

ADDITIONAL REPORT



Item No: 4.8
Title: Central Coast Comprehensive Crown Land Negotiation Program
Department: Governance

9 July 2018 Ordinary Council Meeting

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Report Purpose

The purpose of this report is:

1. To inform Councillors of the current status of the NSW Government's Comprehensive Crown Land Negotiation Program for the Central Coast local government area; and
2. Seek endorsement of Councillors to Council's negotiation principles as set out in Attachment 2 to this Report.

Summary

Since December 2017 Central Coast Council has been participating in the NSW Government's Comprehensive Crown Land Negotiation Program ('Program').

This Report provides an update of the current status of the Program, and seeks Councillor endorsement of the negotiation principles that will be used as the basis for identifying Crown land that Council has an interest in, and the nature of that interest, for the purposes of the Program.

Recommendation

- 1 That Council receive this report on the Central Coast Comprehensive Crown Land Negotiation Program.**
- 2 That Council endorse the "Central Coast Council Principles for Claiming Interests in Crown Land" in Attachment 2 to this report.**
- 3 That Council form a Committee comprised of one Councillor from each ward, to receive reports and information on Council's participation in the Central Coast Comprehensive Crown Land Negotiation Program. The Councillors on the**

Committee will be:

- (i)
- (ii)
- (iii)
- (iv)
- (iv)

- 4 That Council note that the decision to accept the vesting of any Crown land in Council will require a resolution of Council, and that no binding decision will be made to accept the vesting of land other than by the Council.**

Context

Central Coast Council is one of several NSW councils selected to participate in the NSW Government's Comprehensive Crown Land Negotiation Program ('Program') for their local government area. The purpose of the Program is to ensure that NSW Crown Land is held by the most appropriate landholder (State, local council, or local Aboriginal Land Council) to achieve the most positive social, economic, cultural and environmental benefits for the people of NSW. The benefit for Council is it will enable local interests and needs to be owned and managed locally.

In the Central Coast local government area, the Program involves voluntary, multi-party negotiations between the NSW Government, Central Coast Council, Darkinjung Local Aboriginal Land Council and the NSW Aboriginal Land Council.

The Program covers all land within the Darkinjung Local Aboriginal Land Council area, which is also within the Central Coast local government area. There are over 1400 parcels of Crown land within the negotiation area. A map of Crown land in the Central Coast local government is in **Attachment 1** to this report.

Under the *Crown Land Management Act 2016 (CLM Act)*, the Minister has the power to vest Crown land in a local council that meets the prescribed Local Land Criteria and with the local council's consent. The State will retain land that is of state significance and land required for the delivery of state services and infrastructure. The criteria that have been developed by the State for determining state significance are land that:

- currently provides, or is required for planned core government services and infrastructure;
- is part of a state or regionally significant system or network;
- is of high environmental value at a state or regional scale and is required for addition to the conservation network including land identified for future reservation;
- is iconic or contains an iconic asset;
- has or contains an item of state or heritage importance;

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- includes beaches, coasts, estuaries and adjoining, contiguous foreshore lands; or
- produces or has the identified and earmarked potential to produce significant income for the state.

It is not open to Council to claim any Crown land within its local government area. Under section 4.6 of the CLM Act Crown land can only be vested in Council if:

- the Minister is satisfied that the land meets the prescribed Local Land Criteria and is therefore suitable for local use; and
- the Council has agreed; and
- if the land is claimed under the *Aboriginal Land Rights Act 1983*, Darkinjung Aboriginal Land Council and NSW Aboriginal Land Council have agreed.

The Local Land Criteria are prescribed in clause 26 of the *Crown Land Management Regulations 2018*, as follows:

- (a) *whether the land provides, or has demonstrated potential to provide, a public good predominately for residents in the local government area of the local council concerned, or in adjacent local government areas, in a way that is consistent with local planning instruments,*
- (b) *whether the land use is consistent with the functions of local government or could be used for activities consistent with those functions,*
- (c) *whether the land is managed, or has identified potential to be managed, as a community asset by a local council or some other body.*

The Program is also using the Aboriginal Land Agreement (ALA) mechanism under the *Aboriginal Land Rights Act* to recognise the importance of land to Aboriginal people; and to seek to reach agreement on approximately 1100 Aboriginal land rights claims that have been lodged in the Central Coast local government area. Without an ALA, it may take up to 10 years before these claims are determined.

