

Community Engagement Strategy

What is the Community Engagement Strategy?

The Community Engagement Strategy (the Strategy) has been developed as a key statutory requirement of the *Crown Land Management Act 2016* (the Act) to ensure that appropriate community engagement occurs before certain decisions are made about the management of Crown land.

What is the purpose of the Strategy?

The key objectives of the Strategy are to:

- set out the requirements for community engagement before decisions are made about certain dealings and activities on Crown land
- ensure the impact on community use and enjoyment of Crown land is understood and considered before decisions are made about proposed dealings or activities.

What is the Community Engagement Guidance and Resources document?

The Strategy is supported by the Crown land Community Engagement Guidance and Resources document (Guidance and Resources document), which is a practical framework for staff of the NSW Department of Industry—Lands & Water (the department), as well as non-council Crown land managers (non-council CLMs), for determining and conducting engagement for dealings and activities that fall within the scope of the Strategy.

When did the Strategy commence?

The Community Engagement Strategy commenced on 1 July 2018.

How was the Strategy developed?

The Strategy was prepared by the department in consultation with community members and groups, peak body organisations, government agencies and non-council CLMs.

The department hosted forums and meetings with key stakeholder groups in mid-2017, seeking initial feedback about the proposed Strategy.

The draft Strategy and Guidance and Resources document were placed on public exhibition for eight weeks from 16 October to 10 December 2017. During this time, the department held five community information events across NSW, including Sydney, Newcastle, Ballina, Wagga Wagga and Dubbo.

The public exhibition attracted 183 submissions from individuals, community groups and peak bodies representing a variety of stakeholder interests. The views and issues raised in these submissions were carefully analysed and the Strategy and Guidance and Resources document were updated in response to the issues raised. The submissions and a report summarising the key issues and the government response to those issues raised can be found on the department's website.

Who must comply with the Strategy?

The Strategy must be followed by the following decision-makers:

- the minister
- the Secretary of the Department of Industry
- the Lands Administration Ministerial Corporation
- staff of the department
- non-council Crown Land Managers

These decision-makers are referred to as 'responsible persons' in the Strategy and the Guidance and Resources document.

Which dealings and activities are covered by the Community Engagement Strategy?

The Strategy sets out the community engagement requirements for certain dealings and activities on Crown land. These include:

- preparation of the State Strategic Plan
- preparation of plans of management
- alteration or removal of a purpose for which Crown land is dedicated or reserved
- sales of Crown land
- vesting Crown lands
- granting leases, licences or permits over Crown land.

Does the Strategy apply to all decisions relating to Crown land?

No. The Community Engagement Strategy is only for those specified dealings and activities, which are set out in the Act.

The Strategy sets the minimum engagement requirements for in-scope dealings and staff and non-council CLMs are encouraged to carry out additional engagement where appropriate.

The Strategy can only cover transfers of Crown land that are authorised under the *Crown Land Management Act 2016*. Transfers of land authorised under other legislation must be undertaken in accordance with the requirements of those Acts.

Who are non-council Crown land managers and how does the Strategy apply to them?

Non-council CLMs (formerly referred to as reserve trust managers) are Crown land managers who have been appointed to care, control and manage Crown land under the Act.

Non-council Crown land managers must comply with the Strategy in relation to plans of management, leases and longer term licences.

The Strategy does not require non-council CLMs to engage with or notify the community about short-term licences, as this would be too onerous for these Crown land managers, many of whom are volunteer organisations with limited resources.

What are the key mandatory requirements of the Strategy?

Under the Strategy, responsible persons must comply with mandatory requirements to:

1. apply the 'impact on current community use and enjoyment' test
2. consider whether the impact is minimal, moderate or high
3. carry out engagement on the proposed dealing or activity
4. consider of the findings of the engagement process.

The instances where these mandatory requirements apply are set out in table 1 in Part 3 of the Community Engagement Strategy.

When is engagement required?

The 'current community use and enjoyment test' is used to identify whether engagement is required for vestings, certain changes to reserves and deviations and licences. The test is met where the community is currently using or enjoying the land and the proposed dealing or activity would have an adverse impact on that use or enjoyment.

The community does not need to be actively using the land in order for the current community use and enjoyment test to be met. If the community is enjoying the land for its social, cultural or heritage values—and this enjoyment would be adversely impacted—then the test will be met and engagement will be required.

