



Submission on the NSW Travelling Stock Reserves State Planning Framework 2016-19

prepared by

**EDO NSW
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About EDO NSW

EDO NSW is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 25 years' experience in environmental law, EDO NSW has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO NSW is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

EDO NSW is part of a national network of centres that help to protect the environment through law in their [states](#).

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Introduction

Thank you for the opportunity to comment on the draft *NSW Travelling Stock Reserves State Planning Framework 2016-19 (draft Framework)*.

EDO NSW is a community legal centre specialising in public interest environmental and planning law. Our main interests in this consultation relate to:

- legally protecting, valuing and securing environmental outcomes for Travelling Stock Reserves (**TSRs**);
- integrating TSR management planning with wider law and policy frameworks;
- fully recognising the multiple economic, social and environmental benefits of TSRs;
- inclusive and respectful community engagement and management support; and
- achieving ecologically sustainable development (**ESD**) and applying its principles in decision-making.

Our key principles to guide Crown Land management in NSW, including Travelling Stock Reserves (**TSR**), are summarised at **Attachment A** to this submission. These were also set out in our June 2014 submission on the Crown Lands review.

Noting that the draft Planning Framework is quite high level, we welcome the proposed guiding principles (1.3), the intent to align with the 2011 TSR conference 'consensus principles' (1.4) and general recognition of the diverse values of TSRs.

We recommend the draft Framework be developed and clarified for the following issues:

- Integration with other legislative, planning and biodiversity frameworks
- Assessing environmental benefits, cumulative impacts and future threats
- Primary use classification – methodology, criteria and implications
- Community engagement, respect and dialogue about TSR roles in the future
- Recognition of diverse indigenous interests in TSR management
- Adequate resources and capacity
- Identifying, monitoring and reporting outcomes
- Piloting ecosystem services assessment and accounting
- Legislative change must address community concerns about the wider Crown Lands Review.

For ease of reference we structure our comments according to the Draft Framework.

1. Introduction¹

First, we welcome the proposed guiding principles at 1.3.² It is vital that these commitments are put in practice, and that further detail is provided in the draft Framework on how the principles will be implemented. We make some comments on the 'economic viability' criterion below.

Second, we also welcome the intent to align the Planning Framework with the 2011 TSR 'consensus principles' (1.4, draft pp 3-4).³ We suggest these consensus principles be directly addressed and given clearer effect in the Framework and LLS guidance, as discussed below.

2. Management context⁴

In relation to the management context, we provide comment on: *assessing environmental benefits, cumulative impacts and future threats*, and the need for *clearer integration with other legislative, planning and biodiversity frameworks*. We note that some of these comments are equally relevant to the LLS strategic plan and the Government's wider Crown Lands Review Response which have both been exhibited recently. EDO NSW has made a submission on the LLS strategic plan.⁵

Clearer integration with other legislative, planning and biodiversity frameworks

The draft Framework outlines the broader legal and policy context at Parts 1.4 - 2.4.⁶ Integrating TSR management with whole-of-government policy and law reform, and leveraging partnerships and expertise, is crucial to the planning framework's success. The planning framework and supporting materials need to identify and guide LLS on the practical systems and measures for this effective integration.

For example, the draft Framework should require mandatory consideration and integration of:

- State-wide natural resource management targets (example at **Attachment B**);
- strategies, targets and actions of former Catchment Management Authorities;
- findings from State of the Environment and State of the Catchments reporting;
- Key Threatening Processes (**KTPs**), Threatened Species Priorities Action Statement (**PAS**) and Threat Abatement Plans (**TAPs**) affecting the region;

¹ Sections 1.1 – 1.5 relate to: rationale, scope, mission, principles, background, and the planning cycle.

² The draft Framework's guiding principles include recognising historic use values, diverse natural asset values, sustainable use and coexistence, state-wide integration and best available evidence.

³ These consensus principles include:

- (1) stable governance and adequate resourcing,
- (2) improved and accessible data,
- (3) representative management
- (4) educational programs and indigenous engagement, and
- (5) ecological accounting frameworks.

⁴ Sections 2.1-2.4 relate to: governance, law/policy framework, Crown land principles, and responsibilities.

⁵ Available at: www.edonsw.org.au.

