

Crown Lands **Act Review**

ISSUES PAPER

April 2009

Published by
Department of Primary Industries and Water
GPO Box 44
HOBART TASMANIA 7001

www.dpiw.tas.gov.au

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ISBN (web): 978-0-7246-6478-8

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1. Executive Summary

The Crown Lands Act Review has been established to develop a contemporary legislative framework to manage Crown land for the benefit of the Tasmanian community. New legislation will be drafted covering, among other matters, protection of the environment, facilitation of development and ensuring public access and enjoyment of public areas. We seek your input to the review.

The *Crown Lands Act 1976 (CLA)* does not itself provide a policy framework for the strategic and active management of Crown lands in Tasmania.

Key issues with the *CLA* include:

- Some definitions are imprecise and the interface and links with other legislation are unclear;
- Much of the *CLA* is outdated;
- The *CLA* is overly complex and prescriptive, limiting flexibility to implement modern business practices;
- The *CLA* does not deal with assessments for developments on Crown land;
- The *CLA* does not deal effectively with the management of Crown land; and
- Penalty and enforcement provisions are weak.

Crown land is public land, managed and held in trust by the Government for the benefit of the Tasmanian community. The community expects a fair return for the use of *Crown land*. Under a new model, improvements could be made to ensure Crown land is managed on a more commercial basis.

Real estate function

The *CLA* deals with process matters. Except for compliance with RMPS objectives, it provides little guidance to assist in strategic decisions such as whether to retain, lease/licence or sell Crown land. The concept of “public benefit” is not currently recognised in the *CLA* and assessment and decision-making processes may benefit from the inclusion of such a test in any new legislation.

Current licence provisions are prescriptive and this limits the appropriate use of the licence tool. In addition, administrative arrangements for the sale of Crown land are fragmented, with sales managed across several departments. This can result in a lack of strategic oversight in relation to the value and use of the land to the State Government and possible inconsistencies in the method of disposal.

Crown land management function

The Tasmanian community expects public land agencies to lead sustainable land management. Challenges include climate change, land degradation, weed and pest management, fire management, contamination and remediation. Development of a sustainable funding model may assist planning for Crown lands management.

Currently, Crown Land Services does not actively manage unallocated Crown land except to mitigate public risk. The management of other Crown Land Act land is dealt with through lease and licence contractual arrangements.

Other issues

The definitions relating to Crown lands in the *Crown Lands Act* are unclear and inadequate. There is a need for clearer definitions in any new arrangements. There are also some issues relating to the scope of the current Act and how it applies to the seabed and airspace for example.

Many Crown land leases in the past have lacked sufficient requirements for remediation of sites contaminated by the lease or licence holder's activities. Improved penalty and enforcement provisions in new legislation may assist in dealing with such challenges.

2. The Crown Land Act Review

The Crown Lands Act Review has been established to develop a contemporary legislative framework to improve the management of Crown lands for the benefit of the Tasmanian community. New legislation could cover matters not explicitly or fully dealt with under the existing principal Crown land legislation. These matters include, but are not limited to, facilitation of sustainable development and ensuring public access and enjoyment of public areas whilst maintaining the land's environmental values.

2.1 *How you can be involved*

The review is seeking input and support from all stakeholders. The Review will consult with State and local government, major interest groups and the broader community. There will be plenty of opportunity for your views to be heard during the review process.

You can keep up to date with the review through the website at <http://www.dpiw.tas.gov.au/clarp>. Review staff will do their best to ensure that interested organisations and individuals are kept informed about progress. Stakeholder views will be listened to and properly considered.

This Issues Paper is the first phase of public consultation. We are looking for general comments on issues with the current arrangements, what you think new arrangements should look like and more specific comment on the questions posed in the Issues Paper. You can provide your comments by any of the methods set out below.

Comments should be received by close of business on **18 May 2009** by any of the contact methods outlined below.

A consultation report summarising the results of consultation on this paper will be released soon after the end of the consultation period. The results of the consultation will be taken into account when preparing a draft Bill.

When the draft Bill is released for public comment, we will place newspaper advertisements and will directly contact key stakeholders and those who make submissions on the Issues Paper.

Contacting us

Organisations and members of the community can provide their comments in a number of ways. If you would like to comment directly, you can write to us at the address below, fax or email or telephone.

Postal address:

Crown Land Act Review
Department of Primary Industries and Water
GPO Box 44
Hobart TAS 7001

Email:

CLARP.Enquiries@dpiw.tas.gov.au

Fax:

(03) 6233 3717

Telephone:

You can call us to discuss the Review on the following number: [03] 6233 6360 or 6233 2596.

2.2 The need for a review

The review of the *Crown Lands Act* has been initiated by the Department of Primary Industries and Water, primarily to address administrative difficulties associated with the current arrangements for Crown land managed by the department.

The *Crown Lands Act 1976* is more than 30 years old and was written for a different set of circumstances than exists today.

The legislation was drawn up when Crown land was considered to be what was 'left over' after private needs for land had been met. Today there is a much greater sense of Crown land being a public asset for the benefit of the community and for future generations. As a community we now have a much greater appreciation of the need not only to accommodate appropriate development but to do so in a sustainable manner.

Crown land is public land, managed and held in trust by the Government for the benefit of the Tasmanian community. The community expects a fair return for the use of *Crown land*. Under a new model, improvements could be made to ensure Crown land is managed on a more commercial basis.

Of itself, the *CLA* does not provide a policy framework that supports the strategic and pro-active management of Crown lands in Tasmania.

Key issues with the *CLA* include:

- Some definitions are imprecise and the interface and links with other legislation are unclear. For example, the definition of Crown land is narrow and only applies to instrumentalities of the State as defined in the *State Service Act 2000*. It unclear how the *CLA* applies to land held by some statutory authorities, GBEs and SOCs.
- Much of the *CLA* is outdated and/or redundant. For example section IIB of the Act establishes detailed arrangements for the management of public reserves, including management plans, which have never been used. Section 62 deals with Pounds on Crown lands.
- The *CLA* is overly prescriptive, limiting flexibility to implement modern business practices. For example, Part V – Licences specifies types of licences and terms for licences which are limiting the appropriate use of the licence tool. For further information see licence section.
- The *CLA* does not deal with assessments for developments on Crown land.
- The *CLA* does not effectively deal with the management of Crown land. Although it does allow for the development of management plans for Public Reserves, this mechanism has never been used. It does not deal with the management of unallocated Crown land.
- Penalty and enforcement provisions are weak.

The recent completion of the Crown Lands Assessment and Classification (CLAC) Project, and the consequent rationalisation of Crown land holdings, also means that this is now an appropriate time to review how to administer and manage Crown land (see section 2.3 for further information on the CLAC Project).

Terms of Reference for the Review

The review will develop draft legislation to address identified issues with the current arrangements. It will also review the relationship of the *CLA* to other legislation, identify consequential amendments to other legislation, but will not seek to replace other Acts governing various types of Crown land not currently reserved or managed under the *CLA*.

The review process will, however, consider the linkages between various legislative instruments and Crown land governance more broadly.

Definitions

Crown land is a generally accepted term for all lands owned by the State of Tasmania and controlled by the Government. In effect, Crown land is land that is not privately owned. Although most land owned by State bodies is Crown land, most is managed under legislation other than the *CLA*.

In the interest of making useful distinctions between types of Crown land and associated administrative arrangements for the purposes of this paper, the following definitions will apply:

Crown land: all public land reserved and/or administered under the *Nature Conservation Act 2002*, *Forestry Act 1920* and the *Crown Lands Act 1976* including portfolio land.

Crown land managed under the *CLA*: unallocated Crown land, land reserved under the *CLA* as Public Reserve, and portfolio land [does not include land reserved under the *Nature Conservation Act 2002* and *Forestry Act 1920*].

Portfolio land: a subset of Crown land. Portfolio land means land controlled and managed by a State instrumentality (a State Government department or authority within the meaning of the *State Service Act 2000*).

Parks land: land reserved under the *Nature Conservation Act 2002* and managed under the *National Parks and Reserves Management Act 2002* [commonly known as Reserved land].

Forestry Act land: land reserved and/or managed under the *Forestry Act*.

GBE and SOC land
Crown land vested in a Government Business Enterprise (GBE) such as Hydro Tasmania¹ or a State Owned Company such as Transend or Aurora.

¹ See appendix 4.

Private land: land owned by private individuals or corporations rather than Local, State or Commonwealth Government bodies.

Local Government land: land owned and controlled by local government.

Commonwealth land: land owned and controlled by the Australian Government.

