
New South Wales Auditor-General's Report

Performance Audit

Sale and lease of Crown land

Department of Industry – Lands



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In accordance with section 38E of the *Public Finance and Audit Act 1983*, I present a report titled **Sale and lease of Crown land: Department of Industry – Lands**.

A handwritten signature in black ink, appearing to read 'Margaret Crawford'.

Margaret Crawford
Auditor-General
8 September 2016

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Executive summary

Crown land is land owned by the State of New South Wales. Some Crown land is used for public purposes like sports and recreation, while other Crown land is managed and protected for its environmental or heritage value. Crown land can also be leased, licensed or sold.

The Department of Industry - Lands (the Department) is responsible for managing, leasing and selling Crown land. The Department currently manages, either directly or indirectly, more than 580,000 parcels of land covering over 33 million hectares, which is around 42 per cent of the State. Ninety-six per cent is in the far west of the State and is used mostly for grazing and agriculture.

The Department administers around 8,500 leases. The most common uses of leased land include grazing, golf clubs, bowling clubs, tennis courts and aged care services. The average annual return for each of these leases is less than \$10,000. Of the leases overseen by the Department, 275 have an annual rental return greater than \$20,000 and are considered 'high value'. This includes leases for retail and commercial purposes such as cafes, caravan parks and marinas. The average annual return for these high value leases is around \$52,000.

There were 225 Crown land sales between 2012-15, comprising a total of 1,856 hectares and returning nearly \$22 million to the government. A total of 27 high value leases were approved in the same period.

This audit assessed whether the Department is managing the sale and leasing of Crown land effectively. In assessing this, the audit examined the Department's:

- strategy for the use of Crown land
- compliance with legislative requirements and policies for Crown land management
- systems for ensuring quality and transparency in decision-making for leasing and sales of Crown land
- engagement with stakeholders when leasing or selling Crown land.

Conclusion

The Department is not currently managing the sale and leasing of Crown land effectively. The Department has made some improvements recently, but these are not yet fully implemented and as such it needs to make a concerted effort to manage ongoing risks.

The Department's overall governance of decision-making for the sale and lease of Crown land is inadequate. Most guidance for staff is significantly out of date, which has led to inconsistent decision-making. There is low compliance with policy including in relation to rebates on rent, debt management, rent redeterminations and direct negotiation of leases and sales. Oversight of decisions has been limited, with no quality assurance or post-decision review processes. The Department has not monitored tenant compliance with lease conditions.

The Department complies with statutory requirements to notify the public about its decisions, but does not provide consistent opportunities for people to understand or have a say in decisions about the sale and lease of Crown land. Balancing the competing demands of multiple stakeholders in Crown land is challenging. There have been recent examples of better communication. However, consultation with stakeholders varies and does not always allow for meaningful opportunities for input.

The clarity of strategic direction for the Department's management of Crown land has improved over the last twelve months. This could be strengthened further with clearer indicators for social and environmental outcomes to assist the Department to achieve a better balance between the competing priorities involved in Crown land management. It would also enable the Department to demonstrate its achievements in these areas.

Recent improvements in oversight of decisions and strategy for Crown land

The Department changed its executive structure in October 2015 to provide better coordination of work across the Lands division, improve oversight of decision-making, and clarify accountability for achieving the Department's objectives. The restructured executive team has agreed on strategic objectives for the division and is currently finalising performance measures to track its achievements against these. While these are positive steps, most have commenced only within the last twelve months.

Policy and guidance is variable and decisions do not always comply with policy

The Department does not provide staff with clear and up-to-date policies and guidance to make decisions about Crown land sales or leasing. More than 1,300 pages of policies and guidance are currently in circulation, many of which have not been updated in the last decade. This exposes the Department to risk if inconsistent decisions are made by staff.

We found multiple examples where policies and guidelines have been applied inconsistently. For example, Department policy states rebates or waivers should not exceed 50 per cent of the rent for the lease. We found 71 organisations are receiving rental rebates and waivers of over 50 per cent, including some businesses which do not meet any of the eligibility criteria. The Department currently provides rebates and waivers totalling \$5 million per year, but could not explain why these have been granted to some businesses.

In March 2016, the Department released a direct negotiation policy which states that the sale or lease of Crown land will be by a genuine competitive process, unless there is a justifiable reason not to do so. While this is a positive step, one of the criteria for justifying direct negotiations is too broad and allows direct negotiation with most incumbent tenants.

Staff who negotiate and make decisions about the sale and lease of Crown land have only recently been trained in basic aspects of administrative law such as ethical behaviour, conflicts of interest and better decision-making. Not all staff have completed this training.

Limited oversight of leasing and sale decisions and tenant compliance

The Department does not have formal post-decision reviews or quality assurance systems for Crown land sale and leasing. Other areas of the Department have stronger systems in place which could provide a model for improvement.

The Department has a list of current leases that are problematic and require ongoing management. These leases were commonly described as 'legacy issues' by staff. The Department has done some work to manage the cases it is aware of, but still has limited understanding of whether further problematic leases exist.

Many leases are only reviewed when they are due for renewal. There has been no systematic checking of compliance with lease conditions during the term of a lease. This has resulted in the Department having limited understanding of whether tenants are complying with lease conditions. The Department introduced an audit process to begin addressing these issues on 1 July 2016.

Opportunities for community involvement in Crown land decisions are limited

The Department complies with statutory requirements to notify the public when it plans to sell or lease Crown land. However, it often does not provide opportunities for people to understand and have a say in decisions about Crown land. Its approach to community consultation has been focused on notification, rather than meaningful engagement. More recently, the Department has been more active in consulting with community members about decisions in selected high profile cases. Applying this more broadly and consistently would help it to address community concerns about the management of Crown land.

Decision-making about Crown land is not transparent

The Department's decision-making processes for selling or leasing Crown land are not clear to the general public or potential applicants for sales or leases. Negotiations are commonly held directly with selected applicants, with 97 per cent of leases and 50 per cent of sales

directly negotiated over the past four years. The Independent Commission Against Corruption (ICAC) guidelines¹ state that while direct negotiations are appropriate in some circumstances, they are closed processes that make it difficult to ensure and demonstrate to the public that value for money has been obtained.

Strategy for Crown land could be better balanced

The Department's strategic objective is to 'facilitate the use of land and natural resources to deliver social and economic benefit for NSW'. This is consistent with principles of Crown land management set out in Crown land legislation. However, economic and financial outcomes are more prominent than social and environmental outcomes in the Department's business plan.

Recommendations

The Department should:

By March 2017:

1. Resolve issues in the leasing portfolio by:
 - a) Developing a risk-based approach (considering characteristics including location, value and land use) to identify leases which:
 - do not comply with Department policy
 - do not have the correct market value rent, rebates, and waivers applied
 - are not being used for the permitted purpose
 - have aged debt that is not being actively managed.
 - b) Developing a plan to address issues identified and include targets for this in its 2017-18 business plan.
2. Clarify the criteria used to justify direct negotiations in its direct negotiation policy and consult with stakeholders likely to be affected by any changes.

By July 2017:

3. Improve consultation with stakeholders to provide opportunities for involvement in decision-making about Crown land sales and leases, especially in cases where a change to the way the land is used is proposed.
4. Include meaningful and specific performance measures that drive positive environmental and social outcomes in its future business plans and clarify accountability for achieving these outcomes.

By December 2017:

5. Improve the support provided to staff to make good decisions by:
 - producing simplified and consolidated operational policies, guidelines and procedures for processing sales and leases
 - continuing to provide regular training for staff in better decision-making, ethical behaviour, ICAC direct negotiation guidelines, and delegations
 - implementing a regular risk-based review of compliance with policies.
6. Improve transparency of decisions by:
 - publishing policies, processes and expected processing times for Crown land sales and leases
 - publishing information about upcoming and completed Crown land sales and leases
 - publishing quarterly reports on key Crown land sale and lease data, such as the number and value of leases and sales and the number directly negotiated.

¹ ICAC Direct Negotiations guidelines for managing risk 2006.

Introduction

Crown land background

Crown land is a vast and complex responsibility

Crown land comprises approximately 42 per cent of all land in New South Wales and supports a wide range of important environmental, economic, social and community activities. Most of the NSW coast and waterways are Crown land, as are some iconic parts of Sydney including Hyde Park and Bondi Beach. Many community facilities such as town halls, sports fields and racetracks are on Crown land.

