



# Developing plans of management for community land Crown reserves

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Guideline for Council Crown land managers

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## i. Overview

This guideline is designed to assist NSW 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 describes the process that councils should follow in developing and adopting PoM and provides a series of templates to support councils to prepare PoM.

The guideline and attachments are not intended to be an exhaustive or complete guide to preparing PoM.

## Scope

These guidelines provide general guidance to councils relating to the development of PoM for Crown land categorised as community land.

The information contained in this document and the accompanying templates only relates to Crown reserves managed by councils as Crown land managers under the provisions of the CLM Act. While the accompanying templates are 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 continue to refer to [Practice Note No 1 – Public land management](#) for broader guidance on plans of management for community land under the LG Act.

## Terminology

Unless otherwise specified, any reference in these guidelines to ‘the Minister’ should be taken to mean the minister responsible for administering the CLM Act. At the time of writing, the administration of the CLM Act is jointly shared between two ministers detailed below, based on geographical areas.

Minister	Crown land decision responsibility area: *
Minister for Planning and Public Spaces	Greater Sydney region
Minister for Water, Property and Housing	All New South Wales excluding the Greater Sydney region

\*As defined by the [Administrative Arrangements Order April 2019](#)

Unless otherwise specified, any reference to ‘the department’ means the Department of Planning, Industry and Environment (DPIE).

## ii. About this version

Version 3 replaces the version published in December 2020. Changes have been made to reflect legislative changes between the editions.

## iii. Assistance

Note: Council Crown land managers should read these guidelines before seeking assistance.

Phone: 1300 886 235

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

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## 2 Introduction

The *Crown Land Management Act 2016* (CLM Act) authorises local councils that have been appointed to manage dedicated or reserved Crown land (council managers) to manage that land as if it were public land under the *Local Government Act 1993* (LG Act). Under the LG Act, public land is required to be classified as either operational land or community land. A plan of management (PoM) must be adopted by council for all community land.

The CLM Act provides council managers with the opportunity to manage Crown land with other public land as defined under the LG Act. This means both greater autonomy and greater responsibilities for council managers. Most Crown reserves managed by council managers will be classified as community land under the LG Act and require a PoM (section 3.23(6) of the CLM Act). Council managers can implement PoM to manage their entire land portfolios under one streamlined regime, reducing duplication, and removing some administrative complexity.

Amendments to the Crown Land Management Regulation 2018, that came into effect on 4 June 2021, remove the requirement for councils to complete Plans of Management by 1 July 2021. This change provides councils greater flexibility in the development of Plans of Management for Crown reserves.

All community land managed by a council and used by the community must have a Plan of Management in place under the *Crown Land Management Act 2016* and the *Local Government Act 1993* as soon as practicable. Plans of Management ensure that Crown land is lawfully used and occupied, which is an essential part of the role of all council managers in managing Crown reserves.

### 2.1 The role of a plan of management (PoM) in managing Crown reserves

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

PoM are also 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) the NSW *Aboriginal Land Rights Act 1983* (ALR Act). We discuss this further in section 2.3, 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 any PoM to provide vision and relevance for the next 5–10 years, to provide certainty to council and the community about how the reserve will be used.



**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.**

## 3 Considerations when preparing a plan of management

### 3.1 Who should be involved?

It is important when developing PoM that it is a collective effort across all areas of council and not left to one person. Early consultation across the council provides a more considered approach to management of land and ensures all interests are included in the development of the PoM. Key functions across council that should be included are property, finance and planning.

In addition, native title manager engagement and native title considerations should start from the beginning of drafting, even though the written advice is not formally required until the PoM is ready for adoption. Early engagement of the native title manager in the process will ensure that activities and uses under the PoM have been considered in line with the NT Act.

### 3.2 Reserve purpose

The purpose for which the land was dedicated or reserved when gazetted is fundamental to the management of Crown reserves (Figure 1).

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 2.3](#)). 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.

