

Department of Planning, Housing and Infrastructure


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# Guidelines -classification of Crown land managed by council Crown land managers

Division 3.4 of the *Crown Land Management Act 2016*

January 2024



# Acknowledgement of Country

The Department of Planning, Housing and Infrastructure 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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# Overview

Crown reserves managed by a council as appointed Crown land manager must be categorised as either community land or operational land under the Local Government Act 1993 (LG Act). Councils are required to develop and adopt a Plan of Management (PoM) for Crown reserves managed as community land under both the Crown Land Management Act 2016 (CLM Act) and the LG Act.

Councils can seek Minister's consent under the CLM Act to manage a Crown reserve as operational land when appropriate. Reserves classified as operational land do not require a PoM. These guidelines include instructions for council Crown land managers seeking Ministerial consent to classify and manage Crown land as if it were operational land under the LG Act, in accordance with Section 3.22 (4)(b) of the CLM Act.

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## Introduction

The CLM Act authorises councils that are appointed Crown land manager for dedicated or reserved Crown land (council Crown land managers), to manage Crown land as if it were community land under the LG Act, unless the Minister has given written consent to classify the land as operational.

If the council receives Ministerial consent to classify the land as operational, the council Crown land manager has all the functions under the LG Act in relation to operational land. Council Crown land managers cannot sell the land without Ministerial consent or do anything that contravenes:

- any condition of the council's appointment instrument as a Crown land manager
- the Crown Land Management Regulation 2018
- any applicable Crown land management rule
- any applicable PoM adopted under Division 3.6 of the CLM Act (if there is no requirement for a PoM under the LG Act).

The Department of Planning, Housing and Infrastructure (the department) will only issue Ministerial consent to manage land as operational (in accordance with Section 3.22 (5) of the CLM Act) where a council Crown land manager can demonstrate that:

- a) the land does not fall within any of the categories for community land under the LG Act*
- b) the land could not continue to be used and dealt with as it currently can if it were required to be used and dealt with as community land.*

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## When classification of operational land may or may not be appropriate

The department will not give Ministerial consent for Crown land to be classified as operational land where council fails to demonstrate that the land falls outside the category of community land, or that its current use is unable to be managed as community land.

### Examples of land which may be considered operational land

Land that is generally considered to be operational land:

- is not required to be categorised as a natural area under Section 36A, 36B or 36C of the LG Act
- does not meet the guidelines under clauses 102–105 of the [Local Government \(General\) Regulation 2005](#) (LG Regulation) for categorisation as a natural area, a sportsground, a park, general community use or an area of cultural significance
- does not need to be made available for use, for any purpose for which community land may be used, either by the public at large or by specific sections of the public.

Some Crown land may be used in ways that are inconsistent with the categories of community land referred to in the LG Act, for example, a council works depot. The use does not fall within any of the categories for community land because the public must be excluded for their safety, and should be managed as operational land.

### Examples of land which are not considered to be operational land

Reserves which are used and accessible to the public, for example for public recreation, are not considered to be operational land and would fall under one of the assigned categories of community land. These reserves must be managed as community land to allow the public to have a say in how the land is managed for their benefit.

Crown land or uses of Crown land that may fall within categories of community land could include:

- |                                     |                               |
|-------------------------------------|-------------------------------|
| • Public recreation reserves        | • Libraries                   |
| • Caravan parks                     | • Cemeteries and crematoria   |
| • Community centres/facilities      | • Racecourses and showgrounds |
| • Land comprising of a natural area | • Childcare centres           |

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# How to request operational land classification

## 1. Seek Ministerial consent to classify land as operational

Requests for Ministerial consent to manage Crown land as if it were operational land must be lodged with the department using the [operational land classification request form](#). Requests for consent should be accompanied by justification as to why the land should be classified and managed as operational, including consideration of the statutory criteria prescribed by Section 3.23(5), that the land:

- does not fall within any of the [categories for community land under the LG Act](#)
- could not continue to be used and dealt with as it currently can, if it were required to be used and dealt with as community land.

Failure to appropriately justify why Crown land should be classified as operational land is likely to result in refusal to give Ministerial consent.

## 2. The department considers the application for Ministerial consent

The department will consider all applications for Ministerial consent to manage land as operational, taking into account, the requirements of Section 3.22(5) of the CLM Act. In considering any application, the department may request further information to be provided by the council. If this information is not provided in the prescribed timeframe, the application will be refused.

## 3. The department notifies council of the outcome

The department will notify council in writing of the outcome of any request for Ministerial consent to manage land as operational land.

## If consent is given

If the department is satisfied that land meets the requirements of Section 3.22 (5) of the CLM Act, it will provide written notice to council, giving Ministerial consent to classify the land as operational. Unless and until written consent is given, council must continue to manage the land as community land and adhere to the applicable requirements of the CLM Act.

If consent is given, council Crown land managers are not required to adhere to the procedural classification requirements in Chapter 6, Part 2 Division 1 of the LG Act. Written consent under the CLM Act provides authorisation for the council to manage land as operational from that point forward. Classification or reclassification of Crown land managed by councils as if it were public land does not need to be made by a local environmental plan or a resolution of the council in these cases.

## If consent is refused

If the department is not satisfied that land meets the requirements of Section 3.22(5) of the CLM Act, it will provide written notice to the council that Ministerial consent to classify the land as operational has been refused, and that the land must continue to be managed as community land.

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## Considerations for land classified as operational

### Issuing tenure on operational land

Tenure on operational land can be issued in line with the provisions for operational land under the LG Act. Council must also consider:

- the reserve purpose under the CLM Act and
- identify a valid pathway under the future acts regime of the *Native Title Act 1993*.

Any tenure over Crown land in place immediately prior to the repeal of the *Crown Lands Act 1989* (CL Act) will continue in effect for its original term.

### Ministerial powers

The Minister administering the CLM Act can:

- impose restrictions or conditions on the exercise of functions by council managers through an appointment instrument
- make Crown land management rules for, or with respect to, the management of Crown land by council managers.

### Plans of Management

- A PoM currently in place under Division 6 of the CL Act continues until an LG Act PoM is adopted for the land. If the land is classified as operational, then the plan continues as if it were adopted under Division 3.6 of the CLM Act. This means that the council must not do anything that contravenes the PoM.
- The Minister administering the CLM Act can also direct a council Crown land manager who has been given consent to manage land as operational to prepare a new PoM for the land in accordance with Division 3.6 of the CLM Act.

## Council records

- Council should keep a record of written advice that Ministerial consent has been given to manage land as operational.
- Council must also ensure that the details of any Crown land under its control are accounted for in its land register as required by section 53 of the LG Act.

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## Contact

For more information, please contact the Reserve Programs team:

Phone: 1300 886 235

Email: [council.clm@crowland.nsw.gov.au](mailto:council.clm@crowland.nsw.gov.au)

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## Legislation

- *Local Government Act 1993*
- *Local Government (General) Regulation 2005*
- *Crown Land Management Act 2016*