



Submission on NSW Travelling Stock Reserves Review - Public consultation paper

prepared by

EDO NSW
July 2017

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Submitted to:

**Local Land Services,
State Operations
PO Box 2105, Dubbo NSW 2830
By email: tsr.feedback@lls.nsw.gov.au**

For further information on this submission, please contact:

Mr Nari Sahukar
Senior Policy & Law Reform Solicitor
EDO NSW
T: 02 9262 6989
E: [nari.sahukar\[at\]edonsw.org.au](mailto:nari.sahukar[at]edonsw.org.au)

Ms Rachel Walmsley
Policy & Law Reform Director
EDO NSW
T: 02 9262 6989
E: [rachel.walmsley\[at\]edonsw.org.au](mailto:rachel.walmsley[at]edonsw.org.au)

EDO NSW

ABN 72 002 880 864
Level 5, 263 Clarence Street
Sydney NSW 2000 AUSTRALIA
E: edonsw@edonsw.org.au
W: www.edonsw.org.au
T: + 61 2 9262 6989
F: + 61 2 9264 2412

Executive Summary

EDO NSW welcomes the opportunity to contribute to the Travelling Stock Reserves (TSR) Review and public consultation paper (May 2017) (**consultation paper**).

We support the work of Local Land Services (LLS) to create 'resilient communities in productive healthy landscapes'. In our view, 'healthy landscapes' mean that our natural environment is protected and enhanced for both its intrinsic value and the 'ecosystem services' that the landscape provides to our culture, lives and livelihoods.

Following on from the release of the *TSR State Planning Framework 2016-21* (2016), we welcome the aim to improve the evidence base on TSR uses and values.

Our submission comments on the following areas of the review and consultation paper:

- A. The LLS Act and TSR state planning framework – Clarify the interactions**
- B. EDO NSW submission on draft TSR State Planning Framework**
- C. Proposed categories of TSR (Part 3 consultation paper)**
- D. Proposals to access TSR land – Assessment criteria (Part 4)**
- E. Assessment of TSRs' ecological values – Information needed**
- F. TSRs should be sensitive land under land-clearing reforms 2016-17.**

We outline **recommendations** throughout the submission.

Key recommendations include:

- provide further resources for policy development, evidence gathering and consultation, including by drawing on local community networks;
- clarify the relationship and timing of this and other stages of the TSR review;
- clarify how this review will interact with Western Division TSR management;
- clarify the relationship between TSR categories 1-4 in the consultation paper and the 'primary land use categories' in the State Framework;
- clarify how principles in the State Framework will be applied in assessing TSR uses, values and categorisation;
- recognise TSRs not currently in use may have important public values for the future, including cultural heritage, habitat regeneration and climate resilience;
- align the criteria for activity assessment with the aims of the State Framework to maintain or improve environmental integrity and connectivity;
- embed holistic consideration of cumulative impacts on the TSR network;
- tighten and rephrase some of the criteria from negative to positive thresholds;
- develop and publish detailed guidance for LLS to assess impacts, in consultation with other relevant agencies (such as OEH) and stakeholders;
- require decisions to integrate (not just balance) impacts, and ESD principles;
- it is essential this review awaits the results of the ecological values initiative;
- TSRs should be 'sensitive land' under 2016-17 land-clearing reforms.

A. The LLS Act and TSR state planning framework - Clarify the interactions

How the LLS Act deals with TSR management

Part 6 of the LLS Act deals with LLS-managed TSRs and public roads. For example, it sets out how permits to use reserves or to move stock are granted, and allows LLS to impose conditions that users and stock must comply with (among other things, such as reserve closure and recreational access in daylight hours).¹ Part 7 of the Act deals with stock watering points. Further details are in the LLS Regulation 2014.

More generally, as TSRs are Crown reserves, they are also affected by the *Crown Lands Act 1989*, the *Western Lands Act 1901* and their soon-to-be successor, the *Crown Lands Management Act 2016* and regulations (once made and commenced).

