

NSW DEPARTMENT OF INDUSTRY—LANDS & WATER

Guideline—classification of Crown land managed by council Crown land managers

Division 3.4 *Crown Land Management Act 2016*

Published by NSW Department of Industry

Guidelines—classification of Crown land managed by council Crown land managers

First published June 2018

More information

NSW Department of Industry—Lands & Water

industry.nsw.gov.au/lands

DOC18/100437

© State of New South Wales through Department of Industry 2018. You may copy, distribute, display, download and otherwise freely deal with this publication for any purpose, provided that you attribute the Department of Industry as the owner. However, you must obtain permission if you wish to charge others for access to the publication (other than at cost); include the publication in advertising or a product for sale; modify the publication; or republish the publication on a website. You may freely link to the publication on a departmental website.

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (June 2018) and may not be accurate, current or complete. The State of New South Wales (including the NSW Department of Industry), the author and the publisher take no responsibility, and will accept no liability, for the accuracy, currency, reliability or correctness of any information included in the document (including material provided by third parties). Readers should make their own inquiries and rely on their own advice when making decisions related to material contained in this publication.

Overview

These guidelines detail the approach council Crown land managers should take in seeking ministerial consent to classify and manage Crown land as if it were operational land under the *Local Government Act 1993*, in accordance with Section 3.22 (4)(b) of the *Crown Land Management Act 2016*.

Council Crown land managers must comply with the direction relevant to their activities.

Further information

If you have questions about these guidelines, please contact us:

Phone: 1300 886 235

Email: council.clm@crowmland.nsw.gov.au

Web: industry.nsw.gov.au/lands

Web: olg.nsw.gov.au/crowmland

Classification of council-managed Crown land

Procedure

Step 1—Seek ministerial consent to classify Crown land as if it were operational land

The *Crown Land Management Act 2016* (CLM Act) authorises councils that are appointed Crown land manager for dedicated or reserved Crown land (council managers) to manage Crown land as if it were public land under the *Local Government Act 1993* (LG Act).

The LG Act requires that all public land must be categorised as community or operational land.

The CLM Act provides that Crown land managed by council managers as public land must be managed as if it were community land, unless the minister administering the CLM Act has given written consent to classify the land as operational.

Where the minister has given written consent to classify land as if it were operational land, the council manager of the land has all the functions that a local council has under the LG Act in relation to operational land. However, council managers cannot sell the land without further ministerial consent nor do anything that contravenes:

- any condition of the council's appointment instrument as a Crown land manager
- the Crown Land Management Regulation 2018
- any applicable Crown land management rule
- any applicable plan of management adopted under Division 3.6 of the CLM Act.

In accordance with Section 3.22 (5) of the CLM Act, the NSW Department of Industry—Lands & Water (the department) will only issue ministerial consent to manage land as operational where a council manager can demonstrate that either the land:

- does not fall within any of the categories for community land under the LG Act, or
- 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.

Approved form for ministerial consent

Requests for ministerial consent to manage Crown land as if it were operational must be lodged with the department in the form provided at Annexure A.

Requests for consent should be accompanied by sufficient justification as to why the land should be classified and managed as operational. Failure to appropriately justify why Crown land should be classified as operational land is likely to result in refusal to give ministerial consent.

When providing justification as to why Crown land should be classified and managed as operational land, council managers should consider the statutory criteria prescribed by Section 3.23(5) and consider what governs the use of community land under the LG Act. This may include the core objectives for each category prescribed by the LG Act and the guideline for categorising community land prescribed by the LG regulation. This information is provided at Annexure B.

When classification as operational land may or may not be considered appropriate

The department will not give ministerial consent for Crown land to be operational land where council fails to satisfy the department that the land does not fall within a category of community land or its current use cannot continue to be provided for if it were managed as community land.

Further, the department will not issue ministerial consent to manage Crown land as operational in instances where a valid current use of the land cannot be continued under the initial assigned categorisation, but could be otherwise authorised via an amended categorisation through a plan of management.

Example

Council manages Crown land reserved for *Public Recreation* purposes which is subject to a Section 34A lease* under the *Crown Lands Act 1989* for *Community Purposes—Childcare Centre*. The land has been assigned an initial category of *park* in accordance with Section 3.23 (2)** of the CLM Act.

*A section 34A lease permits the use of reserved or dedicated Crown land for the purposes set out in the lease. The purpose set out in the lease can be for any that the minister thinks fit and does not have to be limited by the reserve or dedication purpose.

Section 3.23 (2) requires a council to assign an initial category to reserve Crown land that it considers most closely relates to the **reserve or dedication purpose. See *Guideline—initial categorisation of Crown land managed by council Crown land managers* for more information.

Should the council manager consider that the current use of the land subject to the Section 34A lease for *community purposes—childcare centre* cannot continue if categorised and managed as *park*, it could seek ministerial consent to classify the land as operational land and provide justification as to why. However, in this instance, it is unlikely that the department would be satisfied that the use of the land subject to the lease could not continue to be dealt with if it were managed as community land. This is because the current use of the land could be authorised by altering the categorisation of the land to permit use for *community purposes—childcare centre*, that is *general community use*, via an LG Act plan of management (subject to obtaining ministerial consent to adopt the plan).

