

MANAGING CROWN LANDS

An update for local councils

SEPTEMBER 2017

With new *Crown Land Management Act 2016* coming into effect early next year, this update provides information on how we will work with you to deliver improved management of the state's vast area of Crown land.

Managing Crown reserves

Plans of management

The *Crown Land Management Act 2016* (CLM Act) allows councils to manage Crown land under the provisions of the *Local Government Act 1993* for public land. It is anticipated this will reduce the duplication and drain on resources experienced by councils resulting from the current dual legislative frameworks.

Councils will generally no longer have to seek consent for dealings on Crown land and will also benefit from the removal of reporting requirements. Instead, they will be able to manage Crown reserves in the same way that council-owned land is managed.

As part of this streamlined process councils will be required to have plans of management for most Crown reserves that they manage. Some exceptions will apply for truly operational Crown land, such as waste depots.

In order to make the implementation of the plan of management requirement as straightforward as possible, the following will apply:

- the requirement to have plans of management will be phased in over three years from the time the new legislation commences
- councils can amend existing plans of management so that they apply to Crown reserves, where this is appropriate given the use of the Crown reserve
- where new plans are required, councils will be able to follow a simplified process (for example, councils will not be required to hold public hearings)
- some financial assistance will be available to help with the costs of preparing plans of management.

More information and guidance on the requirements for plans of management, including the available funding, will be provided to councils in the coming months.

Native title obligations

Native title refers to the rights and interests in relation to land and waters held continuously by Aboriginal people under their traditional laws and customs, recognised by Australian law.

As the Reserve Trust Handbook makes clear, all Crown land managers are currently responsible for complying with native title legislation in their management of Crown land and must ensure that their dealings are valid and comply with all procedural requirements of the Commonwealth *Native Title Act 1993* (NT Act).

In response to calls from councils for more autonomy and a streamlined approach to council Crown land management, the CLM Act allows councils to deal with Crown land without the oversight of the Minister for Lands and Forestry or the Department of Industry—Crown Land and Water. This makes it essential that councils clearly understand and comply with their native title obligations.

The CLM Act contains provisions to facilitate compliance by councils with the NT Act, including requiring councils to employ or engage trained native title managers who will be responsible for providing advice on certain dealings for land that may be affected by native title. It also clarifies responsibilities where native title has not been extinguished or determined.

The NSW Government will provide training for nominees from each local council to become accredited as Native Title Managers.

More information will be provided to councils in the coming months and councils will be invited to nominate representatives to participate in the training. Training is planned to occur in November this year.

Regulations

As the next step towards commencement of the new legislation in early 2018, the Government has released the draft Crown Land Management Regulation 2017 for public comment.

The Regulation provides clarity and certainty for Crown land managers, tenure holders, and users of Crown land. It provides information about how certain parts of the CLM Act are to be implemented and protects the Crown land estate for future generations. The Regulation consolidates various existing regulations and introduces some new regulatory provisions appropriate to support new concepts in the new legislation.

A regulatory impact statement (RIS) for the draft regulation has been prepared by the Centre for International Economics, an independent specialist. The RIS identifies and assesses the direct and indirect costs and benefits of each regulation to ensure they are necessary, appropriate and proportionate to risk.

The draft Regulation and the RIS, together with supporting documentation such as Frequently Asked Questions and factsheets are available on the Crown Land and Water website and the NSW Government 'Have Your Say' website.

The public exhibition period commenced on 4 September 2017 and closes on 1 October 2017.

Submissions can be made:

Online: By using the online submission form

Email: legislation@crowmland.nsw.gov.au

Post: Draft Crown Land Management Regulation comments
Department of Industry—Crown Land and Water
PO Box 2185
Dangar NSW 2309

All submissions and comments will be treated as public and may be published unless the author indicates that it is to be treated as confidential.

Engaging with the community on key issues

The CLM Act commits to community engagement and involvement in Crown land decisions by requiring the preparation of a Community Engagement Strategy for proposals that could affect public use of Crown land. Examples of proposals that would trigger the need for community engagement include sales, leases, and licences if they would affect public use, or changes to the reserve purpose that would affect public use.

Both the NSW Government and non-council Crown land managers who manage reserves will be required to comply with the Community Engagement Strategy.

The strategy will not apply to councils acting as Crown land managers—instead, councils must comply with community engagement obligations under the *Local Government Act 1993*.

The Community Engagement Strategy will provide the framework for community engagement to be tailored to specific situations to ensure proposals that most affect the community are subject to genuine engagement. For example, where a change in purpose is proposed for a reserve that is highly used by the community, engagement would be required so that the public could contribute to informing the decision making process. The type of engagement could include focus groups, surveys or workshops.

This new process will deliver transparent decision making and more effective community engagement than the current system of placing advertisements in local papers and notices in the Government Gazette.

The draft Community Engagement Strategy will be released in coming months for public consideration and feedback.

The Community Engagement Strategy is supported by guidance and resource material.

If you would like to be kept informed on developments about the Strategy, register your interest by sending an email to: community.engagement@crowland.nsw.gov.au

Amendments to the *Roads Act 1993*

As part of addressing the recommendations of the comprehensive review of Crown land, amendments to the *Roads Act 1993* were passed by Parliament and are due to commence in early 2018.

Council roads

For the first time, local councils have been given the power to close council roads. The Minister for Lands and Forestry will no longer be required to close council public Roads on council's behalf

This will allow councils to make strategic decisions about their roads and also help to reduce red tape and double handling. In acknowledging councils' responsibility for maintaining and operating these roads it is appropriate that councils decide when they should be closed. This change is a direct response to councils' submissions to the Crown Lands Management Review white paper.

The new powers are supported by stringent safeguards to ensure a closure of a council road is appropriate and does not deny access to a property.

One such safeguard is the requirement for consultation - councils must advertise proposed closures before closing a road and must notify landowners whose properties adjoin the road. Relevant public authorities must also be notified. This includes transport authorities such as Roads and Maritime Services, fire services and the Department of Planning and Environment.

The reforms also include important appeal rights that can be exercised in appropriate circumstances—they are available to owners of land whose access is materially affected and certain public authorities. These parties will have the right to appeal to the Land and Environment Court against a council road closure decision.

Crown roads

Crown roads continue to be regulated under the *Roads Act 1993* (Roads Act) and will remain the responsibility of the Minister for Lands and Forestry.

The legislative framework governing the maintenance, closure, transfer and sale of Crown roads has been updated to streamline administrative processes and address duplication and time delays. Under the Roads Act, Crown roads will not be required to be converted into Crown land before being sold.

The safeguards in the Roads Act around community consultation and notification have been strengthened. Current consultation and notification rights and periods have been retained, including advertisement of any proposed road closure. In addition, notification of adjoining landholders is specifically required in the Roads Act.

The current process of closing and selling Crown roads is lengthy and time consuming resulting in delays associated with road closure applications.

More information

We understand that you have questions about the management of Crown land and changes under the CLM Act. We will continue to provide updates on key features of the Act through these newsletters, LGNSW updates and direct correspondence. We are also planning a scheduled program of briefings for councils, and will present at various council sector conferences over the coming months.

For more information contact the Department of Industry—Crown Land and Water on 1300 886 235 or email legislation@crowmland.nsw.gov.au. The Crown Land website www.crowmland.nsw.gov.au also has updated information on the legislation.

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