

Crown Land Management Act 2016

Council Crown land management FAQ's

MARCH 2018



Q. What does the *Crown Land Management Act 2016* mean for council management of Crown reserves?

The *Crown Land Management Act 2016* (CLM Act) allows councils to manage Crown land under the provisions of the *Local Government Act 1993* (LG Act) for public land. It is anticipated this will reduce the duplication and drain on resources experienced by councils resulting from the current dual legislative frameworks.

Councils will generally no longer have to seek consent from the Minister for Lands and Forestry for dealings on Crown land and will also benefit from the removal of reporting requirements. Instead, they will be able to manage Crown reserves in the same way that council-owned land is managed.

Although local councils will generally be managing land as if it were under the LG Act, the Minister for Lands and Forestry will retain important rights and powers including the ability to:

- make Crown land management rules with which local councils must comply
- place conditions in councils' appointment instruments, when appointing them as Crown land managers
- remove councils as Crown land managers.

Q. How are councils appointed to manage Crown land under the CLM Act?

Councils currently manage Crown land as the appointed reserve trust manager responsible for managing the affairs of a reserve trust.

From the commencement of the CLM Act, the concepts of "reserve trusts" and "reserve trust managers" are removed from the Crown land legislation, and replaced with "Crown land managers." Councils will be automatically appointed as Crown land manager for all reserves for which they are currently the appointed reserve trust manager. Councils will not need to do anything for this to occur – this is provided for in the provisions of the CLM Act.

Q. Can a council classify and manage Crown land for which they are the Crown land manager as operational land?

The default classification for Crown land managed by councils is as community land. In some circumstances, however, it will be possible for councils to get the approval of the Minister for Lands and Forestry for Crown land to be managed as if it were operational land under the LG Act.

The Minister may provide consent for Crown land to be managed as operational land only where the Minister is satisfied that either:

- the land does not fall within any of the categories for community land under the LG Act (eg a road works depot, a rubbish tip); or
- the land could not continue to be used and dealt with as it currently can if it were required to be used and dealt with as community land (eg caravan park sites with long term tenures, cemeteries).

The NSW Office of Local Government, in partnership with the NSW Department of Industry – Crown Lands will provide further guidance material on classifying Crown land managed by councils.

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Q. How do councils categorise Crown land under the LG Act?

Upon commencement of the CLM Act councils must, as soon as practicable, assign an 'initial category' to all Crown land they manage (unless the Minister has given approval for the land to be classified as operational land). The initial category must be the category that council considers is most closely related to the reserve purpose.

Once a council has assigned categories to the reserves it manages, council must provide written notice to the Minister for Lands and Forestry of the categories it has assigned to the reserves. In practice, this will happen by councils notifying the Department of Industry – Crown Lands.

The Minister may require council to alter the category it has assigned to a reserve if the Minister considers that:

- the assigned initial category is not the most closely related to the reserve purpose, or
- the management of the land in accordance with the assigned initial category is likely to materially harm the use on the land for the purpose for which it is reserved.

Following assignment to a category, council must proceed to prepare a plan of management under the LG Act that reflects the assigned category.

Councils will *generally* not be required to hold public hearings in order to adopt this initial plan of management as long as the plan of management has been prepared in accordance with the regime outlined above.

Q. How can council grant tenure over Crown land they manage?

Councils are authorised to manage Crown land as if it were public land within the meaning of the LG Act.

This enables councils to issue licences and leases for Crown land in the same way as for public land owned by the council. Essentially, the process for issuing tenures will depend on the classification and categorisation of the land.

Council may grant a lease, licence or other estate over community land where it is provided for in a compliant plan of management. In accordance with the LG Act, the tenure must also be consistent with the core objectives of the classification of that land. Community land must not be leased or licenced for more than 21 years, or 30 years with the consent of the Minister for Local Government. Any lease or licence for more than 5 years must have prior public notice, and in the event that an objection is made to that tenure as a result of the notice, the Minister for Local Government's consent is required.

Prior to the adoption of plans of management over Crown land, councils will be able to issue short term licences (up to a year) for prescribed purposes under the CLM Act. Councils will also be able to renew existing leases, as long as the permitted uses do not change (and no other uses are permitted). Councils will also be able to grant new leases if they only permit uses which are the same as leases over the land in force immediately prior to the commencement of the CLM Act.

Operational land is not subject to the tenure controls applicable to community land under the LG Act. This means that councils will be able to grant tenures over operational land subject to:

- any Crown land management rule;
- any condition in an instrument of appointment; or
- any requirement in a plan of management under the CLM Act that may be applicable to the land (the CLM Act allows the Minister for Lands and Forestry to require plans of management under the CLM Act for operational land).

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In all cases, councils will be required to obtain the written advice of a qualified native title manager that the grant of the tenure complies with any application provisions of native title legislation.

The NSW Office of Local Government, in partnership with the NSW Department of Industry – Crown Lands will provide further guidance material on granting tenures over Crown land managed by councils.

Q. What is the role of a native title manager and how do they relate to councils?

In response to calls from council Crown land managers for more autonomy and a streamlined approach to Crown land management, the CLM Act allows councils and category 1 Crown land managers to deal with Crown land without the oversight of the Minister for Lands and Forestry or the Department of Industry— Crown Lands. This makes it essential that these groups clearly understand and comply with their native title obligations.

The CLM Act contains provisions to facilitate compliance by councils with native title legislation. It also clarifies responsibilities where native title has not been extinguished or determined.

The CLM Act provides that council and category 1 Crown land managers must engage a qualified native title manager to oversee and provide written advice that dealings which may affect native title are valid under native title legislation. Ensuring compliance with native title legislation also means that registered native title claimants and native title holders are afforded their procedural rights under native title legislation.

The Government has paid for representatives from each council across the State to become qualified as native title managers to assist councils to comply with their obligations.

Q. What obligations will councils have to prepare plans of management for Crown land managed as community land?

Councils will be required to have plans of management for Crown reserves that they manage as community land.

In order to make the implementation of plan of management requirements as straightforward as possible, the following will apply:

- the requirement to have plans of management will be phased in over three years from the time the CLM Act provisions relating to reserve commences
- councils can amend existing plans of management so that they apply to Crown reserves, where this is appropriate given the use of the Crown reserve
- where new plans are required, councils will be able to follow a simplified process (for example, councils will not always be required to hold public hearings)
- some financial assistance will be available to help with the costs of preparing plans of management.

The NSW Office of Local Government in partnership with the Department of Industry - Crown Lands will develop and release guidance material on the requirements for plans of management. Further information on available funding will also be provided to councils in the coming months.

Q. Does the CLM Act impact the management of Crown land devolved to council management under the LG Act?

The new legislation does not change the management of devolved land. Any Crown land that is a *public reserve* for the purposes of the LG Act with no appointed Crown land manager or that is not held under lease from the Crown will continue to devolve to council management in accordance with section 48 of the LG Act.

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Further information

Enquiries about the future management of Crown reserves under the LG Act and the forthcoming support material should be directed to the Office of Local Government's Crown Land Project Officer, Glen Colley on 0419 002 541 or by email at glen.colley@olg.nsw.gov.au.

Enquiries about the broader Crown land reform program should continue to be directed to the Department of Industry—Crown Land on 1300 886 235 or by email at legislation@crowland.nsw.gov.au.