

Introduction

Under section 3.23 of the *Crown Land Management Act 2016* (CLM Act), council Crown land managers must assign one or more community land categories to Crown land as soon as practicable after becoming the manager.

The community land categories are referred to in section 36 of the *Local Government Act 1993* (LG Act). The council must give written notice of initial categorisation to the Minister for approval.

A list of reserves for which council is appointed Crown land manager can be accessed via the [Council Crown Land Reserves Manager Portal](#).

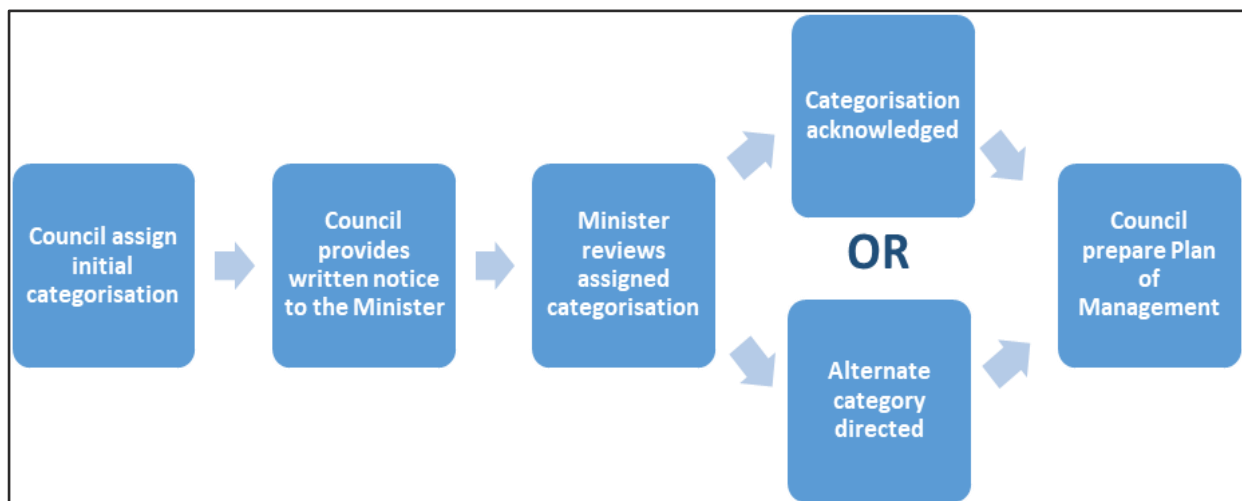


Figure 1. Process for assigning initial categorisation of council managed Crown land

Assigning initial categorisation

Where Crown land is classified as 'community land', councils must assign one or more of the following categories referred to in section 36 of the LG Act.

The categories described in the LG Act for community land include:

- Natural Area (sub-category: watercourse, bushland, escarpment, wetland and foreshore)
- Sportsground
- Park
- Area of Cultural Significance
- General Community Use.

Councils should assign categories that most closely relate to the purposes for which the land is dedicated or reserved. Assigned categories should not materially harm the use of the land for any of the existing reserve purposes. Initial categorisation of reserves cannot be assigned to cover any proposed or future use. Any change to the categorisation to support a future use can be applied at the plan of management stage.

When considering the use and management of community land, council managers should refer to the core objectives for each category prescribed by the LG Act, as well as the guidelines for the categorisation of community land prescribed by [Part 4, Division 1, Local Government \(General\) Regulation 2005](#)¹.

¹ www.legislation.nsw.gov.au/#/view/regulation/2005/487/part4/div1

Councils must assign a category or categories to a reserve that the council considers most closely related to the reserve purposes of the land. The following should be considered when assigning categories under the LG Act:

- **Reserve purpose** — apply categories that ensure the land is used for the purpose for which it was originally set aside by its dedication or reservation.
- **Current/existing use of the reserve** — the initial categorisation cannot be based on proposed or future use. Any change to the categorisation to support a future use should be altered via a plan of management.
- **Characteristics of the land** — councils should consider the characteristics of the land when assigning a category of 'Natural Area' or 'Area of Cultural Significance'.
- **Material harm** — councils should consider whether the management of the reserve under the assigned category is likely to materially harm the use of the land for its existing reserve purposes.

