

Department of Planning and Environment

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Developing Plans of Management for community land Crown reserves

Guideline for Council Crown land managers

Revised version June 2023



Acknowledgement of Country

The Department of Planning and Environment acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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Developing Plans of Management for community land Crown reserves

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Overview

This guideline is designed to assist New South Wales councils to understand the requirements of the *Crown Land Management Act 2016* (CLM Act) and *Local Government Act 1993* (LG Act) when preparing and adopting Plans of Management (PoM) for Crown reserves classified as community land.

The guideline outlines the process for councils to follow in developing and adopting a PoM including links to a series of templates to support councils in the preparation of a PoM.

Scope

This guideline provides general information to support councils in the development of Plans of Management for Crown land classified as community land.

The information contained in this document and links to PoM templates only relates to Crown reserves managed by councils as Crown land managers under the provisions of the CLM Act.

The accompanying templates have been prepared for Crown reserve PoM. They have been designed to satisfy the requirements of the LG Act and therefore may be used for PoM that cover both Crown reserves and council-owned land.

Councils should refer to [Practice Note No 1 – Public land management](#) for broader guidance on plans of management for community land under the LG Act.

About this version

Changes have been made to reflect legislative changes between the editions and to include further guidance for council Crown land managers preparing plans of management. Any references to department names and departmental position titles are current at time of writing.

Assistance

For further advice or clarification on preparing a PoM, please contact the Council Crown Land Management team by email: council.clm@crownland.nsw.gov.au

1 Introduction

The *Crown Land Management Act 2016* (CLM Act) authorises local councils, that have been appointed to manage Crown land, to manage land as if it were public land under the *Local Government Act 1993* (LG Act). This provides both greater autonomy and greater responsibilities for council Crown land managers (CLMs).

Under the LG Act, public land is required to be classified as either operational land or community land. PoM must be adopted by council for all community land.

Most Crown reserves managed by council CLMs will be classified as community land and require a PoM (section 3.23(6) of the CLM Act).

All community land managed by a council and used by the community must have a PoM in place under the CLM Act and the LG Act as soon as practicable. A PoM ensures that Crown land is lawfully used and occupied, which is an essential role of all council CLMs, in managing Crown reserves.

Note: Amendments to the Crown Land Management Regulation 2018, that came into effect on 4 June 2021, removed the requirement for council CLMs to complete Plans of Management by 30 June 2021.

1.1 Benefits of a plan of management (PoM)

A PoM is the key strategic planning and governance plan that councils must have in place for the management and use of community land. A PoM sets out the objectives and performance targets for community land and authorises the use of the land, including tenures and development on the land.

Under the CLM Act, councils manage Crown land as if it were community land under the LG Act. A PoM allows councils to manage the reserves they are appointed as Crown Land Manager (CLM) under one streamlined regime, reducing duplication and administrative complexity.

A PoM is a critical tool to ensure that any authorisation or restriction on the use of a Crown reserve, including proposed development and tenures, considers Aboriginal rights and interests in Crown land under the Commonwealth *Native Title Act 1993* (NT Act) and the NSW *Aboriginal Land Rights Act 1983* (ALR Act). This is further discussed in section 3.3, as well as the important role of native title managers in the PoM preparation process in section 3 of this guideline.

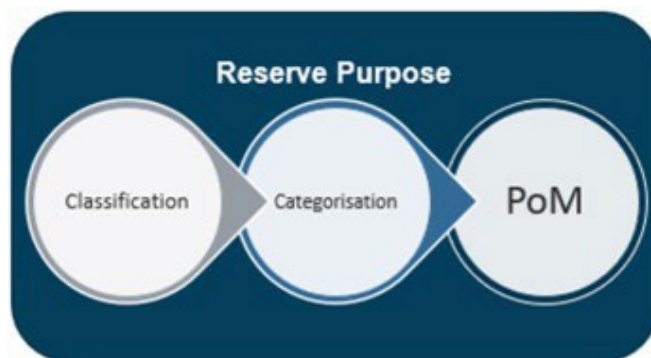
It is important for a PoM to provide vision and relevance for the next 5–10 years, as well as certainty to council and the community about how the reserve will be used. Council should prepare their PoM with longevity in mind, ensuring that it aims to authorise activities proposed for the envisaged life of the PoM.



A PoM is required for Crown reserves managed as community land under both the CLM Act and the LG Act. A PoM must also include consideration of Aboriginal rights and interests in Crown land.

1.2 Public land that does not require a PoM

Reserves *devolved to council* under section 48 of the LG Act and land that defaults to the Minister, do not require a PoM. If council CLMs wish to authorise any development and/or tenure on a Crown reserve devolved to them or where management defaults to the Minister, they may request appointment as the CLM for that reserve. Councils can do this by emailing requests to the local Crown Lands office. This should be done prior to the preparation of a PoM.



purpose is the key guiding consideration for each of these steps.

Land classified as *operational land* does not require a PoM and should not be included. The Minister for Lands and Property must have consented to the classification of a reserve as operational land. Public road reserves also do not require a PoM.

2 Considerations when preparing a PoM

2.1 Is council the CLM?

If Council is not the CLM, a PoM is not required. Information regarding public land that does not require a PoM is detailed in section 2.2.

Council can access information about the Crown reserves that they are appointed to manage as CLM, or is devolved to them, via the council portal.

2.2 Who should be involved?

It is important that the development of a PoM is a collective effort across all areas of council. Early consultation across the council, including the strategic and project planning areas, ensures all interests are included in the development of a PoM.

The native title manager is also required to provide native title advice to ensure all activities and uses under a PoM have been considered in line with the NT Act.

Many council CLMs have conducted community consultation regarding the current and proposed uses and development of Crown reserves, using the information collected in developing a draft PoM. However, the statutory requirement for consultation is by publicly exhibiting a draft PoM for no less than 28 days as per the requirements of section 38 of the LG Act.

2.3 Reserve purpose

The purpose for which Crown land was dedicated or reserved when gazetted is fundamental to the management of Crown reserves.

The reserve purpose defines lawful use of the reserve and is the predominant factor when considering proposals for new developments or leases and licences on Crown reserves.

The reserve purpose is particularly important when addressing Aboriginal rights and interests in Crown land (see [section 3.3](#)). The ALR Act and the NT Act both rely on reserve purpose to validate and demonstrate lawful use for any proposed activities on Crown land.

