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The Unseen Conservation Estate

Tenure Security and Conservation Management of Crown Lands in NSW

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Contents

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1 Summary

The Unseen Conservation Estate is the vast area of rural public lands that is, with little recognition, providing enormous conservation benefits. It consists of:

- Crown grazing leases
- Travelling stock routes
- Railway corridors
- Lands used for Education purposes
- Lands vested for religious and community purposes
- Vacant Crown lands
- Crown reserves
- Commonwealth land

Over the last decade, more public lands are being privatised now than ever before.

Rural public lands are now widely recognised as providing major conservation benefits as part of an informal system of conservation reserves. These informal reserves complement the formal reserve system of national parks, nature reserves and voluntary conservation agreements.

Recognition of the role of the informal reserve system will continue to grow as the effects of land degradation and climate change increase.

Preventing species extinction will rely increasingly on conserving much larger areas of land in a connected landscape network of formal and informal reserves. This will be beyond the capacity of the formal reserve system especially in the underrepresented ecosystems of western NSW that have less than 5% representation in formal reserves.

The importance of public lands for conservation is usually over-looked or ignored by public agencies considering their privatisation.

Recent examples include the Department of Lands conversion of 11,000 Crown leases to freehold where they considered that only 3% of the lease held conservation values. A more accurate figure would be closer to 70%.

Compared to national park management, there are few funds allocated to the management of other public lands. In most cases, management of public lands is delegated to third parties such as lessees, boards or trusts.

The principles of the Protector of Public Land should be applied to retaining public lands of significance in public ownership.

Native Grassland Species in a disused rail corridor, north-east Victoria

This report aims to raise the profile of these public land categories, so that their conservation role is less likely to be discounted from consideration in the future. It also proposes a structure for Crown land agencies that provides for meeting higher standards of environmental management across the State.

A Way Forward for NSW Crown Lands

The report proposes a new structure for the management of Crown land in NSW

This includes:

- A new Public Lands Commission should be established, replacing the land management functions of the Department of Lands. It would have Jurisdiction over all public lands except for national parks, State forests and the Western Division: ie. vacant, reserved and leasehold Crown Land, including Travelling Stock Reserves and Timber Reserves.

- The Commission would develop or endorse core conservation targets, management standards and plans of management for the public lands under their jurisdiction.

- The Commission would be funded primarily from a combination of lease and licence fees, a proportion of land tax and the proceeds of land sales. Funding would be used for supporting conservation assessment and management on Crown lands by government bodies or private landholders; ensuring adherence to the usage conditions of Crown leases; and administering a leasehold acquisition program for adding suitable leasehold land to the state reserve system

- A regional conservation assessment of Crown leases must be conducted prior to any privatisation. Those with high conservation values must be retained in public ownership and their values permanently protected.

- A review of the role and funding arrangements of Travelling Stock Routes and rail corridors in order to improve the conservation of environmental values on stock routes and railways.

- Lands used by education, religious and community organisations should revert to full public ownership if the original use for which the land was granted becomes redundant.

- The NSW Government should assume authority over land zoning of all Commonwealth special purpose lands such as defences sites, air services and communication. No change to use should occur without the approval of the NSW Minister for the Environment.

- Removing the right of State Forest to harvest timber with little scrutiny from all rural public lands (except the national parks system)

2 Conservation as a Public Purpose

It is to be hoped that in 2004, those in government with responsibility over land management have dispelled out-dated ideas that regard conservation as a lowest priority land use option. It is now some 15 years since the enactment of legislation that gave emphasis to the environment in management of public land in NSW.

The relevant objects of the 1989 Crown lands Act (section 11) are as follows:

> (a) that environmental protection principles be observed in relation to the management and administration of Crown land,
>
> (b) that the natural resources of Crown land (including water, soil, flora, fauna and scenic quality) be conserved wherever possible,
>
> (c) that public use and enjoyment of appropriate Crown land be encouraged,
>
> (d) that, where appropriate, multiple use of Crown land be encouraged,
>
> (e) 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, and
>
> (f) 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** (emphasis added).

Even prior to this legislation, Lands Department policy since 1977 had endorsed reservation from sale of environmentally sensitive leasehold Crown lands (Morrison, 1995). The conservation value of Crown land reserved for travelling stock purposes had also been recognised from at least the 1970s (McKnight, 1977). In parts of the state where primary production dominates and land clearing has been the most extensive, public tenures such as leasehold and travelling stock reserves typically contain the remnant ecosystems least well represented in the conservation reserve system (DEC, 2004).

In attempting to achieve conservation and other management aims, the various incarnations of NSW's Crown land agency have relied on third parties to carry out the actual land management. This includes lessees of grazing and other leases, trustees of Crown reserves, other government agencies, and regional boards in the case of TSRs.

Not surprisingly, the resulting management of public lands is extremely varied in emphasis and ecological compatibility, even within a single tenure classification. *The prospects for environmental management to fall off the agenda are as numerous as the plethora of bodies and individuals assigned to manage Crown lands*.

The NSW experience does show some positive examples of complementarity between Crown land use and conservation of biodiversity. The relatively light grazing regimes of many leasehold blocks, and the intermittent grazing of those TSRs still used for their traditional purposes, have both been conducive to a higher level of protection for native species and communities than on adjacent freehold land. The Rural Lands Protection Act of 1998, the latest legislation covering travelling stock reserves (TSRs), specifies management aims of wildlife conservation and protection of soil and water (Austen, 2002).