What do councils need to consider when assessing the land for material harm?

The following considerations are relevant to the question of whether the management of the land by reference to the assigned category is likely to materially harm its use for an existing purpose:

- a. the proportion of the area of the land that may be affected by the additional purpose,
- b. if the activities to be conducted for the additional purpose will be intermittent, the frequency and duration of the impacts of those activities,
- c. the degree of permanence of likely harm and whether that harm is irreversible,
- d. the current condition of the land,
- e. the geographical, environmental and social context of the land,
- f. any other considerations that may be prescribed by the regulations.

Categorisation and native title

Under the *Native Title Act 1993* (Cwlth) (NT Act), any act² that occurs on land or waters that affects native title rights and interests must be validated in order to lawfully affect those rights and interests.

As Crown land managers, councils must obtain Native Title Manager advice under Part 8 of the CLM Act before dealing with Crown land that they manage. This is to ensure the activity is lawful under the NT Act. To validate an act over a piece of land, the council must review the subdivisions outlined in Part 1 Division 3 of the NT Act. In particular, Subdivision J can validate an act if it is done in accordance with the purpose for which the land was reserved or dedicated.

This reinforces the importance for council to assign a categorisation that most closely matches the original reservation or dedication purpose. Land management activities not carried out in accordance with the NT Act may infringe upon native title rights and the council may lose the legal right to continue those activities and may be required to pay damages.

For example, applying the broad category of 'General Community Use' over a reserve may be applicable when no other category applies, but any acts that occur on that land must remain consistent with the reserve purpose, regardless of what is permitted under the objectives of the LG Act. More information on the native title requirements for council Crown land managers is available on the department's website.

See [Native Title and Aboriginal interests](#)³.

² An 'act' is an activity that occurs on or otherwise affects land or waters. Acts may be either physical activities, such as the construction of a road, or the passage of legislation, or the creation of rights and interest in land such as issuing a lease

³ <https://reservemanager.crownland.nsw.gov.au/using-crown-reserves/leases-and-licences2/native-title,-aboriginal-interests-and-granting-tenure>

Giving written notice of initial assignment of categories

As soon as practicable, council must notify the Minister in writing of the proposed assigned initial categorisation over the land. Advice to the Minister must be provided in the approved [categorisation form](#) and clearly set out the:

- applicable Crown land (reserve number)
- the dedication or reserve purpose
- the assigned categorisation
- detailed justification (see examples below).

Justification of assigned categorisation

Councils must give the department a detailed justification to support the assigned categorisation, particularly where the management of the land under that categorisation may be likely to materially harm the use of the land for its existing reserve purposes.

Justification should include:

- details about the existing development on the reserve
- how the reserve is being used
- any characteristics of the land that supports the categorisation
- consideration of the factors for material harm.

This information can be included in the form or attached as a separate document to the form.

The information supports the department's assessment that the categorisation is most closely aligned with the reserve purpose. It will also help the department identify if the land is being used consistently with its reserve purpose and potential solutions that council could consider addressing the issue such as seeking to add an additional reserve purpose.

Multiple use reserves

The CLM Act encourages multiple uses for reserves, consistent with the reserve purpose. To enable effective management of the reserve under the LG Act, council may apply multiple categories to the reserve when these categories are most closely aligned to the reserve or dedication purpose.

If council wishes to apply multiple categorisations to a reserve, it must give a detailed explanation that clearly identifies the areas for which each category will be assigned, with a map delineating the categories over the reserve, as required by clause 113 of the Local Government (General) Regulation 2005.

Examples

Scenario 1: Single-category reserve

Council assigned initial categorisation to Crown land with the purpose of 'Public Recreation'. The reserve is predominantly managed and used for organised sporting activities, so council has assigned the category as 'Sportsground'. An example to justify the assigned initial categorisation is provided below.