⁶ In particular the draft Framework notes (pp 3-7):

- Crown Lands Management Review Report 2013 and response;
- the formation of LLS as 'an opportunity for integrated management of TSR';
- that 'TSR are likely to be a key consideration under [biodiversity law reforms] to provide biodiversity outcomes such as landscape scale connectivity and corridors;' and,
- related state and federal legislation including Crown Land management principles.

- climate mitigation and adaptation initiatives (for example, carbon storage in vegetation/wetlands);
- best practice monitoring, evaluation, reporting and improvement strategies;⁷ and,
- indigenous rights and interests under NSW land rights and federal native title.

Reciprocally, relevant state laws and regional planning processes must identify and protect TSR values. For example, regional plans must integrate protection of 'natural infrastructure'.⁸

The related issue of legal objects and principles is discussed under Part 7 below.

Assessing environmental benefits, cumulative impacts and future threats

We welcome the draft Framework's acknowledgement of the diverse social, environmental and economic values of TSRs. The draft Framework refers to the 2011 TSR consensus principles, including mechanisms to consider the diverse 'economic, social, cultural and environmental values' of TSRs (p 3). We submit that the Framework should provide more specific consideration of these values and raise awareness of the significant benefits that TSRs provide.

The revised Framework should include, for example, an appendix on *ecosystem services* associated with TSRs. Ecosystem services are discussed below, in particular at Part 6. In brief, this refers to human benefits from nature, including those that aren't usually 'priced', such as water quality, erosion control, pollination, carbon storage etc.

A peer-reviewed methodology should also be developed for consulting on and assessing economic and other values of TSRs (for example, social and cultural heritage) to make these values visible in TSR management and decision-making. We note that 'estimating the value of ecosystem services can reveal social costs or benefits that otherwise would remain hidden'.⁹

Drawing on the above, the draft Framework should require Local Land Services (**L**L**S**) to commission research and identify present or potential ecosystem services and related values of TSR. The research would use local, regional and state information, and be done in partnership with communities, Indigenous groups, scientists and agencies like the Office of Environment and Heritage (**O**E**H**) and the Natural Resources Commission (**N**R**C**).

This collaborative research should consider the ability of TSRs to address ongoing and emergent challenges such as biodiversity loss, native vegetation recovery and climate change responses.

The *State of the Environment Report 2011* notes both the ecological importance of TSRs, and steps to assess their natural values in detail (5.3):

TSRs are... often found in environments that are poorly represented in the public reserve system, heavily disturbed and in poor condition. In many of these areas, TSRs remain in relatively good condition and provide the best or only opportunity for improved conservation of threatened species or communities. They form a fundamental network of corridors connecting fragmented landscapes, particularly in the sheep-wheat belt and the tablelands. The natural values of approximately

⁷ For an example of informative and concise monitoring and reporting see Ontario Biodiversity Council, *State of Biodiversity Report 2015* – Summary report, at <http://sobr.ca/report/>.

⁸ See for example, US Government, White House and Council on Environmental Quality (October 2015): <https://www.whitehouse.gov/blog/2015/10/07/incorporating-natural-infrastructure-and-ecosystem-services-federal-decision-making>.

⁹ Ontario Biodiversity Council, <http://sobr.ca/report/>, Indicators report State of Biodiversity 2015 (p 138).

700,000 hectares of TSRs in the eastern and central divisions of NSW are currently being assessed.

These natural value assessments should be shared and built-on via this Framework. For example, LLS and OEH should be funded to identify in each regional TSR plan:

- threatened species, climate refuges and key regional threats to biodiversity;
- potential cumulative impacts and early indicators of degraded TSR networks;
- best available evidence, environmental data gaps, and strategies to fill them; and
- what role TSRs can play in maintaining, recovering and restoring biodiversity.

3. Uses and values of TSR/Crown land¹⁰

The draft Framework sets out a number of ‘active’ and ‘passive’ uses (p 8), reflecting the evolving use of TSRs over time. We agree it is important to note that notwithstanding their ongoing importance for sustainable active uses, these uses can cause environmental damage and compromise reserve values (particularly over-use from both agricultural and non-agricultural uses). We submit that the draft Framework needs to more clearly distinguish and define uses and values.