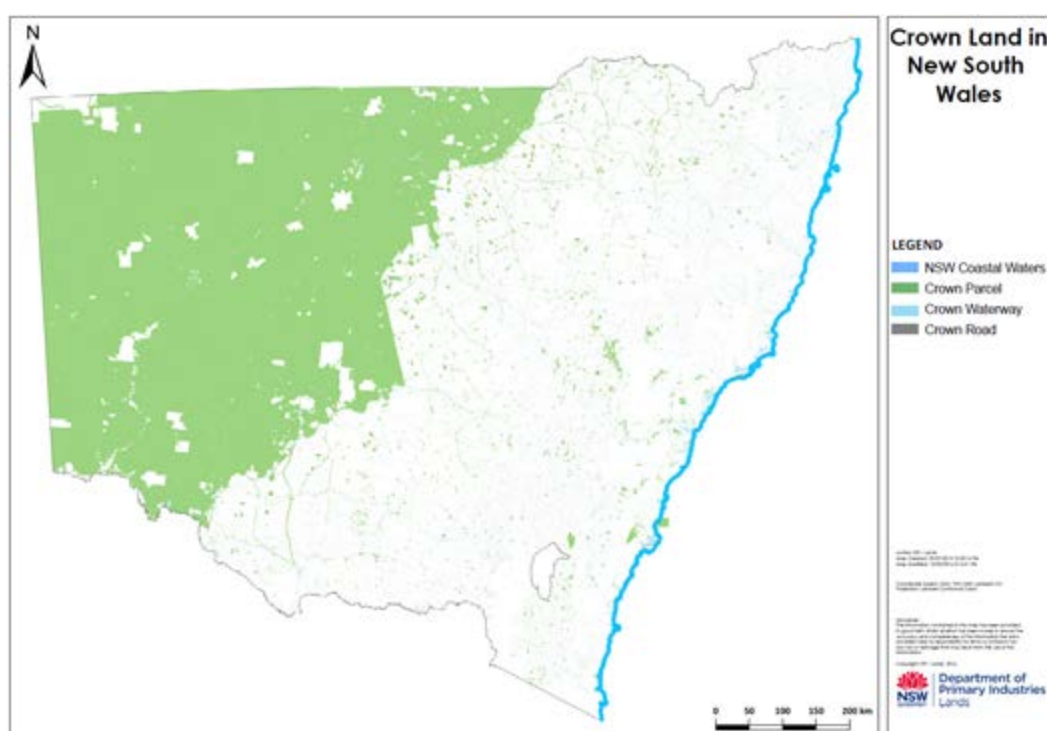
The majority of Crown land is in the far west of the State and is used for grazing and agriculture under ongoing leases. National parks and State forests are not Crown land. See Exhibits 1 and 2 for more details.

The estimated total value of Crown land in New South Wales was \$12 billion in 2014-15. Under the *Crown Lands Act 1989* (NSW), each parcel of land is given an allowed use and valued according to this use, which means Crown land values are not directly comparable with land for sale privately.

The Department is responsible for the administration and management of Crown land. When making decisions about the use of Crown land, the Department must consider:

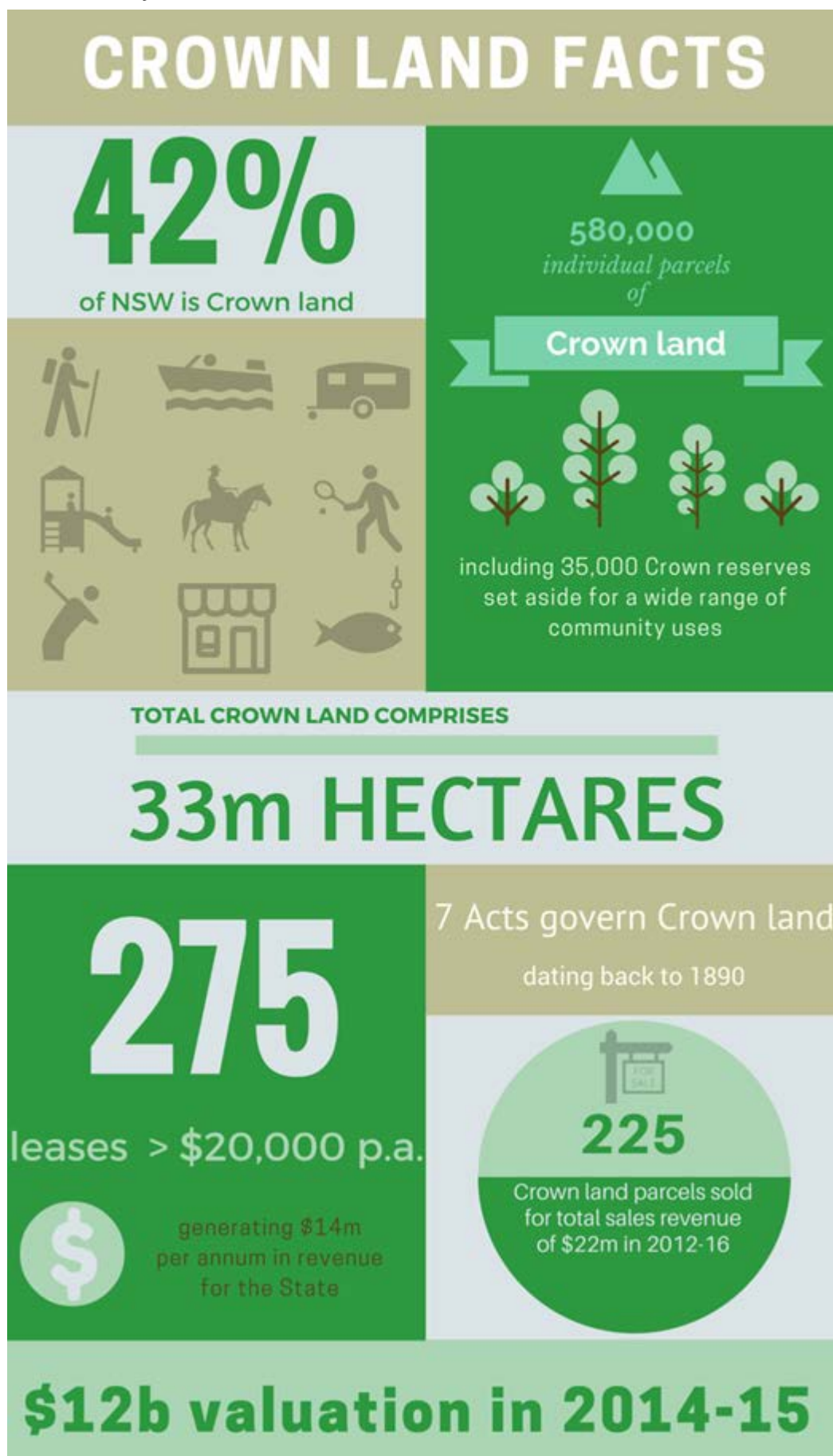
- relevant legislation
- allowed use of the land
- native title claims
- the existence of an Aboriginal land claim
- the existence of a Plan of Management
- the government's potential need for the land in the future
- the interest of the local community in the land.

Exhibit 1: Map of Crown land in New South Wales



Source: Department of Industry- Lands. Crown land in New South Wales map.

Exhibit 2 - Key statistics about Crown land



Source: Audit Office research.

Legislation sets principles for Crown land management

The *Crown Lands Act* is the main Act governing Crown land management in New South Wales. Section 11 of the Act specifies the principles that must be taken into account in determining how Crown land can be used (see Exhibit 3). This aims to ensure Crown land is managed in the best interests of New South Wales.

Exhibit 3: Principles of Crown land management

For the purposes of this Act, the principles of Crown land management are:

1. that environmental protection principles be observed in relation to the management and administration of Crown land
2. that the natural resources of Crown land (including water, soil, flora, fauna and scenic quality) be conserved wherever possible
3. that public use and enjoyment of appropriate Crown land be encouraged
4. that, where appropriate, multiple use of Crown land be encouraged
5. that, where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained in perpetuity
6. that Crown land be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the State consistent with the above principles.

Source: *Crown Lands Act 1989* (NSW), section 11.

Multiple considerations apply in Crown land decisions

When making decisions about Crown land, the Department is required to consider several pieces of legislation in addition to the *Crown Lands Act*, including the *Aboriginal Land Rights Act 1983* (NSW) and the *Native Title Act 1993* (Cth). The powers in relation to sale and leasing of Crown land are delegated from the Minister to the Department under an instrument of delegation.

In addition, the original reserved purpose of the land, plans of management approved for the land and environmental concerns must be taken into account. The Department acknowledges it should also consider stakeholder views and community expectations.

Native title

The *Native Title Act* allows Aboriginal people to seek recognition of their native title through their connection to an area of land. If a native title claim is granted, the claimant receives certain rights over the land which the Department must take into account when making decisions about Crown land. Unless it is determined that native title has been extinguished, procedures in the *Native Title Act* must be followed in all dealings on Crown land, including sale and leasing.

Aboriginal Land Claims

The NSW Aboriginal Land Council or any Local Aboriginal Land Council can make a claim for land under the *Aboriginal Land Rights Act*. Under this Act, Crown land should be returned to Aboriginal people if the land is: able to be lawfully sold or leased; not being lawfully used or occupied; not needed, or likely to be needed, for housing or essential public purposes; and not the subject of a native title claim. Aboriginal land claims are different to, and separate from, native title claims.