How the TSR state planning framework informs management – clarify interactions

We understand the *TSR State Planning Framework 2016-21* (**State Framework**) was finalised in June 2016. This followed public consultation on a draft that received over 600 submissions and we thank LLS staff for their attention to submissions received.² The State Framework expands on several areas that needed more information and clarification, including in relation to conservation values, Aboriginal engagement and cultural heritage, and community and stakeholder consultation.

However the Framework is still high-level, and we agree there is substantial ongoing work needed to consult, gather evidence and develop policy across agencies and multiple TSR values, with stakeholder input. We **recommend** further resources for policy development, evidence gathering and consultation, including by drawing on local community networks such as Landcare, Aboriginal elders and land councils.

What is not clear is the relationship between this review (the *NSW TSR Review - Public consultation paper*), the State Framework, regional TSR plans, pilots and TSR ecological assessments – or the timeframes envisaged for forthcoming stages. We **recommend** clarifying these relationships and timeframes for the community.

We note that in December 2016, the Minister for Lands and Water directed LLS to undertake this review of TSRs in consultation with the Department of Industry – Lands, and the Office of Environment and Heritage (**OEH**). The letter also noted:

*Pending the outcomes of the review, TSRs should be managed as required under the Local Land Services Act 2013, and in accordance with the NSW TSR State Planning Framework 2016-21, noting the multiple values and uses of TSRs.*³

This provides some general context, but links between the stages should be clear.

¹ LLS Act sections 77 (Reserve use permits), 78 (Stock permits) 84 (conditions), 74 (recreational access).

² See *NSW Travelling Stock Reserves State Planning Framework 2016-21- Response to Submissions*

³ The Hon Niall Blair, Minister for Primary Industries, letter to LLS Chair Tim de Mestre, 19 Dec. 2016.

Interaction with Western Division TSR lands

We note this review focuses on TSRs managed by LLS – around 27 per cent or 500,000 hectares of the NSW TSR Crown estate (consultation paper p 4). However we also **recommend** the Government clarify how this review will interact with future TSR management in the Western Division. This is important as when the *Crown Lands Management Act 2016* commences, it will replace the *Western Lands Act 1901* and dissolve the Western Lands Commissioner role under that Act.

B. EDO NSW submission on draft TSR state planning framework

Our December 2015 submission on the draft TSR state planning framework remains relevant to this review (see **Attachment A**).⁴ In that submission we recommended the draft TSR Framework be clarified and expanded to address the following:

- 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 the future roles of TSRs
- Recognition of diverse indigenous interests in TSR management
- Adequate resources and capacity
- Identifying, monitoring and reporting outcomes
- Piloting ecosystem services assessment and accounting
- Community concerns about the wider Crown Lands Review.

Many of these comments and recommendations remain relevant to the current phase – namely the identification of uses and values of TSRs, stakeholder input, and how TSRs may be categorised or prioritised for management and restoration. We **recommend** LLS take our prior submission into account as TSR policies evolve.

C. Proposed categories of TSR (Part 3, consultation paper)

The consultation paper seeks local input on four broad categories of TSRs, in particular to identify the uses and values of TSRs that may fit in each category:

Table 1: Summary of TSR categories, their uses and values (consultation proposals)

Category	Use and values	Aim of TSR category
Category 1 (stock use)	TSR used <i>solely</i> for travelling stock, emergency management (e.g. refuge during bushfires, flood, drought) or biosecurity purposes	<i>Access for stock</i> should remain the <i>primary purpose</i> for these TSRs
Category 2 (stock and other use)	TSR used for travelling stock <i>and</i> other purposes (i.e. TSRs that are important for multiple reasons)	These areas will need to remain as TSRs and be <i>managed for their multiple purposes</i>

⁴ EDO NSW, *Submission on the NSW Travelling Stock Reserves State Planning Framework 2016-19*, Dec. 2015 ([Download PDF](#)) at www.edonsw.org.au/protected_areas_public_land_management_policy

Category 3 (‘important for other reasons’)	TSR not required for travelling stock (i.e. are not or cannot be used for stock ⁵) but are important for <i>other reasons</i> .	These TSRs <i>may need to be re-reserved or re-purposed</i> to ensure land is effectively protected and managed for its primary purpose
Category 4 (‘not used’)	TSR that are not used for purposes above (e.g. travelling stock; emergency management; cultural heritage, land rights and other interests; conservation and biodiversity; recreation)	Identify TSRs not required for any priority purposes

We make five comments here.

