

Attachment F: Risk assessment of the appointment of Racing NSW as Crown Land Manager (CLM)

Crown Lands considered the following risks and mitigation actions in the appointment of Racing NSW as CLM. Mitigation actions have been addressed in the appointment instrument (Attachment A).

Risks	Mitigations
Loss of oversight on key decisions	Quarterly meetings will be established between Racing NSW and Crown Lands and required by the appointment instrument. Minister retains the ability to remove the appointment at any time.
Effect on principle of multiple use through appointment of single interest group	Use appointment instrument to protect community interests that are relevant to each reserve and to require land to be used for all reserve purposes where there are multiple purposes gazetted. Minister retains the ability to remove the appointment at any time.
Non-compliance with statutory obligations or underperformance against objectives, and no compliance or enforcement powers available to the Minister in relation to CLMs (other than revocation of appointment)	Quarterly meetings established between Racing NSW and Crown Lands to discuss operational and statutory obligations. The Minister retains the ability to remove the appointment at any time.
Conflict with community and other stakeholders	Racing NSW is required to apply the community engagement strategy to ensure effective and appropriate consultation. Approval for the appointment is subject to receiving written confirmation of support from the 5 existing CLMs.

Document tendered by
J COON HILL

Received by
26 FEBRUARY 2025

Date: / /

Resolved to publish Yes / No

*FROM NS HURST TO
MINISTER KAMPEN*

Risks

Mitigations

Delegation of functions
Section 24 (3) of the *Thoroughbred Racing Act 1996* (Thoroughbred Racing Act) states '*Racing NSW may delegate to an authorised person or body any of its functions, other than this power of delegation*'. There are risks associated with Racing NSW having any power to delegate its functions as CLM or to authorise others to carry out CLM tasks on its behalf. Particularly, the risk that Racing NSW will authorise other bodies to do so without any oversight or approval from the department.

Section 3.18 of the CLMA prevents a CLM from delegating any of their functions without Ministerial consent.
The appointment instrument will include provisions which prevent Racing NSW from:

- authorising other entities or persons to carry out its responsibilities as CLM;
- delegating any of its functions as CLM (including under section 24 of the *Thoroughbred Racing Act*; and/or
- amending any of its delegations that may impact the Crown land,

without approval from the Minister. Whilst the clause in the appointment instrument may mitigate the risk by putting Racing NSW on notice, Crown Lands does not have a power to prevent Racing NSW exercising powers under the *Thoroughbred Racing Act*.

Racing NSW is independent of government
Section 5 of the *Thoroughbred Racing Act* states: '*Racing NSW independent of Government. Racing NSW does not represent the Crown and is not subject to direction or control by or on behalf of the Government.*'

Despite its statutory independence, the Board of Racing NSW is appointed by the Minister administering the *Thoroughbred Racing Act*.
Racing NSW also will still need to comply with the requirements of the CLMA when managing any Crown land for which it is appointed CLM, including any requirements of the appointment instrument. Minister retains the ability to remove the appointment at any time.

Separation of financial reporting
The *Crown Land Management Act* requires that proceeds generated on a Crown reserve must be retained for use on reserve managed by the CLM.

Racing NSW will be required by the appointment instrument to report proceeds generated through the use of the 5 reserves separate to its general financial reporting.

There are existing tenures with respect to parts of the 5 reserves

All assets, rights and liabilities of the existing CLMs (which were created, exercisable or incurred in connection with the exercise of functions as a CLM) will be transferred to Racing NSW.

Risks	Mitigations
<p>There are existing Aboriginal land claims with respect to parts of the 5 reserves</p>	<p>The appointment instrument includes requirements with respect to Aboriginal land claims under the <i>Aboriginal Land Rights Act 1983</i>. For example, it notes that there are Aboriginal land claims and specifies that Racing NSW must not change the physical condition of land subject to an Aboriginal land claim or issue any tenure which permits a change to the physical condition of such land, without consent of the claimant.</p> <p>The appointment instrument also requires that clauses are included in any tenure document issued by Racing NSW which provide that the tenure must be terminated at any time where the Minister directs in writing because the land has been determined as claimable or an Aboriginal Land Agreement has been entered into.</p>
<p>Reputational risk of appointing the regulator of horse racing in NSW to operate the racecourses</p>	<p>While there is no legal restriction preventing Racing NSW from regulating racing and being a CLM, there may be associated reputational risks. This is because the appointment may be considered an opportunity for Racing NSW (as regulator) to be more favourable towards the racing operators which operate racecourses for which Racing NSW is CLM, as opposed to those which do not.</p> <p>Appointment instrument requires that Racing NSW develop policies to the satisfaction of Crown Lands which detail how Racing NSW is to address conflicts of interest.</p>
<p>Power for Racing NSW to resign from its appointment as CLM at any time, even if tenures have been granted by Racing NSW (see section 3.12 of the CLMA)</p>	<p>Clause within appointment instrument requiring Racing NSW to provide the Minister with 30 days' notice prior to resignation as CLM (and discuss the continuation of termination all existing tenures (leases and licences).</p>
<p>There is currently no policy governing the framework or assessment criteria for appointing a Category 1 CLM</p>	<p>Due diligence, including this risk assessment, has been completed with respect to the proposed appointment and the mitigation strategies identified in this risk assessment will be put into place to address any risks.</p>

Risks

Conflict of interest as the regulator

As Racing NSW is the regulator of horse racing in NSW, existing CLMs may be concerned about consequences if they were to refuse a request to relinquish their current role as CLM

Mitigations

Approval for the appointment is subject to receiving written confirmation of support from the 5 existing CLMs. Conflict of interest requirements are also included in the appointment instrument.