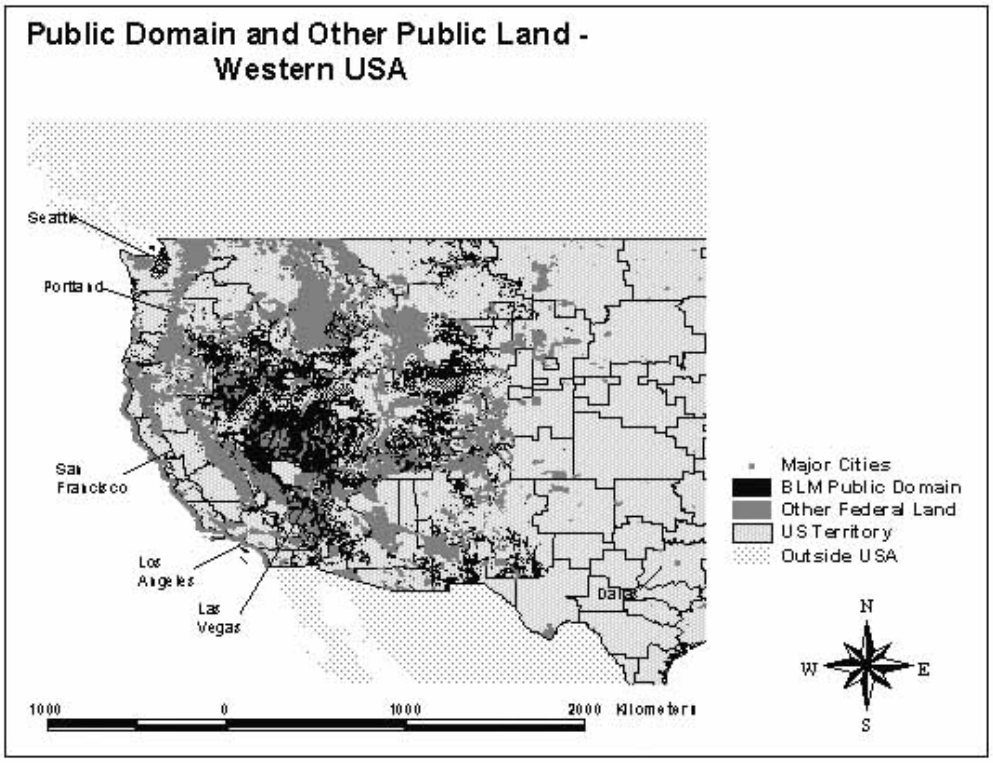
Equally however, these same categories can be rapidly degraded through freehold conversion of leases, licensing TSRs for long term grazing or timber removal, or general dilution of management objectives.

The NSW leasehold system has recently been questioned on the grounds of current relevance to land management, as part of a move by NSW Treasury and the Department of Lands to sell off low rent-yielding leases throughout the State.

NPA acknowledges that the leasehold estate has its origins in the early 20th Century, but strongly disagrees that the *tenure* aspect of leases has become outdated. On the contrary, as knowledge and measurement of biophysical sensitivity has improved, the value of lands retained in Crown ownership under low modification regimes has become much clearer.

If there is government momentum for major overhauls of the leasehold system, then it is in the area of management priorities and associated cost sharing that change is needed, rather than in ownership.

It should be noted that in the western United States, where 60 million people reside and agricultural productivity is considerable, the Federal Bureau of Land Management retains public ownership of grazing lands across a vast area (BLM, 2004). This grazing licensing system underpins the management of the US rangelands, including adjustment of practises according to sustainability needs.



3 Relationships Between Conservation and the Public Domain

3.1 Comparison of Tenure Controls and other Instruments

Under the banner of sustainability, earnest attempts to make management of primary production systems as compatible with the physical environment as possible are occurring. One forum where there has been policy development at a national level is ecologically sustainable forest management (ESFM). Although far from effectively implemented in the face of industry resource demands, the framework for ESFM was encouraging because it recognised as a starting point the setting aside of core protected lands, buffer or intermediate protection areas and, additionally, setting sustainable harvest levels for the remaining production-orientated areas.

What this demonstrates very clearly is that sustainable management cannot be just about how productive use occurs, but must also be about sustaining some areas where there is a different emphasis – one of conservation or heavily attenuated use. This dual responsibility does not yet seem to be widely recognised in many other primary production systems. Rather, there is a perception that if ‘sustainability’ is practiced, the protection of the environment can be assumed.

To underline one of the inadequacies of this point of view, a statement from a CSIRO Land and Water Technical Report by Dr Joe Walker is of interest:

> "It is now generally agreed that it is unrealistic to think that [within primary production areas] land, water and vegetation could ever be managed in a way that results in no loss of resources. This leads to the notion of degrees of sustainability that will change over time and this further confuses the definition". (Walker, 1997 p4)

Thus, while we continue to struggle with meanings of sustainable use and what this can actually deliver, it would seem critical to hold on at all costs to the mechanisms that retain some level of environmental protection for any thinly scattered natural remnants throughout the major agricultural regions. Tenure controls have been the most successful mechanism in this regard. Any relaxation of such controls should require that a mechanism at least as robust is first in place.

