

Native Title Manager advice template

Section 8.7 of the Crown Land Management Act 2016 (CLM Act) states that written Native Title Manager advice is required before a council Crown land manager does any of the following:

- a) grants leases, licences, permits, forestry rights, easements or rights of way over the land
- b) mortgages the land or allows it to be mortgaged
- c) imposes, requires or agrees to covenants, conditions or other restrictions on use (or removes or releases, or agrees to remove or release, covenants, conditions, or other restrictions on use) in connection with dealings involving the land
- d) approves (or submits for approval) a plan of management for the land that authorises or permits any of the kinds of dealings referred to in paragraph (a), (b) or (c).

Summary of Steps when preparing native title manager advice

STEP	Description	Checklist Summary
STEP 1	Provide a description of the land. Is the land 'relevant land' or 'excluded land'? Is there a claim, determination or ILUA?	
STEP 2	A description of the proposed activity or dealing	
STEP 3	Determine if the act affects Native Title	
STEP 4	Assessment of how the act may be validated under the Native Title Act 1993 (The Future Acts Regime)	
STEP 5	Information on whether the act is compensatory	
STEP 6	Procedural requirements necessary under the Native Title Act 1993	

Step one: provide a description of the land

Address		
Reserve number		
Reserve Purpose		
Lot and DP		
Gazettal date		
Native Title determination/claim	Yes	No
Any existing ILUAs?	Yes	No

Is the land relevant or excluded?

Refer to section 4.2 of the [Native Title Manager Workbook](#) for detailed instructions on how to conduct searches to determine the status of the land.

Excluded land	Is land subject to approved determination of native title where native title rights have been determined to be extinguished?	Yes	No
	Is land subject to approved determination that there are no native title rights and interests in the land?	Yes	No
	Have all native title rights and interests in the land been surrendered under an indigenous land use agreement (ILUA)?	Yes	No
	Does section 24FA protection apply?	Yes	No
	Is this land where all native title rights and interests in relation to the land been compulsorily acquired?	Yes	No
	Is a Native Title Certificate in effect over the land?	Yes	No
Relevant land	Is land dedicated or reserved Crown land managed by a council manager	Yes	No
	Is land dedicated or reserved Crown land managed by a non-council manager assigned as a category 1 manager	Yes	No
	Is the land vested in a local council under Division 4.2 (Vesting of Crown land in local councils)	Yes	No

As per the assessment above, the land is determined to be **Relevant/Excluded Land** (select appropriate option).

Step two: a description of the proposed activity or dealing

For example: *The council has received an application for a licence to hold a wedding on a public recreation reserve.*

Step three: determine if the act affects Native Title

See section 4.4 in the [Native Title Manager Workbook](#) for more information on this.

Proposed Act		
Is the act a Future Act?	Yes	No
Does the act affect Native Title?	Yes	No
Why/why not?		

Step four: Assessment of how the act may be validated under the Native Title Act 1993 (The Future Acts Regime)

Refer to relevant subdivision checklists in attachments on pages 5-14.

Future Act Regime Pathway	Yes	No
B-E - Indigenous Land Use Agreements		
F - Section 24FA Protection – an absence of native title, Non-claimant applications		
G - Primary Production		
H - Access to and management of water and air space		
I - Pre-existing right-based acts and renewals etc.		
J - Reservations and leases		
K - Facilities for Services to the public		
L - Low impact future acts		
M - Acts that pass the freehold test		
N - Acts affecting offshore		

If none of the above subdivisions will validate the future act, does the council need to:

Seek 24FA protection?	Yes	No
Negotiate an ILUA?	Yes	No

Step five: Information on whether the act is compensatory

Refer to the 'procedures generally required' table below for an indication of whether compensation would be payable for the act.

Is compensation payable?

Yes/No

Any further comments:

Step six: Procedural requirements necessary under the Native Title Act 1993

Refer to the 'procedures generally required' table below and include a summary of those that are required within the Native Title Manager report, based on your assessment.

