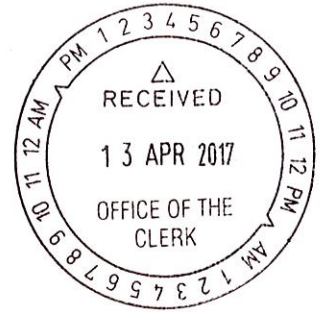




The Hon Paul Toole MP

Minister for Lands and Forestry
Minister for Racing



INT17/40203

Mr David Blunt
Clerk of the Legislative Council
NSW Legislative Council
Parliament House
Macquarie Street
SYDNEY NSW 2000

Dear Mr Blunt

I am pleased to submit the NSW Government response to the inquiry into Crown land in New South Wales. The NSW Government supports, or supports in principle all of the recommendations of the report.

Should you wish to discuss the NSW Government's submission, please contact Alison Stone, Deputy Director General - Lands, Department of Industry, on (02) 49205001.

Yours sincerely

Paul Toole MP
Minister

Encl

13 APR 2017

*Received by me at
4.15 pm on Thursday
13 April 2017 and
authorised to be printed*

*on behalf of the
Clerk of the Parliaments*

NSW Government response to Parliamentary Inquiry into Crown Land

The NSW Government welcomes the Report from General Purpose Standing Committee no. 6 into Crown land in New South Wales. The NSW Government acknowledges the valuable work of this Inquiry and the wide ranging recommendations. The NSW Government also acknowledges the valuable input of the 350 or so individuals, councils, Aboriginal Land Councils and community and other organisations that lodged submissions to the Inquiry and/or gave evidence at hearings. The NSW Government supports, or supports in principle, all of the recommendations of the report.

In recent years, the NSW Government has undertaken the significant task of reviewing and updating the way Crown land is managed in NSW to ensure it continues to meet the needs of current and future generations. In 2014, the NSW Government conducted the first major review of Crown land in more than 25 years – the Crown Lands Management Review. The review was underpinned by an extensive consultation process with more than 600 submissions received from a wide variety of respondents, and ongoing consultation with key stakeholder groups.

The NSW Government is already in the process of implementing key recommendations from the Review to improve the management of Crown land with the key initiative being the new *Crown Land Management Act 2016* which was passed by the NSW Parliament in November 2016. The new Act provides for modern and transparent management of Crown land, delivering better social, environmental and economic outcomes, and facilitating more effective community engagement. The Act provides a stronger and more flexible regime to allow the more effective management of Crown land. It is anticipated that the new Act will commence in early 2018. The new Act addresses 9 of the 20 recommendations of the report.

Another initiative coming out of the Crown Lands Management Review is the Land Negotiation Program which is currently underway. This program aims to ensure NSW Crown land is held by the most appropriate landholder to achieve the most positive social, economic, cultural and environmental benefit for the people of NSW, whilst retaining land of State significance. The program involves voluntary multi party land negotiations between the NSW Government, the NSW Aboriginal Land Council (NSWALC), the relevant Local Aboriginal Land Council and the relevant local council in an area. These negotiations provide the potential for bulk settlement of Aboriginal land claims and provide greater certainty to all parties over the use and management of Crown land. This program addresses 4 of the 20 recommendations of the report. Several recommendations about Aboriginal Land Agreements and Aboriginal land claims overlap with recommendations from the recent Parliamentary Inquiry into Economic Development in Aboriginal Communities. The responses to both inquiries are integrated and the Aboriginal Land Agreement progress supports economic development in Aboriginal communities.

The remaining recommendations of the report are supported or supported in principle.

The NSW Government is committed to delivering a modern Crown land management system which embeds economic, social, cultural and environmental considerations into decisions about the Crown estate. Significant progress has been made with the passing of new legislation, which combined with other programs and business improvements will ensure that Crown land is managed in a manner that is contemporary, accountable and responsive to the needs of current and future generations in NSW.

