

DECISION OF 3710th COUNCIL MEETING HELD ON MONDAY 29 OCTOBER 2018

408. **OSE01: New Crown Land Management Act 2016 – Information and Implications for North Sydney Council**

(This Item was considered en globo. See page 325)

Report of Megan White, Landscape Planner/Architect

The new Crown Lands Management Act 2016 (CLM Act) came into force on 1 July 2018. The CLM Act authorises Councils to manage Crown reserves as public land under the Local Government Act 1993, however ownership of the land remains with the State and the Minister for Lands and Forestry retains certain powers. While the CLM Act will streamline some processes allowing Councils to manage the land without the previous level of Departmental oversight, it also imposes a number of obligations. Councils must classify and categorise all parcels of Crown land, and prepare Plans of Management (PoMs) for all public land classified as community land in accordance with the Local Government Act 1993. It is most likely that all 19 Crown reserves for which North Sydney Council is the Reserve Trust Manager will be classified as community land.

North Sydney Council has an existing suite of 12 PoMs. It is anticipated that 8 PoMs will need to be amended, 4 PoMs will not require amending and 1 or 2 new PoMs will be required (further investigation and advice from the Minister for Lands and Forestry is needed prior to making this determination). Completion of all new and amended PoMs dealing with Crown land is required by July 2021. Council has an existing program of reviewing and updating all PoMs approximately every 5 years. This program will need to be significantly amended to meet this deadline.

Recommending:

1. THAT the report in relation to the New Crown Land Management Act 2016 – Information and Implications for North Sydney Council be received.

Voting was as follows:

For/Against 9/0

Councillor	Yes	No	Councillor	Yes	No
Gibson	Y		Barbour	Y	
Beregi	Y		Drummond	Absent	
Keen	Y		Gunning	Y	
Brodie	Y		Mutton	Y	
Carr	Y		Baker	Y	

RESOLVED:

1. THAT the report in relation to the New Crown Land Management Act 2016 – Information and Implications for North Sydney Council be received.

**Report to General Manager**

Attachments:

1. Leasing and Short-term Licensing under Crown Land Management Act 2016
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SUBJECT: New Crown Land Management Act 2016 – Information and Implications for North Sydney Council

AUTHOR: Megan White, Landscape Planner/Architect

ENDORSED BY: Rob Emerson, Director Open Space and Environmental Services

EXECUTIVE SUMMARY:

The new Crown Lands Management Act 2016 (CLM Act) came into force on 1 July 2018. The CLM Act authorises Councils to manage Crown reserves as public land under the Local Government Act 1993, however ownership of the land remains with the State and the Minister for Lands and Forestry retains certain powers. While the CLM Act will streamline some processes allowing Councils to manage the land without the previous level of Departmental oversight, it also imposes a number of obligations.

Councils must classify and categorise all parcels of Crown land, and prepare Plans of Management (PoMs) for all public land classified as community land in accordance with the Local Government Act 1993. It is most likely that all 19 Crown reserves for which North Sydney Council is the Reserve Trust Manager will be classified as community land.

North Sydney Council has an existing suite of 12 PoMs. It is anticipated that 8 PoMs will need to be amended, 4 PoMs will not require amending and 1 or 2 new PoMs will be required (further investigation and advice from the Minister for Lands and Forestry is needed prior to making this determination). Completion of all new and amended PoMs dealing with Crown land is required by July 2021. Council has an existing program of reviewing and updating all PoMs approximately every 5 years. This program will need to be significantly amended to meet this deadline.

RECOMMENDATION:

1. **THAT** the report in relation to the New Crown Land Management Act 2016 – Information and Implications for North Sydney Council be received.

LINK TO COMMUNITY STRATEGIC PLAN

The relationship with the Community Strategic Plan is as follows:

Direction: 1. Our Living Environment

Outcome: 1.4 Public open space and recreation facilities and services meet community needs

BACKGROUND

There are 35 areas of Crown land in North Sydney. Of these, 19 parcels are Reserve Trusts, with North Sydney Council having Reserve Trust Manager status. These 19 parcels are affected by the CLM Act which can into force on 1 July 2018. This report provides details of Council's responsibilities under the new Act with regards to land management, and sets out a proposal for meeting these requirements.

CONSULTATION REQUIREMENTS

Community engagement is not required.

SUSTAINABILITY STATEMENT

The sustainability implications are of a minor nature and did not warrant a detailed assessment.

DETAIL

Abbreviations used in this Report

CLM Act	Crown Land Management Act 2016
LG Act	Local Government Act 1993
PoM	Plan of Management
DoI	NSW Department of Industry
CL Act	Crown Lands Act 1989
Minister	Minister for Lands and Forestry
LGA	Local Government Area
OLG	Office of Local Government

1. Council's Existing Suite of Plans of Management

North Sydney Council currently has a suite of 12 Plans of Management (PoMs) prepared in accordance with the Local Government Act 1993. The PoMs represent a holistic approach to management of public open space in North Sydney, and they include both Council-owned land and Crown land, managed by Council:

- 5 generic PoMs encompass separate areas performing similar functions, with similar characteristics and issues: Playgrounds, Bushland, Foreshore Parks & Reserves, Neighbourhood Parks and Sportsgrounds.
- 7 significant area PoMs address single areas, significant in terms of intrinsic values, use or facilities. The often complex and diverse range of issues relating to these areas make them more challenging assets to manage:
 - Bradfield Park, Cremorne Reserve, St Leonards Park, St Thomas' Rest Park, Smoothey Park, Forsyth Park and North Sydney Oval.

The PoMs are designed to be read as a set; for example, Council's Foreshore Parks & Reserves PoM should be considered in conjunction with other relevant generic PoMs (for example Sportsgrounds, Playgrounds and/or Bushland), as many of the parks and reserves covered in this document also contain one or more of these features.

