

Council Crown Land Managers Webinar

Questions and Answers

April 2018

Note: This document contains the collated answers to questions raised during the Council Crown Land Managers Webinar hosted by the Office of Local Government and Department of Industry – Crown Lands on 21 March 2018. Answers in relation to questions regarding Crown Roads related reforms will be posted in a separate forthcoming document.

Additional briefings/webinars

Q. We note that you propose to provide tools for staff to brief Councillors on these changes. Our Councillors have specifically asked for a briefing or webinar by DOI/OLG for Councillors. Is this intended?

Webinar content is stored on the OLG web site: <https://www.olg.nsw.gov.au/crownland>

This information and a specific PowerPoint presentation for General Managers and Council senior executives to inform both Councillors and other council staff is also available. All webinars and other content can be used for internal council uses.

Biodiversity

Q. Will the DOI - Crown Land, consider creation of Biodiversity Stewardship Sites within Crown Land (where permitted by a Plan of Management)?

Any Biodiversity stewardship site over Crown land requires the consent of the Minister for Lands and Forestry. A proposal for use of Crown land for a stewardship site would be considered on its merits by the Department giving due regard to the principles of Crown land management and objects of the Crown land management Act. It is advisable to consult with the Department early in the piece when considering a stewardship site.

Categorisation

Q. What is the exact date that we have to do the categorisation of Crown Reserves?

The CLM Act provides that an initial categorisation must be assigned to Crown reserves managed as community land as soon as practicable after commencement of the CLM Act - there is no prescribed date for this but early attention is highly recommended given the timelines for plans of management under the legislation.

Council Crown land managers must also provide written advice of assigned initial categories to the Minister for Lands and Forestry. Categorisation of Crown land managed as community land through adoption of a LG Act Plan of Management must occur within the initial period of three years from the commencement of Part 3 of the CLM Act.

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Classification of land

Q. Can request/negotiations for Minister agreement to categorization as operational be undertaken prior to commencement?

Requests for Ministerial consent to classification of Crown land managed by councils may be lodged to the Department of Industry - Crown Lands from the commencement of Division 3 of the CLM Act. Administrative arrangements are not in place to allow the Minister to issue consent for classification prior to commencement.

Q. With those Crown lands managed by councils as Crown land managers should council be including those lands as part of their revaluation processes for community lands and also include them in our community land registers?

The provisions of the Local Government Act 1993 (LG Act) for 'public land' are applicable to Crown land managed by councils unless otherwise provided for in the CLM Act. Accordingly section 53 of the LG Act - the requirement for councils to keep a register of all land vested in or under its control - is applicable.

Q. What are considered to be the exceptional circumstances to allow land to be classified as Operational land?

The CLM Act provides that the Minister may issue consent to manage land as operational land only where council may satisfy the Minister that either:

- the land does not fit within any category of community land under the LG Act, or
- the current use of the land could not continue should it be managed as community land.

Some relevant examples include waste depots and recycling plants - where there is obviously no applicable category of community land that would apply and public access and use is inappropriate.

Council budgets and changes

Q. What items should councils be considering to put in the budget?

This is a matter for each council, however council should consider all financial impacts of the CLM Act including:

- preparation of PoMs over the initial period (three years),
- leasing and property management functions,
- administrative functions, and
- statutory compliance functions.

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Council reporting

Q. Will councils be required to lodge annual reports by end of October as is the current practice?

Councils will not be required to furnish annual reports to the Minister for Lands and Forestry as is current practice. The Minister for Lands and Forestry does retain powers to direct a council to furnish a report or information regarding Crown land management however this will be used in exceptional circumstances.

Council Reference Group membership

Q. Which councils are involved in the council reference group?

Port Stephens, Blacktown, Shoalhaven, Gunnedah, Port Macquarie and Bayside Councils. Local Government NSW are also represented on the council reference group.

State managed reserves

Q. Are there any Crown land reserves that OLG and Crown Lands are looking to develop into state parks or other state managed entities?

Not at present.

Information updates

Q. Is there an email circulation list that staff can be added to get updates on when all this new info is available?

Information about eNewsletters and other communication opportunities is available at:

<https://www.olg.nsw.gov.au/content/council-crown-land-managers-eneewsletter-and-facebook-page-registration>

Q. I don't and won't do Facebook. Will eNewsletter contain similar information?

Yes.

Infrastructure SEPP

Q. Will the Infrastructure SEPP apply to Lands that are Crown Lands similar to land owned by Council?

No changes are being made to the Infrastructure SEPP.