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| 1. | That the NSW Government consider additional legislative protections to ensure Local land is retained as public land and managed in the public interest. | <p>Support</p> <p>The new <i>Crown Land Management Act 2016</i> (the Act) includes a number of protections to ensure land is not sold by local councils where it needs to be retained for a public purpose.</p> <p>Specifically, Local land vested in local councils will be transferred as community land under the <i>Local Government Act 1993</i> in most circumstances. Community land cannot be sold by Councils and all community land must be managed in accordance with community focused objectives under a plan of management.</p> <p>There are only two limited scenarios where Crown land can be vested as operational land under the <i>Local Government Act 1993</i>. These are:</p> <ul style="list-style-type: none"> • where land is already being used for a demonstrated operational purpose and is not being used by the broader community, for example Council works depots, water towers and waste treatment plants, and • where categorisation as operational land is required to allow the current land use to continue, such as where Crown land is being used for long term residential accommodation or cemeteries. As these uses support the community, it is in the public interest to allow them to continue. <p>The Act also provides powers for the Minister to put covenants on title to land. There may be circumstances where it is appropriate to put covenants on title to land that is vested in local councils to restrict how the land is used and managed into the future. This will be considered on a case by case basis, as land is put forward for transfer of ownership.</p> <p>These protections ensure that public land is used and managed in the public interest.</p> |

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| 2. | That the Department of Industry – Lands prepare a strategic plan, in consultation with local governments, that establishes how Crown land will be effectively managed, maintained and resourced under the new Crown land legislative framework. | <p>Support</p> <p>The <i>Crown Land Management Act 2016</i> requires the Government to prepare a Strategic Plan for the management of Crown land. The Act requires consultation to occur on the Strategic Plan, in line with the Community Engagement Strategy.</p> <p>The Strategic Plan will be prepared within two years of the commencement of the Act, as required by the Act.</p> |
| 3. | That the NSW Government include a provision in new Crown land legislation for the appointment of a Crown Lands Commissioner to oversee the implementation and management of new Crown land legislation. | <p>Support</p> <p>The <i>Crown Land Management Act 2016</i> allows for Crown Land Commissioners to be appointed. Commissioners will be able to investigate and report on anything in relation to the administration of the Act, including its implementation and management.</p> |
| 4. | That the NSW Government develop a proposal to be included in new Crown land legislation that will recompense local councils for owning and managing Crown land as Local land, including transferring to local government equitable access to funds from any money generating capabilities on the land, such as telecommunication towers. | <p>Support</p> <p>The <i>Crown Land Management Act 2016</i> expressly provides that all income generated from land transferred to local councils will be able to be retained by the local councils.</p> <p>In addition to this, Local land transfers can only occur with the agreement of the local council.</p> <p>This ensures local councils will have the resources to manage land that is transferred.</p> |
| 5. | That the NSW Government include a provision in new Crown land legislation for showgrounds, travelling stock routes and reserves and Scout/Girl Guide halls to be classified as State land. | <p>Support in principle</p> <p>The <i>Crown Land Management Act 2016</i> effectively presumes that all Crown land (including showgrounds, travelling stock routes and reserves and Scout/Girl Guide halls) is State land.</p> <p>Crown land cannot be designated as “Local land” unless the Minister is satisfied that the land is suitable for local use, having regards to the Local land criteria which will be prescribed in the regulations.</p> |

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| 6. | <p>That the NSW Government include in new Crown land legislation consultation methods based upon plans of management that currently operate in the <i>Local Government Act 1993</i>, including model plans of management for different classes of land.</p> | <p>Support</p> <p>Of the 34,000 Crown reserves, there are approximately 7,800 Crown reserves that are managed by local councils. Under the <i>Crown Land Management Act 2016</i>, all of these reserves will need to have plans of management that follow the community consultation requirements under the <i>Local Government Act 1993</i>.</p> <p>The consultation requirements for Crown reserves managed by other groups will be set out in the new Community Engagement Strategy required by the new Act. The Community Engagement Strategy will ensure that there is an appropriate level and method of engagement with the community about decisions that affect their use and enjoyment of Crown land.</p> <p>In some cases, the Community Engagement Strategy may require consultation above and beyond that which is in the <i>Local Government Act 1993</i>, depending on the class of land or the decision being considered. In other cases, detailed consultation may not be appropriate, for example, detailed consultation on drainage reserves may not be required.</p> <p>The Community Engagement Strategy will allow for flexibility in the context of meaningful consultation where the community is affected.</p> <p>The NSW Government is intending to release a draft Community Engagement Strategy for consultation as required by the new Act in the second half of 2017.</p> |
| 7. | <p>That the Department of Industry- Lands develop guidelines to ensure that plans of management and leases on Crown land are flexible enough to allow for small community-oriented commercial activities (for example pop-up diners or coffee vans) to operate for the benefit of both the community and the manager or lessor of the land.</p> | <p>Support</p> <p>The <i>Crown Land Management Act 2016</i> provides flexibility to enable the management of a broad range of leases and licences on Crown land which can accommodate small community-oriented commercial activities.</p> <p>Under the <i>Crown Land Management Act 2016</i> parties can negotiate provisions of leases and licences. This ensures the contracts are tailored to the parties needs and recognises that a one size fits all approach is not appropriate for all circumstances.</p> |