North Sydney's PoMs are one of Council's primary management tools, providing clear guidelines for the effective short and long-term management of all public open space owned by Council or under Council's control. The PoMs:

- provide a framework within which managers can develop a balanced response to current opportunities and address future pressures;
- bring together information contained in various relevant Council documents and policies;
- clarify direction, both to Council staff, the community and other stakeholders;
- ensure that the unique qualities of North Sydney's parks and reserves are conserved; and
- provides a basis for assigning priorities in works programming and budgeting.

The PoMs are flexible, working documents; there is scope to alter them as circumstances and/or community needs change. The production of the PoMs is closely linked with Council's overall land management objectives, as set out in Council's Delivery Program. The implementation component of the Plans feeds into the Delivery Program and into OSE's Capital Works Program. Implementation is reviewed regularly to monitor performance, and policy and planning issues are revisited every five years when the PoMs are updated.

2. Crown Land Management Act 2016

The Crown Land Management Act 2016 came into force on 1 July 2018. It replaces 7 existing Acts (including the Crown Lands Act 1989), and aims to:

- Provide more consistent management of Crown land through standardised provisions;
- Streamline the way Crown reserves are managed and facilitate better decision making;
- Allow more meaningful community engagement (the requirement for preparation and adoption of PoMs for Crown land allows the community to have a say in the future management of the land); and
- Recognise rights of, and importance of land to, Aboriginal people.

Councils will now manage Crown reserves under the LG Act. Council managed Crown reserves will generally be classified as community land and categorised under the LG Act. Ownership of the land remains with the State, however, with the Minister for Lands and Forestry retaining the power to:

-
- Dedicate or reserve land, and revoke or alter any dedication or reservation;
 - Grant leases, licences, permits, easements or rights of way in dedicated or reserved land;
 - Appoint managers for dedicated or reserved Crown land; and
 - Sell or dispose of Crown land.

3. Benefits of the CLM Act to Councils

The CLM Act streamlines Crown land management for Councils as Crown land managers, allowing Council's to manage the land without the same level of Departmental oversight as was previously required. Under the CLM Act, Council are no longer required to:

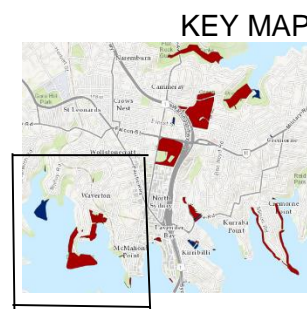
- Seek Ministers approval for dealings on Crown reserves (as is usually required for a development application under the Environmental Planning and Assessment Act 1979). The Minister will be taken to have given land owner's consent to a development application made by a Crown land manager or the holder of a lease or licence on the Crown land for certain low impact acts on dedicated or reserved land. This includes development applications for:
 - minor repairs, maintenance and renovations on existing buildings
 - the use of the land for a purpose for which the land can be used under the Act, or a lease or licence under the Act
- Undertake and submit annual reports for all Crown lands for which Council is reserve trust manager
- Direct income produced at a particular Crown reserve back to that reserve (income may now be directed to any Crown reserve)

4. Crown land in the North Sydney LGA

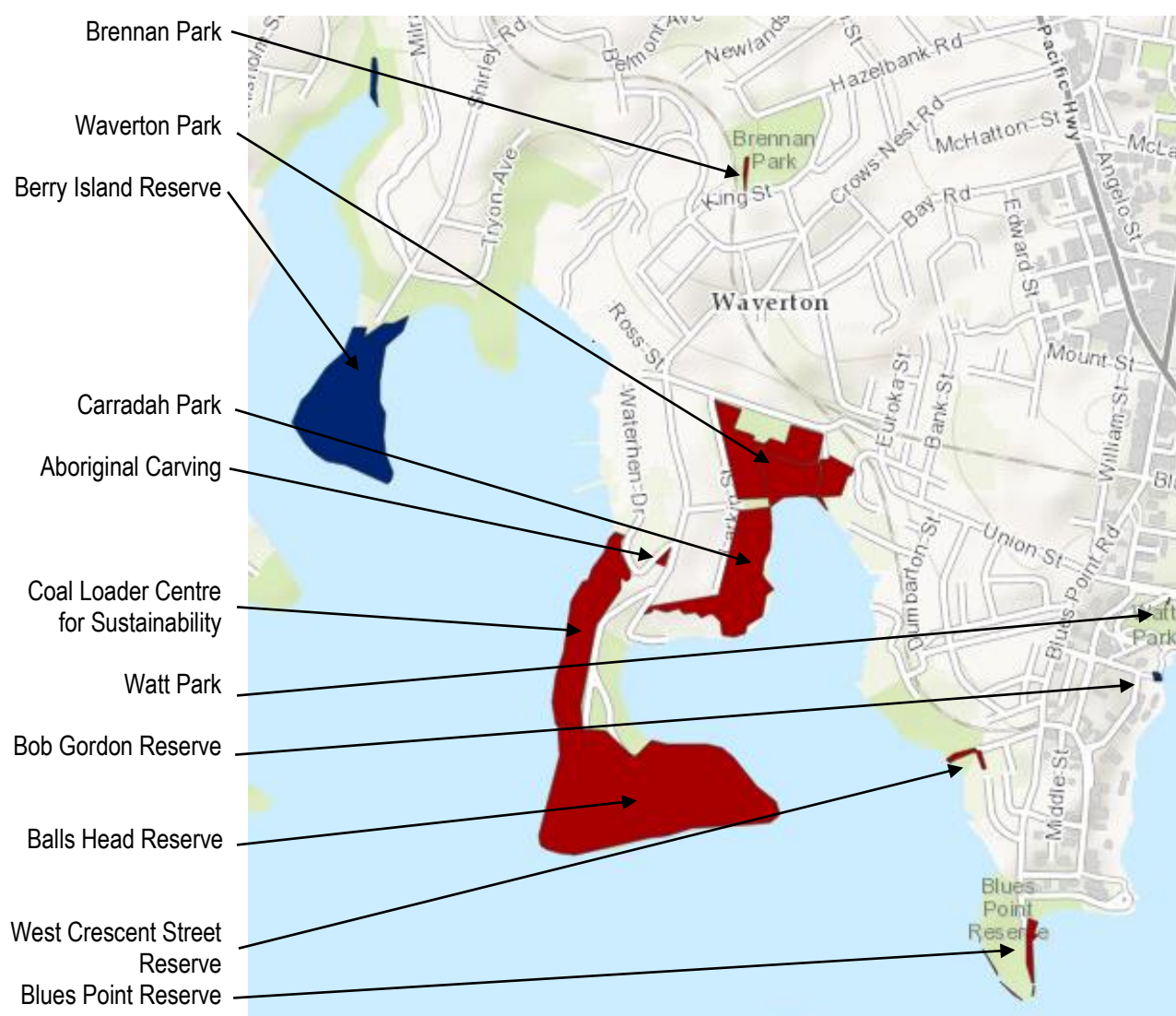
North Sydney Council has 35 areas of Crown land as designated by the Department. Essentially this Crown land will continue to be maintained and managed by Council in the same way as it was prior to the introduction of the CLM Act, with the following changes:

- 19 of these 35 parcels are Reserve Trusts with North Sydney Council having Reserve Trust Manager status. These 19 parcels now require Plans of Management to be prepared for them within the next 3 years, as per the requirements of the Local Government Act.
- The remaining 16 parcels are designated 'Devolved to Council'. These are managed under LG Act S.48: land cannot be leased or licensed by Council, cannot be used for any purpose inconsistent with its reservation or dedication (unless authorised by the Minister) and cannot have a Plan of Management in place to govern its use. No action is required for these parcels.


All Crown land in the North Sydney LGA is shown on the Maps on the following pages.

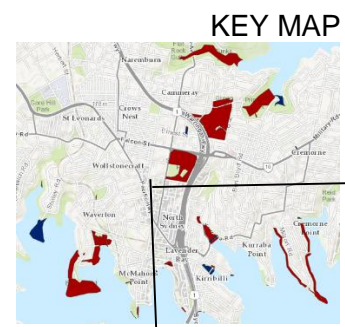


Map 1 – South West Sector North Sydney LGA

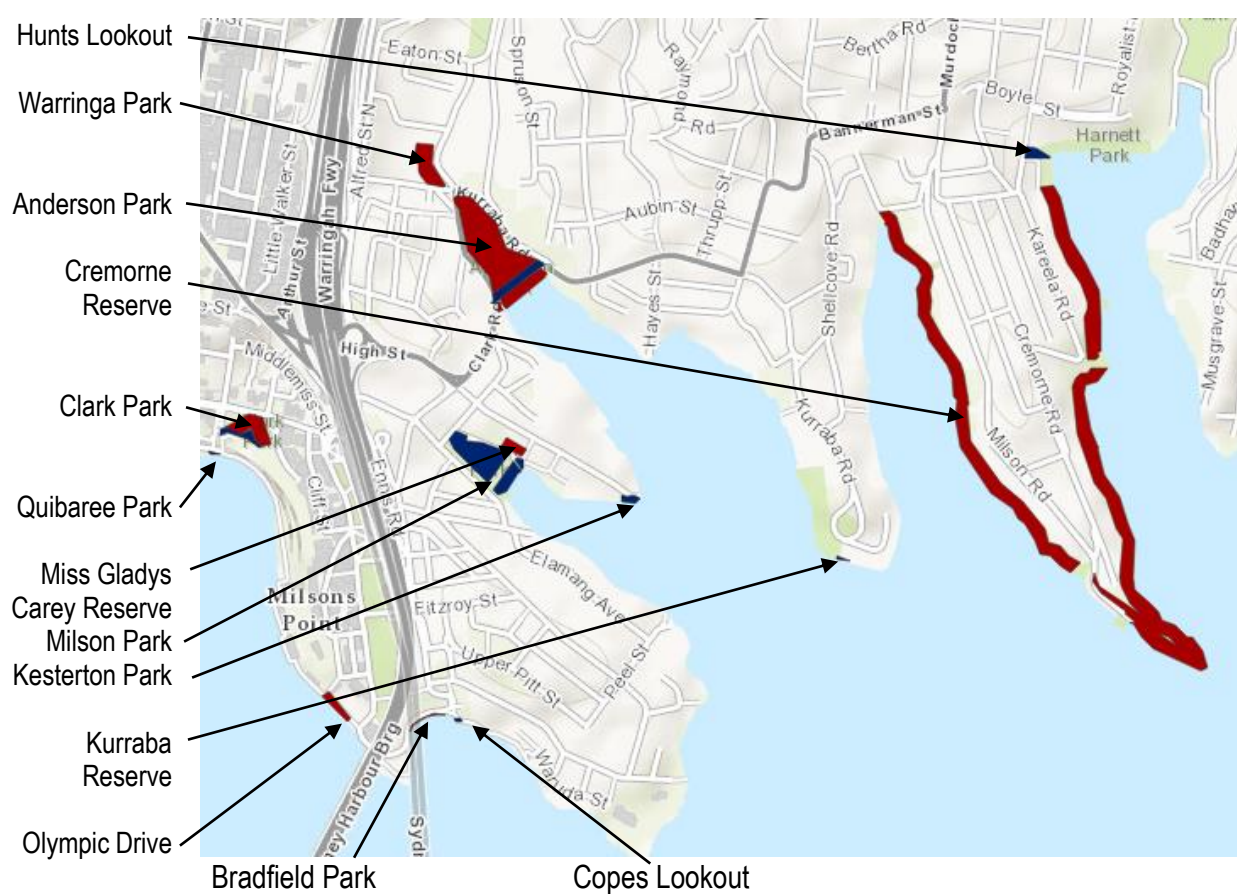


Crown Land in North Sydney

-  Reserve Trust – PoM under LGA required
-  Devolved to Council – No PoM required



