

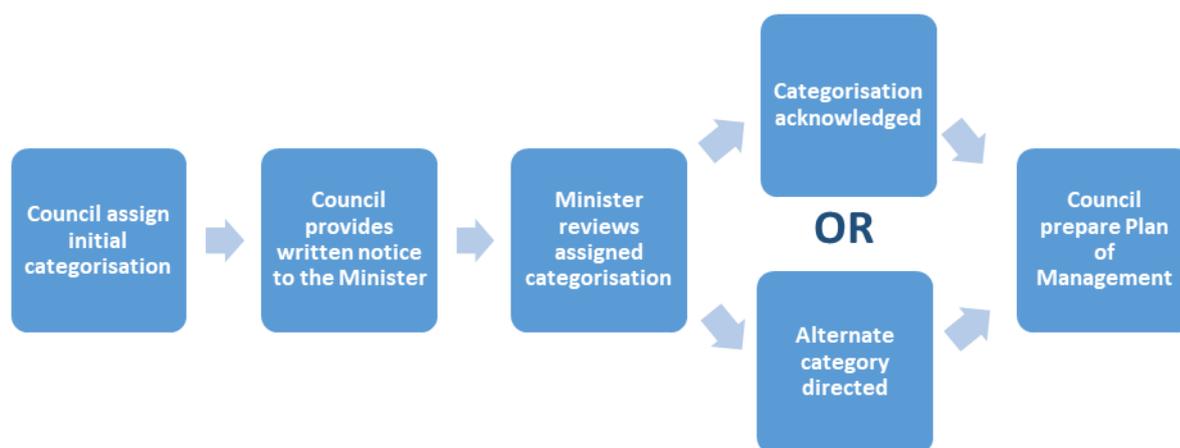
## Initial categorisation of Crown reserves for which council is the Crown land manager

### Introduction

Under section 3.23 of the *Crown Land Management Act 2016* (CLM Act), council Crown land managers must assign one or more community land categories to Crown land as soon as practicable after becoming the manager. The community land categories are referred to in section 36 of the *Local Government Act 1993* (LG Act). The council must give written notice of initial categorisation to the minister for approval.

A list of reserves for which council is appointed Crown land manager can be accessed via the [Council Crown Land Reserves Manager Portal](#).<sup>1</sup> Crown land devolved under section 48 of the LG Act does not require management categories.

Figure 1 describes the process for assigning initial categorisation to Crown land.



**Figure 1. Process map for the categorisation of council managed Crown land**

### Assigning initial categorisation

Council must assign a category or categories, referred to in section 36 of the LG Act, which council considers to be most closely related to the purposes for which the land is dedicated or reserved. The categories described in the LG Act for community land include:

- natural area (subcategory—watercourse, bushland, escarpment, wetland, and foreshore)
- sportsground
- park
- area of cultural significance
- general community use.

When considering the use and management of community land, council managers should refer to the core objectives for each category prescribed by the LG Act, as well as the guidelines for the

<sup>1</sup> <https://reservemanager.crownland.nsw.gov.au/who-we-are/who-manages-crownland/council-crown-land-manager>

categorisation of community land prescribed by [Part 4, Division 1, Local Government \(General\) Regulation 2005](#)<sup>2</sup>

Council should consider the following when assigning categories under the LG Act:

- **Reserve purpose**—Council managers should consider how these categories would ensure the land is used for the purpose for which it was originally set aside by its dedication or reservation.
- **Current/existing use of the reserve**—Council should apply categorisation based on existing/current use of the reserve only. The initial categorisation cannot be based on proposed or future use. Any change to the categorisation to support a future use should be altered via a plan of management.
- **Characteristics of the land**—Council should describe the characteristics of the land, in particular when assigning a category of ‘natural area’ or ‘area of cultural significance’.

Council managers should make their own enquiries and rely on their own judgement when categorising the Crown land they manage.

## Categorisation and native title

Under the *Native Title Act 1993* (Cwlth) (NT Act), any act<sup>3</sup> that occurs on land or waters that affects native title rights and interests must be validated in order to lawfully affect native title rights and interests.

As Crown land managers, councils must obtain native title manager advice under Part 8 of the CLM Act before dealing with Crown land that they manage. This is to ensure the activity is lawful under the NT Act. To validate an act over a piece of land, the council must review the subdivisions outlined in Part 1 Division 3 of the NT Act. In particular, Subdivision J can validate an act if it is done in accordance with the purpose for which the land was reserved or dedicated.

This reinforces the importance for council to assign categorisation that most closely matches the original reservation or dedication purpose. Land management activities not undertaken in accordance with the NT Act may infringe upon native title rights and the council may lose the legal right to continue those activities.

For example, applying the broad category of ‘general community use’ over a reserve may be applicable when no other category applies, but any acts that occur on that land must remain consistent with the reserve purpose, regardless of what is permitted under the objectives of the LG Act.