There are some definitional uncertainties in relation to what is Crown land and how the *CLA* applies to certain State instrumentalities. These issues are discussed in Section 3.3 of this Paper.

2.3 Review outcomes, assumptions and scope

Outcomes

To review the *Crown Lands Act 1976* and draft legislation for the administration and management of Crown land in Tasmania. New draft legislation will seek to deliver:

- sustainable management of *CLA* land
- more consistent and transparent decisions on matters relating to *CLA* land
- economic returns for private or commercial use of *CLA* land
- improved protection of natural and cultural values on *CLA* land
- maximum public use and enjoyment of *CLA* land
- adequate penalty and enforcement provisions.

Assumptions

- Crown land should be managed to maximise benefits for the Tasmanian community. Benefits can compete or overlap and can be broadly categorised as economic, social and environmental. The key objective in managing Crown land is to optimise the balance between these benefits.
- A new Act should be consistent with the RMPS objectives and sustainable development principles.
- A new Act should be outcomes based rather than a prescriptive set of rules and procedures, thereby enabling improved and simplified administrative processes.
- Crown real estate transactions of a commercial nature should generally be transacted at market value unless there is an overriding community benefit.
- Use and development of Crown Land should be integrated with land use planning at a regional and local level.

Scope

The review will:

- Define the scope of Crown land including seabed, waterways and roads
- Review the relationship to any new legislation, of all Crown land including portfolio land, land reserved under the *Nature Conservation Act*, Forestry reserves and other Crown land
- Develop principles and guidance for land management functions, development assessment functions and real estate functions
- Establish compliance and enforcement powers
- Develop proposed business model/s
- Develop and draft new Crown land legislation
- Identify consequential amendments to other Acts
- Consider arrangements for the management of reserve roads.

The review will not:

- Review other Acts or seek to replace them
- Review Crown land classification categories
- Implement new arrangements that may result from the review, including developing subordinate legislation

3. Background

3.1 *History of Crown land in Tasmania*

Prior to European occupation a substantial Aboriginal population inhabited Tasmania. Their social structure comprised three groupings: eastern and northern, midland and maritime; embracing nine language groups (and 45 dialects), which were made up of many bands occupying all parts of the State.

European settlers dispossessed the Aboriginal people of the land, however many sites that are significant to Aboriginal people remain. Under the current legal framework the Tasmanian Aboriginal community has not been able to take advantage of the Commonwealth Native Title legislation, primarily due to lack of continuous connection with the land.

However, in recognition of the Aboriginal community's connection to the land and to foster reconciliation, the State Government has handed back significant parcels of land to the Aboriginal community under the *Aboriginal Lands Act 1995*.

Tasmania was the second Australian colony permanently occupied by European settlers in 1803.

At the time of settlement and up until 1890 land then available for disposal was known as 'waste land', not because it was not suitable for use, rather that it was unallocated to a specific use. Colonial authorities were focussed on encouraging rapid agricultural development so that the colony could become self supporting.

In 1858, after the commencement of responsible Government, the first land legislation was passed in the form of the Waste Lands Act (known as the First Waste Lands Act). It divided the State into settled and unsettled areas, with the settled areas being further subdivided into Agricultural, Pastoral and Town categories. The Act provided for either disposal of Crown land by auction or by private selection. It also provided for "terms" purchase as well as full settlement at the time of the auction or selection

In 1863 there was an amendment to the Waste Lands Act which provided much more liberal credit for the purchase of agricultural lots. There was another credit concession in an 1868 amendment to the Act. New legislation in 1870, included a clause under which a lot could be forfeited unless the selector or a tenant resided on it within a year of purchase and remained there until purchase was complete.

In 1890 the first Crown Lands Acts came into being which followed the same 'develop and dispose' philosophy.

The Crown Lands Act 1890 (54 Victoria No. 18) put in place more restrictive conditions in relation to alienation of Crown land designed to stop speculation. Under the new legislation habitual residence by the selector or his family was compulsory and improvements to the land had to begin and continue for 8 years to the value of two shillings and sixpence (25c) per acre per year.

Subsequent Acts maintained that ethic until the advent of the *Crown Lands Act 1976*. The *CLA 1976* was more focussed the administration and management of the Crown real estate function. The *Crown Lands Act 1976* prescribes the role and functions of the Minister and the Director General of Lands and governs the sale, lease and licence of Crown land as defined under the *CLA* and the management of that land.

More recent developments

Reports published in 1990-91 by the *Legislative Council Select Committee on Public Land Usage* expressed concerns that the then existing system of public land classification was complex and confusing with a great deal of duplication. The Tasmanian Public Land Use Commission (PLUC) was established soon after. Towards the end of 1994 terms of reference were agreed for the Inquiry that delivered the report *Inquiry into Tasmanian Crown Land Classifications*. The objective of the PLUC Inquiry was to simplify the classification of reserved Crown lands and prescribe objectives of management for each classification.

The Commission identified a number of biophysical, cultural and economic values and uses of Crown land in Tasmania. It found that reserved and classified Crown lands play a central role in the conservation of flora and fauna, biodiversity, wilderness, landscape, earth science values, cultural heritage and water quality. Crown land was also seen as a major source of natural resources including forest products, minerals, power supply, and was a major focus of Tasmania's tourism industry and recreational activity.

The initial implementation mechanism for the PLUC's classifications was the Tasmanian Regional Forest Agreement (RFA), an inter-governmental agreement between the Tasmanian and Australian Governments, that was signed in November 1997. The Agreement provides for the long term sustainable management of Tasmania's forests, both public and privately owned. It applies for 20 years, with five-yearly reviews.

The RFA increased the existing conservation reserve system by almost one fifth.

The *Regional Forest Agreement Land Classification Act 1998 (RFALCA)* amended the *FA*, *NPWA* and the *CLA* to implement a series of recommendations from the PLUC Inquiry on a new Crown land classification system for Tasmania. The introduction of this system was also an RFA commitment.

The system significantly simplified the complex web of overlapping tenure, whereby a single piece of Crown land could have several different classifications. Under the revised arrangements, each piece of Crown land has only one classification with a defined set of purposes and objectives for management and use of the land.

RFALCA amendments to the *CLA* focussed on the simplification of the numerous reserve categories down to just one category of public reserve. All *CLA* reserves were directly translated to public reserves under the new arrangements without a strategic assessment of the values of each property. That assessment subsequently occurred through the *CLAC* Project.

Due to its geography and history of settlement, and unlike other Australian states such as Western Australia and Queensland, Tasmania does not have vast tracts of vacant land or large pastoral leases. A small number of remnant 99-year leases remain. There are few 'rural' leases covering land areas greater than 300 hectares except on some of the Bass Strait islands.

Tasmania's relatively small population has not generated large-scale property developments in comparison to other jurisdictions. A great deal of early European built history still remains and Crown Land Services administer a number of older heritage buildings.

