

Council Crown land managers

Leasing and short-term licencing under the Crown Land Management Act 2016

Note: This fact sheet should be read in conjunction with the Transitional provisions for council Crown land managers fact sheet (February 2019) which contains important information about further transitional provisions enabled by the Crown Land Management Amendment (Holdings) Regulation 2019.

Background

The *Crown Land Management Act 2016* (CLM Act) came into force on 1 July 2018. The Act authorises councils that are appointed to manage dedicated or reserved Crown land, to manage that land as if it were public land under the *Local Government Act 1993* (LG Act).

Generally council Crown land managers will manage land as if it were community land. Under the LG Act, a 'plan of management' must be adopted for all community land. The plan categorises the land and governs its use and management. Compliant plans of management must be in place within three years of the CLM Act commencing, to ensure that the Crown land is lawfully used and occupied. Ensuring lawful use and occupation is an essential part of councils' role as managers of Crown land. Compliant plans need to be in place by the 1 July 2021.

Crown reserves that are not trust-managed or managed by leases, and defined by the LG Act as 'public reserves' managed by councils under section 48 of the LG Act (devolved management), are not managed as public land. Councils will need to be appointed as Crown land managers if they want to have increased functions and use-agreement powers on these devolved reserves.

Leasing and licencing of Crown land

A lease or licence is a type of tenure that gives permission to occupy and use Crown land for a specified purpose and term. The CLM Act enables council Crown land managers to enter into leases and licences under the LG Act once a compliant plan of management is in place or the land is classified as operational, whichever occurs first. Council cannot enter into agreements for use, as lessor or licensor, on devolved reserves.

The leasing and licencing of Crown land ensures there is legal and suitable occupation of Crown land. The council Crown land manager is required to ensure all monies received from the use of community land is directed to maintaining and sustaining long-term use and enjoyment of the reserve/s.

The income generated from leasing and licencing is a primary form of funding for a Crown land manager. It allows a Crown land manager to cover long-term running costs (at a minimum) and invest over the long term for future generations to use and enjoy the Crown land in their community. All Crown land managers should have lease and licence agreements in place with users of the reserves that they manage.

Granting tenure—transitional arrangements

Prior to the adoption of a compliant plan of management over Crown land, council is able to issue short-term licences up to one year for prescribed purposes under the CLM Act. Councils can also renew existing leases as long as the permitted use has not changed.

Councils can grant new leases if the uses they permit are the same as those of leases over the land in force immediately prior to the commencement of the CLM Act.

Until council adopts a compliant plan of management for council managed Crown land, Councils can:

- issue short-term licences for a range of prescribed purposes, such as holding sports and recreational activities, camping and events
- renew existing leases over Crown land for a term not exceeding 21 years, including any option for the grant of a further term, if the renewal does not authorise any additional uses for the land
- grant new leases over the Crown land for a term not exceeding 21 years (including any option for the grant of a further term) if:
 - there was a pre-existing lease in force over the land immediately before the repeal of the *Crown Lands Act 1989* ◦ the new lease does not authorise any uses for the land that are additional to uses that were permitted under the previous lease.

Existing plans of management

Where a plan of management was already in place under the previous *Crown Lands Act 1989*, the Crown Land Regulation 2018 provides that this plan will remain in force until either:

- a new plan of management under the provisions of the LG Act is adopted
- the land is classified as operational land under the LG Act with written consent from the Minister for Lands and Forestry
- the conclusion of the initial period, by which time councils are required to have adopted a new plan of management.

Council Crown land managers must continue to comply with plans of management while they remain in force. The minister may cancel an existing plan of management but cannot alter it. Any proposed management activity for land that is not provided for in an existing plan of management should be implemented by adoption of a LG Act plan of management.

Existing leases and licences transfer

Existing leases and licences that were issued by council as the reserve trust manager under section 102 of the now repealed *Crown Lands Act 1989* are still valid until their original term expires.

If a tenure granted under the previous *Crown Lands Act 1989* contains a renewal clause and that renewal is exercised, the renewal will be issued under the CLM Act because the permit, lease or licence will have automatically transferred. It is the tenure that provides the contract to renew. The terms and conditions of holdings are generally valid and enforceable, meaning the tenure can only be renewed under the terms of the tenure.

Transferring an existing lease to a new holder

Schedule 7 (clause 5) of the CLM Act specifies that any existing tenure continues in force for the term of its original grant and may be varied, forfeited, revoked, terminated, cancelled or dealt with in any other way under the CLM Act as if it had originally been approved, granted, issued, dedicated, reserved or made under the CLM Act (clause 5(4)).

New leases and licences during the initial period

A lease or licence can be issued by a council crown land manager to any user to conduct activities on the reserve for extended periods of time. They must be granted for a purpose consistent with the reserve purpose being managed by the council Crown land manager.

If a user wishes to undertake an activity on Crown land that is considered incompatible with the reserve purpose, the council Crown land manager should not pursue the lease or licence.

Types of leases and licences a council Crown land manager can grant

Leases and short-term licences can be issued under two sections of the CLM Act during the initial period. Council is not required to obtain minister's consent prior to granting these tenures.

Council's ability to lease or licence Crown reserves managed as community land is authorised by section 3.22 of the CLM Act, which requires the preparation of a community land plan of management, adopted by council, to authorise the occupancy and use agreement.