Information about the reserve purposes for Crown reserves in your LGA can be found in the [Crown Land Manager Reserve Portal](#).

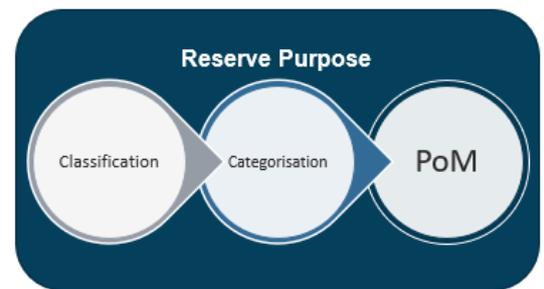


Figure 1. Outline of the three steps that must be completed to manage Crown reserves under the LG Act. The reserve purpose is the key guiding consideration for each of these steps.



**When preparing the plan of management, Council must:**

- identify the reserve purpose in the land description
- align the community land categorisation of the reserve with the reserve purpose
- ensure all proposed development and use is consistent with the reserve purpose or has no greater impact.

**The most effective way to validate acts under the NT Act is to ensure all activities align with the reserve purpose.**

## 3.3 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 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 risk management mitigation measures.

### 3.3.1 Native Title Act

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](http://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 to the land and water. Under the provisions of the NT Act, the Federal Court can determine whether native title exists or has been extinguished and compensation for any loss, diminution, impairment or other effect of an act on native title rights and interests.

All Crown land in NSW can be subject to a native title claim under the NT Act, unless those interests and rights have been extinguished or the Crown land is considered to be 'excluded land'.

#### What is 'excluded land'?

Under section 8 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.

In order to prepare a PoM, councils are required to employ or engage a qualified native title manager to provide advice. 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.

### 3.3.2 Aboriginal Land Rights

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

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 established, the land will be transferred to the claimant Aboriginal Land Council as freehold land.

Unlike native title, there are no strict compliance requirements with the legislation but there is risk to manage. In terms of councils preparing their PoM to comply with the CLM Act, an ALC will not prevent preparation or adoption of PoM. However, councils need to consider the potential outcome of a successful claim and the possibility of a liability incurred by the agency undertaking or authorising that dealing or works.

When preparing a PoM, councils should ensure use of the reserve is in line with the 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 or tenures authorised by the PoM should not go ahead if:

- the proposed activity could prevent the land being transferred to an ALC claimant in the event that an undetermined claim is granted
- the proposed activity could impact or change the physical/environmental condition of the land, unless:
  - a) the council manager has obtained written consent from the claimant Aboriginal Land Council to carry out the proposed work or activity, and/or
  - b) the council manager 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
- the proposed activity is a lease to be registered on title unless the council manager has obtained written consent from the claimant Aboriginal Land Council

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

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



#### When developing 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 reserve purpose**
- **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.**

