

MANAGING CROWN LAND

An update for local councils

December 2017

With the new *Crown Land Management Act 2016* (CLM Act) proposed to commence in 2018, this update provides information on how the NSW Government will work with councils to deliver improved management of the state's vast area of Crown land. Please share this newsletter with your staff and council networks.

Working together

Department of Industry—Lands and Water and the Office of Local Government are working collaboratively to facilitate council readiness for the new legislation. Communication and engagement with councils and the provision of information and materials about the new arrangements to manage Crown reserves in accordance with the *Local Government Act 1993* continues to be a priority. This partnership will ensure a coordinated delivery of information to councils and the development of guidance materials and training to support councils in the transition to the new Crown reserve requirements.

Councils continue to have a critical role in the management of Crown land and the CLM Act introduces some significant improvements and changes for the management of Crown reserves by councils. It is imperative that councils understand these changes and are ready for the transition.

When will the new Act commence?

The CLM Act is proposed to commence in 2018. We are currently finalising regulations and a Community Engagement Strategy to support its operation, together with a suite of policies, guidelines and other information.

We will confirm a specific commencement date in due course.

Crown reserves

Councils play an important role in managing Crown land for their local communities by being appointed manager of Crown reserves. Every Council in NSW currently manages Crown reserves—and this will continue.

Under the current system, local councils manage Crown reserves under Crown lands legislation, and manage council-owned public land under the *Local Government Act 1993* (LGA).

In accordance with the CLM Act—and as recommended in the Crown Land Management Review—councils will manage Crown reserves under the LGA, although the ownership of this land will remain with the state. Crown reserves managed by councils will generally be classified as community land and categorised under the LGA.

When the new legislation commences, councils will continue in their appointed existing roles. Crown reserves currently devolved under section 48 of the LGA will continue to be devolved and managed under section 48 of the LGA.

Schools of Arts and other institutes

Schools of Arts, Mechanics Institutes and Literary Institutes are part of a statewide network of facilities for community use, being managed by volunteers, not for profit organisations, and local councils.

The department will soon write to all managers of Schools of Arts and the other institutes seeking to update and confirm contact details ahead of providing further information about changes under the CLM Act.

The new legislation repeals the *Trustees of Schools of Arts Enabling Act 1902* and provides the following options:

- Where a School of Arts or other institution is on **public land**, that land will be reserved under the new CLM Act for the purposes of providing the School of Arts or other institute and for community purposes. There will be a continued role for trustees to manage the land in much the same way as they currently do, but as statutory Crown land managers. Existing trustees will be appointed as board members of these statutory bodies and will continue to be responsible for the care, control and management of the reserve and the institution.
- Where a School of Arts or institution is on **private land**, the trustees can decide from three options:
 - remain the legal owners of the land and manage the land subject to any trust deed and the *Trustee Act 1925*
 - transfer the land to become a Crown land reserve and trustees would continue to manage the land as an appointed Crown land manager
 - enter into an agreement with a local council for the land to be transferred to council and be used and managed by council under the *Local Government Act 1993*. These discussions will need to be initiated by the trustees. Councils can consider any proposals to transfer land on its merits and agreement will be voluntary.

Further information will follow.

Native title obligations

All managers of Crown reserves—including councils—are currently responsible for complying with the Commonwealth *Native Title Act 1993* (NT Act).

Under the CLM Act, councils will have more autonomy in the management of Crown land, with less reliance on the department. With less departmental oversight under the CLM Act, it is essential that managers clearly understand and comply with their native title obligations.

To support this, the CLM Act contains provisions to facilitate compliance with the NT Act by requiring councils and category 1 Crown land managers to employ or engage trained native title managers who will be responsible for providing advice on certain dealings for land that may be affected by native title.

Councils will only be responsible for those dealings they choose to undertake on their Crown reserves after commencement of the CLM Act. They will not be responsible for anything predating the CLM Act, or any actions of the state or other parties.

The NSW Government is currently funding and delivering training for the new native title managers. The training will see around 250 native title managers qualified across the state. Following completion of the training, details of those participants will be recorded in a central register and a council can engage any native title manager on this register for advice. Council Crown land managers will always have the ability to obtain other advice, such as legal advice, in relation to their native title obligations, where they see fit.

Details about arrangements for future training are currently being confirmed.

Regulations

Recently the draft Crown Land Management Regulation was placed on public exhibition to gather community and stakeholder feedback. The exhibition period closed on Sunday 15 October—thank you to everyone who made a submission.

The Crown Land Management Regulation provides clarity and certainty for Crown land managers, tenure holders, and users of Crown land. It provides information about how certain parts of the CLM Act are to be implemented and protects the Crown land estate for future generations.

Of particular interest to councils, the regulation includes the local land criteria established to identify suitable land for vesting to local councils. The criteria incorporate the findings of the local land pilot conducted in 2015 involving Department of Industry—Lands, Warringah Council, Tamworth Regional Council, Tweed Shire Council and Corowa Shire Council.

The criteria will act as a guide only, and decisions will be made on a case-by-case basis through negotiations with council and Local Aboriginal Land Councils. All transfers will be voluntary and by agreement—there will be no forced transfers.

We are now considering all submissions and feedback to inform the finalisation of the regulation in time for when the CLM Act commences in 2018.

Community Engagement Strategy

The draft Community Engagement Strategy and draft Community Engagement Guidance and Resources document was on public exhibition from Monday 16 October to Sunday 10 December 2017.

The draft Community Engagement Strategy does not apply to councils acting as Crown land managers, as councils will manage Crown land in accordance with the provisions of *Local Government Act 1993*, including associated community engagement obligations.

However, we want to keep councils informed of changes that are being implemented as part of the CLM Act.

The Community Engagement Strategy is a new requirement of the CLM Act and acknowledges and responds to feedback from the community for greater involvement and transparency in decisions about Crown land. It is supported by a Guidance and Resources toolkit, which provides practical, step-by-step guidance for implementation of the strategy.

Copies of both documents, together with related fact sheets and an information video, are available on the NSW Government [Have Your Say website](#) and the Department of Industry's [Crown Lands website](#).

Engagement will be required under the strategy where the community's current use and enjoyment of Crown land could be impacted. The strategy enables engagement to be tailored to specific situations to ensure that Crown land decisions of greater impact on community use and enjoyment attract greater public participation.

All submissions and feedback will be considered to inform the finalisation of the Community Engagement Strategy in time for when the CLM Act commences in 2018.

Amendments to the *Roads Act 1993*

The commencement of the CLM Act will see amendments to the *Roads Act 1993* come into force. One of the key amendments is that councils will be given the power to close council roads and the Minister for Lands and Forestry will no longer be required to close council public roads on council's behalf.

There will come a time when any existing application for a council road closure under the current regime may not have been determined by our Roads team before the new legislation commences.

Once a commencement date for the CLM Act has been identified, we will communicate this important timeframe with councils. Until then, the department will keep processing existing council road closure applications (as the Minister's delegate) as per usual. Should you wish to clarify the status of a road closure application, please contact our Roads team on 1300 886 235.

More information

We understand you may have questions about the management of Crown land and changes under the CLM Act. Previous newsletters are available from the [stakeholder update section](#) of the Crown Land website.

For more information contact the Department of Industry—Lands and Water on 1300 886 235 or email legislation@crowmland.nsw.gov.au. The Crown Land website www.crowmland.nsw.gov.au also has updated information on the legislation.

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