We also suggest that ‘passive’ uses should be clarified to include ‘restorative’ or ‘regenerative’ uses to better reflect their importance in sustaining the TSR estate. While ‘passive’ is a common term, it may imply these uses are less productive than active uses. In the interests of landscape health and restoration, this impression should be avoided. The draft Framework should more clearly define categories and types of uses.

Primary land use classification – methodology, criteria and implications

As we read it, classification of Primary Land Use Categories is the central process under the Framework, ‘to prioritise the management actions required to manage the issues associated with that use’ (p 9). We note this will be supported by a methodology, yet to be developed. We welcome the involvement of the National Parks and Wildlife (within OEH) in setting criteria for classification.

Both the methodology and criteria for classification are clearly of central importance. We would welcome consultation on these. In the meantime, the Framework should:

- provide more detail and examples about Categories and their consequences;
- set out in more detail what criteria and consultation processes it will establish;
- explain what categorisation could mean for different stakeholders’ interests;
- explicitly provide for environmental advice and an OEH concurrence role regarding TSR classification, given their environmental and heritage values;¹¹ and
- clarify the scope of the government’s intent to retain TSRs in the Crown Lands estate (whether or not they have a diverse range of land managers).

Tables A and B of the draft Framework provide some useful but limited background on proposed land use categories ‘A’ to ‘F’ and ‘Principles of Management’. The final Framework should give further context to these tables. For example it could:

¹⁰ Sections 3.1-3.3 relate to active & passive uses, and classification.

¹¹ Concurrence is a joint approval function that provides for inter-agency coordination and oversight. An example of concurrence is in section 79B of the *Environmental Planning and Assessment Act 1979*.

- briefly explain actions and responsibilities for proposed Principles of Management, or actions, listed in Table B (this could be an appendix);
- stipulate that these actions should be explicitly guided by environmental protection principles and other principles consistent with the *Crown Lands Act 1989*;
- identify linkages with other laws and policies for listed action (such as KTPs, TAPs and PAS for threatened species, as noted above); and
- identify partnership options for research, management and awareness-raising.

4. Consultation and liaison¹²

Community engagement, respect and dialogue on future roles of TSRs

We support the objectives of shared responsibility, knowledge and expertise (p 12). We also note and support the LLS Act requirements to consult and engage with local communities including Aboriginal community members and groups. The Framework could give further information on whether these strategies will be based on a central model, or a progress update with associated timeframes.

Engagement strategies should ask Aboriginal people and other community members to identify their preferred forums and methods for communication and representation. This reflects the TSR consensus principle on effective representation. These forums should also be used to build stakeholder and LLS capacity, and mutual awareness. Further in-built guidance and examples could be provided in contracts (Schedules).

Recognition of diverse Aboriginal interests in TSR management

The draft Framework acknowledges the importance of TSRs to Aboriginal peoples. The Framework could be bolstered by more specific commitments to engage early, seek advice from Traditional Owners and explore joint management arrangements with Aboriginal partners. This may start to address past perceptions of inadequate engagement on Crown Lands management, particularly noting that there are, to our knowledge, currently no places reserved on LLS for Aboriginal representation.

With regard to Part 3.2 (uses) and 4.2 of the draft Framework, as LLS are aware, Aboriginal interests in TSRs and other Crown Land include – but also extend beyond – cultural heritage protection. Such interests include continued access to sites of cultural significance and use of TSRs to access traditional resources, particularly for access to fishing areas. The draft Framework should explicitly acknowledge and provide for these.

5. Funding

Adequate resources and capacity

As noted, we welcome the broad acknowledgement of TSRs' diverse values, and the intention to align with TSR consensus principles, which include adequate resourcing and multi-factor valuation.

We also welcome the draft Framework's recognition of the 'conservation value of TSRs as a public asset', and the 'strong case for some ongoing public investment' to manage and sustain these values (draft 5.1). Ecosystem services assessment is a logical way to evaluate the long-term benefits and costs of public investment in TSR management for 'passive' or

¹² Sections 5.1 and 5.2 relate to: principles and business plan reporting.

'restorative' uses. In the medium-term, this is an essential component to the TSR business plan reporting template (draft Table C).