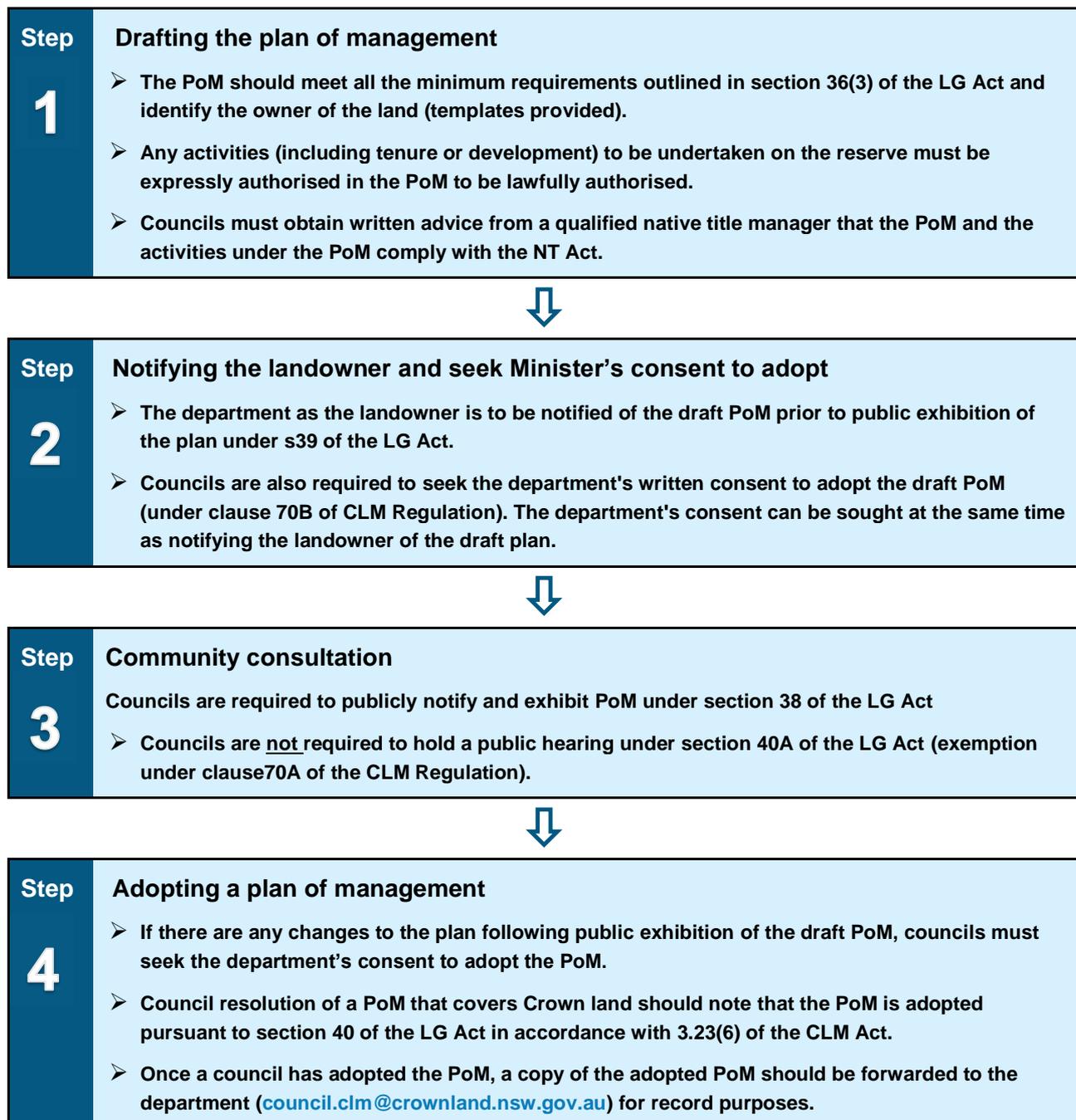
## 4 Preparing a plan of management

Section 3.23(6) of the CLM Act requires council managers to 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.

Plans of management for the land are to be prepared and adopted in accordance with the provisions of Division 2 of Part 2 of Chapter 6 of the LG Act (see [section 3.4](#) for further info). In addition, the CLM Act defines additional requirements which must be included in the PoM.

Council managers may amend existing PoM (i.e. adopted under the *Crown Lands Act 1989*) so that they apply 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 for amended PoM (including the requirement to obtain written advice from a native title manager).

The following sections provide information about how to prepare a draft PoM. There are four key steps to follow when preparing and adopting the first PoM for Crown reserves.



## 4.1 STEP 1 – Drafting the plan of management

This section provides detailed information about the key requirements of a PoM. This information should form the basis of your plan. A checklist of requirements has been developed for reference when preparing the PoM in [Annexure 1](#).

To further assist councils in drafting the plan of management, the department has developed a series of [templates](#) that councils can use to start their PoM.