Where proposed authorisations in a PoM do not align with the reserve purpose and core objectives, the landowner's agreement for a draft PoM may be refused by the department under section 39 of the LG Act.



When preparing a PoM, Council must:

- identify the gazetted reserve purpose in the land description,
- align the community land categorisation (under s36(4) of the LG Act) of the reserve with the gazetted reserve purpose,
- ensure all proposed development and use (including leases and licences) is consistent with the gazetted reserve purpose.

2.4 Aboriginal interests in Crown land

Crown land has significant spiritual, social, cultural, and economic importance to the Aboriginal peoples of NSW. The CLM Act recognises and supports Aboriginal rights and interests in Crown land and facilitates the use and co-management of Crown land by Aboriginal peoples of NSW.

Under both the ALR Act and the NT Act, Aboriginal peoples may make claims over Crown land.

When preparing a PoM, council CLMs must comply with any applicable requirements of the NT Act and have regard for any existing claims over Crown land made under the ALR Act. Councils should consider Aboriginal land rights and interests and develop appropriate management strategies.

2.4.1 Native title

Native title describes the rights and interests that Aboriginal and Torres Strait Islander peoples have in land and waters according to their traditional law and customs.

Native title is governed by the NT Act, and any claims made under that Act are made to the National Native Title Tribunal (www.nntt.gov.au).

Unlike granting an Aboriginal Land Claim (ALC) under the ALR Act, native title does not transfer the land to the native title claimant but recognises the rights of the native title holder to access land and water to practice those rights. The NT Act protects these rights and interests. Under the provisions of the NT Act, only the Federal Court can determine whether native title has been extinguished. If native title rights are found to exist on Crown land, council Crown land managers

may be liable to pay compensation for acts that impact on native title rights and interests. This compensation liability arises for local councils whether or not the act was validated under the NT Act.

To prepare a PoM, councils must have a qualified native title manager employed or engaged to provide advice (Note: If Council is unsure of who their native title manager is, they can contact Crown Lands at council.clm@crownland.nsw.gov.au). Investigations by the native title manager will include validating acts (developments and tenures) over the reserve, in line with the NT Act. The most effective way to validate acts under the NT Act is to ensure all activities align with the reserve purpose.

Council CLMs cannot determine that native title has been extinguished.

Native Title must be considered unless it is excluded land

What is excluded land?

Under Division 8.1 of the CLM Act, excluded land means each of the following:

- (a) land subject to an approved determination of native title (as defined in the *Native Title Act 1993* of the Commonwealth) that has determined that –
 - (i) all native title rights and interests in relation to the land have been extinguished, or
 - (ii) there are no native title rights and interests in relation to the land
- (b) land where all native title rights and interests in relation to the land have been surrendered under an indigenous land use agreement (as defined in the *Native Title Act 1993* of the Commonwealth) registered under that Act
- (c) an area of land to which section 24FA protection (as defined in the *Native Title Act 1993* of the Commonwealth) applies
- (d) land where all native title rights and interests in relation to the land have been compulsorily acquired
- (e) land for which a native title certificate is in effect.

2.4.2 Aboriginal Land Rights

The ALR Act, seeks to compensate Aboriginal peoples (who may or may not be Native title holders) for past dispossession, dislocation, and loss of land in NSW.

The lodgement of an ALC over Crown land creates an inchoate interest in the land for the claimant pending determination of the claim. The actual impact of an ALC and its extent is not usually known until the claim is determined.

ALCs may be lodged over any Crown land in NSW and the department is responsible for investigating these claims as defined in the ALR Act. If an ALC is granted, the land will be transferred to the Aboriginal Land Council as freehold land.

In terms of councils preparing their PoM to comply with the CLM Act, an ALC will not prevent preparation or adoption of a PoM. However, councils need to consider the potential outcome of a successful claim and ensure that it considers the implications of the ALR Act in preparation of the PoM. In particular, any possible liability associated with a proposed development or activity for the reserve.

When preparing a PoM, councils should ensure use of the reserve is in line with the gazetted reserve purpose and have a thorough understanding of how any future development or works might be affected if an ALC is granted to a claimant.

In addition, if the land is subject to an undetermined ALC, any works, development/tenures authorised by the PoM should not proceed:

- If the proposed activity could prevent the land being transferred to an ALC claimant if an undetermined claim is granted
- If the proposed activity could impact or change the physical/environmental condition of the land, unless:
 - a) the council CLM has obtained written consent from the claimant Aboriginal Land Council to carry out the proposed work or activity, and/or
 - b) the council CLM has obtained a written statement from the Aboriginal Land Council confirming that the subject land is withdrawn (in whole or partial) from the land claim
- If the proposed activity is a lease to be registered on title unless the council CLM has obtained written consent from the claimant Aboriginal Land Council.

While a council CLM can make a request to a claimant Aboriginal Land Council, the claimant is under no obligation to grant its consent.

When preparing a draft PoM, council CLMs may wish to consider including an acknowledgement statement concerning ALCs.



When developing a PoM councils should consider Aboriginal rights and interests in Crown land and ensure:

- The use of the reserve is in line with the reserve purpose. The most effective way to validate acts under the NT Act is to ensure all activities align with the gazetted reserve purpose. This will also help to ensure the Crown land is lawfully used and occupied under the CLM Act.
- Council has regard for any existing ALCs over a reserve and how any future development or works might be affected if an ALC is granted to a claimant.
- A qualified native title manager is employed or engaged to provide advice on the validity of activities under the PoM in line with the NT Act.

3 Preparing a PoM

Section 3.23(6) of the CLM Act requires council CLMs to prepare and adopt a PoM for any Crown reserve for which it is the appointed Crown land manager and is classified as 'community land' under the LG Act.

A PoM is to be prepared and adopted in accordance with the provisions of Division 2 of Part 2 of Chapter 6 of the LG Act. In addition, the CLM Act defines additional requirements which must be included in the PoM.

Council CLMs may amend an existing PoM (i.e., adopted under the *Crown Lands Act 1989*) so that it applies to Crown reserves and, where appropriate, to the reserve's use. All applicable provisions of the CLM Act and the LG Act must be addressed in the amended PoM (including the

3.1 STEP 1 – Drafting the PoM

This section provides detailed information about the key requirements of a PoM. This information should form the basis of your PoM. A checklist of requirements has been developed for reference when preparing a PoM, this checklist is available on the [Council CLM webpage](#).