Land reserved for public purposes

Some Crown land is set aside for public purposes, which means it may only be used for a purpose that will deliver a public benefit or good. These are generally called Crown reserves. Where possible, multiple uses of reserves are encouraged, where those uses are consistent with the purpose of the reserve. For example, a reserve for public recreation could be used by different sporting groups and also by the general public for recreation.

Crown reserves are generally required to have a plan of management that defines the value, use, management practices and intent of the public purpose for which the land has been reserved or dedicated. The plan of management must be consistent with:

- the public purpose of the reserve
- legislative principles for Crown land management and Department policies
- relevant environment or planning legislation and regulations.

Crown land review and reforms are ongoing

In 2014, the NSW Government conducted the Crown Land Management Review. This was the first comprehensive attempt at reforming Crown land management in over 25 years. The main aims of the review were to make recommendations to improve the management of Crown land and increase the benefits and returns from Crown land to New South Wales. The review made recommendations to improve the way the Department manages Crown land, including:

- simplifying and consolidating legislation to support Crown land management
- promoting community involvement in the governance of Crown land
- devolving the ownership and management of Crown land to whoever is best placed to manage the land
- improving business practices including information management and strategic planning.

The government accepted most major recommendations of the review. We have been advised the government will introduce new Crown land legislation to support the implementation of these recommendations in 2016.

In June 2016, the General Purpose Standing Committee of the NSW Legislative Council announced that it would hold an inquiry into Crown land. The inquiry will examine:

- the extent of Crown land and the benefits of active use and management of that land to New South Wales
- the adequacy of community input and consultation regarding the commercial use and disposal of Crown land
- the most appropriate and effective measures for protecting Crown land so that it is preserved and enhanced for future generations
- the extent of Aboriginal land claims over Crown land and opportunities to increase Aboriginal involvement in the management of Crown land.

The committee is due to report by October 2016.

Sale and lease transactions are low volume but high risk

There are approximately 580,000 individual pieces of Crown land. The Department manages around 8,500 leases on Crown land. Other types of Crown land the Department is responsible for is described in Appendix 3.

The Department classifies leases as 'high value' if the gross annual rent is more than \$20,000. There are currently 275 high value leases. The average return from each of these leases is around \$52,000 per annum and they comprise 4,573 hectares of land. Overall, these high value leases return almost \$14.5 million per annum to the State. In the past 4 years, 27 new high value leases have been granted.

A Crown land lease allows the exclusive use of a particular piece of land for a specified term and purpose and can be commercial in nature. Generally, leases are sought over Crown land where longer-term security of tenure is required, such as commercial marina sites and caravan parks. Leases may be granted by public tender, invitations for expressions of interest or direct negotiation.

Leases involving commercial businesses operating on Crown land often attract interest from the public, especially in cases where commercial tenants do not comply with lease conditions. While the Department reduces risk by passing some responsibility to the tenant to use the land as agreed, it maintains overall accountability as the owner of the land. It is also responsible for resolving problems with tenant compliance.

Crown land is sold each year in response to rights of some lessees (who have rights to purchase in their leases), demand from third parties including government agencies, and where Crown land is no longer required for public purposes. Revenue from Crown land sales is remitted to NSW Treasury in accordance with annual budget targets.

The Department manages the development, marketing and sale of Crown land that it has decided is not needed for public purposes. The key objectives of Crown land sales are to achieve annual revenue targets agreed with NSW Treasury and develop a rolling three year sales plan for reporting to NSW Treasury. 225 Crown land parcels were sold in 2012-2015 with an average sale price of around \$97,000. The total area sold is 1,856 hectares and these sales have returned nearly \$22 million to the State. The sale of Crown land can be contentious because it involves the permanent removal of land from government ownership.

Key findings

1. Oversight of decision-making

The Department's overall governance of decision-making for the sale and lease of Crown land is inadequate and has exposed the Department to risk. Policies and guidance are applied inconsistently and oversight of decisions has been limited, particularly in relation to leases.

The Department does not provide staff with clear and up-to-date policies and guidance for making decisions about Crown land sales and leasing, and some key policies have only recently been introduced. The Department does not have post-decision reviews or peer review systems to ensure that decisions made were consistent.

The Department has a list of current leases which are problematic and require ongoing management. These leases were commonly described as 'legacy issues' by staff. The Department has done some work to manage the cases it is aware of, but still has limited understanding of whether further problematic leases exist.

Ongoing oversight of leases has been limited, with reviews either not conducted or missing significant issues. The Department has not conducted systematic checks of compliance by tenants, including whether land is being used in line with lease conditions. These problems are exacerbated by the variable quality of data in the Department's systems. The Department introduced an audit process to begin addressing these issues on 1 July 2016.

Recommendations

The Department should:

By March 2017:

- Develop a risk-based approach (considering characteristics including location, value and land use) to identify leases which:
 - do not comply with Department policy
 - do not have the correct market value rent, rebates, and waivers applied
 - are not being used for the permitted purpose
 - have aged debt that is not being actively managed.
- Develop a plan for addressing issues identified and include targets in its 2017-18 business plan.
- Clarify criteria used to justify direct negotiations in its direct negotiation policy and consult with stakeholder groups likely to be affected by any changes.

By December 2017:

- Improve the support provided to staff to make good decisions by:
 - producing simplified and consolidated operational policies, guidelines and procedures for processing sales and leases
 - continuing to provide regular training for staff in better decision-making, ethical behaviour, ICAC direct negotiation guidelines, and delegations
 - implementing a regular risk-based review of compliance with policies.

1.1 Policies only recently introduced and applied inconsistently

Critical policies and guidance are inadequate

The Department has not provided clear and up-to-date guidance for staff to make informed, consistent decisions about the sale and leasing of Crown land, with several key policies only recently introduced. The Department produced an interim complaints guideline in February 2016, which allows complainants access to internal administrative review and independent review by the Ombudsman. Complaints can be lodged in writing or via the Department's website. The Department did not have a complaints policy prior to this and has not published the interim guideline.

No policy is in place for debt collection. More than \$6 million in debt exists on leases we examined, with several organisations owing the equivalent of more than ten years of rent. Twelve organisations had an outstanding debt over \$100,000. While the Department must follow fair and reasonable procedures when making decisions, the lack of a timely resolution to these cases raises concerns about the Department's ability to manage outstanding debts. The *Crown Lands Act* provides the Department with the ability to revoke a lease for failure to pay. The Department has recently centralised its debt recovery function and is working to improve its management of debt.

The Department released a policy on direct negotiation in March 2016. Government policy allows for direct negotiations in limited circumstances where it would be impractical or uneconomical to use a competitive process. The majority of the Department's new policy is consistent with ICAC guidelines on direct negotiations, but it includes additional criteria that are too broad and allow direct negotiation with most incumbent tenants. For example, the policy permits direct negotiation on any lease where the tenant is judged by the Department to be 'good and complying'. There are no criteria for determining what a 'good and complying' tenant is.

Application of policies is inconsistent

Several key policies on the management of Crown land sales and leases have been applied inconsistently or not adhered to. The Department's policy on rental concessions for Crown land leases states that rebates or waivers of up to 50 per cent of the rent can be granted to organisations that provide a social or community benefit. The Department currently provides rebates and waivers totalling \$5 million each year.

Our examination of rental rebates and waivers granted showed that this policy had been applied inconsistently. We found multiple examples where the Department is giving significant rebates and waivers to businesses operating on metropolitan land that do not meet any of the eligibility criteria in the Department's policy. This includes registered clubs and sporting clubs that are generating substantial revenue. In total, 71 organisations are receiving rental rebates and waivers of more than 50 per cent, of which 34 are receiving rent reductions of more than 90 per cent. While most of these organisations are charities or community groups, some are operating businesses and the Department could not explain why these reductions had been granted to businesses.

Additionally, the Department's own policy and standard lease terms state that rent redeterminations should be conducted at specified intervals (three or five years depending on lease conditions), but these reviews are not always conducted. In the leases we examined, multiple valuations and rent redeterminations have been missed resulting in the market value rent of the property having not been assessed for up to 15 years.

This means some tenants are receiving a significant rent reduction on an outdated market value assessment. In two cases, rent has been frozen for 15 years with no CPI adjustments made.

As many land parcels have not been reassessed and revalued, the Department is unable to accurately identify the true value of its leasing portfolio, the market rent it should be receiving, and the total value of the rebates and waivers it is giving to tenants.

While no direct negotiation policy existed prior to March 2016, previous guidance provided to staff stated that direct negotiations should generally be avoided and only be used in situations where:

- land is of low value
- land can only be utilised by a single person
- hardship exists
- there are emergency issues.

The guidance provided that it must be clearly demonstrated there are sound reasons for proceeding outside of the public competition process.