### 4.1.1 Minimum requirements for plans of management

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

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

### 4.1.2 Requirements where land is not owned by council

The LG Act requires that where the council controls but does not own land (as is the case with all council-managed Crown reserves), 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).

### 4.1.3 Specific vs generic plans of management

Council has the discretion in most cases to prepare a site-specific PoM for a single reserve, or a generic PoM that applies to more than one reserve.

Generic plans will be appropriate in many cases – for example, in dealing with children’s playgrounds or other pieces of land that contain similar facilities with similar management issues. Natural areas may not be so appropriate for generic plans given that there may be issues unique to each piece of land based on the character of the land, surrounding development, community expectations and so on. This does not prevent council from including common clauses or paragraphs in site-specific PoM.

However, generic PoM **cannot** be made for land that:

- 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 plan 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 1 on the next page.



Archaeological survey on a Crown reserve. Community land of cultural significance needs a site-specific PoM. *Photo credit: Kay Oxley*

**Table 1. Additional requirements for site-specific plans of management relating to natural areas and areas of cultural significance**

Community land comprising the habitat of endangered species
<ul style="list-style-type: none"> <li>• The plan must state that the land, or the relevant part, is critical habitat - subject to any decision of the Coordinator General of DPIE - Environment, Energy and Science group 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).</li> <li>• The land, or the relevant part, must be categorised as a natural area.</li> <li>• The plan must identify objectives, performance targets and other matters that: <ul style="list-style-type: none"> <li>– take account of the existence of the critical habitat</li> <li>– are consistent with the objects of the TSC Act or the FM Act, as the case requires</li> <li>– incorporate the core objectives prescribed under s36 of the LG Act in respect of community land categorised as a natural area.</li> </ul> </li> <li>• The plan must incorporate any matter specified by the relevant Director in relation to the land.</li> </ul> <p><b>Note:</b> The TSC Act has been repealed and superseded by the <a href="#">Biodiversity Conservation Act 2016</a>. However, references to the former legislation remain in the LG Act and are therefore retained in this guideline.</p> <p>DPIE's Environment, Energy and Science group advises 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.</p> <p>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"> <li>• The plan must state that the land, or the relevant part, is so affected.</li> <li>• The land, or the relevant part, must be categorised as a natural area.</li> <li>• The plan must identify objectives, performance targets and other matters that: <ul style="list-style-type: none"> <li>– take account of the council's obligations under the recovery plan or threat abatement plan in relation to the land</li> <li>– are otherwise consistent with the objects of the TSC Act or the FM Act, as the case requires</li> <li>– incorporate the core objectives prescribed under s36 of the LG Act in respect of community land categorised as a natural area.</li> </ul> </li> <li>• The plan must incorporate any matter specified by the relevant Director in relation to the land.</li> </ul>
Community land containing significant natural features (see s36C(3) of the LG Act)
<ul style="list-style-type: none"> <li>• The plan must state why the land is declared to contain significant natural features.</li> <li>• The land must be categorised as a natural area.</li> <li>• Objectives and performance targets for the management of the land must be designed to protect the area and its features.</li> </ul>
Culturally significant land (see s36D(3) of the LG Act)
<ul style="list-style-type: none"> <li>• The plan must state that the land is declared to be of cultural significance.</li> <li>• The land must be categorised as an area of cultural significance.</li> <li>• Objectives and performance targets for the management of the land must be designed to protect the area and its features.</li> <li>• The plan must incorporate any matter specified by Coordinator General of DPIE - Environment, Energy and Science group in relation to the land.</li> </ul> <p><b>Note:</b> Clause 112(5) of the Local Government (General) Regulation 2005 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'.</p> <p>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.</p> <p>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.</p>

#### 4.1.4 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 2005 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 draft plan of management.

For Crown reserves, it is imperative that councils consider these guidelines and core objectives in the context of the 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 2.2](#) of this guideline).

