

Classification of cemeteries and crematoria for council Crown land managers

Introduction

Councils are responsible for over 1000 Crown reserves for cemetery related purposes across NSW. Councils manage these cemeteries and crematoria as either:

1. The appointed council Crown land manager under the [Crown Land Management Act 2016](#) (CLM Act), or
2. Devolved land under section 48 of the [Local Government Act 1993](#) (LG Act)

This fact sheet provides information for appointed council Crown land managers on the classification of Crown land dedicated or reserved for the purpose of cemeteries and crematoria including details of the classification process.

Where cemeteries and crematoria are devolved land under section 48 of the LG Act, classification of the land is not required.

Community and operational land classification

When a council is appointed as a council Crown land manager under the CLM Act, they are required to manage Crown land as if it were public land as described in the LG Act.

The LG Act states that public land must be classified as either 'community land' or 'operational land', depending on the land use. Council Crown land managers must manage Crown land as 'community land' under the CLM Act unless the Minister has given written consent for the land to be classified as operational (section 3.22(5) of the CLM Act).

The Department of Planning, Industry and Environment can only issue Minister's consent for land to be classified as operational land where a council Crown land manager can demonstrate that either the land:

- does not fall within any of the categories for community land listed in section 36 of the LG Act, or
- could not continue to be used and dealt with as it currently can if it were required to be used and dealt with as community land.

Where Crown land is classified as 'community land', the council Crown land manager must assign one or more of the below categories of community land referred to in section 36 of the LG Act to the land:

- Natural Area (including the further category/ies of bushland, wetland, escarpment, watercourse and/or foreshore)

- Sportsground
- Park
- Area of Cultural Significance
- General Community Use

Can council Crown land managers classify cemeteries and crematoria as operational land under the LG Act?

Crown reserves for cemetery purposes managed by council Crown land managers can fit into several categories dependant on the context, including 'general community use', 'area of cultural significance' and 'natural area'.

Where management of the land as a cemetery or crematorium can continue if the land is classified as 'community land', any request to the Ministers for consent to classify these reserves as 'operational land' cannot be granted (section 3.22(5) of the CLM Act).

How can councils issue burial licences on community land if the maximum term is 21 years?

Where a council is the Crown land manager of a Crown reserve for cemetery related purposes, the council is defined as a 'Crown cemetery operator' by the [Cemeteries and Crematoria Act 2013](#) (C&C Act). The provisions of the C&C Act and its regulations govern the operation of the cemetery/crematorium.

Interment rights, (formerly known as burial licences or burial rights), are granted under the C&C Act, not the LG Act and do not impact the ability for councils to manage the land as 'community land'. This means the management of the reserve as community land under the LG Act places no restrictions on the granting of interment rights.

Are Plans of Management required for cemeteries?

The preparation of a Plan of Management is required for all land classified as 'community land'. The nature and the use of the reserve must not change until a Plan of Management is adopted by Council.

Plans of Management are not a mandatory requirement of the C&C Act. Cemeteries & Crematoria NSW (CCNSW) can, however, direct a council, as a Crown cemetery operator, to prepare a Plan of Management under the C&C Act as appropriate.

A Crown cemetery operator can also seek consent from CCNSW to prepare a Plan of Management under the C&C Act. A Plan of Management prepared under the LG Act for the management of a cemetery on Crown land could also be considered for adoption under the C&C Act.

If CCNSW has adopted a Plan of Management under the C&C Act, that plan will supersede a Plan of Management made under or by the authority of the CLM Act under the LG Act, which will be rendered inoperative to the extent of any inconsistency (section 5 of the C&C Act).

To avoid duplication and inconsistency, the council Crown land manager should incorporate requirements in the C&C Act into the LG Act Plan of Management. This will ensure the requirements of CCNSW are met within the Plan of Management in addition to those set out in the LG Act.

You can view the guidelines for developing a Plan of Management under the C&C Act in the [CCNSW Crown cemetery operator plan of management framework](#).

What are the requirements for land that has been devolved to council?

If a council is not the appointed council Crown land manager but instead responsible for the reserve under section 48 of the LG Act (devolved to council), councils are not required to develop a Plan of Management for the reserve under the LG Act.

If the management of Crown land has been devolved to council, the responsibility for the management of cemeteries and crematoria defaults to the council. In this case, councils have a responsibility to manage the land under the C&C Act and may be required by CCNSW to prepare a Plan of Management under the C&C Act.

If the Crown land is devolved, council is unable to authorise third party use of the land (e.g. issue leases or licences) however, council can issue interment rights under the C&C Act. If a council seeks to actively manage and use the land, they should contact Crown Lands to request to be appointed as the council Crown land manager of the reserve.

How can I find more information?

We have collated a range of useful resources to help councils develop Plans of Management. Please visit the council Crown land manager webpage at www.reservemanager.crownland.nsw.gov.au for more information and to subscribe to our e-newsletter to stay up-to-date with the latest resources, guidelines and training opportunities.

Contact us

For more information, please get in touch with the Council Crown Lands Management team at:

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Image: graves in Tilba District Cemetery, courtesy of John Spencer, Department of Planning, Industry and Environment.

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