



15 June 2018

**SUPPLEMENTARY AGENDA:**

**(1) PLANNING AND ENVIRONMENT**

PE38/2018 Commencement of Crown Land Management Act 2016 and ongoing management arrangements for certain Crown lands.....2

**SUBJECT:** **COMMENCEMENT OF CROWN LAND MANAGEMENT ACT 2016 AND ONGOING MANAGEMENT ARRANGEMENTS FOR CERTAIN CROWN LANDS.**

**RESPONSIBLE OFFICER:** *Strategic Planner - Robert Corken*

### **SUMMARY**

The *Crown Land Management Act 2016* that commences on 1 July 2018 has the potential to impose significant risk and burden on Council with regard to Crown reserves that Council currently manages. These reserves are an important part of Council's provision of open space, recreation, community facilities and utilities. The most significant potential risk under the new Act is that of compensation from Native Title under the *Native Title Act 1993*. This risk is unquantifiable as the law on compensation is still developing. In order to minimise this risk and the ongoing management responsibility for some of the Crown reserves that Council currently manages, it is recommended that Council resign as corporate manager for five reserves listed in Enclosure 1 of this report.

### **RECOMMENDATION**

1. That Council, pursuant to section 96(1) of the *Crown Lands Act 1989*, resigns as Corporate Manager for the Crown reserves numbered 82433, 85696, 86726, 48106, and 63332.
2. That Council authorise the Common Seal of Cessnock City Council to be affixed to the correspondence resigning Cessnock City Council as Corporate Manager for the Crown land reserves numbered as 82433, 85696, 86726, 48106, 63332.

### **BACKGROUND**

The *Crown Land Management Act (CLM Act) 2016* commences on 1 July 2018. The CLM Act replaces the *Crown Lands Act 1989* (CL Act). The new act imposes additional responsibilities on Local Government including the requirements:

1. To classify the land as either operational or community land under the *Local Government Act 1993*.
2. To categorise all community land as one of five categories under the Local Government Act (i.e. Natural Area, Sportsground, Park, General Community Use or Area of Cultural Significance).
3. To prepare plans of management for all land that is classified as community land.

Importantly, from July 1 Council assumes all responsibility for Native Title under the *Native Title Act 1993* (NT Act). This poses an unknown risk to Council in terms of compensation for acts undertaken in the reserves.

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After the new CLM Act commences Council may only resign as trust manager with the Minister's consent and only in certain circumstances. There is however a brief window until the CLM Act commences where Council may resign as corporate manager by writing under its seal to the Minister.

Following a review of the 54 Crown reserves that Council currently manages, five reserves have been identified as lands that Council may no longer wish to manage as they provide no real benefit to the community and will potentially be an ongoing maintenance burden for Council.

This report seeks Council's endorsement to resign as corporate manager of these reserves.

**REPORT/PROPOSAL**

From 1 July 2018 Council assumes all responsibility for Native Title under the NT Act over Crown reserves that Council currently manages. This poses an unknown risk to Council in terms of compensation for acts undertaken in these reserves.

Under the NT Act, any activity that is undertaken on Crown land must consider Native Title. There are specific ways to validate an act on these lands; however, each comes with certain procedural rights. For example; the right to compensation, the right to negotiate, the right to be notified.

Each Crown land reserve is reserved for specific purpose/s. For example; *night soil depot, public recreation and environmental purposes*. The most likely way for Council to *validate* an act on a Crown reserve is by applying Subdivision J of the NT Act, which allows an act to be validated if it is consistent with the reserve purpose. However, it may still come with a right to compensation. The advice from the Department of Industry – Crown lands in relation to compensation is: "The law on compensation is still developing."

Native title law is highly complex and the lack of certainty on the quantum of compensation payable for acts on Crown land is disconcerting; particularly for Councils that assume all responsibilities for Native title from 1 July 2018. To minimise the risk, the CLM Act requires Council's to employ or engage a Native Title Manager to assess the Native Title implications of any action undertaken in any of the Crown reserves it manages. However; this does not wholly mitigate the risks.

Under s96(1) of the CL Act, Council may resign as corporate manager by writing under its seal addressed to the Minister. However, after the CLM Act commences on 1 July 2018, the Council may only resign with the Minister's consent and only in certain circumstances. These circumstances are likely to be where the reserve is of regional or state significance or where there is an Aboriginal Land Claim and that claim is likely to be upheld.

A complete list of Crown land reserves was provided to Council by the Department of Industry on 28 May 2018. Council officers have since reviewed the reserves that it manages to identify any sites that have limited or no community benefit. Of the 54 Crown land reserves currently managed by Council, five have been identified as having limited value. The purpose of this report is to seek Council's endorsement to write to the Minister to resign as land manager for these five reserves before the new CLM Act commences. This will reduce the burden of management on Council and restrict any Native title implications.

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The reserves recommended for Council to resign as land manager are included in Enclosure 1. Some of these sites are former waste depots and night soil depots and subject to current or future rehabilitation obligations. Resignation is unlikely to discharge Council's responsibility to rehabilitate these sites; however, it will ensure Council is not required to manage these sites in perpetuity.

**OPTIONS**

1. To resign as Corporate Manager for the Crown reserves listed in Enclosure 1 to this report.  
This is the preferred option.
2. To not resign as the Corporate Manager for those Crown reserves listed.

**CONSULTATION**

Internal consultation has occurred with Manager Open Space and Community Facilities, Strategic Planning Section, Governance and Business Services and Environment and Waste Services.

**STRATEGIC LINKS**

**a. Delivery Program**

The report links to the desired outcome of Civic Leadership and Effective Governance in the Delivery Program 2017-21.