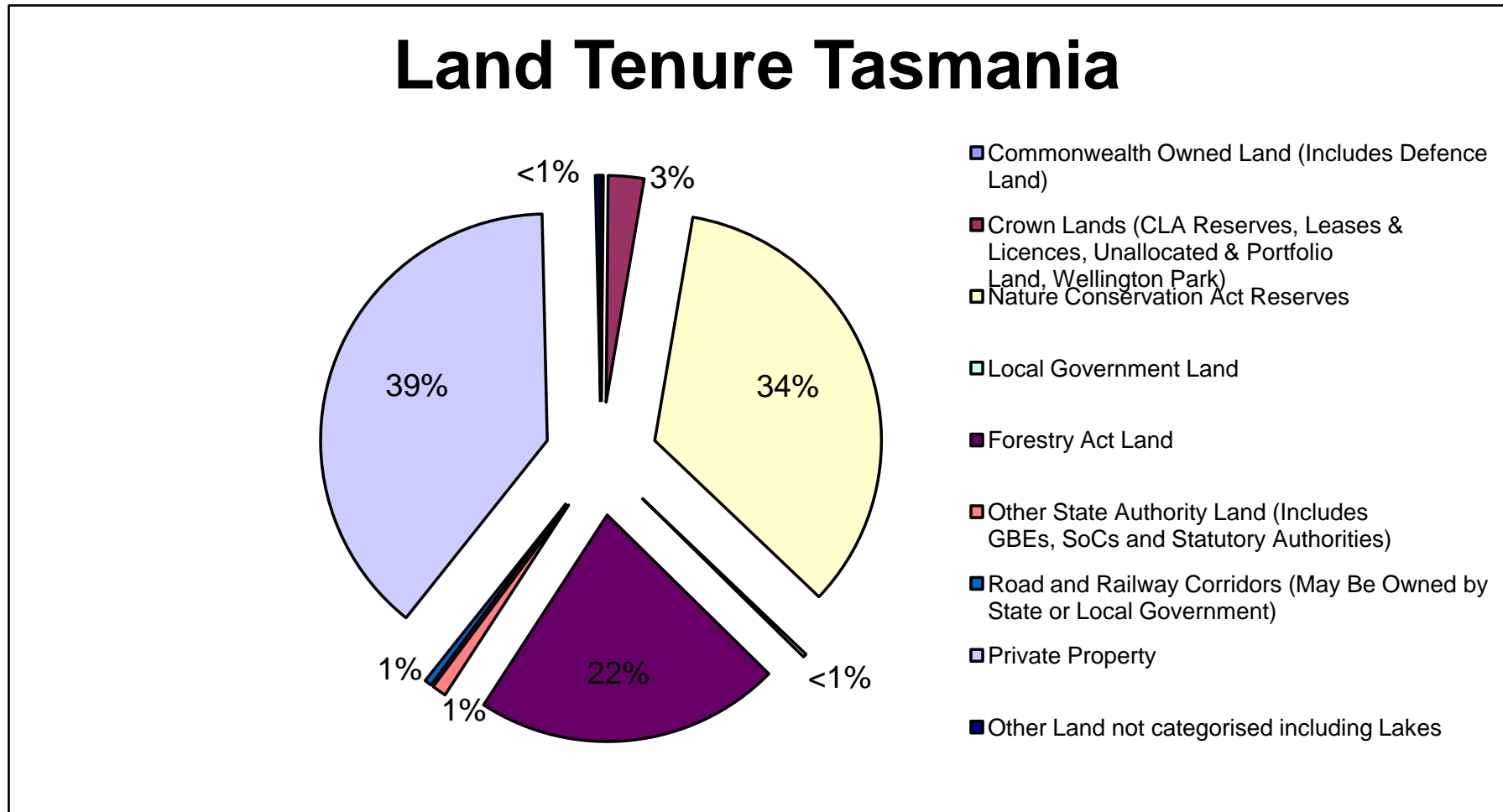
3.2 Land tenure in Tasmania today

As Figure 1 shows, a large proportion of the Tasmanian landmass is private property (approximately 39%). The next largest proportion is land reserved under the *Nature Conservation Act* (approximately 34%). This includes listed World Heritage areas. This is followed by Forestry Act lands (State Forest and Forest Reserves - approximately 22%). These three categories account for around 95% of the State's land.

Other Crown Lands, including portfolio land, account for a relatively small proportion (approximately 3%). Three small categories account for the remainder: other State Authority land (approximately 1%), Commonwealth owned land, (including Defence land - less than 1%), and Local Government land (less than 1%).

For a map that shows the distribution of Crown land in your area can be found on the Crown Land Assessment and Classification Project website at: <http://www.dpiw.tas.gov.au/inter.nsf/WebPages/ASTE-6AJV48?open>. This will take you to the consultation and recommendation page. Follow the link into your municipality. Here you will find maps. You can click on your area for a map of Crown land properties that are leased licensed and those that were assessed under CLAC.

Figure 1: Land Tenure in Tasmania



Source: Geodata Services Branch, Department of Primary Industries and Water (January 2008)

Notes: Statistics have been compiled from calculated GIS polygon areas from LIST cadastral data sets. Note that NCA reserves are generally proclaimed to low water mark and may also include areas of State waters. Therefore the actual proclaimed area will be greater than that depicted for Tasmania's land area. There are approximately 42,000 ha of reserves on public land below high water mark.

3.3 Current management of CLA land in Tasmania

The Minister for Primary Industries and Water is responsible for the *Crown Lands Act 1976*. Portfolio Ministers also have responsibility under the *CLA* for the management of portfolio land. As a result of the CLAC Project the amount of unallocated land will reduce significantly, as land assessed as suitable for reservation is reserved, and land considered suitable for sale is released on to the market.

The *CLA* applies to Public Reserves, portfolio land and unallocated Crown land. Other Acts governing the reservation and management of Crown land are summarised at Appendix 2.

The *CLA* prescribes the role and function of the Minister (and the Director-General of Lands), and governs the sale, lease and licence of Crown land as defined under the *CLA* and the management of that land.

The roles and functions of the Minister established under the *CLA* can be broadly categorised into five main areas as follows:

- a) reservation of public reserves²
- b) management of public reserves, including development of management plans
- c) setting aside of land for the purposes of a department, statutory authority or any other Act
- d) the sale and disposal of Crown lands
- e) leasing or licensing of Crown lands.

The *CLA* also establishes the role of the Director General of Lands. The key features of the role are in the:

- a) preparation of management plans
- b) membership of the Conservation Management Trust
- c) fixing of the reserved price of land on the advice of the Valuer General
- d) application of enforcement and penalty provisions.

All development on Public Reserves, portfolio land and unallocated Crown land must be in accord with the *Land Use Planning and Approvals Act*.

Crown Lands Assessment and Classification Project

The Crown Land Assessment and Classification (CLAC) Project completed the Crown land classification process by assessing and classifying all unallocated Crown land and Public Reserves under the *Crown Lands Act 1976*.

² The Minister, by order, may reserve any Crown land as a public reserve if it is an area of Crown land that contains biophysical, natural, cultural or economic values.

The project arose from the recommendations of the Tasmanian Public Land Use Commission into Tasmanian Crown land classifications. It formed a response to commitments under the *Regional Forest Agreement* and the *Statewide Partnership Agreement on Financial Reform* between the State Government and Tasmanian Local Councils.

Approximately 7000 properties were assessed. They were:

- scattered widely throughout the state
- mostly smaller than 10 hectares
- only in a few cases greater than 500 hectares
- in total nearly 3% of the land area of Tasmania.

Of the 107,742 hectares of Crown land assessed under CLAC, approximately 72% has been flagged for reservation under the *NCA*, a further 13% for reservation as public reserve under the *CLA*, 8% is being considered for sale, 5% for transfer to other agencies and 2% to local government.

As a result of CLAC, it is expected that most of the remaining land managed under the *Crown Lands Act 1976* in the future will be in the form of Public Reserves. Most will be located in urban areas or along coasts and rivers (which include some developments, such as jetties) or in rural areas adjacent to farmland.

4 Major issues

This section will discuss major Crown land issues, providing some background to each issue, a brief discussion of the issue and some examples of how these issues are dealt with in other jurisdictions. Some questions will then be posed to stimulate debate and provide some structure for providing feedback on the Paper.

The issues have been divided into the Crown real estate function, Crown land management function, and other Crown land issues.

4.1 *The Crown real estate function*

The Crown real estate function refers to the management of the Crown estate. It involves all dealings such as sales, transfers, leasing and licensing of Crown lands.

Crown land is public land, managed and held in trust by the Government for the benefit of the Tasmanian community. The community expects a fair return for the use of *Crown land*. Under a new model, improvements could be made to ensure Crown land is managed on a more commercial basis.

The Crown real estate function is governed by a number of legislative instruments and is administered by several departments/authorities. The following is a summary of current arrangements and issues.

Assessment processes

How use and development of Crown lands are currently assessed

The *Crown Lands Act 1976* sets out the procedural, administrative and legal requirements for the sale, leasing and licensing of Crown land subject to the Act. This administrative mechanism presupposes a process which allows decisions to be made on whether a particular property should be available for use by private individuals, clubs, businesses, Councils or other agencies.

Currently legislation and policies deal with the assessment of land on a piecemeal basis. The CLAC process has addressed this issue at a strategic level for Crown land managed under the *CLA*. Other State Government agencies and entities have their own processes for deciding how land assets are dealt with. For agencies, the decision making is usually about whether the land is still needed for a particular purpose by that agency (e.g. school sites for education) or whether it can be disposed of.

When assessing specific use or development applications, reserved Crown land subject to the *CLA* is subject to the Resource Management and Planning System (RMPS). In considering whether to give approval for actions relating to Public Reserves under the *CLA*, the Minister is required to determine whether the action is consistent with the sustainable development objectives of the State's RMPS. The managing authority of any Public Reserve is also required to manage the reserve having regard to the management objectives specified in Schedule 4 of the *CLA* and consistent with the purpose for which the land was reserved.

The Land Use Planning and Approvals Act 1993 (LUPAA) refers to development proposals in relation to Crown land in Section 52. This section states that any application for development approval by a third party on Crown land requires the prior written consent of the Minister administering the *CLA*. This is a more stringent requirement than for private land where third parties can lodge development applications as long as the owner is notified.