Of the leases approved in the past four years, 97 per cent were directly negotiated. Of the sale of Crown land from the past four years, 50 per cent were directly negotiated.

The Department's policy on lease terms state that:

...generally terms for commercial leases will be considered up to 20 years, with shorter or negotiation of longer terms, influenced by certain criteria within a proposal, such as approximate planning horizons and level of investment over term of lease.

The Department's information on lease terms is incomplete, with many leases missing start dates, expiry dates and lease term lengths. Without this information, the Department cannot know whether it is complying with its own policy on lease terms. Our review of the information that is available on lease terms found there were some commercial operations with leases that have terms between 40 and 70 years.

1.2 Clear guidance is not provided to staff

Guidance that is available is complicated and confusing for staff. Policies and guidelines for the leasing and sale of Crown land are considerably out-of-date and do not support consistent decision-making. Due to the inadequacy of documentation, high levels of staff discretion are required in assessing sale and leasing transactions, risking the consistency of decisions.

During the audit, we were provided with more than 1,300 pages of guidelines for the sale and lease of Crown land. Many of these documents have not been updated within the last decade. Many of the documents were watermarked in December 2015 to advise that they may not be up-to-date or reflect current practice, but are still in use.

The Department has recently started to rectify this by updating policies and guidelines. This work needs to include documenting current processes and removing outdated and irrelevant guidance material.

Since 2015, the Department has been training staff in areas including ethics, better decision-making, and compliance with delegations. Not all staff in decision-making roles have completed this training, nor is the training in an induction or annual compliance refresher program.

1.3 Controls are in place to record decisions, but data quality varies

The Department's systems produce an audit trail

The Department's internal decision-making processes are documented and produce an audit trail. A stronger briefing process has been introduced which requires staff to seek formal approval from executive staff for decisions on higher value lease and sale transactions. These briefs include detailed information about factors considered and are submitted to decision makers allowing them to make decisions based on the information presented to them.

The Department's IT system controls access and approvals to process transactions. This is positive in that it prevents transactions from being completed by staff without the delegated authority. However, this has not prevented staff from doing things that may influence the decision-making process, such as informal negotiation with a potential applicant for a lease.

The Department does not have adequate post-decision reviews and quality assurance systems for sales or leases and issues tend to come to light when something goes wrong, not proactively.

In 2013-14, the Department created Business Centres which process more straightforward, lower value transactions such as licences and permits for the use of Crown land. In establishing these centres, many processes have been streamlined, standardised and documented. The Business Centres have systems in place for better quality assurance and review. This includes regular spot checking of decisions and post-decision reviews of transactions. The lessons learned during reviews contribute to further improvement of processes and help identify staff training needs. These systems could be drawn on to improve review processes for leasing and sales.

Some data is incomplete or inaccurate

Some of the data the Department uses to support decision-making is inaccurate. In particular, we found several inconsistencies relating to leasing where key data was either missing or incorrect, including:

- lease start and expiry dates
- term of lease
- type of lease
- purpose of lease.

Our review of the Department's data on current leases also identified other errors and inconsistencies, including commercial leases being classified as non-commercial. This limits the Department's ability to monitor and accurately report on its commercial leasing portfolio, and increases the risk of new leases being negotiated based on incorrect data.

The Department has identified that the transaction database for Crown land, the Crown Land Information Database, is a risk to the organisation. The system, while functional, is over 20 years old and has had little invested in it.

Staff are required to access several systems to gain a full picture to support decision-making. The title searching system used by the Department is provided by another government agency, Land and Property Information, and the Department's direct access to this system is currently being removed. This will mean that the Department will be required to use a third party to access title searches. There will be a fee for this service and the Department told us this may discourage staff from doing comprehensive title searches in future.

1.4 Oversight of leases is limited

Oversight of leases managed directly by the Department is lacking

Leases are only reviewed on renewal, not during the term of the lease, and often do not include a site inspection. This means the Department has limited understanding of compliance by the tenant with lease conditions and cannot take proactive action to remedy problems. Even in cases where the Department has conducted inspections and identified issues, its actions have not always resolved the problems, as demonstrated in Exhibit 4.

The Department has not systematically collected information on tenant compliance with lease conditions. This information is critical to inform future leasing decisions. Due to this, tenant compliance and use of the land in line with the lease agreement are not always taken into account in renegotiating leases unless the Department has been made aware of issues.

The Department introduced an audit process to begin addressing these issues on 1 July 2016. Under the new system, a sample of properties will be selected based on their assessed level of risk and audited each year. The audit will include a review of the condition of infrastructure on the property, environmental protection issues, public safety and compliance with regulatory issues such as having current insurance.

Exhibit 4: Collapse of Pelican Marina

The Pelican Marina is a structure on Crown land in Lake Macquarie. On 8 February 2016, part of the marina collapsed into the lake. While no one was injured, the collapse was a potentially serious threat to public safety as the marina included a large restaurant and several residential apartments.

There had been ongoing problems with the Pelican Marina for several years, which the Department had made numerous attempts to resolve. The lease holder had been in arrears on rental payments since October 2011 and in dispute with the Department over responsibility for the costs of repairs to the marina's piers since 2012.

The Department issued multiple compliance warnings between 2011 and 2015 and made attempts to recover debt from unpaid rent. It initiated action to terminate the lease for the marina in July 2015, due to the lease holder's failure to pay rent, and took possession of the site in December 2015.

The Department commissioned a report to examine the structural condition of the marina as a part of its preparations for taking possession of the site. The report was finalised in November 2015 and found that the two storey building was in reasonable and sound structural condition, but that there were problems with the boardwalks and jetties that required further examination.

The Department is conducting an internal inquiry into the Pelican Marina collapse and we cannot make findings about the causes of the collapse. However, the series of events described above indicates that the Department was aware of serious issues with a lease on Crown land but was not able to resolve these issues effectively. A stronger system for reviewing tenant compliance that includes clear processes for identifying and responding to non-compliance may assist the Department to prevent these issues in the future

Oversight of leases on Crown reserves is limited

The *Crown Lands Act* allows the management of Crown land to be undertaken by a reserve trust. Most reserve trusts are local councils or volunteer groups. Reserve trusts are able to enter into leases on the land that they manage and more than 900 such leases generate almost \$14 million in rental income annually.

The Minister for Lands and Water must give consent for a reserve trust to enter into a lease. This authority is generally delegated to the Department, which reviews lease proposals prior to granting consent. The Department retains responsibility for ensuring the land and any infrastructure on it are maintained for the benefit of the community.

The *Crown Lands Act* requires reserve trusts to submit annual reports and financial statements to the minister and the Department provides an online reporting system to facilitate this. In 2014-15, Sixty-three per cent of reserve trusts submitted an annual report. In addition, reserve trusts with an annual income over \$10,000 and all showgrounds and caravan parks must be audited by a registered company auditor. In 2014-15, only 50 per cent of these trusts complied with this requirement. The lack of compliance means that the Department has limited understanding of reserve trust activities.

Problem leases are classified as 'legacy issues'

The Department has a list of current leases that are problematic and require ongoing management. These leases were commonly described as 'legacy issues' by staff, despite being current leases. The Department has been made aware of, and is monitoring, these leases and has made some effort to resolve the issues. For example, senior executives receive a register of issues that provides updates on the status of each case. However, the Department has done limited proactive work to determine whether there are other leases in its portfolio that have similar problems. This means the Department does not know if all of the leases on Crown land that it manages comply with policies and have the correct rent, rebates, and waivers applied. Nor does the Department know whether the land is being used for the purpose permitted under the lease.

2. Community involvement in Crown land decisions

The Department complies with statutory requirements to notify the public about its decisions, but does not provide consistent opportunities for people to understand or have a say in decisions about the sale and lease of Crown land. Balancing the competing demands of multiple stakeholders in Crown land is challenging. There have been recent examples of better communication. However, consultation with stakeholders varies and does not always allow meaningful opportunities for input.

The Department's decision-making process for sales and leases on Crown land are not clear to the general public or potential applicants for sales or leases. The reasons for decisions are not made public and the process for handling complaints about decisions is not clear. The Department recently introduced an interim complaints management policy to improve its response to complaints.

Negotiations for leases and sales are commonly held directly with selected applicants, so the public and other potential applicants are not notified until after decisions have been made. This creates a closed process and means the Department cannot know whether it is getting the best value for sales and leases that use direct negotiation.

The Department complies with the statutory requirement to notify the public when it plans to sell or lease Crown land. This usually only involves a brief, formally worded notice in the Government Gazette and local newspaper. The Department provides more information about other areas such as its Crown road closure program. Taking a similar approach to sales and commercial leases would improve transparency.

The Department has started improving its communication and consultation processes, for example, by including an online survey that allowed community members to provide feedback on a plan for a major redevelopment on Crown land. Applying this more broadly and consistently would help it to address community concerns about the management of Crown land.