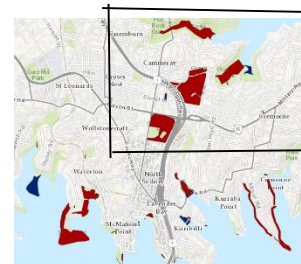
Map 2 – South East Sector North Sydney LGA



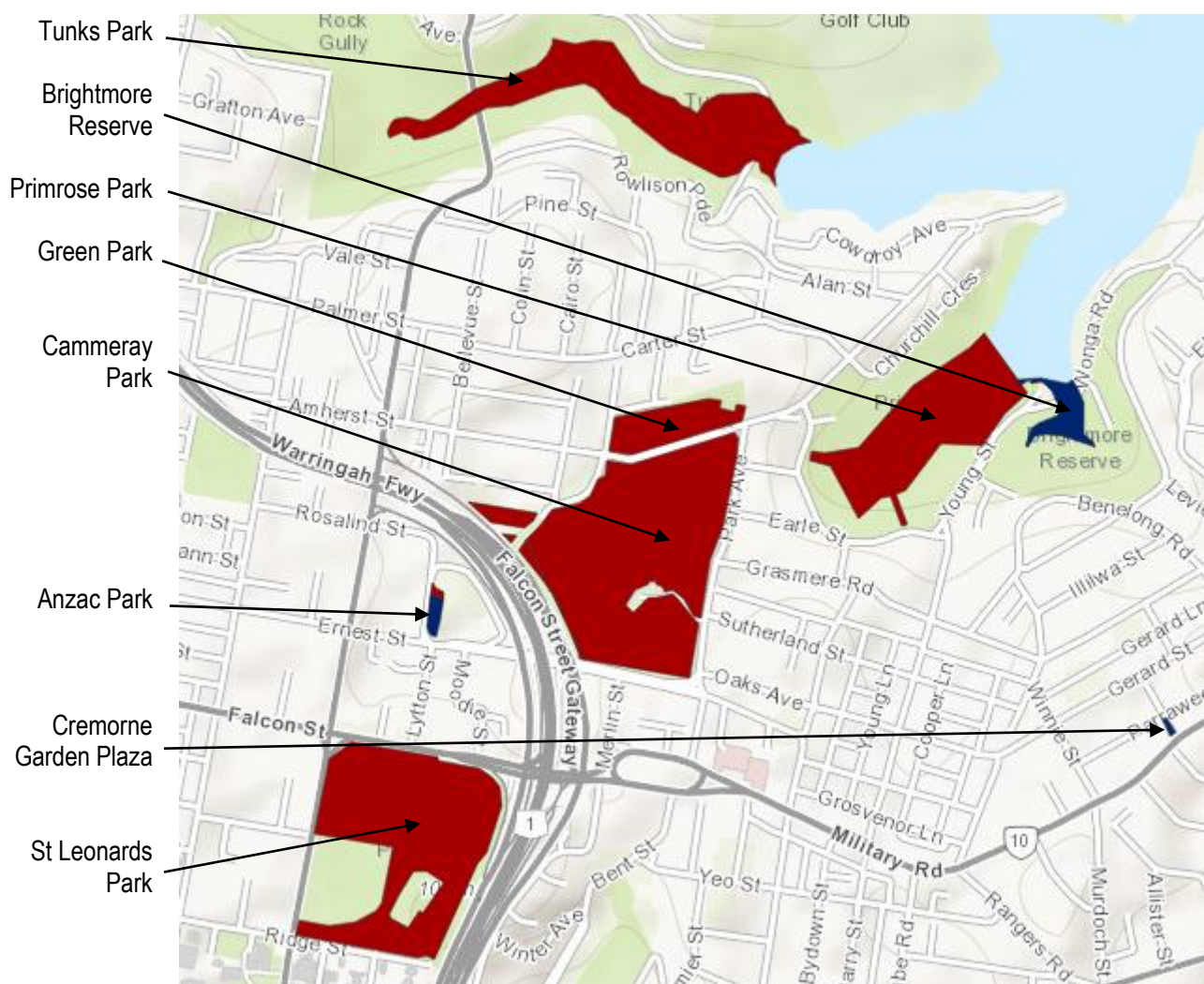
Crown Land in North Sydney

- Reserve Trust – PoM under LGA required
- Devolved to Council – No PoM required

KEY MAP



Map 3 – Northern Sector North Sydney LGA



Crown Land in North Sydney

- Reserve Trust – PoM under LGA required
- Devolved to Council – No PoM required

5. Summary of Changes to management of Crown land under the new CLM Act

- 1) All current reserve trust managers (including Councils) have been automatically appointed as Crown land managers under the new Act.
- 2) Where previously Councils managed Crown reserves under Crown lands legislation (the CL Act), and managed Council owned and public land under the LG Act, Councils now manage Crown land in accordance with the LG Act, as ‘community land’, as if it were public land under the LG Act.
- 3) Ownership of Crown land remains with the State, and the Minister for Lands and Forestry retains certain oversight functions (for example Council Crown land managers cannot sell managed Crown land without Ministerial consent). However, Councils are generally not required to seek Minister’s approval for dealings on Crown reserves.
- 4) Land management must be as per a PoM adopted in accordance with the provisions of the LG Act. The PoM must be informed by the designated reserve purpose, and must specifically address:
 - Management Issues
 - Objectives and Performance Targets;
 - Means of Achieving Objectives; and
 - Manner of Assessment of Performance.
- 5) Where previously leases or licences over 1 year required Ministerial consent, there is now no requirement for Minister of Lands consent (except in exceptional circumstances; for example, leases >21 years).
- 6) Native title obligations are Council’s responsibility, and Council must engage a native title manager to oversee dealings and actions that may affect native title. PoMs are a critical tool to ensure that any authorisation or restriction on the use of a reserve is consistent with the Commonwealth Native Title Act 1993. Native title managers must have training or qualifications that have been approved by the Minister. Council Crown land managers must obtain the written advice of at least one native title manager where it grants certain interests in the land, including leases, licences, easements, mortgages, covenants and other restrictions on use.

