

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 issuing leases and licences.

Council CLMs must develop Plans of Management (PoMs) for Crown reserves classified as community land. PoMs are required if 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 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 issued on land that is classified as community land where there is expressed authorisation in an adopted Plan of Management (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, Industry and Environment (the 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 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
- If the lease or licence is authorised under provisions in clause 70(2) of the Crown Land Management Regulation 2018 (CLM Regulation)
- If a lease or licence is not authorised under the CLM Regulation, whether an adopted PoM authorises the lease or licence, and whether the proposed lease or licence complies with any tenure provisions under the LG Act
- 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.
- Consistency of the lease or licence with any existing PoM adopted by the department¹
- The impact of granting the lease or licence on Native Title
- The impact of granting the lease or licence on any existing Aboriginal Land Claims
- The environmental impacts of the proposed activity 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 or 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.

Can councils grant a lease or licence without a Plan of Management in place?

Prior to the adoption of a PoM for Crown land, councils can issue some leases and licences, in limited circumstances, as set out in clause 70(2) of the CLM Regulation.

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

Table 1 below summarises lease and licence options for Council CLMs under clause 70(2) of the CLM Regulation.

¹ See Clause 37A of Schedule 7 in the *Crown Land Management Act 2016*

Table 1: Summary of lease and licence options for Council CLMs without a Plan of Management

Type	Term	Ministers consent	Applying condition	Applicable CLM Regulation 2018
Short-term licence	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 31(1) (a-w)
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 additional purposes that were not in the existing lease.	Clause 70(2)(b)
New lease or licence for an existing purpose	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 additional purposes that were not in the previous lease.	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 types of organisations)	Up to 5 years	Required	Negotiations between council and lessee 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 department 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.	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 in place, before entering into any tenure arrangement 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*'. Subsequently, if none of the scenarios in Table 1 apply, Council CLMs must have an adopted PoM in place and comply with the requirements of section 46 through to 47F 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 the particular tenure.

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

If a council 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 can issue 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 development of a PoM.

Councils are not the CLM for reserves devolved to them and are therefore unable to issue 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.

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 *Native Title Act 1993* (*Cwth*). This includes any lease or licence issued under the CLM Regulation or the LG Act.

Council CLMs should be aware that actions harming any existing 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 proposed tenure activity could prevent the land being transferred to an Aboriginal Land Council (ALC) in the event that the undetermined claim is granted
- 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 carry out the activity, or a written statement from the ALC confirming it has withdrawn its claim or altered the land claim to exclude the proposed tenure area.

Although the above request can be made to an ALC with an existing land claim, 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.

Example scenarios

The following tenure scenarios provide some common examples relevant to this fact sheet.

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

A lease for the purpose of a kiosk was in effect over reserved Crown land prior to the commencement of the CLM Act on 1 July 2018. The lease expires in February 2020 with no option of renewal. Council wishes to enter into a new lease commencing February 2020 with no additional permitted uses than those authorised under the previous lease.

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 reserve.

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

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

Tenure outcome

A Council CLM cannot extend an existing lease under the transitional arrangements. However, the lessee 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 land.

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

Council wishes to grant a licence for a short-term market to occur on 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, providing the licence meets 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 no adopted PoM is in place

Negotiations for a lease over 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 issue the lease.

Tenure outcome

Under clause 70(2)(e) of the CLM Regulation, Council can grant a new lease (with Ministers consent) over Crown land 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 sufficient evidence to the Minister to demonstrate that the negotiations were substantially completed. This may include evidence of 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 Crown Land in January of 2018. The adopted PoM authorised leasing of a tennis facility, and this lease has yet to be executed.

Tenure outcome

As the lease for the tennis facility was 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 Ministers administering the CLM Act.

Scenario 6: new lease for an emergency service facility

A Council CLM is approached by a local Rural Fire Service (RFS) Brigade requesting to lease a small reserve for emergency vehicle storage for four years.

Tenure outcome

As the proposed tenure holder is an emergency services provider, under clause 70(2)(d) of the CLM Regulation a Council CLM is authorised to grant the lease pending the consent of the Ministers 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 for 20 years.

Tenure outcome

As the proposed tenure holder is an emergency services organisation, under 70(2)(d) of the CLM Regulation clause the Council CLM is authorised to grant the lease with the consent of the Ministers 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:

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Image: Broken Hill NSW, courtesy of Destination NSW.

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