New South Wales has laws designed to protect native vegetation on private land – the Native Vegetation Act (2003) and it's predecessor laws and policies of the past decade. This area of legislation has clearly presented difficulties in implementation and enforcement. Examples of rushes to clear land in advance of laws coming into effect were witnessed in both 1995 and 2004. Exemptions to clearing restrictions have featured in each iteration of these laws, and the limits of definitions are frequently tested. As an example, the current Act outlines exemptions to clearing restrictions for routine agricultural management activities (RAMAs) as follows:

> **Routine agriculture management activities** (NV Act, 2004)
>
> 1. Clearing for routine agricultural management activities is permitted.
> 2. This section does not authorise any clearing of native vegetation:
>
> (a) if it exceeds the minimum extent necessary for carrying out the activity, or
>
> (b) if it is done for a work, building or structure before the grant of any statutory approval or other authority required for the work, building or structure.

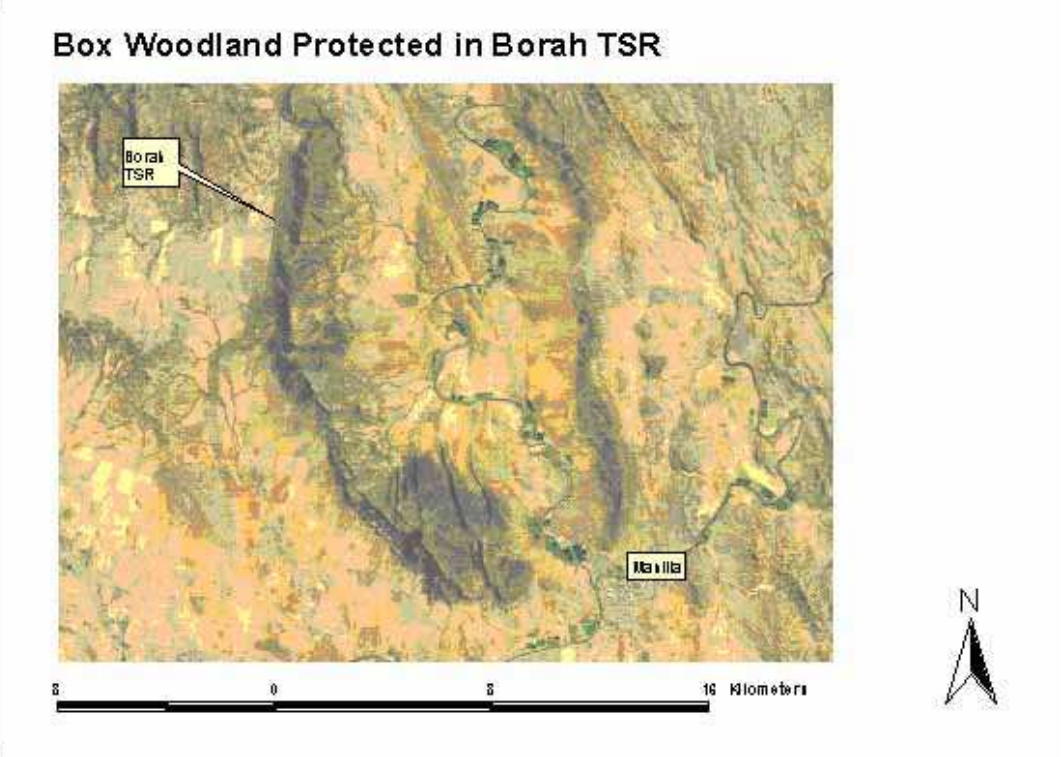
The reference to ‘minimum extent necessary’ will prove in coming years to be as large a loophole as any found in the prior laws. It allows for landholders in essentially identical situations to proceed with vastly different scales of clearing for infrastructure such as fence lines and dams, with little prospect of their interpretation of 'minimum extent necessary' being challenged.

Among the justifications by NSW Treasury and Lands for the freehold conversion of Crown leasehold tenure, was the assertion that the values protected under leasehold are now equally protected across private tenures. The weight of evidence shows that wherever adhered to, the conditions of grazing leases offer more comprehensive protection to environmental values than laws applying to freehold tenure. This is especially the case in regard to risks of subdivision and cultivation of land otherwise confined to native pasture grazing uses. Under the Native Vegetation Act (2003), every rural landowner is allowed an automatic exemption for clearing up to two hectares of their property. Therefore, every time a subdivision or freehold conversion occurs, a new clearing exemption of this type is created also.

In the heavily cleared wheat-sheep belt of central NSW, the other significant Crown tenure is travelling stock reserves (TSRs). As shown in figure 1 below, the difference

in condition in vegetation between TSRs and adjacent freehold land can be most stark. The pictured example is Borah TSR in the Peel Province of Nandewar Bioregion.

Figure 1.



Borah TSR has been found to contain one of the best remnants of the Box Woodland endangered ecological community (EEC) in the state (DEC, 2004). As can be seen, the northern extent of the forested Baldwin Range is flanked by intact footslope and valley floor woodlands within the TSR, with a sharp boundary to adjacent cleared freehold to the west. However, the southern part of the range, where there is no adjacent TSR, shows clearing extending right to the margin of rugged terrain.

While ruggedness has offered a degree of inherent protection to the steeper lands, there can be little doubt that tenure controls have been the factor that preserved the box woodlands of the foot slope and valley setting. Such instances of remnant vegetation preservation have been found over the majority of the TSR system, being of particular importance in the wheat/sheep belt (Williams and Metcalf, 1991; Austen, 2003; DEC, 2004).

In conservation management, there is a long history of proven benefit in having composite layers of protection for a given area. For example, a site with both protective SEPP designation and conservation reserve status is likely to be more securely managed over the longer term than one with a single layer of protection. Where protection mechanisms are partly contingent on other land management decisions, such as scenarios under native vegetation laws or grazing leases, the conservation benefit of multiple layers is more significant still, given that impacts possible under one mechanism may be precluded under another.