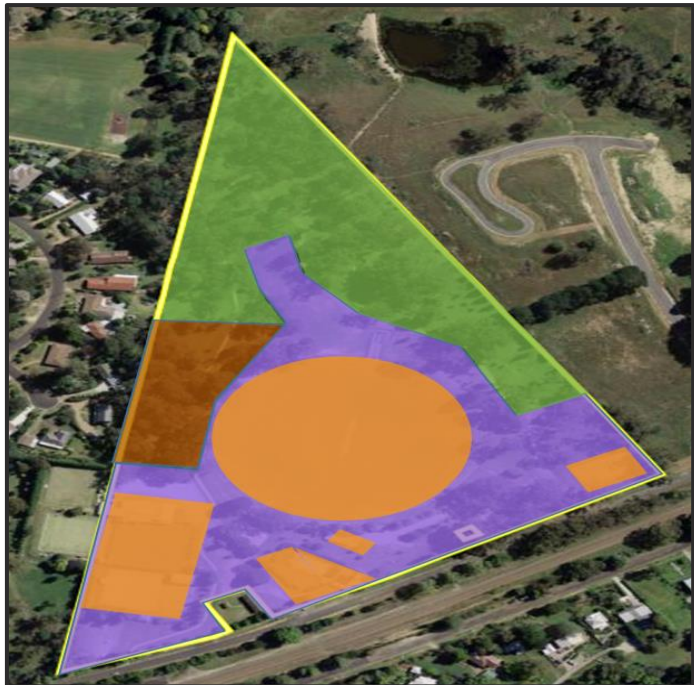
Example: Assigned category 'Sportsground'

Council justification	Map
Reserve has a long-established use as a multi-purpose sportsground. Facilities located on the reserve include a sports oval and tennis courts, lighting, spectator seating and amenities block. The category of Sportsground is compatible with reserve purpose of public recreation and not likely to materially harm the existing reserve purpose.	A map is not required as a single category has been assigned across the entire reserve.

Scenario 2: Multiple-category reserve - based on characteristics of the land

Council assigned initial categorisation to Crown land with the reserve purpose being 'Public Recreation'. The reserve is managed for multiple uses and has land characteristics that apply to different categories under the LG Act. In this example, multiple categories would be assigned over the reserve. Multiple categories on the reserve must be clearly identified on a map, including a key to easily identify the assigned categories and sufficient information to justify the assigned categories, as demonstrated in the example below.






Example: Assigned multiple categories

Council justification	Map
<p>Natural area (sub-category-bushland) applies to area of natural vegetation which provides habitat shelter and feed, protection of remnant vegetation, movement corridor.</p> <p>Sportsground - applies to the area of the reserve used for structured active recreation and sports. Facilities include a rugby league field, hockey pitch, netball and tennis courts, bowling club, swimming pool and associated amenities</p> <p>General community use - applies to area where regular community events are held including, local markets, seasonal festivals and kiosks used for the sporting events.</p> <p>Area of cultural significance - the area is known to have Aboriginal artefacts and associated potential archaeological deposits.</p>	<p>Map clearly indicates the categories across a reserve.</p> 