First, clarify the relationship between categories 1-4 above and the ‘primary land use categories’ A-F in the State Framework. We reiterate our comments on primary use classification from our **attached** 2015 submission (pp 6-7):

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; 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).*

Second, clarify how the principles in the State Framework will be applied in assessing TSR uses, values and categorisation. In particular, the ‘principles for land use categorisation in regional TSR management plans’ (State Framework Table 2):

- *Best available knowledge for decision making (discussed below)*
- *Maintenance of existing functionality*
- *Ecological linkages and corridors are to remain intact*
- *Frequently used stock distribution pathways are unencumbered and enhanced*
- *Aboriginal cultural heritage access is maintained and sites protected*
- *Enhanced biodiversity conservation*

Other important reference points are the 2011 TSR consensus principles, the Crown land management principles (Framework at 2.3), conservation management principles (at 3.5) and Part 5 of the Framework on consultation and liaison (including Aboriginal engagement at 5.2).

Third, we emphasise the importance of the ecological values assessment project to inform the identification of values and the categorisation of TSRs. As noted at E below, details are needed on the method, process and timeframe for this project.

⁵ Reasons include: the TSR is isolated; located in an unsuitable landscape; or has vegetation that is toxic to livestock (consultation paper p 11).

Fourth, in addition to an assessment of ecological values, we **recommend** that a comprehensive survey of Aboriginal cultural values on TSRs be fully resourced and completed to inform this review.

Finally, we note some concerns around Category 4 above: TSRs that are 'not used'. The fact that these reserves are not currently used does not mean that they have no public value. In particular these TSRs could have:

- Environmental values that are not yet known, because they have not been assessed,
- Cultural heritage values known to relevant traditional knowledge holders and therefore not necessarily publicly recorded; or
- Potential future values as areas for regeneration of native vegetation, habitat for threatened species and ecological communities, important wildlife corridors, or as climate refuges. (We note that future uses beyond 10 years would not be captured by Category 1.)

We **recommend** current and future stages of TSR planning address these issues.

D. Proposals to access TSR land – Assessment criteria (Part 4, consultation paper)

This review also seeks input on the process for assessing proposals that may impact on TSR land and values.⁶ Of the examples given, where applications are made to use TSRs for unrelated purposes, we are particularly concerned about attempts to integrate public TSRs into private, 'long-term agricultural operations'; and the potential for State significant development applications to override TSR protections and values. We submit that major resource projects (including pipelines) are a more likely example that would affect TSRs than proposals for 'schools and hospitals' (p 13).⁷ We also note that all mining and gas exploration is a 'Part 5' planning activity which reduces public scrutiny and input on the environmental assessment process.⁸

Criteria for assessing proposals that may impact TSR land

The Consultation Paper asks whether the proposed criteria are adequate for considering whether a proposal might impact on a TSR (p 14). It then discusses the consideration of broader social, environmental and economic impacts.

The Consultation Paper sets out nine criteria to assess whether the proposal is likely to materially harm the TSR network. The draft criteria provide a useful starting point that can be further clarified. At a general level, our **recommendations** are:

⁶ For example, to build electricity infrastructure, provide access to private property, integrate TSR into long-term agricultural operations.

⁷ A list of State Significant Development (SSD) and Infrastructure (SSI) is set out in the *SEPP State and Regional Development 2011*, and can otherwise be declared by the Planning Minister under the *Environmental Planning and Assessment Act 1979*.