For this reason, the idea of letting protection functions default back to the existing vegetation laws, as announced by the NSW Lands Department in their leasehold conversion proposal, is seriously flawed.

The degree of modification of leases is influenced by both attitudes of the lessee to adherence to conditions, prospect for future conversion and to the utility of the land in question. A qualitative study of digital map data of Crown lands using a Landsat base was carried out for this report. Given that the majority of perpetual leases have always had an in built option for freehold conversion, it is not uncommon to find a high degree of clearing on leases within flatter landscapes capable of pasture modification. The remaining leases with a legal reservation from sale coincide with the best remnant vegetation on the whole. Although the NSW Government has retained it's discretion to continue to reserve these lands from sale on public interest grounds, the Department of Lands is giving indications that it sees this as unnecessary (reference media statement).

In some respects, the recent changes could be seen as punishing those who have adhered to the usage conditions of their lease. This is because their rent is set to be increased while the option to convert to freehold has been withheld in the past, and may yet be in the future also. Options for rate relief on financial grounds ought to be expanded to include a reduced rate where a lease is being retained in Crown ownership for the public purpose of conservation.

The alternative outlook would see even high conservation value leases converted. The recent vegetation and catchment reforms have indicated that a payment system to landholders for conserving vegetation in lieu of development opportunities is to be established. Taking the above factors into consideration, in converting high conservation value leases for a one-off, insubstantial return, the government could well be setting itself up to have to *contribute financially* to the conservation of the same lands that previously earned a small but regular rental *income*. This is unwise therefore on both ecological and economic grounds.

The Department of Lands has recently indicated an intention to offset part of the anticipated environmental effects of freehold mass conversions with a system of positive covenants, special conditions attached to converted lots, and an acquisition program for high conservation value leases.

Areas placed under conservation covenant or acquired for conservation would also require ongoing management programs and resources. It is expected that the management of a covenant system will prove to be comparable in resource needs to administering of leases, quite likely more costly in fact. Hence a future efficiency drive within the Lands Department could just as easily target this protection system for disposal or winding back, in the way it has recently targeted low-rent yielding leases. Further, as this department has typically assigned other bodies to manage the Crown land estate, the agency can not be regarded by any means as a specialist manager of biodiversity. All of these factors point to a second rate and insecure system of protection being established if the Lands Department plan is followed.

3.2 Timber Resources on Crown Land

Whatever direction is taken with regard to future conservation management on various public lands, one constraint that should be overcome is the lingering resource interest held by State Forests (now Dept. Primary Industries) in the timber of Crown Lands. This provision allows State Forests, on behalf of the Crown, to exploit the timber of leasehold and other Crown lands, even up to seven years after sale or conversion. There is a clear incompatibility between this profit à prendre system and

the dedication of leasehold or other Crown lands to a conservation purpose (eg the proposed covenants or conservation areas under the Lands Department).

In areas covered by Regional Forest Agreements, or other wood supply agreements proposed for inland forestry regions, the public wood resource allocated to the binding agreement processes has consisted entirely of merchantable timber within dedicated State Forests. It is unacceptable for the forestry agency to subsequently claim on timber resources of other Crown lands, over which it had resisted making any resource analysis during a comprehensive assessment process. *This, however, is exactly what State Forests (DPI) is able to do in relation to the most ecologically intact leasehold areas of central and eastern NSW.*

NPA understands that in fact State Forests has the first option to declare an interest in leases with a current reservation from sale (which coincides with the areas of highest ecological integrity). The exercising of this option would lead to logging of such areas and thwarting of measures to formally protect their conservation values for something like a decade.

The NSW Government is known to be actively considering privatisation of State-owned plantation forests. Environment groups are on the whole opposed to the privatisation of plantations, even if only the timber is privatised rather than the plantation site. This opposition is based on both the anticipated cutting of corners in the management of remnant native vegetation and stream buffers by private operators, and also the impact on employment in the plantation sector.

It seems likely also that following a move to sell off plantations, the remaining timber in the public domain would be turned to as a way of staving off the downsizing of timber workforce that accompanies such privatisation. The main uncommitted resource is State Forests' profit à prendre rights over the timber within Crown lands, meaning vegetation on leasehold land would become more at risk of logging.

Opposition by environment groups to a plantation's sell off will be much more active if this concern is realised. For all of the reasons outlined above, NPA seeks the removal of profit à prendre rights to harvest timber or gazette State Forests on leasehold and other Crown lands.

3.3 Historic Examples

In early 1993, a policy change mirroring the current moves to sell off Crown leases was in effect for a period of days (Benecke, 1994). In this short window of time, several examples of leasehold land with high conservation values were converted to freehold. MacRaes Knob, immediately to the west of Pine Brush State Forest near Grafton was among the areas converted.

Prior to conversion, this leasehold block had been referenced for future acquisition as a Nature Reserve, due to the occurrence of lowland rainforest communities heavily cleared in the far north coast region.

Quarry on MacRaes Knob, 1993

Conversion of this block to freehold was contrary to previous advice of both the National Parks and Wildlife Service and Forestry Commission.

There is also good evidence to suggest that the leaseholder, to whom the conversion was granted, had been operating rock quarries in breach of the lease conditions, providing a case for termination by the government. Instead the block was converted at the rate of $1.00 per acre (Devine, 1995).

