GENERAL PURPOSE STANDING COMMITTEE NO. 6

INQUIRY INTO CROWN LAND IN NEW SOUTH WALES

At Parliament House, Macquarie Street, Sydney

Friday, 29 July 2016

The Committee met at 10:15 am

PRESENT

The Hon. P. Green (Chair)
The Hon. L. Amato (Deputy Chair)
The Hon. S. Farlow
The Hon. T. Khan
The Hon. P Primrose
Mr D. Shoebridge
The Hon. M. Veitch

The CHAIR: Good morning and welcome to the inquiry into Crown land. First of all we would like to acknowledge country. Welcome to the first hearing of the General Purpose Standing Committee No. 6 inquiry into Crown land. The inquiry was established to examine the adequacy of community input and consultation regarding the commercial use and disposal of Crown land. We will be looking at the benefits of active use and management of Crown land as well as the most appropriate and effective measures for protecting it. The inquiry will also consider the extent of Aboriginal land claims over Crown opportunities to increase Aboriginal involvement in its management.

Before we commence I would like to acknowledge the Gadigal people, who are the traditional custodians of the land. I would also like to pay my respects to elders past and present of the Eora nation and extend that respect to Aboriginal people present here today, both witnesses and people in the gallery, and, of course, those who may be listening to the hearing online. This is the first of seven hearings we plan to hold for this inquiry. Today we will hear from the NSW Aboriginal Land Council, the Office of the Registrar of the Aboriginal Land Rights Act 1983, the Metropolitan Local Aboriginal Land Council and the City of Sydney. Later in the day the Minister for Primary Industries, Lands and Water, the Hon. Niall Blair, MLC, will appear with representatives from the Department of Industry – Lands. We will conclude the hearing with Local Government NSW.

Before we commence I would like to make some brief comments about the procedures for today's hearing. In terms of webcasting, today's hearing is open to the public and is being broadcast by the Parliament's website. A transcript of today's hearing will be placed on the Committee's website when it becomes available. In accordance with the broadcasting guidelines, while members of the media may film or record committee members and witnesses, people in the public gallery should not be the primary focus of any filming or photography. I also remind media representatives that you must take responsibility for what you publish about the Committee's proceedings. It is important to remember that parliamentary privilege does not apply to witnesses in regard to what they may say outside regarding their evidence at the hearing today. I urge witnesses to be careful about any comments you make to the media or to others after you complete your evidence as such comments would not be protected by parliamentary privilege if another person decided to take action for defamation. The guidelines for the broadcasting of the proceedings are available from the secretariat and are available on the table at the back of the room.

In terms of questions on notice, there may be some questions that a witness could only answer if they had more time or with certain documents to hand. In those circumstances, witnesses are advised that they can take questions on notice and provide an answer within 21 days or at a time resolved by the Committee. In terms of adverse mention, I remind everyone here today that committee hearings are not intended to be a forum for people to make adverse reflections on others under parliamentary privilege. I therefore request that witnesses focus on the issues raised by the inquiry's terms of reference and avoid naming any individuals unnecessarily. In terms of delivering messages and documents that people may want to hand to witnesses or to Committee members, witnesses are advised that any messages should be delivered through the committee staff. Finally, could everyone please turn off their mobile phone or set it to silent for the duration of the hearing—and there is to be no Pokémon Go going on in this room. This is not a Pokémon stop area.

STEPHEN HYND, Director of Government Relations, NSW Aboriginal Land Council, affirmed and examined

ANNE DENNIS, Deputy Chairperson, NSW Aboriginal Land Council, sworn and examined

STEPHEN WRIGHT, Registrar, Office of the Registrar, Aboriginal Land Rights Act 1983 (NSW), affirmed and examined

The CHAIR: I welcome the witnesses. The process we are going to use this morning will be quite fluid in the questioning, but before we do that does anyone have an opening statement they would like to read onto the record?

Ms DENNIS: I have got an opening statement I would like to read. First of all, thank you for allowing us to speak. I would like to acknowledge the Gadigal people of the Eora nation and pay my respects to elders past and present. I am a Kamilaroi woman travelling from Walgett, New South Wales, and I thought about why I am here as a representative of Aboriginal people. Really it is about land and our access to land and probably around Parliament passing land rights legislation just over 33 years ago and how successive governments have not delivered over the 33 years. Today in 2016 we live in one of the richest countries on earth and the richest State in Australia, but we as Aboriginal people still live in poverty, sickness and face enormous disadvantage.

These injustices were really created by the dispossession of land, the loss of culture, language, and the loss of identity over two centuries—200 years. Just over 33 years ago the New South Wales Parliament recognised the root cause of the disadvantage and injustice and passed into law the Aboriginal Land Rights Act. This legislation acknowledged what we know, that the land of New South Wales was and always will be Aboriginal land and was to provide some compensation for the dispossession through a mechanism for the return of vast tracts of Crown land to Aboriginal people. The mechanism really was to be simple, quick and inexpensive. It was a great initiative and gave us Aboriginal people hope. It was to be the most fundamental initiative for the regeneration of Aboriginal culture and dignity whilst laying the basis for a self-reliant and more secure economic future for Aboriginal people. These were all statements made in this House by the late, and to our people, the great Frank Walker.

Government had good intent, but what has gone wrong? This was a promise of the Aboriginal land rights made to Aboriginal people of New South Wales by this House. It was a promise that we would have access and would be able to claim land, a promise that, sadly, I must report, has not been delivered. As the peak Aboriginal land rights body in New South Wales, the NSW Aboriginal Land Council appreciates this opportunity to put it on record again before this Committee and before this House. We truly look forward to a day when there is no need for making such a statement, when the promise of land rights made by this House has been delivered to Aboriginal peoples in New South Wales. We trust that this Committee, this House and the New South Wales Government share that vision of Aboriginal people managing land to strengthen culture and to build an independent economic base that delivers for Aboriginal people and contributes to the cultural and economic life of Aboriginal people in New South Wales and we trust that you are willing to work with us for that day. Thank you.

The CHAIR: Are there any other opening statements?

Mr WRIGHT: Yes, Chair. Thank you to the Committee for giving me an opportunity to speak with you. As the Registrar of the Aboriginal Land Rights Act, I have the duty to register land claims as they arise from Aboriginal land councils, and when those claims are registered it creates the legal right for the land council to have their land claim determined. The determination of that land claim, as we know, determines again after that the ownership or otherwise of that land by Aboriginal land councils leaving the Crown estate and entering the Aboriginal estate. Today I bring the Committee's attention to a number of matters. One is to touch upon those sections in the Land Rights Act which directly go to the issue of the land rights that are embodied in the Aboriginal Land Rights Act and then with the indulgence of the Committee, Chair, I have some graphical information to hand up to Committee members today.

The CHAIR: We are receiving that now.

Mr WRIGHT: I will give you an idea of what that means in due course. The first thing I bring to the Committee's attention is the preamble in the Aboriginal Land Rights Act. As we know, the use of preambles is an old legislative technique; they wax and wane. The Aboriginal Land Rights Act has one and it is actually very significant. If it is reasonable, I would like to read that into *Hansard*. The preamble in the Land Rights Act says:

Whereas.

1. Land in the State of New South Wales was traditionally owned and occupied by Aboriginal persons.

2. Land is of spiritual, social, cultural and economic importance to Aboriginal persons.

3. It is fitting to acknowledge the importance which land has for Aboriginal persons and the need of Aboriginal persons for land.

4. It is accepted that as a result of past Government decisions the amount of land set aside for Aboriginal persons has been progressively reduced without compensation.

Be it therefore enacted. The preamble is very important because it makes a strong statement of this Parliament's commitment to Aboriginal people and, secondly, it has a direct relationship to the legal rights embodied in the Aboriginal Land Rights Act because it gives a very strong indication that the Aboriginal Land Rights Act is beneficial legislation. That becomes important, particularly in matters of administrative decision-making and in matters of court decisions because, as a matter of statutory interpretation, it is a very important matter that both administrative decisions and court decisions take into account that the primary goal of this legislation is to benefit Aboriginal people. It is a very important emphasis that holds up throughout the whole Act as a result of that very strong preamble.

For the Committee's benefit, section 36 of the Land Rights Act is the primary section which drives the land claims provisions. I will gratefully include a more fulsome review of section 36 in the submission to the Committee in due course. However, that is what gives the land council the right and sets out the grounds upon which the Minister is to determine each individual land claim.

Very importantly, I bring to your attention to 36AA, a provision which was introduced to the Aboriginal Land Rights Act in July 2015. It is a provision that provides for a statutory creature called Aboriginal land agreements. It is a very important amendment in that it primarily relieves the Minister for Crown lands of his duty to determine land claims on the objective tests in section 36 and allows the Minister and land councils to enter into a process of negotiation, not only in relation to a single claim, not only in relation to multiple claims, but also in relation to a range of issues involving land claims and in fact beyond. There is a very strong recognition that there is a partnership role, there is a negotiation role to be had in resolving land claims as well as the strict legal process of claim by claim. It does not replace the procedures in section 36 but it is an extremely important initiative to complement those procedures.

I bring the Committee's attention to section 36A, which has been a provision in the Act since 1996 and is directly linked to those reforms in this Parliament in 1996, which created the joint management of conservation estate, principally the amendments which were made to part 4A of the National Parks and Wildlife Act and various provisions in the Land Rights Act. This is a legislative scheme that provides for existing conservation estates such as any reservation under the National Parks and Wildlife Act to be transferred to Aboriginal land councils to be leased back to the Crown, to the Minister administering the National Parks and Wildlife Act, and, most importantly, for the care control and management of those lands to be a joint management project between Aboriginal people and non-Aboriginal people by way of a board of management of which the majority are Aboriginal people with cultural association.

Mr DAVID SHOEBRIDGE: That is section 36A?

Mr WRIGHT: Yes, section 36A. That has been a feature of our legislative framework in New South Wales for 20 years. We have a number of those parks operating, we have a number of those projects still underway. It is a very important process for land claims because it comes to life as a land claim issue whereby if land is found by a Crown lands Minister to be not claimable Crown land, by way of it being needed or likely to be needed for the essential public purpose of major conservation, then the Minister has the capacity to offer the land to be granted under section 36A rather than outright refusing the claim. It does create a very clear and helpful partnership arrangement if that is possible and is in the mind of the Minister. The two areas in New South Wales that are outstanding successes as a result of the operation of that section are the Worimi Conservation Lands north of Newcastle and the Gaagal Wanggaan National Park, which is an area of land geographically best described as between Nambucca Heads to the north, Scotts Head to the south and the western boundary is the Pacific Highway. Those two areas are the direct result of section 36A.

The Hon. TREVOR KHAN: Would you be able to tell the Committee on notice when those grants were made under section 36A?

Mr WRIGHT: There is a trajectory of events that occurred through time which, if I could take on notice, I would be very happy to give you chronologies of those. I bring to the attention of the committee a very underutilised section but one that needs to be acknowledged: section 37 of the Aboriginal Land Rights Act, which now applies to land reserved under the Local Land Services Act 2013. This is your reservations for a number of those rural uses such as travelling stock and watering reserves. There is a whole range of reservations under that Act. Land claims over such lands can be refused normally under section 36 if those tests apply;

however, they can also be granted subject to an agreement. That agreement is a way of acknowledging the Aboriginal significance of those lands and also preserving their land use under the Local Land Services Act. So there is a way to manage those rural Crown holdings, it has simply been underutilised over time but it is important for the Committee to be aware of its existence.

Mr DAVID SHOEBRIDGE: What is your role once the claim has been made? Do you have a role in the negotiation? Do you direct things down to section 37 or 36A or are just a registrar? I do not mean any offence in saying that.

Mr WRIGHT: No offence taken. In terms of the registration of the claim, once the claim is registered I do not then have a policy role directly in saying, "What you should do with this claim is". That then becomes a matter between the Crown and the land council; however, in my suite of functions there are other functions such as dispute resolution functions and at times during the process of the land claim it may arise as a matter that people want assistance with. It is not directly related to me looking at a land claim and directing it in a certain way, it more arises as the claim is in the process of determination.

I draw the attention of the Committee to section 38 of the Aboriginal Land Rights Act, which is a straight acquisition section providing Aboriginal land councils with the right to purchase or take land of their own volition. That is very important and an important part of the rights under the Original Land Rights Act. Section 39 is very rarely used but in exceptional circumstances the Minister administering the Aboriginal Land Rights Act can acquire land under just terms compensation provisions and can vest that land in a land council or an organisation established for the benefit of Aboriginal people. There is a proactive power in the Minister administering the Aboriginal Land Rights Act to acquire land on behalf of land councils and other bodies.

The Hon. TREVOR KHAN: Has it ever happened?

Mr WRIGHT: I think it occurred some years ago in relation to the Wellington Common matter. Again I would have to take on notice the details, but that is my recollection.

Mr DAVID SHOEBRIDGE: Once?

Mr WRIGHT: Yes, in my experience. Lastly in terms of sections for the attention of the Committee, I draw attention to sections 47 and 48—again, they are underutilised. Section 47 provides that Aboriginal people can request access to any land for the purposes of hunting, fishing and gathering. That can be the Crown estate or it can be the private estate, it does not matter—it can be other Aboriginal estate for that matter. That right to apply for access is a statutory right and if refused section 48 provides it can be a matter determined by the court. So there is a very strong emphasis that access should be granted on fair terms; if not, the courts can consider whether it should have been granted—again, very underutilised. I cannot point the Committee to any formal agreement under section 47 although in two experiences in my mind—one on a rural property outside of Cobar and another on various rural properties in far western New South Wales in the area of the Mutawintji National Park—conversations between Aboriginal people and landholders about the operation of section 47 gave rise to access on an informal but cooperative basis. Again, underutilised but a very powerful way for Aboriginal people to engage with any other landowner in relation to their rights to hunt, fish or gather on land.

Mr DAVID SHOEBRIDGE: I have heard of it being used in the Hunter Valley, in the lower Hunter, on the same basis.

Mr WRIGHT: It may well have been, yes.

Mr DAVID SHOEBRIDGE: It is a reference in a negotiation that gives them the capacity to come to an agreement.

Mr WRIGHT: Yes.

The Hon. LOU AMATO: Have you found the private landowners to be accommodating?

Mr WRIGHT: In relation to the Cobar matter and the matters in western New South Wales they were initially quite concerned, and some of that concern was a combination of a misunderstanding of what that right was and also a more general feeling at that time in relation to the emergence of native title rights and interests. But through those conversations and direct conversations people became relaxed and access was often granted. The important part of that provision is that it has given rise to a limited number of very positive conversations.

The next matter I would like to raise is the statistics I have provided. The first one is the ubiquitous pie chart. This is to give the Committee of flavour of the way the land claims world looks at the moment. I premise my remarks by saying that there are three primary sources of land claim statistics—there are those held by the Registrar on the Register of Land Claims. To explain that, it is not a public register per se but it is a register that people can ask for information from in a restricted way. What I mean by that is that we often deal with searches

where people will ask if there is a land claim over a parcel of land. If that is the case and we identified that there is a land claim, the first thing we do is notify the land council who is the claimant and ask them to understand that there is a request for knowledge about that claim. What I mean is that there is no right to access the information on the register per se but the use of the register subject to consent is a very important tool for identifying land subject of claim, if that makes sense.

The Hon. TREVOR KHAN: Do I take it if the land council says it does not want this information disclosed then that is the end of it?

Mr WRIGHT: We will then say there is a claim over the land but we will not provide any other information. We very rarely strike land councils not wanting to engage. The statistics on land claim are held by what is now the Department of Primary Industry, ourselves are on the register and the NSW Aboriginal Land Council. There is data sharing as well. Sometimes those statistics do not look exactly the same. That is not fundamental loss of land claims, that is just sometimes the way things are counted and the way in which they are used.

So the statistical information I give you is an aggregation. I ask you to understand that that is an issue and we are constantly dealing with updating those records. There are, for better or worse, over 40,000 individual files because every land claim has its own file. As recently as a month ago I was dealing with the land claim No. 1 for land at Evans Head over an area called Goanna Headland. I was dealing with that because the land councils adjacent to that area are negotiating some outcomes for that land. That file is old and dusty but it exists and, to the best of my knowledge, so do the other land claim files up to the most recent. They come out from time to time and there is the usual digitising of that information and all those processes going on along the way. What you will see from the pie chart is a very large number of incomplete land claims which are, as we know, land claims that are remaining to be determined. That is a significant number—approximately 29,000 individual claims—and they do require determination over time.

The Hon. TREVOR KHAN: Are you able to provide any sort of statistics on the ageing of that 29,000?

Mr WRIGHT: There are two parts to my answer on that. Firstly, if you look at the bar graph that I have provided, the bar graph ages claims in five-year brackets in relation to what was lodged and then what outcomes there have been or whether they are incomplete. What the bar graph tells us is that there was a reasonable steady process of land claims from 1983 through to 2002. Then from 2003 onwards there was a significant increase in the lodgement rate. As a corollary that means an increasing number of incomplete claims, if only because there are more claims that have to be dealt with.

Mr DAVID SHOEBRIDGE: There was a concern that there might be some statutory closing of the window at some point, was there not?

Mr WRIGHT: The motivations for why those two spikes occurred, I think what I would say is the first one to my knowledge was when there was an administrator appointed to the New South Wales Aboriginal Land Council—the late Murray Chapman, who certainly made it part of his administration to provide me with an extremely large number of land claims for registration.

The Hon. TREVOR KHAN: In essence he tidied up what was sitting on the desk.

Mr WRIGHT: No, I think it is better to say he engaged in a fairly proactive land claiming process across the State. It was a project. The figures from 2008 show the New South Wales Aboriginal Land Council chose again to efficiently look at land and to engage in a land claims process. That is what those two areas represent to me.

Mr DAVID SHOEBRIDGE: And do we know the extent to which it is done by the New South Wales Aboriginal Land Council or other local Aboriginal land councils? Maybe Councillor Dennis or Mr Hynd might know the breakup.

Ms DENNIS: Maybe. I would ask Stephen Hynd to comment.

Mr HYND: The breakdown is roughly 80 per cent made by the New South Wales Aboriginal Land Council.

Mr DAVID SHOEBRIDGE: And 20 per cent by a spattering of other local land councils.

Mr HYND: Yes—pretty much.

Mr DAVID SHOEBRIDGE: How does that work within the organisations? Is it by agreement?

Mr HYND: The land council's claims are effectively lodged on behalf of the Local Aboriginal Land Council. We have greater resources to pursue and exercise that right of claim. But all land is transferred to the local Aboriginal land council ultimately. Instructions on pursuing, appealing or whatever about those claims are taken from those local Aboriginal land councils. We have to remember that a lot of local Aboriginal land councils are very small community organisations so their access to data systems that we have varies a lot.

Ms DENNIS: Really the core business around a land council is about claiming land. I suppose when you live in community the issues on the ground are probably a lot broader than that—social issues, housing, conditions and education for members to be able to work through the legislation. Over 33 years we have been coming to terms with the legislation and we have been able to get the legislation to work for us as Aboriginal people. Land really was our classroom. That is where we learnt everything around the ecology, the environment, men's business and women's business. The small tracts of land are getting smaller and smaller. The social issues are starting to grow. The legislation is quite prescriptive. Through that governance arrangement, the members, the board and the chief executive officer, we have been able to do that and then have been supported by the New South Wales Aboriginal Land Council.

We are becoming more and more focused on how we make the legislation work to achieve economic independence and also retain that cultural access to the land around spirituality, social and other purposes. Not only do we have to manoeuvre within the legislation but we also have to be able to work within the local government acts and the zoning of the land—what is the purpose of the land? How do we do that? And then there are also culture and heritage laws and Crown land legislation. It is not only the legislation—the Aboriginal Land Rights Act—that we have to be able to understand. It is being able to look at all other legislation so we can work together. But really it is about building; it is about the whole community—where we live. It is about being able to access equality and work towards that economic independence, being able to make decisions and choices. As I have said, the legislation allows us to claim land but again the processes and governments have to be able to meet us halfway to say, "This is what we need to do."

The Hon. TREVOR KHAN: I ask this question before we proceed. When I look at the bar graph, taking the period 2003-2007, for instance, on the left is "claims lodged" and on the right is "claims incomplete". Do I read that as saying this is a snapshot in time, so if I look at the group of bars for 2003-2007, as of now, there are some 7,000 incomplete claims? Is that how I read it?

Mr WRIGHT: No. That is a snapshot of that particular period. So that was the number lodged during that time and the number that were incomplete at that time.

Mr DAVID SHOEBRIDGE: The number that were lodged and incomplete at the time of lodging?

The Hon. TREVOR KHAN: Well, they would be incomplete at the time of lodging.

Mr DAVID SHOEBRIDGE: That is what I am saying, but it is not referencing a historic number that are on the registry that are incomplete—it is just the number that came in in that five-year period.

Mr WRIGHT: It is the number that were lodged in that five-year period and the number at the end of that five-year period which remained incomplete.

Mr DAVID SHOEBRIDGE: Oh, I see. I understand.

The Hon. SCOTT FARLOW: So a lot of those would be finalised now.

Mr WRIGHT: The last set of statistics is what I am going to provide you with now. I take your point that they are encapsulated in each of those five-year groups. Bearing in mind, Chair, what I have said about statistical differences that can occur, for the Committee's benefit, as at 26 July 2016 we show 40,960 land claims having been lodged. We show 1,906 claims having been granted. We show 7,023 claims having been refused. We show 14,055 claims in a category called "withdrawn or finalised", which is essentially withdrawals of claims by land councils for a range of reasons. We show 29,840 claims incomplete, which is the large area of the pie chart, and 672 claims in a category called "part grant, part refuse", recognising that a land claim may come in over an area of land and through the determination process it may arise that part of it is claimable and part of it is not, so the outcomes can be variable. What is claimed may not be what is granted in total.

The Hon. TREVOR KHAN: Is the claim made over individual titles or can a number of titles be contained within the one claim?

Mr WRIGHT: Over time, the recording of the Crown estate has changed. We went through a very large process of essentially creating a lot and a deposited plan number for every parcel of Crown land. Prior to that there were reserves, portion numbers and a range of different identifiers. It was often the case that a claim might have been made over a number of portions, which were identified, which has subsequently been brought

into lots over time. That can sometimes cause slight differences in the internal configuration. However, the whole of the land is parcel by parcel, whatever that identify is. So land claims, unlike native title, are not claims to country; they are claims to individual identified parcels of land.

Mr DAVID SHOEBRIDGE: Mr Wright, could I just take you back to this bar graph as I do not know if I am understanding it. In that first five-year period there were 3,000 or so claims lodged and of those 3,000 or so claims that have been lodged, as we sit here today there are a small number that are still incomplete?

Mr WRIGHT: A very small number, yes.

Mr DAVID SHOEBRIDGE: And so if we go through to 2003 to 2007 there were 8,500 claims lodged and of those lodged, 7,500 of those are still incomplete today?

Mr WRIGHT: Yes.

Mr DAVID SHOEBRIDGE: So we get to 29,000 by adding up all of those last bar graphs?

Mr WRIGHT: Yes, Mr Shoebridge. Do I have a moment more, Chair?

The CHAIR: I am happy to be getting the sort of information you are giving and Committee members are asking questions as we go so I am happy for you to proceed.

Mr WRIGHT: Thank you, Chair, I will not take up too much of your time. I would just like to read some information into the *Hansard* for you. The large number of incomplete or undetermined land claims does present a challenge for all of those with an interest in the Crown estate. The statistics which are attached demonstrate that for some time land claims had a regular pattern of lodgement and determination. However, this was disrupted by two significant spikes in the rate of lodgement of claims that greatly increased the total number of claims.

Section 36AA is a direct result of the New South Wales Government and Aboriginal land councils recognising the need to find an alternative path to resolution of land claims that would complement the determination of claims on a claim-by-claim basis. The challenge for the New South Wales Government and Aboriginal land councils will be negotiating their competing priorities for the determination and/or settlement by agreement of land claims. I am aware of the Aboriginal land agreement framework between the New South Wales Government and the NSW Aboriginal Land Council. This framework will see land claims determined and settled over time.