Crown Land Services development assessment process

Assessment of specific development and/or use proposals for individual Crown land properties is subject to DPIW policies and processes. Since July 2004, applications for development or use have been subject to a public benefits test.

As a matter of policy, when Crown Land Services (CLS) receives an application for a lease or licence it consults with local government and in some circumstances other affected parties, carries out a basic assessment, and a Public Benefits Test.

The Public Benefits Test effectively applies a broad triple bottom line assessment to a development or lease proposal. The test fits within the context of the objectives of the RMPS, the concept of sustainable development and is in accordance with the State's Coastal Policy. It includes consideration of the following issues:

- What public benefit does the proposal have – economic, social, environmental?
- Is public access to the area or public use of the area affected? Is it enhanced or made worse?
- Are there any impacts on the natural values of the area? Are the values likely to be enhanced or made worse?
- Are there any planning issues, such as zoning issues or impact on scenic values?
- Does the proposal have environmental impacts, for example water, soil, air pollution?
- Are the land and/or the proposed development likely to be affected by sea-level rise?
- Is the proposal for minor or major development?
- Is the development of a temporary or longer-term nature?
- Are there any implications for the Crown’s risk exposure in terms of liability?

Applications are considered by a Technical Advisory Group (TAG), made up of Government stakeholders with technical expertise across a number of areas, including environmental, European and Aboriginal heritage, and conservation.

CLS, after having received TAG advice, then make recommendations to the Public Benefit Assessment Committee. This cross-agency committee comprises senior departmental representatives (representing the Environment Division of DEPHA, Planning Division of the Justice Department and the Strategic Policy, Resource Management and Conservation and Information and Land Divisions of DPIW).

The overall public benefit of a proposal is assessed by this committee, which then provides advice through DPIW to the Minister for Crown lands.

Assessment process issues

The *CLA* deals with process matters and provides little guidance to assist in strategic decisions, such as whether to retain or sell Crown land, aside from compliance with the RMPS objectives and/or any management plan for a Public Reserve. The concept of “public benefit” is not currently recognised in the *CLA* and assessment and decision-making processes may benefit from the inclusion of such a test in any new legislation.

In comparison the *Local Government Act 1993* provides for a public process prior to the sale, lease, donation or exchange of Council owned land. There is a process for decision and appeals. Leases of less than 5-years do not require a public process. This approach is intended to ensure an open and transparent approach to dealings with public land. A similar approach for Crown lands subject to the *CLA*, and in particular Public Reserves, could provide similar transparency and ensure that all uses of the land are considered by the decision making body.

There is a degree of inconsistency in internal development assessment processes across departments. This can contribute to some uncertainty for developers and the public. It is particularly an issue where proposals cross over between Crown lands managed under the *CLA* and other Crown lands (usually Parks land).

The Crown land approval process culminating in landowner permission to proceed to a development application with local government can increase the time taken to process a development from application to decision. However, it could be argued that particularly for significant developments, an assessment must be made of the State Government's interest and public interest and the broader rather than local impacts of the development.

Question for consideration:

Should a public benefits test be included in new legislation? Is the current public benefits test appropriate? If not, how could it be improved?

Lease and licensing of Crown land

Crown leases and licences are used as contractual mechanisms to confer certain rights and responsibilities on users of Crown land.

A Crown lease is an agreement in which the landlord (the Crown) agrees to give the tenant the exclusive right to occupy property for a specific term and, in exchange, the tenant agrees to give the landlord some consideration.

A Crown license gives permission to an individual or an entity to use property for a specific purpose and requires compliance with certain requirements. Unlike a lease, it does not transfer an interest in the property. A number of licences may be held against the same property at the same time by a number of parties.

While the majority of Crown land leases and licences are managed by CLS several agencies including portfolio agencies also issue leases and licences for Crown land. For example, the Department of Education (DoE) manages leases as diverse as teacher residences and telecommunications towers on portfolio land. Portfolio agencies have powers under the *CLA* to lease or licence but not to sell or otherwise dispose of Crown land. PWS also manage leases and licences on Parks land.

It could be argued that portfolio agencies should be responsible for managing their own affairs in relation to leases and licences. For example, managing leases for teacher residences is clearly within the DoE's core business. However, there may be a case for the central management of strategic assets such as land on which key infrastructure is located, such as telecommunications towers where there is a strategic state-wide interest.

The Crown Lands Act provides for Crown land to be leased in such a manner, to such persons, for such purposes, at such rent, and on such terms as the Minister sees fit. Generally the term of leases can not exceed 99 years. Leases for land in waters edge, rivers edge, inland seas, and waterways locations for industrial purposes can not exceed 50 years. Rural leases are limited to 21 years. Leases do not confer any right to minerals or forest products.

In practice most leases are now issued for less than 10 years. Leases involving large investments are generally issued for a term of up to 21 years, providing sufficient certainty to investors and in most cases satisfying business lenders loan assessment criteria. Longer terms of up to 50 years may be appropriate in circumstances where there are very large investments and longer lease terms are required to achieve a return on investment.

Issues

Leases historically have not always been strategically assessed and may have been entered into over what by modern standards are inappropriately long terms and at low returns to the State.

Licences are generally used in situations where there is a requirement to confer non-exclusive use or access rights over Crown land. For example, access over Crown land to freehold land, sometimes by multiple parties and for infrastructure developments such as pipelines.

There are several provisions for licensing under the *CLA* that are prescriptive, limiting and somewhat contradictory. The Minister may issue temporary licences for a time not exceeding 12 months on such terms as specified in the licence. Longer term licences can be issued but they can be cancelled by giving 3 months notice.

The *CLA* assumes a temporary nature for licences, which may not always be appropriate. For example, a non-exclusive use such as underground pipelines is a long-term use, which is not adequately catered for in the current legislation.

Currently applications for Crown land are processed by CLS on a first come basis and land available to lease or licence is not generally put out to tender. This may now be an issue as more of Tasmania's coastal areas are developed and suitable sites for developments such as marinas become more scarce.

There is also currently no opportunity for public input into proposals to lease or licence Crown land. Given the large volume of Crown leases and licences and the minimal impact of the majority, consideration may need to be given to the circumstances under which public input is warranted and a clear set of criteria established for deciding this.

In addition, leases and licences are often over both Crown land managed under the *CLA* and Parks land e.g. jetties which start on Parks land extend over unallocated Crown land. Assessment and issuing agreements may need to be streamlined.

Other jurisdictions - examples

New Zealand

In New Zealand under the *Land Act 1948* power to issue leases rests with the Commissioner. Leases and licences must be registered under the *Land Transfer Act 1952*. The Commissioner has power to reject lease and licence applications for the public benefit or at his discretion. The Land Act contains a number of sections that imply covenants into every contract made under it. These include that land must be properly farmed and maintained and timber must be preserved and any removal or destruction requires prior consent of the commissioner.

New Zealand's *Land Act 1948* specifies principles that must be applied by accredited suppliers to the leasing and licensing of Crown land. These are to:

- achieve fair market value for the Crown
- maximise return to the Crown
- minimise risk to the Crown
- have regard to Land Information New Zealand and other Government Department's future intentions to the land.

Victoria

The Victorian Department of Sustainability and Environment uses a 4-point model of assessment to vet lease applications:

- community use, enjoyment and access to crown land,
- enhances or maintains public land values or amenity of locality,
- not detrimental to crown land
- economic benefit consistent with terms and conditions in the lease.

Questions for consideration:

Should leases and licences be assessed on the basis of RMPS (or other) objectives?

Should there be an opportunity for public input into to the lease or licence Crown land? If so, should this be a legislative requirement or departmental policy?

Should portfolio agencies continue to be responsible for managing, leasing and licensing of Crown land currently held by those agencies? Are there exceptions to this such as where strategic or state wide interests are at stake?

Should any new Act specify lease or licence terms?

How could applications for developments on land governed by more than one Act be more efficiently dealt with?

Sale of Crown lands

Power rests with the Minister to sell Crown land in such manner, to such persons, and on such terms, as the Minister thinks fit. However, the price must be set by the Director General of Lands after considering such matters as the advice of the Valuer General. Approval of the Parliament is required if the Minister wishes to transfer land other than in accordance with the Act.

Issues

Current administrative arrangements for the sale of Crown land are fragmented. Currently Crown land sales are managed by the Departments of Treasury and Finance, Economic Development and Tourism, Primary Industries and Water and other line agencies. Some portfolio agencies such as the Department of Education prepare land for sale while others such as DIER forward land sales to DPIW for preparation.