Attempts by NPWS to secure a protective covenant over areas of highest ecological value on the property in advance of the leases conversion were minimally successful, and a voluntary conservation agreement was ultimately placed only over areas of secondary environmental importance so it did not interfere with exploitation by the landholder (Devine, 1995).

Quarrying activities, which had been undertaken in contravention of lease conditions, were expanded following the freehold conversion.

In Central Western NSW, the National Parks and Wildlife Service moved in 1994 to acquire a 5,000 hectare addition to Pilliga Nature Reserve to secure land from the imminent threat of clearing following subdivision. This same block had been converted from leasehold around ten years earlier. The purchase price outlaid by the NPWS is considered to be around $0.5 million higher than if this naturally vegetated block had not been converted to freehold. Hindsight shows that long-term nature conservation interests were not adequately considered at the time of relinquishing this Crown lease, and the costs of recovering from this course of action to actually protect this bushland were considerable.

These avenues of sanctioned degradation of former public land give an indication of what may be lost if a relaxed policy over leasehold disposal is adopted by the NSW Government. In the following sections, the opportunities represented by retaining Crown tenure lands to meet the biodiversity and heritage policy goals of government are expressed in terms of key policy principles.

4 Reform Proposals for Crown Grazing Leases

Leasehold Crown land forms part of a spectrum of land designations with a clear contemporary role in achieving biodiversity and heritage conservation across regional NSW.

Longstanding Government policy on reserving from sale leases with conservation significance must be retained. This is best achieved through a legislated confirmation of conservation as one of the public purposes which, following proper assessment, would require high conservation-value Crown lands (including leasehold) to be retained in public ownership.

Pursuant to the above, where leasehold land is reserved from sale on conservation grounds, lease holders, in recognition of their ongoing management of conservation values, should be entitled to discounted rental. This rate should utilise either the pre 2006 non-market based formula, or the equivalent discount adjustments provided to pension holders.

In light of renewed pressure to convert leasehold lands, an ecological assessment process is required to determine the conservation values of leases outside the Western Division and identified wilderness, at not less than a 1:100 000 mapping scale, and inclusive of woody and non-woody native vegetation. This should be conducted on a regional basis, as an externally funded biodiversity survey project of the Department of Environment and Conservation. This process should precede any program of conversions.

To ensure vegetation values on leasehold land are not compromised in the future, the profit à prendre provisions of the Forestry Act (1916) should be removed from leasehold and other Crown Lands.

Where a lease with no reservation from sale is assessed to have sections of both high conservation value and substantially modified landscapes, options for voluntary surrender of conservation-value areas in exchange for discounted freehold conversion over the remainder should be facilitated. This is particularly appropriate where the potential surrendered portion is contiguous with other public tenures dedicated to, or compatible with nature conservation. Such a process has functioned with relative success in New Zealand's sub-alpine regions for several years.

A covenant system for protecting values of leasehold lands is only valid if established under an agency (and Ministry) specialising in biodiversity protection, and using a plan of management process equivalent to that of formal reserves.

A leasehold acquisition fund should be established out of proceeds from the unsolicited sale of leases with an existing statutory right of conversion, and an initial input of $10 million from the NSW Government. This fund should focus on acquiring areas of native vegetation larger than 200 ha in the Eastern Division and 80 ha in the Central Division. It is anticipated that some areas of higher disturbance would be acquired through this processes and such land should be managed to promote ecological recovery. The appropriate management agency for these acquisitions would be the Department of Environment and Conservation (DEC).

5 Reform Proposals for Travelling Stock Reserves

a) NPA reiterates the need identified in the Rural Lands Protection Act review for a policy-based appraisal of management purposes and funding sources for TSRs.

b) The Government must urgently respond to changes in the rural sector, competition policy and public liability, which have impacted on the ability of Rural Lands Protection

Boards to manage Travelling Stock Reserves for the values outlined in the Rural Lands Protection Act of 1998.

c) The model of regional protection boards as managers of TSRs has been shown to be compatible with biodiversity conservation, provided a resource base exists for retaining traditional, intermittent grazing patterns or exclusion of grazing from sensitive ecosystems.

d) The defacto leasing of TSRs for ongoing grazing by permit for 1 to 3 year periods is contrary to sustaining biodiversity values. This trend is a direct consequence of a declining resource base from traditional TSR usage.

e) TSRs contiguous with or surrounded by National Park estate should be negotiated for transfer to DEC wherever the traditional travelling stock purposes are no longer the dominant usage. This process should be extended to also cover areas in the process of establishment as NPWS reserves.

f) TSRs surrounded by rural land use should be classified into prospective stocking and conservation uses as a basis for determining funding structures and needs. The following table gives an example of a decision support system for such classification.

Compatibility Table for conservation and stock grazing goals on TSRs

		Potential For Stock Usage		
		Traditional (travelling stock)	*Decline to minimal levels of traditional use*	*Grazing for adjacent landholders*
Conservation purpose	*Protect Endangered Ecological Community*	Generally compatible, with a traditional funding stream (possible supplementation needed for adequate biodiversity management)	Compatible with conservation, but management funding source required.	Low compatibility due to continuity of grazing
	Protect Critical habitat for threatened species	As above	As above	As above
	Protect corridor values	As above	As above	As above
	Recovery of regionally rare and under-represented ecosystems	As above, with a potential need for increased rest periods to support regeneration efforts	Likely to be suitable for conservation management following successful regeneration	Incompatible
	Low conservation value	Compatible	Explore other sustainable uses (eg recreation, research)	Compatible, pending soil and water conservation needs being met

6 Reform Proposals for Rail Corridors

a) Presently functioning rail lines in heavily cleared regions require environmental management to conserve and enhance remnant vegetation.

b) A management arrangement by memoranda of understanding between the rail infrastructure corporation, DEC and Catchment Management Authorities should be established. Under such an arrangement, native vegetation would be sensitively managed and, where warranted, fenced from stock access.

c) Disused rail corridors should not automatically be privatised or leased out for grazing. Formal ecological assessment of conservation values should take place prior to consideration of options for these lands.

d) In common with travelling stock reserves, disused rail corridors with remaining or recovering conservation values require a new management funding structure to provide for the public purpose of biodiversity conservation on public land.