If the Program is successful and one or more agreements reached between all parties, the most significant outcome is that it will deliver certainty for all parties within a relatively short timeframe in relation to the ownership, control and management of all Crown land on the Central Coast.

Classification and restrictions on use

There are protections under the CLM Act and the *Local Government Act 1993* for land that is vested in a Council under the CLM Act:

- Under section 4.8 of the CLM Act the land will automatically be taken to be classified as "community land" under the *Local Government Act 1993*, except where the Minister has made a declaration that the land is to be acquired as "operational land". The Minister is only able to make this declaration if Council satisfies the Minister that the land does not fall under one of the categories of community land as set out in the

Local Government Act 1993 or the land could not continue to be used and dealt with as it currently can be if it were required to be used and dealt with as community land. Under the *Local Government Act*, land classified as 'community land' cannot be sold.

- Land vested will be subject to native title. The land cannot be sold until native title has been extinguished or surrendered or the Minister issues a native title certificate stating that there is adequate evidence of extinguishment. (Section 4.9 CLM Act)
- Until a Plan of Management is adopted under the *Local Government Act* (a process which includes public notification and a public hearing), the nature and use of the land must not be changed. (Section 44 of the *Local Government Act*)

Current status

The Program consists of four stages:

1. Preliminary
2. Assessment
3. Negotiation
4. Post Negotiation

The Central Coast Program is currently in the Assessment stage. In this stage, each party to the negotiation undertakes an assessment of the Crown land in the whole of the negotiation area and indicates which Crown Land they have an interest in owning and managing, taking into consideration the criteria that is relevant to each party. Council's assessment will be based on the negotiation principles in **Attachment 2** that have been developed by Council as a result of extensive consultation with internal stakeholders who use, manage or have an interest in Crown land. (Please see below for details on consultation).

At the end of the Assessment phase, the Crown will prepare a spreadsheet that identifies land that more than one party has claimed an interest in. The land with overlapping interests will be divided up into several negotiation areas, which will then be the subject of detailed negotiations in the Negotiation phase. The detailed negotiation areas will be determined once the list of overlapping interests has been collated. Land with no or only one interested party may be retained by the Crown or vested in that party, subject to applicable statutory requirements.

Consultation with Council

On 21 May 2018 Councillors were provided with a briefing on the Project by the NSW Department of Industry – Crown Lands and Mary-Ellen Wallace, Special Counsel, Central Coast Council.

The following items will be submitted to Council for information or endorsement:

- Central Coast Council Principles for Claiming an Interest in Crown Land (the 'Negotiation Principles') (this report) – for endorsement.

- A list of all properties that Council has claimed an interest in and the basis for each claim, at the end of the Assessment Phase (anticipated to be August 2018) – for endorsement.
- The Crown spreadsheet that sets out the results of the Assessment phase and the interests claimed by each party, and details of the proposed detailed negotiation areas (August – September 2018). Council endorsement will also be sought at this point to proceed to the Negotiation phase.
- A report on the outcome of negotiations for each negotiation area including details of land or interests proposed to be vested in Council (at the end of the negotiation for each negotiation area) – for endorsement.
- Approval for vesting or granting of interests in Council (at the end of the Negotiation phase).
- A report on progress of vesting (every 3 months during the Post Negotiation period).

An introductory half day tour is being arranged by the Crown on Thursday 19 July 2018 to visit a sample of sites that illustrate the nature of each party's interests in Crown land, for the Assessment phase. Representatives of all parties (including staff, board members and councillors on the committee) will be invited to attend.

Site visits will also be undertaken during detailed negotiations.

Additional site visits and briefings can be arranged for Councillors and Council staff prior to endorsement or approval for vesting property in Council.