3.1.1 Templates

The department provides a series of [templates](#) to assist councils in preparing a compliant plan of management. Council should modify the template to meet their own specific requirements.

Note: These templates provide NSW councils a comprehensive starting point for developing Plans of Management for Crown Reserves. These are not mandatory documents and councils' discretion is advised in adapting templates to local circumstances.

Table 1. Plan of management templates and descriptions

Template 1 – Generic plan of management for all reserves
<p>This template is to cover all categories of land defined under section 36 of the LG Act in a generic PoM i.e., parks, sportsgrounds, general community use and natural areas.</p> <p>This template details the minimum requirements for a generic PoM under the LG Act. It is likely to be of most benefit to councils that do not have complex management issues for their reserves.</p>
Template 2 – Generic plan of management for community land, structured by category
<p>Councils may prefer to structure a generic PoM by each category of land i.e., parks, sportsgrounds, natural areas, and general community use – as a separate group. PoM template 2 provides contextual information and includes more detail than in Template 1. Councils should make careful consideration if this type of PoM is appropriate for the reserves they manage and their management requirements.</p>
Template 3 – Site-specific Crown reserve plan of management outline
<p>Some types of community land cannot be included in a generic plan of management (see section 4.1.5). These include areas of land:</p> <ul style="list-style-type: none"> • that have been identified to be of Aboriginal, historical, or cultural significance, • comprising the habitat of threatened or endangered species, • with significant natural features or land that provides a wildlife corridor. <p>These types of land require a site-specific PoM that more appropriately establish and set out ongoing development and management than a generic PoM.</p> <p>Crown reserves categorised as Area of Cultural Significance require a site-specific PoM.</p> <p>Where a Crown reserve is complex with several categories, a variety of uses and identified as requiring a more detailed management regime, it is recommended council address these requirements by developing a site-specific PoM.</p>

3.1.2 Minimum requirements for a PoM

The minimum requirements for a PoM are set out under section 36(3) of the LG Act. A PoM must identify the following:

- a) category of the land
- b) objectives and performance targets of the plan with respect to the land
- c) means by which the council proposes to achieve the plan's objectives and performance targets
- d) manner in which the council proposes to assess its performance with respect to the plan's objectives and performance targets

A PoM may require the prior approval of the council to the carrying out of any specified activity on the land. For plans that are specific to one area of land, section 36(3A) of the LG Act specifies that the plan must also:

- describe the condition of the land as at the adoption of the plan
- describe the buildings on the land as at adoption
- describe the use of the buildings and the land as at adoption
- state the purposes for which the land will be allowed to be used, and the scale and intensity of that use.

Note: photographs of buildings/structures located on the reserve should be considered. Council should also consider including a rating system for buildings/structures.

3.1.3 Requirements where land is not owned by council

The LG Act requires that for community land that is not owned by council, a PoM must:

- a) identify the owner of the land
- b) state whether the land is subject to any trust, estate, interest, dedication, condition, restriction or covenant
- c) state whether the use or management of the land is subject to any condition or restriction imposed by the owner
- d) not contain any provisions inconsistent with anything required to be stated by paragraph (a), (b) or (c).

3.1.4 Requirements when including council-owned land

Where appropriate, council CLMs may include council-owned community land and council-managed Crown land under one PoM. When drafting a PoM that includes both council-owned land and Crown land, councils must ensure the PoM includes:

- a schedule that clearly defines and delineates Crown land from council-owned land
- statements that clearly define what legislation applies to Crown land
- mapping that shows land ownership i.e., Crown reserves, council-owned land.

Council CLMs need to ensure they meet the minimum requirements and comply with the LG Act for council-owned land contained in the PoM with Crown land. For advice on council-owned land, councils should contact the Office of Local Government.

3.1.5 Site specific vs generic PoM

The terms 'generic' and 'site specific' are used in the LG Act to describe a PoM. In most cases, council has the discretion to prepare a site-specific PoM for a single reserve, or a generic PoM that applies to more than one reserve.

The term 'generic' is used for a group of reserves. This means a council can manage similar reserves in a coordinated and consistent way, such as by community land category (e.g., park or general community use), location (e.g., a group of reserves located in a coastal area), or reserves that have similar functions but are geographically separate (i.e., sportsgrounds).

A site-specific PoM may be appropriate to apply to one reserve where the use of the land is complex with multiple categories, or where the land has special considerations, such as for a sporting complex with multiple user groups. This does not prevent council from including common clauses or paragraphs in a site-specific PoM.

The LG Act requires councils to develop a site-specific PoM in instances where the land:

- has been declared as critical habitat or directly affected by a threat abatement plan or a recovery plan under threatened species laws (sections 36A(2) and 36B(3) of the LG Act)
- is the subject of a resolution by the council that declares that land to contain significant natural features (section 36C(2) of the LG Act)
- is the subject of a resolution by the council that declares that land to be of cultural significance (section 36D(2) LG of the Act).

If a site-specific PoM is required for any of the above reasons, there are specific requirements in the LG Act which must be included in the PoM outlined in Table 2 below.

Generic PoMs structured by category

Council CLMs may consider drafting a thematic PoM which is a generic PoM structured by category. A thematic PoM may suit councils where single categories are assigned to the Crown reserves. For example, council may be the appointed CLM for several Sportsgrounds within their LGA. Each of these reserves is wholly categorised as Sportsground. As the reserves have similar functions and management requirements, council may choose to prepare a Sportsground PoM which covers all reserves categorised as Sportsground within their LGA.

A thematic PoM may or may not be appropriate depending upon the unique profiles of reserves within the LGA. Care must be taken to avoid duplication or omission of land in the development of thematic PoM, particularly in land schedules and mapping.

Caravan parks

In September 2022, council CLMs were advised Crown reserves containing caravan parks could be managed as community land and, where appropriate, categorised as General Community Use (see section 36I of the LG Act).

Council CLMs are encouraged to develop site-specific PoM for caravan parks where the caravan park has existing residential tenancies or privately-owned caravans. However, if council CLMs have multiple caravan parks on Crown land across their LGA, these can be combined into a generic PoM for caravan parks.

The PoM must identify any existing residential tenancies or privately-owned caravans, the terms of those occupations, and how the council manages them.

Table 2. Additional requirements for site-specific PoM - natural areas and areas of cultural significance.