The test is not required to be conducted for sales, plans of management and leases, as these dealings and activities will always trigger engagement under the Strategy—regardless of whether they impact on the community's current use and enjoyment of Crown land.

What are the engagement requirements for leases?

All proposed leases (except for purchasable leases which are excluded from the Strategy) will be notified on the department's website. This includes those leases that do not have an impact on the community's current community use and enjoyment of the land.

Leases that are assessed to have a moderate or high impact on current community use and enjoyment of land will also be required to carry out additional engagement.

What are the engagement requirements for sales of Crown land?

The Strategy requires the community to be notified of all in-scope sales on the department's website for 28 days and for a submissions process to be conducted. Where a sale is assessed to have a high-impact on current community use and enjoyment of the land, then the notification period extends to 42 days and additional engagement is required from the *participate* category of engagement options.

What are the engagement requirements for plans of management?

The engagement requirements for proposed plans of management and alterations to plans of management are the same as the requirements for sales.

Why are there different levels of engagement?

The engagement required corresponds with the level of impact on current community use and enjoyment.

The Strategy has also been designed to avoid a one-size-fits-all approach to community engagement methods. There are a range of engagement options to choose from for engagement to be tailored to the circumstances of the case.

What are the different levels of community engagement?

Minimal-impact proposals must carry out the engagement at the level of *inform*.

Moderate-impact proposals must carry out engagement at the level of *consult* and high-impact proposals must carry out engagement at the level of *participate*.

Inform engagement is a one-way communication technique used to inform the community. Inform engagement options include:

- notification on the department's website (mandatory)
- local newspaper advertisements
- fact sheets or FAQs
- signage—local or site
- letter box drops.

Consult engagement is a two-way communication designed to gather feedback on proposed activities and dealings. Consult engagement options include:

- community information events
- NSW government Have Your Say website
- online forum
- submissions (mandatory for sales and plans of management)
- survey.

Participate engagement is a two-way process that enables collaboration between the community and decision-makers. Participate engagement activities can include:

- targeted meetings
- interactive workshops
- walkshops (onsite tours/visit)
- community advisory or consultative committee.

Section 4.3 of the Strategy explains the assessment of the level of impact on current community use and enjoyment in more detail.

Does this Strategy acknowledge the importance of Crown lands to Aboriginal people?

Yes. The Strategy sets clear requirements that enable Aboriginal peoples and communities to have a say in important decisions about Crown lands. The Strategy also respects and acknowledges existing consultation rights under the *Native Title Act 1993* and any Indigenous Land Use Agreements and notes that engagement under the Strategy must be conducted in addition to these existing engagement arrangements.

The Guidance and Resources document, which has been developed to assist departmental staff and non-council Crown land managers to comply with the Strategy, includes guidance for culturally sensitive engagement.

The Guidance and Resources document also encourages departmental staff and non-council Crown land managers to contact groups, such as NTSCORP and the NSW Aboriginal Land Council, to discuss proposals and seek advice about engagement approaches early in the engagement process.

Does the Strategy apply to local councils?

No. Councils will manage Crown land under the *Local Government Act 1993*, which includes engagement requirements.

Does the Strategy require engagement about sales of Crown land proposed by local councils?

Yes. The department must notify a sale proposed by a local council on the department's website and call for submissions.

In addition, if the sale is assessed by department staff to be a high-impact sale, then the notification period will extend to 42 days and additional engagement at the *participate* level of engagement will be undertaken.

The findings from the engagement process will be input into the decision about whether or not to grant consent to the proposed sale.

What support is available to implement the Strategy?

The department is committed to supporting non-council CLMs in their role, including assisting with compliance with the Strategy.

The Guidance and Resources document, which is available on the website, will assist Crown land managers comply with the Strategy. It contains the steps to follow to determine what the engagement requirements are. This includes steps for determining whether engagement has been triggered and weighted criteria for calculating the level of impact a proposal has on current community use and enjoyment.

There is also information about the different engagement activities to select from and guidance for considering the engagement findings in the decision-making process. The Guidance and Resources document also contains advice about how to properly close off an engagement process.

In addition, the department is preparing further resources, including a brochure for non-council CLMs summarising the key requirements. The website will have forms available for non-council CLMs to use to demonstrate compliance with the Strategy as part of seeking Minister's consent for their leases and licences and to facilitate publishing notifications on the department's website.