7 Reform Proposals for Public Lands Used for Education

a) The conservation values of areas vested with the NSW Department of Education, TAFE NSW and the campuses of public universities require formal protection measures for long-term security.

b) Bushland areas in the above tenures and exceeding 25 hectares (0.25 sq km) should be protected by a permanent conservation covenant, equivalent in scope to a Voluntary Conservation Agreement under the National Parks and Wildlife Act.

c) Smaller parcels of bushland or remnant vegetation should be mapped and recorded on an environmental register developed with the Department of Environment and Conservation.

d) Education institutions should be bound by departmental policy to avoid any new development in areas of remnant native vegetation.

e) Where educational institutions no longer require a particular site for its original purpose, the land should be retained in public ownership and all heritage values fully conserved.

8 Reform Proposals for Public Lands Vested with Religious/Community Organisations

a) The granting of land by Governments to church or community organisations has been shown to require safeguards against future sell-offs of land with conservation or heritage values.

b) A general system of entrenching public rights of retention from disposal, for lands granted to a specific religious or community purpose, is the preferred means of addressing this emerging issue.

c) The NSW Government should develop, as part of comprehensive public land protection legislation, a mechanism for reversion to public ownership of lands granted by government to churches and similar organisations if the original use for which the land was granted becomes redundant.

d) Memoranda of understanding should also be required for managing these granted sites to protect recognised heritage and conservation values.

e) A suitable management authority to maintain a register of sites and MOUs is the proposed commission outlined in section 11.

9 Reform Proposals for Vacant Crown Land, Crown Reserves and Recreation Areas

a) Vacant and Reserved Crown land forms part of a spectrum of land designations which has a clear contemporary role in achieving heritage conservation across NSW.

b) Longstanding Government policy on protecting Crown lands of conservation significance must be retained. This is best achieved through a legislated confirmation of conservation as one of the public purposes which would require all Crown lands of conservation value to be retained in public ownership.

c) Significant areas of naturally vegetated Crown land vested with the Department of Sport and Recreation require a conservation management capacity to be developed within this agency. This is best achieved through processes in train to establish DSR management of some Regional Parks in urban areas. A management planning framework involving Department of Environment and Conservation is also essential.

d) Subsequent to establishment of the management arrangements in point c), the present system of State Parks located near six regional water storages and two coastal sites should be placed under the same jurisdiction of Dept. Sport and Recreation with DEC support, to fully develop a capacity for ecologically-compatible management of recreational open space.

e) Where Crown Reserves and vacant Crown lands are currently precluded from gazettal as NPWS estate by mineral objections or legal issues, interim appointment of the DEC to manage biodiversity values should be introduced as a standard practice. Vesting trusteeship of such lands with the Director General of DEC would be a suitable method of achieving this.

10 Reform Proposals for Commonwealth Land

a) The recent trend for disposal of Commonwealth Property with conservation values, including Defence lands at St Marys, Nelson Bay and along Sydney's Georges River, reveals serious deficiencies in processes of heritage protection at a Commonwealth level.

b) The community needs to be satisfied that the protection of natural and cultural heritage on Commonwealth property adopts the same standards for sites of both high and low public profile. For example, Defence lands in the Georges River estuary appear to be proceeding towards sale in a manner already dismissed as unacceptable in Sydney Harbour.

c) Commonwealth lands in NSW included on the National Estate register should each have an established memorandum of understanding between the Federal agency occupying the site, Environment Australia and the NSW Department of Environment and Conservation. The MOU would address conservation management and a process for future transfer of any surplus land to the NSW Government at no cost for the purposes of environmental protection.

d) To accommodate long term planning for future conservation uses of Commonwealth sites, the NSW Government should assume authority over land zoning of all Commonwealth special purpose lands (e.g. defence, communications, air services). This can be readily achieved though a State Environmental Planning Policy (SEPP).

e) A central tenet of such policy would require the Minister for Planning to obtain the concurrence of the Minister for the Environment on any proposed zoning change over Commonwealth lands, with a view to rezoning for environmental protection or public open space.

11 Reform Proposals for an Effective Public Land Management Body

The opening sections of this document refer to mainly the most recent problems for public lands from a conservation perspective. However, many of the issues being confronted at present have been simmering in the background for years or decades, only occasionally gaining public attention.

As authority over a large portion of public land in the eastern half of NSW, the Lands Department clearly needs to be responsive to Government policies on land designations and biodiversity. NPA believes that in fact the Lands Department and its predecessors have frequently been unnecessarily obstructive of establishment of new protected areas on Crown lands, basically 'splitting every hair' to render exhausted what ought to be a straight forward process.

Similarly, there has been little consistency with regard to allocating Crown lands to the most appropriate management body. The Lands Department's program of Ad hoc land use assessments for Crown lands has appeared at times to simply duplicate studies by local government or state environment agencies with better developed assessment capacities. The conclusions of such Lands Department studies about preferred uses of Crown lands are often so open-ended as to call into question the effort spent in making the assessment.