Procedures generally required

Subdivision	Notification	Opportunity to comment	Other procedures	Is compensation payable?
B-E - ILUAs	Yes	Yes	Yes Extensive legal negotiations Multi-party consents	Yes
F - FA protection			Yes Court application	Yes
G - Primary production	Yes	Yes		Yes
H - Water, living aquatic resources and airspace	Yes	Yes		Yes
I - Pre-existing acts or renewals	Yes	Yes		Yes
J - Reservations	Yes If it is a public work	Yes If it is a public work		Yes
K - Facilities for services to the public	Yes	Yes		Yes
L - Low-impact activities				No
M - Acts that pass the freehold test	Yes	Yes		Yes
N - Acts affecting offshore places	Yes	Yes		Yes

ATTACHMENTS

Does subdivision F apply?

☐ Yes ☐ No

Subdivision F - Section 24FA Protection – an absence of native title, Non-claimant applications

Requirement Number	Requirement	Section	Requirement Satisfied
1.	The land is not covered by a government application under s. 24FB(a).	s. 24FC(b)	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.	A non-claimant application needs to be made in relation to the whole or part of the area covered by the application.	s. 24FC(a) and (c)	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.	The three month period specified in the notice given under s. 66 of the NT Act (Cth) has ended and at the end of that period there is no native title claim covering the area or all entries that relate to a relevant native title claim that covered an area are removed from the Register of Native Title Claims, or cease to cover the area.	24FC(d) and (e)	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.	The application has not been withdrawn, dismissed or otherwise finalised.	24FC(f)	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.	There is no entry on the National Native Title Register that native title exists in relation to the land.	24FC(g)	<input type="checkbox"/> Yes <input type="checkbox"/> No

Comments:

Does subdivision G apply?

☐ Yes ☐ No

Subdivision G - Section 24GB – Primary Production

Requirement Number	Requirement	Section	Requirement Satisfied
1.	A non-exclusive agricultural lease or a non-exclusive pastoral lease (i.e. a lease for agricultural or pastoral purposes which do not confer a right of exclusive possession on the land was granted) is in force.	s. 24GB(l)(a)	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.	The lease was granted on or before 23 December 1996.	s. 24GB(l)(a)	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.	The lease was valid, that is of full force and effect, including because it is a past act or intermediate period act.	s. 24GB(l)(b)	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.	The future act takes place after 23 December 1996.	s. 24GB(l)(c)	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.	The future act permits or requires the carrying on of the following while the lease is in force (including as renewed on one or more occasions): a primary production activity, or an activity which is incidental to a primary production activity, provided that the majority of the area covered by the lease is used for primary production activities.	s. 24GB(l)(d)	<input type="checkbox"/> Yes <input type="checkbox"/> No
6.	The future act could have been validly done or authorised prior to 31 March 1998, if any native title in the area covered by the lease had not then existed.	s. 24GB(l)(e)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Exclusion 1	1. Section 24GB does not validate a future act where the lease granted by 23 December 1996 was a non-exclusive pastoral lease covering an area greater than 5,000 hectares and the future act has the effect that the majority of the area covered by the lease is required or permitted to be used for purposes other than pastoral purposes.	s. 24GB(4)(a)	
Exclusion 2	2. Section 24GB does not validate a future act which converts a non-exclusive agricultural or pastoral lease granted by 23 December 1996 into a lease conferring a right of exclusive possession or a freehold estate, over any of the land or waters covered by the lease.	s. 24GB(4)(b)	

Subdivision G – Section 24GD

Requirement Number	Requirement	Section	Requirement Satisfied
1.	Either of the following was granted on or before 23 December 1996 a freehold estate, an agricultural lease, a pastoral lease	s. 24GD(l)(a)	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.	The freehold or lease was valid (including because it is a past act or intermediate period act).	s. 24GD(l)(b)	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.	The future act takes place after 23 December 1996.	s. 24GD(l)(c)	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.	The future act permits or requires the carrying on of grazing, or an activity consisting of, or relating to, gaining access to water or taking water that:	s. 24GD(l)(e)	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(a) takes place while the freehold estate exists or the lease is in force; and	s. 24GD(l)(e)(i)	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(b) is directly connected to the carrying on of any primary production activity on the area covered by the freehold estate, agricultural lease or pastoral lease; and	s. 24GD(l)(e)(ii)	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(c) takes place in an area adjoining or near the area covered by the freehold estate, agricultural lease or pastoral lease; and	s. 24GD(l)(e)(iii)	<input type="checkbox"/> Yes <input type="checkbox"/> No
	does not prevent native title holders in relation to land or waters in the area in which the activity will be carried on from having reasonable access to the area.	s. 24GD(l)(e)(iii)	<input type="checkbox"/> Yes <input type="checkbox"/> No
Exclusion 1	Section 24GD does not validate a future act where it concerns the grant of a lease, or any act that confers a right of exclusive possession over land.	s. 24GD(l)(d)	

Comments:

Does subdivision H apply?

