

Granting leases and licences on Crown reserves

Introduction

Under the *Crown Land Management Act 2016* (CLM Act), Council Crown Land Managers (CLMs) can generally manage Crown land under the provisions of the *Local Government Act 1993* (LG Act). This function includes granting leases and licences.

Council CLMs must develop Plans of Management (PoMs) for Crown reserves classified as community land. PoMs are required before there is any change in the nature and use of the Crown reserve. Section 44 of the LG Act provides that “*pending the adoption of a plan of management for community land, the nature and use of the land must not be changed*”. As such, Council CLMs are encouraged to progress with the development of their draft PoMs and prioritise significant reserves with greater community value within their local government area.

This is because PoMs are important tools to:

- Focus attention on the essential nature of reserves and how they can best be managed
- Ensure transparency in council decision-making and provide opportunities for community participation in decisions about the management of reserves
- Establish the current and future management of reserves, to maximise the economic, social, and environmental benefits to the local community and broader public
- Set out the core aims and objectives for the management of reserves
- Identify the circumstances in which leases and licences can be entered into.

Under the LG Act (s.46), leases and licences can be granted on land that is classified as community land in accordance with that section and that includes where there is express authorisation in an adopted Plan of Management (PoM).

Part 1 – general information about leasing and licensing*

*[Part 2](#) deals with granting a lease or licence when there is no adopted PoM.

Lease and licence templates

Leases generally enable exclusive use of land for a specified term and purpose (for example, a bowling green for 15 years). Licences generally enable non-exclusive use for a specified term and purpose (for example, the use of a hall at a showground on the first weekend of every month for six months).

To assist Council CLMs in their management of Crown land, the Department of Planning and Environment (“department”) has developed standard lease and licence templates. These templates should be used as a basis for preparing leasing and licensing agreements and adapted to meet the requirements of the specific type of lease or licence proposed to be granted. Lease and licence templates for Council CLMs are available on the [Council Crown Land Manager](#) web page.

What must a Council CLM consider when granting a lease or licence on Crown land?

Before granting a lease or licence on Crown land, Council CLMs should consider the following:

- Compliance with relevant legislation, Crown land management rules, policies, regulations, guidelines and fact sheets
- Whether an adopted PoM authorises the granting of a lease or licence, and whether the proposed lease or licence complies with any tenure provisions under the LG Act
- If a lease or licence is not authorised under an adopted PoM, whether the lease or licence is authorised to be granted under the provisions in clause 70(2) of the *Crown Land Management Regulation 2018* (CLM Regulation)
- Compatibility of the lease or licence with the reserve purpose (other than short term licences for prescribed purposes). If you are not sure that a proposed lease or licence is consistent with the reserve purpose, contact the department for advice.
- The impact of granting the lease or licence on native title rights and interests
- The impact of granting the lease or licence on Aboriginal land rights
- The environmental impacts of the proposed activity permitted by a lease or a licence and the ability of the land to support the activity
- Whether the term of the tenure is appropriate and complies with the requirements of the CLM Regulation and the LG Act
- Impacts from proposed tenure to the current and future use of the land.
- Development consents or any other consents required under *the Environmental Planning and Assessment Act 1979* or any other legislation
- Provisions for conducting rent reviews (at least every three years) and provisions for consumer price index rent increases annually
- Compliance with any community engagement requirements set out in the CLM Act or the LG Act, where applicable.

What if my reserve isn’t classified as community land?

If a Council CLM has obtained the written consent of the Minister to manage the land as if it were operational land under s.3.22(3) of the CLM Act, the Council CLM can grant leases and licences over the reserve in accordance with the provisions of the LG Act for operational land.

If the reserve is under devolved management, s.48 of the LG Act applies. This land cannot be classified or categorised under the LG Act and there is no requirement for the preparation and adoption of a PoM.

Councils are not the CLM for reserves devolved to them and are therefore unable to grant any tenures over devolved land. Councils can request to be appointed as CLM for any reserves devolved to them under s.48 of the LG Act by emailing reserves@crowland.nsw.gov.au.

