

Altering categorisations by Plans of Management

Council Crown land managers (CLM) can alter community land categorisations on Crown reserves through a Plan of Management. Councils will need to consider material harm when altering a category in a Plan of Management.

Process for altering Crown land categorisation

All community land Crown reserves managed by a council must have a Plan of Management in place under the *Local Government Act 1993* (LG Act).

Before a Plan of Management is prepared, councils are required to assign one or more community land categories to the reserve. Once these initial categories are assigned, councils can then prepare draft Plans of Management for their reserves.

Councils submit the draft Plans of Management to the Department of Planning and Environment – Crown Lands (the department) for review, before public exhibition (section 39 of the LG Act) and when applying for written Minister's consent to adopt the plan, under clause 70B of the *Crown Land Management Regulation 2018*.

The Minister cannot give written consent to the adoption of a Plan of Management if the alteration of the categorisation is considered likely to **materially harm** the use of the land for its reserve purpose (section 3.23 (10) of the *Crown Land Management Act 2016*).

What is material harm?

The *Crown Land Management Act 2016* (CLM Act) does not define material harm, but it does provide relevant considerations under section 2.14 of the CLM Act. These considerations guide the Minister in making a decision on whether the alteration of land category is likely to materially harm the use of the land for its reserve purpose.

When should material harm be considered?

Councils need to consider material harm when:

- Seeking Minister's consent to the alteration of a community land category in a Plan of Management – [section 3.23\(10\)](#) of the CLM Act
- Seeking Minister's consent for an additional reserve purpose where the proposed activities are not considered consistent, ancillary, or incidental to the existing reserve purpose – [section 2.14\(2\)\(b\)](#) of the CLM Act
- Granting a tenure under [section 2.19](#) of the CLM Act.

In all these situations, councils should first contact the department to discuss proposed changes. Councils should provide a map detailing the changes and provide information to justify those changes, including why the change is needed, what council intends to occur under the change and whether it is consistent with the existing reserve purpose(s).

When councils submit a draft Plan of Management with an altered category, they should include the justification and their assessment of material harm in the department's [submission form](#).

What are the material harm considerations?

[Section 2.14\(3\)](#) of the CLM Act sets out the material harm considerations.

- 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 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.

*or change in community land category

Under section 2.14(2)(a) of the CLM Act, council CLM also need to consider whether the change in community land category or additional reserve purpose is in the public interest.

How should a council CLM address the material harm considerations?

When assessing material harm, council CLM need to remember that the material harm considerations are all relative to the existing reserve purpose(s) and frame their assessment accordingly. Council CLM should also consider the [Objects of the CLM Act \(s1.3\)](#) and the [Principles of Crown land management \(s1.4\)](#) when considering likely material harm.

Each consideration is assessed on its own merits. The assessment should include arguments that may be both 'for' and/or 'against' each consideration.

Table 1: Guidance to help councils in assessing material harm considerations.

Material harm consideration	Guidance
a) The proportion of the area of the land that may be affected by the additional purpose/change in category.	Council may want to represent this as a percentage of the total reserve area and include a map that indicates the affected area in context to the reserve.
b) If the activities to be conducted for the additional purpose/change in category will be intermittent, the frequency and duration of the impacts of those activities.	<p>Consider what activities will be authorised under the altered category (or additional reserve purpose) and the potential impact of those activities on the existing reserve purpose.</p> <ul style="list-style-type: none"> Will council be leasing the impacted portion of the reserve for exclusive use? What user groups will be able to access and utilise this portion of the reserve? What are the positive benefits of this use to the reserve and community using the reserve? <p>How frequent will the activities be under the altered category (or additional reserve purpose)?</p>
c) The degree of permanence of likely harm and whether that harm is irreversible.	<p>Consider what the main impacts might be on the current use of the reserve as a result of altering the category (or adding an additional reserve purpose).</p> <ul style="list-style-type: none"> Is the use (or proposed use) consistent with the existing reserve purpose(s) and would it be likely to limit the use of the reserve for its existing reserve purpose? Consider how long those impacts would be experienced for and how easy or difficult it might be to reverse those impacts, relating it to the points raised in consideration (b). <p>When considering reversibility, council may want to consider how a facility could be repurposed in the future.</p>
d) The current condition of the land.	<ul style="list-style-type: none"> What is the reserve currently used for? What is the existing state of the reserve including any buildings/structures and natural features? Would the altered category (or additional reserve purpose) change the condition of the buildings/structures or natural features? Would this be a beneficial change? Would the change in category enable the reserve to be better utilised for the existing reserve purpose(s)?
e) The geographical, environmental, and social context of the land.	<p><i>Geographical:</i></p> <ul style="list-style-type: none"> Where is the reserve situated? Is it located rurally or within a town/metropolitan area? How can the reserve be accessed? <p><i>Environmental:</i></p> <ul style="list-style-type: none"> How will the proposed changes impact on the local environment? Do the changes involve land clearing or environmentally intensive practices? Will the changes benefit the environment? <p><i>Social:</i></p> <ul style="list-style-type: none"> Who does the site provide for? Does it provide for the local community or is it significant on a regional or state level? Will the changes improve or diminish social amenity? Is there a need for a particular service in the area? Is it an essential public service? <p>Does the proposed change improve social outcomes?</p>
f) Any other considerations that may be prescribed by the regulations.	<p>Currently the <i>Crown Land Management Regulation 2018</i> does not prescribe any other considerations.</p> <p>However, Council CLM are encouraged to keep up to date with legislative changes as this may change in the future.</p>

What are some considerations for public interest?

Considerations of public interest may include:

- If the council has already undertaken some community consultation regarding the proposal, what was the community response to the proposed changes?
- Is this for the benefit of the local community or is it for specific user groups?
- How will the public benefit from this?

What else do councils need to consider?

In addition to satisfying the material harm considerations, Council CLM must ensure they are compliant with the requirements of the *Aboriginal Lands Right Act 1983*.

Council CLM must also ensure that they receive Native Title Manager advice for the activities proposed under the altered community land category (or additional reserve purpose) to ensure they have a valid pathway under the *Native Title Act 1993 (Cwlth)*.

Contact us

For more information, please contact the Council Crown Lands Management team at:

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