inquiry regarding Crown land, to ensure that perceptions are not purely urban/coastal NSW centric, and that the potential consequences of decisions on regional NSW are appreciated.

Whilst Moree Plains Shire Council does not claim to represent regional councils generally, it feels that it is important that the substantial differences in the values and management of Crown land across the whole of NSW are respected and that potential changes in Crown land legislation facilitate benefits and opportunities for all accordingly.

*(a) the extent of Crown land and the benefits of active use and management of that land to NSW.*

Historically the whole of the State was Crown land. Effectively most has been disposed of by sale, grant or perpetual lease, or reserved and managed for a public purpose. Much of the remainder is remnant, set aside for future purposes, or idle due to changed circumstances.

Crown reserves form the backbone of recreational, cultural, sporting, environmental and civil activities across the State and are valued by their communities universally. The exclusion and preservation of these areas from disposal has retained these assets for the community,

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particularly in areas of high demand. There are however substantial areas where the intended use is redundant, for example Reserves for Night Soil.

Whilst there is understandably a community drive to ensure that iconic community assets are appropriately protected, there also needs to be an appreciation that the imposition of extensive administration and consultation precludes the ability to deal with small and lower value lands. Many such lands are not required for retention in public ownership, but cannot be disposed of without inappropriate allocation of resources. This inability to deal with low value land perpetuates issues with unmanaged lands and affects development opportunities in regional areas.

Across the State, the magnitude of areas and purposes of Crown land is extensive and unmanageable. To move forward it may be appropriate to consider strategies to enable a reduction in the total area/number without extensive investigation or administration. In this regard, for example, any reserves for a municipal purpose, where that purpose has been effected by local government, i.e., garbage depot, gravel removal, public pound, water supply, (particularly where there may be an ongoing obligation) should be vested in the managing council. Moree Plains Shire has identified in excess of 80 Crown reserves (27 different purposes) for which it is appointed trust manager, has devolved responsibility, or some form of occupation or interest.

As lands that are active and/or impaired, their potential for return to the State, either financial or actual is unlikely. Therefore, other than the notional loss of a paper asset, there is no actual forfeiture of income potential from vesting of these lands.

In Moree Plains Shire alone this proposition could potentially dispense with approximately 30 municipal reserves.

Furthermore, with reserves for public recreation and other community purposes which are managed by council trusts, particularly where there has been substantial investment by council in infrastructure, the vesting of these areas would also potentially release a substantial number of reserves from State responsibility. (e.g. a further 26 reserves in Moree Plains Shire).

The action could be effected merely by providing councils with a list of reserves, and asking which they have an interest in and are prepared to accept. The vesting could then be formalised under the provisions of section 76 of the Crown Lands Act, 1989. (Note: Public ownership can be protected where appropriate by declaring the land to be "public reserve" for the purposes of the Local Government Act, 1993).

The effect would be the removal of substantial areas of (relatively insignificant) Crown land, (for which the State has maintained little, or no active interest). The advantage to councils would be direct control and accountability of their managed assets and removal of the requirement to report to and obtain consent of the State.

This proposal would support the "White Paper" concept that the State should be responsible for land that is strategic for State purposes and be extrapolation, that a council should also have control of lands principally for municipal and local purposes.

In consideration of future disposal and allocation of Crown land there must be an appreciation that across NSW there are a lot more reserves for "night soil" and "garbage depot" than there are "Paddington Bowling Clubs" and "King Edward Parks". In this regard any proposed administrative and policy directions need to provide for opportunities for the majority of situations, not the exceptions.

Specific provisions to protect and preserve Crown land of regional or State significance should be provided, however this should not be implemented generally to the detriment of beneficial management of minor reserves and low value Crown land.

*(b) the adequacy of community input and consultation regarding the commercial use and disposal of Crown land.*

Current legislation (Crown Lands Act, 1989, and Aboriginal Land Rights Act, 1983) with high levels of accountability and administrative requirements, has hamstrung potential development and opportunities with Crown land for decades. Whilst this may not be exclusive to regional NSW, the lower land values in comparison to the east coast has resulted in resources being focussed on prospects for development and disposal with high returns with opportunities west of the ranges generally left to languish. Potential changes to the legislation must enable Crown land to be dealt with in an efficient and effective manner to make it economically viable to cleanse the State of miscellaneous low value Crown parcels, and maximise productivity and opportunity.