#### Initial categorisation

The CLM Act requires councils to assign one or more categories of community land referred to in section 36 of the LG Act to all reserves as an initial step, before PoM are prepared.



More than one category may apply to some reserves and must be clearly identified by map or otherwise. *Photo credit: Jodie Tersteeg*

#### Mapping

The Local Government (General) Regulation 2005 (Clause 113) requires a draft PoM that categorises an area – or parts of an area – of community land, in more than one category, must 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 map included in a PoM has 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. An example of category colours to use in maps is provided in the key below:

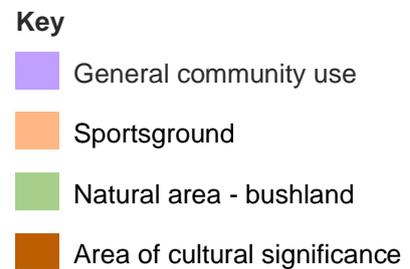
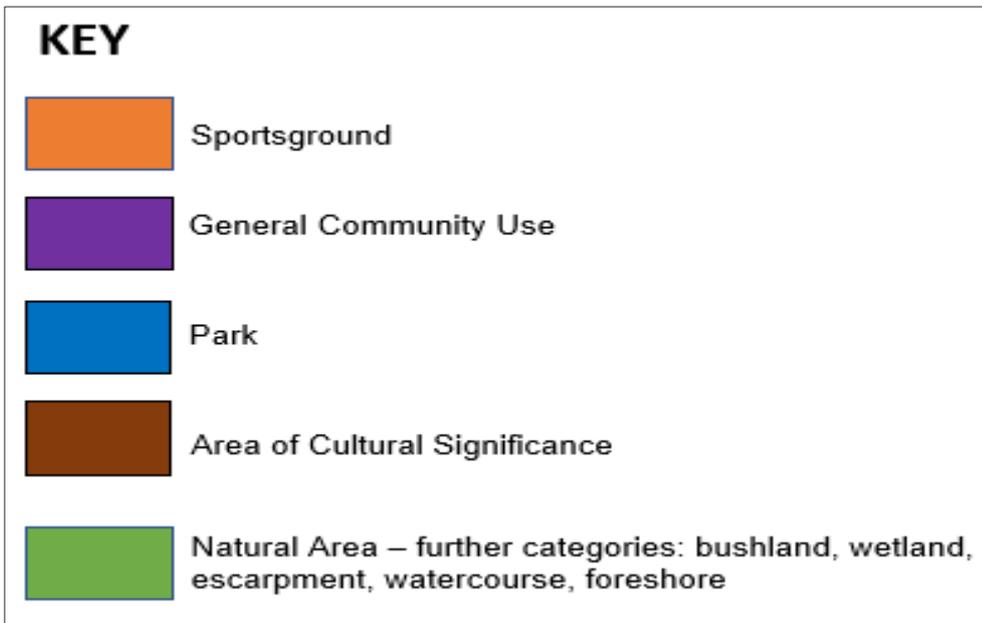


Figure 2. Example of category map under clause 113 of the LG regulations

### Altering the categorisation of Crown reserves

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

However, councils may also wish to alter the initial categorisation in the PoM. Councils may do this when informing the department as the landowner under section 39 of the LG Act before giving public notice and when applying for written Minister’s consent to adopt the plan under clause 70B of the CLM Regulation 2018. The Minister cannot give consent to the adoption of the plan under clause 70B of the CLM Regulation if the alteration is considered likely to materially harm the use of the land for its reserve purpose.

## What constitutes material harm?

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

- a) the proportion of the area of the land that may be affected by [any proposed lease, licence or other estate allowance provision]
- b) 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
- 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.

## Permissible uses

Section 36(3A)(b) of the LG Act requires that 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.

Any statements about these elements do not need to be long, but will be binding on council once included, so any statement 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, under a lease).

The permissible uses of Crown reserves are required to align both with the reserve purpose and the core objectives of the assigned categorisation.