The Department of Treasury and Finance deals with major sales. Currently properties valued at over \$50,000 sold by auction or tender are considered major sales. Treasury also deals with sales of surplus Government built properties from all agencies.

This situation where there are multiple agencies involved in may complicate strategic assessment of the value and use of land to the State Government and result in possible inconsistencies in the method of disposal.

There may also be a case, on the grounds of efficiency, to have a central sales unit to build up skills and ensure consistency in process.

Other jurisdictions - examples

South Australia

A draft Crown Land Management Bill 2006 was released for public comment in 2007.

The proposed model provides for a system of land management under Ministerial control. In certain circumstances a Ministerial decision may be appealable to the Administrative and Disciplinary Division of the District Court. Appeals are limited to compulsory acquisition of land, cancellation of leases, licences, serving of a remediation notice and do not include the setting of rents or prices. The latter can be appealed to the Valuer-General or on appeal to the Land Valuation Court.

Other key real estate function provisions include:

- lease and licence processes are simplified so that potentially they can be carried out by the private sector
- land must be sold by auction or other competitive tender process, unless “special circumstances” exist. The latter must be included in the Annual Report.
- the sale of waterfront land requires public consultation
- fines and powers to control activities on Crown land will be increased
- the Minister may direct remediation of land and require financial assurances up front to cover potential costs of remediation.

Western Australia

Crown real estate functions are centralised in the Department for Planning and Infrastructure. The Department carries out activities such as:

- administration of the State estate
- management and disposition of State lands
- facilitation of major projects on a priority basis
- selling, leasing and conveyancing of State lands
- administration of the State's roads and reserves systems
- acquisition for client agencies of land required for public works
- identifying and investigating surplus Government property assets for disposal through a web based whole of government clearing house.

The WA Land Administration Act codifies all processes relating to State land including reserving State land for a specific purpose and the sale or transfer of State land into freehold.

State land administration powers have been consolidated in the LAA. Road tenure provisions were brought across from the Local Government (Miscellaneous Provisions) Act 1960, together with the land-related provisions from the Land Acquisition and Public Works Act 1902.

New Zealand

The real estate function in New Zealand is largely privatised. Land Information New Zealand (LINZ) acts as a regulator and provides statutory approvals for leasing arrangements and sale of surplus land. Preparation of land for sale and assessment of leases is carried out by accredited private sector contractors according to a specified set of methodologies.

The LINZ sets the rules and standards for all portfolio departments and GBEs dealing in land. Before land is sold portfolio department and GBEs must obtain statutory approvals from LINZ.

Question for consideration:

Should all sales of Crown land be subject to a strategic whole-of-government assessment?

4.2 Crown land management function

Background

There is strong interest by the Tasmanian community in, and support for, public land agencies to lead in sustainable land management. Sustainable development, as defined in the RMPS, means: managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while:

- sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations
- safeguarding the life-supporting capacity of air, water, soil and ecosystems

- avoiding, remedying or mitigating any adverse effects of activities on the environment.

The Crown land management function discussed in this chapter includes the on-ground management of Crown land not dealt with under the real estate management function. Aspects of management include dealing with visitor risk assessment and hazard management, fire management, ecosystem protection and conservation management, recreation and tourism management, and management of Aboriginal and European heritage.

The sound management of the State's land resources is crucial if they are to be used and enjoyed by the public of today and future generations.

According to the *Australia State of the Environment 2006* report, "Tasmania's land heritage and land resources remain in a relatively good state: the diversity of landform and vegetation, together with the State's reserve system, has provided some degree of protection from environmental problems. Nevertheless, a range of pressures reflecting the legacy of historic land management practices and unsustainable practices today continue to affect Tasmania's land resources. Significant environmental pressures facing land in Tasmania are not confined to any one land tenure or land use".

Pressures on vegetation, soils, biodiversity, geodiversity and landscapes can be cumulative and require active management.

Key management challenges for Crown lands include, but are not limited to, the following:

- **Land degradation:** Land degradation problems include soil salinity, acidification, compaction, and erosion.
- **Weed and pest management and managing biodiversity:** Many unique Tasmanian vegetation communities and species are affected by human activities such as land clearance, inappropriate use of fire, housing developments, and some agricultural and industrial uses, and a number are regarded as threatened.
- **Fire management:** Wild fire can pose threats to both biodiversity and human settlements as well as to economic assets such as forests, water supply and other infrastructure. However, fire is an essential requirement for maintaining many plant and animal species and ecosystems found on Crown land.
- **Contamination:** Inappropriate use and practices on Crown land in the past have led to the need to manage and/or remediate some sites.
- **Climate change:** The impacts of climate change may result in inundation of Crown land in coastal areas.
- **Water quality:** Poor land management can have a significant impact on water quality.

- **Landslips and erosion:** Areas of landslip and erosion are affected by land management practices including land clearing, changed hydrological regimes, fire management, etc.
- **Strategic management of developments, particularly coastal developments:** The coast in Tasmania is a zone under growing pressure. The very values that attract people to live or relax on the coast are put at risk by increased coastal activity, exacerbated by the impacts of climate change. Nearly all of Tasmania's coast is Crown land.
- **Aboriginal heritage:** The Tasmanian Aboriginal community today continues an association with the State's Aboriginal heritage which spans many thousands of years and represents an important part of Tasmania's prehistoric, historical and cultural heritage (TPLUC 1995).
- **Historic heritage:** The community places a high value on the heritage embodied in the places, buildings and structures associated with the European habitation and development of Tasmania, right through to contemporary events and activities.

How Crown lands are currently managed

Crown land in Tasmania is managed by a number of different bodies, including but not limited to the DEPHA, DPIW and Forestry Tasmania. A large proportion of Crown land is currently managed by the DEPHA [Parks land]. Crown land under the *CLA* is largely managed by Crown Land Services, a division of the Department of Primary Industries and Water.

The Parks and Wildlife Service (PWS) is responsible for managing reserved land proclaimed under the *Nature Conservation Act* in accordance with the *National Parks and Reserves Act*. It is also responsible for managing the real estate function for these lands.

The *Forestry Act 1920* provides for the dedication of State forest and forest reserve. Forestry Tasmania is responsible for land managed and/or protected under the *Forestry Act*. The Act prescribes the functions and powers of Forestry Tasmania, including how it manages and administers State forest.

Portfolio agencies are also responsible for managing land on their asset registers.

The *CLA* applies to Public Reserves and unallocated Crown land. CLS is responsible for overseeing the management of that land. The focus for CLS is on managing the real estate function, i.e. processing applications to purchase, lease or licence Crown land. The PWS have carried out some on-ground management of this land on behalf of CLS and some land management issues are addressed through provisions in lease and licence instruments.

Issues

The on-ground land manager

The public recognises the importance of Crown lands, and there has been an increased demand for our environment to be sustainably managed.

The PWS is responsible for on-ground management of Parks land. Specific funding is provided for this purpose. Forestry Tasmania and other State Authorities are responsible for the on-ground management of land vested to them. Crown Land Services are responsible for land management on land managed under the *Crown Lands Act* but has traditionally focussed on processing applications to use Crown land rather than actively on ground maintenance. The land management function has been performed by PWS.

Parks land is often adjacent to Crown land managed under the *CLA* and from an efficiency perspective it could be argued that all Parks and Crown land managed under the *CLA* could be managed by one authority, as was the case in the past.

Whatever the administrative arrangements, and in a context of increasing demand for a range of Government services, it is clear that funding to carry out appropriate on-ground management of both Parks and Crown land managed under the *CLA* is an issue.

The *CLA* also does not currently allow for flexible arrangements to enable local management of Crown land. Local communities or groups such as Coast Care, River Watch or Land Care groups are often interested in taking on the management of Crown land and with support can improve the land's condition, providing additional recreational opportunities. Councils and non-government organisations could also have an increasingly important role as partners in managing Crown lands.

Questions for consideration:

Is the current arrangement for managing Crown lands efficient? If not, are there more efficient ways to manage Crown lands?

Is there potential to form land management partnerships with community groups? If so, how could such partnerships work?

4.3 Other issues

Definitional issues

Crown land is a generally accepted term for all lands owned by the State of Tasmania and controlled by the Government and its instrumentalities. In effect, Crown land is land that is not privately owned.

The *Crown Lands Act 1976* defines Crown land as:

“land which is vested³ in the Crown, and which is not contracted to be granted in fee simple; and includes land granted in fee simple which has been revested in the Crown by way of purchase or otherwise”. Essentially this means unencumbered land which is owned and controlled by the State.