What I mean by this is that the settlement or negotiation process enlivened by section 36AA does not replace the determination process; it complements it. The framework must be complemented by an ongoing determination of individual land claims, the acknowledgement that land claim agreements may be made beyond the scope of the framework and attention to particular Crown lands that arise as a priority for the New South Wales Government and/or Aboriginal land councils over time. If parcels of Crown land that are a priority for the New South Wales Government and/or Aboriginal land councils can be adequately determined or settled, the remaining incomplete land claims remain an important land bank for the Aboriginal community of New South Wales.

I say "land bank" because once a land claim is lodged for a parcel of land, the determination of the land claim has priority over any other new interest in the land. Lastly, two points I would make, Chair, are: first, that we cannot discount the importance of native title rights and interests on your work. The legal and political relationship between land claims and native title rights and interests is complex. This relationship must be kept in sharp focus when considering Aboriginal people's rights and interests in Crown land.

Lastly, I make some comments about reimagining the Crown estate. The competition for Crown land in New South Wales is a fact of life. This is often presented as a contest between public and private interests. The reality for New South Wales is that Aboriginal interests in the Crown estate underpin the Crown interests and so underpin the public-private debate. By reimagining the Crown/Aboriginal estate I mean giving priority to resolving the Aboriginal interests in in Crown land before considering the public-private considerations that may arise. Thank you, Chair.

The CHAIR: Some Committee members are lawyers and may understand it but for the sake of the Committee could you explain how native title rights complicate land claims over Crown land?

Mr WRIGHT: If we had three weeks to sit here I may scratch the surface.

The CHAIR: Just a general definition so that as we proceed through this inquiry we are all aware of some of the complications?

Ms DENNIS: A number of important issues that arise are that native title claims may be made over areas of land, as we know, and the issue of the tenure of the land is then explored as part of the claim. The claim may be over a whole range of lands and the question becomes whether people have cultural connection with the lands and, secondly, whether there has been an extinguishment of their native title rights and interests in law, as it is understood. The intersection with land rights has a number of facets but, most importantly, if there is a registered native title claim over Crown land or there is a determination that native title exists, which is a matter for the courts, over Crown land, that bars the lodgement of a land claim.

To amplify that slightly, there is also a complex relationship whereby land claims lodged before 28 November 1994, which was the commencement of the New South Wales Native Title Act, are not objectively subject to native title rights and interests, which means they do not come with an encumbrance. Land claims lodged after that date, if granted at any time—so if the lodgement was after 29 November 1994, whenever in the future they may be granted, there is a notation on the title of the land council, a standard Torrens title matter that says in order to deal in that land, to sell, lease or whatever the dealing might be, they have to deal with the native title rights and interests. That has become a complication because that requires again Federal Court proceedings by way of something called a non-claimant application. Sorry about the complexity, Chair.

The CHAIR: No, it is important because I am not sure how much understanding Committee members have of native title and Crown lands. We have been dealing with it as a State development issue. It is important going forward to know that there is great encumbrance if there is native title over the land.

Mr WRIGHT: For the benefit of the Committee, I would say, without going into the nitty-gritty, that the Committee needs to remind itself that both native title rights and interests in land claims must be considered when the Crown estate is being assessed in any form.

The CHAIR: What is the low hanging fruit in terms of the 29,000 land claims that are incomplete and how can we assist in addressing that?

Mr WRIGHT: The first thing I would say is that is a question better directed to the responsible Minister who would be able to assist you. I can assist by saying that within section 36 there are provisions which provide that the registrar can refuse to register our claim but only in very narrow circumstances and that is where there is clear evidence that the land is not vested in Her Majesty and there are very clear rights for a land council to object and appeal against such registrar's determination. But that is to pick up where there might be a situation where land that has been claimed is clearly unequivocally private land in total and the land council can be advised that that is not a matter that should be claimed because it would be refused if it is over private land.

Secondly, really the only matter I could direct you to as being low hanging fruit are claims that are made clearly and unequivocally over private land. They do happen from time to time. Land councils quite rightly, because it is beneficial legislation, do not have the responsibility of clearly identifying the owner of the land they claim. For most land claims that due diligence is done and done very well. It is done extremely well by the NSW Aboriginal Land Council and normally very well by local land councils but there are a small number of claims where it is private land and so it is an easily determined matter. Beyond that the determination process, I am sure Crown lands will advise you, is a particularly detailed process per claim.

Mr DAVID SHOEBRIDGE: Councillor Dennis, do you have access to this bar graph?

Ms DENNIS: Yes.

Mr DAVID SHOEBRIDGE: How do you respond to the data you see there in the last five years, 2013-2016, which despite there being a huge number of outstanding land claims, you almost cannot see on the bar graph the numbers that have been granted. In fact, if we look from 2003 onwards, the numbers that have been refused dwarf the numbers that have been granted. Can you tell me about your experience and how this bar graph reflects the reality on the ground for you

Ms DENNIS: That is probably the frustration that every land council across New South Wales experiences. Where land claims have come in to that extent we find that the members and the land councils are getting on with business and they are understanding how to work through the legislation and the land claims process. They are more confident about putting in land claims.

Mr DAVID SHOEBRIDGE: But none of them have been approved.

Ms DENNIS: That is right and that is the frustration that we have. Trying to address many issues within community for Aboriginal people, whether it is youth, men or women—to be able to access that land, build an economic base or use it for cultural and social purposes, we can address that and work in partnership. Just having that negotiation power of working with a local government to address some of the issues—but

because the land is not being granted and there are other hurdles that we need to get across within local community. And every community is different. That is the frustration that land councils have through the purpose of it.

Mr DAVID SHOEBRIDGE: You put the claim in on behalf of the local community and land council but then it just sits there. Is that what happens?

Ms DENNIS: Yes.

Mr DAVID SHOEBRIDGE: Mr Hynd, are you dealing with this in your day-to-day work?

Mr HYND: Yes.

Mr DAVID SHOEBRIDGE: Does it just sit there? What happens?

Mr HYND: Largely. It is not to say that there is not processing of land claims but the statistics are pretty shameful. If I can tie it into the earlier question from our perspective, the low-hanging fruit is not about the numbers.

Mr DAVID SHOEBRIDGE: From what I understand from Mr Wright's view the low-hanging fruit is the number that can be refused out of hand. That did not sound very attractive to me.

Mr HYND: That is the low-hanging fruit for processing and statistics. The low-hanging fruit for achieving our objectives is the lands that the local community prioritise.

Ms DENNIS: They need to be determined and handed back or say, "Well, no, it can't be granted because of this", and, "Yes, it can be granted because of this."

Mr DAVID SHOEBRIDGE: Have you had a discussion with the Minister and the department to say, "Why don't we sit down and prioritise for our communities the ones we want you to get to first and direct resources to"? Is there that kind of relationship with the department and the Minister?

Ms DENNIS: We have had many conversations over 33 years about how the land can be granted back, hence the new amendment around Aboriginal Land Agreements [ALAs] which is another little mechanism to be able to progress that to the point where land can be determined probably more succinctly and address it in that way. But at the moment it is in four pilot areas. Again, as I said, land councils would like to get on with business and the land claims are just not being addressed.

The Hon. TREVOR KHAN: The ALAs seem to be an interesting concept. Is anyone able to give a description of how the discussions and negotiations are going in the four pilot areas?

Mr DAVID SHOEBRIDGE: There is Warringah, Tamworth and two others. Where else?

Ms DENNIS: Albury.

Mr HYND: Formerly Corowa, I think it is now called Federation shire, and Tweed Byron.

Ms DENNIS: And really it is probably early days. The negotiations have just started and the resources behind progressing that discussion with the relevant land councils and local government and all parties at the table. That is very early days.

The Hon. TREVOR KHAN: I do not want to press but are you able to perhaps on notice give an indication as to when those discussions started?

The CHAIR: For members' sake, we will be meeting with Tweed Aboriginal Land Council. They might be able to give a reflection on that pilot program for us.

The Hon. TREVOR KHAN: But it is more than Tweed.

Mr DAVID SHOEBRIDGE: It sounds like a lot of it is done by the NSW Aboriginal Land Council. Are you taking the lead on these negotiations as the peak body?

Mr HYND: If I may, the negotiations specifically about land have not commenced in any of these areas. The negotiations to date have been with the State Government about the possibility of negotiations in those specific areas. Does that make sense?

Mr DAVID SHOEBRIDGE: Sadly.

Mr HYND: The Government response to the Crown lands white paper identifies on page 21 that the Government will work closely with both Aboriginal land councils and local councils in implementing the recommendations of the review, including by exploring opportunities afforded by the new Aboriginal Land

Agreement provisions in the Aboriginal Land Rights Act. We are at this stage just actually exploring that opportunity.

The Hon. MICK VEITCH: Are there any ALAs we could look at as examples that are in place?

Mr HYND: We are aware of one that has actually commenced but not in that specific context.

The CHAIR: I think we are aware of that in the State development committee.

Mr DAVID SHOEBRIDGE: One agreement that has been completed or one agreement where negotiations have started?

Mr HYND: One instance where actual negotiations over land have commenced. It does not involve local councils per se.

The CHAIR: That has its hurdles as well.

The Hon. MICK VEITCH: The Local Government NSW submission states that it has recommended that the Government clarify whether it is preferencing the disposal of Crown land rather than transfer of Crown land under the Aboriginal Land Rights Act [ALRA] as both disposal and transfer under the ALRA appear to remain options. Can I get your views on that statement from Local Government NSW? Is that an accurate statement?

Mr WRIGHT: Just as a technical matter, the idea of preferencing is an interesting one because section 36 is an objective test. It is either claimable Crown land or it is not. If it is adjudged under the test in section 36 to be claimable Crown land there is no option for a preference, it simply has to be transferred. If it is refused then the Crown is free to do as it pleases with that land. That is a very important underpinning of the land rights agenda. It is not a matter of discretion in section 36.

The Hon. TREVOR KHAN: I take it from what you said before that if a claim is lodged that is it. It has to be determined before anything happens with the land. Is that right?

Mr WRIGHT: Some years ago the court somewhat opaquely said that a land claim over land is an inchoate property right, which is very difficult to find in any text book or other learned source. Essentially what it means is that once a land claim is lodged a land council's statutory right to have the claim determined has priority over any other interest or dealing in the land. Sometimes you might find examples of uncertainty about what is under claim and there might be some curbing and guttering done or there might be some access to the land for whatever purpose. That actually is not able to occur without consent of the land council because the land council's right to have the claim determined has priority.

The Hon. MICK VEITCH: Just to clarify, what you are saying is the submission from Local Government NSW is incorrect?

Ms DENNIS: It is really about that mistrust, it is the interpretation and using the Crown Land Act against the Aboriginal Land Rights Act. Really it is like land and water. You cannot separate land and water for Aboriginal people or for anyone, yet you cannot separate the Aboriginal Land Rights Act and the Crown Lands Act. It is understanding both legislations, how they work and the land council through its members trying to claim unused, unneeded Crown lands. It is quite specific. As the registrar is saying, the determination is that the land council can claim it or they cannot for whatever reasons. That is all we are asking for, to look at it. Yet it is put off for 33 years and 29,000 land claims. The mistrust that Aboriginal people have in trying to access and use the legislation so that we can better improve the social conditions and the economic conditions of Aboriginal people. It is that mistrust, that use and misguidance of how it is determined, because then we come into the Local Government Act and then the zoning of the land. We have got to work through that as well so then nothing happens.

Mr WRIGHT: For the benefit of the Committee, the emergence of section 36AA is significant in the Land Rights Act. It emerged from a review of the act that was undertaken in 2011-12 and that review brought together representatives of the Minister administering the Crown Lands Act and the land councils as a working group. That was a collaborative outcome. Prior to the genesis of the framework matters, which Mr Hynd and Councillor Dennis took you to in relation to the pilots, there was a proving negotiation. The local land council at Lake Macquarie is called the Bahtabah local Aboriginal land council. If the Committee had the ability to hear from them it would be useful.

That was a negotiation between that local land council and the Minister narrowly on matters of undetermined claims, it was not as broad as what is now available under Aboriginal land agreements. It was a narrow negotiation over a number of claims. The key to it was that the land council had a number of claims which were its priority. Of 35 claims it had lodged itself 15 of those claims were a priority. What I mean by that,

is what they expressed was if we are able to have these claims dealt with and if they are claimable Crown lands, in terms of what we can advance within our community economically, socially and culturally that will keep us busy for some time. It will give us work to do to improve our member's circumstances.

Those negotiations took 18 months. They were done under the rubric of a conciliation under the registrar's functions. It brought together a series of meetings between officers of the Bahtabah land council and officers on behalf of the Minister and two outcomes were a very good outcome on a balance between claims that could be granted and claims that were withdrawn between the parties. Second, the relationship that developed and the understanding that developed that had not been there before was probably just as important. The reason I raise this goes back to my analogy, is this a backlog or a land bank. If we are drawn to the total number of undetermined land claims it looks like an impossible hurdle. If we re-imagine it somewhat and say if there are opportunities for the priorities within that for each of the 120 land councils to identify it may be that claims remain undetermined but matters of priority are dealt with. There is a way to manage that without it becoming overwhelming and I would encourage the Committee to look at that.

The Hon. SCOTT FARLOW: With respect to section 36AA, is that to be applied to past claims or is it only for fresh applications?

Mr WRIGHT: Any claim that has been lodged.

The Hon. PETER PRIMROSE: On the theme of inchoate, I would point out that in relation to the four pilots that there has been no update of the department's website since December 2014 in relation to this. I think the Committee is probably in the dark as to all of the issues, as is the public, about outcomes. Can I ask Councillor Dennis and Mr Hynd, in relation to your submission, on pages five and extending on to page six, it states:

> At present the Minister is required to assess Crown land to determine its capabilities and preferred uses prior to dealing with the land. While it is understood that these assessment provisions are readily and regularly overcome through legislated exceptions such requirements must not be removed without adequate replacement. The NSW Aboriginal Land Council has difference about the Crown land reform proposal to remove these requirements in favour of unclear local planning processes under the new land use planning framework. This lack of clarity is even more concerning given the uncertainty that remains about the future land use planning framework in New South Wales.

You go on to say that we need to get some clarification about that. Could you expand on your concerns there please?

Mr HYND: Yes. There are a few elements. Firstly, while we have been in discussion with the State Government about that particular statement in response to the Crown lands legislation white paper there are a lot of elements to it that we are still in the dark about, to be perfectly honest. One of them is the proposed changes to the notification provisions and the proposed changes to the assessment of Crown lands. We are probably more concerned about the notification provisions. There is some general statements there about using more modern and inclusive methods of community consultation which sound fantastic but as with most things the devil is always in the detail. We do not know the detail yet. For us some of the proposals, while they sound fantastic, we do not want to see the baby thrown out with the bath water in terms of existing requirements particularly about the notification provision. The requirement that sales and revocation of reserve purposes are gazetted we think is of critical importance given the State significance of Crown land.

The Hon. TREVOR KHAN: Do I take it that the reason you want to continue to go through the gazette each week is to check what's going on?

Mr HYND: Yes.

The Hon. TREVOR KHAN: If the requirement becomes to put it in the local paper that would need you to receive every paper in New South Wales to make sure you got notification?

Mr HYND: Yes.

The Hon. TREVOR KHAN: I am not being critical. Having it in the gazette is a centralised source that allows you to regularly update your knowledge?

Mr HYND: Definitely.

The Hon. PETER PRIMROSE: I accept that. Please comment on that? I am particularly focusing in on your concerns about local planning processes?

Mr HYND: From our reading of the white paper and the white paper response there seems to be a piggybacking off the proposed changes to the planning laws. Again, another element where, I hate to say it, we are a bit in the dark about that. We had significant concerns about the previous planning bill that failed last year.

To suggest that there is a better way of consulting and assessing but without detail of what it actually is, that is where our concerns lie.

Mr DAVID SHOEBRIDGE: Thank you all for your evidence. There are a many questions on notice. Mr Wright, could you provide the numbers behind the bar graph and the chart?

Mr WRIGHT: Yes.

Mr DAVID SHOEBRIDGE: Councillor Dennis and Mr Hynd, if the legislative way we deal with Crown land is to be reformed, and that will happen, we are talking about 42 per cent of the State. Given that it was all Aboriginal land, and many say it still is, do you believe the first principle under any reformed Crown land act should be recognising Aboriginal ownership and prioritising, wherever possible, transfer of the land into Aboriginal ownership?

Ms DENNIS: Most definitely. We need to be a part of that discussion and each land council must be consulted around that handing back of that land. We have a legislative framework that really was supposed to be simple and inexpensive but it has not worked. It has not worked for whatever reason. We cannot separate the Crown Lands Act from the Aboriginal Land Rights Act, they are integral parts and need to work together. We cannot change one without impacting on the other. We followed the process, land councils have put in claims, NSW Aboriginal Land Council has put in claims and over 33 years we are getting better at working through that process. If it is claimable it should be determined one way or the other and say, yes, that land can be transferred or, no, it cannot be. It is a simple process, but again it is not simple.

Mr DAVID SHOEBRIDGE: What is your lawyer perspective on putting that as the clear objective of any Crown land act given we are in a State which was dispossessed from Aboriginal people, every square metre of it?

Mr HYND: The simple answer is yes.

Ms DENNIS: Yes, hand it back.

Mr HYND: As Councillor Dennis said, these two pieces of legislation cannot be looked at in isolation—they cannot.

The CHAIR: I think the point has been made, and it is a very clear point, and Mr Shoebridge was getting another question in there. Members may very well put questions on notice and I note that you did take a question or two on notice. You have 21 days to reply to further questions and the secretariat will be in contact to assist you in that. I thank you for your presentation this morning. There is much information and myriad hurdles that we are yet to jump for the sake of our Aboriginal people and their culture and the special part that they play in our history and our future. Thank you very much.

(The witnesses withdrew)

NATHAN MORAN, Chief Executive, Metropolitan Local Aboriginal Land Council, affirmed and examined

The CHAIR: Do you have an opening statement that you would like to proceed with?

Mr MORAN: Firstly, I acknowledge that we are standing on Gadigal country today and that is the meeting place we are having this discussion on. I acknowledge the Gadigal clan and the surrounding Eora nation. My second point would be to acknowledge I am a Biripi and Thungutti, I am a Gurri from the North Coast of New South Wales. I have had the dual status of having not only just land rights inferred on my communities but also native title.

My first premise today would be to go back into an era where I was a young child. My mother is Wilma Moran. Wilma was the first mediator, conciliator, of the Land and Environment Court for the NSW Aboriginal Land Rights Act. My grandfather was William Holton, who is listed as one of the founders of the land rights movement for New South Wales. The greatest issue for our communities is the lack of genuine realisation of the preamble of the Land Rights Act that said that we would be recompensed for the loss of the State through the use of Crown lands and the ability to have Crown land appropriately given to us.

Acknowledging now that in 2016 we still have over 75 per cent of our claims unresolved and undetermined by the Government, I just do not feel that there has been good will, let alone commitment from government to honour its own legislation that was noted as bipartisan-passed—both parties, major parties, and collective smaller parties at the time supported land rights. Unfortunately, what I have lived through in my generation is the non-realisation of that ambitious, I would say, leadership in Australia that in 1983 the State of New South Wales was willing to lead on. Resolving relationships between the first nations of Australia was the best and still remains the best bit of legislation but we just have not realised those aims and goals. I feel that it has been down to government under-resourcing Crown lands.

I recall vividly as a child going to the Taree regional office of Crown Lands to ask for the maps to find out what land was available to claim, and the battles we had just to get the maps shared with us. That indignity remained up until 1996, but then all of a sudden we were told they were no longer available to our communities, therefore leaving us blindfolded as to what is actually claimable. We have been knee-capped—I would say Achilles cut—from the very moment that the Land Rights Act began through the lack of cooperation of the New South Wales government agency known as Crown Lands, because if you do not know the actual Crown land that is claimable it is very hard to make a claim. That would be my first main issue to raise, that we just did not get that fair, equitable treatment from the beginning.

But then you look at the claims that we actually lodged, and I draw upon again my youth in Port Macquarie watching Birpai Local Aboriginal Land Council claiming Crown land on Hastings River Drive that Port Macquarie—or Hastings Council as it was then—Port Macquarie Local Council was granted under the premises that we could not get it because it was for sport and recreation. I challenge anyone today to drive along Hastings River Drive from the Pacific Highway and find sport and recreation. You find car yards, you find commercial businesses, and all of the benefits of that Crown land went to the Hastings Council, or today's Port Macquarie Council, through the sale of freehold land. That is the very premises that the Land Rights Act was meant to deliver to our community.

That is an example I would say to you that is multiplied across the State of New South Wales. But knowing that Hastings River Drive was jokingly called Parramatta Road by 1989 and has only continued since to show that evidence that it was not about sport and recreation. We got one ten-pin bowling club, which was a commercial operation, and the only real communal sporting fields we got were not actually on the claim or part of the claim, they adjoined the claim, and that is where today's basketball courts and sporting fields remain. So looking at the evidence knowing that we lodged a claim on land that is vacant Crown land that has no public essential use identified, to find out that we are then refused that claim because the local government authority will have use of it and then gets the benefits of the commercial sales is quite deeply sickening, to be quite frank.

To realise that Australia has no treaty, has no formal legal arrangements to deal with the issue of sovereignty to trade our goods, our minerals and our land and then to have this as the replacement, pseudo treaty, as a lot of my generation certainly calls it, and then to not see that good will, that equitable treatment and fairness of assessment take place does really leave you gutted to think if this is all it is about Crown land being notionally claimable but never being given the information on what is actually claimable, then lodging claims and watching the majority of them being refused and, in fact, the overarching percentage of 75 per cent and above have never even been assessed, leaves you wondering: Is land rights supported by the Parliament?

Certainly what we had hoped to see is maybe the Land Rights Act itself being honoured, Crown land not being seen as something that is an asset for commercial sale, for government's gain—be it at local level or State level—but something that was originally intended under the Land Rights Act to recompense us for the loss of our State. I say that with a knowledge that we have no mineral rights, reparations under the land rights Act, unlike the Northern Territory Land Rights Act. Our income was cut at a certain level in 1998 by the Parliament. They ended in the sunset clause the 7.5 per cent of land tax that formed our reparation fund. So if we are not getting the reparation fund and we are not getting the land claims, I really would start questioning and wondering what is the commitment to land rights by the Parliament. I say that with a broken heart knowing that the Liberal Party in 1989, under the Greiner Government, engaged in a process where they wanted land rights to be driven by Government, to be controlled by Government.

My mother wrote a paper called "The Black Paper" against that very notion, but then by 1998 we saw the Labor Party taking away our income streams and that is the evidence that I would speak to and say we would like to see a change. We have seen, and I must acknowledge a very minimal but very heartening change, under Mr Niall Blair. We have seen more claims processed in a shorter time with Mr Blair than we had with the two or three predecessor Crown land Ministers. Whilst that is good we feel there is still a long way to go if we are to really see land rights realised for Aboriginal people let alone for the Parliament to make good on its original intention and certainly what it was proclaimed to do.

The third issue I would raise is the Crown Lands (Amendment) Act, and you probably witnessed—I am sure you did if you were here that day—in November 2014 when the communities came together to protest. It seems ironic that we would have a Crown lands bill about coastal Crown lands sponsored by members of Parliament who do not have an electorate on the coast. I must say that the knowledge of my old people makes me speak about an issue that we feel was at the heart of that issue for that member to be moving such a motion. It was not so much about the concern of use of coastal Crown lands but about the expiry of 99-year Crown leases. I would say to the Parliament that Aboriginal people, particularly those in New South Wales, have a deep understanding that 99-year Crown leases was the predominant way that individuals were appropriated land from 1915 onwards. It is ironic that in 2014 we had such a proposal to amend the Act to take away our ability to have land claims assessed retrospectively and to think that we cannot have an open discussion around, yes, there are 99-year leases expiring and, yes, they could be notionally claimable. It seems very disappointing that we do not have that maturity to sit down together and discuss such matters.