Development consent exemptions under planning legislation (the Infrastructure SEPP) for development carried out in accordance with an existing CL Act PoM will remain for those CL Act PoM that continue in effect from commencement of the CLM Act. As a transitional arrangement, CL Act PoMs continue in effect until either:

- a LG Act Plan is adopted, or
- the initial period concludes.

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More information on transitional arrangements for council managed Crown land is available in the Council Update – April 2018 which can be downloaded at:

<https://www.olg.nsw.gov.au/content/council-crown-land-managers-resources>

A review of the Infrastructure SEPP is currently underway by the Department of Planning and Environment, any outcome of this as it relates to council management of Crown land will be communicated to councils.

Land Claims

Q. How many land claims have been lodged on behalf of the Local Aboriginal Land Councils and not yet finalised? What is being done to address this backlog in the immediate future? Also, what measures are in place to ensure that Native Title can be extinguished over Crown Land of local importance to facilitate the freehold transfer of land to Councils as soon as possible?

There is currently a significant backlog of undetermined Aboriginal Land Claims across the state. Crown land management activities for land subject to an outstanding claim must consider the implications of any claim.

Any land transferred to a local council under the Land Negotiation Program is vested in limited freehold title subject to Native Title rights and interests in the land. Further information on Native Title considerations for land vested in local councils will be provided to councils upon vesting and participants of the land negotiation program as it is rolled out.

Land identification

Q. Will individual Councils be provided with a list of Crown land for cross referencing to what parcels of land they believe comprise crown land? Similarly will a list of current leases be provided?

The Department does intend to provide a schedule of Crown land managed by Council. Councils should have their own records as to whether any land under their management is subject to a lease.

Q. Will the schedules of crown lands to be provided to Councils include devolved land?

Yes, DoI - Lands is planning to provide a schedule of Crown land managed by councils and also that which devolves to their management under section 48 of the LG Act prior to commencement of the CLM Act.

Land Negotiation Program

Q. If not included in the first three rounds of the Land Negotiation Program will Council continue to manage Crown Land under the LG Act as Community Land?

All Crown land managed by councils as appointed Crown land managers will continue to be managed under the provisions of the CLM Act until and unless it is vested in a council.

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Q. The first round of the Land Negotiation Program EOIs has been completed. Will there be another opportunity for those councils unsuccessful in the initial EOI process and when is this likely to be? Could you please outline the current and future time frame work for the land transfer program? When will it be the next land transfer negotiation program?

An EOI process was run to establish participants for the Land Negotiation Program. All successful applicants were notified of their inclusion in the program to 2020. Details of future opportunities to participate in the Land Negotiation Program will be made available closer to the completion of the currently planned negotiations.

Q. Can you negotiate land transfers outside of land negotiation program, given only limited number of councils successful in recent EOI process?

The Crown Land Management Act continues to allow for vesting of local land in councils. The Department's intention is to facilitate this through the Land Negotiation Program, however, in very exceptional circumstances it may be appropriate for the Department to consider a one-off or 'limited and unique' vesting of Crown land in a council.

Lease applications

Q. When will Crown lands that have applications to lease start to be processed, or expired leases advertised for lease?

Please see Council Update – April 2018.

Licensing

Q. Will a schedule of existing licences be provided?

No

Native Title

Q. Will there be grant funds established for councils to apply for to meet Native Title claims post implementation of the legislation?

Councils currently are involved in Native Title claims and determinations, and this will continue under the new legislation. No change in funding arrangements is proposed.

Q. Will the crown fund JO's to employ Native Title Managers.

The Department of Industry - Crown lands will not be funding Joint Organisations to employ Native Title managers.

Q. Will DoI - Crown Lands continue to complete Native Title assessments on S.48 LG Act 1993 lands?

The position regarding S.48 LG Act 1993 land is not changed by the legislation.

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The CLM Act provides that Council only needs to obtain written Native Title manager advice for activities on land for which they are the appointed Crown land manager. As councils are not appointed to manage S.48 'devolved' land written Native Title manager advice is not required under Crown land legislation.

Any activity carried by council in accordance with S.48 land should comply with Commonwealth Native Title legislation and councils should afford Native Title groups any applicable procedural rights. Importantly, management of S.48 land is significantly different to Crown land for which council are appointed as Crown land manager.

S.48 land cannot be leased or licensed by council, cannot be used for any purpose inconsistent with its reservation or dedication (unless authorised by the Minister) and cannot have a Plan of Management in place to govern its use.

Q. As ownership of the land remains with the State, will NSW Government be responsible for any payment required to extinguish Native Title?

