Deemed Land Owners Consent

This fact sheet provides information on the use of s.2.23 deemed land owners consent under the *Crown Land Management Act 2016* for Crown land managers and holders of a lease or licence.

What is land owners consent?

The *Environmental Planning and Assessment Act 1979* requires any person seeking to carry out specified development to obtain the consent of the land owner prior to lodging a development application.

For the purposes of seeking land owners consent to the lodging of a development application, the Minister for Water, Property and Housing is the owner of Crown land. This includes where Crown land is managed by a Crown land manager. The Department of Planning, Industry and Environment has authority to grant land owners consent on behalf of the Minister administering the *Crown Land Management Act 2016* (CLM Act).

What is deemed land owners consent?

Section 2.23 of the *Crown Land Management Act 2016* (CLM Act) has introduced kinds of development where the Minister has taken to have given land owners consent on behalf of the Crown (deemed consent) for Crown Land Managers (CLMs) and holders of a lease or licence (Tenure Holders) to make a development application (DA) under Part 4 of the *Environmental Planning and Assessment Act 1979.*

When considering land owners consent requirements, a CLM or Tenure Holder should determine if the proposed development falls within the kinds of development set out in s2.23(2) CLM Act (see **Table 1** below). If a development type clearly fits within those listed, land owners consent is taken to have been given (deemed). If the CLM or Tenure Holder is uncertain whether the development type would fall within the kinds of development for which land owners consent is taken to be given, a CLM or Tenure Holder should seek guidance from the department.

It is important to remember when considering whether the development type is one which s2.23 applies, CLMs or Tenure Holders must have regard for the reserve purpose and/or purpose of the tenure. CLM are also required to comply with the *Native Title Act 1993* (Cth) and Part 8 of the CLM Act. If the land is subject to an Aboriginal Land Claim, then CLMs should contact the department for advice.

When is land owners consent required?

For any development type not covered in **Table 1**, a CLM or Tenure Holder will require land owners consent from the department to lodge a DA. It is recommended that if you are uncertain whether your proposed development type would be consistent with the kinds of the development set out in s2.23(2), contact the department to discuss.

Application of section 2.23 (2)(c)

Section 2.23(2)(c) applies when a person makes a change from one land use to another form of land use on a property which, for the purposes of the *Environmental Planning and Assessment Act 1979*, that person has undertaken development. A change in land use includes a change in the use of a building. Section 2.23(2)(c) can only be applied in the following circumstances;

- on dedicated or reserved Crown land,
- where the CLM or Tenure Holder is the applicant and

- for CLMs, for a use of the land that is consistent with the reserve or dedication purpose, or
- for Tenure Holders, for a use of the land permissible under their licence or lease,

Note: it is not appropriate to rely on this subsection for any of the kinds of development listed in the other subsections of s2.23. This means that section 2.23 (2) (c) does not apply to any building work associated with a change in use.

Deemed land owners consent does not apply to the subdivision of land, or the carrying out of development of a kind excluded by the regulations (see s2.23(3)).

The following are examples of activities applicable for deemed land owners consent:

- outdoor dining,
- food trucks,
- rainwater tanks,
- playgrounds,
- garbage bin structures,
- access ramps,
- barbecues and outdoor cooking structures,
- bollards,
- carports,
- charity and recycling bins,
- stock holding yards (not used for sale),
- hot water systems,
- shade structures (canvas, fabric, mesh),
- temporary stages, tents, booths for community events,
- temporary markets.

Table 1: Deemed Land Owners Consent – kinds of Development under s2.23(2)

Deemed consent provision	Development types
s2.23(2) (a)	The repair, maintenance, restoration or renovation of an existing building on the land; as long as it does not; (i) alter the footprint of the building by adding or removing more than one square metre (or any other area that may be prescribed by the regulations), (ii) alter the existing building height by adding or removing one or more storeys, (iii) involve excavation of the land
s2.23(2) (b)	Erection, repair, maintenance or replacement of fencing
s2.23(2) (c)	The use of the land for any of the following purposes: (i) a purpose for which the land may be used under the CLM Act, (ii) a purpose for which a lease or licence has been granted under the CLM Act,
s2.23(2) (d)	Erection, repair, maintenance or replacement of signage
s2.23(2) (e)	Erection, repair, maintenance or replacement of temporary structures

Deemed consent provision	Development types
s2.23(2) (f)	Installation, repair, maintenance or replacement of services
s2.23(2) (g)	Erection, repair, maintenance or replacement of any of the following on the land: (i) a building or other structure on the land permitted under the lease, (ii) a toilet block, (iii) a structure for the protection of the environment
s2.23(2) (h)	The carrying out on the land of any other development of a kind prescribed by the regulations or permitted under a plan of management for the land.

Examples

Scenario 1: Access Road

A CLM wants to construct a sealed access road through a reserve to enable access to an adjoining waste management facility. A DA is required for the development (access and waste management facility). The Crown land is reserved for a golf course.

Does deemed consent apply?

No, this development scenario could not be considered within s2.23 for the following reasons;

- The proposed road is not consistent with the reserve purpose, as its principle aim of the proposed road is to provide access to the waste management facility.
- The development is not a kind of development listed in s2.23

The CLM therefore would need to seek land owners consent from the department to lodge a DA for this development.

Scenario 2: Skate Park

A CLM is the manager of a reserve for public recreation. Community consultation has resulted in support for the construction of a skate park. A DA is required for the development.

Does deemed consent apply?

No, whilst a skate park is in keeping with the reserve purpose the construction of a skate park is outside the scope of the kinds of developments contemplated in s2.23 of the CLM Act.

Scenario 3: Farmers Markets

A CLM manages a showground, reserved as public recreation and showground. The CLM wants to hold a regular farmers market at the showground; the markets will have temporary stages, tents and booths. A DA is required for this development.

Does deemed consent apply?

Yes, if the development is within the reserve purpose (a CLM should consult with the department to make this decision) and proposed structures are temporary, the Minister is taken to have given written consent on behalf of the Crown to lodge a DA.

Scenario 4: Sports Club Extension

A rugby club manages a sports ground and clubhouse under a lease, reserved for public recreation. The rugby club wants to add a second storey to an existing building at the sports ground. A DA is required for this development.

Does deemed consent apply?

No, as altering the existing building height by adding one or more storeys is not a kind of development for which deemed landowners consent applies. The rugby club would therefore need to seek land owners consent from the Department to lodge a DA for this development activity.

Scenario 5: End of Season Event

A CLM manages an event space on their showground, with a reserve purpose of public recreation. The CLM has been approached by a local sports club to hire out the event space to hold their annual end of season awards night at the venue.

Does deemed consent apply?

Yes, under s2.23(2)(c) the showground can be used for any public recreation purpose.

Contact us

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

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