⁸ See the Mining SEPP clause 6 (*State Environmental Planning Policy - Mining, Petroleum Production and Extractive Industries 2007*): <http://www.legislation.nsw.gov.au/#/view/EPI/2007/65/part2/cl6>.

- align the criteria with the aims of the TSR state planning framework – to *maintain or improve* the environmental integrity and connectivity of TSRs;
- embed the consideration of cumulative impacts on the TSR network (i.e. the aggregated, negative effects or pressures of numerous smaller-scale activities) so TSR management, access and use is informed by local *and* holistic factors;
- reframe some of the criteria from a negative ('would not cause...') to a positive (would 'maintain or improve'...);
- develop and publish detailed guidance for LLS to assess impacts, in consultation with other relevant agencies and stakeholders (including the OEH); and
- require decisions to *integrate* social, economic and environmental impacts and be made 'consistently with the principles of ecologically sustainable development' (**ESD principles**),⁹ as per the objects of the LLS Act as amended in 2016.¹⁰

We comment in more detail on each draft criterion below.

1. *Would not significantly impact on the integrity of the existing TSR network at local or regional scale. ...*

We **recommend** rephrasing this from 'not significantly impact' to 'would maintain or improve' the integrity of the existing TSR network. If the applicant cannot show this will be the case, the activity should be refused. The phrase 'not significantly impact' raises issues of definition and inconsistency, and opens the door to smaller negative impacts that lead to cumulative erosion of values over time. 'Integrity' could specifically refer to the agricultural and ecological integrity of TSRs. We welcome the references to local and regional scale. This should require LLS to consider the cumulative impacts of pre-existing activities in the local or regional area.

2. *Would not affect a TSR, or part of a TSR, which is critical for public use.*

We **welcome** this proposed criterion. It could be supported with guidance that gives examples and makes clear what is and is not a public use. For example, in addition to travelling stock purposes, relevant public uses include non-consumptive and regenerative activities (passive uses). A TSR may form a vital wildlife corridor for endangered species, where the public use is for the conservation of biodiversity. This may mean only complementary uses (such as bird-watching) will be acceptable.

⁹ By way of guidance, we suggest that consideration of ESD principles would include, for example:

- *Precautionary principle*: Take preventative and precautionary actions to avoid serious or irreversible harm to TSRs and the ecosystems they sustain (even if there is scientific uncertainty about the nature or likelihood of that harm). If the harm is certain, adopt *preventative* measures.
- *Ecological integrity*: Make biodiversity and ecological integrity a *fundamental consideration* in decision-making – for example, conserving biodiversity and its values should be ensured upfront.
- *Equity (Inter-generational and intra-generational)*: Consider short- and long-term consequences of uses and impacts, including the benefits and burdens that may fall on different parts of the community (for example, traditional owners) – both now and for future generations of Australians, who may sustainably use, care for and rely on TSRs for ecosystem services into the future.
- *Full environmental costing*: Identify and value the full benefits of TSRs in contributing to livelihoods, culture and healthy landscapes; as well as the full costs of proposed activities that may degrade environmental and other values. This helps make natural values visible in decisions.

¹⁰ The *LLS Amendment Act 2016* (soon to commence), replaces s. 3(e) of the LLS Act objects with:
(e) *to ensure the proper management of natural resources in the social, economic and environmental interests of the State, consistently with the principles of ecologically sustainable development (described in section 6 (2) of the [Protection of the Environment Administration Act 1991](#)).*

3. *Would not cause any fragmentation to the TSR network*

We **welcome** this proposed criterion to protect the connectivity values for both travelling stock uses and biodiversity. It could be supported with guidance.

4. *Would not make the TSR route unusable for travelling stock... [e.g. by prohibiting access to critical local TSR corridors]*

No specific comments.