Community land comprising the habitat of endangered species
<ul style="list-style-type: none"> The plan must state that the land, or the relevant part, is critical habitat - subject to any decision of the Environment and Heritage Coordinator General under s146 of the <i>Threatened Species Conservation Act 1995</i> (TSC Act) or any decision of the Secretary of the Department of Regional NSW under s220Y of the <i>Fisheries Management Act 1994</i> (FM Act). The land, or the relevant part, must be categorised as a natural area. The plan must identify objectives, performance targets and other matters that: <ul style="list-style-type: none"> take account of the existence of the critical habitat are consistent with the objects of the TSC Act or the FM Act, as the case requires incorporate the core objectives prescribed under s36 of the LG Act in respect of community land categorised as a natural area. The plan must incorporate any matter specified by the relevant Director in relation to the land. <p>Note: The TSC Act has been repealed and superseded by the Biodiversity Conservation Act 2016. However, references to the former legislation remain in the LG Act and are therefore retained in this guideline.</p> <p>DPE's Environment, Energy and Science group advised that recovery plans and threat abatement plans made under the TSC Act were repealed on the commencement of the <i>Biodiversity Conservation Act</i> in 2017. These plans have not been preserved by any savings and transitional arrangement under the <i>Biodiversity Conservation Act</i> or LG Act, meaning pre-existing plans have no legal effect.</p> <p>For this reason, requirements relating to recovery plans and threat abatement plans for local councils preparing PoM under section 36B of the LG Act are now redundant. Councils will be advised if future amendments are made to the LG Act to enable these mechanisms. Importantly, references to recovery plans or threat abatement plans made under the FM Act remain current and therefore continue to be triggers for a site-specific PoM.</p>
Community land comprising the habitat of threatened species
<ul style="list-style-type: none"> The plan must state that the land, or the relevant part, is so affected. The land, or the relevant part, must be categorised as a natural area. The plan must identify objectives, performance targets and other matters that: <ul style="list-style-type: none"> take account of the council's obligations under the recovery plan or threat abatement plan in relation to the land are otherwise consistent with the objects of the TSC Act or the FM Act, as the case requires incorporate the core objectives prescribed under s36 of the LG Act in respect of community land categorised as a natural area. The plan must incorporate any matter specified by the relevant Director in relation to the land.
Community land containing significant natural features (see s36C(3) of the LG Act)
<ul style="list-style-type: none"> The plan must state why the land is declared to contain significant natural features. The land must be categorised as a natural area. Objectives and performance targets for the management of the land must be designed to protect the area and its features.
Culturally significant land (see s36D(3) of the LG Act)
<ul style="list-style-type: none"> The plan must state that the land is declared to be of cultural significance.

- The land must be categorised as an area of cultural significance.
- Objectives and performance targets for the management of the land must be designed to protect the area and its features.
- The plan must incorporate any matter specified by Environment and Heritage Coordinator General in relation to the land.

Note: Clause 112(5) of the Local Government (General) Regulation 2021 states that 'A council must not prepare a draft plan of management that categorises community land as an area of cultural significance on the ground that the land is an area of Aboriginal significance...unless the council has called for and considered any submissions made under this clause by Aboriginal people traditionally associated with the area in which the community land is situated'.

Clause 112 of the regulation contains additional consultation requirements concerning categorisation of land as an area of cultural significance, which should also be considered by councils.

Additionally, section 36DA of the LG Act allows that a council may resolve (at the request of any Aboriginal person traditionally associated with the land concerned or on the council's own initiative) to keep confidential such parts of a draft or adopted PoM to which this section applies as would disclose the nature and location of a place or an item of Aboriginal significance.

3.1.6 Categorisation of Crown reserves

The LG Act requires that community land is to be categorised as one or more of the following categories: natural area, sportsground, park, area of cultural significance, and/or general community use.

Categorisation will determine the core objectives for the land. The core objectives of community land categories can be found in sections 36E-N of the LG Act. In addition, Clause 101(2) of the Local Government (General) Regulation 2021 (LG Reg) requires councils to have regard to the guidelines for the categorisation of community land set out in clauses 102 to 111 of that regulation when preparing a PoM.

For Crown reserves, it is imperative that councils consider these guidelines and core objectives in the context of the gazetted reserve purpose. The categorisation of the reserve as well as any proposed use of the reserve, including any express authorisations, must align with the reserve purpose (see section 4.1.8 of this guideline).

Initial categorisation

The CLM Act requires councils to assign one or more of the community land categories, referred to in section 36 of the LG Act, to all reserves as an initial step, before a PoM is prepared. More than one category may apply to some reserves, and this must be clearly identified by a map or otherwise. In some cases, council CLMs will be advised by the department to assign the initial categorisation in the draft PoM, such as when councils are appointed to manage Crown reserves as CLM after completion of the original initial categorisation.



Photo credit: Jodie Tersteeg

Mapping

The draft PoM must categorise an area – or parts of an area – of community land by reference to one or more of the categories set out in section 36(4) of the LG Act. Clause 113 of the LG Regulation requires a draft PoM to clearly identify the land, or parts of the land, and the separate categories by a map or otherwise.

Clear and accurate mapping is a key component of a PoM, as it allows readers and users to understand where particular categories (and therefore any relevant express authorisations proposed in accordance with the category) apply on the land in question.

Councils must ensure that any maps included in a PoM have a sufficient level of detail to allow the easy identification of category boundaries, important natural features and any existing or proposed infrastructure, such as buildings, roads, and parking areas. Overlaying or including aerial imagery may be used to show the natural and built features on the land.

Council may choose to include a series of maps, or multiple maps, to ensure all relevant and required spatial information is included.

The mapping should also clearly define the area of land within the relevant Crown reserves and easily distinguish between Crown land and council-managed land included in the PoM (i.e., use different coloured boundaries or transparent shading).

Natural area further categories- foreshore, wetland, bushland, watercourse, and escarpment- should be mapped in different colours.

An example of mapping and category colours is provided below. If a reserve has multiple Lot and DPs, council should identify those Lot and DPs in the map also.