☐ Yes ☐ No

Subdivision H – Management of Water and Air Space

Requirement Number	Requirement	Section	Requirement Satisfied
1.	A future act consists of the grant of a lease, licence, permit or authority under legislation.	s. 24HA(2)	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.	The legislation is valid.	s. 24HA(2)(a)	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.	The legislation relates to the management or regulation of: surface and subterranean water, living aquatic resources, or airspace	s. 24HA(2)(b)	<input type="checkbox"/> Yes <input type="checkbox"/> No

Comments:

Does subdivision I apply? ☐ Yes ☐ No

Subdivision I – Pre-existing right-based acts and renewals etc.

Requirement Number	Requirement	Section	Requirement Satisfied
1.	The act is a renewal, re-grant or re-making, or extension of the term, of a lease, licence, permit or authority (original lease etc.) that is valid (including because it is a past act or intermediate period act); and	s. 241C(l)(a)	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.	Any of the following apply –	s. 241C(l)(b)	<input type="checkbox"/> Yes <input type="checkbox"/> No
	the original lease etc. was granted on or before 23 December 1996; or	s. 241C(l)(b)(i)	
	the grant of the original lease etc. was a permissible lease etc. renewal or a "pre-existing right-based act"; or	s. 241C(l)(b)(ii)	
	(the original lease etc. was created by an act under s.24GB, GD, GE or HA (primary production or management or regulation of water and airspace); and	s. 241C(l)(b)(iii)	
3.	The permit does not: confer a right of exclusive possession over any of the land covered by the original lease etc.; or create a larger proprietary interest in the land than was created by the original lease etc.; or create a proprietary interest over any of the land covered by the original lease etc., where the original lease etc. created only a non-proprietary interest.	s. 241C(l)(c)	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.	If the original lease etc. contains, or is subject to, a reservation or condition for the benefit of Aboriginal peoples or Torres Strait Islanders - the renewed, re- granted, re-made or extended lease, licence, permit or authority contains, or is subject to, the same reservation or condition.	s. 241C(l)(d)	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.	If the original lease etc. did not permit mining - the renewed, re-granted, re-made or extended lease, licence, permit or authority does not permit mining.	s. 241C(l)(e)	<input type="checkbox"/> Yes <input type="checkbox"/> No

Comments:

Does subdivision J apply?

☐ Yes ☐ No

Subdivision J – Reservations and leases

Requirement Number	Requirement	Section	Requirement Satisfied
1.	The reservation was created on or before 23 December 1996; and	s. 24JA(l)(a)	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.	The reservation was valid; and	s. 24JA(l)(b)	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.	The creation of the reservation was done by the Crown (the Commonwealth or State); and	s. 24JA(l)(c)	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.	The whole or part of any land or waters under the reservation was to be used for a particular purpose; and	s. 24JA(l)(d)	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.	The act is done in good faith under or in accordance with the reservation, or	s. 24JA(l)(e)	<input type="checkbox"/> Yes <input type="checkbox"/> No
	in the area covered by the reservation, so long as the act's impact on native title is no greater than the impact that any act that could have been done under or in accordance with the reservation would have had.		

Comments:

Does subdivision K apply?

☐ Yes ☐ No

Subdivision K – Facilities for services to the public

Requirement Number	Requirement	Section	Requirement Satisfied
1.	The future act relates (to any extent) to an onshore place; and	s. 24KA(l){a}	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.	<p>The facility is any of the following:</p> <p>a road, railway, bridge, or other transport facility (other than an airport or port).</p> <p>a jetty or wharf.</p> <p>a navigation marker or other navigational facility.</p> <p>an electricity transmission or distribution facility.</p> <p>lighting of streets or other public places.</p> <p>a gas transmission or distribution facility.</p> <p>a well, or a bore, for obtaining water.</p> <p>{h} a pipeline or other water supply or reticulation facility.</p> <p>a drainage facility, or a levee or other device for management of water flows.</p> <p>an irrigation channel or other irrigation facility.</p> <p>a sewerage facility, other than a treatment facility.</p> <p>a cable, antenna, tower or other communication facility.</p> <p>an automatic weather station.</p> <p>any other thing that is similar to any one or more of the things mentioned above; and</p>	s. 24KA(2)	<input type="checkbox"/> Yes <input type="checkbox"/> No
3.	The future act either:	s. 24KA(l)(b)	<input type="checkbox"/> Yes <input type="checkbox"/> No
	permits or requires the construction, operation, use, maintenance or repair, by or on behalf of any person, of any of the facilities listed in Requirement 2 that is operated or to be operated for the general public; or	s. 24KA(l)(b)(i)	
	consists of the construction, operation, use, maintenance or repair, by or on behalf of the Crown or a local government body or other statutory authority of the Crown, of any of the facilities listed in Requirement 2 that is operated or to be operated for the general public; and	s. 24KA(l)(b)(ii)	