5. *Would not significantly deteriorate the conservation values, cultural values, heritage values or other public values of the network of TSRs, the TSR [or part thereof]*

As per our comment on principle 1, the term 'significantly deteriorate' raises problems of definition, inconsistency and cumulative impacts. We **recommend** rephrasing Principle 5 as a positive to ensure that *conservation values, cultural values, heritage values or other public values will be maintained or improved* if an activity goes ahead. If the applicant cannot show this will be the case, it should be refused. In determining this, cumulative impacts of this and other actions should also be considered.

6. *Would not result in overuse of pasture and water in other TSR*

We **support** the general intent of this principle to avoid overuse of natural resources including native pasture and water. However we **recommend** clarifying the specific intent of referring only to 'other TSR'. (For example, it may refer to displacement of stock from one TSR to another as a result of separately approved activities). It could instead refer to 'this or other TSRs' to prevent the overuse of resources in any case.

7. *Would not set any adverse precedent.*

We **welcome** this proposed criterion. We **recommend** it explicitly has reference to the significant public and multiple use values of TSR to the community.

8. *Would resolve existing encroachments by neighbouring landowners on condition that compensation is paid or other land made available to offset damage done to the TSR.*

We have **concerns** about this principle. It must be clear that LLS decision-making processes will not reward or legitimise past breaches of the law via gradual private encroachment on publicly-owned TSRs. This could in itself set an 'adverse precedent' (see 7 above), particularly if the encroachment was relatively recent. We also have concerns about whether offsets can deliver environmental outcomes – for example, in relation to this criterion, land to offset impacts may not have equivalent environmental values.

9. *Is for emergency management purposes or ancillary infrastructure such as fire trails and access.*

No specific comments.

Consideration of broader social, environmental and economic impacts

The paper also proposes to balance the broader social, environmental and economic impacts of a proposal on TSR land. The paper lists four particular considerations.¹¹ We are concerned that the weighting of 3 out of 4 principles favours the economic benefits of proposals for using TSRs, and that this could lead to unbalanced decision making. For example, 1 and 2 appear to duplicate references to economic benefits.

While there is a public interest in economic development, it should be clear that other public interests (or impacts) may outweigh the economic benefits of an activity. For example, development of a gas pipeline could hold out promise of short-term economic development, but have long-term adverse socio-economic and environmental impacts – if TSRs become fragmented, if existing uses are excluded, or if high conservation value TSRs are destroyed and ‘offset’ with poor quality land.

As noted above, we **recommend** decisions must *integrate* (not just ‘balance’) social, economic and environmental impacts, to encourage low-impact solutions. Decisions should explicitly be made ‘consistently with the principles of ecologically sustainable development’ (**ESD**). We give guidance on how to consider ESD principles above.

E. Assessment of TSRs’ ecological values – Information needed

We **strongly support** the Environmental Trust grant of \$4.75 million to help the NSW Government and community identify the ecological values of TSRs.¹²

The grant acts on the widespread recognition of the TSR network as a valuable environmental asset which supports biodiversity conservation, and in turn, other socio-economic values. As the NSW *State of the Environment Report 2012* noted:

*In many of these areas [of Crown land], 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 700,000 hectares of TSRs in the eastern and central divisions of NSW are currently being assessed.*¹³

Our 2015 submission called for ‘Piloting ecosystem services assessment and accounting’ for TSRs. To date however, details of any progress on the ecological values assessment remain limited. We request and **recommend** that further information – including the assessment methodology – be published and disseminated, and widely applied. In addition to widespread community consultation

¹¹ See Consultation Paper p14. Namely, whether the proposal:

1. Is in the public interest as it would facilitate economic growth or jobs creation;
2. Would advance the economic, social or environmental well-being of the community;
3. Would advance public health and safety outcomes.
4. Would facilitate the construction or extension of public infrastructure [e.g. road/rail] or an approved state significant development or state significant infrastructure).

¹² TSR consultation paper (May 2017) p 6; *NSW Environmental Trust Annual Report 2015-16*, p 18.

