



NSW DEPARTMENT OF INDUSTRY—LAND & WATER

Guideline—initial categorisation of Crown land managed by council Crown land managers

Division 3.4 Crown Land Management Act 2016

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More information

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Overview

These guidelines detail the approach to be taken by a local council that is a Crown land manager of any dedicated or reserved Crown land (a council manager) when:

- assigning categories to that land, as referred to in section 3.23 of the *Crown Land Management Act 2016*
- notifying the minister administering the *Crown Land Management Act 2016* in writing of the initial categories assigned.

Council managers must comply with the directions relevant to their activities.

Classification of Crown land

These guidelines should be read in conjunction with the related *Guideline—Classification of Crown land managed by council Crown land managers*.

More information

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Initial assignment of categories

Procedure

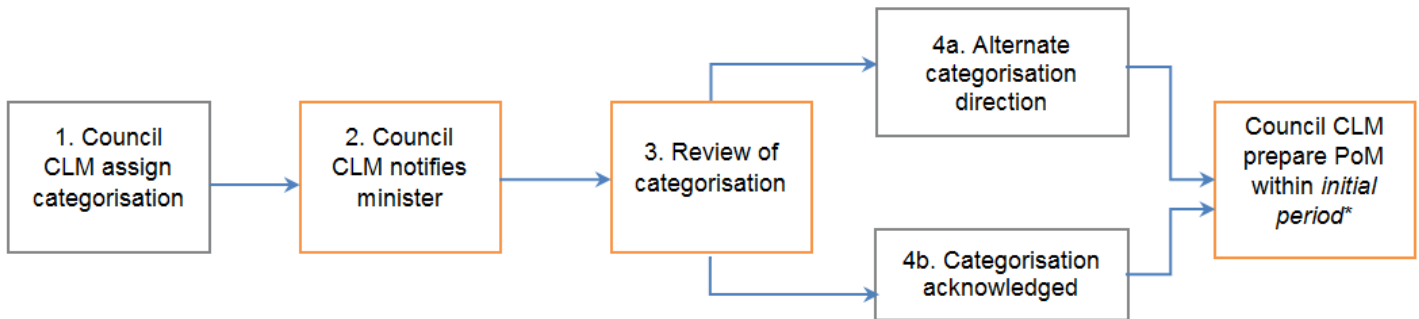


Figure 1. Process map for the categorisation of council-managed land

*Unless minister consents to council classifying land as operational

Table 1. Key to diagram

Abbreviation	Meaning
CLM	Crown land manager
PoM	plan of management

Step 1—Council manager assigns a category to Crown land

Under the *Crown Land Management Act 2016* (CLM Act), council managers must assign to all Crown land under their management one or more initial categories of community land referred to in section 36 of the *Local Government Act 1993* (LG Act). The initial category must be assigned as soon as practicable after a council’s appointment as a Crown land manager—including because of commencement of the CLM Act.

Council managers must assign a categorisation they consider to be most closely related to the purposes for which the land is **dedicated** or **reserved**. Multiple categories may be assigned to Crown land where Crown land is subject to multiple reservation or dedication purposes.

In assigning an initial categorisation, council managers should refer to the LG Act provisions that govern the management and use of each community land category. Council managers should consider how these categories would preserve and facilitate the use of the land for the purpose for which the land was originally set aside by its dedication or reservation.

When considering the use and management of community land, council managers should refer to the core objectives for each category prescribed by the LG Act, as well as the guidelines for the categorisation of community land prescribed by the *Local Government Regulation 2005*. These are provided at Annexure A.

For the department’s guidance on the categories that may be most closely related to LG Act categories, please refer to Annexure B. This is provided as general guidance only and council managers should make their own enquiries and rely on their own judgement when categorising the Crown land they manage.

Categorisation and native title

The degree to which an assigned categorisation relates to the reserve or dedicated purpose is important, as council managers must obtain native title manager advice under Part 8 of the CLM Act prior to dealing with Crown land that they manage, specifically in regards to subdivision J of the *Native Title Act 1993* (Cwlth).

Where a categorisation has been assigned that is **not** the most closely related to the reserve or dedication purpose, the council's ability to validly manage the land in accordance with that category might be limited by the extent to which those actions affect native title.

Therefore council managers must select a category that closely matches the original reservation or dedication purpose, or their land management activities may infringe upon native title rights and council may lose the legal right to continue those activities.

Further information on the native title requirements for council Crown land managers is available on the department's website.

Example categorisation of land reserved for *environmental protection purposes*

A council manager of Crown land reserved for *environmental protection purposes*, in considering the most closely related category, should consider how the guidelines and core objectives for each category would preserve and facilitate the declared purpose for which the land is reserved.

For example, the LG Act prescribes that the core objectives for management of land categorised as *natural area* is to:

- a) conserve biodiversity and maintain ecosystem function in respect of the land, or the feature or habitat in respect of which the land is categorised as a natural area
- b) maintain the land, or that feature or habitat, in its natural state and setting
- c) provide for the restoration and regeneration of the land
- d) provide for community use of and access to the land in such a manner as will minimise and mitigate any disturbance caused by human intrusion
- e) assist in and facilitate the implementation of any provisions restricting the use and management of the land that are set out in a recovery plan or threat abatement plan prepared under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*.