Some Crown land may be manifestly inconsistent with the categories of community land referred to in the LG Act. Generally, this is land that:

- may not need to be made available for use for any purpose for which community land may be used, either by the public at large or by specific sections of the public
- is not required to be categorised as a natural area under Section 36A, 36B or 36C of the LG Act
- does not satisfy the guidelines under clauses 102–105 of the Local Government (General) Regulation 2005 (LG Regulation) for categorisation as a natural area, a sportsground, a park or an area of cultural significance.

Land of this nature may be truly operational land. For example, works depots, where the land need not be made available to the public and/or facilitates a use that does not satisfy any categorisation or use of community land because the public must be excluded for their safety.

Other examples

Other examples of Crown land or uses of Crown land that **may not** fall within categories of community land could include:

Table 1. Uses of Crown land

| Uses that may not fall within 'community land' categories | | |
|--|---|--|
| <ul style="list-style-type: none"> • Cemeteries • Coastal infrastructure • Emergency services | <ul style="list-style-type: none"> • Quarries and gravel pits • Reservoirs • Sanitary purposes | <ul style="list-style-type: none"> • Sewage works • Urban services • Water infrastructure |

The onus is on council managers to identify and satisfy the minister that certain land under their management does not fall within any of the categories for community land under the LG Act, or 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.

Step 2—The department considers the application for ministerial consent

The department will consider any application for ministerial consent to manage land as operational on its merits, taking into account the requirements of Section 3.22(5) of the CLM Act. In considering any application, the department may request further information to be provided by the applicant council. If this information is not provided in the prescribed timeframe, the application will be refused.

Step 3—The department notifies council of the outcome

The department will notify council in writing of the outcome of any request for ministerial consent to manage land as operational land.

Consent given

If satisfied that land meets the requirements of Section 3.22 (5) of the CLM Act, the department will provide written notice to council, giving ministerial consent to classify the land as operational. Unless and until written consent is given, council must continue to manage the land as community land and adhere to the applicable requirements of the CLM Act.

Should consent be given, council managers are not required to adhere the procedural classification requirements of Chapter 6, Part 2 Division 1 of the LG Act when classifying Crown land they manage as if it were public land. That is, classification or reclassification of Crown land managed by councils as if it were public land need not be made by a local environmental plan or a resolution of the council. Rather, written consent under the CLM Act provides authorisation for the council to manage land as operational from that point forward.

Consent refused

If not satisfied that land meets the requirements of Section 3.22(5) of the CLM Act, the department will provide written notice to the council that ministerial consent to classify the land as operational has been refused, and that the land must continue to be managed as community land.

Council records

Council should keep a record of written advice where ministerial consent to classify Crown land as operational land been given or refused. Council must also ensure that the details of any Crown land under its control are accounted for in its land register as required by Section 53 of the LG Act.

Notes

- Any tenure over Crown land in place immediately prior to the repeal of the *Crown Lands Act 1989* (CL Act) will continue in effect for its original term.

Transitional arrangements

- The Crown Land Regulation 2018 provides transitional arrangements to allow council Crown land managers to:
 - renew existing leases should there be no additional use permitted by the lease
 - grant new leases over land where a lease was in effect immediately before the repeal of the CL Act and there are no additional permitted uses for the land under the lease.
- These transitional arrangements are available to council until:
 - the land is classified as operational
 - an LG Act plan of management is adopted for the land, or
 - the conclusion of the initial period (three years from the commencement of the CLM Act).

Ministerial powers

- The minister administering the CLM Act can:
 - impose restrictions or conditions on the exercise of functions by council managers through an appointment instrument
 - make Crown land management rules for or with respect to the management of Crown land by council managers.

Plans of management

- Plans of management currently in place under Division 6 of the Crown Lands Act 1989 continue in force until an LG Act plan of management is adopted for the land. If the land is classified as operational, then the plan continues in force as if it were adopted under Division 3.6 of the CLM Act.
- The minister administering the CLM Act can also direct a council Crown land manager who has been given consent to manage land as operational to prepare a new plan of management for the land in accordance with Division 3.6 of the CLM Act.

Council records

- Council should keep a record of written advice that ministerial consent has been given to manage land as operational.
- Council must also ensure that the details of any Crown land under its control are accounted for in its land register as required by section 53 of the LG Act.

Related documents

- [Local Government Act 1993](#)
- [Local Government \(General\) Regulation 2005](#)
- [Crown Land Management Act 2016](#)
- Guideline—*initial categorisation of Crown land managed by council Crown land managers*.

Annexures

Table 2. Guide to annexures

| Letter | Title | Details |
|--------|--------------------------------------|--|
| A | Request form | Approved form for requesting ministerial consent to manage Crown land as if it were operational land under the <i>Local Government Act 1993</i> . |
| B | LG Act governance for community land | Core objectives for each community land category prescribed by the LG Act and guidance for the application of categorisation of community land prescribed by the Local Government (General) Regulation 2005. |