Consultation with Council Stakeholders

An internal Council stakeholder working group has been established and there has been widespread consultation with stakeholders across Council to identify the diverse range of Council assets, uses and interests in Crown land. From this consultation, the Negotiation Principles have been developed to guide the initial assessment of Council's interests in Crown land in the negotiation area and ensure all interests are appropriately and consistently captured.

The stakeholder working group includes representatives from the following Council business units:

- Business & Economic Development
- Business Enterprise
- Community Partnerships
- Economic Development & Project Delivery
- Facilities Management
- Leasing & Asset Management
- Learning & Education
- Leisure & Lifestyle
- Natural & Environmental Assets
- Open Space & Recreation

- Roads, Assets, Planning & Design
- Roads Construction & Project Management
- Strategic Land Use & Planning
- Technology & Customer Service
- Water Planning & Development
- Waterways & Coastal Protection

Consultation with affected third parties, such as occupiers of facilities on Crown land, will be managed by the Crown as part of the Program.

Negotiation Principles for Claiming Interests in Crown Land

Council's Negotiation Principles are set out in **Attachment 2**. The principles identify the Crown land interests of each Council business unit against the applicable Local Land Criteria, and the nature of the interest claimed by Council; whether land should be vested in Council, easements granted, or whether the land should be kept in public ownership and managed by Council.

Financial Impact

Council is not required to pay a purchase price for land vested under the CLM Act.

Council will be required to pay for costs required to prepare the land for vesting, such as surveys, title diagrams, easements and associated registration fees. The Minister will vest land via a gazette notice.

A budget will be prepared at the Negotiation phase, when Council will have more information about the number of properties and interests likely to vest in Council.

Social Impacts

Council's negotiation principles capture reserves, facilities and assets that are used by Council or the community to deliver services to the local community.

The Program is an opportunity to ensure the interests of the local community in local Crown land are owned and managed locally.

Environmental Considerations

The State has indicated that it will seek to retain ownership of land that is of high environmental value or is required for the conservation network.

Risk Management

If Council does not continue to participate in the Program we lose the opportunity to own and manage locally, the interests of our community in local Crown land.

There will also be continuing uncertainty over the status of Crown land used and managed by Council and the local community, given there are currently over 1100 Aboriginal land claims in the Central Coast local government area. Each land claim that affects land used or managed by Council, or that Council has a future interest in, will need to be assessed individually and evidence of use provided to the Minister, which is a significant burden on Council resources. Land claims can continue to be lodged in perpetuity even after a claim is unsuccessful.