4.	The future act does not prevent native title holders in relation to the land or waters on which the thing is located or to be located from having reasonable access to the land or waters in the vicinity, except: while the thing is being constructed; and for reasons for health and safety; and	s. 24KA(l)(c)	<input type="checkbox"/> Yes <input type="checkbox"/> No
5.	If there are any areas or sites in the future act area of particular significance to Aboriginal peoples or Torres Strait Islanders in accordance with their traditions, a law of the State is made in relation to the area or sites preservation or protection; and	s. 24KA(l)(d)	<input type="checkbox"/> Yes <input type="checkbox"/> No
6.	The future act does not relate to the compulsory acquisition of the whole or part of any native title rights and interests.	s. 24KA(lA)	<input type="checkbox"/> Yes <input type="checkbox"/> No

Comments:

Does subdivision L apply?

☐ Yes ☐ No

Subdivision L – Low impact future acts

Requirement Number	Requirement	Section	Requirement Satisfied
1.	The act takes place before, and does not continue after, an approved determination of native title is made in relation to the land or waters, if the determination is that native title exists.	s. 24LA(l)(a)	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.	The act does not consist of, authorise or otherwise involve:	s. 24LA(l)(b)	<input type="checkbox"/> Yes <input type="checkbox"/> No
	the grant of a freehold estate in any of the land or waters; or		
	the grant of a lease over any of the land or waters; or		
	conferral of a right of exclusive possession over any of the land or waters; or		
	the excavation or clearing of any of the land or waters; or		
	mining (other than fossicking by using hand-held implements); or		
	the construction or placing on the land, or in the waters, of any building, structure, or other thing (other than fencing or a gate), that is a fixture; or		
	the disposal or storing, on the land or in the waters, of any garbage or any poisonous, toxic or hazardous substance.		
3.	However, the excavation or clearing of any of the land or waters is permitted where it involves:	s. 24LA(2)	<input type="checkbox"/> Yes <input type="checkbox"/> No
	excavation or clearing that is reasonably necessary for the protection of public health or public safety; or	s. 24LA(2)(a)	
	tree lopping, clearing of noxious or introduced animal or plant species, foreshore reclamation, regeneration or environmental assessment or protection activities.	s. 24LA(2)(b)	

Comments:

Does subdivision M apply?

☐ Yes ☐ No

Subdivision M – Acts passing the freehold test

Requirement Number	Requirement	Section	Requirement Satisfied
1.	It is an act other than the making, amendment or repeal of legislation; or	s. 24MB(l)(a)	<input type="checkbox"/> Yes <input type="checkbox"/> No
2.	Either:	s. 24MB(l)(b)	<input type="checkbox"/> Yes <input type="checkbox"/> No
	the act could be done in relation to the land concerned if the native title holders concerned instead held ordinary title to it; or	s. 24MB(l)(b)(i)	
	the act could be done in relation to the waters concerned if the native title holders concerned held ordinary title to the land adjoining, or surrounding, the waters; and	s. 24MB(l)(b)(ii)	
3.	A law of the Commonwealth, a State or a Territory makes provision in relation to the preservation or protection of areas, or sites, that may be: in the area to which the act relates; and of particular significance to Aboriginal peoples or Torres Strait Islanders in accordance with their traditions.	s. 24MB(l)(c)	<input type="checkbox"/> Yes <input type="checkbox"/> No
4.	The subdivision only applies to a future act to the extent that it relates to an onshore place.	s.24MC	<input type="checkbox"/> Yes <input type="checkbox"/> No

Comments: