

Granting leases and licences over pre-PoM Crown land

Introduction

Under the *Crown Land Management Act 2016* (CLM Act), Council Crown land managers (CLMs) are able to generally administer Crown land under the public land provisions of the *Local Government Act 1993* (LG Act). This includes issuing leases and licences.

For all Crown land that is classified as community land under s.3.23 (7) of the CLM Act, Council is required to have an adopted plan of management (PoM) by 30 June 2021. Under the LG Act, leases, licences and other estates can only be issued on land that is classified as community land where an expressed authorisation is provided in an adopted PoM withstanding filming activities, the provision of public utilities and associated works, and connections of adjoining premises to council or other public utility facilities,

To facilitate continued access to and use of the land while a PoM is being developed, the CLM Regulation 2018 provides interim arrangements for the granting of certain leases and licenses¹.

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 councils in the management of its Crown land, the department has developed standard lease and licence templates. The templates should be used as a base and adapted to meet the specifics of the lease or licence being granted. Lease and licence templates for Council CLMs are available at:

<https://www.olg.nsw.gov.au/content/council-crown-land-managers-resources>

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.
- Regard and compliance with tenure provisions under the Local Government Act, 1993
- 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 plan of management adopted by Crown lands².

*pre-POM Crown land comprises Crown land managed by a Council Crown Land Manager that has not been classified as operational land with Minister's consent or is subject to an adopted a plan of management for the land for the purposes of Division 3.4 of the Crown Land Management Act 2016.

¹ See Clause 70 (2) Crown Land Management Regulation 2018

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² See Clause 70 (2) Crown Land Management Regulation 2018

- Environmental impacts of the proposed activity and the ability of the land to support the activity.
- Whether the term of the tenure is appropriate.
- 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.
- Allow provisions for conducting rent reviews (at least every three years) and provisions for consumer price index rent increases annually.
- Following community engagement requirements set out in the Local Government Act 1993.
- Aboriginal interests (more on this below).

What tenure can Council grant pre-PoM?

Table 1 below summarises Council CLM authorisations and requirements Clause 70 of the *Crown Land Management Regulation 2018*.

Table 1: Summary of lease and licence options for Council CLMs pre-PoM

Type	Term	Minister's 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)

Type	Term	Minister's consent	Applying condition	Applicable CLM Regulation 2018
New lease or licence authorised under a plan of management adopted by Crown lands 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?

If the proposed lease or licence scenario is not covered by Table 1 above, contact the department to discuss options for your reserved Crown land as early as possible.

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 LG Act applies. This land is not required to be classified or categorised under the LG Act nor a PoM developed, and the council is not able to issue any tenure of the land as a Crown land manager.

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 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 below.

Native Title

Councils are required to employ or engage a native title manager under the CLM Act.

Council Crown land managers must obtain written advice from a qualified native title manager that any proposed lease or licence arrangements comply with any applicable provisions of the Commonwealth *Native Title Act 1993*. This includes any lease of licence issued in accordance with the CLM Regulation.

Further information on native title rights and interests and the role of native title managers is available on the department's website (<https://www.industry.nsw.gov.au/lands/what-we-do/our-work/native-title>).

Specific information on the interaction of tenure, land rights and what Council CLMs need to consider when issuing tenure can be found here;

https://www.industry.nsw.gov.au/data/assets/pdf_file/0015/143061/Native-title-applications-and-options-for-interest-holders-fact-sheet.pdf

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 an undetermined claim is granted
- the proposed tenure could impact or change the physical/environmental condition of the land, unless the council Crown land manager or tenure applicant has written consent from the claimant ALC to carry out the proposed work or activity or a written statement confirming that the ALC has withdrawn the land claim, or has amended the land claim to exclude the proposed tenure area.

While the above request to the ALC can be made, the claimant ALC is under no obligation to grant consent.

If in doubt, contact the department to seek advice about any potential land claims affecting Crown land.

Example scenarios

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

Scenario 1: New lease, following an expired lease

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 Regulation 70 (2)(c), the Council is authorised to grant a new lease from February 2020 for up to 21 years, as an existing lease was in place prior to the commencement of the CLM Act and there are no additional permitted uses of the land.

Scenario 2: Lease extension/renewal

In 2016, Council issued a Request for Offer for a lease over reserved Crown land. The successful applicant entered into a 5-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

Council cannot extend an existing lease under the transitional arrangements. However, the lessee has the option to surrender the existing lease after which Council may issue a new lease under Regulation 70 (2)(c) for a maximum of 21 years, provided that there are no additional permitted uses of the land.

Scenario 3: Short term licence

Council wishes to grant a licence for a short-term market to occur on reserved Crown land under its management.

Tenure outcome

Under Regulation 70 (2)(a), Council may grant a short-term licence over pre-PoM Crown land, providing the licence meets the prescribed purpose under clause 31 of the Regulation (of which market is a prescribed purpose).

Scenario 4: Negotiations for lease occurred prior to 1 July 2018

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 Regulation 70 (2)(e), Council can grant a new lease (with Minister's consent) over pre-PoM Crown land for a term not exceeding the maximum term (5 years in this case), as there is evidence that negotiations for the lease were substantially completed before 1 July 2018. Council would have to provide sufficient evidence to the Minister demonstrating that the negotiations were substantially completed for consideration when determining whether to give consent to the lease. This may include a council resolution, documentation of agreement, a lease executed by both parties prior to obtaining Ministers consent etc.

Scenario 5: New lease or licence under an existing PoM

A Council CLM managed coastal caravan and camping park has an approved PoM, that was adopted by Crown lands in January of 2018. The adopted PoM authorised leasing of a tennis facility, 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 70(2)(f) of the CLM regulation, without Ministers consent.

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 4 years.

Tenure outcome

As the proposed tenure holder is an emergency services provider, under 70(2)(d) the Council CLM is authorised to grant the lease with Ministers consent.

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) the Council CLM is authorised to grant the lease with Ministers consent.

Contact us

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

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Fax: 02 4925 3517

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