Despite this broad definition, it is in fact not entirely clear exactly which categories of State owned land fall within this definition and which fall outside. In addition, a common view within Government of what it means to ‘vest’ land is not in accordance with the legal definition. That is, it is considered that when Crown land is vested, it is conditionally given, remains the property of the Crown, and reverts back to the Crown when the organisation in which it is vested no longer requires it.

The definition of Crown land appears to cover land held by all ‘State instrumentalities’⁴ as defined in the *CLA* as follows:

- (a) a Government department within the meaning of the *State Service Act 2000*; and
- (b) a State authority within the meaning of the *State Service Act 2000*.

It is unclear whether the *CLA* applies to some State authorities not listed in the *State Service Act*⁵.

Legal advice has been sought on how the Act applies to Government Business Enterprises (GBEs) as some of these entities manage Crown land vested in them under a relevant Act. The advice indicates that the *CLA* does not apply to land vested in GBEs.

A further category of Government organisation is the State Owned Company (SOC). SOCs are incorporated under the *Corporations Act 2001* and are set up as separate legal identities.

³ The meaning of ‘vested’ according to LAW.COM Dictionary, sourced 3/09/2008 at <http://dictionary.low.com/>, is as follows: “referring to having an absolute right or title, when previously the holder of the right or title only had an expectation”. The meaning of ‘vest’ is: “to give absolute right to title or ownership”.

⁴ See Appendix 4.

⁵ See Appendix 4.

The *Electricity Companies Act 1997* (ECA) specifically prevents Aurora Energy, Hydro Tasmania and Transend Networks from owning or trading in Crown Land as defined in the *CLA*. The *ECA* also specifically excluded the transfer of Crown land when all other property vested in the former Act was transferred under the *ECA*. This meant that land transferred was freehold land. It would appear that all Crown land allocated to in these companies remains the property of the Crown and must be returned to the Crown if it is no longer required. However, whilst it remains allocated it can be used in any way the company to which it is allocated sees fit.

It would appear that land held by GBEs and SOCs is private land, with the exception of Crown land allocated to Transend Networks, Aurora Energy or Hydro Tasmania.

Two important categories of Crown land are specifically excluded from the jurisdiction of the *CLA*. Section 2A of the *CLA* states that the Act does not apply to land that is:

- (a) reserved land within the meaning of the *Nature Conservation Act 2002*; or
- (b) State forest within the meaning of the *Forestry Act 1920*.

Thus land managed as reserves under the *National Parks and Reserves Management Act 2002*, privately owned land subject to statutory covenant for conservation purposes, and State forest are outside the jurisdiction of the *CLA*. As is explained below, (section 2.2), reserves and State forest comprise the great majority of publicly owned land. Similarly, roads are Crown land but are set aside and managed under various other Acts.

The definitions relating to Crown lands in the *CLA* are somewhat confusing and inadequate. The *CLA* does not appear to cover State authorities not listed in the *State Service Act*, and it does not appear to recognise public land allocated to GBEs and SOCs as Crown land, despite the *ECA* specifically excluding Crown land from the ownership or control of the electricity corporations established under that Act.

Organisational arrangements – a more commercial model?

Tasmania's Crown Land Services operates within a traditional government department framework. It is funded from consolidated revenue. Revenue generated goes into the Crown Land Administration Fund, which is centrally controlled by the Treasurer and administered by the Department of Treasury and Finance. Most Australian jurisdictions operate along similar lines. New Zealand, however has moved towards a more commercial purchaser provider model with its key areas of service provision operating in a contestable environment.

There may be an opportunity through this review to examine other models including setting aside revenue generated to fund operations and land management.

Other jurisdictions - examples

New Zealand

New Zealand has moved further than other jurisdictions towards a purchaser/provider model. Land Information New Zealand (LINZ) was established in 1996, bringing together the public administration of land regulation, Crown property management and land information. The restructure of services formerly delivered by several government departments aimed to create a contestable environment for services such as valuations,

The real estate function has been largely privatised under LINZ. Preparation of land for sale and assessment of leases is carried out by accredited private sector contractors according to set methodologies.

LINZ also sets rules and standards for all portfolio agencies, government authorities and GBEs dealing in land and they must obtain statutory approvals from LINZ to sell land.

LINZ operates on a commercial basis in a contestable environment. Principles for leasing/licensing are to:

- have regard to future intentions for the land (if known)
- maximise return to the Crown
- minimise risk to the Crown
- have regard to future intentions for the land (if known).

LINZ's funding is sourced approximately 60% from general government revenue and 40% from fees paid by users of LINZ services. In addition, LINZ receives appropriations to undertake various land and property activities as the Crown's agent, for example management and remediation of contaminated sites. LINZ also receives revenue as an agent on behalf of the Crown from property rentals including pastoral leases, map and chart sales, and land sales on behalf of the NZ Transport Authority.

Western Australia

The Department for Planning and Infrastructure's services in relation to State land include:

- effective administration of the State estate
- management and disposition of State lands
- facilitation of major projects on a priority basis
- selling, leasing and conveyancing of State lands
- administration of the State's roads and reserves systems
- acquisitions for client agencies of land required for public works.

The Department operates as a traditional government department this is centrally funded. Revenue generated goes back into the consolidated fund.

LandCorp is Western Australia's land and property development agency. It facilitates land and infrastructure projects.

The former Department of Land Administration has been corporatized and is now called Landgate. It provides titles, mapping and land information services.

Potential for establishing overarching principles for Crown land

The RMPS establishes a set of overarching land management principles, which currently apply to Crown land that is Public Reserve and to parks land managed under the *National Parks and Reserve Management Act*. The RMPS objectives do not currently apply to Crown land that is portfolio land, land of some State authorities, unallocated Crown land or to forestry land.

At a more specific level, relevant pieces of legislation provide objectives for Crown land that is Public Reserve, for parks reserves and for forest reserves.

The *CLA* does not provide strategic objectives that should be met in managing Crown land, or a set of principles that underpin decision-making, as is provided in other States such as New South Wales.

Other jurisdictions - examples

New South Wales

Crown Lands Act 1989 (NSW)

The principles of Crown land management under the NSW Act are:

- (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 can 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.

South Australia

In South Australia the *Draft Crown Land Management Bill 2006*, ensures consideration of sustainable land management principles are observed by the Minister and delegates when Crown Land is dealt with by lease, licence, sale or other dealings.

The Bill defines sustainable land management as taken to mean that the use, development and protection of the environment should be managed in a way and at a rate,

- (i) that will enable people and communities to provide for their economic, social and physical well being and for their health and safety, while sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations,
- (ii) Safeguarding the life supporting capacity of air, water, land, and eco systems.
- (iii) Avoiding, remedying or mitigating any adverse effects of activities on the environment

Queensland

Queensland administers the *Land Act 1994* under the principles of sustainability, evaluation, development, community purpose, protection, consultation, transparent administration and uses a market approach to land dealings.

It is suggested that any legislation governing management and dealings with Crown land in Tasmania should clearly identify the objectives that the Government wishes to achieve in managing that land and the principles that underpin decision-making.

Principles for new legislation could include:

- maximising public use and enjoyment of Crown land, where appropriate
- maximising economic returns on Crown land, where appropriate
- sustainable and commercial management of Crown land for the benefit of the people of Tasmania
- decisions on Crown land to be made in the overall interests of the public
- adherence to environmental principles
- sustainable development principles
- protection of natural and heritage values.

Questions for consideration:

Could overarching principles replace more detailed CLA schedule 4 objectives?

Should Public Reserves have different management objectives to Parks land [Reserved land]? If so, what should be the management objectives for Public Reserves?

What land should be covered in a new Act?

Seabed

There is an increasing demand for developments over the seabed, however there are a number of uncertainties that affect planning decision-making.

Australia's *Offshore Constitutional Settlement* established Commonwealth, State and Territory jurisdictions over marine areas. States generally have primary jurisdiction over marine areas extending to three nautical miles from the baseline.

The *Crown Lands Act 1976* defines 'land' as including "land covered by the sea or other waters, and the part of the sea or those waters covering that land". However, it does not explicitly state that the Act applies to State waters extending to three nautical miles from the baseline.

Under the definition of 'land' inland water bodies are covered by the current Act.

Most land covered by sea is unallocated Crown land, with some exceptions where a public or parks reserve may extend to low water mark. Under the current Act, this unallocated land would not be subject to the RMPS objectives and would be treated differently to reserved land.

Council Planning Schemes currently deal with the extent of their jurisdiction over the sea inconsistently. Some schemes include jurisdiction over developments for varying distances from the shore while others limit themselves to the high water mark.