A statement of permissible purposes and intensity of use will be closely related to any authorisation of tenure that council includes in a plan. 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.'

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

## 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 the PoM to any local approvals policy in place or include the relevant material in the PoM.

### 4.1.5 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 council 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:

- 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 a statement required in site-specific PoM about the permissible future development of the land as well as the reserve purpose.

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

More information about express authorisation can be found in *Practice Note No. 1 – Public Land Management*, which can be downloaded from [www.olg.nsw.gov.au/strengthening-local-government/supporting-and-advising-councils/practice-notes-and-guidelines](http://www.olg.nsw.gov.au/strengthening-local-government/supporting-and-advising-councils/practice-notes-and-guidelines)

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.

### Easements and compulsory acquisition

From time-to-time councils need to access Crown land for the purposes of providing essential public services, such as the provision of town water supplies, sewer systems and stormwater drainage, or to permit an adjoining land owner to connect to an existing council or other utility facility. The LG Act gives councils the powers to do this for a number of different kinds of work, without going through detailed consent processes.

Where ongoing access works are required on Crown reserves, the CLM Act requires councils ask the department to create an easement for access. When assessing easements, the department needs to consider several factors including whether the purpose of the easement is consistent with the reserve purpose. The proposals must also meet the relevant provisions of the NT Act and the ALR Act where the land is subject to an undetermined Aboriginal land claim.

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, that is, by the issue of a Proposed Acquisition Notice (PAN) in accordance with Section 11 of Just Terms to all potential interest holders.

### **Short-term licensing restrictions under the LG (General) Regulation 2005**

There are specific limitations on short-term licensing under Clause 116 of the Local Government (General) Regulation 2005 and councils should take these into consideration for express authorisation under 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 five years, unless the lease is to be granted to a non-profit organisation. In addition, 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.

#### **4.1.6 Native title manager advice**

Where the 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 Crown land manager 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 attests 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.

Note: In cases where a PoM does not allow dealings under section 8.7(a)–(c) of the CLM Act, written confirmation of this should be provided by a native title manager. This confirmation should accompany any notice made to the department (using forms A or B).

### **Assume native title exists and do not seek to determine extinguishment of native title**

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 Native Title 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 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, please see the Native Title Manager Workbook ([industry.nsw.gov.au/lands/what-we-do/our-work/native-title](http://industry.nsw.gov.au/lands/what-we-do/our-work/native-title)) and the e-learning module: [nativetitlemanager.crownland.nsw.gov.au/#/menu/5ed442497af56b79f60cafe6](http://nativetitlemanager.crownland.nsw.gov.au/#/menu/5ed442497af56b79f60cafe6).



#### Step 1: When drafting PoM councils must ensure:

- the use of the reserve is in line with the reserve purpose
- the minimum requirements for 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 the 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 the PoM to provide advice on the validity of activities under the 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.

## 4.1.7 Templates

The department has developed 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 are intended to provide NSW councils with a comprehensive starting point for developing PoM for Crown Reserves. However, they are not mandatory documents and council discretion is advised in tailoring them to local circumstances.

For example, there may be situations where a detailed, site-specific PoM is appropriate due to extensive community interest or the unique features of a Reserve. Similarly, councils must give careful consideration as to the activities and uses of a Reserve that are expressly authorised. Further contextual information is provided in the relevant template.