Critical Dates or Timeframes

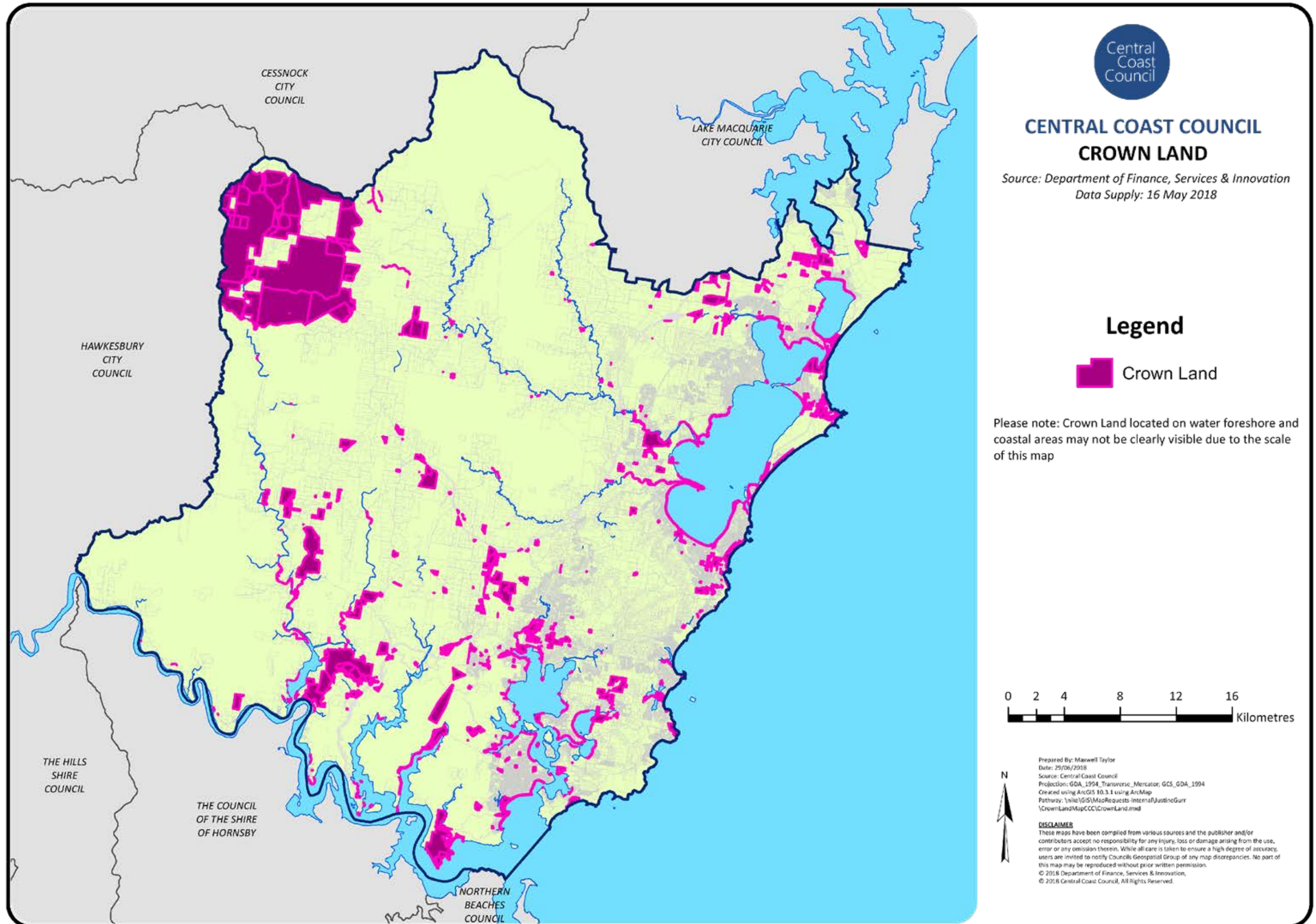
The parties anticipate that the Assessment phase is likely to be completed by the end of August 2018 and the detailed Negotiations phase is likely to commence in September 2018.

The Crown proposes that the Negotiations phase will be completed by the end of 2018 and agreements entered into early 2019.

It is considered that a more realistic timeframe to complete negotiations and enter into agreements is 30 June 2019, to ensure sufficient time to carry out due diligence, undertake consultation with Council stakeholders and obtain approvals from affected business units and Councillors.

Attachments

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| 1 | Map of Crown Land within the Central Coast Local Government Area | D13272486 |
| 2 | Central Coast Council Principles for Claiming an Interest in Crown Land | D13272490 |