The State is responsible for any Native Title compensation payable for actions attributable to the State for Crown land prior to commencement of the CLM Act. From commencement of the CLM Act the State will remain responsible for Native Title compensation payable for actions it has undertaken and council Crown land managers will be responsible for Native Title compensation payable for actions they undertake on their reserves.

Q. With crown land that has Native Title claims existing, will they be dealt with prior to transition or will this become Council's responsibility?

Native Title claims are determined through the Federal Court. The NSW Department of Industry - Crown lands will continue to assist the courts in determining the existence of Native Title rights and interests in Crown land.

Q. Does a Native Title Manager have to be a Council Officer (trained) or can this role be performed by others such as a lawyer?

The Native Title manager does not have to be a lawyer, rather the role is to provide written advice that certain activities on Crown land comply with any applicable provisions of Commonwealth Native Title legislation. In certain circumstances it may be necessary for a Native Title manager to seek legal or professional advice to inform their advice to assist council, as Crown land manager, to make a considered business decision regarding the proposed activity.

Native Title managers do not need to be council officers, however most councils feel that using staff members is most appropriate, given that they will not be charged additional fees/costs for the role to be performed and given that all knowledge about their land and their dealings will be retained "in house".

Q. It was stated that Councils will become liable for potential Native Title claims, does the DOI - Crown Lands currently maintain a contingency for its actions until the commencement of the Act similarly should Councils maintain a contingency for future claims?

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All Crown land managers including councils have always been required to comply with Native Title requirements in exercising Crown land management functions. This has sometimes meant that Crown land managers have relied on Industry – Crown Lands for ensuring compliance with Native Title obligations.

The CLM Act streamlines Crown land management for local councils as Crown land managers to be able to conduct certain activities and dealings for the reserves they manage, including by leasing and licencing, without the same level of Departmental oversight.

The Crown will retain an interest in Native Title requirements and compliance up to commencement, when due to the increased autonomy for Councils, the Crown land manager will be specifically responsible. Accordingly, the CLM Act provides specific provisions to facilitate compliance with the Native Title legislation. It is a matter for councils as to how they will manage liabilities, noting that liabilities will in all cases depend on the actions councils choose to take on their reserves.

The State will remain liable for all action taken by the State and will continue to participate in Native Title determinations.

Q. Feedback from staff who have attended the Native Title training is that it was too brief for such an extensive piece of legislation and not available for more than 2 staff.

Q. What additional training resources and funding for these staff will be made available?

Q. Thank you for presentation. Can you advise whether there will be more detailed briefings on understanding Native Title implications for Councils?

Q. Will there be more places made available for the training of more than 2 people per Council as Native Title managers?

An additional Native Title manager training session is planned for delivery prior to commencement to ensure all Councils and certain professional Crown land managers have at least one trained Native Title manager.

Dates are currently being finalised and will be published shortly. If there are vacant spots at this training, it may be possible for councils to nominate additional staff to attend and be trained, but this will be dependent on final numbers, with the priority being those councils who do not have trained Native Title managers.

Further face to face training is being planned for post-commencement, and the Department is exploring additional resources that may assist Native Title managers perform their functions

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Aboriginal Land Claims

Q. Will outstanding land claims continue to be assessed outside of the land negotiation program?

Aboriginal land claims will continue to be assessed by the Department of Industry. In processing and resolving claims the Department's Aboriginal Land Claims Unit will continue to advise council of claims within their local government area and seek information regarding use and management of Crown land to support the assessment process.

Q. Who will be responsible for the legal costs for appealed ALC's once CLM act has commenced?

The Department of Industry Crown lands will continue to manage Aboriginal Land Claims and appeals as per current practice.

Plans of Management

Q. Our Plans of Management already cover our Crown Reserves- as per the guidelines of DLG and LWC 1996. Will these suffice until the PoMs are reviewed in due course?

Any existing plan of management that may reference Crown land can be amended and readopted, following the assignment of an initial categorisation, to comply with the requirements of the CLM Act.

Q. Will DOI & OLG consider developing a POM template for councils?

DoI Land and the Office of Local Government are planning to develop, amongst other support documents, a PoM template to assist Council Crown land managers in complying with the requirements of the CLM Act.

Q. A number of Plans of Management already classify and categorise lands under the LG Act (including crown lands managed under our care control and management / care control). For a number of plans the only proposed change will include reference to the new CLM Act within the Plan of management and removal of the words care control and management / care control. In these situations do we still need to update a plan of management within 3 years?

Whilst useful as a management planning tool, Plans of Management council may have adopted under the LG Act for Crown land will not have statutory effect.