Recommendations

The Department should:

By 30 June 2017:

Improve consultation with stakeholders to provide opportunities for involvement in decision-making about Crown land sales and leases, especially in cases where a change to the way the land is used is proposed.

By December 2017:

Improve the transparency of decisions by:

- publishing policies, processes and expected processing times for Crown land sales and leases
- publishing information about upcoming and completed Crown land sales and leases
- publishing quarterly reports on key Crown land sale and lease data, such as the number and value of leases and sales and the number directly negotiated.

2.1 Consultations are not meaningful

Staff are given little guidance and consultation is not done consistently

The Department does not have policies to guide consultation with the community or interested organisations. There is no guidance for staff about when community consultation should take place or what it should involve. The Department has generally only conducted consultations relating to leases or sales when staff anticipate they may be controversial.

The Department's website had two notices in its 'public exhibition' section in 2015 that provided information on current plans for developments on leased Crown land. While some additional consultations may have taken place, there is no public record of these.

Community input is most often sought through the development of plans of management and through planning processes which provide for community and public exhibition. Some of these are not under the control of the Department.

Consultations focus on communication rather than engagement

The focus on the Department's community engagement plans has often been on risk management rather than community engagement. For example, the Department prepared a community engagement plan for the Sandy Point quarry in March 2016. This document is heavily focused on communicating 'key messages' to the public and reducing negative publicity, rather than providing opportunities for the community to have input into the process.

In recent months, there is some evidence that the Department has improved its approach to community consultation. For example, it has a consultation program for its plan to develop a Crown land site. This includes providing information about the process, publishing copies of consultant reports that informed the plan, and asking for community comments on the draft plan through an online survey.

The Department does not measure community satisfaction with specific consultations or with its communication about Crown land more generally, so it does not know what type of consultation the community expects or wants. The Department has developed a draft customer service strategy and set a target to improve customer satisfaction, but has not done similar work to measure or improve community satisfaction with consultation.

2.2 Decision-making is not transparent

There is minimal public information about decision-making processes

The Department's decision-making processes for sales and commercial leases are not transparent to stakeholders. This means that a potential sale or lease applicant, or an interested member of the public, will find it difficult to be informed about or scrutinise the Department's decisions.

The Department's website includes a large amount of detailed information about Crown land, but does not give a clear overview of its activities. For example, it does not provide a summary of the principles or decision-making criteria used to assess Crown land sales or leases. In contrast, the Victorian Government publishes its Crown land leasing policy and guidelines on the relevant department website.

The Department does not publish a forward plan for sale or commercial lease transactions or a consolidated list of Crown land that has been sold. Property NSW, the government agency that manages the NSW Government's property portfolio (excluding Crown land) recently started publishing information about properties for sale and lease and properties that have been sold. Other jurisdictions also publish Crown land sales information. For example, the Western Australian Government publishes Crown land that is currently for sale, land being prepared for sale, and recent sales of Crown land on its website.

In many cases, the only information the Department publishes is the decision itself, after it has already been made. Additionally, it classifies many transactions as 'commercial in confidence', which further limits transparency and public scrutiny of the process.

Section 121(2) of the *Government Information (Public Access) Act 2009* states that an agency does not need to provide access to information that discloses or would tend to disclose the contractor's financing arrangements, financial modelling, cost structure or profit margins, which would preclude the Department from disclosing this information. In the interests of transparency and given the sensitive nature of Crown land transactions, the Department could agree with applicants in advance as part of the conditions of lease or sale to publish this information.

Community groups interviewed for the audit expressed concerns about the absence of a clear process for resolving complaints about Crown land decisions and one said that taking the Department to court is sometimes the only option for resolving disputes.

We were told by government agencies and community groups that typically their only engagement with the Crown land transaction process is by objecting toward the end of the process. They feel they could make positive contributions to decision-making if they were given an opportunity to engage in the process at an earlier stage.

Government agencies noted that their communication with the Department about its strategy for Crown land had improved considerably in recent months. Extending this approach to decisions about sale and lease transactions would allow the Department to draw on the knowledge of other organisations and potentially make better and more informed decisions.

The Department routinely uses direct negotiation

The Department routinely negotiates directly with a selected party for the sale or lease of Crown land rather than using an open, competitive process. The commencement of a direct negotiation is not announced publicly, so the public is not aware of the transaction until after the decision has been made.

Our analysis of the Department's sale and commercial lease records found that 97 per cent of commercial leases approved in the last four years were directly negotiated, while 50 per cent of Crown land sales from the past four years were directly negotiated.

Direct negotiations can create opportunities for dishonesty or bias. Even in cases where there is no evidence of wrongdoing, direct negotiations can create a perception of conflict of interest or improper conduct. In addition, the absence of competition makes it difficult for an agency to ensure, or prove to the public, that it is getting value for money.

A recent controversial case involving the Department's direct negotiation was the Plaza carpark in Port Macquarie (see Exhibit 5).

Exhibit 5: Community consultation on the Plaza carpark site

The Plaza Car Park site is located in the Hastings Regional Crown Reserve on the NSW Mid North Coast. The reserve was established in 2006 for the public purposes of access and public requirements, tourism, and environmental and heritage conservation. The car park has a foreshore location near the Port Macquarie town centre.

The Port Macquarie-Hastings Council manages the reserve as Trust Manager, which means that it has day to day responsibilities for the care, control and management of the land.

In 2013, the Department began directly negotiating with Woolworths to sell the Plaza carpark site so an existing store adjoining the carpark could be redeveloped and expanded. These negotiations were approved by the minister on the advice of the Department. Despite being Trust Manager, the Port Macquarie-Hastings Council was not involved in these direct negotiations, nor initially made aware of them.

In May 2014, a public notice was issued stating Woolworths had been given a licence to investigate the site in preparation for a development application. The council and some community members raised concerns about the plans to sell the land without using a transparent process and also queried whether a supermarket redevelopment was consistent with the 2012 plan of management for the Crown Reserve and a 2009 masterplan for the Port Macquarie foreshore. Both of these plans had been developed with substantial community consultation.

In response to these concerns, the Department began an expression of interest (EOI) process in early 2015. This process attracted 21 enquiries but only two full proposals; from Woolworths and the council.

In June 2015, the Department announced that Woolworths had been successful in the EOI process. In announcing the decision, the Department explained that price had been an important consideration, as had the extent to which the Woolworth's proposal aligned with the plan of management for the area. The Department commenced direct negotiations with Woolworths on the specific terms for the sale of the land.

On 11 September 2015, the Department announced Woolworths had withdrawn its EOI for the site. This was done after taking into account commercial considerations, site suitability, and the strong local concerns about the proposal.

High profile cases have affected the Department's reputation

Several cases involving leases on Crown land have generated significant community concerns and media attention. Within the Department, these are often described as historical 'legacy issues', as discussed above. Considering these cases as legacy rather than current issues risks understating the extent to which these cases undermine community confidence in the management of Crown land. One of the most prominent examples of this is the issues surrounding the Paddington Bowling Club (see Exhibit 6).

Much of the damage caused by these incidents arises from the perception that the broader community is excluded from the process and unable to contribute to, or question, decisions made by the Department. A more proactive, transparent and outward facing approach to stakeholder engagement would help to build greater trust in the Department.

Exhibit 6: Paddington Bowling Club lease

The Paddington Bowling Club ('the Club') occupied Crown land in Paddington under a perpetual lease since the 1960s. The land was set aside for public recreation. The Club began to experience financial difficulties around 1999, leading to a long and complex period of administration.

In 2003, a property developer paid the Club for an option to buy the land if the then Minister for Planning agreed to sell the land to the Club. Essentially, the Club would seek to convert its perpetual lease to freehold title, and then sell the title to the developer. The developer planned to build residential apartments on the land.

In 2006, the Department of Lands refused a proposal from the Club to convert the perpetual lease to freehold land. The Department noted that it was not in the public interest to sell Crown land in a situation where the land was clearly intended to be sold on to a private company.

The land was then subject to a number of leasehold transactions between 2009 and 2013, most significantly:

- the surrender of the perpetual lease by the club
- the granting of a 50-year commercial lease to the Club, which was subsequently transferred to the property developer. Department policy at the time was that commercial leases could only be granted for a maximum of 20 years.

The developer then asked the Department for landowner's consent to apply for a development approval from Woollahra Council to build a large, for-profit childcare centre on the land. Landowner's consent was given in March 2013 and the developer submitted a development application to Woollahra Council.

In 2014, following complaints and activism from local residents and concerns from Woollahra Council, the Minister for Trade and Investment ordered an independent review of the lease and sale process.

Key findings of the review included:

- the leasehold transactions had initially been agreed through direct negotiations between a very senior official of the Department, representatives of the Club, and the private developer
- these direct negotiations were 'not appropriate' and inconsistent with guidelines on direct negotiation published by the Independent Commission Against Corruption (ICAC)
- policies for evaluating and making lease agreements, as well as varying the purpose for which Crown land may be used, were not complied with
- the result of these transactions was that Crown land was transferred to private company
- and a financial opportunity was provided to a private company without a competitive process.