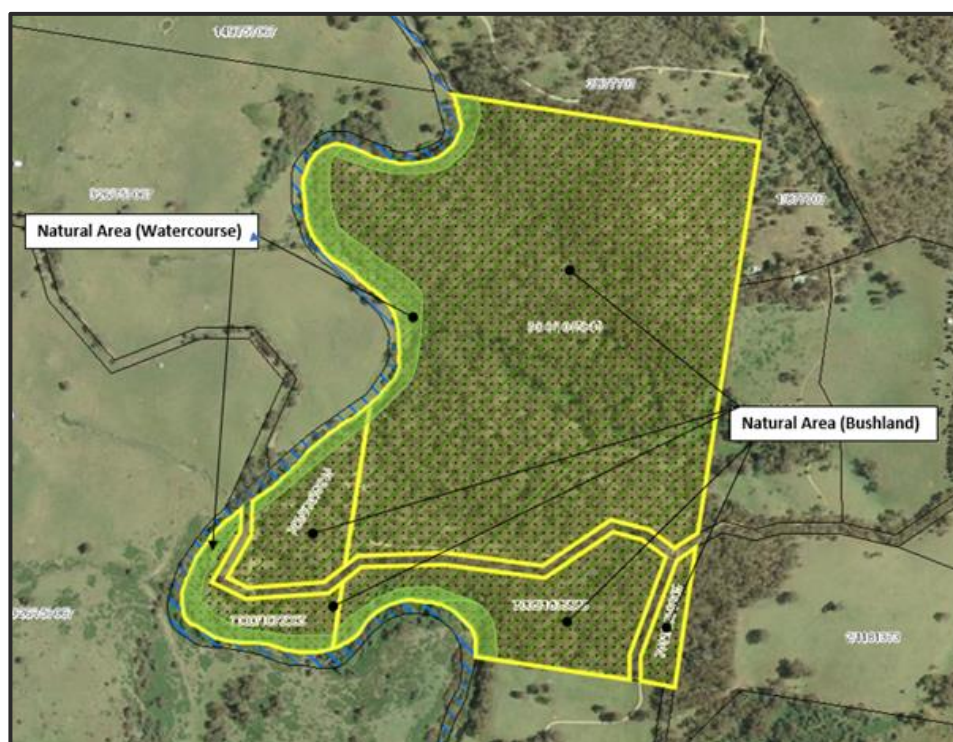
Mapping of categorisations

The Local Government (General) Regulation 2005 (Clause 113) requires that a draft plan of management that categorises an area of community land with more than one category must clearly identify the land or parts of the land and the separate categories across the reserve.

Councils must provide clear and accurate mapping identifying categorisation of the reserves at both the categorisation stage and included in draft Plans of Management. If there are multiple categorisations across a reserve, a map delineating the categories with different colours must be provided. The mapping should clearly identify the categories over the reserve. An example of colours to use is provided below:

KEY	
	Sportsground
	General Community Use
	Park
	Area of Cultural Significance
	Natural Area - sub-categories: bushland, wetland, escarpment, watercourse, foreshore

If a reserve is categorised as 'Natural Area', the sub-categories of watercourse, bushland, escarpment, wetland, and/or foreshore for 'Natural Area' should also be clearly indicated within the maps. See example below:



Minister's response

The Minister may require a council manager to change an assigned categorisation if they consider:

- that the category is not the most closely related to the purpose/s for which the land is dedicated or reserved, or
- managing the land under the assigned category is likely to materially harm the use of the land for any of the purposes for which it is dedicated or reserved.

This will be provided in the form of a Direction for an alternative categorisation that is in keeping with the reserve purpose and is aligned with the categorisation requirements of the LG Act.

When the department receives the application from council for the categorisations of Crown reserves, the assigned categorisation will be considered against the above criteria.

In its response, the department, as delegate of the Minister, will:

- acknowledge the application and accept the category assigned, or
- Issue a direction requiring council to change the assigned categorisation in accordance with section 3.23 (5) of the CLM Act. A council Crown land manager must comply with a direction to change the assigned categorisation.

Plan of management

Once council managers have received the department's acceptance of assigned categorisation, or received the department's direction about categorisation assignment, council managers may proceed to prepare a draft Plan of Management to meet the requirements of the LG Act plan of management. Council managers are encouraged to refer to and use the templates and resources for the preparation of LG Act plans of management for Crown land at www.reservemanager.crownland.nsw.gov.au.

All draft plans of management must be provided to the department for review before councils can display for public exhibition to meet the requirements of the LG Act. Councils must also provide to the department (as landowner) any plan of management that has been amended in response to the Public Exhibition process before it can be formally adopted.

Contact us

For more information please contact your local Crown lands office, or alternatively contact us at:

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PO Box 2185
DANGAR NSW 2309

Tel: 1300 886 235

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

Web: www.reservemanager.crowmland.nsw.gov.au

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