Council Crown land managers will be required to prepare and adopt new Plans of Management for Crown land they are appointed to manage under the CLM Act. This can be achieved through amending an existing plan or preparing a new plan.

The CLM Act provides some legislative relief regarding the need to hold public hearings for plans in certain circumstances.

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Q. When will the general guide be issued to Councils?

The department and NSW Office of Local Government are working to develop and release guidance material to support councils in meeting the requirements of the CLM Act.

Plans of Management funding assistance

Q. You have indicated that resources will be made available. Will these resources fully fund the legal and CCLM positions required under these new reforms?

Funding provided for the preparation of plans of management is intended to assist councils to generate and adopt compliant plans. Council Crown land managers are able to continue to apply for funding from the Crown Reserves Improvement Fund (previously known as the PRMF) and apply proceeds generated from activities on Crown reserves towards the preparation of Plans of Management.

Q. So that Councils can commence planning for new POM's, when will Crown Lands provide further details on funding?

Government will provide more information about the grants funding for assistance with preparation of plans of management when the commencement dates are announced by the Minister for Lands and Forestry

Q. Is there any indication of whether or not we will require 'matching funds' for the plans of management funding? Any indication for inclusion in our 18/19 budget would be appreciated

The provision of funding to support Plan of Management development will not be subject to any fund matching arrangement, however the funding provided will be a contribution to support council development of compliant plans. It is anticipated that in most cases the development of Plans of Management will require alternate council funding sources. Information on the amount apportioned to each council will be provided shortly.

PoMs/Native Title

Q. How detailed to POMs need to be? Can one POM include all undeveloped parcels of Crown Land? What Native Title considerations are there for a POM?

It is imperative that PoMs for Crown reserves be compliant with the statutory requirements prescribed by the both CLM Act and LG Act. As provided by the LG Act, 'generic' plans of management may apply to multiple categories and pieces of land withstanding where a categorisation under the LG Act mandates a single Plan for land.

Council crown land managers must also obtain written advice from a qualified Native Title manager that any PoM for Crown land adopted, or submit for approval, complies with any applicable provision of the Commonwealth Native Title legislation.

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Reporting

Q. What are the requirements for reporting of crown land income?

Under the CLM Act Council Crown land managers are not required to report financial details to the Minister for Lands and Forestry. Reporting and accounting requirements for council managed Crown land from commencement of the CLM Act will be as required for public land under the LG Act.

The Minister for Lands however may direct a council Crown land manager to furnish reports and information on Council Crown land manager conduct in exceptional circumstances.

Section 48 of the LG Act 1993

Q. Is devolved crown land, where no reserve trust in place, treated differently under new management arrangements.

There are no changes to the management of land that 'devolves' to councils under S.48 of the LG Act.

Q. Will Crown Reserves which currently have no trust manager assigned be managed by council?

Where the land can be defined as a public reserve under S.48 of the LG Act, the land will be managed by council in accordance with that provision of the LG Act rather than as community land.

Q. Will S.48 lands require categorisation and POM under new arrangements?

No, plans of management are only required for crown land managed by councils as if the land was community land - this does not apply to S.48 'devolved' land.

Telco facilities management

Q. Will there be any changes to how Telecommunications Facilities are managed?

There is no intention to alter the Departments current arrangement for Telecommunication Facilities on Crown land. Telecommunications Facilities will continue to be tenured by the Department of Industry - Lands.

Travelling Stock Routes

Q. What is happening with TSRs?

Information on the travelling stock reserves review is available from the Crown lands website: <https://www.industry.nsw.gov.au/lands/access/travelling-stock>

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Vesting

Q. Can Crown Lands be vested in a County Council, where the County Council has Infrastructure on the Crown Reserve?

Crown land can only be vested in local councils or other government agencies, including State owned corporations and other statutory corporations, prescribed by the CLM Regulation. As county councils are not prescribed by the Regulation Crown land cannot be vested in them.

Q. Can Councils renegotiate existing agreements on Crown Land for say commercial opportunities when the land is transferred to local government?

Please see Council Update – April 2018. If the land is managed as if it is community land, then a plan of management is generally required to authorise tenures and dealing.

Q. If land is vested to council what is in place to prevent councils from changing categorization to operational and selling land

Land being vested to council will come across as community land in the majority of cases. The land will be vested with any Native Title obligations. To reclassify the land council will need to go through its own vigorous re-classification process, including consideration of native title.

Further Information

Please visit www.olg.nsw.gov.au/crownland for further resources and information.

Disclaimer: These answers provide general information only and do not constitute legal advice. The information provided is based on knowledge and understanding at the time of writing (April 2018) and may not be accurate, current or complete.

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