Changes to the Crown roads disposal procedures, for example, without the requirement for substantial investigation or public consultation of the action, has enabled accelerated transfer of those areas of Crown land that were lawfully occupied and enclosed with surrounding/adjoining properties. Therefore appropriate reduction in consultation and community input has generated effectiveness and efficiency in dealing with large volumes of Crown land, where appropriate.

Therefore, contrary to proposals for implementing complex public consultation and notification processes for Crown land disposals, the process for dealing with low value lands of little strategic interest should be simplified, and made economically viable.

The advantages of this proposal would be to remove areas of little or no significance from the State's management responsibility, and also to enable opportunities for land development and management in areas where land and community interest values are of high local, but limited State, significance.

The continuation (or intensification) of extensive public consultation and assessment requirements for all Crown land disposals, designed to protect iconic public sites, will be detrimental to practical advancement of land allocation and management in the majority of the State.

The sale of Taylor Oval (a dedicated Crown Reserve) in Moree, to facilitate the development of a Department store complex as a corner stone for growth in the town, is a prime example of how a complex process, involving community consultation, legislation (removal of dedication) and administration can have disastrous consequences. The convoluted process

took in excess of 8 years over which time the proponent withdrew interest and the development failed.

In any review of process and procedures for disposal of Crown land, it needs to be appreciated that the majority of opportunities are not iconic sites and whilst accountability must be maintained, the controls must provide for practical and economically viable dealings.

Furthermore, with regard to the potential introduction intensified consultative and review processes for dealings with Crown land, the practicalities and consequences of implementation without application of additional resources needs to be considered.

In this regard attention is drawn to the introduction of provisions in the Crown Lands Act, 1989 wherein the requirements for Land assessment/inventory were intended to be the basis of open and informed Crown land allocation.

"CROWN LANDS ACT 1989 - SECT 30
Programme for land assessment

(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. "

Despite being active for 26 years, the State has yet to substantially achieve the programme. This indicates that despite the best intentions, if a system is not resourced it cannot be successful. Therefore any proposed changes to process, procedures or legislation need to be practical, efficient, effective and achievable.

*(c) the most appropriate and effective measures for protecting Crown land so that it is preserved and enhanced for future generations.*

The perception, from "urban dwellers", of undeveloped Crown land west of the ranges being valuable havens of native vegetation and wildlife that must be protected and preserved, may be valid for limited areas, however, the liability of feral animal and weed infested fire hazards, that cannot be occupied or disposed of because of unresolved Aboriginal land claims is more of a reality.

These areas can be a major impost on local government resources, particularly with regard to compliance. An example would be a parcel of unoccupied Crown land near Moree, where in 2001 a Council funded clean-up involved removal of 42 truckloads of rubbish and 14 car bodies.

In this regard the disposal or alienation of these lands is a greater priority than preservation. Of major concern to regional local government is the potential for these liabilities to become council responsibility.

Where Crown lands are identified as valued for a public purpose, the application of a dedication under the Crown Lands Act, 1989 provides a substantial barrier to dealing and ensures a comprehensive public process for revocation or alteration. Appropriate use of this provision for iconic sites only would be preferable to application of more complex aspects to dealing with Crown land generally.

As discussed in (a) above, potential exists for public and municipal reserves to be vested in local government where appropriate with protection for "public reserves" provided in the Local Government Act 1993.

With regard to protecting lands for future development opportunities and land banking, it may be appropriate to consider that such land be reallocated as State owned land, with removal of its status as Crown land. This would remove its vulnerability as claimable Crown land under the Aboriginal Land Rights Act, 1983. Such action would be justifiable where future potential residential growth opportunities are identifiable, and where there is no requirement to retain the land as Crown land for public/community benefit.

The status of "Crown land" should therefore be retained/determined for lands that are best dealt with by the State and preserved and managed for public or community benefit.