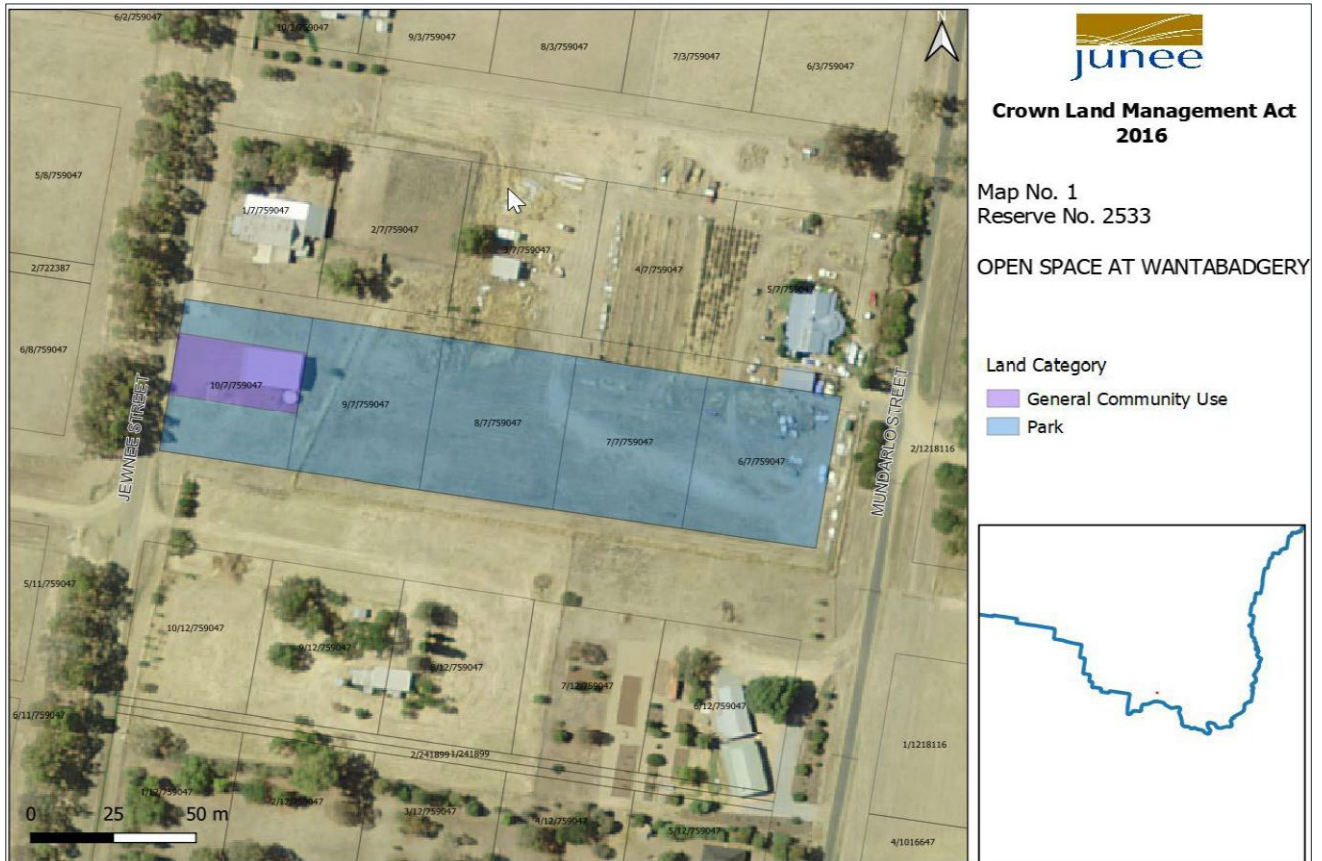


Figure 3. Example of category map in accordance with clause 113 of the LG Regulation (courtesy of Junee Council)

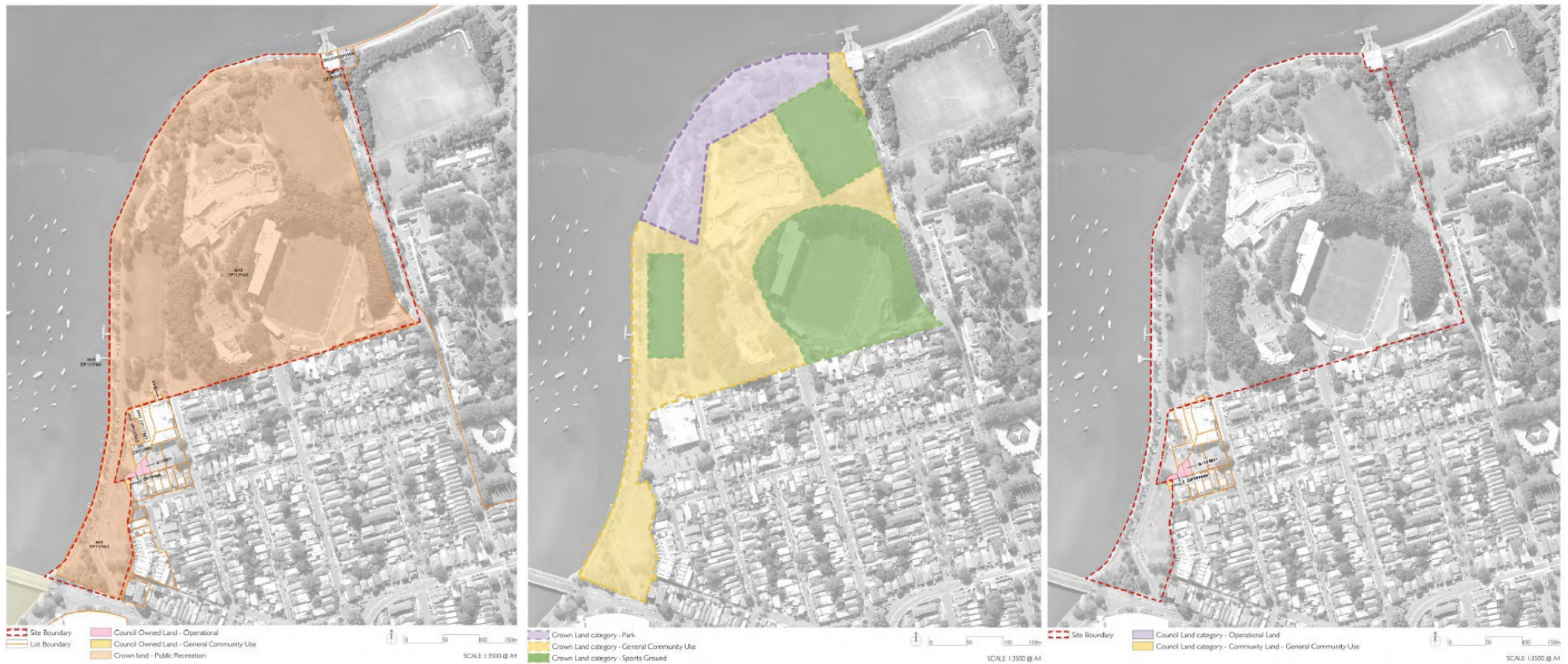


Figure 4. Example of a series of maps by Inner West Council to show a range of spatial information on a Crown reserve, including site boundary, lot/DP, ownership and categories.