Part 5 of the Framework relates to the guiding principle of 'economic viability' (draft 1.3). To better understand the implications of this principle, it may be useful to summarise and link to specific information on existing budgetary positions; funding changes over time (particularly with the merger to form LLS); and how economic, social and environmental values of TSRs are accounted for at present and in future. An emphasis on 'economic viability' requires a commitment to develop tools and capacity to value ecosystem services and benefits. This is a significant gap in the draft Framework and is addressed further in the next section.

6. Monitoring and reporting

Identifying, monitoring and reporting outcomes

Part 6 of the draft Framework provides encouraging statements but limited detail. We welcome the commitment to a process of monitoring, evaluation, reporting and improvement (**MERI**). As the draft Framework (p 15) notes: 'For this to be possible, desired outcomes must first be clearly stated.' What are those desired outcomes?

We suggest an overarching goal to *maintain or improve* the environmental condition of TSRs for the benefit of the NSW community and the stewardship of other species.

Consideration and integration of the following will assist LLS and stakeholders to identify specific outcomes at local, regional and state levels:

- State-wide natural resource management targets (example at **Attachment B**);
- strategies, targets and actions of former Catchment Management Authorities;
- climate mitigation and adaptation strategies including disaster preparedness;
- findings from State of the Environment and State of the Catchments reporting; and,
- Key biodiversity threats (KTPs), abatement plans (TAPs) and priorities (PAS).

The final paragraph of Part 6 on the MERI should also be fleshed out with detail. We would support legislative requirements to gather and report information annually on monitoring and evaluation. We also support a legislated, independent review of the TSR planning framework in 2019, to coincide with the next planning cycle.

Piloting ecosystem services assessment and accounting

The TSR Planning Framework provides a unique platform to integrate ecosystem services assessment and accounting. Given TSRs' unique values and defined areas, they provide an ideal incubating space for assessing and piloting these approaches.

As the Ontario Biodiversity Council explains:

Biodiversity is the foundation upon which humans derive benefits called ecosystem services. For example, natural systems such as wetlands, free-flowing rivers, forests and grasslands provide services such as water purification, storm and flood protection, air pollution mitigation and recreational opportunities that benefit human well-being (Miller and Lloyd-Smith 2012). Estimating the value of ecosystem services can reveal social costs or benefits that otherwise would remain hidden. Once

*identified and understood, these values can be considered and accounted for in the policy and decision-making process.*¹³

We strongly advocate the integration of ecological services and values in LLS and Crown Lands accounting and reporting frameworks. As a first step, this requires improved valuation of the *ecosystem services* that TSRs (and other Crown lands) provide. This should include pilot programs beginning from 2016, and expanding throughout the planning cycle.

This would positively reinforce the Government's intention to integrate environmental, social and economic values into TSR management; and would also build capacity to monitor and report on environmental outcomes via the Framework. It is also consistent with the Aichi Target 2 under the Convention on Biological Diversity.

A growing number of NRM and biodiversity agencies are integrating ecosystem services into their strategic planning, assessment and land management programs, for example:

- The Ontario Biodiversity Council has set goals and targets to implement ecosystem services approaches by 2020;¹⁴
- In October 2015, the US Government issued a directive to all federal agencies to develop ecosystem services frameworks in forward planning;¹⁵
- In April 2013, the UK Government issued guidance for policy and decision makers on using an ecosystems approach and valuing ecosystem services.¹⁶

Australian expert groups have also recently developed relevant analysis and guidance:

- The Wentworth Group of Scientists has issued guidance on *Using markets to conserve natural capital* as part of its environment and economy Blueprint;¹⁷ and,
- The IUCN (Australian Chapter) has recently issued analysis on valuing nature in protected areas.¹⁸

7. Legislative change

Legislative change must address community concerns about the wider Crown Lands Review

Finally, as per sections 10-11 of the *Crown Lands Act 1989*, EDO NSW strongly supports:

- retaining, in law, the existing 'environmental protection principles' and applying these to Crown Lands including TSRs;
- conservation of natural resources 'wherever possible';
- sustaining the land and resources 'in perpetuity', and related principles; and
- a public interest test that is consistent with these principles, and that integrates short- and long-term considerations as required by ESD.