**Table 2. Plan of management templates and descriptions**

<b>Template 1 – Generic plan of management for all reserves</b>
<p>This PoM template is designed to cover all categories of land defined under section 36 of the LG Act that can be included in a generic PoM – that is, parks, sportsgrounds, general community use and natural areas.</p> <p>This template is detailed and is designed to fulfil the minimum requirements for a generic PoM under the LG Act. It is likely to be of most benefit to councils with limited resources to create their own PoM, and/or to councils that do not have complex management issues for their various community lands.</p>
<b>Template 2 – Generic plan of management for community land, structured by category</b>
<p>Some councils prefer to structure their generic PoM so that each category of land – parks, sportsgrounds, natural areas and general community use – is considered as a separate group. This approach is used in Template 2 and the contextual information is generally considered in more detail than in Template 1 and can be inserted by council.</p>
<b>Template 3 – Site specific Crown reserve plan of management outline</b>
<p>Some types of community land cannot be included in a generic plan of management (see <a href="#">3.13 Specific vs generic plans of management</a>). These include areas of land:</p> <ul style="list-style-type: none"> <li>• that have been identified to be of Aboriginal, historical or cultural significance</li> <li>• comprising the habitat of threatened or endangered species</li> <li>• with significant natural features or land that provides a wildlife corridor.</li> </ul> <p>These types of land require site-specific PoM that more appropriately establish and set out ongoing development and management than a generic PoM.</p> <p>Site specific PoM should be used for reserves such as a sportsground with a heritage grandstand of state historical significance. When land in other categories (such as parks and sportsgrounds) under a council's care is identified as requiring a more detailed management regime than a generic PoM can provide, the council is to address these requirements by preparing a site-specific plan of management.</p>

## 4.2 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 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 with regard to material harm are set out in section 2.14 of the CLM Act, and include:

- a) the proportion of the area of the land that may be affected by [any proposed lease, licence or other estate allowance provision]
- b) 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
- c) the degree of permanence of likely harm and in particular 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.

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 [Written Notification of Plan\(s\) of Management Form](#).

## 4.3 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 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.

### 4.3.1 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.

Additionally, 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 apply:

- When public notice is given of the draft plan under section 38, the draft PoM must be sent (or a copy 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.

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

- in relation to the *Threatened Species Conservation Act 1995*, the Coordinator General of DPIE - Environment, Energy and Science group (noting the transitional arrangements regarding the *Biodiversity Conservation Act 2016* referred to in Table 1 of this guideline)
- in the *Fisheries Management Act 1994*, the Director General of the Department of Primary Industries.

### 4.3.2 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 categorisation of the community Crown land.

## 4.4 STEP 4 – Adopting a plan of management

Section 3.23(6) of the CLM Act requires that 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: If there are any changes to the PoM following public exhibition, councils **must** seek the Minister's consent to adopt the PoM. Consent can be requested using the [Written Notification of Plan\(s\) of Management 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 2005 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 the PoM has been adopted by council, the council manager should forward a copy of the adopted PoM to the department for record purposes.

Note: The resolution should also be carefully worded so as to authorise an appropriate council officer to make the application, using the relevant form, on behalf of the council.

All copies of adopted PoM should be sent to [council.clm@crowmland.nsw.gov.au](mailto:council.clm@crowmland.nsw.gov.au)

## 5 Related documents

- *Local Government Act 1993*
- Local Government (General) Regulation 2005
- *Crown Land Management Act 2016*
- Crown Land Management Regulation 2018
- Practice Note No 1 – Public land management



<p><b>A PoM applying to just one area of community land describes the following?</b></p> <ul style="list-style-type: none"> <li>• The condition of the land, and of any buildings or other improvements on the land</li> <li>• The use of the land and any such buildings or improvements as at that date, including:             <ul style="list-style-type: none"> <li>○ the purposes for which the land, and any such buildings or improvements, will be permitted to be used</li> <li>○ the purposes for which any further development of the land will be permitted, whether under lease or licence or otherwise</li> <li>○ the scale and intensity of any such permitted use or development.</li> </ul> </li> </ul>	<input type="checkbox"/>
<p>NATIVE TITLE MANAGER REVIEW</p> <p><b>Qualified Native Title Manager has provided advice on the validity of activities under the PoM in line with the NT Act?</b></p>	<input type="checkbox"/>
<p>REFERRING POM TO CROWN LANDS</p> <p><b>Request for Minister’s consent to adopt plan of management form completed and signed?</b></p>	<input type="checkbox"/>