As a recent example of the impediments that internal, sight-specific assessments by Lands can cause to government environment policy, it has taken the active involvement of the

Premier's Department to reach a seemingly basic outcome for co-location of recreational shooting facilities in south-western Sydney to allow addition of a number of high conservation value Crown land parcels to the National Park estate.

In these instances, the Lands Department had simply been responding on a case-by-case basis to each area, indicating objections to reservation as National Park on the basis of possible uses as shooting ranges.

NPA concludes that there has been a long history of awkwardness in the functioning of the Crown Lands Department, particularly in respect of supporting government nature conservation policy.

Rather than retaining this agency in its current form, it is proposed here to establish a new public land management body with some of the traditional responsibilities of the Lands Department, but a much greater focus on, and capacity for delivering government policy on conservation and sustainability. We propose the following policies for the establishment of such a body:

a) The NSW Government legislate for and establish a new statutory body – the Public Land Management Commission. This commission would assume authority over all Crown Lands excepting State Forests under the Forestry Act (1916), Western Division leases under the Western Lands Act (1901) and reserves under the National Parks and Wildlife Act (1974).

b) The commission should comprise an executive board consisting of: 2 appointees of the Department of Environment and Conservation (DEC); 2 appointees of the Department of Infrastructure, Planning and Natural Resources (DIPNR); one appointee each of the Departments of Primary Industries (DPI), Aboriginal Affairs, Sport and Recreation and Rural Fire Service; and one appointee each from the National Parks Association of NSW/peak environment groups, the Catchment Management Authorities and the Local Government Association.

c) The body should be empowered to develop or endorse core conservation targets, management standards and plans of management for the public lands under their jurisdiction. This should be given effect through amendments to the Crown Lands Act (1989) and Rural Lands Protection Act (1998).

d) Crown Timber Reserves under section 22 of the Forestry Act (1916), including those within the Western Division, should be transferred to the control of this commission.

e) The Environmental Planning and Assessment (EP&A) Act (1979) should be amended to make the commission a consent authority over rezoning for a schedule of conservation and heritage value lands owned by the Commonwealth (including corporate arms of Commonwealth agencies).

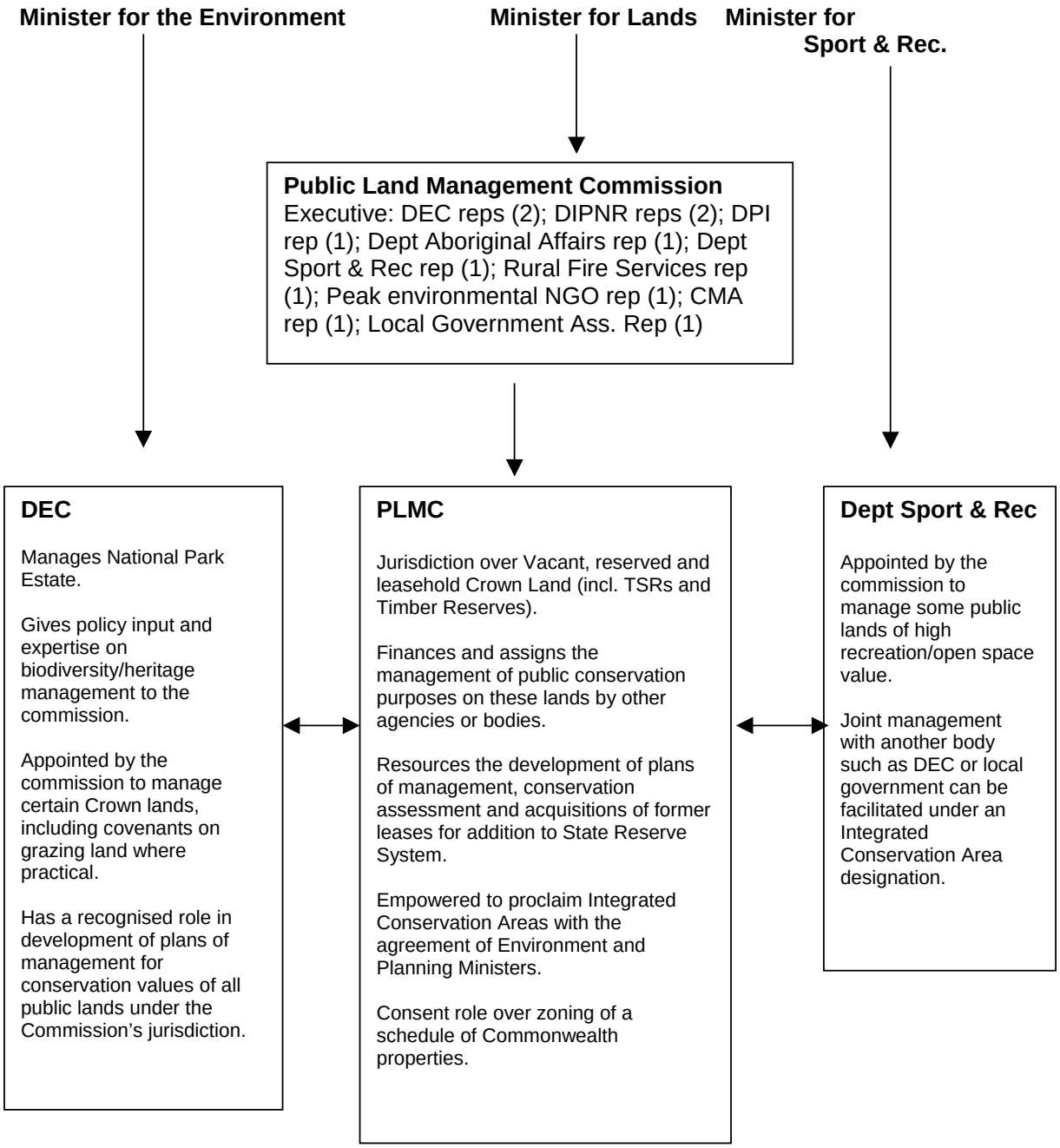
f) The commission should have a funding base derived from: rentals over commercial and domestic waterfront leases, other leases and licenses; a twenty year allocation of 3% of state land tax (or a special levy of equivalent scope); and the proceeds of sale of Crown property within the commission's jurisdiction.

