

Transitional provisions for council Crown land managers

The Crown Land Management Amendment (Holdings) Regulation 2019 supports the operation of the Crown Land Management Act 2016 (CLM Act) and expands the existing transitional provisions for council Crown land managers to grant tenures.

The amendments included in the regulations enable councils managing Crown reserves as community land to grant appropriate leases and licences in the initial three-year implementation period of the CLM Act, up to 30 June 2021. By the end of this transitional period, all tenures on Crown reserves managed as community land must have plans of management in place.

Council leases and licences

A tenure is a holding (a lease or a licence) under the CLM Act. Leases of Crown land generally enable exclusive use over a piece of land for a specific term and purpose. Licences are generally for non-exclusive use for a specific term and purpose.

Under existing transitional provisions in the CLM Act, councils operating as Crown land managers can grant leases and short-term licences during the transitional period of the CLM Act to 30 June 2021 under limited circumstances. The regulations expand on these circumstances, giving councils more flexibility to appropriately manage Crown land during the transition period.

The additional provisions mitigate risks that could arise from reduced or delayed service delivery by organisations using Crown reserves for community purposes. They also help protect the value of grant funding or significant capital expenditure incurred by councils prior to the commencement of the CLM Act.

Transitional provisions

The transitional provisions are designed to allow emergency services organisations, community groups and not-for-profit organisations to occupy and use Crown land while council's are fully implementing the provisions of the CLM Act.

They also cover dealings with commercial organisations in some limited circumstances. In particular, the transitional provisions can apply where negotiations and agreements between councils and commercial proponents were substantially completed, but not able to receive government 'in-principle' approval, prior to the repeal of the *Crown Lands Act 1989*.

The CLM Act specifies that council Crown land managers must expressly authorise all tenures on Crown reserves managed as community land in a council adopted *Local Government Act 1993* plan of management. Plans covering all Crown reserves must be in place by 30 June 2021.

The transitional arrangements apply until any of the following occurs:

- council adopts an *Local Government Act 1993* plan of management
- minister's consent is granted to manage the land as operational land under the *Local Government Act 1993*
- the initial period to prepare plans of management expires—being 30 June 2021.

Before entering into a lease or licence that requires consent from the minister administering CLM Act, a council Crown land manager should consult with NSW Department of Industry as to the appropriateness of the proposed use and the leasing or licensing arrangements, the market rent for the site, appropriate discounts for non-commercial uses, and potential improvements.

Table 1. Summary of all current transitional provisions.

Earlier provisions retained	New provisions added
<p>Licences</p> <p>Grant short term licences up to 12 months for prescribed purposes.</p>	<p>Renew licences issued before 1 July 2018 for a term not exceeding five years (including any options) if there are no additional permitted uses for the land.</p> <p>Grant new licences for a term not exceeding five years (including any options) if:</p> <ul style="list-style-type: none"> a) there was a licence in force over the land immediately before 1 July 2018 b) there are no permitted uses for the land under the new licence that are additional to those that were permitted under the previous licence. <p>Grant new licences for a term not exceeding five years (including any options) where:</p> <ul style="list-style-type: none"> a) the licensee is an emergency services organisation as defined in <i>State Emergency and Rescue Management Act 1989</i> (see Table note 1) b) the minister consents to granting the licence. <p>Grant new licences for a term not exceeding five years (including any options) where:</p> <ul style="list-style-type: none"> a) the licensee is a not-for-profit organisation or a community group b) the minister consents to granting the licence.
<p>Leases</p> <p>Renew existing leases for a term not exceeding 21 years (including any options) if there are no additional permitted uses.</p> <p>Grant new leases, for a term not exceeding 21 years (including any options), if there was a lease in force over the land immediately before 1 July 2018 and there are no permitted uses for the land under the lease additional to those permitted under the previous lease.</p>	<p>Grant new leases for a term not exceeding five years (including any options) where:</p> <ul style="list-style-type: none"> a) the lessee is an emergency services organisation as defined in <i>State Emergency and Rescue Management Act 1989</i> (see Table note 1) b) the minister consents to granting the lease. <p>Grant new leases for a term not exceeding five years (including any options) where:</p> <ul style="list-style-type: none"> a) the lessee is a not-for-profit organisation or community group b) the Minister consents to the granting of the lease. <p>Grant new leases for a term not exceeding five years (including any options) where:</p> <ul style="list-style-type: none"> a) council provides evidence satisfactory to the minister that the lease was substantially negotiated prior to 1 July 2018 (see Table note 2) b) the minister consents to granting the lease.
<p>Plans of management</p> <p>Existing <i>Crown Lands Act 1989</i> plans of management previously adopted by the minister remain in force.</p>	<p>Grant new leases or licences for up to 21 years, including options, if the lease or licence could, in the opinion of the minister, have been granted immediately before 1 July 2018 under a plan of management in force immediately before that date (see Table note 3).</p>

Table note 1: The *State Emergency and Rescue Management Act 1989* defines an emergency service organisation as:

- Ambulance Service of NSW
- Fire and Rescue NSW
- a fire brigade within the meaning of the *Fire and Rescue NSW Act 1989*
- NSW Police Force
- NSW Rural Fire Service
- State Emergency Service
- Surf Life Saving New South Wales
- New South Wales Volunteer Rescue Association Inc
- Volunteer Marine Rescue NSW
- an agency that manages or controls an accredited rescue unit
- a non-government agency that is prescribed by the regulations for the purposes of this definition. (note that no regulation is made for this act).

Table note 2: Substantial negotiation is regarded as including the documented agreement or council resolution approving the identity of the future lessee, proposed uses, proposed term, and make-good provisions.

Table note 3: Proposals for a lease or licence will require minister's consent. The lease or licence will need to have been authorised under any *Crown Lands Act 1989* plan of management that was in force on 30 June 2018.

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