The independent review recommended that the matter be referred to ICAC. In considering the matter, ICAC observed that the responsible department at the time, the Department of Trade and Investment, had undertaken several actions to address systemic issues. These included staff training in fraud and corruption prevention, as well as a new agency governance structure. As a result of these actions, ICAC determined that it would not take further action.

The Club closed in June 2015. Following the independent review report, the NSW Government withdrew landowner's consent for the private developer to apply to Woollahra Council for approval to build the proposed childcare centre. The private developer retains the lease on the site, though it is unclear for what purpose the site will be used.

2.3 Communication complies with requirements but could be improved

Formal notifications comply with legislative requirements

The Department has processes in place to ensure that it complies with the requirement for public notifications of the intention to sell, lease or change the approved purpose of Crown land. The Department acknowledges that more could be done to improve the impact of these notifications by publishing more widely than the Government Gazette and local newspapers.

The language used in the notices is formal and would be difficult for a member of the public to understand (see Exhibit 7). It is difficult to know which piece of land the Department is referring to without technical knowledge of the way land is described. The use of more modern and simple language and communication would increase the reach of these notifications without a significant increase in cost to the Department.

Exhibit 7: Examples of notifications from the Government Gazette and local media

WAGGA WAGGA OFFICE

**REVOCATION OF RESERVATION
OF CROWN LAND**

Pursuant to section 90 of the *Crown Lands Act 1989*, the reservation of Crown land specified in Column 1 of the Schedule hereunder is revoked to the extent specified opposite thereto in Column 2 of the Schedule.

The Hon NIALL BLAIR, MLC
Minister for Lands and Water

Schedule	
Column 1	Column 2
Land District: Wagga Wagga Local Government Area: Junee Shire Council Locality: Boree, Clarendon (Parish, County) Reserve No 751399 Public Purpose: Future Public Requirements Notified: 29 June 2007 Lot 174 DP No 751399 Parish Boree County Clarendon Lot 175 DP No 751399 Parish Boree County Clarendon	The part being Lot 187 DP No 820894 Parish Boree County Clarendon of an area of 4.714ha

Under the provisions of Sections 34 and 90 of the *Crown Lands Act 1989*, the Minister administering the *Crown Lands Act 1989*, after 14 days from publication of this notice, intends to publish in the Government Gazette a notice revoking the reservations and allowing the sale, lease, exchange or other dealing with the lands described as follows:

Location: Sydney. Parish: St James. County: Cumberland. Reserve 1014349 identified by Lot 1863 DP 1000001 and Lot 1864 DP 1000002.

Reference: 16/04139
Contact Officer: Vanessa Hitchcock
(02) 4925 4178.

Z10723

Public Notices

Under the provisions of Sec34(3) and Sec90(2) of the *Crown Lands Act 1989*, the Minister administering the *Crown Lands Act 1989*, after 14 days from publication of this notice, intends to publish in the Government Gazette a notice revoking the reservation and allowing the sale, lease, exchange or otherwise dispose or deal with the land described as follows. Location: Toronto, Parish: Awaba, County: Northumberland, Being Reserve 89035 identified by Lots 307 and 308 DP755207. Reference: 14/03850.

Contact Officer: Vanessa Hitchcock
(02) 4925 4178.

Z06333

Source: Department of Industry - Lands. Notifications published in local media and the Government Gazette.

There is better practice elsewhere in the Department

The Department has produced an informative and transparent website for its Crown roads sales program. This could be used as a model to improve the transparency of other sale and lease transactions. As shown in Exhibit 8, the website provides a searchable map and detailed listing of Crown roads that are listed for sale. It also provides information about how to make a submission to apply for, or object to, the sale.

Exhibit 8: Crown roads sale website

Search for public roads

Local Government Area	Road Description	Publication	Date Published	Date Submissions Close
GREATER HUME SHIRE COUNCIL	Roads at Little Billabong within and adjoining properties of 184, 274, ...	Holbrook Eastern Riverina Chronicle	20 April 2016	18 May 2016
GUYRA SHIRE COUNCIL	Crown and Council roads at Bald Blair and Falconer, within and adjoini...	Guyra Argus	21 April 2016	19 May 2016
CARRATHOOL SHIRE COUNCIL	Crown road at Goolgowl, adjacent to the property 'Caloona' (File Ref: ...)	Griffith Area News	22 April 2016	20 May 2016
CARRATHOOL SHIRE COUNCIL	Crown roads at Hillston and Wallanthery, bounded by Lachlan Valley Way ...	Griffith Area News	22 April 2016	20 May 2016
LACHLAN SHIRE COUNCIL	Crown roads and unformed council road at Lake Cargelligo, bounded by B...	Griffith Area News	22 April 2016	20 May 2016

MAPS OF ROADS OFFERED

FULL ADVERTISEMENT

MAKING A SUBMISSION

X

PROPOSED ROAD CLOSING SECTION 35 ROADS ACT 1993 & NOTICE OF INTENTION TO SELL CROWN LANDS SECTION 34(3) CROWN LANDS ACT 1989

Published in Merriwa District Diary on 22 April 2016.

Unformed Crown and Council roads at Cassilis bound to the north by Coolah Tops National Park, to the south and east by Munmurra River and bound to the west by Cooba Bulga Road

[Print this advert](#)

Refer to the advertisement and contact your case officer if you have any questions about the map or roads identified for proposed closure and sale.

Source: Crown roads website - http://www.crownland.nsw.gov.au/crown_land/roads visited 17 May 2016.

3. Strategic direction for Crown land

The clarity of strategic direction for the Department's management of Crown land has improved over the last 12 months. This could be strengthened further with clearer indicators for social and environmental outcomes to assist the Department to achieve a better balance between the competing priorities involved in Crown land management. It would also allow the Department to demonstrate these achievements through regular reporting.

The Department's 2015-16 business plan set out an overall objective to 'facilitate the use of land and natural resources to deliver social and economic benefits for NSW'. Some goals and performance indicators to measure progress toward this objective were developed for the plan, but more detailed targets were not, and accountability for achievement against some indicators is still not clear.

The Department's communication with some stakeholders about Crown land strategy has improved in recent months - mainly with other parts of government - but the Department still has work to do to help staff and stakeholders outside government understand its strategy for the management of Crown land.

The Department's business plan has well defined indicators and targets for measuring economic and financial benefits, but does not have equivalent targets for social or environmental outcomes. Including clear and measurable indicators and targets for social and environmental outcomes would provide stronger incentives for staff to consider these aspects. Reporting on these publicly would also help the Department to communicate the positive outcomes that it supports.

Recommendations

The Department should by July 2017 include meaningful and specific performance measures that drive positive environmental and social outcomes in its future business plans and clarify accountability for achieving these outcomes.

3.1 Strategic planning and communication are improving

Business planning is improving but has not been fully implemented

The overall strategic direction of the Department sets the context for how it makes decisions about sales and leasing of Crown land, including how it prioritises competing considerations, and the way it engages with staff and stakeholders.

The Department did not have a business plan prior to 2015-16. The plan prepared for 2015-16 sets out an overall objective, plus some specific goals and indicators. The Department has held several planning sessions over the past twelve months to develop a more strategic approach to Crown land management.

The executive staff interviewed for this audit demonstrated a shared understanding of the overall objectives for Crown land as set out in the business plan. Some acknowledged that there is more work to do to ensure these changes are understood across all levels of the Department.

Engagement with some stakeholders is improving, but strategic approach is limited

We spoke to stakeholders including other government agencies, industry groups and community and special interest groups during this audit. While stakeholders did not have a clear understanding about the Department's strategic direction, several representatives from other government departments noted that the Department's communication had been more proactive in recent months.

The Department has taken the first steps toward a strategic approach to stakeholders, identifying its top 50 stakeholders and allocating responsibility for these to relevant executive staff. Most of these stakeholders are industry groups and government agencies. The inclusion of community and special interest groups in its key stakeholders would broaden the Department's engagement.

A good example of the Department's recent improvement in its work with stakeholders is the development of streamlined arrangements for surf lifesaving clubs that operate on Crown land (see Exhibit 9 below).

Exhibit 9: Streamlining Surf Life Saving Club leases

The Department worked successfully with Surf Lifesaving NSW to develop a standard lease agreement for surf lifesaving clubs (clubs) on Crown land. This was released in January 2016 along with a guidance document outlining roles and responsibilities for clubs holding leases on Crown land. The standard lease agreement was the result of ongoing consultation with clubs and councils throughout 2015.

There are currently 129 clubs in New South Wales with more than 77,000 members. Around 80 per cent of clubs are on Crown land. These clubs support recreation activities and provide important safety services on NSW beaches. Club facilities are also important community assets that can be used by the general public for meetings, training, functions and events.