At the end of the day, you will never see an Aboriginal land council try to get land that is under use or being occupied rightfully by individuals who may be farmers, community groups. But at the end of the day, if they really have only had it for their own commercial gain, it should be determined that that lease must end and it must be then returned to the Crown and assessed for what its purpose is. If it does not have an essential public purpose, it should be granted under land rights, but, unfortunately, we are not seeing that, and we believe that the actions of Parliament and parliamentarians to amend the Crown Lands Act was about preventing the intentions of the New South Wales land rights Act to be realised. I feel quite saddened that today the seconder of that amendment is appointed as the Minister for Aboriginal Affairs. I feel that that is a tragic irony that people who moved to take away our rights are then appropriately given—one was the former Minister for Aboriginal Affairs and now the current one. So you have to wonder about the commitment to work, dare I say, in a fair and equitable way with us.

Mr DAVID SHOEBRIDGE: Mr Moran, can I ask you, if it is alright, about the number of land claims that Metropolitan Local Aboriginal Land Council currently has on foot and, if you could, are there priority claims and non-priority claims?

Mr MORAN: I will be very open to you and say I would not give you an exact number, but I would say in excess of 1,000 are yet to be determined for our local land council. We know definitively by working with Crown lands and the Warringah local government's pilot that we have 306 local Aboriginal land claims alone in the Warringah local government area that are undetermined.

Mr DAVID SHOEBRIDGE: How many have been determined? Give me a ballpark figure now but then give me a more detailed figure on notice.

Mr MORAN: I would not give an actual number but I would say it would be around 100. We have 170 land listed properties in our name, so I would suggest that would be the rough figure to give you—under 200.

Mr DAVID SHOEBRIDGE: As a proportion of the claims—

Mr MORAN: Twenty per cent, virtually the same standard that the State is suffering from.

Mr DAVID SHOEBRIDGE: You said that there has been some improvement under Minister Blair. Did you want to detail that in some way?

Mr MORAN: Well, we have seen processing of claims, be it granting, refusing, in numbers over and above previous years.

Mr DAVID SHOEBRIDGE: Can you tell me how many you are talking about?

Mr MORAN: I got three land claims granted last year.

Mr DAVID SHOEBRIDGE: How many refused?

Mr MORAN: Two.

Mr DAVID SHOEBRIDGE: Historically, that is a surge, is it?

Mr MORAN: That is a surge. That is an immense increase.

The Hon. SCOTT FARLOW: How many did you lodge?

Mr MORAN: We did not lodge any in the last year. These were claims that go back to 1994. One of the earliest claims that was yet to be resolved was finally resolved. That is a bit odd because we do have other claims that were lodged more recently. We are not quite sure of the methodology that they use to make these assessments.

Mr DAVID SHOEBRIDGE: Do you have any engagement with the Minister or the department to say, "These are our priority claims. Can we please get to these first?" Is there some way that that happens and, if not, do you think that would be useful?

Mr MORAN: I think it would be very useful. I believe the amendments to the land rights Act will allow such negotiations to take place, but I then draw your attention to the Crown land pilots that say that this pilot will take place in only four local government areas. There is an ability now in the Act, it is about making that happen.

Mr DAVID SHOEBRIDGE: You are talking about section 36AA?

Mr MORAN: Yes, 36AA allows us to negotiate directly on Crown land claims and other lands outside of claimable Crown land. We believe that is a really good opportunity to sit down and negotiate direct. However, we have had the Crown land pilots announced around the same time.

The Hon. MICK VEITCH: Have you undertaken any of those negotiations on the agreements, the latest reform?

Mr MORAN: No, they came into effect last July.

The Hon. MICK VEITCH: So you have not initiated any?

Mr MORAN: No, we are subject to one of the four Crown land pilots, being the Warringah area.

Mr DAVID SHOEBRIDGE: That is more than 12 months now. I know things move slowly. It was passed in Parliament before then but it commenced on 1 July last year. What has happened?

Mr MORAN: I am not aware of any movement of any individual land council having that ability. I am aware that a few have personally wrote to Government asking to negotiate but been informed about the reliance on the Crown land pilot as a way that the Government is going to resolve Aboriginal land claims.

The Hon. TREVOR KHAN: We are dealing with the Warringah area. The pilot being announced, what does your organisation do to engage in that process? I am not being critical of anyone—I might be later. Do you rely upon the department coming to you and saying, "This is what we do", or do you have some internal process?

Mr MORAN: It is 100 per cent that the control and power is with Crown lands. They determine when this will commence. They will tell us which of the four will be the first and the order and priority of the others. We virtually sit back and wait to be informed and be instructed as to when this will commence. We have had a presentation and voiced our willingness to negotiate. Given the history, we feel that is the only thing we can do, but we do not have any say on when that will happen and what the priority order of those four different pilots will be.

The Hon. TREVOR KHAN: Will you be able to come back to us with some sort of time line as to when you were notified you would be in the pilot and when you have had communications with the department and what they were?

Mr MORAN: We have been informed in May this year and in a total respectful way, being an ex-public servant, I understand that it was about planning for financial years and it would commence from 1 July. So we now await the announcement or at least confirmation of who will be going first—whether it starts at the south in Albury or Tweed in the north or Tamworth or us.

The Hon. TREVOR KHAN: So even though there are four pilots—

Mr DAVID SHOEBRIDGE: Is it your understanding that they are going to operate seriatim, one after the other?

Mr MORAN: My understanding is that they will do one at a time and progressively go through them.

The Hon. MICK VEITCH: What do you envisage will be the impact—

Mr MORAN: We would hope that it would at least allow us to resolve those 306 claims in the Warringah government area that we have been unable to. I should point out that we even approached the New South Wales Government Minister for the Environment to resolve the claims through an Aboriginal national park. Unfortunately, the Minister acknowledged that that model does not exist in the NSW Government. That was us offering up to have our claims resolved, to be granted to us on the undertaking that we would form an Aboriginal national park in the Oxford Falls area.

Mr DAVID SHOEBRIDGE: Like down round Jervis Bay—the Booderee.

Mr MORAN: But we wished to control this park, we did not wish to sign it back to National Parks to be given a position on a board of management. We wanted to utilise this land ourselves, accessing things like biobanking, carbon trading, to fund our own operations of an Aboriginal national park.

Mr DAVID SHOEBRIDGE: As I understand it, in your capacity to agree and under section 36AA with four pilot projects which are going to be run one after the other, if Warringah is last then you may not even be at the table for a number of years. There is like an agreement to agree sometime maybe in 2020.

Mr MORAN: In an order we will just wait and be informed when we will get that opportunity. I must say going back to the preamble of the Aboriginal Land Rights Act, land is supposed to be for cultural, economic and social value and we just do not get any value when they are undetermined. That is certainly our frustration in that Warringah area, we have got a number of lands that adjoin either pristine national park or residential. So we see that there is great value to us culturally, environmentally and commercially.

The Hon. MICK VEITCH: Has your organisation been appointed as trustees to this Crown land at all?

Mr MORAN: No, we are not trustees of any land.

The Hon. MICK VEITCH: Under the Crown Lands Act have you ever been appointed trustees anywhere?

Mr MORAN: No. I would say that that is probably a really good opportunity that we could sit down with local governments and work together, community groups, but at the end of the day we have not been given any opportunities.

The Hon. MICK VEITCH: Have you been approached?

Mr MORAN: Not that I am aware of. Certainly not in the two years and three years I have been at Metro.

Mr DAVID SHOEBRIDGE: You know that one of the potential outcomes of the Crown land review is that a large amount of Crown land will be devolved down to local councils if it does not have State or regional significance.

Mr MORAN: Yes.

Mr DAVID SHOEBRIDGE: What if any threats do you see in that process for Aboriginal land claims and for the right of return of Aboriginal land to Aboriginal people?

Mr MORAN: Being a coastal-based land council we intrinsically see that the granting of these lands, and certainly Crown lands, to local governments, to community groups and to give them freehold title would not be in the best interests of the community, and certainly from a land rights point of view we believe it is circumventing the very intention of land rights. But I would question what the community value is in transferring title to local government authorities when at the end of the day if it is really about communal use and recreational wellbeing you do not really require the title to provide that.

Mr DAVID SHOEBRIDGE: Are you concerned that that process of itself, the transfer to a local government authority, will extinguish land titles claims?

Mr MORAN: My understanding is yes.

Mr DAVID SHOEBRIDGE: If these reforms happen and there is the process in place for the transfer of large parts of the Crown estate to local councils, all things being equal, that would require every single land council across this State to basically run the ruler over all the land and make every possible land claim before that happened otherwise they may potentially lose it forever.

Mr MORAN: In perpetuity, yes.

Mr DAVID SHOEBRIDGE: Do you think there is a capacity within the Aboriginal land councils to engage in that process or would the reality of the challenge in front of you basically extinguish land titles?

Mr MORAN: I am not so sure about the capacity, there is certainly a big willingness from local land councils, through zones to the State land council but it is a real game of charades where you are not getting that critical data shared with you about what is coming up for claim or what is claimable now. So it is nearly stealth in the night stuff and you have got to rely on cunning—either community people tipping you off, may be sometimes good residents, councillors—and that is a real tragedy but that is how land rights works.

Mr DAVID SHOEBRIDGE: But potentially in these reforms there would be bucket loads of extinguishment—a phrase that comes to mind?

Mr MORAN: That would be my understanding of what would be the effect of transferring the titles of these Crown lands.

The Hon. MICK VEITCH: In your opening statement you mentioned access to maps and information and you have now touched on that again. I take it from your most recent comment that that has not been remedied in any way over the duration?

Mr MORAN: No, only through the pilot are we actually seeing that up-to-date data.

The Hon. MICK VEITCH: Is that because the information is just not available or do you think there is a recalcitrance of others?

Mr MORAN: I have got to confirm that I am a property manager by trade—the data is available; it is just about the accessibility to that data and who shares it, and knowing the Crown Lands are not sharing it with our State land council.

The Hon. MICK VEITCH: Is that Crown Lands or local council, local government?

Mr MORAN: Crown Lands.

The Hon. MICK VEITCH: As a part of the reform process that needs to be addressed, does it not?

Mr MORAN: You would surely hope and think that if we are going to see land rights achieved it has to. It is virtually impossible to say, "You can claim something but we won't tell you what you can claim." That has been the charade of New South Wales land rights.

Mr DAVID SHOEBRIDGE: It appears that there will be some statutory reform at the end of this year. Would you be supportive of a provision in the Act that at minimum says something like before a land can be transferred from Crown Lands that the local Aboriginal land council and the NSW Aboriginal Land Council have to be notified and have some informed consent about the transfer before it happened?

Mr MORAN: I would suggest that would be the ultimate legal right and it would be great to have that ability to exercise it.

The Hon. MICK VEITCH: One of the former Ministers for lands in New South Wales indicated that there would be an exposure draft of the new Crown Lands Act before it went to the Parliament. The new Minister is making noises about presenting the bill, as Mr Shoebridge has said, towards the end of this session. Do you think there is a benefit in having an exposure draft of the proposed Crown Lands Act?

Mr MORAN: Any ability to read what is being proposed I think is a benefit.

Mr DAVID SHOEBRIDGE: And influence the legislative outcome by making submissions.

Mr MORAN: I would go back to that November 2014 legislation, I will use the analogy that it was like cloak and dagger stuff. We were left with less than weeks of knowledge that it was being presented.

The Hon. MICK VEITCH: Was this the Red Rock?

The Hon. TREVOR KHAN: That was not the position in 2015, for instance, with the amendment of section 36AA?

Mr MORAN: No, that was much more informed but it also involved the best consultation process through our State land council. What I am referring to is the Crown Land amendment where Red Rock was used as the furphy for the Coffs Harbour districts local land council claim and virtually weeks, less than days were provided to us to be aware that this was being presented to the Parliament. That really showed and indicated that is not the best way and should never be the way.

The Hon. MICK VEITCH: So you are contrasting those two bills, one is an example of consultation—

Mr MORAN: Yes.

The Hon. MICK VEITCH: With the proposed Crown Lands Act you are suggesting that there needs to be time for all stakeholders to have time to digest and analyse and then present a way forward for the Parliament?

Mr MORAN: Yes. Given that we are talking about things from golf courses to tennis courts to the scrub that is vacant, we should all be given as much time as possible to give input to these things. I fear that was the thing that was avoided.

The CHAIR: We get the cloak-and-dagger thing every time we deal with legislation. Some 24 hours before we are told, "This is what it looks like. Have a look. What do you think?" We get 24 hours; Labor gets five minutes.

Mr MORAN: We get it retrospectively at an Aboriginal level.

Mr DAVID SHOEBRIDGE: I had never heard about that 24 hours—that is a luxury.

The CHAIR: We have the balance of power, so you expect a little lead in.

Mr DAVID SHOEBRIDGE: Mr Moran, you said that about 170 properties have been claimed and are on title with Metro land council now.

Mr MORAN: Formally granted and in the ownership of the land council.

Mr DAVID SHOEBRIDGE: What has been the benefit of that?

Mr MORAN: Well, it has been able to provide the very essence that runs our business for the last 33 years—touch wood. We have been able to use the land to provide that very much—to meet our requirement it says we must foster the best interests of all Aboriginal people, so all of our programs, be they administratively running an office, providing community benefit schemes from funeral assistance, social housing, grants and sponsorship to community members, that has all been as a result of land rights. And I should point out, given that our underlying resource every year is $143,000 to look after 16,000 Aboriginal people, we are looking at 8.8 cents per Aboriginal person in resources.

Mr DAVID SHOEBRIDGE: That is the funding from the State Government?

Mr MORAN: That is the annual funding and that is because of that trap in 1998 where the land rights Act was amended so no more land tax money was going into our fund—we were capped and we live off those reserves as an allocation every year. As the large class 1 land council, that is what we are given.

Mr DAVID SHOEBRIDGE: Are the 170 properties primarily commercially tenanted? What is the mix?

Mr MORAN: No. The majority are vacant Crown lands. Therein is another issue. Once you get a Crown land resolved, you then face the problem of the use of that Crown land. Whilst I would acknowledge that the Land Council has sold in total around $30 million worth of land from land claims over the years, that is the total sum of some 10 or 12 plots of land. The problem is every time we go to develop land ourselves rather than try to sell it to a private benefactor we face encumbrances like being told, "No. That land was determined for environmental or ecology values," or, "That land was never determined as being able to be residential," when right next to you is residential land and, in fact, the local government fought the claim against you to get the land given to them for their sport and recreational purposes.

That is an example that we deal with very often, every day of the week. If we are given land and we try to rezone it, we are then objected to by popular council decisions rather than administrative reports based on quality data. It is certainly an issue we are experiencing with the former Warringah local government in the

development of a land claim that could be, for us, the opportunity to stop from selling to operate to actually developing land to put in trust to run our own super fund.

Mr DAVID SHOEBRIDGE: So getting the land claim is the first part of it.

Mr MORAN: Yes—and that is a huge battle. But it is a bigger battle to use that land, I would say.

The Hon. MICK VEITCH: Because of the encumbrances that are on them?

Mr MORAN: And the majority of that land being competed for with the very body who determines whether you can use it—the local government.

Mr DAVID SHOEBRIDGE: Do you say that that process—I do not want to put words in your mouth—creates ill will, almost, because you get it instead of the local council? It is almost like you have a target on you when you come in to deal with the land—what do you say?

Mr MORAN: I would suggest that it has been the problem from day one with land rights between local governments and local land councils—it has been a competition for the same thing. There has been no adjudicator or mediator in the middle. It has just been a free-for-all. What we have seen is those who can influence or have power usually win. And of course the local land councils very rarely get that win unless they have legal advice or some sort of evidence available to them, which is usually given to them—you cannot just find it on public record.

The Hon. LOU AMATO: Do you find you have issues with all councils or only some councils?

Mr MORAN: Prior to the amalgamations, and some are still going through, we had 26 local governments in our boundaries that we operate with.

The Hon. TREVOR KHAN: We have one local council who has written support for the resolution of Aboriginal land claims out of the 21 or so after the amalgamations. Of 20-odd local governments only one wrote a supporting letter.

Mr DAVID SHOEBRIDGE: Who was it?

Mr MORAN: They will be presenting next, I think: City of Sydney.

The Hon. PETER PRIMROSE: Is the issue not that the planning processes are unclear but in fact that the planning processes are tilted in favour of one side against the other?

Mr MORAN: I would suggest it is very hard to put forward an application to someone for utilising a parcel when prior to that you fought them for that parcel. And then they are in a position of power to determine what you can do on that parcel of land.

Mr DAVID SHOEBRIDGE: And one of the bases under the land rights Act that you have to establish is that it is not being used for residential purposes and it is not relevant for residential purposes.

Mr MORAN: All those essential—

Mr DAVID SHOEBRIDGE: You have to establish that to get your claim up so then when you go back to the council afterwards and say, "Actually, we would like some of it for residential," they say, "Hang on—didn't you say?" It almost puts you in a bind from the outset in terms of using the land.

Mr MORAN: It puts a restriction, certainly, up-front.

The CHAIR: We are dealing with this in the State development committee. It is good to have this conversation. That sort of line is one of the things that we are exploring. You are saying one of the hurdles is that you get the land claim and it is not a blank canvas—you still have to jump through all the New South Wales planning—

Mr MORAN: Local environmental and State environmental planning—yes.

The CHAIR: All the zones. And it virtually renders it useless and you cannot use it to then get a return for your people to get ahead.

Mr MORAN: To realise the original intention of the land rights act.

The CHAIR: That is right. By illustration, to pick a worst case scenario in some sort of hypothetical situation, you are saying if you made a land claim in a particular place across New South Wales where a lot of people disagreed with coal seam gas but the nation of that area said they wanted to explore coal seam gas, you feel that you should have that right if that will meet the objectives of your nation?

Mr MORAN: Yes, I suppose. There is one more nuance for local land councils—that is traditional owners and the native title bodies. If there is broad support from both bodies, yes, it should occur.

The CHAIR: That is what I am trying to draw out. You are saying, "We should be totally autonomous in that parcel of land. That parcel of land should not be put in 2016 boundaries. It should be given to us unhindered as it would have been 200-plus years ago."

Mr MORAN: I wish it could have been unhindered 200 years ago. It would be pristine and clean. At the end of the day, granting of a land claim should be like our neighbour X, Y, Z, Mr and Mrs Citizen—whomever. That is theirs. They have ultimate certainty within the title. Unfortunately what we see is that we very rarely get to that step. We get the undeveloped Crown land left to us and then we have the encumbrance, responsibilities, legalities for land maintenance, trespass, damages—and that all burdens are to be met out of that administrative grant every year.

The Hon. MICK VEITCH: Bushfire, weeds.

Mr MORAN: You name it.

Mr DAVID SHOEBRIDGE: But of course lands councils do not pretend to be the traditional Aboriginal owners for the land, the custodians—that is a separate group of people and they have a very legitimate interest.

Mr MORAN: That is right.

Mr DAVID SHOEBRIDGE: And of course there are potentially very strong environmental values in the land that you get which you would want to protect as well. You are not negating that, but are you saying they can sometimes be in competition?

Mr MORAN: I do not think they are in competition. I believe if communities have a good mix of traditional owners, native title owners and land councils, the traditional owners and certainly native title owners will identify the lands that should not be and the lands that shall never be developed—whether the significance is cultural, historical or whatever. The land that remains outside of that is really the essence of the economic developments.

Mr DAVID SHOEBRIDGE: And is there any structure in government that helps you negotiate that, because that is a difficult negotiation?

Mr MORAN: No.

Mr DAVID SHOEBRIDGE: Does anybody sit down and help you negotiate through that?

Mr MORAN: No. You have heard from the registrar. He keeps a registration of traditional owners for each local land council area. We then have to deal with the Commonwealth Government's native title services as to whether we have native title owners in our area. But we have to do that ourselves. That is part of our responsibilities under the land rights Act in dealing with land.

Mr DAVID SHOEBRIDGE: Do you think that the State Government that owns 42 per cent of the State as Crown land should be assisting in that and putting in place facilitation and resources to help you do that?

Mr MORAN: Between the Commonwealth and State laws there would need to be some unique arrangement because traditional owners are by virtue of their status people who are eligible for native title. Some have not received it yet.

Mr DAVID SHOEBRIDGE: Federally.

Mr MORAN: That is right. It would be great if government would do that—to have a process in New South Wales, to have a resolution of traditional owners and native title owners in the State of New South Wales to gather together, but I have never heard of that. Traditional owners and native title owners want that but that does not seem to be the priority. It seems to be about responding to individual claims rather than as a collective sitting down and discussing the use of the remaining Crown lands.

Mr DAVID SHOEBRIDGE: Every square metre of this State was Aboriginal land—some would say still should be Aboriginal land. Do you believe in any Crown land Act that there should be a clear statutory priority given where ever possible for the return of Crown land to Aboriginal people?

Mr MORAN: I draw back to my grandfather's original analogy about land rights. Firstly, it was meant to be national and we just did not get that. We saw Liberal and Labor governments walk away from that—and Mr Hawke more importantly leave it—and we left with the State model. But at the end of the day, why wouldn't

we be recompensed for all the freehold, all the commercial holdings, and just get on with it and whatever is left, sit down and negotiate amicably—whether it is environmental, social, recreational or cultural. If it falls into the cultural areas, it should be returned immediately. I say to you: probably one of the saddest realities of the land claims system is that we have land claims on cultural sites that are registered with the Office of Environment and Heritage that have not been determined and remain under the management of local councils.

We do not think it is rocket science; we just think it is about openness to sit down fairly and say, "Land rights says that you will recompense us for the loss of our State." Well, okay, that is Crown land. It is a very limited view. It does not take into account the water. As a saltwater fellow myself, we lived off the ocean and it provided. The majority of our lifestyle and sustenance was from the ocean and the waters. That is not even part of land rights. Land rights has been refined to what it is now and it is just about land titles. We could sit down and resolve this but it will take a bit of openness.

Mr DAVID SHOEBRIDGE: From that I take it you say what we are talking about now with the Crown land estate is largely the residual; a lot of the high-value stuff is already freehold and the Government's own submission values 42 per cent of the estate of Crown land at $11 billion. That is about four city blocks in the central business district in value. I suppose you say that is a perspective we should take on board; that we are talking about the residual?

Mr MORAN: I would openly say to the inquiry that there is a value for land and we all know how to do that and certainly Aboriginal people in the last generation in having access to mainstream education know the value of the land of Australia. We can actually tell you the valuations and the increases. You then wonder why we are not just being open about that. It has a value of this much and we have gained this much through the sale already of these freehold titles. Maybe that forms a figure that we could negotiate around but certainly the evidence is there to sit down in a calculated, methodical way and resolve land claims. Our mob, certainly in the last generation, have the skills and knowledge. We have the accountants; we have the property managers; we have those with the industry skills to sit down and negotiate, let alone a glut of legally trained people.

The Hon. MICK VEITCH: Mr Moran, some of your comments have been about the relationship between local councils and your land council. If the new model for a Crown land administration goes ahead, there is a good chance that it will be devolved to land councils for administration. If that does occur, what mechanism has to be put in place to enhance, fix, remedy or improve that relationship?

Mr MORAN: If the transfer was to occur of the Crown land directly to the local government, it will rely on leveraging from the local land council to that local government. Unless it is written into the agreement of the transfer that we would be involved in some way or given rights to be on any boards of management and certainly have input, dare I say it would be down to our leveraging but I would say that is the current existing level anyway.

The Hon. MICK VEITCH: So it is essential then that it remains in whatever is the new Act?

Mr MORAN: It would stay the same as it currently is.