6. Work to be undertaken by Councils

The work that Councils are now required to undertake to meet their land management responsibilities under the CLM Act can be divided into 2 parts:

- **Part 1: Initial Work** (required prior to the preparation of new Plans of Management)
- **Part 2: Preparation of new Plans of Management**

Part 1: Initial Work

Step 1

Council officers determine if all Crown land (for which it is reserve trust manager) is appropriately classified as ‘community’ land.

Comments: If Council wishes to classify any of the land as ‘operational’, it must apply to the Minister for Lands and Forestry for approval. Approval will only be given if the land does not fall within any of the categories for community land under the LG Act. There is no appeals process for refusals, although another application, providing additional information, may be made.

Step 2

Council officers determine the most appropriate categorisation for each Crown reserve.

Comments: Only 1 category may be assigned per reserve purpose; it should be the category that relates best to the purpose for which the land was reserved.

If more than 1 category is appropriate, this can be added later, when the draft PoM is being prepared, however a public hearing will be required as this classifies as ‘an alteration to the category’.

Step 3

Council officers notify the Minister, in writing, of the proposed categorisation for each Crown reserve. (Notification is via the OLG Crown Land Manager Reserves Portal).

Comments: Information justifying the proposed categories must be supplied.

Step 4

Minister reviews the proposed categories and informs Council, in writing, whether the proposals have been accepted.

Comments: If a proposed categorisation is not accepted, an alternative category will be directed. There is no appeal process, although applications can be resubmitted with additional information.

Step 5

Council can proceed with preparation of draft Plans of Management.

Part 2: Preparation of new Plans of Management

Step 1

Council prepares new draft PoMs (under the LG Act) to include all Crown land for which it is reserve trust manager.

Step 2

Draft PoMs must include native title consideration, through engagement with a Native Title Manager.

Step 3

Completion of draft PoM is reported to Council - Council resolves to refer draft PoM to the Minister (DoI Lands), as the owner of the land.

Step 4

Draft PoM referred to Minister, together with a declaration form, including the following information:

- A description of the land.
- Confirmation that Council has received and considered written advice from a Native Title Manager.
- One of the following:
 - A statement attesting that the initial categorisation has not been altered.
 - If the draft PoM will not alter the initial categorisation of any reserve to which it applies, this is known as **Case A**.
 - A statement attesting that an additional category (but not an additional purpose) is needed.

- If the draft PoM will alter the initial categorisation (eg add an additional category), but will not require an additional purpose for the use of the reserve, this is known as **Case B**.
- Indication that the change in category requires an additional purpose.
- If the draft PoM will alter the initial categorisation and will require an additional purpose for the use of the reserve, this is known as **Case C**.

Step 5

In Cases A and B:

- DoI Lands review the declaration and advise of any properly required provisions to include in draft PoM. DoI notifies Council it may proceed to adopting PoM.

In Case C:

- If Ministerial Consent is granted, DoI will notify Council that it can adopt the PoM. If refused, PoM will be referred for Council to amend.

Step 6

Council undertakes public exhibition of the draft PoM (for 42 days, as required by LG Act).

In Cases B and C only:

- A public hearing must be held under the LG Act during the public exhibition period, and the results reported to Council.

Step 7

Council adopts Plan of Management.

7. Implications and Effects of the new CLM Act on the North Sydney Council Situation

Table 1 below lists all Crown reserves for which Council is the reserve trust manager. (Crown land that is ‘devolved to Council’ is not included as there is no requirement to prepare Plans of Management for this land). The Table shows:

- The purpose of each reserve (assigned when the reserve was created);
- The category suggested by the DoI (Initial Category Guidance);
- The category proposed by Council officers (where this is different from the ICG);
- Any extra categories that Council officers believe are required; and
- Any extra purpose or change of purpose that Council officers believe are required.

Table 1: List of Crown reserves showing reserve purpose and categorisation information

Reserve Name & Number	Purpose	Initial Category Guidance (ICG)	Proposed Category	Extra Category Required	Extra or Change of Purpose Required
Green Park & (most of) Cammeray Park 500179	Access to Water/Public Recreation	Park		Sportsground	
Cammeray Park (part golf course) 100158	Public Recreation	Park	Sportsground		

Reserve Name & Number	Purpose	Initial Category Guidance (ICG)	Proposed Category	Extra Category Required	Extra or Change of Purpose Required
Waverton Peninsula Reserve (Coal Loader C for S & Carradah Park) 1004268	Community Purposes/ Public Recreation	GC Use/ Park			
Balls Head Reserve (part) <i>Lot 106 DP 1162898</i> 83109	Preservation of Aboriginal Carvings & Drawings	Area of Cultural Significance			
Blues Point Reserve (part) 1000007	Public Recreation	Park			
Blues Point Reserve (part) 82191	Public Recreation	Park			
Former Olympic Drive 100078	Public Recreation	Park			
Brennan Park (part) 100182	Public Recreation	Park			
Cremorne Reserve 39677	Public Recreation	Park		Natural Area - Bushland	Extra Purpose: Environmental Protection
Waverton Park (part) 500178	Public Recreation	Park			
Waverton Park (part) 87002	Public Recreation	Park	Sportsground		
Miss Gladys Carey Reserve 500219	Public Recreation	Park			
Warringa Park & Anderson Park 500352	Public Recreation	Park		Sportsground	
Primrose Park 500456	Public Recreation	Park		Sportsground	
Anzac Park (part) 87861	Public Recreation	Park			
Balls Head Reserve 88999	Public Recreation	Park	Natural Area - Bushland		Change Purpose: Environmental Protection
St Leonards Park 89592	Public Recreation	Park			
Bradfield Park (part) 89797	Public Recreation	Park			
West Crescent Street 96739	Public Recreation	Park			
Tunks Park 74114	Public Recreation		Sportsground		

Anomalies

Where anomalies or errors exist, relevant information will need to be submitted through the OLG Crown Land Manager Reserves Portal prior to submitting the initial categorisation information. Anomalies identifies to date include:

- 1 No ICG is provided for Tunks Park
- 2 The lot and DP information for Reserve 83109 (Part of Balls Head Reserve) is incorrect (the Aboriginal carving site is elsewhere)

8. Proposed New Plan of Management Program

Due to the time frame for preparing LG Act PoMs for Crown reserves, Council's existing program of reviewing and updating PoMs will have to change. As a result, several PoMs that deal exclusively with Council-owned land will be delayed, and preparation of PoMs will need to be prioritised over other work by OSE officers. Table 2 sets out the changes required to Council's existing PoM program to meet the July 2021 deadline imposed by the Department.

Table 2: Proposed New Plan of Management Program

Plan of Management	Review Due	New or amended PoM Required	Revised Schedule for Review	Crown reserves to be incorporated into Council's existing suite of PoM's (Reserve name, Lot & DP Information)	Case
Neighbourhood Parks	18-19	Yes	18-20	Green Park Part of Reserve 500179, Lot 7138 DP 93723 Part of Brennan Park Reserve 100182, Lot 7042 DP 1059448 Miss Gladys Carey Reserve Reserve 500219, Lot 7332 DP 1158203 Warringa Park Part of Reserve 500352, Lot 7361 DP 1168049 Part of Anzac Park Reserve 87861, Lot 7096 DP 106019 West Crescent Street Reserve Reserve 96739, Lot 2 DP 48224, Lot 7352 DP 1157191	A
St Leonards Park	19-20	Yes	18-20	St Leonards Park Reserve 89592, Lot 1106-1107 DP 46990, Lot 7321 DP 1149783	A
Coal Loader Centre for Sustainability		Yes/ New	18-20	Coal Loader Centre for Sustainability Part of Reserve 1004268, Lot 99 DP 1048930	A
Aboriginal Carving Site		Yes/ New	18-20	<i>Lot & DP information incorrect</i> Reserve 83109, Lot 106 DP 1162898	?
Cremorne Reserve	20-21	Yes	19-20	Cremorne Reserve Reserve 39677, Lot 1128 DP 752067, Lot 1 DP 911147, Lot 1 DP 911459, Lot 7337-7341 DP 1139892	C
Bushland	20-21	Yes	19-20	Balls Head Reserve Reserve 88999, Lot 106 DP 1162898 Part of Cremorne Reserve Reserve 39677, Lot 7337-7341 DP 1139892	C
Bradfield Park	20-21	Yes	19-20	Part of Bradfield Park Reserve 89797, Lot 20 DP 785020	A
Playgrounds	21-22	Yes	20-21	Part of Waverton Park Reserve 500178 Lot 1 DP 115703 Warringa Park Part of Reserve 500352, Lot 7361 DP 1168049 Green Park Part of Reserve 500179, Lot 7138 DP 93723	A
Sportsgrounds	22-23	Yes	20-21	Part of Cammeray Park Part of Reserve 500179, Lots 7302-7303 DP 1136001 Part of Cammeray Park Reserve 100158 Lot 2-6 DP244543 Part of Waverton Park	B

Plan of Management	Review Due	New or amended PoM Required	Revised Schedule for Review	Crown reserves to be incorporated into Council's existing suite of PoM's (Reserve name, Lot & DP Information)	Case
				Reserve 87002, Lot 1-2 DP 909046 Primrose Park Reserve 500456, Lot 100 DP 727041, Lot 7136 DP 1071218 Tunks Park Reserve 74114, Lot 7349 DP 1166085 Part of Anderson Park Part of Reserve 500352, Lot 7362 DP 1168049	
Foreshore Parks & Reserves	22-23	Yes	20-21	Carradah Park Part of Reserve 1004268, Lot 20 & 22 DP 1048933 Part of Blues Point Reserve Reserve 1000007, Lot 1132-1135 DP 752067 Part of Blues Point Reserve Reserve 82191, Lot 2 DP 581992, Lot 7048 DP 1077149 Part of Waverton Park Reserve 500178, Lot 1 DP 115703 Part of Waverton Park Reserve 87002, Lot 1-2 DP 909046 Primrose Park Reserve 500456, Lot 100 DP 727041, Lot 7136 DP 1071218 Balls Head Reserve Reserve 88999, Lot 106 DP 1162898 Part of Bradfield Park Reserve 89797, Lot 20 DP 785020 Olympic Drive Reserve 100078, Lot 6 DP 127637 Tunks Park Reserve 74114, Lot 7349 DP 1166085 Part of Anderson Park Part of Reserve 500352, Lots 2-3 DP 913708 (new category required) Cremorne Reserve Reserve 39677, Lot 1128 DP 752067, Lot 1 DP 911147, Lot 1 DP 911459, Lot 7337-7341 DP 1139892	B
North Sydney Oval	20-21	No	21-22		NA
Forsyth Park	21-22	No	21-22		NA
Smoothey Park	21-22	No	21-22		NA
St Thomas' Rest Park	21-22	No	22-23		NA
Miscellaneous Lands	18 -19	No	22-23		NA

9. Transitional Arrangements

1 Leases, Licences and Other Estates

There are transitional arrangements in places for leases, licences and other estates until new PoMs are prepared or existing PoMs are amended:

- Schedule 7 (Cl.5) provides that any existing tenure for Council managed Crown land continues in force for the term of the original grant.
- CLM Regulation – enables Council Crown land managers to:
 - Grant short term licences under s.2.20;
 - Renew existing leases should there be no additional permitted use, and
 - Grant new leases if there was a lease in force over the land immediately before the CL Act 89 repeal, and there are no permitted uses for the land under the lease that are additional to those permitted under the previous lease, before a LG Act PoM has been adopted.

Refer **Attachment 1** '*Council Crown land managers Fact Sheet: Leasing and short-term licencing under the Crown Land Management Act 2016*' for further information.

2 Phasing

New PoMs dealing with Crown land to be phased in over 3 years. (completion is required by July 2021).

3 Funding

OLG will provide North Sydney Council with funding of \$30,000 to assist with implementation of the required work. This money could be used to engage independent consultants to carry out the required public hearings, or to engage a qualified Native Title Manager to provide the required written advice for each PoM.

Council Crown land managers

Fact sheet

Council Crown land managers

Leasing and short-term licencing under the Crown Land Management Act 2016

Background

The *Crown Land Management Act 2016* (CLM Act) came into force on 1 July 2018. The Act authorises councils that are appointed to manage dedicated or reserved Crown land, to manage that land as if it were public land under the *Local Government Act 1993* (LG Act).

Generally council Crown land managers will manage land as if it were community land. Under the LG Act, a 'plan of management' must be adopted for all community land. The plan categorises the land and governs its use and management. Compliant plans of management must be in place within three years of the CLM Act commencing, to ensure that the Crown land is lawfully used and occupied. Ensuring lawful use and occupation is an essential part of councils' role as managers of Crown land. Compliant plans need to be in place by the 1 July 2021.

Crown reserves that are not trust-managed or managed by leases, and defined by the LG Act as 'public reserves' managed by councils under section 48 of the LG Act (devolved management), are not managed as public land. Councils will need to be appointed as Crown land managers if they want to have increased functions and use-agreement powers on these devolved reserves.

Leasing and licencing of Crown land

A lease or licence is a type of tenure that gives permission to occupy and use Crown land for a specified purpose and term. The CLM Act enables council Crown land managers to enter into leases and licences under the LG Act once a compliant plan of management is in place or the land is classified as operational, whichever occurs first. Council cannot enter into agreements for use, as lessor or licensor, on devolved reserves.

The leasing and licensing of Crown land ensures there is legal and suitable occupation of Crown land. The council Crown land manager is required to ensure all monies received from the use of community land is directed to maintaining and sustaining long-term use and enjoyment of the reserve/s.

The income generated from leasing and licencing is a primary form of funding for a Crown land manager. It allows a Crown land manager to cover long-term running costs (at a minimum) and invest over the long term for future generations to use and enjoy the Crown land in their community. All Crown land managers should have lease and licence agreements in place with users of the reserves that they manage.

Granting tenure—transitional arrangements

Prior to the adoption of a compliant plan of management over Crown land, council is able to issue short-term licences up to one year for prescribed purposes under the CLM Act. Councils can also renew existing leases as long as the permitted use has not changed.

Councils can grant new leases if the uses they permit are the same as those of leases over the land in force immediately prior to the commencement of the CLM Act.

Until council adopts a compliant plan of management for council managed Crown land, Councils can:

- issue short-term licences for a range of prescribed purposes, such as holding sports and recreational activities, camping and events
- renew existing leases over Crown land for a term not exceeding 21 years, including any option for the grant of a further term, if the renewal does not authorise any additional uses for the land
- grant new leases over the Crown land for a term not exceeding 21 years (including any option for the grant of a further term) if:

Council Crown land managers

Fact sheet

- there was a pre-existing lease in force over the land immediately before the repeal of the *Crown Lands Act 1989*
- the new lease does not authorise any uses for the land that are additional to uses that were permitted under the previous lease.

Existing plans of management

Where a plan of management was already in place under the previous *Crown Lands Act 1989*, the Crown Land Regulation 2018 provides that this plan will remain in force until either:

- a new plan of management under the provisions of the LG Act is adopted
- the land is classified as operational land under the LG Act with written consent from the Minister for Lands and Forestry
- the conclusion of the initial period, by which time councils are required to have adopted a new plan of management.

Council Crown land managers must continue to comply with plans of management while they remain in force. The minister may cancel an existing plan of management but cannot alter it. Any proposed management activity for land that is not provided for in an existing plan of management should be implemented by adoption of a LG Act plan of management.

Existing leases and licences transfer

Existing leases and licences that were issued by council as the reserve trust manager under section 102 of the now repealed *Crown Lands Act 1989* are still valid until their original term expires.

If a tenure granted under the previous *Crown Lands Act 1989* contains a renewal clause and that renewal is exercised, the renewal will be issued under the CLM Act because the permit, lease or licence will have automatically transferred. It is the tenure that provides the contract to renew. The terms and conditions of holdings are generally valid and enforceable, meaning the tenure can only be renewed under the terms of the tenure.

Transferring an existing lease to a new holder

Schedule 7 (clause 5) of the CLM Act specifies that any existing tenure continues in force for the term of its original grant and may be varied, forfeited, revoked, terminated, cancelled or dealt with in any other way under the CLM Act as if it had originally been approved, granted, issued, dedicated, reserved or made under the CLM Act (clause 5(4)).

New leases and licences during the initial period

A lease or licence can be issued by a council crown land manager to any user to conduct activities on the reserve for extended periods of time. They must be granted for a purpose consistent with the reserve purpose being managed by the council Crown land manager.