g) The commission's funding should be used for: supporting conservation assessment and conservation management on Crown lands by government bodies or private landholders; ensuring adherence to the usage conditions of Crown leases; and administering a leasehold acquisition program for adding suitable leasehold land to the state reserve system (see also section 4 h.).

h) The commission would assume control over vesting of Crown Land and Crown Reserves with the most appropriate management body, including the option of full transfer to DEC or Department of Sport and Recreation (see Fig. 2).

i) The Public Land Management Commission would be empowered (with the joint consent of the Environment and Planning Ministers) to proclaim Integrated Conservation Areas (ICAs) over adjoining blocks or clusters of land managed for conservation or open space by different public and private bodies. The ICA proclamation should be revocable only by Act of parliament (see next page).

Figure 2. Diagrammatic Organisational Relationships of Proposed Public Land Management Commission



Integrated Conservation Areas would be a category of protected area applicable over lands of multiple owners or management jurisdictions. An approximation of this model – Coordinated Conservation Areas - have been in place in Queensland for over a decade (Wells *et al*, 1993). Using a covenant process for private land holders and memoranda of understanding for public agencies, a statutory protected area can be dedicated with a means to cooperatively manage the multiple components under an encompassing plan.

The model proposed here would give proclamation authority for ICAs to the Ministers for Environment and Planning (jointly). The facilitation and funding of conservation management for these areas is well suited to the proposed structure of the Public Land Management Commission, and the likely inclusion of various Crown land categories in such protected areas.

As an example of a candidate site for the establishment of such a conservation area, the bushland catchment of Narrabeen Lagoon contains a mosaic of land designations, all notionally intended for environmental protection or opens space. This includes National Park, Department of Sport and Recreation land, Crown Reserves, vacant Crown land and some large freehold blocks zoned for environmental protection.

Already a coordinated approach to fire management across jurisdictions has been developed, while the opportunities for joint conservation management are equally obvious and require an impetus such as the ICA model proposed here.

Appendix: Position Statements of the Protectors of Public Lands

PUBLIC LANDS (PPL) CHARTER

A Coalition of community action groups, environmental organisations and local Councils whose charter is to protect and preserve significant public lands in Public ownership for present and future generations.

PREAMBLE

Significant public land once sold is land lost to the people forever. When Governments sell land that is of significance or value to the people, they are also selling our children's future. Governments shall not be allowed to act in this way. The public, as represented by community groups, environmental organisations and local councils, being concerned at the alienation of significant public lands, has resolved to come together and form a coalition with the following Charter.

CHARTER

1. Public lands belong to the people.
2. No National, State or Local government or government department or body 'owns' public lands, they are held in trust for the people.
3. All public land that is of significance must remain in public ownership and control.
4. Public land is of significance where it is of environmental, heritage, natural, cultural, social, historic, scientific, aesthetic, ecological, or indigenous value, or is capable at present or in the future of having a value or use the benefit of which to the public outweighs any public benefit from sale or alienation by lease.
5. In relation to public land that is of significance:
(a) no privatisation;
(b) any lease must enhance significance and have public support after due process;
(c) maximisation of public access compatible with significance.
(d) proper protection and conservation;
(e) proper and genuine consultation with the public.

PRINCIPLES RE SIGNIFICANT PUBLIC LANDS

To remain in public ownership and control, to be held on trust for the people of NSW; and
Public uses to accord with the assessed significance of the land; and
Proper protection, conservation and management; and
Planning to be strictly controlled, and subject to the significance of the site, the trustee relationship and public participation; and
No residential development; and
Maximum public access, subject to assessment of significance and appropriate public uses; and
Any lease to retain public control, to accord with the significance of the site, and have general public support after due process. No head lease permitted. Any lease greater than 5 years to require the approval of Parliament, with no term over 21 years; and
Proper, genuine and ongoing public participation, including in the determination of agreed public uses; and
Public land can not be considered for sale, or lease contrary to paragraph (g), unless it has been assessed as not being of significance.

STATE REGISTER

a. A State Register to be developed and maintained by the Department Infrastructure, Planning and Natural Resources of all lands publicly owned by the State Government and its agencies (departments, authorities and bodies), and by local governments.
b. The State Register to include the list of public lands, an assessment of their significance (paragraphs 2 and 3 above), and notification of any such land being surplus or involving a possible change of use. The Register to be publicly available.
c. The State Government and its agencies, and local governments, to notify the above Department as soon as any public land is surplus to requirements or involves a possible change of use. The Department to notify governments (and agencies) and the public when such information is received, and to promptly pass such information to the Commonwealth Department of the Environment & Heritage to place on the National Register (when established).
d. Appropriate time frames to be specified.

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