Mr DAVID SHOEBRIDGE: Which is pretty ordinary. Surely it would be better that you have, if you like, power before the transfer or some consent required from you before the transfer happens in your area?

Mr MORAN: I would agree. I believe that we, as Aboriginal people, certainly under the New South Wales Aboriginal Land Rights Act, should have the respect to have our claims determined before this process.

The Hon. TREVOR KHAN: Isn't not the position that if the land is subject to a claim—so I put that caveat on—if the land is subject to a claim, then it can't be transferred, isn't not right?

Mr MORAN: Yes, I suppose we talk about claims that are done but then the use of the land may change. In the essence of our local land council, we have got two land claims on but we are now having negotiations to us from the Department of Education around the need for schooling. So then we start really worrying about: Wait a minute, after the date of our claim we have now got what we would agree would be an essential public purpose for that land being sought. So in some cases we are probably yet to see what will happen.

The Hon. TREVOR KHAN: Sure. You use that example. A land claim has been put in—tell me if I am wrong—but then a government department comes to you and says, "Look, we want to do X with this land". Is the position as Mr Wright put it that essentially it requires your agreement or the land council's agreement before that changed land usage can go ahead in the example you use of the school or in his example of kerbing and guttering?

Mr MORAN: In theory, yes, but I will wait until this is resolved. We have had an approach from the Department of Education around compulsorily acquiring lands that are subject to a land claim.

The Hon. PETER PRIMROSE: I think Mr Khan has made a suggestion. I think we need to put on record that we need to clarify that evidence because it is a very important point.

The Hon. TREVOR KHAN: Absolutely.

Mr DAVID SHOEBRIDGE: And we are talking about that large part of the Crown estate where there is no claim made over; you are not aware of it and the transfer itself. That is the question I asked you earlier.

The Hon. TREVOR KHAN: David, I put the caveat on for that very reason.

The Hon. PETER PRIMROSE: We just need to clarify the process.

The CHAIR: Mr Khan did.

The Hon. PETER PRIMROSE: It is a very good point and we look forward to that.

The CHAIR: Mr Moran, you were very articulate in the evidence you gave today. You knew exactly what the member was asking. Thank you for your presentation today. It was very good and very helpful. You have 21 days to answer any questions taken on notice—I do not think any were but you may get further questions given your evidence. Thank you very much for presenting today. It was really appreciated.

Mr MORAN: Thank you very much and good on you for discussing such an issue.

(The witness withdrew)

SAMANTHA URQUHART, Manager, Property Division, City of Sydney Council, sworn and examined

YVETTE ANDREWS, Manager, Community Consultation, City of Sydney Council, affirmed and examined

The CHAIR: Welcome and thank you for presenting to the Committee. Do either of you have an opening statement that you would like to give?

Ms URQUHART: We both do.

The CHAIR: If you would like to go first, Ms Urquhart?

Ms URQUHART: Thank you for inviting us to speak here today on the Crown lands inquiry. My role in the city is to assist with the management of public lands and that includes Crown reserves. The city's management and involvement in Crown land extends only to the management of Crown reserves so that is what we will be talking about today.

The city currently manages 56 Crown reserves. This represents 89 hectares of land, which makes up 45 per cent of the city's open spaces. To ensure the Crown reserves in our local government area are actively managed the Crown has appointed us as reserve trust manager for those reserves. As reserve trust manager it is our responsibility to actively maintain and manage these reserves in the interests of the community. Each year the city spends approximately $3.7 million in maintenance of our Crown reserves. In the last five years the city has spent $47 million upgrading Crown reserves and intends to spend a further $43 million for additional upgrades to these Crown reserves as part of our long-term financial plan.

The city is committed to achieving its vision, which is a green, global and connected city that involves a city green with trees, parks, gardens and linked open spaces. Green by example and green by reputation. To enable us to achieve our vision we must actively upgrade and maintain our parks, including Crown reserves in our care. All of the city's open spaces are managed the same, be they Crown land or community land. That is in accordance with the City of Sydney's open space and recreational needs strategy of 2007. This document is currently under review and will be replaced by the open space strategy, which should be endorsed this year. Crown Lands has been involved in the preparation of this new plan.

While the Crown Lands Act encourages community consultation, it is not to the same extent as the Local Government Act. The city is of the view that the current community consultation required for the management of Crown land under the Crown Lands Act is not adequate. Under the Crown Lands Act plans of management which define the value, use, management practices and intent for the broad purpose of land and open space are not mandatory. Leases under five years do not require public consultation. To mitigate this issue the city has included all of our Crown reserves in either site-specific plans of management or generic plans of management. Whilst most of these plans have not been endorsed by the Minister we believe that these plans of management are critical to the management of these Crown reserves just as much as they are to community land. They enable us to find the highest and best use for public reserve and through public consultation.

Ms ANDREWS: My role involves overseeing the city's consultation with the community. I also have responsibility for the Aboriginal and Torres Strait Islander Advisory Panel and our Reconciliation Action Plan. My interest in being here today is to share with the Committee the city's experience in the importance of community use of Crown land. We have some of Australia's most iconic parks. Our Crown reserves include Hyde Park, Wentworth Park, Prince Alfred Park and Victoria Park, which you probably all know. As the most densely populated part of Australia our open space must work hard for the community, and our community is highly engaged in the future of these places. Ms Urquhart has just outlined how we think consultation with community can be consolidated in Crown reserve legislation.

They are also important places for sharing Aboriginal and Torres Strait Islander culture and history. The city is on Gadigal country; a fact we now acknowledge on our park signage. We work closely with the Metropolitan Local Aboriginal Land Council through principles of cooperation and we also work closely with the community through our advisory panel and other mechanisms. Our Crown reserves have great significance to Aboriginal and Torres Strait Islander communities of Sydney and we feel that this could be documented in our plan of management for these parks.

At the moment the Eora Journey projects and the Reconciliation Action Plan document how we will continue to engage Aboriginal and Torres Strait Islander communities in the places that we have management of. These actions include naming, both dual naming and the use of Aboriginal words in naming places, opportunities for interpretation, recognition through signage, through public works such as Yininmadyemi,

which is in Hyde Park, and business enterprises such as cultural tours and, finally, ceremony and celebrations like the Yabun Festival and NAIDOC Week, which are both held in Crown reserves. These actions, we believe, should deliver economic, community and cultural benefit to the Aboriginal and Torres Strait Islander community as well as bring greater knowledge and understanding to the broader Australian community.

The CHAIR: You talked about the consultation periods being different in the Local Government Act and the Crown Lands Act. I note from down south in the Shoalhaven—where it is also clean, green and pristine—that pop-up venues are becoming very popular. You said that leases under five years do not need a public consultation period. Do you not think it would be reasonable if you want to run a pop-up cafe or dining area in the middle of one of these wonderful parks that you do not have to jump through all of those hoops to get an opportunity to do that under a really short-term lease?

Ms URQUHART: I think there can be a happy medium. Under the Crown lands legislation they have got short-term licences. If you have a licence that is under six months they do not require Crown approval. Something similar to that if they are pop-up and they are only for a short term then perhaps that is okay. Most importantly, if these Crown reserves have a mandatory plan of management that plan of management would dictate commercial use within the Crown reserves. That would enable us to comfortably say that something fits the purpose that is allocated to that area within the reserve and yes we can do it

The Hon. TREVOR KHAN: Stan, which is like Netflix, had a pop-up in Hyde Park that was there for some weeks selling coffee, although I think that was the promotional element. What sort of approval process did that go through in Hyde Park?

Ms URQUHART: They would not require Crown consent. Hyde Park has a plan of management which the city has developed.

The Hon. TREVOR KHAN: That allows for a commercial promotion like that in it?

Ms URQUHART: Yes. It does allocate certain areas. Hyde Park is a very complicated area that has got many uses and many stakeholders are actively interested in what goes on there. So Hyde Park's plan of management is quite detailed. We have got the noodle markets, we have got a lot of uses that are permitted within Hyde Park but there are very strict guidelines that need to be followed for those uses to be approved.

Mr DAVID SHOEBRIDGE: They would have been given a licence for that?

Ms URQUHART: That would have been a short-term licence.

The CHAIR: That is exactly my point. I am not talking about Hyde Park because that is very unusual in New South Wales. The plans of management across local government areas of New South Wales have not moved into the area of pop-ups. Plans of management do not embrace them. When we are going through these public consultation periods surely we need to be mindful of whether some things really need that level of consultation or whether it can be an executive decision.

The Hon. MICK VEITCH: In your opening statement you spoke about the number of reserves that you are currently acting as trustees for on behalf of the Crown as the City of Sydney. Whenever the Minister decides he or she needs to dismiss a trust board do they consult with you about whether or not they can appoint you as the trustee or administrator?

Ms URQUHART: They should.

The Hon. MICK VEITCH: In the case of Wentworth Park did they do that? You are actually the trustees of the land on either side, are you not?

Ms URQUHART: Yes, we are. In the case of Wentworth Park, I have not personally but my colleagues have been working with the Department of Education and the Crown on that. If you want to find out more information I would have to take the question on notice so I can talk to the people who are involved in that transaction.

The Hon. MICK VEITCH: Could you take that on notice? You have experience and expertise in managing trusts on behalf of the Crown. The Minister, on a regular basis, needs to remove trusts for a whole range of reasons. When they do that do they draw on your expertise before they appoint an administrator?

Ms URQUHART: Yes, normally they do. The concern for us is it is up to the Crown's discretion. It is embedded in the legislation that if they want to revoke a reservation all they need to do is a public consultation for 14 days and then they can gazette the revocation. Technically, they do consult with us but our concern, which is what we highlighted in the submission to the white paper, is that if we are spending $47 million and $3.7 million maintaining our parks a year how do we protect our assets that we are putting into the parks and the

community's interest in that park? That is the concern from a council perspective. To date Crown have been quite good in communicating with us.

Mr DAVID SHOEBRIDGE: You could lose it in 14 days?

Ms URQUHART: Yes, in accordance with the legislation.

The Hon. MICK VEITCH: Could you take on notice the Wentworth Park scenario, as you are the trustees for the land on either side? You mentioned the funding that the City of Sydney has used. In that proposal do you have a unit cost that the City of Sydney has developed, a costing model that is used for Crown land that you are a trustee for and manage? How do you know how much to set aside in your budget to maintain the asset?

Ms URQUHART: With Crown reserves we look at them as our own. We budget for them as if they are our own each year. Our parks team will look at the needs of the park and they will manage it. The public open space strategy is a strategic approach to the management of the parks and they do not delineate whether something is a Crown reserve or community land. From a city perspective these open spaces are critical to the community and it is our role as reserve trust manager to maintain the parks to enable that use to continue.

Mr DAVID SHOEBRIDGE: I predicate by saying, in all of the submissions I have not seen a single submission criticising the City of Sydney, which is extraordinary given the number of reserves you have and how crucial they are. You must be doing something right.

The Hon. TREVOR KHAN: He has not said how many of the submissions he has read.

Mr DAVID SHOEBRIDGE: I have read about 55 per cent. Maybe in the last 45 per cent there is a whole swag.

The Hon. TREVOR KHAN: It is like postal votes.

Mr DAVID SHOEBRIDGE: They become conservative as time goes on. The public do not see public land as council, State or Commonwealth land, they just see public land. It seems in some ways the way you manage Crown reserves accords with that. You see it as public land whether it is council or Crown, is that right?

Ms URQUHART: Absolutely.

Mr DAVID SHOEBRIDGE: One of the concerns raised about the devolution of Crown land to local council land is that we start putting in a division. There will be some councils that say this is our land and it cannot be used for a broader public purpose because we want to use it for a council purpose, whether to sell it to build bigger council chambers or a pool. State Government may want to use it for another purpose and it potentially introduces those tensions. Do you recognise that could happen?

Ms URQUHART: My personal feeling is that if a lot of the Crown reserves are devolved to local councils the Local Government Act is so prescriptive when it comes to the management of that land, and for all of our community land, we must have a plan of management. If that plan of management becomes a document that is more prescribed then the danger of the land not serving the purpose for which it was meant to be will not occur.

Mr DAVID SHOEBRIDGE: We are not just talking about community land, because once it is in the hands of the council they can convert it to operational land?

Ms URQUHART: Yes, they could.

Mr DAVID SHOEBRIDGE: I will give you a concrete example. Many people in Ultimo have kids in Ultimo public school and would love to see a chunk of public land at Fig and Wattle streets, owned by the council, to be where a new public school is built. The local council, your council, sees it as council land and is not willing to give it over for that public purpose unless there is substantial monetary compensation. The difference in land ownership means many people think we are getting suboptimal use for that land. They want public land to be used for public purposes and they do not want artificial accounting between the council and State government to get in the way of the best use of public land.

Ms URQUHART: In the Local Government Act public land is classified into community and operational land. Do not get me wrong, I have not looked into the classification of the Fig and Wattle depot, but I believe it is operational land.

Mr DAVID SHOEBRIDGE: Correct.

Ms URQUHART: Parks are classified as community land. If we were to say let us divest Sydney Park and turn it into some residential housing that involves a high level of community consultation and takes years and years and involves the Department of Planning and gateway approvals and that would never eventuate.

Mr DAVID SHOEBRIDGE: The question I am asking is different to that. The public wants to see public lands used for the best public purpose.

Ms URQUHART: Yes.

Mr DAVID SHOEBRIDGE: If there is a division in ownership between the local council and State Government the local council may be unwilling to let go of a large parcel of public land without substantial financial compensation from the State government even though the public do not care if the money goes to the council or the State government, they just want the public land used for the public purpose. That internal accounting for Fig and Wattle streets of $30 million or $40 million can make all the difference between getting the best outcome for public land or a suboptimal outcome?

Ms URQUHART: From a council perspective, Fig and Wattle street depot is operational land. The division between operational and community is operational land is land which we use for a commercial benefit. The reason we use operational land for commercial benefit is to generate an income to invest back into the community. Essentially we really need to think strategically about what is the highest and best use for that land. The highest and best use for all community land is for a public purpose because that is what it was put there for. We have an investment portfolio in our property division of operational land that generates a substantial income for the council and that is put back into maintenance of roads and parks. The $47 million that we are putting into capital works within our parks, including Crown reserves, is coming from the income that we generate through the management of our operational land.

Mr DAVID SHOEBRIDGE: You acknowledge the point at the outset of that. You said "from a council perspective", and that is what I am putting to you. You have a council perspective and a specific interest, commercial or financial, that the council has and once the land ownership is fractured the council's interest, State government's interest and the public interest may all differ and the end result is that we do not get the best allocation of land from the public's perspective.

Ms URQUHART: What I am trying to say is, if the parks or Crown reserves were to devolve to council that would be devolved as community land. That was in the white paper.

The CHAIR: We will navigate slowly through this. I understand what Mr Shoebridge is trying to say. This is the value of why we try to keep Crown lands either community or operational. We do want to protect community land unless the community changes its view. In terms of Mr Shoebridge's question he is saying that falls into community use. You are right, it is an asset. The view would be that you have to switch the asset with the current school site with that particular model, not a community land site, because they are operational.

The Hon. TREVOR KHAN: My understanding is that the two relevant terms are community land and operational land?

Ms URQUHART: That is right. Community land protects public land from going out of council's ownership.

The Hon. TREVOR KHAN: So if under this proposal for new legislation land was transferred to council as community land—a park, for instance—then in order to change its use from community land to operational land, there is a process—an onerous process, I understand—under the Local Government Act for that to be achieved?

Ms URQUHART: That is right, and it involves significant public consultation including public hearings and final sign-off by the Department of Planning and Infrastructure, not by council.

Ms ANDREWS: I am not sure that it is onerous; it is just robust and ensures community interest.

Ms URQUHART: A wrong choice of words. I know what you mean; it can be off-putting because it is highly demanding, but it does benefit the community and brings good results.

The Hon. TREVOR KHAN: In terms of a park,-because in all of this we know where this is all going, the suggestion will be that if it is transferred to council they are going to flog it off to their developer mates. What is the process that a council has to go through to convert land from community land to operational?

Ms URQUHART: The process is, first, if a proposal comes in, for instance—I have done it before and I have done it to assist the Aboriginal Housing Company in Redfern, so this was community land which was a park in the Block and it was no longer used as a park and it was to assist in the Aboriginal Housing Company's

development of our land—so what was done was they approached council, we went to council and said can we commence this process, council said yes, go and get a gateway determination from the Department of Planning, which we did. So the Department of Planning gave us a gateway determination, which prescribes all of the processes that we needed to go through to achieve that; one of them was public consultation, so it went on exhibition for a period—I think it was two months.

We also conducted two community meetings down at the Block at the Redfern Community Centre to talk to the public about various elements of that. Then we conducted a formal public hearing where members of the community were invited to come to talk about the reclassification of land to operational, and that was conducted by an independent facilitator, not by council. That independent facilitator then gave a recommendation on whether or not this land should be reclassified and then when we went back to council and we got two people to attend that public hearing and everybody was in support of the reclassification because it was for a higher and better purpose for the use of that land.

Then we went back to council; council agreed with the recommendations from the facilitator and then we got final approval by the Department of Planning and Infrastructure. That process took about two years and involved, I think, about five levels of community consultation. So every single person in the Redfern area knew of our intention to do this and knew why and had an opportunity to participate in that process. Under the Crown lands legislation that is not there to that extent. So from my perspective I think that if Crown land did devolve to council as community land, that community land would be a lot more protected than it currently is.

The CHAIR: To take our former witness on that, Mr Moran, all those hurdles virtually kneecap—potentially if the community disagrees that can totally take the opportunity for the Aboriginal people who have got a big plan to do something like that to totally kneecap that opportunity. That is the challenge that every local council has to work at.

The Hon. TREVOR KHAN: Were you here when Mr Moran gave evidence?

Ms ANDREWS: Towards the end.

The Hon. TREVOR KHAN: I am not being critical of any of the evidence, but do I take it that your view is that if land is transferred under the Land Rights Act then it should be subject to the LEP that covers your area? If you transfer a piece of unused Crown land, should it conform with other environmental and planning instruments?

Ms ANDREWS: That is an interesting question. I would suggest yes, but we can get further advice if that would help.

The Hon. TREVOR KHAN: Take it on notice.

The Hon. MICK VEITCH: Does the City of Sydney pay any lease fees or levies to Crown Lands?

Ms URQUHART: Unfortunately, yes. This is one of our objections in the Crown Lands white paper. We currently make, I think, around $510,000 from the leasing of Crown land, which is not a great amount, and we are required to put 15 per cent of that into a reserve trust management fund, of which the Crown can draw at any time. They have not as yet, but that is not money that we can put back into the parks. We do not receive any money from the Crown to help us with our maintenance and upgrades of our parks.

The Hon. MICK VEITCH: So you are trustee, you develop the plans of management, you maintain and operate the Crown land on behalf of the Department of Lands—

Ms URQUHART: And we give them money for it.

The Hon. MICK VEITCH: And you give them money for it.

The Hon. TREVOR KHAN: A great deal.

Ms URQUHART: But the thing is it is the public benefit.

The CHAIR: We want to put this in perspective though because you have got to also take on board the Sydney ratepayer base compared to a little town out north or west of New South Wales, like Shoalhaven, which I know very well; it has 400 parcels that it has to do that asset maintenance on and they do not have the ratepayer base. So we have to got to take that in context that at least you have a big bank account to address that and that is subsidising something that should really be self-reliant on the funds coming in.

The Hon. MICK VEITCH: Which is where I was going. Smaller councils west of the Dividing Range, the capacity for them to do that on behalf of the State becomes quite a problem.

Mr DAVID SHOEBRIDGE: You are a very unusual example for all the reasons that have been said. You have got the resources to do your plans of management, you have got the sophistication in your management structures, you tick every box and you are very careful about it. But for many other local councils, for the reasons just said—

The Hon. TREVOR KHAN: Woollahra?

Mr DAVID SHOEBRIDGE: They are resource-constrained. Even other city councils in relatively affluent areas are resource-constrained because of rate-cutting. But they may see a large influx of Crown land as nothing as an enormous burden and there will be an immediate response from the council. Many councils say, "How do we relieve ourselves of this burden? Let's find what we can sell and make a quick buck from". Do you understand how different it is council to council?

Ms ANDREWS: Absolutely. Sydney is very different from most councils in our population, our size and our revenue. But we probably cannot comment on how other councils respond; we can just share our experiences.

The Hon. TREVOR KHAN: And other councils still have to comply with the Local Government Act.

Ms ANDREWS: Absolutely, yes.

Mr DAVID SHOEBRIDGE: But you can reclassify land through a rezoning under the LEP, and we know—this is New South Wales—there are councils that rezone land deeply in opposition to the local community, large anxiety and opposition from the local community, but the rezonings and the reclassifications happen because there is a particular majority on council that wants a particular outcome. That could be a very dangerous statewide scenario if the majority of State land goes to local councils, could it not?

The Hon. PETER PRIMROSE: And maybe just a sole administrator in some cases.

Mr DAVID SHOEBRIDGE: But do you see?

Ms URQUHART: I see it, but I also see that the way it is at the moment the Crown could do the same thing. So it is really six of one and half a dozen of the other because at the moment if Crown wants to sell off Hyde Park—I will not use Hyde Park as an example, but another Crown reserve within our LGA, there is a very real possibility that they could do that.

Mr DAVID SHOEBRIDGE: Has it happened?

Ms URQUHART: No, it has not.

The CHAIR: But that has happened in, I think, Byron where the Crown took back holiday tourist parks.

The Hon. TREVOR KHAN: In terms of the proposition that was put, Mr Shoebridge is saying that by changing the LEP I take it you can convert community land to operational land.

Ms URQUHART: The way I described to you was amending the LEP because that is why the Department of Planning and Infrastructure approval is necessary because it does amend the LEP. So I think in order to amend that you still need to go through that rigorous public consultation, and there is a risk.

The Hon. TREVOR KHAN: That is where I was going; it is not simply a matter of amending your LEP.

Ms URQUHART: No, there are processes.

Mr DAVID SHOEBRIDGE: It is amending your LEP, but the amendment of the LEP process has a gateway process with the department, you then have some public consultation and then there is a further resolution of council and there is sign-off by the Minister or the Minister's delegate.

The Hon. LOU AMATO: At the moment, regarding your Crown land, when you are renting it out to anyone who wants to have a venue what determines the pricing?

Ms URQUHART: It is market rent. We go to market, and Crown ultimately approve ours. We operate in accordance with the Crown Reserve Trust Handbook, which says that all rent should be market rent and there are special circumstances, obviously. The council also has grants for certain organisations where we subsidise rent in certain circumstances as well, but generally it is market rent.

The Hon. LOU AMATO: If you wanted to give it to a private business, would it have a right over the public?

Ms URQUHART: In order to lease out to a private stakeholder it would have to align with the public purpose, so if it does not align with the public purpose, or the reason—there are certain reasons how we manage the land, so it was reserved to us as reserve trust manager for these particular reasons, so we must manage it in accordance with that. That is the way we build our plans of management. If the private purpose aligned with that then we would lease it to them, as long as it aligned with that and met the needs of the community.

The Hon. LOU AMATO: As you said, it would be market based?

Ms URQUHART: That is right, yes.

The CHAIR: So you could shut down Hyde Park for a movie event, if it met the plan of management guidelines, and the public would be excluded?

Ms URQUHART: In accordance with the Crown lands legislation, yes.

The Hon. MICK VEITCH: With regards to the plans of management that the City of Sydney have in place, you develop those as a part of your normal requirements under the Local Government Act?

Ms URQUHART: That is right.

The Hon. MICK VEITCH: You will have to remind me, is it every five years?

Ms URQUHART: I think it is every five years, yes.

The Hon. MICK VEITCH: As you would be aware, the Land and Environment Court in recent years has made rulings around plans of management in other parts of the State?

Ms URQUHART: Yes.