The council Crown land manager is exempt from the operation of section 3.22 of the CLM Act during the initial transitional period of three years and prior to the preparation of a plan of management (pre-PoM), to enable transitional security and the operation, management and use of tenures. This exemption applies to the:

- granting of short-term licences over the pre-PoM Crown land of a kind that can be granted by a Crown land manager under section 2.20 of the CLM Act
- renewal of existing leases over pre-PoM Crown land for a term not exceeding 21 years (including any option for the grant of a further term) if there are no additional permitted uses for the land
- granting of new leases over pre-PoM Crown land for a term not exceeding 21 years (including any option for the grant of a further term) if:
 - there was a lease in force over the land immediately before the repeal of the *Crown Lands Act 1989* (the 'previous lease')
 - there are no permitted uses for the land under the new lease that are additional to those that were permitted under the previous lease.

Table 1: Types of leases and licences issued by Crown land managers during the transitional period.

Type of lease or licence & legislation	Term	Crown land manager	Minister's consent
Short-term licence under s2.20*^	Up to 12 months*	Council	Not required
Lease under s.5.3*	Up to 21 years*	Council	Not required
*Can only be issued during the 'initial period', see clause 70 of the Crown Land Management Regulation 2018			
^Refer to the Short-Term Licencing Fact Sheet			

Things to consider when leasing and licencing

To ensure that usage or occupation of the reserve is appropriate for the lease or licence, a council Crown land manager must always consider:

- compliance with the legislation, related policies and guidelines
- compatibility with the purpose (any tenures not considered compatible with the reserved Crown land purpose should be discussed with the Department of Industry)
- environmental impacts of the activities to be permitted by the lease or licence
- appropriate term (period of occupation) of the lease or licence
- land capability of the reserve to support the proposed lease or licence
- current and future use of the land
- native title rights
- Aboriginal land claims
- if development consent is required and has been obtained (and other consents under the *Environmental Planning & Assessment Act 1979*)
- obtaining market value (or applying a rebate to market value) and providing a proper return to the public for use of the public land. For more information about market value and granting of rebates please refer to the fact sheet for market rent and rebates

- provisions for periodically updating (annually using the Consumer Price Index) and reviewing the rent (minimum rent review period of at least three years), the termination of the lease or licence in the event of a revocation of the reserve, the indemnification of the council Crown land manager, the Crown and the NSW Government against claims for compensation, and that appropriate insurances are in place.

Native title

Native title is the name given to the traditional ownership of land and waters that have always belonged to Aboriginal people according to their traditions, laws and customs. The *Native Title Act 1993* sets out how native title rights are recognised and protected.

A proposed lease or licence may affect native title interests in the reserve. When exercising powers provided by these transitional arrangements, council Crown land managers must obtain written advice from a qualified native title manager that any leases or licences comply with native title legislation. Under the CLM Act councils are required to engage or employ a native title manager.

More information on managing native title rights and interests and the role of native title managers is available on the Department of Industry's website (industry.nsw.gov.au/lands).

Aboriginal land claims

The *Aboriginal Land Rights Act 1983* recognises that land in NSW was traditionally owned and occupied by Aboriginal people, and is of spiritual, social, cultural and economic importance to Aboriginal people. Under the *Aboriginal Land Rights Act 1983*, Aboriginal Land Councils may lodge a claim over Crown land.

A lease or short-term licence must not be granted over land that is the subject of an undetermined Aboriginal land claim, if the proposed lease could:

- prevent the land being transferred to an Aboriginal Land Council in the event the claim is granted
- impact or change the physical condition of the land.

Where the proposed lease or short-term licence will impact or change the physical condition of the land, the grant of the tenure must only be considered if the council Crown land manager or proposed lessee/licensee has obtained a letter of consent from the claimant Aboriginal Land Council or the claimant Aboriginal Land Council has withdrawn or amended the claim to exclude the proposed tenure area. While a request to a claimant Aboriginal Land Council can be made, the claimant Aboriginal Land Council is under no obligation to grant such a request and may prefer to have the claim fully investigated.

For more information, contact the department to seek advice about any potential land claims affecting the Crown land that could be affected by the proposed lease or short-term licence. This ensures any possible land claim issues are resolved before proceeding.

Community Engagement Strategy

Councils are not required to comply with the Community Engagement Strategy, but are required to follow any engagement requirements set out in the LG Act.

Lease and licence templates

Templates for leases and licences have been prepared for use by council Crown land managers. These templates are suitable for use with both commercial and non-commercial operators and other users of the reserve. The templates can be downloaded from the Office of Local Government Council Crown Land Managers – Resources page (www.olg.nsw.gov.au/content/council-crown-land-managers-resources).

Council Crown land managers have the ability to grant lease and short-term licence agreements during the initial period without requiring the minister's consent. Council Crown land managers are able to use the templates available if they choose to do so, although councils may seek to make amendment through the addition of clauses by a solicitor. The lease template provides suitable provisions for agreements over Crown reserves managed by councils as Crown land managers, as well as good practice provisions for land management, use and insurances.

In granting leases and licences council Crown land managers are encouraged to engage the services of a solicitor to provide advice to the Crown land manager on legal aspects concerning the grant of the proposed tenure.

Contact us

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