If a user wishes to undertake an activity on Crown land that is considered incompatible with the reserve purpose, the council Crown land manager should not pursue the lease or licence.

Types of leases and licences a council Crown land manager can grant

Leases and short-term licences can be issued under two sections of the CLM Act during the initial period. Council is not required to obtain minister's consent prior to granting these tenures.

Council's ability to lease or licence Crown reserves managed as community land is authorised by section 3.22 of the CLM Act, which requires the preparation of a community land plan of management, adopted by council, to authorise the occupancy and use agreement.

Council Crown land managers

Fact sheet

The council Crown land manager is exempt from the operation of section 3.22 of the CLM Act during the initial transitional period of three years and prior to the preparation of a plan of management (pre-PoM), to enable transitional security and the operation, management and use of tenures. This exemption applies to the:

- granting of short-term licences over the pre-PoM Crown land of a kind that can be granted by a Crown land manager under section 2.20 of the CLM Act
- renewal of existing leases over pre-PoM Crown land for a term not exceeding 21 years (including any option for the grant of a further term) if there are no additional permitted uses for the land
- granting of new leases over pre-PoM Crown land for a term not exceeding 21 years (including any option for the grant of a further term) if:
 - there was a lease in force over the land immediately before the repeal of the *Crown Lands Act 1989* (the 'previous lease')
 - there are no permitted uses for the land under the new lease that are additional to those that were permitted under the previous lease.

Table 1: Types of leases and licences issued by Crown land managers during the transitional period.

Type of lease or licence & legislation	Term	Crown land manager	Minister's consent
Short-term licence under s2.20 ^{*^}	Up to 12 months [*]	Council	Not required
Lease under s.5.3 [*]	Up to 21 years [*]	Council	Not required
[*] Can only be issued during the 'initial period', see clause 70 of the Crown Land Management Regulation 2018 [^] Refer to the Short-Term Licencing Fact Sheet			

Things to consider when leasing and licencing

To ensure that usage or occupation of the reserve is appropriate for the lease or licence, a council Crown land manager must always consider:

- compliance with the legislation, related policies and guidelines
- compatibility with the purpose (any tenures not considered compatible with the reserved Crown land purpose should be discussed with the Department of Industry)
- environmental impacts of the activities to be permitted by the lease or licence
- appropriate term (period of occupation) of the lease or licence
- land capability of the reserve to support the proposed lease or licence
- current and future use of the land
- native title rights
- Aboriginal land claims
- if development consent is required and has been obtained (and other consents under the *Environmental Planning & Assessment Act 1979*)
- obtaining market value (or applying a rebate to market value) and providing a proper return to the public for use of the public land. For more information about market value and granting of rebates please refer to the fact sheet for market rent and rebates
- provisions for periodically updating (annually using the Consumer Price Index) and reviewing the rent (minimum rent review period of at least three years), the termination of the lease or licence in the event of a revocation of the reserve, the indemnification of the council Crown land manager, the Crown and the NSW Government against claims for compensation, and that appropriate insurances are in place.

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Native title

Native title is the name given to the traditional ownership of land and waters that have always belonged to Aboriginal people according to their traditions, laws and customs. The *Native Title Act 1993* sets out how native title rights are recognised and protected.

A proposed lease or licence may affect native title interests in the reserve. When exercising powers provided by these transitional arrangements, council Crown land managers must obtain written advice from a qualified native title manager that any leases or licences comply with native title legislation. Under the CLM Act councils are required to engage or employ a native title manager.

More information on managing native title rights and interests and the role of native title managers is available on the Department of Industry's website (industry.nsw.gov.au/lands).

Aboriginal land claims

The *Aboriginal Land Rights Act 1983* recognises that land in NSW was traditionally owned and occupied by Aboriginal people, and is of spiritual, social, cultural and economic importance to Aboriginal people. Under the *Aboriginal Land Rights Act 1983*, Aboriginal Land Councils may lodge a claim over Crown land.

A lease or short-term licence must not be granted over land that is the subject of an undetermined Aboriginal land claim, if the proposed lease could:

- prevent the land being transferred to an Aboriginal Land Council in the event the claim is granted
- impact or change the physical condition of the land.

Where the proposed lease or short-term licence will impact or change the physical condition of the land, the grant of the tenure must only be considered if the council Crown land manager or proposed lessee/licensee has obtained a letter of consent from the claimant Aboriginal Land Council or the claimant Aboriginal Land Council has withdrawn or amended the claim to exclude the proposed tenure area. While a request to a claimant Aboriginal Land Council can be made, the claimant Aboriginal Land Council is under no obligation to grant such a request and may prefer to have the claim fully investigated.

For more information, contact the department to seek advice about any potential land claims affecting the Crown land that could be affected by the proposed lease or short-term licence. This ensures any possible land claim issues are resolved before proceeding.

Community Engagement Strategy

Councils are not required to comply with the Community Engagement Strategy, but are required to follow any engagement requirements set out in the LG Act.

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Lease and licence templates

Templates for leases and licences have been prepared for use by council Crown land managers. These templates are suitable for use with both commercial and non-commercial operators and other users of the reserve. The templates can be downloaded from the Office of Local Government Council Crown Land Managers – Resources page (www.olg.nsw.gov.au/content/council-crown-land-managers-resources).

Council Crown land managers have the ability to grant lease and short-term licence agreements during the initial period without requiring the minister's consent. Council Crown land managers are able to use the templates available if they choose to do so, although councils may seek to make amendment through the addition of clauses by a solicitor. The lease template provides suitable provisions for agreements over Crown reserves managed by councils as Crown land managers, as well as good practice provisions for land management, use and insurances.

In granting leases and licences council Crown land managers are encouraged to engage the services of a solicitor to provide advice to the Crown land manager on legal aspects concerning the grant of the proposed tenure.

Contact us

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