For the purposes of providing clarity the definition of Crown land in any new Crown land legislation could more explicitly apply to the State's jurisdictional waters.

Airspace

Unlimited air rights existed when people began owning real estate. However, with the advent of air transport in the 20th century, the first legal limits were placed on air rights. Eventually, owners only had rights to airspace that they could reasonably use. It would be impractical for the development of air travel for landowners to own all the air above them, because aircraft would be constantly trespassing.

The development of airspace, ie. space above land, is increasingly being pursued in other countries. In the UK it was identified in the 2006 Barker Review of Land Use Planning and listed along with other development opportunities in the context of planning tools for the more efficient use of urban land.

The development of airspace above bridges, railways or other infrastructure is an example of how new developments can utilise space above other uses.

Reserve roads

There is no formal definition of a reserve road. However, reserve roads are essentially strips of Crown land or corridors retained by the Crown to make provision for access to land granted or sold by the Crown or to other Crown land. Despite the name, these strips of land are not reserved in the same manner as, for example, a Public Reserve. A reserve road is created in most cases by notation, a subdivision plan, or by being excluded from a sale of Crown land. Where land is registered under the *Land Titles Act*, reserve roads are usually shown on the title but are excluded from the title ownership.

The mere existence of a reserve road on paper to the boundary of a block does not of itself give the owners of that block a right to construct a road upon the reserve road and use the reserve road for vehicular access.

Due to reserve roads being recorded in short sections on many thousands of subdivision plans, the Government does not know how many reserve roads exist, where they are, or how many people use them.

The tools available to Government to manage reserve roads are deficient. Crown Land Services currently uses licences to confer user rights on parties wishing to access reserve roads. Issuing licences for reserve roads generates a significant administrative burden. Since the early 1980s CLS has issued approximately 1,000 access licences under the provisions laid out in Part 5 of the *Crown Lands Act 1976*. Depending on circumstance, the license is issued either for a period of 50 years, or annually, for a fee of \$100.

Recently some Councils have argued that a licence issued by DPIW is not a sufficient nor permanent guarantee of access to a reserve road. Advice indicates that licensing to confer access rights is not the most appropriate mechanism for authorising the use of reserve roads under the Act, as the only form of licence which allows a land owner to both use and maintain a road surface under the *CLA*, can be terminated with 3 months notice. Recent Resource Management and Planning Appeal Tribunal rulings make the same point, that is that a licence issued by DPIW does not adequately provide legal access from the nearest public road to adjacent freehold land due to lack of security of tenure.

One option to deal with these issues would be to make a legislative provision to give any private land adjoining a reserve road that does not have frontage to a public road or highway; or any alternative access to a public road or highway a statutory vehicular and pedestrian right-of-way to a public road or highway. Responsibility for construction and maintenance would fall to those land owners who have a right to use the road for access purposes. These works would be administered through the planning process,

Disputes between road users would be resolved in the courts through civil action.

This approach is similar to the current approach of NSW, Victoria and Western Australia.

Question for consideration:

What are the options for improved management of reserve roads?

Land contamination and remediation

Contaminated land is often a legacy of our industrial past when the community's awareness about the need to protect the environment was much lower than it is today.

Remediation is the treatment, containment, removal or management of chemical substances or wastes and contaminated soil and groundwater so that they no longer represent actual or potential risk to human health or the environment taking into account the current or intended use of the site.

Poorly managed remediation may result in adverse impacts on human health, property and the environment. Methods and processes for remediation, which can range from relatively straightforward earthmoving operations to complex technological treatment processes, may also result in adverse impacts to the environment and adjoining land occupiers, if not properly managed.

Many Crown land leases in the past have lacked sufficient requirements for remediation of sites contaminated by the lessee's activities. In addition, legislative provisions have not been sufficiently robust to allow the Crown to appropriately deal with land contamination and remediation breaches.

In the absence of appropriate legislative arrangements, managing remediation of contaminated sites is potentially a large liability for the State. Where damage is caused to Crown land those responsible for causing that damage should be responsible for remediation. While to some extent these issues are currently dealt with through agreements, any new legislation should have robust penalty and enforcement provisions.

Penalties and enforcement

Most land dealings are dealt with under contract law (leases, licences, sale contracts). Each contract has clauses that deal with non-compliance and breaches, while still being subject to *CLA* compliance provisions.

If found guilty of an offence under the *CLA*, a fine cannot exceed 5 penalty points (currently \$600). The *CLA* enables bailiffs to be appointed by the Minister to enforce actions on Crown land.

It could be argued that there are weak penalty and enforcement provisions in the *CLA*. In addition, CLS has a limited capacity to carry out enforcement activities.

Other jurisdictions - examples

South Australia

In South Australia offences on Crown Land, which include cutting vegetation, tree removal, fencing and unapproved building carry a maximum penalty of \$20,000. Police powers are given to administrators of Crown land with fines for abusing, obstructing and assaulting officers, these range from a \$5,000 fine for verbal abuse, up to a maximum \$10,000 for actual assault.

Western Australia

Under the Western Australia *Land Administration Act 1997*, the act lists a range of offences including living on Crown land, making roads and tracks, water collection, vegetation removal, litter and firing guns. These offences carry a fine of up to \$10,000 with a \$200 per day fine if the offence continues. On top of the fine a guilty person is also liable to pay compensation for rehabilitation, cost of inspection, stock removal or other orders as the court provides.

Queensland

In Queensland the *Land Act 1994* places a Duty of care burden onto every lease or licence holder. This duty explicitly places a duty to control noxious plants and leases are only granted on the proviso the lessor accepts the conditions outlined in the act. Offences on Crown land are dealt with as a

trespass, with notices of trespass given to offending persons for offences such as fencing, cultivation, vegetation removal, building etc and carries a fine of up to \$30,000. The cost of any remedies to the land carried out by the State is a debt owed to the State, by the person named in the trespass order.

New Zealand

In New Zealand and New South Wales the resulting fines from trespass and offences to Crown land are reasonably low (Max \$400 NZ and \$2200 NSW), however under each act compensation for substances removed and damaged done to the land is assessed by the Courts. In New South Wales the Court is free to make orders and recover costs as it feels 'just and reasonable' under the circumstances. In New Zealand, in addition to the penalty under the act, the trespasser shall pay for the value of substances removed or damage done to the land, forests, vegetation and minerals.

The Land Act (NZ) also places time limits on certain actions such as lessors have one month of notice to sign contracts or contracts can be declared void and places non-performance, unpaid rent and breach of conditions as a power of the Commissioner to act upon.

Administrative review

There are no special provisions for the review of decisions made under the *CLA*. However, the *Judicial Review Act (Tas) 2000* (JRA) allows courts to review administrative decisions made under legislation enacted in Tasmania. Under the JRA an aggrieved person can appeal to the Supreme Court to review a decision made by an agency of the Government.

The grounds for seeking a review include:

- a breach of natural justice
- procedures required by law to be observed relating to the making of a decision were not observed (procedural breach)
- the person who purported to make the decision did not have jurisdiction to make the decision
- the decision was not authorised by the enactment
- the making of the decision was an 'improper exercise' of the power conferred by then enactment under which it was purported to be made'
- the decision involves an error of law
- the decision was affected or induced by fraud
- there was no evidence or other material to justify the making of the decision
- the decision was contrary to law.

The Court has power to:

- quash or set aside a decision, refer the decision back to the person/agency that made the decision for further consideration
- an order declaring the rights of the parties
- an order directing the parties to do or refrain from doing anything that the court considers necessary to do justice between the parties.

When a decision is made under the *CLA*, the reasons given by the agency must contain the reasons for the decision but does not have to give details of personal or business affairs.

To date no decision made under the *CLA* has been subject to judicial review.

Questions for consideration:

Are definitions of Crown land in the CLA adequate? If not, how could the definition of Crown lands be improved? Should the definition cover Crown lands more broadly?

Should a new Act apply to the seabed and airspace?

Should penalty and enforcement provisions be strengthened under new legislation? If so, how?

Is there a need for other administrative review pathways? If so, what should they be?

Appendices

Appendix 1: Review governance arrangements

A cross agency Steering Committee is providing strategic oversight to the Review. The Steering Committee is made up of representatives from the Departments of:

- Primary Industries and Water
- Environment, Parks, Heritage and the Arts
- Infrastructure, Energy and Resources
- Premier and Cabinet.