The Hon. MICK VEITCH: They are a planning instrument, in essence. The rigour required for a planning instrument as opposed to a plan of management, you are saying, is different. The City of Sydney has elevated that of its own choosing. Is that what should happen? Is it your view that plans of management across the State should be developed consistent with the approach that the City of Sydney have taken?

Ms URQUHART: Yes. The approach that we have taken is when a plan of management is developed, it is done with the local community. We hold community meetings, public hearings, and they are with us every step of the way because, ultimately, we need to understand what the higher and best use for that public reserve is and it is going to differ depending on the demographic utilising that park, so we need to canvass the surrounding area and the park users visiting that park.

The Hon. MICK VEITCH: The community consultation that you undertake drives the end result for the plan of management?

Ms URQUHART: That is right.

Ms ANDREWS: It informs it.

The Hon. MICK VEITCH: So it is not disregarded—

Ms URQUHART: Not at all, no

The Hon. MICK VEITCH: It informs the process.

Mr DAVID SHOEBRIDGE: When it is done well.

Ms URQUHART: The Local Government Act—

The Hon. SCOTT FARLOW: That is your starting point.

Ms URQUHART: The Local Government Act is very prescriptive in how you get to a plan of management and public hearings, public consultation is all part of that. It should be done well. There may be councils out there that do not do it well and it should be enforced. The legislation prescribes it for a reason. It is community land for a reason and the very name "community" says it.

Mr DAVID SHOEBRIDGE: The legislation prescribes a process, which the council needs to follow. If a council is on a particular mission and a majority of councillors—I will pick somewhere random like Port Stephens—want to rezone community land for operational land so they can develop it, if they are a mission they go through the process and come up with their outcome. That happens.

The CHAIR: You put the consultation on State of Origin night and not many people will turn up.

Mr DAVID SHOEBRIDGE: You know that happens, do you not?

Ms ANDREWS: That is right. Prescribed consultation is not a solution in its own right. It does not necessarily deliver good results. But if the community knows it is their right because it is legislated and the organisation has to invest in it, it should eventually bring about a better process.

Mr DAVID SHOEBRIDGE: They turn up to the hearing, they get it ignored.

Ms ANDREWS: It does not mean we should not—

Mr DAVID SHOEBRIDGE: They turn up to the hearing, they get ignored; they turn up to council meetings, they get ignored. The council goes ahead on its pre-determined path. Do you not recognise that when we are talking about something as important as public land that there is something to be said for having a check and balance at a State Government level so that we do not put that fundamental risk all across the State.

Ms URQUHART: And that could happen. In our talks on the white paper if the land was to devolve to local councils there may be that level of State Government input into that.

Ms ANDREWS: Or oversight.

Mr DAVID SHOEBRIDGE: Would you support having it there?

Ms URQUHART: Why not?

Ms ANDREWS: Yes. I think anything that ensures public land for public benefit is important.

Mr DAVID SHOEBRIDGE: You have been managing the better part of 80-odd council reserves.

Ms URQUHART: Eighty-nine.

Mr DAVID SHOEBRIDGE: Have you ever found that the Minister or the department is unwilling to treat the proposal or there has been a problem in respect of getting their consent or getting their approval.?

Ms URQUHART: No. I have not, not with public reserves. A road closure is a different thing. The department that we deal with are every accommodating. Over the years, I have heard that there have been some bad dealings but, in recent years, I have not had a problem.

Mr DAVID SHOEBRIDGE: Having them there as a final sign-off and a public interest check would not be an overly burdensome red tape provision?

Ms URQUHART: I do not think so. If it ensures that the public interest is met, then it is a no-brainer. I think it should happen.

The Hon. MICK VEITCH: That process for developing your model for plans of management being elevated as required under the Local Government Act, you are saying in a new Crown land administration environment and under a new Act that the Local Government Act provisions should be standard in the new Act?

Ms URQUHART: Yes.

The Hon. PETER PRIMROSE: Exported into it.

The Hon. MICK VEITCH: Yes, export that into it.

Ms URQUHART: Absolutely.

Mr DAVID SHOEBRIDGE: With that State Government sign-off and approval as a final check.

Ms URQUHART: Yes.

The Hon. MICK VEITCH: My last question for the moment is that the former Minister for Lands indicated there would be an exposure draft of a new Crown Lands Act before it was put through Parliament in both Chambers. We have been told there is going to be legislation possibly towards the end of this session. Do you think there should be an exposure draft because of the nature and quantum of what we are talking about, or do you think there has been enough consultation and it should be presented?

Ms URQUHART: I think there should be a draft. As much as you talk about it and we think we are all on the same page, when it is all black and white and on the paper quite often it does not play out that way.

Mr DAVID SHOEBRIDGE: If ever there is a part of statutory law where devil is in the detail, it is property dealings and Crown lands.

Ms URQUHART: That is right.

Ms ANDREWS: Management of land, I would agree.

The CHAIR: On reflection, it is very important with Crown lands, being a mayor of 49 towns and villages, that one size does not fit all. Every community sees itself as unique.

The Hon. MICK VEITCH: You were a mayor last decade.

The CHAIR: Yes, it was a while ago. Shoalhaven Heads had excess Crown land parcels and it was happy to make one redundant in light of getting a benefit for its community village. That was not something for Ulladulla to speak to. It was a community decision to give up a particular parcel for a particular outcome that would benefit its community. We need to be mindful it is not one size fits all. We have to be careful making legislation for regional and city because there will be different views from different villages for different reasons. It is not one-way traffic. I wanted to outline that similarity.

Ms ANDREWS: Absolutely. When you apply the process, you have to meet certain parameters but the way you do it has to work for that community.

The CHAIR: That is right.

Ms ANDREWS: You are absolutely right. Consultation is not a one size fits all.

The CHAIR: At one point it needs to be a city decision, the Shoalhaven City decision, and the next time it is a community decision. You have to bob between all those dynamics.

The Hon. MICK VEITCH: I was talking about your plans of management and the way you went about the process. Normally a plan of management would have to be signed off by the Minister?

Ms URQUHART: The Crown Lands Act says that it likes plans of management but, in practice, most of our plans of management have not been signed by the Minister and that is because—I actually do not know why that is.

Mr DAVID SHOEBRIDGE: Do you want to take that on notice?

The Hon. MICK VEITCH: Can you take it on notice?

Ms URQUHART: Yes.

The Hon. MICK VEITCH: How many have you had signed off and are there any reasons for it.

Mr DAVID SHOEBRIDGE: And is it your preference to have them signed off by the Minister?

The CHAIR: If you could get us that information by 2.15, it would be very helpful.

The Hon. TREVOR KHAN: Perhaps one of answers is have they been submitted to the Minister for consideration?

Mr DAVID SHOEBRIDGE: That was part of the question.

The CHAIR: It would be helpful for our next session. Thank you very much. You have taken some questions on notice. You have 21 days to get those answers back but, on that issue, it would be good if you could get an answer to the secretariat by 2.15. We have the Minister giving evidence and I would be interested to know his answer to that question. The secretariat will be of assistance if you have anything that you need to get back within 21 days. Once again, thank you for your investment in this beautiful city. I thank you for your time today.

Ms ANDREWS: Thank you.

(The witnesses withdrew)

(Luncheon adjournment)

THE HON NIALL BLAIR MLC, Minister for Primary Industries, Lands and Water

ALISON STONE, Deputy Director General, Department of Industry—Lands, affirmed and examined

DAVID CLARKE, Group Director Governance and Strategy, Department of Industry—Lands, affirmed and examined

DAVID McPHERSON, Group Director Regional Services, Department of Industry—Lands, affirmed and examined

The CHAIR: Minister, I remind you that you do not need to be sworn as you have already sworn an oath to your office as a member of Parliament. Would you like to make an opening statement?

The Hon. NIALL BLAIR: I would like to start by acknowledging the traditional owners of the land on which we meet and pay my respects to elders past and present. I am pleased to see this inquiry includes terms of reference about the importance of Aboriginal communities in New South Wales and the role of Crown land to those communities. As Minister for Lands and Water I welcome this inquiry and thank the Committee for the opportunity to present. I am joined by the department's key leadership team—Alison Stone, Deputy Director General, Department of Industry—Lands; David McPherson, Group Director Regional Services, Department of Industry—Lands; and David Clarke, Group Director Governance and Strategy, Department of Industry—Lands.

Before I come to the terms of reference per se I will provide some context for the Committee. Crown land is one of New South Wales's most important assets. The Crown estate is valued at some $11 billion. The management of Crown lands has been one of the NSW Government's most important tasks since the formation of the colony. All land in New South Wales that is currently held in freehold for residential, community and business purposes was previously Crown land and before that it was Aboriginal land. Essentially, every bit of land in New South Wales which is not freehold land, national park, state forest, council-owned land or owned by another part of government is Crown land—some 33 million hectares. or 42 per cent, of New South Wales.

It spans the majority of farming land in western New South Wales, thousands of parks, reserves and other community spaces in and around rural and regional towns, through to beaches, waterways and seabeds. Crown land is in every community in New South Wales. It provides benefits and services to every community. For instance, the Committee might be interested to know that 89 surf life saving clubs in New South Wales are on Crown land; more than 250 showgrounds and racecourses in New South Wales are on Crown land; 200 caravan parks in New South Wales are on Crown land; Hyde Park, just down the road from this Parliament, is on Crown land; most beaches are on Crown land; many rivers and estuaries are on Crown land; 25 regional ports and harbours, places like Eden and Ballina, are on Crown land; more than 1,000 community facilities in just about every town in the State are on Crown land—local halls, war memorials, preschools, maternal and child health clinics, scout and girl guide centres; and the list goes on.

Most people might assume that the local park in their community, which they visit every week with their kids or community group or play sport on during the weekend, is a council-owned facility—and many are. However, people might also be surprised to know that many facilities managed by local councils across New South Wales are also on Crown land. Local parks and reserves, sporting fields, tennis courts, boat ramps, swimming pools, skate parks, public toilets, walking tracks, all these facilities can be located on Crown land and of course, there are many businesses operating on Crown land. As I indicated, some 200 caravan parks are located on Crown land—almost 50 per cent of all caravan parks in New South Wales—and these play a crucial role in regional economies. There are also marinas, cafes, restaurants, the odd pub, clubs, golf courses and other small businesses and facilities which rely on Crown land. So I hope that has been helpful to set the scene about Crown land.

In 2012 the New South Wales Government began the first major review of Crown lands in some 25 years. This review has been conducted in a highly open and consultative manner, including the publication of a white paper in 2014, which received more than 600 submissions, and a series of ongoing consultations with key stakeholder groups. The work done to date makes it clear there is a need for significant reform of Crown land management in New South Wales. The legislative framework that underpins Crown land management is unnecessarily complex and comprises eight different pieces of legislation—some of which dates back to the late 19th century. The legislation will allow a strong, strategic approach to managing this highly diverse portfolio and whilst all Crown land is important clearly there are differences between a tiny parcel of land with limited public access and a major regional beach or reserve.

What is more, there has been a view that the community, including Aboriginal groups, is not effectively engaged in Crown land management and decisions. We are now nearing the end of this review. This inquiry will allow a further exploration of views about management of Crown land in New South Wales as we are moving towards introducing new, consolidated Crown land legislation. The New South Wales Government has made a detailed submission to this inquiry which outlines the current state of play with our reforms. The New South Wales Government will be introducing a new, single Crown land management bill into Parliament during 2016 to replace the existing range of legislation regulating Crown lands. The new bill will deal with a number of the issues being examined under the terms of reference of this inquiry. For instance, it will protect the environmental, social, cultural heritage and economic values of Crown land.

The objects of the new bill will recognise the need to integrate environmental, social, cultural heritage and economic considerations in decision-making about Crown land; reduce complexity and duplication when it comes to managing Crown land as eight existing Acts will be consolidated into one, modern, new bill; and support greater local decision-making by allowing locally significant Crown land to be devolved to a local level of ownership and management and to retain land of State significance under State control. Any land which is proposed to be transferred to local councils will be on a voluntary, opt-in basis—that is, if councils do not want it, they do not have to take it. The bill will strengthen opportunities for community involvement. A community engagement strategy will be required in relation to major decisions about Crown land. It will increase opportunities for Aboriginal involvement in the management of Crown land. The objects of the new bill will provide for Aboriginal use and co-management of Crown reserves.

I would like to speak briefly about two issues from the above which are directly relevant to your terms of reference. Firstly our submission provides new detail about our commitment to community consultation. As part of a new Crown land bill to be introduced into the New South Wales Parliament later this year a community engagement strategy will be required for proposals such as sales or long-term leases—actions that would affect public use of land. This compares to the current legislation which simply requires 14 days notice in a local newspaper advertising the intention for such decisions, which represents a very old-school approach to consultation. The new community engagement strategy will enable more meaningful and tailored input so that decisions of the greatest interest to the public will have the greatest level of engagement.

Secondly our submission outlines in some detail how we are seeking to better involve Aboriginal groups in discussions about Crown lands. The submission includes details about our work with local councils to examine the transfer of Crown land of local significance to local communities. Aboriginal land councils will be intimately involved in this process. We are also seeking to undertake a more strategic and proactive approach to managing Aboriginal land claims by undertaking strategic negotiations with Aboriginal land councils.

Together the proposed reforms to the Crown estate will significantly improve the management of Crown land in New South Wales; ensure ongoing community input and involvement in Crown land in New South Wales; set the State up to implement effective, transparent, efficient and outcomes-based processes for Crown land management; and more strategically address the interests of Aboriginal people, empowering communities; and support the economic outcomes for Aboriginal people in New South Wales. These improvements are considered the most appropriate and effective measures for protecting and enhancing the Crown estate both now and in the future. The underlying driver is to manage Crown land in such a way that it continues to provide significant benefits to the people of New South Wales. Chair, I am happy to answer any questions.

The CHAIR: Thank you for that very comprehensive opening statement.

The Hon. SCOTT FARLOW: Minister, you mentioned in your opening statement the role of local councils in managing Crown land across New South Wales. Under the reforms, what would be the continuing role for local government in that management and what does the term "local land" mean?

The Hon. NIALL BLAIR: Thank you for the question. As I said in my opening address, councils already manage lots of Crown land. Local parks, sporting fields, swimming pools, skate parks, water towers, sewage plants, works depots, council offices, waste treatment plants, community centres et cetera are on Crown land. As managers, councils meet the cost of managing that Crown land and the value of the land sits in councils' financial accounts. Through the Crown land management review we put forward the concept of local land. Local land is land that is principally for local communities consistent with the functions of local government.

A pilot project in 2015 demonstrated significant council interest in the concept of local land and in the potential for that local land to be owned by councils rather than councils being the manager of Crown land in that area. Members may be aware that we had four pilot councils that were involved in that process with the Government to go through that. Originally involved in that were Corowa council, which is now Federation

Council; Warringah, which is now Northern Beaches; Tamworth Regional Council; and also Tweed council. That is something that was a very valuable experience to go through and identify those different types of lands. As a result the Government will enter into new, voluntary—and, I repeat, voluntary; this is not about forcing lands on councils—negotiation with councils. This will empower local decision-making over local land.

Negotiations with councils again will be voluntary. If a council does not wish to participate, it does not have to. Agreements will be just that—they will be agreements. This is about identifying those pieces of local land. In some cases through the pilot we found that there are council assets like sewage treatment plants that sit on Crown land that everyone would say that is local land—a lot of people including the council in some cases thought it was council land. This is about deciding whether we need to negotiate with those councils and enter into an agreement with them about them taking over that land. If no agreements can be reached, no land will transfer. If the Crown land that is managed by councils is transferred to them in freehold there will be little change.

Any Crown land transferred to councils in freehold will be transferred as community land. I know that has been raised. Some people are concerned that if land is to be transferred to councils how will that be treated? That would stay as community land. The only exception will be for land used for things like works depots and weigh stations, which clearly meet the definition of operational land under the Local Government Act and the State will retain Crown land of State significance. Hopefully that gives a broad overview as to what we mean by local land and that is a result of the pilot that was carried out.

The Hon. PETER PRIMROSE: Minister, just following up on that question; it is the same question essentially. In relation to those four pilots that took place in 2015, I note that none of those councils have actually made a submission to this inquiry. I have been to the department's web page and I cannot find any material after the material relating to the actual introduction of the pilots. Is it possible for you to provide us with the findings and maybe an evaluation of those pilots so that the Committee can be aware of what actually happened?

The Hon. NIALL BLAIR: Mr Clarke, do you have any information or are you happy to take that on notice?

Mr CLARKE: Yes, we can take that on notice. We have briefed the councils in those four areas about the results of the pilot and we have a range of material that we would be happy to provide about the finding of those pilots. I just make the point that that was a desktop exercise; no actual land transferred as a result of that pilot. It was simply to explore that concept of local land and we can provide some further information.

The Hon. PETER PRIMROSE: Would you be aware of the reasons why none of those councils actually made a submission, given how important this was to this Committee?

Mr CLARKE: No.

The Hon. NIALL BLAIR: No, I think you would have to ask them. As Mr Clarke has said, there is information—

Mr DAVID SHOEBRIDGE: There was no land transferred.

The Hon. NIALL BLAIR: Sorry?

Mr DAVID SHOEBRIDGE: It was an academic exercise.

The Hon. NIALL BLAIR: It was academic. It was a desktop process in which the councils were happy to participate and interestingly other councils have been watching. I have had some representations from other councils asking when could they go through the process as well because they see some benefit in the way that that could be applied to their local areas but as far as why they have not provided a submission, you would have to ask them, but we can give you the information that Mr Clarke referred to.

The Hon. PETER PRIMROSE: As a desktop exercise it has clearly influenced significantly what you are proposing to do in relation to the legislation so that information would be very valuable.

The Hon. NIALL BLAIR: I am happy to help.

The Hon. LOU AMATO: Minister, what has been done to progress Aboriginal land claims and the involvement of Aboriginal people in Crown land management? You touched on this before but could you elucidate?

The Hon. NIALL BLAIR: Thank you. Members would be well and truly aware of the significant number of Aboriginal land claims that are still to be processed. As a result, there are currently around 29,000 undetermined land claims in New South Wales. The current process for determining Aboriginal land claims

under the Aboriginal Land Rights Act is lengthy and costly. Currently all land claims have to be individually assessed by the Minister for Lands and Water as to whether they meet specific statutory criteria relating to the use and purpose as at the date of the lodgement of the claim.

Mr DAVID SHOEBRIDGE: Minister, is that a delegable power? Can you delegate that to senior officers?

The Hon. NIALL BLAIR: No. The necessary checks are done and all of them come through for my determination.

Mr DAVID SHOEBRIDGE: I am sorry to interrupt you.

The Hon. NIALL BLAIR: No, that is all right. They definitely come through for my signature. There is no discretion to take into account the New South Wales Government's current intentions for that land nor the Aboriginal land council's strategic aims. This has resulted in uncertainty for government, industry and the Aboriginal communities that land rights are intended to benefit. In recognition of this issue, in 2014 the New South Wales Government amended the Aboriginal Land Rights Act to allow the New South Wales Government and Aboriginal land councils to enter into Aboriginal Land Agreements relating to land transfers and land use without having to go through the existing land claims determination process.

The amendments came into force on 1 July 2015. ALAs are negotiated agreements which allow for the strategic settlement of multiple land claims. ALAs also provide for a broad set of issues, including alternative or additional outcomes to the transfer of Crown land to be considered and agreed to in these settlements. This will enable settlements that are better aligned with the strategic interests of government and local Aboriginal land councils.

Specifically, ALAs are designed to speed up the processing of outstanding New South Wales land claims by encouraging the simultaneous settlement of multiple claims, allowing the parties to agree on a range of alternative or additional outcomes to the transfer of Crown land and freehold, integrating opportunities for sustainable, social, cultural and economic benefits for Aboriginal people with the settlement of land claims and provide greater certainty to all parties over Crown land.

To date, one ALA is underway at Eden on the far South Coast of New South Wales involving the Eden Local Aboriginal Land Council and the NSW Aboriginal Land Council. This ALA was initiated in response to requests from the Eden Local Aboriginal Land Council to address longstanding land claims issues. As Minister, I initiated the ALA to progress those limited number of land claims. I am pleased to advise that whilst the negotiations are not yet finalised, good progress has been made in identifying priority land claims of interest to the local Aboriginal land council, along with other land claims which are duplicates or no longer required.

With the work that has gone in, particularly over the last 12 months to set up the frameworks for ALAs and the building of relationships between the department and particularly the NSW Aboriginal Land Council, I am optimistic about the future of ALAs because the current system with the backlog of 29,000 claims is something that certainly needed to be addressed and I think that the ALAs present a good opportunity to move forward.

The Hon. TREVOR KHAN: Page 9 of the Government's submission deals with, amongst other things, the sale of Crown land. Are you able to indicate why Crown land is sold and what the process is to achieve that end?

The Hon. NIALL BLAIR: Thank you for the question. The answer is: there are a number of reasons. I might just give a bit of a historical context. Since colonial times the New South Wales economy has been facilitated through the sale of Crown land. All land in New South Wales that is currently held in freehold for residential, community and business purposes was previously Crown land and has been sold. Successive legislation dating back to 1791 has supported management and allocation for the sale of the Crown estate where no future public use has been identified.

Land sold from the Crown estate over the last 220 years has supported growth of the economy through security provided by freehold title which is required in free-market economies to enable investment. Before Crown land can be considered for sale, a justification for the sale and consultation appropriate to the circumstances must be undertaken. A sale is not automatically presumed. Key attributes that identify land for sale include land for residential purposes, land that will support or facilitate regional and local economic development opportunity and land that is considered a long-term liability for government.

In addition, some existing tenure holders have rights in their tenure agreements to purchase the land leased to them. When it has been determined that a parcel of Crown land is no longer required for government or community purposes, sale of that land is considered through investigation set out in the Crown Land Act

1989. Land sold from the Crown estate requires public notices to advertise intention to sell and to revoke any reserves that may be in place. The department is required to deal at market value in land sales and ensure compliance with statutory processes. Proceeds from the sale, along with lease and licensing of Crown land are reinvested into managing the Crown estate or used to fund other government programs.

In the 2014-15 financial year only a modest amount of Crown land was sold—40 properties, returning $5.2 million to the New South Wales Government. Between January 2012 and July 2016 there have been a total of 225 sales, excluding compulsory acquisitions, with a total value of $24,724,722 in land sales. The average sale price was $121,259. The highest sale price was $3,093,750. There is an average of 50 sales per year. Less than 0.0001 per cent of the Crown land estate is sold in any year. I have some illustrations I could show of the Committee of some types of sales that have occurred

The Hon. MICK VEITCH: Hand up your drawings.

The Hon. NIALL BLAIR: I did not prepare them myself with crayons or anything. They are just to give the Committee a bit of an example of the types of Crown lands that may be considered for sale where they are landlocked and some other pieces of land. That is just an example but if the Committee wanted we could probably prepare something. That is just to have a look at but we could probably prepare some examples of that making sure that we remove lot and DP numbers so that they cannot be identified and maybe provide some examples to the Committee of the types of land that is considered for sale.

The Hon. TREVOR KHAN: That would be helpful.

Mr DAVID SHOEBRIDGE: Do you have a separate body of statistics for the 99-year leases?

Ms STONE: Yes, we do.

Mr DAVID SHOEBRIDGE: Could you provide that as well?

Ms STONE: We can certainly provide a summary.

Mr DAVID SHOEBRIDGE: A summary that cuts across the same period as you have done for sales. The Minister gave a series of figures.

The Hon. NIALL BLAIR: I gave 2012 to 2016.

Ms STONE: We can do that.

The CHAIR: What is your approach to the maintenance of roads on Crown land? One concern is the cost shifting that falls back either on the rural property owner or the local council. Can you tell us how you are handling that and what are you doing?

The Hon. NIALL BLAIR: I might hand over to one of the staff in a moment but just one of the examples of how some of those can be maintained is through the Public Reserves Management Fund Program [PRMFP]. I was in the Illawarra earlier in the week at Killalea State Park having a look at where half of the roads have been upgraded in that vital asset. I think they have a pending submission in the PRMFP at the moment to complete that type of road funding. That is just one example.