**b. Other Plans**

Nil

**IMPLICATIONS**

**a. Policy and Procedural Implications**

Council has a Policy for the Use of Council's Seal. This document was referenced in the preparation of this report.

**b. Financial Implications**

There are unknown financial risks associated with Native Title compensation for the use of Crown land reserves.

**c. Legislative Implications**

The CLM Act 2016 commences on 1 July 2018. Prior to this date, Council may resign as corporate manager for reserves that Council manages. After that date, Council may only resign with the consent of the Minister and only in certain circumstances.

Once the CLM Act commences, Council is required to employ or engage a Native Title Manager to assess all activities on Crown land.

**d. Risk Implications**

There is unknown but significant risk of compensation under the NT Act for activities on Crown land reserves. This risk will be borne by the State Government until 30 June 2018. From 1 July 2018 this risk will be borne by Council's who manage Crown land reserves.

**e. Environmental Implications**

Resigning as Corporate Manager from Crown reserve sites that were former waste management or night soil depots is unlikely to discharge Council's responsibility to remediate these sites.

**f. Other Implications**

There are other implications from the unlawful use of Crown land for Aboriginal Land Claims. Any use (with exception) of Crown land that is inconsistent with the reserve purpose is grounds for an Aboriginal Land Claim. This may lead to the loss of important community assets if the land is not managed lawfully.

**CONCLUSION**

Crown reserves are an important part of Council's provision of open space, recreation, community facilities and utilities. The new CLM Act that commences on 1 July 2018 has the potential to impose risk and burden on Council. The most significant risk is the risk of compensation from Native Title under NT Act. This risk is unquantifiable as the law on compensation is still developing. In order to minimise this risk and the ongoing management responsibility for some Crown reserves, it is recommended that Council resign as corporate manager for the five reserves listed in Enclosure 1.

**ENCLOSURES**

[1](#) Crown Land Sites

Table 1: Summary of Reserves to resigned from

Reserve ID	Reserve Purpose	Property Details	Parcel ID	Suburb
<b>Site 1 – Reserve ID 84233</b>				
82433	Public Recreation	Lots 11-17, 19-20 Section 10 DP 758834, Lots 11-19 Section 11 DP 758834, Lot 7330 DP 1157042 Parish Stanford County Northumberland	<b>Lots in Sec 10 DP 758834 (Image 1)</b> Lot 11 - 9547 Lot 12 - 26526 Lot 13 - 26525 Lot 14 - 26524 Lot 15 - 26523 Lot 16 - 26522 Lot 17 - 26521 Lot 18 - 26520 Lot 19 - 26519 Lot 20 - 26518 <b>Lots in Sec 11 DP 758834 (Image 2)</b> Lot 11 - 27155 Lot 12 - 26535 Lot 13 - 26534 Lot 14 - 26533 Lot 15 - 26532 Lot 16 - 26531 Lot 17 - 26530 Lot 18 - 26529 Lot 19 - 26528 Lot 7330 - 508337	PELAW MAIN

Image 1: Lots in Sec 10 DP 758834



Reserve ID	Reserve Purpose	Property Details	Parcel ID	Suburb
<b>Site 1 – Reserve ID 84233(Continued)</b>				
82433	Public Recreation	Lots 11-17, 19-20 Section 10 DP 758834, Lots 11-19 Section 11 DP 758834, Lot 7330 DP 1157042 Parish Stanford County Northumberland	<p><b>Lots in Sec 10 DP 758834 (Image 1)</b></p> <p><b>Lot 11 - 9547</b></p> <p>Lot 12 - 26526</p> <p>Lot 13 - 26525</p> <p>Lot 14 - 26524</p> <p>Lot 15 - 26523</p> <p>Lot 16 - 26522</p> <p>Lot 17 - 26521</p> <p>Lot 18 - 26520</p> <p>Lot 19 - 26519</p> <p>Lot 20 - 26518</p> <p><b>Lots in Sec 11 DP 758834 (Image 2)</b></p> <p>Lot 11 - 27155</p> <p>Lo 12 - 26535</p> <p>Lot 13 - 26534</p> <p>Lot 14 - 26533</p> <p>Lot 15 - 26532</p> <p>Lot 16 - 26531</p> <p>Lot 17 - 26530</p> <p>Lot 18 - 26529</p> <p>Lot 19 - 26528</p> <p>Lot 7330 - 508337</p>	PELAW MAIN

Image 2: Lots in Sec 11 DP 758834 and Lot 7330 DP 1157042



Reserve ID	Reserve Purpose	Property Details	Parcel ID	Suburb
<b>Site 2 – Reserve ID 85696</b>				
85696	Rubbish Depot	Lot 6 DP 863344, Lot 140 DP 1145327 Parish Branxton County Northumberland	Lot 6 - 507109 Lot 140 - 508187	GRETA



<b>Site 3 – Reserve ID 86726</b>				
86726	Rubbish Depot	Lots 7002-7003 DP 1028807 Parish Heddon County Northumberland	Lot 7002 - 505310 Lot 7003 - 505311	ABERMAIN



Reserve ID	Reserve Purpose	Property Details	Parcel ID	Suburb
<b>Site 4 – Reserve ID 48106</b>				
48106	Night Soil Depot	Lot 88 DP 755259 Parish Stanford County Northumberland	21584	BUCHANAN



<b>Site 5 – Reserve ID 63332</b>				
63332	Night Soil Depot	Lot 87 DP 755231 Parish Heddon County Northumberland	23911	KURRI KURRI