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| | | <p>In addition:</p> <ul style="list-style-type: none"> • the Act provides flexibility in granting leases and licences to allow for commercial activities operating from Crown reserves in appropriate circumstances; • plans of management can allow for activities to operate for the benefit of both the community and the manager of the land, and • there are a comprehensive rebate, waiver and concession provisions which ensures that community benefits can be taken into account when considering rentals. |
| 8. | That the NSW Government consider introducing a shared equity scheme for affordable housing on Crown land. | <p>Support in principle</p> <p>The NSW Government will explore this and other options through its cross government working group on housing affordability, which is aiming to make housing more affordable for NSW residents.</p> |
| 9. | That the Department of Industry – Lands undertake a stocktake of all Crown land in New South Wales before any land is transferred to local government as Local land under proposed new Crown land legislation. | <p>Support</p> <p>A stocktake of all Crown land in a local government area will be undertaken before the land is considered for transfer to a local council as Local land. The stocktake will involve an assessment of the land against the State and Local land criteria.</p> <p>The stocktake will be implemented through a staged process on a region by region basis.</p> |
| 10. | That the Department of Industry – Lands undertake a digitisation project of maps identifying Crown land in New South Wales and publicly release an accurate register of Crown land. | <p>Support in principle</p> <p>The Department of Industry - Lands is scoping business requirements and technology solutions to upgrade its ICT systems, including the potential to provide a spatial view of Crown land in NSW via a web based viewer.</p> |

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| 11. | That the NSW Government, when implementing the stocktake of Crown land in New South Wales at recommendation 9, must consider an audit of its ecological value including its local, regional and state environmental significance. | <p>Support in principle</p> <p>The stocktake of Crown land will include an assessment of the land against State and Local land criteria. These criteria include a detailed consideration of the ecological, environmental and heritage values of the land with reference to existing data sources from agencies such as Office of Environment and Heritage.</p> |
| 12. | That the Department of Industry – Lands report to General Purpose Standing Committee No. 6 in March, July and December 2017 regarding the implementation of recommendations made by the Auditor-General in the report entitled ‘Sale and lease of Crown land’, published 8 September 2016. | <p>Support in principle</p> <p>The NSW Government supports transparency about the progress of implementing recommendations from the Auditor-General’s report into the sale and lease of Crown land.</p> <p>To reduce duplication of reporting, existing reporting processes through the parliament’s public accounts committee and the Department of Industry’s Audit and Risk Committee will be used instead of reporting to the General Purpose Standing Committee No. 6 in March, July and December 2017.</p> <p>The NSW Government is required to report to the Parliament’s Public Accounts Committee on implementation of the Audit Office recommendations. This committee conducts reviews or holds inquiries into matters raised in performance audit reports. The same report will be sent to the General Purpose Standing Committee No. 6. This process ensures there is a strong monitoring and public reporting regime in place.</p> <p>The Department of Industry’s Audit and Risk Committee will monitor the implementation progress of the Auditor- General’s recommendations. The Audit Office is represented on this committee.</p> <p>The department has commenced work on all six recommendations of the Auditor – General.</p> |
| 13. | That the Department of Industry – Lands explore the feasibility of including an appeals mechanism, adjudicated by an independent arbiter, for decisions | <p>Support in principle</p> <p>The <i>Crown Land Management Act 2016</i> (the Act) allows the development of regulations conferring jurisdiction on the Land and Environment Court to determine appeals against any decisions under the</p> |