The CHAIR: I am thinking a bit more rural. Through questions in public interviews it has been a major concern that private property owners are having to prop up the maintenance of Crown land roads because local council is not taking that responsibility. With my local council hat on, it is probably because of cost shifting because they are subsidising government on that matter. I would like some sort of structured answer on how we are going to approach that in a better way.

Mr McPHERSON: Currently the department is not funded to construct or maintain roads. We do not have that ability. We provide approvals to landholders at times to maintain the road, to fill potholes, to grade it and keep it trafficable. If there are proposals to upgrade or construct it to any significant standard we usually ask that the road get transferred to the local council on the basis that the council has the ability to levy rates and also to reach agreements with landholders to fund the ongoing maintenance once it has been constructed.

The CHAIR: Can you tell us how many roads across New South Wales would fall into the Crown lands portfolio?

Ms STONE: Across the State I think our numbers are about 500,000 hectares of roads that are reserved as a road. You would be aware of the road closure and disposal program that the Government has been running for a number of years.

Mr DAVID SHOEBRIDGE: Does that include predominately unmade roads?

Ms STONE: Yes, predominantly unmade roads. Roads that are enclosed within people's properties.

Mr DAVID SHOEBRIDGE: I think the Chair was really asking about formed roads. Is there a different way you deal with formed roads and unmade roads?

Ms STONE: The answer is essentially the same. We are not a road authority.

The CHAIR: You hit it on the head. You transfer it to local government and then they have to fund it. If you are out west where your rate base is not able to encompass that massive shift of cost surely there must be a way through this new reform to alleviate that burden on the fewer ratepayers in rural and regional areas.

Mr McPHERSON: We do not force roads on councils generally. It is only where they are willing to accept transfer. Where they do not we can still reach agreements with landholders. It is essentially a user pays principle that the people who are benefitting from the road contribute towards the cost of construction and maintenance.

The Hon. MICK VEITCH: One of your predecessors indicated that the new Crown Lands Act would be taken as an exposure draft. In your contribution today and I think in the Chamber one day you mentioned that you would be introducing the bill at some stage in the next session. Are you planning to not have an exposure draft?

The Hon. NIALL BLAIR: I guess this inquiry was not occurring when previous Ministers maybe were talking about the process that may occur. I have given a pretty clear indication as to the direction that the bill is heading. We have given our response to the Crown lands white paper and I think it is fairly safe to say that when we introduce the bill to Parliament there will not be any new surprises or anything that will be away from what was signalled or flagged in the response to the Crown lands white paper and answers to questions or statements that I am making here today in the Committee inquiry. As I said, I guess that is probably the opportunity to discuss what we are doing in more detail than just putting out an exposure. We are also continuing to consult with all of the stakeholders that have been involved throughout the process as well. As I said, I do not think there are going to be any surprises in this case. We have said that we will take eight redundant pieces of legislation down to one and I have outlined some of those areas today.

The Hon. MICK VEITCH: If you are not going to put out a draft is there any chance you might be able to table the draft legislation just for the Committee to have a look at? I can ask.

The Hon. NIALL BLAIR: I do not have a copy to table.

The Hon. MICK VEITCH: You can take it on notice and get it to us. I just thought I would ask.

The Hon. NIALL BLAIR: As I said, what is fortuitous about having the inquiry at the moment is that we can discuss a number of issues that stakeholders or members may have. Through our submission, through our evidence today and whether the department gets called back again there are more opportunities for us to discuss what the intent would be. As I said, it is not about providing surprises when we get to Parliament.

The Hon. PETER PRIMROSE: Given that you are talking about consulting, I do not want to labour the point but individual terms and words in legislation are actually very meaningful. You have said that one of the reasons that you are not proposing to put out an exposure draft is because of the consultation of this Committee. If that is the argument surely it would be appropriate for us to at least see where you are up to with the proposed legislation. The individuals words, the terms and the things that are left out are the things. If we are not going to be able to look at it in an exposure draft, if you are using this as an excuse for not doing that, why can we not see the draft?

The Hon. NIALL BLAIR: We have only got an early draft at this stage. We are still engaged in that consultation with stakeholders.

The Hon. PETER PRIMROSE: We are one of the stakeholders.

The Hon. NIALL BLAIR: I understand, but the timing at the moment of the Committee—as I sit here today we are still engaging on that early draft. It is something that we can talk about further as it goes along but I am not prepared to table anything here today while we are still conducting that consultation.

The Hon. MICK VEITCH: I thought you may well have been briefed by the Hon. Trevor Khan about this morning but apparently not. Earlier today there was a line of questioning around plans of management. We spoke at length with the City of Sydney witnesses about the process they have followed with the plans of management. Essentially they have elevated that to the Local Government Act requirements for consultation. I asked them whether or not they had had the Minister sign off on any of their plans of management. Since you have been the Minister how many plans of management have you signed off on?

Ms STONE: We could provide those numbers.

The Hon. NIALL BLAIR: There are one or two that spring to mind but I would have to get those to you.

The Hon. MICK VEITCH: As the Minister do you see the value in you signing off on those? For the City of Sydney to have gone through a more rigorous consultation process to develop their plans of management and then not have the Minister sign off on them is sort of like an exclamation mark or a full stop missing off the sentence, in my view. What is your view about ministerial sign off on the plans of management?

The Hon. NIALL BLAIR: I think whether it is the Minister that signs it or whether it is delegated the most important thing is the content and the consultation with the stakeholders in the development of the management plan. It is not something I have a firm view of at the moment as to whether it should be the Minister or not. It is more about the processes of making sure that we engage community when we go through and develop plans of management. That is going back to the intent when I am talking about what we are trying to do with the proposed new legislation. There are better ways to do consultation than what we have done in the past. I use the example of 14 days advertising in the local paper versus setting up stakeholder consultation, that is what I think is more important.

The Hon. MICK VEITCH: Can we take it from your comments that we can expect that in the draft bill there will be a consultation process or checks and balances around consultation articulated in the bill?

The Hon. NIALL BLAIR: In relation to plans of management? I was using the example of what we do with Crown land and disposal and that process. Do you mean about plans of management?

The Hon. MICK VEITCH: Yes.

Ms STONE: I can clarify two points: the proposals are speaking to the point you are trying to raise, which is that councils do have solid processes that they are required to go through under the Local Government Act if they are putting out plans of management. What is the value add from the State Government's perspective? I think it speaks to that. In addition, the Minister in his opening statement talked about the requirement in the proposed new bill to have a community engagement strategy prepared that will outline at what level decisions need to go through appropriate consultations.

Mr DAVID SHOEBRIDGE: That will be statewide policy that will be adapted to individual sales and enforceable as a statutory instrument?

Mr CLARKE: The Minister will have the responsibility under the proposed new bill to approve the community engagement strategy and the department will be responsible for complying with the strategy, and it will outline the principles, the processes and requirements for the various types of activities and dealings that happen on Crown land so the community has a clear understanding of how and when they can be engaged. For individual circumstances that will be tailored to those particular processes, whether it is a plan of management or sale process or some other activity around Crown land.

Mr DAVID SHOEBRIDGE: There will be a legal obligation to comply with the strategy and some remedy if that is not complied with? The community does not value highly a right without a remedy.

Mr CLARKE: If I can take that on notice. I do not know the proposed provision in the new bill in relation to community engagement and strategy, except that the Minister will be required to approve it and the department will be required to comply with it.

The Hon. NIALL BLAIR: Returning to the start to close the loop on the plans of management; there is a requirement for the consultation and the Minister does sign off on it. That is the current process. Whether it is my view or whether it should be or not the Minister signs off, that is what the legislation says. The point I was making is that the most important part is making sure that the consultation occurs adequately and people are engaged in that process before it gets to the Minister for sign-off.

Mr DAVID SHOEBRIDGE: The reason I ask about the legal enforceability of the consultation strategy is that a good many of the submissions have said there are really good principles, legal processes and structure in the current Crown Lands Act, but it has not been enforced by the department or the bureaucrats. In places such as the Tallis trust the local community are tearing their hair out about getting the law enforced. You can have all the rights in the world in statute but unless somebody enforces them they end up being valueless. Have you taken those concerns on board and will it be enforceable?

The Hon. NIALL BLAIR: We will take that on notice and come back to you.

The Hon. MICK VEITCH: State significant Crown land and plans of management around those, they are the ones that are essential for the Minister to sign off. Minister, I am certain you have had staff read the submissions that have come to this inquiry and noted that there are quite a few around Bondi Pavilion. Is there a plan of management for Bondi?

Mr McPHERSON: There is, that is correct.

The Hon. MICK VEITCH: How old is it?

Mr McPHERSON: I think it is 2014, but I can get you the exact date.

The Hon. MICK VEITCH: Can you find out? There are a number of people who have made submissions about that particular pavilion.

The Hon. TREVOR KHAN: It has been a topic.

Mr McPHERSON: There has been some confusion around that.

Mr DAVID SHOEBRIDGE: Is it your understanding that the current redevelopment proposal would be consistent with the plan of management, or do you want to take that on notice?

Mr McPHERSON: I would have to take that on notice because I have not seen the proposal.

Mr DAVID SHOEBRIDGE: Waverley council has a $38 million Taj Mahal plan for it. Is that consistent with the plan of management?

Mr McPHERSON: I will have to look at that.

The Hon. MICK VEITCH: You spoke of rentals. When Government agencies are leasing Crown land do they pay a lease to the department?

Ms STONE: Our starting principle for sale and lease of land is market value and then through a series of policies that we have either on rebates or waivers you can apply, depending whether you are a community or sporting organisation or qualify under any of those policies.

The Hon. MICK VEITCH: Government departments on Crown land would pay market rent?

Ms STONE: They start at market rent and depending what the use of that land may be for it still may qualify. I will add, when there are acquisitions by government agencies of Crown land, and that applies to councils, they are required to transfer at market rate.

The Hon. MICK VEITCH: Are there any Government departments outstanding on payment of those fees to the department?

Ms STONE: I would need to check on that.

The Hon. MICK VEITCH: I am told Yasmar training facility, Juvenile Justice, have not paid their fees. Could you deny or confirm that?

Ms STONE: We can do that.

The Hon. MICK VEITCH: The next thing is about collection of back rents, back lease fees and the department. Is there a current figure on how much is outstanding in lease fees from Crown land?

The Hon. TREVOR KHAN: Does this include western lands and the like?

The Hon. MICK VEITCH: In general.

Ms STONE: We do have rent in arrears that sits on the department's books. We can get you those figures. I will indicate that is an area that we are looking to further investigate given that some of that is because it relates to a deceased estate, some of it relates to an incorrectly applied figure, duplicate applications, those sorts of things. We can provide that further detail.

Mr DAVID SHOEBRIDGE: What is the rationale for having one department pay another department to gain access to public land that is owned by the public other than to employ a bureaucrat to set up the terms of the lease, monitor the terms of the arrangement, send out the invoice, pay the invoice and double check it? It seems to me it is some kind of bizarre internal accounting for which the public is the only loser. What is the rationale?

Ms STONE: The provisions are provided in the current act and we are required to deal in market rates.

Mr DAVID SHOEBRIDGE: It is the same legal entity if it is a department and a department. Is that going to be fixed in the new act? Will you have this bizarre internal accounting where public land is paid for by one department to another department and invoices.

The Hon. NIALL BLAIR: As Ms Stone said, that is the starting point.

Mr DAVID SHOEBRIDGE: Why do we have that for department to department?

The Hon. NIALL BLAIR: It does not mean that is happening in every case. There could be a number of circumstances where exemptions or reductions may be applied. It is not saying that every department is doing that. That is always the starting point because that is what the current act says.

Mr DAVID SHOEBRIDGE: Is that going to be the new act as well, that one part of government has to pay another part of government to access a piece of land owned by the other part of government?

The Hon. TREVOR KHAN: Even within companies you put costs across different sections because it makes sense to.

Mr DAVID SHOEBRIDGE: My question is to the Minister.

The Hon. NIALL BLAIR: It depends on what they are doing and who the departments are. It is a provision.

Ms STONE: I will just clarify: we are also guided by Treasury guidelines. If there is an agreement by the Treasurer that we can transfer it nil consideration that is one of the provisions that we are able to currently access. Some of those are policy decisions, but as a guiding principle in terms of Crown land when it is considered for sale or disposal or leasing, you start at market rent as a first principle.

Mr DAVID SHOEBRIDGE: I understand that with externalities, but within government it seems bizarre.

The CHAIR: Just to bring that home: a government department has the ability to waive or exempt based on the proposal. Is that right?

Ms STONE: Only with the Treasurer's approval. There are Treasury guidelines that allow us to proceed down that path.

The CHAIR: I think they are very helpful because we were certainly going down the track where Crown Lands was going to ask full market value for some community rentals and that was going to impact Meals on Wheels. Local council was not right to go and ask full market rents from those people that are volunteering.

Ms STONE: They are two different concepts. What I was responding to there was really about the transfer of land between government agencies. In terms of yes we start with market rent and then we can apply a rebate for sporting organisations, non-government organisations, community organisations that allow the social value of the land being used that is not at the requirements of market rent.

Mr DAVID SHOEBRIDGE: Minister and Ms Stone, it might be useful if you gave us in detail on notice, maybe with reference to the Treasury guidelines—divide the two up.

Ms STONE: We can do that.

The Hon. MICK VEITCH: Was the plan of management for Bondi signed off by the Minister?

Mr McPHERSON: I would have to get back to you on that one.

The Hon. MICK VEITCH: If there is any plan of management out there, such as the City of Sydney testimony we heard this morning, if their plans of management are not signed off by the Minister what is the legal status of those plans of management?

Mr McPHERSON: It is a draft plan.

The Hon. MICK VEITCH: So not enforceable?

Mr McPHERSON: That is correct. However, I would be surprised—in most cases once a council has been consulted, if they have got a draft plan of management that has not yet got the final signature on it, generally, as far as I am aware, they tend to follow that plan.

The Hon. MICK VEITCH: If it is challenged for any reason, if there is a basis upon which anything occurs there, 2½ years into a five-year plan of management and it has not been signed off by the Minister, what is the legal status of that whole process?

Mr McPHERSON: I am not aware that has been tested

Mr CLARKE: If I could just add: it is a requirement under the current Crown Lands Act that a plan of management is approved before it becomes a statutory tool under the Crown Lands Act. So to give effect to a plan of management it has to be approved.

The Hon. MICK VEITCH: Which means signed by the Minister.

Mr CLARKE: Or his delegate.

The Hon. MICK VEITCH: What worries me then is that there are plans of management where they have not followed that process to the end.

Mr CLARKE: The process for plans of management is spelt out in the Crown Lands Act.

The Hon. MICK VEITCH: If we are hearing that there are plans of management that have not been signed off by the Minister then the process has not been followed.

The CHAIR: Is there a minimum time period by which a plan of management needs to be signed?

Mr CLARKE: Not in the current Act.

The CHAIR: Maybe we need to look at that to make sure that the clock does not stop on these wonderful projects that the community is expecting.

The Hon. MICK VEITCH: Minister, do you see merit in you signing off on all plans of management—the Minister or the delegates signing off on them?

The Hon. NIALL BLAIR: That is what has been happening under the current legislation and that is what is proposed to continue because there does need to be someone that approves that the plan of management has been developed correctly and has adequate buy-in, and at the moment that seems to be the process. Whether there are some out there that are still pending that is something that we said we would have a look at.

The Hon. SCOTT FARLOW: Can I just ask a quick question in regards to this? The City of Sydney Council were talking about their plans of management previously. They treat it as part of all of their reserves. If you were to receive a plan of management that did not just deal with Crown land but dealt with other land that the council had in council reserve, would you be able to sign off on that? Is that perhaps an impediment?

Mr McPHERSON: In effect, you could sign off in relation to the Crown lands aspects of that plan.

The Hon. NIALL BLAIR: So if there is unnecessary delay because they are doing everything—I was not privy to the evidence that was given earlier today but there is no reason why the Crown lands aspects cannot be signed off. Is that right, Mr McPherson?

Mr McPHERSON: That is correct.

Mr DAVID SHOEBRIDGE: Minister, just quickly on the issue of the draft legislation, will you give some commitment—I am happy for you to take it on notice and consider it—if you are not going to put an exposure draft out to at least leave the legislation lying on the table of the Parliament for a sufficient period of time for stakeholders to read it and consider it before we go into the second reading debate? I am happy for you to take it on notice as to maybe timing.

The Hon. NIALL BLAIR: At least over the weekend.

Mr DAVID SHOEBRIDGE: A reasonable period of time I would have thought would be in the order of three weeks, but I am more than happy for you to take it on notice to think about it.

The Hon. NIALL BLAIR: I will take the final answer on notice as far as whether we will or we will not or what is the time frame. But I will make this observation that through going through the white paper process to providing the Government response, the ongoing consultation with that, the opportunity for stakeholders and members of this Committee to be able to discuss these issues, again I am very confident that by the time we introduce legislation into the Parliament we will have had the ability to openly discuss and, from where I sit, a beneficial opportunity to be able to put some concerns at rest, to clarify some confusion or misunderstandings. I will come back with my response but I just put it in that context. This is something that we are very happy to be open about and we are discussing it at many forums.

Mr DAVID SHOEBRIDGE: We are discussing the principles, but of course the principles and the drafting are two different issues and I suppose the community concern—

The Hon. NIALL BLAIR: I will take that on notice and come back to the Committee.

Mr DAVID SHOEBRIDGE: Minister, under the proposed changes, if land is transferred by agreement from the Crown estate to local councils, will that land cease to be claimable land for the purposes of section 36 of the Land Rights Act?

The Hon. NIALL BLAIR: I am going to ask Mr Clarke to talk through the exact details of that. He is well and truly across this aspect.

Mr DAVID SHOEBRIDGE: It is a binary question here; there are two answers: yes or no.

Mr CLARKE: The answer to your question is yes. However, much of Crown land has existing land claims on it and the State is unable to transfer that land until that land claim is determined.

Mr DAVID SHOEBRIDGE: You must, therefore, understand the anxiety that was expressed in the baldest possible terms from the NSW Aboriginal Land Council, the Metropolitan Land Council, that they say, to paraphrase it, that there is a vast amount of land out there, yes there are a whole series of land claims out there but there is no way that they have got a full map of all of New South Wales and therefore if those transfers happen—

The Hon. TREVOR KHAN: That is not what the NSW Aboriginal Land Council said.

Mr DAVID SHOEBRIDGE: If those transfers happen how are you going to ensure that potential Aboriginal land claims are not extinguished?

The Hon. NIALL BLAIR: Can I start by saying that I have addressed the NSW Aboriginal Land Council directly on a number of occasions—the last time was at their meeting in Parramatta. This is something that they are intimately involved in this process and these discussions. I will ask Mr Clarke to provide the details around that, but we see them as a very important stakeholder in this process.

Mr DAVID SHOEBRIDGE: But they say they do not know the details. That is their evidence today; they do not know the details, they are in the dark.

The Hon. NIALL BLAIR: Mr Clarke will go through some detail.

Mr CLARKE: The proposal is that local Aboriginal land councils and New South Wales Aboriginal land councils are involved in those discussions and negotiations with the State and with local councils about any transfer, and that implies that those Aboriginal land councils firstly have the ability or requirement or power to agree to any transfers and also to put forward the outcomes that they would like through those negotiations to come to the question about the provision of information to those Aboriginal land councils. We understand that is an issue and we are working through a process to enable information to be provided to those local Aboriginal land councils so they have full visibility of Crown land in their area and then they can make an informed assessment and do their own planning in their community to determine which Crown land is of importance to them, which Crown land might be of interest to a local council and, thirdly and importantly, which Crown land is still important to the State. Then it is a matter of those negotiations trying to come up with a way forward and, as the Minister said in his opening statement, it is a voluntary process and if agreements are not reached there are no transfers.

Mr DAVID SHOEBRIDGE: Voluntary with the council and including voluntary with the Aboriginal land council?

Mr CLARKE: That is correct.

Mr DAVID SHOEBRIDGE: So if the Aboriginal land council does not agree to the transfer of land to a local council, it will not happen? Is that how the law will operate?

Mr CLARKE: Yes. There are two answers to that question. First, if they have an Aboriginal land claim on it, no, the land will not be transferred. If it is land that they did not have an Aboriginal land claim on, as the Minister said, we are running this process or proposing to run this process in partnership with Aboriginal land councils and it would be disingenuous of the Government to transfer land to one party without the third party agreeing, and the Minister, on behalf of the State, is involved in those processes.

Mr DAVID SHOEBRIDGE: Will there be a statutory obligation to adequately notify and seek the consent of Aboriginal land councils before Crown land is transferred to become local land under the new bill?

Mr CLARKE: That process will be implemented through those three-way negotiations. It will not be driven by the legislation. The legislation will not enable land to provide for this parcel or that parcel to go. It will be through a negotiation process. We are in the early phases of getting ready for those negotiations and they will be those genuine three-way negotiations.

Mr DAVID SHOEBRIDGE: To be honest, I am as much in the dark now as the witnesses were today about what the statutory regime will be and what the statutory protections are. I have asked whether or not there will be a statutory protection and the answer seems to be, no, there will be a commitment to negotiate. Did I miss it? I will ask you again: Will there be a statutory protection to ensure that the Aboriginal land councils are notified and given sufficient notice before land is transferred to become local land?

Mr CLARKE: I will take that on notice given that the drafting process is underway.

The Hon. SCOTT FARLOW: Minister, we have heard a lot about Crown land across New South Wales so far. We know 42 per cent of New South Wales is covered by Crown land. Can you give us some examples of the benefits of Crown land to the people of New South Wales?

The Hon. NIALL BLAIR: There are a lot of benefits that the people of New South Wales gain from the Crown land estate. It is an important public asset that delivers widespread social, cultural, environmental and economic benefits to the people of New South Wales. You only have to look at some of the facilities like surf clubs in New South Wales to see the benefits that they provide to the people of New South Wales. As I said earlier in my address, there are about 80 surf clubs on Crown land, which have the sole purpose of providing a facility for our lifesavers to continue to keep our beaches safe. Regarding surf clubs, members would be well and truly aware of the standard lease agreement process that we have come to with Surf Life Saving NSW regarding standardised lease agreements for surf clubs on Crown land, which cuts red tape and allows them to spend more time on the sand and less time in the office trying to negotiate new leases with councils, for example.

A lot of our other key assets on Crown lands are showgrounds, which provide enormous benefit, as well as travelling stock reserves, which provide not only a vital asset to our producers but also a significant benefit to the biodiversity of the State and a number of key cultural sites are contained on those. A good example is I was recently in Young and was able to see that Local Land Services is employing members of the Local Aboriginal Land Council, which have been put through the Australian Institute of Management training. They were identifying significant coolibahs on travelling stock reserves and were tasked with documenting them and also mapping them so that we can preserve that key cultural significance because a lot of the travelling stock reserves traditionally followed a lot of the Aboriginal routes throughout New South Wales because they were usually the easiest and most direct way between watering points.

A lot of the travelling stock reserves were mapped on the back of the knowledge of the local Aboriginal people. That is just some of the benefits to the State. I like to use the words "sweat equity" when we talk about some of our volunteer organisations and that includes showgrounds where a lot of sweat equity from our volunteers is put into the maintenance and upkeep of those facilities. I might leave that there.

The Hon. TREVOR KHAN: Chair, what I think might be appropriate is we will cut off our time. We will put the balance of our questions on notice and maybe finish a little bit earlier.

The CHAIR: I am happy to do that. Since the Minister talked about watering holes, I wish to bring up the particular issue of fishing watering holes. I note some of the interest in public access to fishing areas, particularly Molineaux Point. There has been a lot of discussion about that place and access for community benefit. It was never meant to be shut off and now there is razor wire shutting off access. There are roads across the State that have been shut down with signs saying "no river access", and if we look at the community benefit and certainly stakeholders, maybe you can answer the question why local councils or other people are shutting down access to those areas which are meant to be of benefit to the community?