Central Coast Council Principles for Claiming Interests in Crown Land

Principle	Description of Uses and Assets
<p>Local Land Criterion 1. The land provides or potentially provides, or has demonstrated potential to provide, a public good predominantly for residents in the local government area of the local council concerned, or in adjacent local government areas, in a way that is consistent with local planning instruments.</p>	
1. Open Space & Recreation - Active – Land to vest in Council	Existing RE1 active sporting and recreation facilities managed by Council
2. Open Space & Recreation - Passive – Land to vest in Council	Existing RE1 passive parks and recreation facilities managed by Council
3. Open Space & Recreation - Aquatic Infrastructure – Land to vest in Council	Existing aquatic infrastructure managed by Council
4. Open Space & Recreation - Future Needs – Land to vest in Council	Crown land required for future sporting and recreation facilities or for future parks
5. Roads & Drainage - Recreational Pathways – Land and/or easements to vest in Council	Existing recreation pathways managed by Council that aren't within a public recreation reserve
6. Natural & Environmental Assets - Managed Bushland - Land to vest in Council or remain in Public Ownership	Bushland currently managed by Council - usually contains Council infrastructure
7. Natural & Environmental Assets - Other Bushland - Land to vest in Council or remain in Public Ownership	Bushland not currently managed by Council - to remain in public ownership or subject to enforceable management agreements
8. Natural & Environmental Assets – Future Biodiversity Corridors – Land to remain in Public Ownership	Future Biodiversity Corridors not already covered above, that are in strategic planning reports
9. Waterways & Coastal Protection - Recreation - Land to vest in Council or remain in Public Ownership	Waterways and coastal reserves currently managed by Council for public recreation and water access
10. Waterways & Coastal Protection - Environment - Land to remain in Public Ownership	Waterways and coastal reserves - required for nature conservation - to remain in public ownership. Council to manage areas requiring public maintenance.

Principle	Description of Uses and Assets
Local Land Criterion 2. The land use is consistent with the functions of local government or could be used for activities consistent with those functions	
11. Council Operations - Land to vest in Council	Council operational facilities
12. Council Operations - Future Needs - Land to vest in Council	Crown land required for future Council operational facilities
13. Council Business Operations - Land to vest in Council	Business operations owned, operated or managed by Council - Cemeteries, holiday parks, waste facilities
14. Heritage Cemeteries – Land to vest in Council or remain in Public Ownership	Heritage cemeteries managed by Council
15. Council Business Operations - Future Needs - Land to vest in Council	Crown land required for future commercial enterprises or for extensions to existing enterprises
16. Water & Sewer Discrete Infrastructure - Land to vest in Council	Water and sewer discrete Assets
17. Water & Sewer Linear Infrastructure – Easements to vest in Council	Linear water and sewer assets
18. Water & Sewer Future Needs - Land and/or easements to vest in Council	Crown land required for future water and sewer infrastructure
19. Water & Sewer – Water Catchment – Land to vest in Council, or remain in Public Ownership & Council to manage	Crown Land that falls within the Water Catchment areas - vest or public ownership and Council manage
20. Roads & Drainage Infrastructure - Land and/or easements to vest in Council	Road, drainage and pathway infrastructure on Crown land (excluding Crown roads)
21. Roads & Drainage Future Needs - Land to vest in Council	Crown land required for future roads and drainage infrastructure including carparks
22. Waterways & Coastal Protection Infrastructure – Land to vest in Council or remain in Public Ownership and/or Easements to vest in Council	Waterways and coastal protection infrastructure
23. Waterways & Coastal Protection Infrastructure - Future Needs – Land to vest in Council or remain in Public Ownership and/or Easements to vest in Council	Crown land required for future waterways & coastal protection infrastructure
24. Emergency Management Assets - Land and/or easements to vest in	Emergency management assets and infrastructure

Council	
25. Emergency Management Assets - Future Needs - Land and/or easements to vest in Council	Crown land required for future emergency management assets
26. Telecommunications Infrastructure - Land and/or easements to vest in Council	Council telecommunications facilities including access
27. Telecommunications Infrastructure - Future Needs - Land and/or easements to vest in Council	Crown land required for future Council telecommunications facilities
28. (LAM) Third Party Infrastructure Under Tenure - Land to vest in Council	Third party infrastructure on Crown land managed by Council

Principle	Description of Uses and Assets
Local Land Criterion 3: The land is managed or has identified potential to be managed as a community asset by a local council or some other body.	
29. Community Assets - Council - Land to vest in Council	Council community facilities used and occupied by Council or managed by Council
30. (LAM) Community Assets - Under Tenure - Land to vest in Council	Council community facilities used and occupied by another body under tenure or management
31. Community Assets - Third party – Land to vest in Council or remain in Public Ownership	Community facilities used and occupied or managed by another community organisation
32. Community Assets - Future Needs - Land to vest in Council	Crown land required for future community facilities