More information on the native title requirements for council Crown land managers is available on the department’s website. See [Native Title and Aboriginal interests](#)<sup>4</sup>

<sup>2</sup> [www.legislation.nsw.gov.au/#/view/regulation/2005/487/part4/div1](http://www.legislation.nsw.gov.au/#/view/regulation/2005/487/part4/div1)

<sup>3</sup> An ‘act’ is an activity that occurs on or otherwise affects land or waters. Acts may be either physical activities, such as the construction of a road, or the passage of legislation, or the creation of rights and interest in land such as issuing a lease

<sup>4</sup> <https://reservemanager.crownland.nsw.gov.au/using-crown-reserves/leases-and-licences2/native-title,-aboriginal-interests-and-granting-tenure>

### Giving written notice of initial categorisation

As soon as practicable, council must notify the minister in writing of the assigned initial categorisation over the land.

Advice to the minister must be provided in the [approved form](#) and clearly set out the:

- applicable Crown land (reserve number)
- the dedication or reserve purpose
- the assigned categorisation
- detailed justification (see examples below).

### Justification of assigned categorisation

Councils must give the department a detailed justification to support the assigned categorisation. Justification should include:

- details about the existing development on the reserve
- how the reserve is being used
- any characteristics of the land that supports the categorisation.

This information supports the department's assessment that the categorisation and current use is most closely aligned with the reserve purpose. It will also help the department decide if any additional purposes are required.

### Multiple use reserves

The CLM Act encourages multiple uses for reserves, consistent with the reserve purpose. To enable effective management of the reserve under the LG Act, council may apply multiple categories to the reserve when these categories are most closely aligned to the reserve or dedication purpose.

If council wishes to apply multiple categorisations to a reserve, it must give a detailed explanation that clearly identifies the areas for which each category will be assigned, with a map delineating the categories over the reserve, as per clause 113 of the Local Government (General) Regulation 2005.

### Examples

#### Scenario 1: Single-use reserve

Council assigned initial categorisation to Crown land with the purpose of public recreation. The reserve is predominantly used for sports, so council has assigned the initial categorisation as 'sportsground'. Council gave the following information to justify the assigned initial categorisation.

**Table 1. Assigning a categorisation of 'sportsground'**

Council justification	Map
Reserve has a long-established use as a multi-purpose sportsground. Facilities include a sports oval and tennis courts, lighting, spectator seating and amenities block. Sportsground is considered to be compatible with reservation purpose of public recreation as sport is a form of recreation.	A map is not required to support the categorisation as council is applying a single category across the entire reserve.

### Scenario 2: Multiple-use reserve—categorised based on characteristics of the land

Council assigned initial categorisation to Crown land with the purpose of public recreation. The reserve has multiple purposes and has land characteristics that apply to different categories under the LG Act. Therefore, council assigned multiple categories over the reserve including 'natural area', 'sportsground', 'general community use' and 'area of cultural significance'.

The following information was provided to justify the assigned initial categorisation.

**Table 2. Assigning multiple categories**

Council justification	Map
<p><b>Natural area</b>—applying to the natural drainage line of a creek that forms part of a riparian management zone. This zone performs a number of functions including providing habitat shelter and feed, protection of remnant vegetation, movement corridor, as well as protecting river channel from erosion</p> <p><b>Sportsgrounds</b>—applying to the area of the reserve used for structured active recreation/sportsground. Facilities include rugby league field, synthetic hockey pitch, netball court, tennis courts, bowling club, swimming pool and associated amenities</p> <p><b>General community use</b>—applying to the annual and season community events held at the oval. Seasonal events, including festivals and sporting events.</p> <p><b>Area of cultural significance</b>—the area is known to have Aboriginal artefacts and associated potential archaeological deposits.</p>	<p>Map showing categorisations of reserve for public recreation.</p> <p>Key:</p> <p>Purple= general community use</p> <p>Orange = sportsground</p> <p>Green = natural area</p> <p>Brown = area of cultural significance.</p>  <p><b>Figure 2. Aerial photograph</b></p>

### Spatial mapping of categorisations

To manage changes to the use of Crown reserves over time and changes of categorisation, councils must map the spatial extent of the initial categorisation over the reserves that have multiple categories.

At the time of initial categorisation, council should provide the spatial mapping of categorisations over the reserve. The mapping should clearly identify the categorisation via the following colours:

- park = blue
- natural area = green
- sportsground = orange
- general community use = purple
- area of cultural significance = brown or brown hatching if overlaid over another category.

Spatial data should be submitted using a 'shape file' that can be downloaded from the Crown land managers reserve portal.

### Minister's response

The minister or the department may require a council manager to change an assigned categorisation if they consider:

- that the category is not the most closely related to the purposes for which the land is dedicated or reserved, or
- managing the land under the assigned category is likely to materially harm the use of the land for any of the purposes for which it is dedicated or reserved.

When the department receives notice from council, we will consider the assigned categorisation against the above criteria. The department will then:

- acknowledge the category assigned, or
- ask the council to change the category assigned: The department will issue a direction requiring council to change the assigned categorisation in accordance with section 3.23 (5) of the CLM Act. A council Crown land manager must comply with a direction to change the assigned categorisation. Complying with a direction also reduces council's future native title compensation liability.

### Plan of management

Once council managers receive the department's acknowledgement of an assigned categorisation, or the department directs them to assign a specific categorisation, council managers may proceed to develop and adopt a LG Act plan of management for the land. Council managers should refer to guidance material for the preparation of LG Act plans of management for Crown land.

### Contact us

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

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