The Hon. NIALL BLAIR: I am happy to take the specifics of the one example you have cited on notice.

The CHAIR: I am not at liberty to talk about the submission at this point in time, but I know it is a raging concern. It will become a public submission in the future.

The Hon. NIALL BLAIR: I am happy to take that on notice.

The CHAIR: The other example is the same issue at Port Kembla. It is Crown lands, everyone enjoyed the environment and since we have moved into privatisation, for some reason the public access to those areas has been reduced.

The Hon. NIALL BLAIR: In general, regarding access for recreational fishers and as it relates to the Crown roads program, officers from the Department of Primary Industries [DPI] Fisheries and the Department of Primary Industries Lands work together to ensure that existing angler access is continued. In many cases, this process has identified additional access to water courses for anglers and the broader community. Funds from the

Recreational Fishing Trusts are used to employ two staff members who are involved in the assessment of road closure applications where an individual application may contain multiple roads.

DPI Fisheries staff have assessed more than 13,000 individual roads for closure. Of those, DPI Fisheries has requested the retention of 300 roads. I have met with acclimatisation organisations and others that have raised this issue with me directly in the past. As I have said, the employment of those two dedicated officers to go through and try to identify any of those is an ongoing program that is carried out. Having the portfolio of Fisheries as well as Crown lands presents me with a great opportunity to ensure that different parts of the portfolio are working together to ensure that the outcome is beneficial for those anglers. As I said, I will take the specifics of that question on notice and get back to you.

The CHAIR: You and I know, Minister, under the guise of safety we can make any rule to close down anything. Recreational fishing, to a large degree, can have an element of risk, but we are not going to fence the whole ocean. I would like to see that the Government takes on board the spirit of its commitment to recreational fishers, particularly the community point where Crown lands was negotiated with that outcome and certainly Port Kembla. A lot of submissions also talked about the Parramatta pool and the development or future of that particular area. Will you give this Committee an update of what is happening there.

Mr DAVID SHOEBRIDGE: Particularly concerns about the lack of public consultation regarding the boundary adjustment that is going through now. There are real concerns that the boundary adjustment that is happening to the park has occurred without any community consultation. Basically fans of football clubs were spoken to and that is it.

The Hon. PETER PRIMROSE: And what consultation is required under the Act.

Ms STONE: We may need to get back to you with the details on that one. It is not one we are familiar with.

Mr DAVID SHOEBRIDGE: Nor are the local community, I am sorry.

The CHAIR: Read through the submissions and you will probably find something.

Mr DAVID SHOEBRIDGE: It is the boundary adjustment between the park owned by the Parramatta Trust and the venue. I think it is called the border adjustment.

Ms STONE: We would need to determine whether we are talking about Crown land or whether it is council land, so we will get back o you.

Mr DAVID SHOEBRIDGE: It is Crown land.

The Hon. PETER PRIMROSE: It is Crown land.

Mr DAVID SHOEBRIDGE: Parramatta Trust.

The CHAIR: You can take that question on notice.

Mr DAVID SHOEBRIDGE: Time after time when the community finds out what price a developer, a restaurateur or another third-party private interest has paid to get access by way of a licence or lease or buy Crown land the community is mortified about the small value that is given to the land. I know that the community up in Newcastle were mortified about how little the land was valued for King Edward Park. In the executive summary I see that your department values 42 per cent of the State at just $11 billion. How did you come up with that figure? It seems extraordinarily low.

The Hon. NIALL BLAIR: I will hand to Ms Stone in a moment but I want to make it absolutely clear that a lot of small business owners, mum and dad operators, operate their small businesses on Crown land. I gave the example earlier of the number of caravan parks that are leased on Crown land. As I said earlier, there are kiosks and a whole range of small operations by small business mums and dads on Crown land. I wanted to create that context because the premise of your question would make those who were not aware of that think that we only operate at the big end of town, which is not the case.

Mr DAVID SHOEBRIDGE: What about the Newcastle court house? A figure of $6.6 million for that entire block of land?

The CHAIR: Order! The member well-knows that the Minister has the right of reply. It is then up to the member if he wishes to ask a further question.

The Hon. NIALL BLAIR: There are community and private operators with access to facilities on Crown lands who are providing kiosks—whether it is in a surf club or elsewhere—they provide some of the best small businesses right across the State. I wanted to put that into context. I will come to the details around the

evaluation process and how that $11 billion figure was arrived at. I certainly want to make sure that it is understood that this is something that benefits a whole range of people in our community when it comes to Crown land and those smaller operations, those kiosks and small business operators, are vitally important. I do not want the picture to be painted that it is all about developers because that is far from the truth. Ms Stone might have some details in relation to the evaluation process.

Mr DAVID SHOEBRIDGE: How do you evaluate 42 per cent of the State at just $11 billion?

Ms STONE: I will take the answer in two parts because I can come back and clarify the Newcastle court house as well. Annually the department goes through a mass valuation process for the value of the Crown estate. You will be aware that we do that for the purposes of making sure that what is recorded on the department's books for submission into an annual Treasury process is done appropriately. With 42 per cent of the State we do not go out and value individual parcels of land, so we apply—

Mr DAVID SHOEBRIDGE: A formula?

Ms STONE: A formula and a method that is approved through the Valuer General and appropriate agencies. Where we do individual evaluations is where we are striking a commercial rate and that is where we go to where you are asking for market value for sale, transfer or lease and then according to our rebates policy if it is for a sporting group, a community group or a not-for-profit we can apply those rebates. I always say that Crown land is not a cheap or free alternative to private land and we need to make sure that we have those valuations done either through individual, independent valuers or we use the agreed formulas that are provided.

Mr DAVID SHOEBRIDGE: You say that it is not a cheap alternative but if 42 per cent of the State is valued at roughly the same as four blocks in the city then it is an extraordinarily cheap alternative. I know I would not compare grazing land in western New South Wales to a block in Pitt Street but—

The Hon. NIALL BLAIR: That is exactly what you just did.

Mr DAVID SHOEBRIDGE: I will happily compare 42 per cent of the State to four blocks in the city. It seems a remarkably unbalanced valuation that you have got.

Ms STONE: The annual process that we do go through is a Treasury-approved process.

Mr DAVID SHOEBRIDGE: Can you provide us with some detail about that process?

Ms STONE: I can provide further detail on that process.

The Hon. TREVOR KHAN: The original question contained two parts, one included an assertion about Newcastle court house. Ms Stone indicated that she would be in a position to respond to that.

Mr DAVID SHOEBRIDGE: I did not stop her.

Ms STONE: I will clarify that. In 2013 the then Minister for Lands and Water provided concurrence to vesting to Government Property, so matters including its current status and value are matters to be directed to Government Property NSW.

The Hon. MICK VEITCH: Minister, there are quite a few questions. You have been quite cooperative today but the Committee is going to be travelling around the State and meeting people so would you be amenable to appearing again at our next hearing in Sydney to wrap-up any loose ends? You are also going to be presenting the bill and there is not going to be any exposure.

The Hon. NIALL BLAIR: I am happy to take that on notice. If I am invited I will assess the invitation as I would every other opportunity.

The Hon. MICK VEITCH: Will the bill contain provisions for regulation?

The Hon. NIALL BLAIR: Yes.

The Hon. MICK VEITCH: Minister, earlier in your evidence you talked about the white paper and the consultation that has taken place in that process. There was some suggestion about Western Lands being converted to freehold. Is that going to be taken up as part of the bill?

The Hon. NIALL BLAIR: That was included in part of the Government's response to the white paper. You would be well aware that there are communities like Wentworth, for example, with proximity to Mildura that would love the opportunity to be able to explore the freeholding of some of that land. It is something that we have been open about in that process and it was part of the response to the white paper.

The Hon. MICK VEITCH: Are you looking at all of the Western Lands being converted to freehold as part of this new bill or will it be a selected process that is nominated by individuals or on a case-by-case scenario?

The Hon. NIALL BLAIR: That is something we are still working through.

Mr DAVID SHOEBRIDGE: Minister, what are the protections for Aboriginal land councils because as soon as it is transferred to freehold it ceases to become claimable land under section 36? Maybe Mr Clarke might tell us what the protections are or do you want to pick that up in your answer on notice.

Mr CLARKE: If we could take that one on notice.

The Hon. MICK VEITCH: Are you aware of any area in the State where local Aboriginal land councils have been appointed as trustees of Crown land? Can you take that question on notice and come back to us?

Ms STONE: There is nothing that prevents an Aboriginal land council from being a trustee. We would have to check how many we do have though, thank you.

The Hon. MICK VEITCH: Do you see that the appointment of a local Aboriginal land council as a trustee may assist in your ALA process?

Mr DAVID SHOEBRIDGE: Or it might be an outcome.

The Hon. MICK VEITCH: It could be an outcome, yes.

Mr McPHERSON: If I could just clarify? I will take the original question on notice but we have had Aboriginal people as trust board members on community trusts and they have been a very valuable part of that trust, in particular in sites around Goanna Headland up at Evans Head. That is a really significant site to the local community and they have played an important part on that trust. There are certainly no bars to it and we would encourage and welcome it.

The Hon. MICK VEITCH: In no way will I refute that those individuals are valuable but I am talking about the local Aboriginal land council itself.

Mr McPHERSON: Absolutely can be.

The Hon. NIALL BLAIR: I think what you have said is that it is potentially something that could be part of the ALA process. One of the benefits of being able to share with your wisdom this afternoon is that that is something we would be more than happy to go and have a look at.

Mr DAVID SHOEBRIDGE: Minister, the bar graph in front of you shows the outcomes for Aboriginal land claims over five-year periods. Indeed, you can see just how few determinations there have been that are positive in land claims that have been lodged really for the past 20 years.

In fact, if we go back to your submission you have got "finalise land claims on an annual basis". From what I could tell from that very small red bar graph almost certainly all or the great majority of those are land claims that have been finalised by being actually denied or refused. Can you give a breakdown on a year-by-year basis of what "finalise" means—how many were refused, how many were granted and how many were withdrawn?

Ms STONE: We can provide those numbers.

Mr DAVID SHOEBRIDGE: Minister, if you have a look at that graph that was provided by the registrar you would have to say that that paints a pretty unattractive picture for the Aboriginal community of a tiny, tiny fraction of land claims actually being approved, including under your watch—although people have said there is a minor improvement under you.

The Hon. TREVOR KHAN: No, that was not the evidence.

Mr DAVID SHOEBRIDGE: They said that there had been five. Metro council said there had been five approved last year under you and you got some credit for an increase.

The Hon. NIALL BLAIR: That is just for Metro though.

Mr DAVID SHOEBRIDGE: Yes, for Metro. It is a handful.

The Hon. NIALL BLAIR: Yes. I know what comes across my desk and I can tell you—and we will provide the information—there are a number of factors. Sometimes they are duplicate—more than one claimant

over the same piece of land. They are things that need to be taken into consideration. We will come back with the data. But what I will not wear is that there has been some minor improvement. The claims are assessed—

The Hon. TREVOR KHAN: That was not the evidence. That is what Mr Shoebridge said.

The Hon. NIALL BLAIR: That is what I am taking exception to.

Mr DAVID SHOEBRIDGE: Metro council said five in the last year.

The Hon. NIALL BLAIR: I have the final determination for claims that come from right across the State, so you cannot just take the raw numbers in one area.

Mr DAVID SHOEBRIDGE: Your graph is not attractive either.

The Hon. NIALL BLAIR: Hang on. There is a set process against which all of these are assessed. When I get that file there is a clear determination. There are associated maps. They are assessed against set criteria. The criteria is not something that I or any other Minister is starting to play with. They are coming through and have been assessed with the legislation applied in detailed and, I must say, high-quality work that has been done by staff within the department. Sometimes I look at these and the thickness of the file that comes through. You look at that number. We have got staff turning up and putting their heart and soul into this job and the number is not going down. It is something that is given the utmost attention and detail by the staff that do these assessments. As they come through to me for final determination I read them, I go through them and I sign them as appropriate.

Mr DAVID SHOEBRIDGE: But there are clearly inadequate resources, Minister—that is the point.

The CHAIR: Order! The member has had his time for questions.

The Hon. NIALL BLAIR: That is why we have the Aboriginal land agreement [ALA] process.

The CHAIR: Order! Minister, my recollection is that the comment from the witness was quite complimentary about how you are going and obviously more can be done.

Mr MICK VEITCH: In the white paper there was a foreshadowing of some changes to the way dedicated lands are treated. Will that be accommodated in the new bill? Is that the direction the bill will be taking?

The Hon. NIALL BLAIR: We will take that on notice, if that is okay.

Mr MICK VEITCH: When you dismiss a board of trustees—this has happened recently with you—and appoint an administrator, what is the process you have to follow with regard to local government? Do you talk to local councils about the appointment of a new administrator if you are dismissing trustees in their region—as a courtesy as opposed to an obligation?

Ms STONE: Dismissal of trustees?

Mr MICK VEITCH: The whole board of trustees.

Mr DAVID SHOEBRIDGE: Tell us the trust.

Mr MICK VEITCH: Wentworth Park.

Mr DAVID SHOEBRIDGE: Okay.

The Hon. NIALL BLAIR: They were not dismissed. Their time had expired.

Mr MICK VEITCH: And then you appointed an administrator?

The Hon. NIALL BLAIR: Yes.

Mr MICK VEITCH: My understanding is the council is the trustee of land on either side of Wentworth Park. They are caught in the middle. Were there any discussions with City of Sydney or did anyone look at making the City of Sydney the trustees?

Ms STONE: There were no formal discussions at the time of expiry of the former trust.

Mr DAVID SHOEBRIDGE: The question is "at the time of appointment of the administrator".

Mr MICK VEITCH: Yes.

The Hon. NIALL BLAIR: We have appointed an administrator for the three-month period. At the time the current trust term had expired there was still some uncertainty as to what was happening. The McHugh

report had not been handed down. So the decision was made to appoint an administrator for a period of three months and we will reassess it from there.

Mr MICK VEITCH: What I am getting to, though, is, if the council is trustee of land on either side, is there consideration being given to appointing the City of Sydney as trustees in the longer term?

The Hon. NIALL BLAIR: As I said, that is something that we will look at when we decide about the future of the trust there. But at the moment the administrator has come in for the three-month period because there was some uncertainty—and I stress the term of the existing trustees had expired; they were not dismissed.

The CHAIR: That same witness referred to by Mr Shoebridge said, "There is no value while the land remains incomplete in assessment." That is a fair comment. There are 29,000 parcels that are incomplete. Can you give us a snapshot of what resources could be made available to fast-track some of the process? Secondly, many parcels when they are processed have been handed over to the Aboriginal community but are padlocked by planning instruments or zoning complications. That does not help the Aboriginal people get ahead to do anything with the land. Is there an opportunity to put resources where the high priorities are? Or is this not a high priority that it is not gaining more resources?

Ms STONE: I will quickly explain the processing of Aboriginal land claims as we do it today—the parcel by parcel approach under section 36. We start at the oldest claims and move through the list, so you can imagine that land that was claimed a long time ago may not be the most valued land. Hence we wish to transfer a fair degree of attention and resources into the Aboriginal land agreement process.

Mr DAVID SHOEBRIDGE: But that is just a bureaucratic determination.

The CHAIR: That is a concern, because—

Ms STONE: When you have a long list of land claims you cannot be picking and choosing which land claim you assess before another one. The most equitable way is to do it is on date order. We also have a priority list of land claims. That is submitted by individual Aboriginal land councils and other Government agencies. For instance, for the Pacific Highway widening and prominent Government priorities, if there are land claims—

Mr DAVID SHOEBRIDGE: When it is important to refuse them to get on with something else, the land council—

The Hon. TREVOR KHAN: Oh, David, stop.

Ms STONE: I am sorry—I did not hear the question.

The CHAIR: I instruct the witness not to answer the member. It is my question. The point is that there is low-hanging fruit that can help these Aboriginal communities get ahead and do what they want to do, and that is be self-reliant. Surely going through the processes chronologically is not very helpful to their possibilities of self-empowerment.

The Hon. NIALL BLAIR: Those land councils can identify claims to go on the priority list. And I genuinely believe this is where the ALA process comes in. This is where we can sit down with those land councils and have that negotiation. This is where we are with the Eden component. They are the ones that have been identified to that community to sit down and go through that process to get a better resolution for everyone. I know we have the list there and it is a huge number. There has to be a way to work through that. But we also have to look at what the future presents us and how we can work together to get a better outcome. The old way of doing them one by one was not serving anyone's interests. The last 12 months have been about establishing the framework for negotiation but more importantly establishing the relationships to be able to sit down and do that.

What we have had previously has been an adversarial approach—it was something that sometimes pitted Aboriginal communities against each other for a competing interest over a claim. We need to be able to sit down, negotiate and be open and transparent about that. That is what the ALA process presents us with. As for the planning side of things, unfortunately that is something that is a bit out of my remit, but if I spent my time looking back and worrying about that number we would not get anywhere. This is about looking forward. It is about having a modern framework to deal with Crown land. It is about being open and transparent with the community as we go through. More importantly, with the ALA process it is about having a proper negotiation and sitting down and working out what is important for those communities.

The CHAIR: Yes, but on the last issue I think you appreciate that if you give me a car without a motor there is not much I can do with it. Once again, thank you very much for presenting today. We will be extending an invitation for the department to come back and have a right of reply after we travel around the State. Whether the Minister is part of that will be up to his calendar and other things. Once again I know that

you have been very helpful in this cause and you want to make sure that we make this legislation community friendly but also the right legislation for the right time. If you have any questions on notice you have 21 days to provide responses to them. If you need any assistance the Committee secretariat will be in contact to give you a hand. You may get some further questions from members after this very informative session this afternoon.

(The witnesses withdrew)

(Short adjournment)

DONNA THERESE RYGATE, Chief Executive Officer, Local Government NSW, sworn and examined

SHAUN McBRIDE, Senior Policy Manager, Local Government NSW, sworn and examined

The CHAIR: Welcome and thank you for attending today's hearing. Would either of you like to make an opening statement?

Ms RYGATE: You know that Local Government NSW is the peak organisation representing councils in New South Wales, general purpose and associate members—the county councils. We also represent the New South Wales Aboriginal Land Council [NSWALC], which is interesting, particularly in the context of issues like this, and some other associate members. We are pleased to have the opportunity to speak to you this afternoon. Councils do have already a very significant role in managing the Crown estate at a local level. We manage nearly 8,000 Crown reserves and we are very committed to the important environmental, social, recreational and economic roles that Crown land plays in New South Wales. We are keen to support any action that ensures that those benefits continue into the future.

Most councils, as you probably know, have welcomed the thrust over the last couple of years of examining how to transform Crown lands management, taking it from probably the nineteenth century into a twenty-first century approach. Our interests have particularly been in trying to reduce the complexity of Crown lands management because it has been quite complex and become very complex. Having streamlined legislation would hopefully help manage the processes involved in dealing with Crown land tenure and provide a simpler framework for everybody involved; for lease approvals, plans of management—those kinds of things—and potentially reduce administrative costs.

As I have said, we have had a significant and long-term role in managing Crown lands. A lot of councils, probably the majority, would welcome the transfer of Crown reserves that they already manage and have managed for many decades but we are not saying that as a blank cheque. We think that there is a need to examine the issues very closely and in fact each parcel of land pretty closely to make sure there are not any unintended disadvantages, cost shifts, those sorts of things. The suggestion of devolving other land of local interest to councils also needs to be approached cautiously to make sure again there is no cost shifting and that councils can assess and either accept or reject parcels of land individually.

One of our other big-ticket issues as part of the review of Crown lands, which is not specifically mentioned in your terms of reference but we thought we would mention to you, is that local government is not supportive of the idea of amending the Roads Act so that the Lands Minister is no longer a roads authority. We are not supportive of that particular suggestion.

The CHAIR: Thank you. Do you wish to add anything, Mr McBride?

Mr McBRIDE: No.

The Hon. MICK VEITCH: Was that a prepared speech, Ms Rygate?

Ms RYGATE: Actually, no. It was looking at different bits of our submission but it is in there.

The Hon. MICK VEITCH: Can you elucidate your comment about the roads and the Minister and articulate why you have that position?

Ms RYGATE: Yes. I will get Mr McBride to give the detail of that.

Mr McBRIDE: The question of roads has been a long-running issue. The concern of councils has arisen from time to time over the years and there have been some big arguments, like the Singleton council, going back a decade. It was Crown lands trying to force the responsibility for maintaining their roads onto councils where it had little or no local government significance. It is a cost shifting issue or a responsibility shifting issue. It was forcing unwanted lengths of roads, which were Crown roads in Crown forests and things like that, over to council for the care and maintenance but not giving any financial support to do so. As part of that there have been moves mooted for many years to take Crown lands out of that; to take any responsibility for managing any roads by stopping the Minister responsible from being a roads authority.

Ms RYGATE: The Roads and Maritime Services [RMS] Minister is the roads authority for State roads. Councils look after local roads and at the moment the Crown lands Minister is responsible for roads on Crown lands. There are thousands and thousands of kilometres of them and councils would be very concerned if by the stroke of a pen the Minister ceased to be a roads authority and then they defaulted to become local roads that councils would then be responsible for the maintenance of.

The Hon. MICK VEITCH: Without the commensurate funding to assist?

Ms RYGATE: Yes.

The Hon. MICK VEITCH: Obviously councils would have a calculation that they would use for the maintenance of those roads, either in the current state—

Mr McBRIDE: There are various reference sources for establishing road maintenance, road construction costs and depreciation costs over time, so there are ways of calculating per metre of road, depending what type of road and what type of terrain; those types of things, so cost estimates could be calculated. The issue is complicated because you have to categorise the road. There are some Crown roads that might rightfully go to local government because they serve a purpose for the local community such access to a populated area, it is an access road and there is not usually much dispute about that. But there are a lot of Crown roads that are of no local significance and go nowhere. Their significance is for access to the forest, not necessarily recreational access, but access for forest workers—

Ms RYGATE: Log trucks.

Mr McBRIDE: Log trucks in some cases is another argument altogether and things like that.

The Hon. SCOTT FARLOW: Fire trails?

Mr McBRIDE: Yes. They are not serving a purpose for the local community. You have to categorise them differently. What councils are saying is that we do not want to be dumped with all those ones that are of no use to our community and people have to bear that cost.

Ms RYGATE: Where we cannot recover the costs of maintenance in any way through the rating system, for instance, because things are exempt from rates.

The Hon. MICK VEITCH: Page 6 of your statement states, "LGNSW has recommended the Government clarify whether it is preferencing the disposal of Crown land rather than transfer of land under the ALRA, as both disposal and transfer under the ALRA appear to remain options." What was the basis for you to put that in your submission? Do you have any evidence?

Mr McBRIDE: In dealing with the Crown lands review we have made comprehensive submissions in the past which are referred to in this submission. That was the advice given to us by the New South Wales Aboriginal Land Council. We were basically reporting the perspective that they were presenting.

Ms RYGATE: As I said at the beginning, we represent councils but NSWALC is also a member of ours and this is one of the most prominent issues where the interests of both of those groups could compete. What we would like to see as a result of the processes that are underway to modernise the Crown lands arrangements is some sort of outcome that is complementary, both for councils and for Aboriginal land councils and Aboriginal people. In making representations to the government agency responsible for this Crown lands review we have certainly been very conscious of making sure that we put the point of view that the Aboriginal interests need to be considered and Aboriginal people need to have a seat at the table. It is actually quite gratifying that we understand that will be the case from here on in. That is very good.

The Hon. MICK VEITCH: With regards to plans of management for Crown lands, we heard from the City of Sydney witnesses this morning that they went through a process for their community land under the Local Government Act. Whilst they were undertaking that process they also did the plans of management for the 80-something parcels of Crown land that they are trustees for. Are you aware of other councils that have followed the same path?