Can council CLMs grant tenures under sections 2.19 and 2.20 of the *Crown Land Management Act 2016*?

Council CLMs must manage Crown land in accordance with the LG Act and for Council CLMs to grant tenures under sections 2.19 or 2.20 of the CLM Act, the PoM must expressly authorise these.

Sections 2.19 of the CLM Act allows tenures for secondary interests to be granted and 2.20 of the CLM Act allows short-term licences to be granted, over dedicated or reserved Crown land for a purpose that is not limited by the dedicated or reserve purpose. However, certain requirements need to be met and they are set out in the table below.

Secondary interests can be granted under s 2.19 of the CLM Act if the Council CLM is satisfied that the use of the land under the secondary interest:	Short-term licences may be granted under s 2.20 of the CLM Act:
<ol style="list-style-type: none">1. Would be in the public interest and2. Would not be likely to materially harm its use for the purposes for which it is dedicated or reserved.	<ol style="list-style-type: none">1. For a prescribed purpose set out in clause 31 of the CLM Regulation.2. Subject to conditions specified by the Council CLM and prescribed conditions in the CLM Regulation (if any).3. That do not create a landlord/tenant relationship.4. For a maximum of one year (including any further term available under an option or holding over provision).

Community engagement requirements

Council CLMs must comply with the community engagement requirements under the LG Act for Crown reserves. Council CLMs cannot sell or dispose of Crown land without written consent from the Minister. Public consultation and notification requirements set out in the LG Act must be complied with when granting tenures, to ensure appropriate community consultation standards are met.

Aboriginal interests and Crown land

Crown land has significant spiritual, social, cultural and economic importance to the Aboriginal people of NSW. The CLM Act recognises and supports Aboriginal rights, interests and involvement in Crown land.

When considering a lease or licence, Council CLMs must comply with any applicable requirements of the Commonwealth *Native Title Act 1993* and have regard for any existing claims over the land under the NSW *Aboriginal Land Rights Act 1983*. At a minimum, Council CLMs must consider the matters listed below.

Native Title

Councils are required to employ or engage a native title manager under the CLM Act. Council CLMs must obtain written advice from a qualified native title manager that any proposed lease or licence arrangements comply with any applicable provisions of the Commonwealth *Native Title Act 1993*. This includes any lease or licence granted under the CLM Regulation or the LG Act.

Council CLMs should be aware that actions harming any native title rights can result in liabilities in the form of payment of compensation. Further information on native title rights and interests and the role of native title managers is available on the department's [website](#).

Aboriginal Land Rights

If land is subject to an undetermined Aboriginal land claim under the NSW *Aboriginal Land Rights Act 1983*, tenure should not be granted if:

- The use of the land permitted by the proposed tenure could prevent the land being transferred to an Aboriginal Land Council ("ALC") in the event that the undetermined claim is granted or
- The proposed tenure could impact or change the physical/environmental condition of the land, unless the Council CLM or tenure applicant has either written consent from the claimant ALC to use the land as per the proposed tenure, or a written statement from the ALC confirming it has withdrawn its claim or amended the land claim to exclude the proposed tenure area.

Although a request can be made to an ALC with an existing land claim for consent to use the land as per the proposed tenure, the registered ALC claimant is under no obligation to grant consent. Council CLMs can contact the department for assistance in identifying any current land claims affecting Crown reserves.

Part 2 – leasing and licensing under clause 70

What leases and licences can councils grant on Crown reserves without an adopted Plan of Management?

Prior to the adoption of a PoM for Crown land, Council CLMs can grant leases and licences in certain circumstances, as set out in clause 70 of the CLM Regulation. As this is intended as a transitional measure the circumstances are generally limited to leases or licences for existing purposes or for which the Minister provides consent. It is not intended that clause 70 be used as an ongoing substitute for the adoption of a PoM that may expressly authorise the granting of leases and licences for the reserve.

Table 1 below summarises lease and licence options for Council CLMs without a PoM under clause 70(2) of the CLM Regulation.