The standard lease agreement for clubs provides more certainty of tenure, with a 20 year minimum lease term, and streamlines administrative requirements by removing the need to negotiate lease terms with councils. It also provides leases on the minimum statutory rent under the *Crown Lands Act* in recognition of the important contribution that clubs make to the community.

3.2 Business planning requires balance

The legislative principles of Crown land management set out several factors that should be taken into account in Crown land management, including social, environmental, and economic principles. The Department needs to balance these considerations to achieve the best outcomes for New South Wales from the use of Crown land.

The Department's business plan has clearer measures for the achievement of economic outcomes than it does for social or environmental outcomes (see Exhibit 10). This creates stronger incentives for staff to focus on economic benefits compared to other outcomes when making decisions about the best use of Crown land.

Additional indicators with clear targets such as increasing the amount of land available for public recreation, improving the quality of public recreational facilities on Crown land, or promoting innovative environmental sustainability initiatives on Crown land would increase the incentives for staff to consider social and environmental outcomes.

The Department manages some Crown land in a way that has direct benefits for the community. For example, it leases land with minimal rent to support the work of a range of important community organisations. Including clearer measures in its planning to capture this type of benefit would allow the Department to track and report publicly on the positive work that it does.

As a division of the Department of Industry, the Lands division's performance indicators need to align with the broader Department strategy. The Department of Industry's strategic priorities are primarily focused on economic growth, job creation, and establishing a positive business environment. While the Lands division's business plan should contribute to the Department of Industry's overall economic priorities, it should not override the consideration of social and environmental outcomes required by the *Crown Lands Act*.

Exhibit 10: Extract of Department of Industry - Lands business plan

DPI strategic priorities	Engage with business and the community	Drive economic growth and productivity	Create a positive business environment		Foster an innovative, commercially focused and collaborative workforce
DPI goals	Actively engage and build trust through positive partnerships with business, industry and the community; establishing a platform for growth	Achieve economic growth through innovation, and productivity improvements which support long-term industry competitiveness, resilience and job growth	Deliver distinct regulatory and operational improvements that enable greater business efficiencies, create certainty and ensure safe and sustainable industries		Responsive and engaged workforce supported by a culture of innovation and collaboration, to deliver the best possible outcome for customers
DPI outcomes	Productive partnerships with business, industry and community to accelerate opportunities and maximise benefits	Economic growth through innovation that improves resilience and boosts productivity	Economic growth by ensuring sustainable use of and access to natural resources	Mitigate and manage risks from use of land and water	Drive business excellence to support productivity and quality
LNR measures contributing to DPI KPIs	Social contribution <ul style="list-style-type: none"> Maintain and enhance opportunities for leisure, recreation and social wellbeing <ol style="list-style-type: none"> Increase land investment Increase visitors and/or access to key sites 	Financial contribution <ul style="list-style-type: none"> To increase return to government and the community <ol style="list-style-type: none"> Increase return to government Increase percentage of revenue re-invested 	Environmental contribution <ul style="list-style-type: none"> A healthy, safe and sustainable environment for NSW <ol style="list-style-type: none"> Area of land managed Land managed to ensure safe and sustainable industries 	Economic contribution <ul style="list-style-type: none"> Make a positive contribution to the NSW economy <ol style="list-style-type: none"> Number and value of transactions Jobs supported by LNR 	Customer and staff contribution <ul style="list-style-type: none"> Accessible, consistent and valued customer service <ol style="list-style-type: none"> Increase in customer satisfaction rating Increase employee satisfaction rating
DPI KPIs	20% increase in stakeholder satisfaction	30% growth in the value of primary industries by 2020			>65% increase in employee engagement with improvement in agility and adaptability

Source: Extract from Department of Primary Industries (DPI) Land and Natural Resources Business Plan 2015-16 (references to DPI reflect the organisational structure in place at the time the plan was made).

Appendices

Appendix 1: Response from Agency



SECI16/319

Ms Margaret Crawford
Audit-General of NSW
Audit Office of New South Wales
Level 15, 1 Margaret St
Sydney NSW 2001

Dear Ms Crawford

Performance Audit Report on Sale and lease of Crown land

Thank you for your letter of 4 August 2016 requesting a response to the Audit Office's Performance Audit Report on the Sale and lease of Crown land.

Please find attached the Department's formal response to the Report and its recommendations. You will note that all six recommendations are accepted, and proposed actions to achieve the recommendations are set out in the table Attached.

The Department of Industry's Audit and Risk Committee will monitor implementation of the Report recommendations.

Should you require further information please contact Alison Stone, Deputy Director General Lands on (02) 4925 5001.

Yours sincerely

A handwritten signature in black ink, appearing to read 'SAYL', followed by the date '29/8/16'.

Simon A Y Smith
Secretary

Recommendations	Accept / Reject	Proposed Action
The Department of Industry should:		
<p>By March 2017:</p> <p>1 a) Develop a risk-based approach (considering characteristics including location, value and land use) to identify leases which:</p> <ul style="list-style-type: none"> ▪ do not comply with Department policy; ▪ do not have the correct market value rent, rebates, and waivers applied; ▪ are not being used for the permitted purpose; ▪ have aged debt that is not being actively managed. <p>1. b) Develop a plan to address issues identified and include targets for this in its 2017-18 business plan.</p>	Accept	<p>Develop a plan to address Crown land commercial leasing policy compliance for issues identified and develop targets for outcomes by March 2017.</p> <p>Include targets in the Department of Industry Business Plan 2017-18.</p>
<p>By March 2017:</p> <p>2. Clarify the criteria that are used to justify direct negotiations in its direct negotiation policy and consult with stakeholders likely to be affected by any changes.</p>	Accept	<p>Review the Direct Negotiation Policy and clarify criteria through consultation with stakeholders by March 2017.</p>
<p>By July 2017:</p> <p>3. Improve consultation with stakeholders to provide opportunities for involvement in decision making about Crown land sales and leases, especially in cases where a change to the way the land is used is proposed.</p>	Accept	<p>Prepare a Stakeholder Communication and Engagement Strategy and program by July 2017.</p>
<p>By July 2017</p> <p>4. Include meaningful and specific performance measures that drive positive environmental and social outcomes in its future business plans and clarify accountability for achieving these outcomes.</p>	Accept	<p>Develop social and environmental performance measures for business plans with clear accountabilities by July 2017.</p>

<p>By December 2017:</p> <p>5. Improve the support provided to staff to make good decisions by:</p> <ul style="list-style-type: none"> ▪ producing simplified and consolidated operational policies, guidelines and procedures for processing sales and leases; ▪ continuing to provide regular training for staff in better decision making, ethical behaviour, ICAC direct negotiation guidelines, and delegations; ▪ implementing a regular risk-based review of compliance with policies. 	Accept	<p>Prepare a program to produce operational policies, guidelines and procedures for sales and leasing, including an evaluation program by December 2017.</p> <p>Develop and deliver a Commercial Sale and Lease training program by December 2017.</p> <p>Commence a Triennial policy compliance program for policy compliance and lease conditions by December 2017</p>
<p>By December 2017</p> <p>6. Improve transparency of decisions by:</p> <ul style="list-style-type: none"> ▪ publishing policies, processes and expected processing times for Crown land sales and leases; ▪ publishing information about upcoming and completed Crown land sales and leases; ▪ publishing quarterly reports on key Crown land sale and lease data, such as the number and value of leases and sales and the number directly negotiated. 	Accept	<p>Develop a Crown Lands Commercial Sales and Leasing web-page or portal for publication of sales and commercial leasing information by December 2017.</p> <p>Include relevant outcomes and activities in Business Plan and Annual Report publication for sales and commercial leasing information by December 2017.</p>

Appendix 2: About the Audit

Audit objective

This audit assessed whether the Department of Industry - Lands has an effective and transparent decision-making process in place to assess requests to lease or sell Crown land.

Audit scope and focus

The audit sought to answer the following questions:

- Does the Department achieve outcomes for the sale and lease of Crown land that are aligned to policy and legislation?
- Does the Department ensure that stakeholders are engaged effectively in individual Crown land transactions?
- Does the Department have a sound governance framework in place for decision-making on Crown land transactions?

Audit exclusions

We did not specifically assess:

- the Department's decisions on individual sale and lease transactions
- Crown land transactions concerning licensing, permits and land claims
- legislation governing Crown lands
- the implementation of the Crown lands management review.

Audit criteria

Our audit criteria included:

- Are the Department's desired outcomes defined clearly and aligned with statutory principles and government policy?
- Do Department staff, other government agencies and stakeholders understand the strategic direction for Crown lands?
- Are KPI's and targets which drive appropriate behaviours in place to measure the achievement of outcomes and are these outcomes being achieved?
- Are systems in place to ensure compliance with legislative requirements?
- Are policies in place to ensure appropriate consultations take place and these are meaningful?
- Is the Department's decision-making process transparent to stakeholders?
- Does clear guidance for staff assessing requests against statutory principles and government policy exist?
- Is there a transparent decision-making process?
- Is an oversight process including post decision review and quality assurance in place?
- Do Department staff have access to quality data which supports decision-making?