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| | regarding Crown land plans of management, sales and leases. | <p>Act regarding Crown land. This could include a range of decisions, including decisions about plans of management, sales and leases.</p> <p>The appropriateness and feasibility of such an appeals mechanism will be considered in developing the regulations. The regulations and new legislation are expected to commence in 2018.</p> |
| 14. | That the Minister for Lands and Water increase staffing levels for the Crown roads disposal program, increase the minimum time for publication of the proposal to dispose of Crown roads and consider methods to widen the scope of public notification so that a broader group of interested stakeholders are made aware of proposed land sales. | <p>Support in principle</p> <p>The department reviewed the resourcing allocated to the Crown Roads Disposal Program in 2016 and as a result, implemented a new structure and additional ongoing staff which increased ongoing roles in the program to 65.</p> <p>All road closure applications are advertised online and advertisements are published in local print media which allows submissions to be made by any interested parties. Consultation is also specifically undertaken with all affected government agencies and adjoining land holders.</p> <p>The statutory advertising period for road closures is 28 days, and this will be maintained. Extensions can be sought by interested parties on a case by case basis.</p> |
| 15. | That the Minister for Lands and Water ensure that Crown roads will only be transferred as Local land on a voluntary basis to local government once the Department of Industry – Lands has reduced the current backlog of closure applications to a manageable level. | <p>Support</p> <p>Crown roads will not be considered for transfer to local councils as “Local land” under the program.</p> <p>Local councils will continue to be consulted as part of the Crown road closure and disposal application process and transfers of Crown roads to local councils will be considered where the transfer is required for a public purpose</p> |
| 16. | That the Minister for Lands and Water increase the funding for the Local Land Services and amend its governance structure to allow input from drovers and graziers at board level. | <p>Support in principle</p> <p>A number of changes are being made to Local Land Services (LLS) to strengthen the LLS model and remove barriers for farmers and communities to engage with LLS. The reforms will also create a more efficient organisation and allow its board and staff to provide locally-responsive and innovative services to its customers.</p> |

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| | | <p>The NSW Government is working with LLS to explore options for LLS' ongoing financial sustainability, including for managing the TSR network. This may include options for identifying additional sources of revenue, and a new fee-for-service growth strategy.</p> <p>Improvements to the LLS governance framework are also being implemented. These improvements include:</p> <ul style="list-style-type: none"> • a new structure for the central Board to improve strategic focus, • tighter board processes, and • improved communications about roles, responsibilities and decisions. <p>The LLS model is based on regional service delivery, and this will not change under the new arrangements.</p> <p>The governance model already allows for extensive engagement and participation at Board level for regional community members across a range of rural professions. This includes the board recruitment process for Ministerial Board Member appointments and through the LLS Election to be held on 31 May 2017. Any occupier of rateable land in a region who is over 18 years of age may nominate as a candidate for election in that region.</p> <p>The NSW Government does not support governance arrangements targeting a specific rural occupation. Instead, we intend to have representation at the board level which reflects broad experience and backgrounds.</p> |
| 17. | <p>That the Minister for Lands and Water:</p> <ul style="list-style-type: none"> • ensure that the Local Land Services adopt consistent State-wide policies and practices regarding travelling stock routes and reserves, • amend the Local Land Services permit process for drovers and graziers accessing travelling stock routes to | <p>Support</p> <p>Significant improvements are being implemented to support the management and permitting processes for Travelling Stock Reserves (TSRs) across the State. Specifically:</p> <ul style="list-style-type: none"> • Consistent state-wide TSR policies – in 2016 LLS published the <i>NSW Travelling Stock Reserves State Planning Framework 2016-21</i>. This framework will be implemented across the state through stakeholder driven regional Plans of Management, and provides a consistent and |