Type	Term	Minister's consent	Applying condition	Applicable CLM Regulation 2018
Short-term licence under section 2.20 of the CLM Act	Up to 12 months	Not required	A licence must be consistent with any of the prescribed purposes set out in clause 31(1) of CLM Regulation.	Clause 70(2)(a), and clause 31(1) (a-y)
Lease or licence renewal	Up to 21 years	Not required	A lease or licence must have been in effect prior to 1 July 2018, and the proposed tenure cannot add permitted uses that were not in the existing lease or licence.	Clause 70(2)(b)
New lease or licence for an existing permitted use	Up to 21 years	Not required	A lease or licence must have been in effect prior to 1 July 2018, and the proposed tenure cannot add permitted uses that were not in the previous lease or licence.	Clause 70(2)(c)
New lease or licence for emergency services, not-for-profit or community group	Up to 21 years	Required	The lessee or licensee must be an emergency services organisation*, a not-for-profit organisation or community group.	Clause 70(2)(d)
New lease (for other lessees)	Up to 5 years	Required	Negotiations between the council and the lessee regarding the granting of the lease were, in the opinion of the Minister, substantially completed prior to 1 July 2018.	Clause 70(2)(e)
New lease or licence authorised under a plan of management adopted by the Minister administering the Crown Lands Act 1989 prior to 1 July 2018	Up to 21 years	Not required	The lease or licence could, in the opinion of the Minister, have been granted before 1 July 2018 under a plan of management in force before that date.	Clause 70(2)(f)

* meeting the definition of an emergency services organisation within the *State Emergency Services and Rescue Management Act 1989*

What if the proposed tenure scenario is not covered in Table 1?

Unless a proposed lease or licence complies with the provisions of clause 70(2) of the CLM Regulation, Council CLMs will need to have an adopted PoM that complies with the requirements of the LG Act and authorises the granting of leases and licences, before entering into a lease or a licence over a Crown reserve.

Section 44 of the LG Act states that “*pending the adoption of a plan of management for community land, the nature and use of the land must not be changed*”. This means that, if none

of the scenarios in Table 1 apply, Council CLMs must have an adopted PoM and comply with the requirements of section 46 through to 47D of the LG Act for the granting of any lease or licence. This may include resolving to apply for and receive the approval of the Minister for Local Government before entering into the particular tenure.

What is the effect of granting a lease or licence without an adopted Plan of Management?

Prior to the adoption of a PoM for dedicated or reserved Crown land or the land being classified as operational land with the Minister's consent, Council CLMs can grant leases and licences, in certain circumstances, as set out in clause 70(2)(a)-(f) of the CLM Regulation. The limitations relating to leasing and licensing in s.3.22 of the CLM Act are in effect 'turned off' if the proposed lease or licence falls within the circumstances set out in clause 70(2)(a)-(f) of the CLM Regulation.

Therefore, the provisions of the LG Act relating to leasing and licensing referred to in s.3.22 of the CLM Act will not apply. For example, clause 47 of the LG Act will not apply and a Council CLM is not required to give public notice of the proposed lease or licence nor obtain the consent of the Minister administering the LG Act in the event of an objection.

Although clause 70(2)(a)-(f) of the CLM Regulation provides that the Council CLM is exempt from the operation of s.3.22 of the CLM Act in respect of the granting or renewal of leases or licences, s.3.22 applies in all other respects. Therefore, Council CLMs must manage the land as if it were community land under the LG Act unless when granting or renewing leases or licences under clause 70(2)(a)-(f) of the CLM Regulation.

The only exceptions are where the Crown reserve is managed by a council as devolved land under s.48 of the LG Act, or the Minister has consented to it being classified as operational land. This means councils must categorise the land and prepare a PoM as soon as possible. The nature and use of the reserve must not be changed pending the adoption of a PoM.

Clause 70 only applies until either:

- The council adopts its first PoM for the land for the purposes of section 3.23 of the CLM Act or
- The land is classified as operational land with the Minister's consent under section 3.22 of the CLM Act.

Example scenarios

The following tenure scenarios are common examples of leases and licences granted without an adopted PoM.