Mr McBRIDE: Yes, that would be true of many councils, maybe even most, in that there are plans of management for parklands and other recreational lands and so on that are community lands, that is land that is owned by council. But in most cases councils will also have the care, control and management of other parcels of land used for the same purpose or similar purposes, that is Crown land. They will be managing both portfolios, their own land and part of the Crown land portfolio that sits in their area.

Ms RYGATE: I am certainly aware of the argument that the process of looking after the plan of management sort of stuff for land under the Local Government Act is much more straightforward than the complex process that has to be gone through for Crown land where you do the plan of management and then it has to go off into the never-never for a while. That is one of the attractions I think for councils in some of the suggestions that have been put on the table as part of the Crown lands review because it would streamline that process quite significantly. The other really important thing to say in this context is that the process that councils go through in developing those plans of management and all of that is a really important way that the community can have their say about what happens with bits of land too. We think that is important.

The Hon. MICK VEITCH: With regards to the plans of management, if a council goes through that process in accordance with the Local Government Act my understanding is—and we had the Minister here prior to afternoon tea—that the plans of management should be submitted to the Minister to sign off on.

Ms RYGATE: For the Crown lands, yes.

The Hon. MICK VEITCH: Even though you follow the Local Government Act process and the City of Sydney said it is probably a more rigorous process than the Crown Lands Act in any case. How many plans of management are you aware of that may not have been presented to the Minister for signing?

Ms RYGATE: That should have been?

The Hon. MICK VEITCH: Yes, that have followed that process for councils.

Ms RYGATE: I do not know and I am not really sure how we would find that out for you, I am sorry.

The Hon. MICK VEITCH: From memory the City of Sydney said that they had not submitted any of theirs for signing by the Minister even though they had followed a much more rigorous process. I was wondering how many would be outstanding.

Ms RYGATE: I do not know.

Mr McBRIDE: It is not a number that we have, or it is not a matter that is reported to us so we have not seen that. I cannot say I have ever seen that type of statistic anywhere. I am not sure anyone is reporting on that.

The Hon. MICK VEITCH: You may have to take this on notice and speak to your constituency but what would be the cost of putting together a plan of management for the Crown Lands Act?

Mr McBRIDE: I do not know the actual dollars myself but the fact that you have to do lots of individual plans of management, you cannot do consolidated plans of management, means that it is a more costly process than it might need to be.

The Hon. MICK VEITCH: Is consolidating them within a local government area a good thing to be doing?

Mr McBRIDE: I would think so and I think a lot of councils would prefer to be able to consolidate their plans for their recreational lands, for their parklands and so on.

The Hon. MICK VEITCH: Most of them are five years but if you were to go through the process of the Local Government Act is there a possibility of maybe doing them for 10 years but reviewing them at five years for their currency?

Ms RYGATE: You could certainly consider that if it made sense and there was not anything significant that was going to change or had changed in that sort of time frame.

The Hon. MICK VEITCH: That would be the caveat: unless there had been significant change.

Ms RYGATE: I think we would be open to considering that.

Mr McBRIDE: Definitely. Councils do not want to be doing plans of management any more frequently than they need to, but it is important that the public interest is protected too. If there is a significant change of use planned it should be subject to a new plan.

The Hon. PETER PRIMROSE: On page 5 of your submission you summarise the Local Government NSW position under a number of dot points. The third last dot point reads:

> The suggestion of devolving other 'land of local interest to local councils' needs to be approached very cautiously to ensure there is no cost shifting and councils can accept or reject parcels of land individually.

The Minister in his evidence has suggested that the second part will probably be incorporated into the draft legislation. I was wondering if you could talk about what mechanisms need to be in place administratively or otherwise to actually ensure that there is no cost shifting? Please feel free to take it on notice. Local Government NSW talks about a $680 million cost shifted onto councils each year. What mechanisms in terms of that dot point would you see needing to be in place to ensure that does not happen?

Ms RYGATE: We have certainly been actively involved as part of the review in the pilot process that has been undertaken in four council areas. I guess that point needs to be read in conjunction with the one above it where we are talking about Crown reserves. It makes sense where we are already managing the things and we do everything except own them. There is some logic in looking at those parcels of land. But the process that has been gone through in those pilots seems to be quite a good one where councils, and now there will be Aboriginal

voices in that process as well, look at the holdings in a particular local government area and make sensible decisions about what is or is not transferred.

That is a really important thing that I think we would like to maintain if this goes further, that there is that opportunity to have that conversation and to say no. Councils need to be able to resist getting bits of Crown land if they do not want them, similarly Aboriginal people may wish to say no as well. They might wish to say yes or no. I think that is certainly part of the process that we would want to make sure is in place so that you are making an informed decision and you go into it with your eyes open rather than stroke of a pen stuff. Part of that informed decision is thinking about what the ongoing costs might be. Obviously, we are already bearing the costs for the reserves that we already manage for the management of those things. The point you referred to in particular is about other stuff and what additional costs we might be willing to take on if we could see sufficient community benefit in doing that.

The Hon. TREVOR KHAN: I am trying to conceptualise what is the sort of Crown land that would fall into this category, the other land.

Mr McBRIDE: The other land that might be transferred to us could be forest, it could be leased agricultural lands.

Ms RYGATE: There are all sorts.

Mr McBRIDE: It could be conservation lands and things like that.

Mr DAVID SHOEBRIDGE: Road verges on roads that go nowhere.

Mr McBRIDE: Yes.

The Hon. TREVOR KHAN: If there is a condition in all of this that the council has to agree to receive the land that overcomes that, does it?

Mr McBRIDE: That provides the assurance that councils were looking for. To put this in context, when the Crown lands review first commenced councils were a bit wary that the exercise might be a cost shift, a dumping exercise, because there is considerable expense in controlling the feral animals, noxious weeds and so on on these parcels of land and they are of little community value or benefit in a sense. They were concerned that it might be that we shove the responsibility for that over to the council because it is in their area and councils would have no way of generating extra revenue to manage those lands properly. Councils were very wary of that happening and that was a major argument in taking this issue forward. They were concerned about that and the cost shift that goes with it. They did welcome the assurances that were given that that would not happen and the decision to allow councils to decide whether they want to accept or reject was very much welcomed.

Ms RYGATE: That is going to be an important part of council support for legislative reform that it is there in black and white.

The Hon. TREVOR KHAN: You may be comforted by the Minister's evidence today in that respect.

The CHAIR: If one were to reflect on the way that regional roads went, it was going to be full cost recovery and it has fallen short by 10 to 15 per cent. I do not think councils would like to see that replicated.

Ms RYGATE: That is why there is a blanket "we do not want to take on the Crown roads, thanks very much".

The Hon. MICK VEITCH: We heard from the City of Sydney that they have to pay the Department of Lands a fee, for whatever purpose, to manage the Crown land. It was a little strange. You have vested responsibility, you manage the Crown land and then pay the Crown lands for the privilege to do it.

The Hon. SCOTT FARLOW: It went into a trust.

Ms RYGATE: Okay.

Mr DAVID SHOEBRIDGE: It was out of the hands of the council.

The Hon. MICK VEITCH: That is right. Is there much discussion about setting the fee or levy and do councils have a view as to whether they are getting value for money out of the trust?

Mr DAVID SHOEBRIDGE: Have there been systemic complaints?

Mr McBRIDE: I am not familiar with the City of Sydney example, but there are some Crown lands that have income generation capacity. There is generally a requirement, through one payment system or another

that money goes back to the State Government or goes into the Public Reserves Management Fund for asset maintenance, that type of thing. Where sporting clubs lease part of the grounds.

Ms RYGATE: For a commercial purpose.

Mr McBRIDE: For the netball clubhouse or whatever, there is a lease for that and a modest rental. Out of that rent a certain proportion has to go to the State which it uses presumably to maintain the non-income generating parts of the Crown estate.

The Hon. MICK VEITCH: It is cross-subsidisation?

Mr McBRIDE: Yes. There are several other arguments. One argument is about mobile phone towers on Crown lands. This is a distinct argument. In the past councils were able to collect the rental from that which they used for funding, maintenance and improvements to those Crown land parcels. That changed a number of years back and that revenue goes to the State. That was a contentious issue with a number of councils. Sutherland council raised that a few times because they lost a significant revenue stream which was helpful in maintaining and making improvements to recreational lands in that reserve.

The Hon. MICK VEITCH: I spent a number of years on Young Shire Council.

The Hon. TREVOR KHAN: You were the cause.

The Hon. MICK VEITCH: I will ignore the Hon. Trevor Khan. In a number of instances the Government of the day was unable to find a sufficient number of people to take up a role as trustee, therefore the council was approached to become default trustees. How often does that happen and do councils have a view about that process?

Mr McBRIDE: I am not familiar with the whole system, it is broad. I have had some experience with the Crown caravan parks over the past decade or more. In that system councils were often imposed upon to take over from trusts who had let various caravan parks fall into disrepair or did not manage them properly. The various trusts fell apart or became dysfunctional and quite often it fell to local government to come in and pick up the game. That was quite a frequent occurrence going back 10 or 15 years ago. The game changed somewhat when the State Government was taking some of those parks back off the councils because they were good income generating parks. That is another story. That happened a bit on the North Coast. It has not been uncommon with that type of reserve, with Crown caravan park lands; I would not be surprised if it applied to other types of Crown reserves that were managed by trusts.

The Hon. MICK VEITCH: The Minister gave evidence earlier and I asked about whether or not he was going to present the proposed bill as an exposure draft and he indicated probably not.

The Hon. TREVOR KHAN: He put it a little stronger than that.

The Hon. MICK VEITCH: He said, "No, that will not be happening." It is a significant change. Do you have a view as to whether there should be an exposure draft? To be fair to the Minister, he said in his view there had been considerable consultation around the process. They are the two sides of the argument. Mr Shoebridge suggested it be tabled in the Parliament and left to lie on the table for a period of time so people could see what is in it. What are your views about how the bill should be treated once it is prepared and ready to go?

Ms RYGATE: Given that we have a strong and direct interest in this legislation, like other bits of legislation, we would generally be supportive of an exposure draft rather than not. Even though you can have a pretty high level of agreement on the principles, the actual wording of the legislation makes an enormous amount of difference as well.

Mr DAVID SHOEBRIDGE: Some people say it is important.

Ms RYGATE: The devil is always in the detail and you need to see exactly how it is drafted to be sure that the intent is the intent you would wish the legislation to reflect and there are not any unintended consequences. We are always keen to see exposure drafts of legislation if at all possible. I would say that the process that has been gone through over a number of years in this Crown lands process has been a pretty good one in terms of people having ample opportunity to have their say.

The Hon. TREVOR KHAN: Exhaustive in fact.

Ms RYGATE: I would not want to sound entirely negative about that. I think Mr Shoebridge is right, you never know what the legislation says until you see the whites of its eyes..

The Hon. MICK VEITCH: It could be in the regulations.

Ms RYGATE: That is always interesting.

The Hon. MICK VEITCH: The Minister did not rule out that there would be regulations.

The Hon. TREVOR KHAN: No, he said there would be.

Ms RYGATE: We should have arrived earlier, it sounds like it was interesting.

The Hon. MICK VEITCH: With regard to the pilots that were conducted we have not had much feedback about that or sighted that. Have you sighted any review of the pilots and are you aware of other councils that would like to look at the local land pilots to see how it went?

Ms RYGATE: There has been general feedback from the pilots that they went pretty well and the councils that were involved gave us that feedback. I have not seen a written report.

The Hon. MICK VEITCH: Nor have we.

Ms RYGATE: The feedback we have received is that it was a good and fair process. The gap in it, as I suggested earlier, was with the Aboriginal perspective and we are very pleased that is going forward. It is critical that process continues with Aboriginal people and the local Aboriginal land councils. The councils that were involved in the pilots to date have said it was good. You get a good look at all of the Crown land in a particular area and have a rational conversation about the best way to care for that land and manage it in the future.

Mr McBRIDE: I would confirm that the feedback that we have had to date is that the pilots have been quite successful and councils are happy with the outcome. The principles that were promised to be applied have been applied in the pilot process, so it has given a bit more confidence in the process, given councils more confidence particularly about issues such as the forced transfer of unwanted land; they are a lot more trusting on that issue now.

The Hon. TREVOR KHAN: Do you envisage if the proposed legislation, whether it is tabled or not, goes through that the process of dealing with councils will be as has been done in the pilot, that is, that groups of councils will be approached and there will be a sort of interactive exchange of information?

Ms RYGATE: That is certainly what we would be looking for and that could be our fervent hope as a result of—

Mr DAVID SHOEBRIDGE: Groups of councils?

Ms RYGATE: Each council, but they would probably do them in tranches, I think, because you could not do them all at once. They might be able to do half a dozen and then do the next half a dozen or whatever it might be. I do not mean doing them all together around the one big table.

The Hon. SCOTT FARLOW: To that point, how much do you understand of that process? Is it a council makes certain suggestions and puts forward their determination of land and the like or is it everybody sitting around the table and saying this is what we think about each parcel of land?

Ms RYGATE: My understanding of the pilot is that Lands came to the table with these are all the bits of land here; there is a set of criteria about ongoing State significance or whatever and so on down the line, and then there is the discussion around each bit of the Crown land in that local government area to form some view about what should happen with it.

Mr DAVID SHOEBRIDGE: What about the land that may not have had State value, that might have risen above local value? Not everything you could identify is State significant or that is only local; there is land that has clear regional value from a north part of Sydney or a chunk of the mid-west, particularly value land. What happened in the regional land in that?

Mr McBRIDE: I think it was generally State land.

Mr DAVID SHOEBRIDGE: So is State land everything that was not local land?

Mr McBRIDE: That was not local or Aboriginal. That was in the pilots. I do not think they have necessarily dealt with an alternative approach as yet.

Mr DAVID SHOEBRIDGE: Has the Government been clear with you about how it is going to work?

Mr McBRIDE: Not on a regional basis as yet.

Mr DAVID SHOEBRIDGE: Because you would agree with me not everything falls into a neat dichotomy of State or local, does it?

Mr McBRIDE: No, and with Crown land there is such a large and diverse portfolio of land—different types of land uses, different types of land—

Ms RYGATE: And different types of values as well—conservation value or social value or recreational value.

Mr McBRIDE: —that it is very hard to generalise. So, yes ,there are certainly things that should be looked at on a regional basis and perhaps regionally by regional groups of councils but also in conjunction with the State Government.

Mr DAVID SHOEBRIDGE: In terms of protecting the interests of Aboriginal people in the State, one of the mechanisms, of course, is using Aboriginal land councils as a sort of trigger, but you would know that there are some Aboriginal land councils that are functional and some that are deeply dysfunctional and that there are also a bunch of Aboriginal traditional owners, many Aboriginal traditional owners who have independent interests in land outside the land council. How does local government see those traditional owners being involved in the process under a reformed Act and what do you do where the land council is dysfunctional?

Ms RYGATE: You are right, it is really complicated, and you have also got the interplay of the native title arrangement as well. I do not know that we have got the answer about how to do that perfectly, but the thing that we have been pushing with Lands and that we are happy that they have listened to is that the land council at least needs to be at the table.

Mr DAVID SHOEBRIDGE: Do you accept that there is a place for traditional owners as well, entirely separate from land councils, to be involved and how do you think local government can best work to make sure that traditional owners are also notified so that their rights are not extinguished?

Ms RYGATE: I do not think local government has turned its mind to that specific issue. Do you have any thoughts about how that might happen that we would be happy to canvass?

Mr DAVID SHOEBRIDGE: I do, but I do not know if that is the role of this Committee. Clearly you would accept though that there needs to be a notification that goes beyond just the land council that informs the local Aboriginal community more broadly when these things are happening. Do you agree with that?

Ms RYGATE: It is not in council's interest to shut Aboriginal people out of the process. The precise mechanisms, and given the complexities of the arrangements for Aboriginal community might be different—

Mr DAVID SHOEBRIDGE: But you just cannot start and end with the land council. You would agree with that in your experience around the State?

Ms RYGATE: We are very happy that the land council is now in the equation because that was not the case previously.

Mr DAVID SHOEBRIDGE: I agree with you but I am saying that you cannot just start and end with the land council, can you? I am putting that proposition to you.

Ms RYGATE: I would like to see what the alternative options are, I suppose, that are practical.

Mr DAVID SHOEBRIDGE: Traditional owners.

Ms RYGATE: But how would you do it?

Mr DAVID SHOEBRIDGE: Do you agree that the legislation and the process should endeavour to ensure that traditional owners are notified and have a role so that their rights are not extinguished?

Ms RYGATE: We are not saying that the lands councils are the be-all and end-all. I think I have said quite consistently this afternoon that we are interested in Aboriginal people having their say. I was not talking about a particular institution necessarily, even though that seems to have been the proxy to get at least some kind of voice in this process. I think local government would be open to whatever the best mechanism is to make sure that the Aboriginal people have an opportunity to be part of this process and get a fair go out of it.

The CHAIR: Just a question about plans of management: We heard that it is not necessary that all are signed off but in terms of the City of Sydney there were some that have still got to be signed off and there seems to be—

The Hon. TREVOR KHAN: They said all.

Mr DAVID SHOEBRIDGE: To have legal effect.

The CHAIR: The point is—it is not so much about that—there are different plans of management that need ticking off at the senior level of the Minister himself or delegated authority. Would it be fair to say that

there are probably plans of management where if there is no contention publicly that could go through sort of certain trigger points, that it would not need to go to the Minister if it is a low-key situation, because a lot of councils do have to wait to get the final tick-off?

Ms RYGATE: Yes and I think one of the attractions in a different sort of process and taking the Minister out of the equation is that you do not have to send things that are really insignificant through that process.

The CHAIR: That is my point: If there is a public interest test as part of the trigger point and if you have got submissions to it, that, to me, is a major trigger point that you might have people who want to say, "No, we are not happy", but if it is a straightforward one it seems to me that it is a waste of time trying to send it all the way up the line to get someone at the very top to tick that off when the whole community believes in it.

Mr McBRIDE: That is one of the primary advantages of transferring land like that that is already under the care and control of management of councils. One of the advantages of transferring ownership to the council is that that is where the buck stops—the plans of management can be signed off by the council after going through proper processes.

Mr DAVID SHOEBRIDGE: Do any of your member councils complain about delay in getting plans of management back? Do you have any cases you can put forward to show that that is anything more than a theoretical problem?

Mr McBRIDE: We probably have not had too many complaints about that because councils just carry on regardless of whether they are signed off because if the Minister is not signing off they will carry on to the best of their intentions according to the plan.

The Hon. TREVOR KHAN: As was demonstrated by Sydney.

Mr DAVID SHOEBRIDGE: They have plans of management that extend beyond Crown land.

The CHAIR: My point is, rather like DAs, 90 per cent or more of them go through local councils with no need to go any further because everyone understands that is the system—it is has been critiqued, it has been valued, it has been certified. It is always the 4 per cent that seems to get the public unleashed, so why are we stopping 90 per cent from going forward if it does not need to be ticked off at that level?

Ms RYGATE: That sounds pretty logical to me.

Mr DAVID SHOEBRIDGE: But is that happening? Are they being stopped? How many?

The CHAIR: It is not about that, it is time delays.

Ms RYGATE: And also the administrative expense and all that kind of thing of doing that extra step.

The Hon. SCOTT FARLOW: I take it there are plenty of councils that are not preparing plans of management for their Crown land?

Mr McBRIDE: No, one of their responsibilities as trustees is to prepare plans of management.

The Hon. SCOTT FARLOW: Even if they are not getting signed off, they are still preparing them?

Mr McBRIDE: Yes.

The CHAIR: Absolutely.

Ms RYGATE: They take their legal obligations seriously.

The CHAIR: They are big. Plans of management take a lot of resources because they do them for sportsgrounds with bollards and rocks and plantings. They are worth hundreds of thousands if not millions of dollars. When they are completed they are worth a lot of money.

Mr DAVID SHOEBRIDGE: Are they being done for all Crown land in accordance with statutory obligations?

The CHAIR: No, not every parcel. They are done strategically in certain areas to meet the community's expectations. That was not my point. My point was do they all have to go to the top of the tree to get ticked off.

Ms RYGATE: No.

The CHAIR: I do not think they do because we do not treat development applications that way. You also note in your submission on page 6 that the new legislation will remove red tape and in brackets it states,

"(Local Government NSW argued for this and agrees)". Will you extrapolate what type of red tape you are agreeing to get rid of?

Ms RYGATE: I think this is about if council wants to build a toilet block or something on a bit of land that it has had under its care, control and management for yonks, and it has to go to the Minister to be approved, stuff like that, which seems—

The Hon. TREVOR KHAN: Is that right, a toilet block?

Mr McBRIDE: Yes, improvements to it, anyway.

Mr DAVID SHOEBRIDGE: Not if it is consistent with the plan of management.

Mr McBRIDE: Not if it is consistent with the plan of management.

Mr DAVID SHOEBRIDGE: Problem solved.

The CHAIR: That is only if the plan of management [POM] is ticked off. There are a lot of reserves down my way where if you want to put a toilet block on it, you do not do a POM. It is the fact that there has been one there in the past or the demand of public use indicates that one is needed.

Mr DAVID SHOEBRIDGE: It goes to the department, it does not go to the Minister.

Mr McBRIDE: You are talking about getting rid of a lot of red tape.

Ms RYGATE: But it has to go there.

Mr McBRIDE: It still has to go to the department.

The CHAIR: It is Crown lands; they have the authorisation.

Mr DAVID SHOEBRIDGE: But on the important blocks of land you have a plan of management and if you do things in accordance with the plan of management, no problem.

The Hon. TREVOR KHAN: You disagree with her evidence, we understand that. It is fine, David. Anything she says on this you are going to disagree with and that is fine.

Mr DAVID SHOEBRIDGE: The toilet block example excludes all the public land where there is a plan of management in place that allows for toilet blocks.

Ms RYGATE: It still is a bit of red tape that can be removed in the circumstances where it is relevant.

The Hon. LOU AMATO: We are talking about removing a lot of red tape. It certainly will streamline the whole process.

Mr McBRIDE: For upgrading caravan park facilities and amenities and so on, yes, it has to go to the department for approval. They have to approve the building designs, all of that type of thing. There is an extra layer beyond the council that has to be dealt with in doing that, and often before doing a significant upgrade to a Crown reserve caravan park there will be a requirement to do a new plan of management because you might be substantially improving but at the same time changing that caravan park. So there are layers to go through at the bureaucratic level, not always the ministerial level, but still the departmental or agency level, and they add time to the process. Time adds expense. It does happen.

The CHAIR: When you have an authority sitting there like local councils that say yes to million-dollar private projects, yes to the little house down the road, surely they can say yes to a lot of things unless it is triggered by significant public interest. There is no need to go further up the chain and waste all that time. They are valuable resources that can be put to use somewhere else. We are done, unless there are any further questions?

The Hon. MICK VEITCH: Do you want a hand down from your soapbox or are you okay?

The CHAIR: There are some advantages to being the Chair.

Mr DAVID SHOEBRIDGE: He is on his throne; there has been a lot of discussion about toilets.

The CHAIR: Ms Rygate made a poignant comment that there are lots of people around that are friends of local government. There is no truer word. I thank you for your time this afternoon. You have come a long way to have input. As you represent such a large body that could have huge implications from this legislation, it is great you are here. If you have taken questions on notice, we encourage you to return them in 21 days. The Committee secretariat will assist you if there are further questions on notice. You are welcome to

watch the inquiry as we go through the different regional areas and if you want to make comments on some of the feedback before we get to the last hearing day in Sydney, we might be able to take some feedback from you.

Mr DAVID SHOEBRIDGE: I will ask you a question on notice now. What do you think have been the issues raised in the hearing since we met today? If you could take that on notice, I would appreciate it.

The CHAIR: That concludes today's hearing.

(The witnesses withdrew)

The Committee adjourned at 4.44 p.m.