Altering the categorisation of Crown reserves

For a PoM covering Crown reserves, the initial category (assigned under section 3.23(2) of the CLM Act) should be applied in a PoM.

However, councils may also wish to alter the initial categorisation in the PoM and can do this in the [Notice of PoM Form](#) when submitting a draft PoM to the department.

Councils need to provide justification for the changes to the initial categorisation when they submit their draft PoM, including their assessment of likely material harm.

The Minister cannot give consent to the adoption of a PoM, under clause 70B of the CLM Regulation, if the alteration in the category is considered likely to materially harm the use of the land for its reserve purpose.

Material Harm

Material harm considerations are set out in section 2.14(3) of the CLM Act, and include:

- the proportion of the area of the land that may be affected by [any proposed lease, licence or other estate allowance provision]
- if the activities to be conducted [under any proposed lease, licence or other estate allowance] will be intermittent, the frequency and duration of the impacts of those activities
- the degree of permanence of likely harm and whether that harm is irreversible
- the current condition of the land
- the geographical, environmental and social context of the land
- any other considerations that may be prescribed by the regulations.

Refer to the [factsheet](#) for further information.

Councils need to consider material harm when:

- seeking Minister's consent to the alteration of a community land category in a Plan of Management – section 3.23(10) of the CLM Act
- seeking Minister's consent for an additional reserve purpose where the proposed activities are not considered consistent, ancillary, or incidental to the existing reserve purpose – section 2.14(2)(b) of the CLM Act
- granting a tenure under section 2.19 of the CLM Act

3.1.7 Permissible uses and development

The PoM authorises the use of the land, including tenures and development on the land. The permissible uses of Crown reserves are required to align with the gazetted reserve purpose and the core objectives of the assigned categorisation.

Under section 36(3A)(b) of the LG Act, a site-specific PoM must:

- i. specify the purposes for which the land, and any such buildings or improvements, will be permitted to be used
- ii. specify the purposes for which any further development of the land will be permitted, whether under lease or licence or otherwise
- iii. describe the scale and intensity of any such permitted use or development.

While outlining the permissible uses is a requirement of a site-specific PoM under the LG Act, it is good practice to include this section in all PoM, whether generic or site-specific.

Any statements about these elements do not need to be long, but will be binding on council once included, so should be well thought out. A statement will apply to the activities of council on the land as well as any other person (for example, a lessee).

A statement of permissible purposes and intensity of use will be closely related to any authorisation of tenure that council includes in a PoM. An authorisation of leasing applies specifically to the use of community land by others apart from council. The statement under this heading and any authorisation should be consistent with each other. For example, in relation to a park, council could state, 'The park will be used in future for general community recreation, with public right of access to all outdoor areas. Council will permit the erection of an amenities block and/or kiosk, if appropriate. Outdoor seating at the kiosk is permitted, provided no more than 20 seats are erected.'

The templates on the [Council CLM webpage](#) provide some helpful examples of the types of permissible uses and developments for each community land category. Council CLMs may wish to use these tables and edit them so that they reflect council's objectives and the gazetted reserve purpose of the Crown land.

Coastal reserves

If the reserve is impacted and subject to a coastal management plan (CMP) under the *Coastal Management Act 2016*, council CLMs should reference the CMP in the Strategic Objectives and Management Framework sections of the PoM.

Council CLMs will also need to include any authorised coastal management development work and relevant activities in the permissible uses/future uses section and express authorisation section (for leases and licences) where applicable.

Any PoM for reserves located in a coastal zone should:

- consider coastal hazard and climate change risks relevant to coastal Crown land
- be consistent with any relevant CMP or, in the absence of a CMP, the objects of the *Coastal Management Act 2016*.

For more information refer to section 22 of the *Coastal Management Act 2016*.

Energy-saving initiatives and infrastructure

Council CLMs are encouraged to consider how their council can best utilise energy-saving initiatives and infrastructure on the Crown land they manage. This might include the installation of electric vehicle charging stations, water tanks, or solar lights/panels. In any case, council CLMs need to authorise the installation and use of these measures on Crown land (generally in the permissible uses/future uses section) and ensure that they align with the assigned community land category and the gazetted reserve purpose.

Approval for certain activities

The LG Act specifies that a PoM should identify activities that require the prior approval of the council before being carried out on the land (section 36(3)). These activities are listed in Part D, section 68 of the LG Act. Council may have also dealt with these approvals more particularly under a local approvals policy. If so, council should refer in a PoM to any local approvals policy in place or include the relevant material in a PoM.

3.1.8 Express authorisation of tenure

The LG Act specifies that any tenure to be issued on a reserve must be authorised in a PoM. This is known as 'express authorisation' (section 46 of the LG Act).

The express authorisation in the PoM allows councils to lawfully issue a tenure on the reserve. If council has not clearly stated the intent to issue tenure on the reserve in the PoM, then the tenure cannot be considered lawfully issued.

As a general rule, express authorisation of leases, licences or other estates should cover the following:

- type of arrangement authorised – that is, council may authorise leases and/or licences and/or other estates
- land or facilities to be covered – that is, council may allow leases and/or licences and/or other estates on all or some of the land and facilities
- purpose for which tenure will be granted – council may choose to allow leasing for community purposes, business purposes, or more limited purposes such as sports or childcare facilities
- proposed term of the tenure – this can be broken down into short-term or long term or specify a term in years.

Any authorisation should be consistent with statements about the permissible future use and development of the land as well as the reserve purpose.

Examples of purposes for which tenure may be granted are provided in the [templates on the Council CLM webpage](#), which you can add to, delete or replace.

More information about express authorisation can be found in [Practice Note No 1 – Public land management](#).