¹³ NSW EPA, *State of the Environment Report 2012*, p 243:

<http://www.epa.nsw.gov.au/soe/soe2012/pdf/1284Soe2012Biodiversity.pdf>.

on TSR values, it is essential that this review and any categorisation awaits the results of the ecological values initiative.

Fully identifying the intrinsic biodiversity values, intersection with cultural values and ecosystem services¹⁴ that TSRs provide, has a range of important benefits:

- it addresses the need for an improved evidence base to inform TSR management
- it is consistent with integrated decision-making and ESD principles, and
- it is relevant to the Government's aim of truly 'cost neutral' TSR management, because some costs and benefits remain hidden unless ecological values are properly understood.¹⁵

F. TSRs should be 'sensitive land' under 2016-17 land-clearing reforms

In our submission on the draft Local Land Services Amendment Regulation 2017, EDO NSW strongly recommended that TSRs be excluded from clearing under the Land Management (Native Vegetation) Code.¹⁶ For example, this could be done by categorising TSRs as either *Category 2 – sensitive land* (a sub-category of *Category 2 – regulated land*)¹⁷; or *Excluded land* (that is dealt with under other legislation¹⁸).

Exhibition documents for the land management and biodiversity reforms indicated that the Government had not decided how TSRs should be classified for the purposes of land-clearing applications, and invited feedback. Our submission reiterated that TSRs should be excluded from Code-based clearing, recognising TSRs as a unique public asset to be protected and valued against broadscale clearing. Minor clearing with negligible impacts only, that is currently permitted, could still continue.¹⁹

As noted in our land management reform submissions, even if TSRs are classified as 'sensitive land', this would not fully protect them from discretionary land-clearing applications made to the Native Vegetation Panel (**NV Panel**).²⁰ This emphasises the need for three other important considerations and clarifications:

- First, clarify who is eligible to apply for a land-clearing application on TSRs (i.e. the land manager only (e.g. LLS), or a licensee, lessee or permit holder);
- Second, require that applications to the NV Panel be exhibited for comment;
- Third, identify and nominate high conservation value TSRs (or parts of the TSR network) as new 'Areas of Outstanding Biodiversity Value' under the soon-to-commence *Biodiversity Conservation Act 2016* and Regulations.

¹⁴ That is, the benefits that natural assets provide to humans, which are often rendered invisible from traditional balance sheets and accounting methods.

¹⁵ Ontario Biodiversity Council *Indicators report: State of Biodiversity 2015* (p138) <http://sobr.ca/report/>

¹⁶ EDO NSW [Submission on the Draft Local Land Services Amendment Regulation 2017](http://www.edonsw.org.au/nsw_biodiversity_and_land_management_reforms_draft_regulations_and_products), June 2017: http://www.edonsw.org.au/nsw_biodiversity_and_land_management_reforms_draft_regulations_and_products.

¹⁷ For example under the draft Local Land Services Amendment Regulation 2017, clauses 108 and 113.

¹⁸ i.e. existing LLS Act and Crown Lands Act provisions and permits; or the *Crown Lands Management Act 2016*.

¹⁹ This should be clear and limited. Under existing law, clearing of native vegetation requires approval under the *Native Vegetation Act 2003* unless it is permitted clearing (e.g. RAMAs) or excluded under the NV Act. See NSW OEH, 'Clearing on travelling stock reserves': www.environment.nsw.gov.au/vegetation/stockreserves.htm.

²⁰ Under Part 5A, Division 6 of the LLS Amendment Act 2016.

Conclusion

Thank you for the opportunity to comment on the future management of Travelling Stock Reserves. We look forward to further engagement with LLS on these matters, in particular the proposals for categorising TSRs and ecological values assessment. For further information please contact the EDO NSW Policy & Law Reform team via the details on p 2.

Attachment A:

EDO NSW, *Submission on the NSW Travelling Stock Reserves State Planning Framework 2016-19, December 2015* ([Download PDF](#)). Available at:
http://www.edonsw.org.au/protected_areas_public_land_management_policy