We recommend retaining and extending these principles to the LLS Act and TSR planning framework. We do not support removing or weakening these principles.¹⁹

¹³ See <http://sobr.ca/report/>, Indicators report – State of Biodiversity 2015 (p 138).

¹⁴ See <http://sobr.ca/report/>, Summary report – State of Biodiversity 2015 (Target 14).

¹⁵ See: <https://www.whitehouse.gov/blog/2015/10/07/incorporating-natural-infrastructure-and-ecosystem-services-federal-decision-making>.

¹⁶ See: <https://www.gov.uk/guidance/ecosystems-services>.

¹⁷ See: <http://wentworthgroup.org/2015/06/blueprint-paper-1-using-markets-to-serve-natural-capital/2015/>.

¹⁸ See: <http://aciucn.org.au/index.php/publications/2015-valuing-nature/>.

¹⁹ See also EDONSW *Submission on the NSW Crown Lands Management Review* (June 2014) [Download PDF](#).

8. Conclusion

We hope these comments are of assistance, and look forward to further engagement with LLS on Travelling Stock Reserves, and on Crown Lands generally with DPI.

Attachment A: Approach to Crown Land management including TSRs (2014)

EDO NSW supports improved legislation, governance and management of Crown lands in accordance with the following principles:

- **ESD:** NSW Crown lands should be managed for the benefit of the people and environment of NSW in perpetuity, in accordance with ESD and its principles.
- **Legal safeguards:** needed to ensure short-term economic benefits (such as sale or commercialisation) are not given precedence over long-term social, environmental and economic values.
- **Ecological services:** Good decisions require full valuation of environmental and social values of Crown lands, including diverse contributions of ecological services, now and in the future.
- **Maintain or improve:** Land managers should be required to assess, protect and manage Crown lands in ways that maintain or improve environmental outcomes, based on leading practices.
- **Engagement:** Good management and accountability requires proactive community engagement, transparent processes, and public participation in management and decision-making.
- **Integration:** Crown lands management should integrate with state environmental protection and planning laws and policies, including to address biodiversity loss and climate change.
- **Long-term TSR protection:** Travelling Stock Routes must be conserved and managed appropriately in perpetuity.
- **Indigenous engagement:** Ensure ongoing protection of Aboriginal cultural heritage and land rights, via tailored engagement, appropriate safeguards and whole-of-government policy integration.
- **Governance:** Clear regulatory responsibilities and safeguards are necessary for good governance that achieves the legislative objects.
- **Enforcement:** Proper monitoring, enforcement, auditing and reporting on Crown lands management is needed, including open standing for community enforcement of legal breaches.

More specific EDO NSW recommendations, and analysis of the NSW Government's initial 2014 response to the Crown Land Review process, and are outlined here:

EDO NSW Submission on the NSW Crown Lands Management Review
June 2014 - [Download PDF](#)

Also available at: http://www.edonsw.org.au/planning_development_heritage_policy.

Attachment B: Natural Resource Commission state-wide NRM targets (2010-15)

NSW Natural Resources Monitoring, Evaluation and Reporting Strategy 2010–2015, Appendix 1.²⁰

By 2015 there is an increase in native vegetation extent and an improvement in native vegetation condition.

By 2015 there is an increase in the number of sustainable populations of a range of native fauna species.

By 2015 there is an increase in the recovery of threatened species, populations and ecological communities.

By 2015 there is a reduction in the impact of invasive species.

By 2015 there is an improvement in the condition of riverine ecosystems.

By 2015 there is an improvement in the ability of groundwater systems to support groundwater dependent ecosystems and designated beneficial uses.

By 2015 there is no decline in the condition of marine waters and ecosystems.

By 2015 there is an improvement in the condition of important wetlands, and the extent of those wetlands is maintained.

By 2015 there is an improvement in the condition of estuaries and coastal lake ecosystems.

By 2015 there is an improvement in soil condition.

By 2015 there is an increase in the area of land that is managed within its capability.

Natural resource decisions contribute to improving or maintaining economic sustainability and social wellbeing.

There is an increase in the capacity of natural resources managers to contribute to regionally relevant natural resource management.

²⁰ Source: Natural Resources Commission (2007), *State-wide Targets for Natural Resource Management Fact Sheet*, Sydney.