A cross agency Working Group is providing input to the Review, particularly in developing this issues paper and draft legislation. The Working Group is made up of representatives from the Departments of:

- Primary Industries and Water
- Environment, Parks, Heritage and the Arts
- Infrastructure, Energy and Resources
- Premier and Cabinet
- Health and Human Services
- Education
- Economic Development and Tourism
- Justice.

A Reference Group, consisting of representatives from a number of peak stakeholder groups, will provide advice to the Review. Individuals are encouraged to have their say through these groups or through other organisations that have an interest in the issues raised in this Paper. Organisations on the Reference Group are:

- Forestry Tasmania
- Hydro Tasmania
- Tasports
- Marine and Safety Tasmania
- Local Government Association of Tasmania
- Tasmanian Conservation Trust
- Minerals Council of Tasmania
- Tasmanian Farmers and Graziers Association
- Tasmanian Aboriginal Land and Sea Council.

The Review Team is made up of a Project Manager and a Project Officer. You can contact Review staff in the ways listed above.

Appendix 2: Key State policy instruments relevant to review of Crown lands legislation

Policy Instrument	Description
Nature Conservation/Environmental	
<i>Nature Conservation Act 2002 (NCA)</i>	Provides for the conservation of fauna, flora and geological diversity and the reservation of land for related purposes.
<i>National Parks and Reserves Management Act 2002</i>	Provides for the management of national parks and other land reserved under the <i>NCA</i> .
<i>Living Marine Resources Management Act 1995</i>	Provides for the sustainable management of living marine resources, the protection of marine habitats and the development of management plans.
<i>Environmental Management and Pollution Control Act 1994</i>	Provides for the management of the environment and the control of pollution in the State.
Forestry	
<i>Forestry Act 1920</i>	Provides for reservation, protection and management of forests. Establishes Forestry Tasmania as exclusive manager of State forest and requires it to manage that forest for multiple uses. Defines the powers of Forestry Tasmania to include the issuing of licences and leases and sales of all forest products.
<i>Forest Practices Act 1985</i>	Establishes the framework for regulating forest practices across all tenures, requires development and implementation of the Forest Practices Code.
Regional Forest Agreement	Provides for sustainable forestry and the establishment of a comprehensive, adequate and representative reserve system.
Mining	
<i>Mineral Resources Development Act 1995</i>	Provides for the development of mineral resources consistent with sound economic, environmental and land use management (licences for mineral exploration, leases for mining activities).
Fisheries	
<i>Marine Farming Planning Act 1995</i>	Provides for the planning of marine waters for marine farming and the allocation of marine farming leases.
<i>Inland Fisheries Act 1995</i>	Provides for the management of inland fisheries.
Planning	
Resource Management and Planning System	Made up of several pieces of legislation including LUPAA. Establishes objectives and principles underpinning the planning system.

<i>Land Use Planning and Approvals Act 1993 (LUPAA)</i>	Principal planning Act of the RMPS, it provides for land use planning and approvals.
<i>Natural Resource Management Act 2002</i>	Establishes governance arrangements and provides for the development of regional strategies for natural resource management.
<i>State Policies and Projects Act 1993</i>	Provides for Tasmanian Sustainable Development Policies, the integrated assessment of projects of State significance, State of the Environment Reporting and for related purposes.
State Coastal Policy	Provides a statutory framework for integrated management and planning of the State's coastal and marine areas.
Heritage Protection	
<i>Aboriginal Relics Act 1976</i>	Provides for the protection of Aboriginal heritage.
<i>Historic Cultural Heritage Act 1995</i>	Provides for the identification, assessment, protection and conservation of places having historic cultural heritage significance.
Other	
<i>Land Acquisition Act 1993</i>	Provides for the acquisition of land by the Crown, public and local authorities and promoters, authorises the acquisition of land for undertakings of a public nature, and deals with matters incidental to, and consequential on, that acquisition.
<i>Roads and Jetties Act 1935</i>	Provides for the control, maintenance and management of State roads by the State road authority.
<i>Local Government,(Highways) Act 1982</i>	Provides for the control, maintenance and management of local roads by Councils.

Planning system⁶

The **Resource Management and Planning System (RMPS)** is made up of several pieces of legislation including the Land Use Planning and Approvals Act 1995 (LUPAA). The RMPS establishes the objectives and principles underpinning the planning system. The *Crown Lands Act 1976* requires that the Minister, in exercising his/her powers, comply with RMPS objectives.

⁶ For further information see *guide to the Resource Management and Planning System*, Resource Planning and Development Commission, March 2003.

The concept of sustainable development provides overall direction for the RMPS.

The objectives of the RMPS are to:

- promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity
- provide for the fair, orderly and sustainable use and development of air, land and water
- encourage public involvement in resource management and planning
- facilitate economic development in accordance with the objectives set out above
- promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.

In the objectives, “sustainable development” means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while:

- sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations
- safeguarding the life-supporting capacity of air, water, soil and ecosystems
- avoiding, remedying or mitigating any adverse effects of activities on the environment.

The LUPAA is the principal planning Act of the RMPS. Broadly, it provides for:

- the making and amendment of planning schemes
- the assessment of planning directives
- development control and enforcement and agreements between planning authorities and landowners
- RMPAT to hear appeals into specific development control matters.

The **State Policies and Projects Act** provides the framework for Tasmanian Sustainable Development Policies, the integrated assessment of projects of state significance, State of the Environment reporting and related purposes.

Appendix 3: List of acronyms used in the Paper

CLA:	<i>Crown Lands Act 1976</i>
CLAC:	Crown Lands Assessment and Classification Project
CLAR:	Crown Lands Act Review
DEDT:	Department of Economic Development and Tourism
DEPHA:	Department of Environment, Parks, Heritage and the Arts
DHHS:	Department of Health and Human Services
DIER:	Department of Infrastructure, Energy and Resources
DoE:	Department of Education
DPAC:	Department of Premier and Cabinet
DPIW:	Department of Primary Industries and Water
FA:	<i>Forestry Act 1920</i>
GBE:	Government Business Enterprise
LGAT:	Local Government Association of Tasmania
MAST:	Marine and Safety Tasmania
NCA:	<i>Nature Conservation Act 2002</i>
PWS:	Parks and Wildlife Service
RFA:	Regional Forestry Agreement
RFALCA:	<i>Regional Forest Agreement Land Classification Act 1998</i>
RMPAT:	Resource Management and Planning Appeal Tribunal
RPDC:	Resource Planning and Development Commission
RMPS:	Resource Management and Planning System
TALSC:	Tasmanian Aboriginal Land and Sea Council
TFGA:	Tasmanian Farmers and Graziers Association
TPLUC:	Tasmanian Public Land Use Commission

Appendix 4: List of State organisations

State instrumentalities as defined in Schedule I of the State Service Act 2000⁷

Part 1 - Government departments

Agency	Head of Agency
Division 1	
Department of Economic Development and Tourism	Secretary
Department of Education	Secretary
Department of Environment, Parks, Heritage and the Arts	Secretary
Department of Health and Human Services	Secretary
Department of Infrastructure, Energy and Resources	Secretary
Department of Justice	Secretary
Department of Police and Emergency Management	Secretary
Department of Premier and Cabinet	Secretary
Department of Primary Industries and Water	Secretary
Department of Treasury and Finance	Secretary
Division 2	
Tasmanian Audit Office	Auditor-General

Part 2 - State authorities

Agency	Head of Agency
Port Arthur Historic Site Management Authority	Chief Executive Officer
Rivers and Water Supply Commission	Chairperson
Tasmanian Polytechnic	Chief Executive Officer
Tasmanian Skills Institute	Chief Executive Officer
Tasmanian Dairy Industry Authority	Chairperson
The Public Trustee	Chairperson

State authorities not listed in the State Service Act⁸:

Forest Practices Authority
Marine and Safety Tasmania
Sullivans Cove Waterfront Authority
Tasmanian Qualifications Authority
Wellington Park Management Trust

⁷ As at 16 April 2009

⁸ Listed at <http://service.tas.gov.au/GovOrgs/> accessed 16 April 2009.

**Government Business Enterprises as listed in Schedule I of the
*Government Business Enterprises Act 1995***

Hydro-Electric Corporation
Motor Accidents Insurance Board
Port Arthur Historic Site Management Authority
Public Trustee
Rivers and Water Supply Commission
Southern Regional Cemetery Trust
Tasmanian Public Finance Corporation
Forestry Corporation (established by the *Forestry Act 1920*)

State-owned companies⁹

Aurora Energy
Metro Tasmania
TasPorts
TOTE Tasmania
Transend Networks
TT-Line Company

⁹ Listed at <http://service.tas.gov.au/GovOrgs/> accessed 16 April 2009.