Note: 'Estate' is a broad term and includes many other rights over land that can be granted. The technical legal meaning is found in the *Interpretation Act 1987*, section 21, which states: 'estate includes interest, charge, right, title, claim, demand, lien and encumbrance whether at law or in equity.'

Note: The provisions of sections 46, 46A, 47, 47A, 47AA, 47B, 47C, 47D, 47E and 47F of the LG Act must be closely considered when addressing express authorisation for leases and licenses in a PoM. For example: a council must ensure that leases or licenses exceeding 21 years that require ministerial consent under section 47(8AA) of the LG Act are expressly authorised in the PoM.

Short-term licensing under the LG Act

Council CLMs can authorise short-term licences under section 46(1)(b)(iii) of the LG Act for the specific purposes listed in clause 116 of the LG Regulation. As such, council CLMs will need to include this provision in their express authorisation section of the PoM and consider any restrictions under the LG Regulation.

Short-term licencing under the CLM Act

Section 2.20 of the CLM Act allows council CLMs to issue short term licences (up to 12 months) for the prescribed purposes listed in clause 31 of the CLM Regulation. Should Council wish to continue to use this provision to issue short-term licences, the use of this provision must be expressly authorised in the PoM.

Tendering for leases, licences, and other estates

Section 46A(3) of the LG Act requires a council to tender for leases of community land of more than 5 years, unless the lease is to be granted to a non-profit organisation. Furthermore, a council may choose to nominate other leases that will only be entered into after a tender process. For example, a council may state that leases, licences, and other estates granted for the purposes of X will be granted only after a tender process, in accordance with the LG Act.

Terms of leases, licences and other estates under the LG Act

Requirements for leases, licences and other estates are specified under sections 46-47A of the LG Act. These can be short term or casual. Leases, licences and other estates longer than 5 years are subject to different requirements to shorter tenures. Consent from the Minister for Local Government is required if the lease or licence is over 21 years (up to 30 years) or if one or more objections have been received.

Existing leases, licences and other estates

Council should include a schedule of any existing tenures issued by council over the Crown reserves in the PoM. This schedule should include details of the affected reserve, the type of tenure (lease or licence), tenure start and finish dates and the purpose of the tenure. The PoM must expressly authorise the re-issue of these tenures if Council intends to continue the tenure.

If there are no current tenures issued by Council on the reserves, a statement confirming this should be included.

Easements and compulsory acquisition

Where councils have the power to acquire the land under the LG Act, they should first consider creating an easement by compulsory acquisition under the *Land Acquisition (Just Terms Compensation) Act 1991* (Just Terms).

It is the department's preference for any acquisition of Crown land to be undertaken by compulsory process, by the issue of a Proposed Acquisition Notice (PAN) in accordance with Section 11 of Just Terms to all potential interest holders. This process is undertaken by Crown Lands Acquisition Team: cl.acquisitions@crowmland.nsw.gov.au.

3.1.9 Native title manager advice

Where a PoM includes Crown reserves, councils are required to obtain written advice from a qualified native title manager that the PoM and activities under the PoM comply with provisions of the NT Act.

Section 8.7 of the 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).

In practice, the native title manager advice generated for the PoM could be used as a basis for developing the advice regarding the lease, licence or permit, and any notification procedure could refer to the previous notification or consultation.

A council CLM cannot approve (adopt) a PoM until they have obtained written advice from a qualified native title manager that the PoM complies with any applicable provisions of Commonwealth native title legislation.

The department will not process a draft PoM received from a council unless the council declares that it has considered native title manager advice. A council generally does not need to provide the advice itself to the department. However, the department may request the advice in certain circumstances.

Council must assume native title exists

As the department's Native Title Manager Workbook makes clear, unless the council-managed Crown land in question is 'excluded land' (as defined by the CLM Act), a council must assume that native title exists.

If there are no known native title claims for the land it does not mean that native title has been extinguished. A council will still need native title manager advice to comply with the CLM Act.

Determinations about whether native title has been extinguished are complex and can only be made by the Federal Court.

Validating an act via the NT Act

Any 'act' planned or implemented on Crown land which 'affects' native title holder's rights and interests is considered a future act. The future acts regime in the NT Act enables states (Crown land managers) and territories to validate future acts against the legislation.

Native title managers will most commonly rely on subdivision J to validate acts that are future acts. Subdivision J allows for developments and tenures on reserves that are aligned with the reserve purpose.

With some exceptions, when the state does an act in compliance with the future acts regime the act will be valid; the state will typically have to notify the native title claimants; and the native title holders may, in the future, be entitled to compensation.

Activities that breach the future acts regime could result in legal proceedings to stop the activity and seek damages.

Preparing advice

To assist your native title manager in preparing native title advice, refer to the [Native Title Manager Workbook](#) and the [Native title e-learning module](#).



Step 1: When drafting a PoM councils must ensure:

- the use of the reserve is in line with the reserve purpose
- the minimum requirements for a PoM under the LG Act are met
- the owner of the land is clearly identified
- clear and accurate mapping identifying categorisation of the reserves is included
- the appropriate template is used for site-specific or generic PoM (see templates) or the requirements identified in this guideline are addressed in a PoM that is prepared
- categorisations and express authorisation of tenures align with the reserve purpose
- a qualified native title manager is employed or engaged early in the planning and drafting phase of a PoM to provide advice on the validity of activities under a PoM in line with the NT Act. The most effective way to validate acts under the NT Act is to ensure all activities align with the reserve purpose.

3.1.10 Encroachments

Encroachments are unauthorised structures or uses of Crown land, such as fences from neighbouring properties, dwellings, structures, gardens, car parking, private accesses, and constructed roads.

Council CLMs need to acknowledge the existence of encroachments on Crown land they manage in a PoM. This can be a statement or table that identifies the location of the encroachments and how the council intends to manage them over the period of a PoM, such as referring to any existing council policies on dealing with encroachments, enforcing the removal of unauthorised fences and sheds, or leasing and licensing (where council has a valid native title pathway).

Encroachments need to be considered on a case-by-case basis and may require a lease/licence to be issued by either council or Crown Lands.

3.1.11 Roads

Certain constructed roads do not need to be formally dedicated if they provide access to the Crown reserve they are situated within, i.e., the road provides access to/throughout and parking for the Crown reserve. These roads will likely be captured by the provisions of section 47F(1)(a) of the LG Act, which provides that a road can be located on community land, if that road is necessary to facilitate enjoyment of the area of community land on which the road is to be constructed, and council CLMs will not need to take any action.