Why are notifications about dealings and activities published on the department's website?

Not all non-council Crown land managers have a website. To ensure transparency of all activities and dealings within the scope of the Strategy, the department website will include these notifications.

Having all notifications of dealings and activities published in a centralised location ensures information about Crown land—especially changes occurring on Crown land—is easy to find.

Crown land managers with a website are still required to publish the notification on the department website, and may choose to include a notification on their own website

Why does the trigger for engagement focus on current community use and enjoyment of Crown land?

Communities are keen to protect and preserve their current use and enjoyment of Crown land and through this Strategy they will have that opportunity.

Consistent with this principles and Objects of Crown land management, the Strategy helps to ensure decision-makers understand how the community uses and enjoys land before decisions are made on proposals that may impact on that use and enjoyment.

The Strategy also provides adequate opportunities for engagement about the future use of Crown land. The Strategy provides for engagement in relation to the future use of Crown land in the context of plans of management and the state strategic plan.

The Strategy also provides for engagement about proposed sales and leases, including sales and leases over land that the community is not currently using or enjoying.

What is the consequence of non-compliance with the Strategy?

All responsible persons must comply with the Strategy.

Failure to demonstrate compliance with the mandatory requirements of the Strategy may result in the minister (or delegate) refusing to approve the dealing or activity.

In instances where a dealing or activity has been approved, but the engagement has not been completed in accordance with the mandatory requirements, the validity of the dealing or activity may be challenged in court.

How are compliance decisions reviewed?

There will be detailed procedures and systems within the department to support compliance.

Random audits of decisions will also be periodically carried out by the department to ensure that the Strategy requirements are being complied with.

A Crown Land Commissioner will be appointed to provide independent advice about the application of the Strategy.

Can the engagement requirements be waived?

The Strategy includes powers for the minister to waive the need for community engagement in instances where it is considered inappropriate or not in the public's interest to undertake engagement.

Waivers can be granted in the following circumstances:

- in emergency or exceptional circumstances
- to enable approved NSW Government for Government priorities that require Crown land
- where the Minister is satisfied that a waiver is in the public interest
- where the Minister is satisfied that other legislation is applicable and delivers the same or better engagement (for example, through planning approval processes).

The minister cannot waive engagement:

- after a dealing or activity has been carried out (that is, waivers cannot be issued retrospectively)
- in relation to plans of management, state strategic plans, or sales of Crown land for which engagement is required in section 3.3 of the Strategy.

Are there exemptions to the Strategy?

The Strategy contains exemptions on certain types of dealings and activities that do not impact on current community use and enjoyment of the Crown land.

Exemptions are in place where engagement is being required under other legislation—such as in the case of the issuing of licences for telecommunication infrastructure.

See table 3 in Part 3 of the Strategy for more information.

Does the Strategy facilitate the sale of Crown land?

No, the Strategy ensures decisions to sell Crown land adequately consider how the community's use and enjoyment might be impacted.

How does the engagement inform the decision-making processes?

It is a mandatory requirement of the Strategy that consideration is given to the issues raised in the engagement process prior to the decision being made on the proposed dealing or activity.

The engagement findings are to be summarised in an engagement findings report, which is to be provided to the decision-maker, so the findings are factored into the final decision on the dealing or activity.

Decision-makers should consider not only the findings of the engagement activity, but also the objects of the Act, including the principles of Crown land management and valuable local insights.

How will the final decision be communicated to the public?

The Strategy requires that decisions for activities and dealings are published on the department's website. Website notices will include information about the engagement process undertaken and the final decision on the proposed activity or dealing.

When engagement includes a submissions process, notices will also contain the number of submissions.

The guidance materials also recommend that feedback be provided to those groups and individuals that participated in the engagement process.

When will the Strategy be reviewed?

The Strategy will be reviewed after five years. This is consistent with the statutory review period set for the Act.

If required, the Strategy can be amended within the five-year timeframe. The Act requires that future proposed amendments to the Strategy must be exhibited for 28 days, and public submissions must be called for, before any amendments can be approved by the minister.

The Guidance and Resources document is an evolving document that will be regularly reviewed and updated in line with community expectations and State priorities.



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Frequently asked questions

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