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| | <p>introduce a one-stop-shop, which provides an annual permit and an ability to pay online,</p> <ul style="list-style-type: none"> • amend the Local Land Services licencing process for beekeepers on travelling stock reserves to introduce a one-stop-shop, with uniform State-wide fees, and consider issuing licences for more than one year, and • introduce a Local Land Services ranger internship program where all rangers must complete training with drovers and graziers. | <p>integrated management framework for TSRs.</p> <ul style="list-style-type: none"> • TSR permit process - LLS is committed to continuous service improvement including where opportunities exist to streamline and provide consistency in all aspects of TSR management and service delivery. One of the key elements in the LLS ICT review is an inclusion of a customer self-serve interface that will support these elements. LLS is working to develop this system. • Apiary permits – The NSW Government is developing a whole-of-government policy framework for the management of apiary sites on public lands, including travelling stock reserves, State forests and National Parks. The framework will streamline administrative arrangements and support industry growth and development through: <ul style="list-style-type: none"> ○ a common framework for the administration of beekeeping sites on public land across NSW, ○ a consistent and transparent process for allocation of sites, ○ a single pricing structure across all public land sites, ○ long-term permits with greater clarity around tenure, ○ a central point of information on site location and availability, and ○ standard permit conditions. <p>The framework will be implemented progressively in 2017. Further information is available on the DPI website at: http://www.dpi.nsw.gov.au/animals-and-livestock/bees/policy-framework</p> <ul style="list-style-type: none"> • Ranger internship program: LLS is committed to ensuring that its staff have the skills and knowledge to provide consistent and appropriate levels of service to all TSR users. It is unlikely that this will require an internship for rangers |
| 18. | That the NSW Government ensure the new Crown land legislation recognises the fact of prior and continuing Aboriginal custodianship of Crown land | <p>Support</p> <p>This recommendation was addressed through the new <i>Crown Land Management Act 2016</i>. The Act, for the first time, includes provisions for Aboriginal management of Crown land, acknowledges the need to</p> |

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| | and operates together with the <i>Aboriginal Land Rights Act 1983</i> . | <p>facilitate Aboriginal peoples' use of Crown land and appropriately references the rights given to Aboriginal people through the State's <i>Aboriginal Land Rights Act 1983</i> and the recognition of native title through Commonwealth <i>Native Title Act 1993</i>.</p> <p>Specifically, the <i>Crown Land Management Act 2016</i>:</p> <ul style="list-style-type: none"> • includes an object of facilitating the use of Crown land by Aboriginal people in recognition of the spiritual, social, cultural and economic importance of land to Aboriginal people; • includes an object about the co-management of reserved Crown land; • explicitly recognises and support Aboriginal land rights, native title rights and interests and Aboriginal people's involvement in the management of Crown land; • expressly recognises local Aboriginal Land Councils and Native Title Prescribed Body Corporates as appropriate Crown land managers; and • includes provisions to ensure reserve managers recognise the role of Aboriginal people in the management of a reserve and the special significance of land to Aboriginal people. |
| 19. | That the Department of Industry – Lands prioritise the conduct and completion of the Aboriginal Land Agreements pilot program in the local government areas of Federation Council, Northern Beaches Council, Tamworth Regional Council and Tweed Shire Council, with an evaluation of the pilot to be made publicly available by the end of 2017. | <p>Support</p> <p>Work to support proposed Aboriginal Land Agreements in the Federation, Northern Beaches, Tamworth and Tweed local government regions is well advanced.</p> <p>Proposed negotiations will be evaluated on completion across all pilot areas to identify achievements and learnings. Findings from the evaluations will be released publicly. This is anticipated to be after 2017.</p> |

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| 20. | That the Minister for Lands and Water develop a policy to prioritise Aboriginal land claims for economically viable land. | <p>Support</p> <p>The Department of Industry – Lands currently prioritises Aboriginal land claims which are identified by LALCs and NSWALC as having potential for economic development or cultural significance.</p> <p>The Department of Industry – Lands encourages LALCs to prioritise lands which have a high strategic value. This could be strengthened through further involvement of NSWALC and the Registrar in working with LALCs to identify priority claims.</p> <p>The department will review the prioritisation process in consultation with the NSW Aboriginal Land Council and the Registrar.</p> |