Audit approach

We acquired subject matter expertise by:

- interviewing staff responsible for Crown land
- interviewing other key stakeholders
- reviewing legislation, policies, strategies, guidelines, procedures and other documents
- reviewing information available from other jurisdictions
- analysing relevant data.

Audit fieldwork

We spoke to 20 staff from the Department of Industry - Lands.

We spoke to other government agencies:

- Government Property NSW
- Urban Growth NSW
- Aboriginal Affairs
- Office of Local Government
- Land and Property Information
- Department of Planning
- Treasury
- Local Land Services
- Office of Environment and Heritage
- Information and Privacy Commission.

We spoke to other stakeholders including:

- Caravan and Camping Industry Association of NSW
- Boating Industry Association of NSW
- Local Government NSW
- Crown Land Our Land
- Nature Conservation Council.

Audit methodology

Our performance audit methodology is designed to satisfy Australian Audit Standards ASAE 3500 on performance auditing. The standard requires the audit team to comply with relevant ethical requirements and plan and perform the audit to obtain reasonable assurance and draw a conclusion on the audit objective. Our processes have also been designed to comply with the auditing requirements specified in the *Public Finance and Audit Act 1983*.

Acknowledgements

We gratefully acknowledge the co-operation and assistance provided by the Department of Industry - Lands. In particular we wish to thank our liaison officers and staff who participated in interviews and provided material relevant to the audit. We would also like to thank other stakeholders that spoke to us during the audit.

Audit team

This audit was conducted by Michael Thistlethwaite and Alex Kaiser. Giulia Vitetta was the Engagement Reviewer.

Audit cost

Including staff costs, travel and overheads, the estimated cost of the audit was \$240,000.

Appendix 3: Other types of Crown land

Crown reserves

Crown reserves are areas of land set aside on behalf of the community for public purposes. Examples of Crown reserves include: State parks, beaches, caravan and camping grounds, cemeteries, racecourses, showgrounds, community halls, and sporting fields and parks. The Crown reserve estate ranges from familiar areas such as Hyde Park and Bondi Beach to small community halls and showgrounds. Underwater areas such as river beds, lakes, ports and the ocean floor up to three nautical miles out to sea are also classified as Crown reserves.

There are about 35,000 Crown reserves with a total area of 2.5 million hectares across New South Wales. Crown reserves are managed by the Department other state government departments, or reserve trusts (which can be a local council or a community group). Crown reserves are given allowed uses and changes to these must be consistent with the Act and approved by the minister. More than 6,000 volunteers help to care for Crown reserves as members of community trust boards.

Travelling stock reserves

Travelling stock reserves are areas of land that are set aside for farmers to move livestock around. The grazing industry still uses these reserves, mostly as supplementary or temporary grazing areas in times of drought, bushfire and flood. However, some are no longer used for their original purpose so the government is considering alternative uses for these. This may include longer term grazing leases, licensing for outdoor recreation groups such as fishing, or development of community recreation facilities including camp grounds and walking trails.

There are over 6,500 travelling stock reserves throughout New South Wales, covering an area of approximately two million hectares (about two and a half per cent of total land in New South Wales). All of these reserves are Crown land, with the majority being managed by reserve trusts and around 25 per cent managed by the Local Land Services division of the Department of Industry. Travelling stock reserves are subject to more than 5,000 Aboriginal land claims, covering about half of all the reserves.

The Western division

The Western division is a vast and sparsely populated region covering more than 32 million hectares, which is almost 96 per cent of all Crown land. The arid climate means that dryland agricultural production in the Western division is generally less intensive than in the rest of the state. The land is fragile and susceptible to land degradation if not managed appropriately. There are around 1,200 Crown Reserves in the Western division.

The area was originally settled for grazing and this remains the most widespread use of land in the Western division. Other uses include mining, agriculture, tourism and residences.

Nearly all of the land in the Western division is held under Western Lands Leases, most of which are perpetual and were granted under the *Western Lands Act 1901*. The minister is advised on the administration of the Western division by the Western Lands Advisory Council, a group made up of people who have an interest in the Western division (including lessees, environmental protection groups, and Aboriginal groups).

All of the Crown estate in the Western division is administered and managed by the Department. Around 9.4 million hectares of the Western division (more than ten per cent of New South Wales) is unincorporated, meaning it has no formal local government. In these areas, the Department assists in coordinating various community services.

Coastal areas and waterways

The submerged land of NSW waterways are Crown land, extending three nautical miles (five and a half kilometres) out to sea and including the ocean floor, most coastal estuaries, many large riverbeds and some coastal wetlands. These are generally reserved from sale and lease, but can be licensed for aquaculture and fishing.

The Department is responsible for the management and maintenance of 25 coastal harbours. In addition to being operational bases for the commercial fishing fleet, the coastal harbours are tourist destinations and departure points for charter boats and recreational boaters. The Department is also responsible for the built maritime assets along the coastline of New South Wales, such as harbours and river management infrastructure. The major maritime assets in New South Wales are worth a total of \$2 billion.

Crown roads

The Department is responsible for managing the Crown road network. Most Crown roads were established in the 1800s and only a small proportion have been developed as roads intended for regular use by vehicles; most remain as 'paper roads' (that is, they exist on maps but are actually tracks rather than roads or in some cases don't exist at all).

The Crown lands management review recommended giving control of Crown roads to local councils to reduce the administrative burden (e.g. applications from councils and individuals to work on Crown roads) and because the Department does not have the expertise to maintain public access roads.

Performance auditing

What are performance audits?

Performance audits determine whether an agency is carrying out its activities effectively, and doing so economically and efficiently and in compliance with all relevant laws.

The activities examined by a performance audit may include a government program, all or part of a government agency or consider particular issues which affect the whole public sector. They cannot question the merits of government policy objectives.

The Auditor-General's mandate to undertake performance audits is set out in the *Public Finance and Audit Act 1983*.

Why do we conduct performance audits?

Performance audits provide independent assurance to parliament and the public.

Through their recommendations, performance audits seek to improve the efficiency and effectiveness of government agencies so that the community receives value for money from government services.

Performance audits also focus on assisting accountability processes by holding managers to account for agency performance.

Performance audits are selected at the discretion of the Auditor-General who seeks input from parliamentarians, the public, agencies and Audit Office research.

What happens during the phases of a performance audit?

Performance audits have three key phases: planning, fieldwork and report writing. They can take up to nine months to complete, depending on the audit's scope.

During the planning phase the audit team develops an understanding of agency activities and defines the objective and scope of the audit.

The planning phase also identifies the audit criteria. These are standards of performance against which the agency or program activities are assessed. Criteria may be based on best practice, government targets, benchmarks or published guidelines.

At the completion of fieldwork the audit team meets with agency management to discuss all significant matters arising out of the audit. Following this, a draft performance audit report is prepared.

The audit team then meets with agency management to check that facts presented in the draft report are accurate and that recommendations are practical and appropriate.

A final report is then provided to the CEO for comment. The relevant minister and the Treasurer are also provided with a copy of the final report. The report tabled in parliament includes a response from the CEO on the report's conclusion and recommendations. In multiple agency performance audits there may be responses from more than one agency or from a nominated coordinating agency.

Do we check to see if recommendations have been implemented?

Following the tabling of the report in parliament, agencies are requested to advise the Audit Office on action taken, or proposed, against each of the report's recommendations. It is usual for agency audit committees to monitor progress with the implementation of recommendations.

In addition, it is the practice of Parliament's Public Accounts Committee (PAC) to conduct reviews or hold inquiries into matters raised in performance audit reports. The reviews and inquiries are usually held 12 months after the report is tabled. These reports are available on the parliamentary website.

Who audits the auditors?

Our performance audits are subject to internal and external quality reviews against relevant Australian and international standards.

Internal quality control review of each audit ensures compliance with Australian assurance standards. Periodic review by other Audit Offices tests our activities against best practice.

The PAC is also responsible for overseeing the performance of the Audit Office and conducts a review of our operations every four years. The review's report is tabled in parliament and available on its website.

Who pays for performance audits?

No fee is charged for performance audits. Our performance audit services are funded by the NSW Parliament.

Further information and copies of reports

For further information, including copies of performance audit reports and a list of audits currently in progress, please see our website www.audit.nsw.gov.au or contact us on 9275 7100.

Our vision

Making a difference through audit excellence.

Our mission

To help parliament hold government accountable for its use of public resources.

Our values

Purpose – we have an impact, are accountable, and work as a team.

People – we trust and respect others and have a balanced approach to work.

Professionalism – we are recognised for our independence and integrity and the value we deliver.

Professional people with purpose

Making a difference through audit excellence.

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