Scenario 1: new lease, following an expired lease in the absence of an adopted PoM

A lease with a permitted use of a kiosk was in effect over reserved Crown land prior to the commencement of the CLM Act on 1 July 2018. The lease expired in February 2020 with no option of renewal. Council wanted to enter into a new lease commencing February 2020 with no new permitted uses.

Tenure outcome

Under clause 70(2)(c) of the CLM Regulation, a Council CLM is authorised to enter into a new lease from February 2020 for a term up to 21 years, because an existing lease was in place prior to the commencement of the CLM Act and there are no additional permitted uses of the premises.

Scenario 2: lease extension/renewal in the absence of an adopted PoM

In 2016, a Council CLM issued a Request for Offer for a lease over a parcel of reserved Crown land. The successful applicant entered into a five-year lease which commenced on 1 January 2018, and expires on 31 December 2022. The Council CLM has been contacted by the tenant wishing to extend the current lease.

Tenure outcome

A Council CLM cannot extend an existing lease under the transitional arrangements. However, the tenant has the option to surrender the existing lease after which the Council CLM may issue a new lease under the CLM Regulation clause 70(2)(c) for a maximum of 21 years, provided there are no additional permitted uses of the premises.

Scenario 3: short term licence in the absence of an adopted PoM

A Council CLM wishes to grant a licence for a short-term market to operate on a parcel of reserved Crown land under its management.

Tenure outcome

Under clause 70(2)(a) of the CLM Regulation, a Council CLM may grant a short-term licence over the Crown reserve, provided the licence is for a purpose prescribed under clause 31 of the CLM Regulation (of which market is a prescribed purpose).

Scenario 4: lease negotiations occurred prior to 1 July 2018 and in the absence of an adopted PoM

Negotiations for a lease over a parcel of reserved Crown land took place, and were substantially completed, prior to commencement of the CLM Act on 1 July 2018. Council would now like to grant a lease as per the negotiations.

Tenure outcome

Under clause 70(2)(e) of the CLM Regulation, the Council CLM can grant a new lease (with Minister's consent) over the Crown reserve for a term not exceeding the maximum term (five years in this case), as there is evidence that negotiations for the lease were substantially completed before 1 July 2018.

Council CLMs would need to provide evidence satisfactory to the Minister to demonstrate that the negotiations were substantially completed. This may include evidence of a council resolution or information documenting the agreement.

Scenario 5: new lease or licence under an existing Crown Land PoM

A council manages a coastal caravan and camping park under a PoM that was adopted by the Minister administering the Crown Lands Act 1989 in January of 2018. The adopted PoM authorised leasing of a tennis facility, and this lease was yet to be executed.

Tenure outcome

As the granting of a lease for the tennis facility was authorised under a PoM adopted prior to July 2018, the lease can be granted by Council for up to 21 years under clause 70(2)(f) of the CLM Regulation, without the consent of the Minister administering the CLM Act.

Scenario 6: new lease for an emergency service facility

A Council CLM is approached by a local Rural Fire Service brigade requesting to lease a small Crown reserve for emergency vehicle storage for four years.

Tenure outcome

As the proposed tenant is an emergency services provider, under clause 70(2)(d) of the CLM Regulation, the Council CLM is authorised to grant the lease if it has the consent of the Minister administering the CLM Act.

Scenario 7: new lease for Surf Life Saving Club

A Council CLM is approached by Surf Life Saving NSW requesting a new lease over a Crown reserve for 20 years.

Tenure outcome

As the proposed tenant is an emergency services organisation, under clause 70(2)(d) of the CLM Regulation, the Council CLM is authorised to grant the lease with the consent of the Minister administering the CLM Act.

Contact us

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For more information, please get in touch with the Council Crown Lands Management team at:

PO Box 2155
DANGAR NSW 2309

Tel: 1300 886 235

Email: council.clm@crowmland.nsw.gov.au

Web: reservemanager.crowmland.nsw.gov.au

Image: Broken Hill NSW, courtesy of Destination NSW.

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