*(d) the extent of Aboriginal Land Claims over Crown land and opportunities to increase Aboriginal involvement in the management of Crown land.*

There are 942 unresolved Aboriginal Land Claims over Crown land in the Moree Plains Shire.

The existence of unresolved land claims is a burden on local government, and the Crown, as it impedes decision making and limits opportunities. Moree Plains Shire Council has several acquisition and development proposals that are impeded by unresolved, and granted Aboriginal land claims.

Investigation of individual claims (as they are progressively processed by the Aboriginal Land Claims Investigation Unit) involves substantial council resource to consider such matters as protection of infrastructure and access entitlements, as well as research into historical information to provide valid evidence in relation to a claim.

Any fast tracking of land claim investigations will either generate a substantial burden on local government, or risk inappropriate loss of valid lawful entitlements. Examples would be road, water, sewer and drainage infrastructure that are present over claimed land, or access entitlements that exist over travelling stock reserves by virtue of the Local Lands Services Act, 2013, which would vanish if a claim was granted without imposing alternative provisions.

Proposals identified in the Crown Land Review and White Paper for transfer of "local lands" to councils, or for the Crown to generally devolve itself of "surplus" Crown land, will either be impeded by unresolved Aboriginal land claims, or will be resolved by extensive granting of claims without comprehensive evaluation. In this regard the Local Land Councils will potentially become a significant landholder in the shire and with no disrespect intended, with

little expertise, or resources for its ongoing management. The potential for disastrous consequences regarding weeds, feral animals and fire hazard is apparent under these circumstances.

Locally in Moree, tracts of land granted as successful claims have been a substantial burden on council (e.g. Edward Street/Delander Crescent, former rifle range) requiring slashing to manage fire hazard, rubbish removal, illegal dumping compliance, and public health and safety issues with unauthorised burning. These matters have been addressed at cost to the community.

Granted Aboriginal Land Claims are exempt from payment of rates unless they are being used for commercial or residential purposes. Granted lands are also immune to compulsory acquisition by a public authority. This can also have consequences for development and infrastructure planning.

Granting of claims can, in some instances, release Crown lands for onsale, and/or development opportunities that are otherwise hampered by current Crown land legislation or unresolved claims. This can provide benefits to general communities, particularly where land values are not sufficient for the Crown to otherwise resource investigation and disposal.

Before a decision is made with regard to broad scale granting of land claims, it is suggested that the review extend to the evaluation of the benefits to Aboriginal communities that have been achieved through successful granting of land claims to date and the potential consequences the transfer of further extensive areas of land, both to Aboriginal communities, and local government management, may produce.

It is noted that in the 33 years since enactment of the Aboriginal Land Rights Act, 1993 there appears to be very little advantage provided locally to Aboriginal Land Councils through granting of land claims. Granted lands are not strategically, or culturally significant, or necessarily resalable for financial benefit. Furthermore, development opportunities on Crown land have been hamstrung by unresolved claims to the detriment of the community as a whole. The inability to deal with land under claim also burdens the community with vacant and unmanaged areas that become compliance management problems.

Even with successful granting of claims there appears to be a substantial inequity between coastal and regional Land Councils with regard to the value and potential opportunities for claimable lands.

In this regard it is suggested that a revamp of land claim provisions be considered to provide equitable advantage to Land Councils and to release Crown land where opportunities for disposal exist. Agreement should be negotiated with Aboriginal Land Councils to withdraw unresolved claims over Crown land, and in return the State will undertake to allocate 10%-20% of all Crown land sales to Land Councils, to be distributed in accordance with need, as opposed to location, specifically for housing, or purchase of land with strategic cultural, or economic benefit.

This proposal would enable increased disposal opportunities for Crown land generating substantial income to the State and justifying the percentage allocation to the Land Councils. The benefits to Aboriginal communities would be equitable and based on need

rather than access to high value land, and would be available substantially quicker, and with less local administrative requirements than current arrangements. It would also provide funding for housing and purchase of strategic and culturally significant lands.

Moree Plains Shire Council appreciates the opportunity to contribute to the Legislative Council Inquiry into Crown land. We trust that the matters raised herein are of value to your deliberations.

Yours sincerely

Angus Witherby
**Director Planning and Community Development**