A council manager might consider that these objectives are very closely related to the reserve purpose and would facilitate the use and management of the land for environmental protection, whilst limiting uses that are not consistent with environmental protection. Accordingly, the council manager would then assign an initial category of natural area to this land.

The LG Act provides that the categorisation *natural area* must be further categorised as *bushland*, *wetland*, *foreshore*, *watercourse* or *escarpment*.

Should a council consider that the categorisation *natural area* most closely relates to a reservation or dedication purpose, the department encourages the council to assign *natural area* as the primary categorisation in considering the reserve purpose, with the 'further categorisation' to be assigned based on the LG (General) Regulation 2005, Part 4, Division 1—Guidelines for the categorisation of community land.

In this instance, the council manager would then consider the natural features of the land and assign a further categorisation. For example, if the reserve was over land containing remnant bushland, the category of *natural area—bushland* could be most appropriate. Should the land also contain a creek, the category *natural area—watercourse* could also be assigned.

The Local Government Regulation 2005 guidelines further prescribes how land should be assigned a 'further categorisation' based on the features of the land.

Alternatively, in assigning a categorisation against Crown land reserved for environmental protection, council might consider that the category *general community use* most closely relates to the land. The LG Act prescribes the core objectives for management of land categorised as *general community use* is 'to promote, encourage and provide for the use of the land, and to provide facilities on the land, to meet the current and future needs of the local community and of the wider public:

- a) in relation to public recreation and the physical, cultural, social and intellectual welfare or development of individual members of the public, and
- b) in relation to purposes for which a lease, licence or other estate may be granted in respect of the land (other than the provision of public utilities and works associated with or ancillary to public utilities).'

In certain cases, it could be contested that the assigned categorisation of *general community use* to land reserved for *environmental protection purposes* is not the most closely related category. This could be argued due to the scope of the core objectives for land categorised as *general community use*. For example, the core objective ‘to promote, encourage and provide for the use of the land and supporting facilities for purposes for which a lease, licence of other estate may be granted’ could be considered largely incompatible with environmental protection due to the intensity and nature of developments for purposes this category promotes and encourages, such as child care centres, restaurants and kiosks (referred to explicitly in s.46 of the LG Act).

Step 2—Council manager notifies the minister in writing of the assigned category

After council has assigned an initial categorisation to Crown land under their management, council must provide written notice to the minister as soon as is practicable.

Advice to the minister must be provided in the approved form set out at Annexure C and clearly set out the applicable Crown land, the dedication or reserve purpose, the assigned categorisation and (if required) justification.

Authority to notify the minister

The CLM Act does not prescribe an explicit level of authority required to assign and notify the minister of an initial categorisation. This can be considered by a council manager to suit its own structure and governance arrangements.

Step 3—the department considers the category initially assigned

The minister or the department may direct a council manager to alter an assigned categorisation if they consider that:

- the category is not the most closely related to the purposes for which the land is **dedicated** or **reserved**, or
- the management of the land by reference to the assigned category is likely to materially harm the use of the land for any of the purposes for which it is **dedicated** or **reserved**.

Upon receipt of the council manager’s notice, the department will consider the assigned categorisation in relation to the above criteria. This will result in one of the outcomes discussed below.

Acknowledgement of the category assigned

If the department determines that the assigned categorisation does not require alteration, it will issue a notification to council acknowledging this.

Direction to alter the category assigned

If the department determines that the assigned categorisation meets the above criteria, it will issue a direction to council requiring the council to alter the assigned categorisation in accordance with section 3.23 (5) of the CLM Act.

A direction to alter the assigned categorisation **must** be adhered to by a council Crown land manager.

Once council managers are notified that the department acknowledges an assigned categorisation, or that the department directs them to assign a specific categorisation, they may proceed to develop and adopt an LG Act plan of management (PoM) for the land. Council managers should refer to guidance material for the preparation of LG Act PoMs for Crown land.

Council records

Council should keep a record of assigned categorisation for Crown land—including any departmental acknowledgement or direction—and use this to inform the development of its PoMs for Crown land managed as community land.

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.

Should council consider that particular Crown land does not fall into any category of community land, or that a valid, current use of the land would not be able to continue should the land be managed as community land, it may request ministerial consent to manage the land as if it were operational land under the LG Act. Before considering this option, council should refer to the *Guideline—Classification of Crown land managed by council Crown land managers*.

Related documents

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

Annexures

Table 2. Guide to annexures

Letter	Title	Details
A	LG Act guidance for categorisation	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 Regulation 2005.
B	Categories versus reserves	Departmental guidance for categorisation that may be considered to most closely relate to a reserve purpose
C	Written notice of assigned categorisation	Approved form for notifying the department in writing of the initial categorisation