However, where roads are not captured by the provisions of section 47F(1)(a) of the LG Act, i.e., the subject road appears to be a through road which is being used as part of the council's wider local road network, councils will need to identify that these areas are constructed roads and state their intentions in a PoM. This might be a short statement noting the existence of the constructed roads and that the council will seek to acquire them under the *Land Acquisition (Just Terms Compensation) Act 1991* and formally dedicate them as public roads under the *Roads Act 1993*.

3.2 STEP 2 – Landowner notification requirements

Section 39 of the LG Act requires that any PoM for a Crown reserve is required to be referred to the department (as owner of the land) in draft form prior to council placing the PoM on public exhibition.

This provides the department (as landowner) with an opportunity to review the draft PoM to ensure its interests and obligations are addressed.

As already noted, the Minister cannot give consent to the alteration of a categorisation if it is considered that the alteration is likely to materially harm the use of the land for its reserve purpose(s). Considerations by the department regarding material harm are set out in section 2.14 of the CLM Act and section 4.1.6 of this document.

All PoM must obtain Minister's consent prior to being adopted by council. Minister's consent can be requested at the same time as landowner notification using the [Notice of PoM Form](#).

3.3 STEP 3 – Community consultation on draft PoM

All PoM must be developed in accordance with the public exhibition requirements of the LG Act.

The LG Act requires undertaking community engagement activities when preparing a PoM, including publicly exhibiting the plan and providing opportunities for the community to comment. This allows the community to be involved and represented in the contents of a plan.

3.3.1 Public exhibition requirements

Section 38 of the LG Act sets out that:

- a council must give public notice of a draft PoM for a period of not less than 28 days
- the public notice must also specify a period of not less than 42 days after the date on which the draft plan is placed on public exhibition during which submissions may be made to the council
- the council must, in accordance with its notice, publicly exhibit the draft plan together with any other matter that it considers appropriate or necessary to better enable the draft plan and its implications to be understood. All documents referred to in a PoM should be displayed at the same time as the draft PoM.

In the case of community land comprising the habitat of endangered species, or which is affected by a threatened species recovery plan or threat abatement plan, the following requirements also apply:

- when public notice is given of a draft plan under section 38, the draft PoM must be sent by the council to the relevant director. The PoM must incorporate any matter specified by the relevant director in relation to the land, or the relevant part.

For the purpose of the abovementioned provisions, relevant director means:

- in relation to the [Threatened Species Conservation Act 1995](#), the Environment and Heritage Coordinator General (noting the transitional arrangements regarding the [Biodiversity Conservation Act 2016](#) referred to in Table 2 of this guideline)

- in the [Fisheries Management Act 1994](#), the Director General of the Department of Primary Industries.

In the case of community land comprising areas of cultural significance the following requirements also apply:

- when public notice is given of the draft plan under section 38, it is a requirement of section 36D(3)(d) that the draft PoM must be sent by council to the Environment and Heritage Coordinator General. The PoM must incorporate any matter specified by the Coordinator General in relation to the land, or the relevant part.

3.3.2 Public hearings

Under clause 70A of the CLM Regulation 2018, councils are no longer required to hold public hearings where the draft PoM would have the effect of categorising or altering the community land categorisation of the Crown land.

3.4 STEP 4 – Adopting a plan of management

Section 3.23(6) of the CLM Act requires a PoM for council-managed Crown reserves be prepared and adopted in accordance with the provisions of Division 2 of Part 2 of Chapter 6 of the LG Act.

In that division of the LG Act, section 40 requires that:

1. After considering all submissions received by it concerning the draft plan of management, the council may decide to amend the draft plan or to adopt it without amendment as the plan of management for the community land concerned.
2. If the council decides to amend the draft plan it must either:
 - a. publicly exhibit the amended draft plan in accordance with the provisions of this Division relating to the public exhibition of draft plans, or
 - b. if it is of the opinion that the amendments are not substantial, adopt the amended draft plan without public exhibition as the plan of management for the community land concerned.
3. If a council adopts an amended plan without public exhibition of the amended draft plan, it must give public notice of that adoption, and of the terms of the amended plan of management, as soon as practicable after the adoption.
4. Whether a plan is placed on public exhibition or public notice without public exhibition, council will require Minister's consent before the adoption of all Plans of Management.

Note: Whether a plan is placed on public exhibition or public notice without public exhibition, council will require Minister's consent before the adoption of all Plans of Management.

If Minister's consent to adopt has been granted prior to public exhibition but there are substantial changes to the PoM following public exhibition, councils must reapply for Minister's consent to adopt the revised PoM in the [Notice of PoM Form](#).

Following Minister's consent under clause 70B of the CLM Regulation 2018, council resolution should note that a PoM is adopted, pursuant to section 40 of the LG Act in accordance with 3.23(6) of the CLM Act.

Additionally, clause 114 of the LG (General) Regulation 2021 must also be adhered to in cases where a council receives any submission concerning the draft PoM that makes any objection to a categorisation of land under the draft PoM, and the council adopts the PoM without amending the categorisation that gave rise to the objection.

In this case, the resolution by which the council adopts the PoM must state the council's reasons for categorising the relevant land in the manner that gave rise to the objection.

Once a PoM has been adopted by council, the council CLM should forward a copy of the adopted PoM, including a copy of the minutes from the Council resolution to the department for record purposes. Copies of adopted PoM should be sent to council.clm@crowland.nsw.gov.au

4 Related documents

- *Local Government Act 1993*
- Local Government (General) Regulation 2021
- *Crown Land Management Act 2016*
- Crown Land Management Regulation 2018
- Practice Note No 1 – Public land management

PoM Checklist

A PoM [Checklist](#) is available on the Council CLM webpage for use when preparing a draft PoM. Councils are encouraged to use this as a final step to ensure minimum requirements of a PoM are met, prior to submitting the draft PoM for review by the department.

IMPORTANT: Ensure the draft PoM is submitted to the department for review and consent prior to public exhibition. Council should conduct a final review of the document to ensure all legislation referenced is currently in force, departmental names are up to date, and spelling, grammar and formatting is correct and consistent.

Note: Councils are no longer required to hold a public hearing about proposed plans of management (under section 40A of the LG Act) where the proposed plan would alter the land categorisations assigned. This exemption applies to all PoM for Crown land managed by councils.