DEVELOPMENT AND CROWN LAND

Land and Property Management Authority
Crown Lands

This fact sheet is to assist persons seeking to carry out development on:

(i) Crown land

(ii) land adjoining or near Crown land, and

(iii) former Crown land (now sold), where ongoing conditions or restrictions apply.

It establishes those matters of interest to the NSW Land and Property Management Authority (LPMA) in terms of its responsibility to manage Crown land in NSW.

As such this fact sheet will also assist authorities considering applications for such development under the *Environmental Planning and Assessment Act 1979*.

Nearly half of all land in NSW is Crown land. This includes state parks, Crown reserves, land that is leased or licensed, minor ports, river entrances, caravan parks, and places of cultural and community significance. Crown land includes the submerged land of public waterways (except where under the ownership of NSW Maritime Authority) and Crown roads. The day-to-day management of some Crown reserves is devolved to a reserve trust, which can be a local council or community trust board.

The Crown Lands Act 1989 sets out how Crown land is to be managed. This directly affects the response of the LPMA to development proposals. In particular:

- all actions are to be consistent with the 'principles of Crown land management'
- an assessment must be carried out prior to any dealings in Crown land (such as a lease)
- specific use of Crown land generally needs to be authorised by a lease, licence or other permit.

In summary, the principles of Crown land management are that, as appropriate:

- environmental protection principles be observed
- natural resources be conserved wherever possible
- public use and enjoyment, and multiple use be encouraged
- the land and its resources be sustained in perpetuity, and
- it be occupied, sold, or otherwise dealt with consistent with these principles.

Development applications on Crown land

Applications need landowner consent

The *Environmental Planning and Assessment Act 1979* and accompanying Regulation provides that a Development Application (DA) or an application for a Complying Development certificate must have the consent in writing of the owner of the land. In the case of Crown land this consent is given by LPMA (on behalf of the Minister for Lands as landowner).

Note this requirement applies equally to Crown land held under lease or licence and to Crown land managed by a trust (including where the trust is a local Council).

Where the applicant is itself a public authority (which includes a Council and a reserve trust), landowner consent by LPMA is not required for a DA if the public authority serves a copy of the application on LPMA (on behalf of the Minister for Lands) *before* the DA is lodged with the consent or approval authority. Applications should be served on the local office of LPMA. This provision does not apply to applications for complying development certificates – landowner consent must be obtained for such applications.

There are different provisions for landowner consent where a proposed development falls under Part 3A (Major infrastructure and other projects) of the *Environmental Planning and Assessment Act 1979*. Specific reference should be made to these provisions.

When deciding whether to grant landowner consent, LPMA will consider the proposal against the principles of Crown land management and any environmental or other strategic assessment that has been undertaken, whether any authorisation for the development under the *Crown Lands Act 1989* exists or would be issued, and any other matters specifically relevant to the site or type of development proposed.

Reference should be made to the separate LPMA *Policy for the Issue of Landowner's Consent*. This policy includes an Application Form.

Authorisation for use of Crown land also required

The issue of any consent, as landowner, to the lodging of an application to carry out development on Crown land is separate to the need to obtain an authorisation under the *Crown Lands Act 1989* (ie. lease, licence or similar) to occupy Crown land.

As such, an authorisation under the *Crown Lands Act 1989* to allow occupation of Crown land must still be obtained:

(i) where development is 'exempt development' or 'development that does not need consent' (ie. no approval under the *Environmental Planning and Assessment Act 1979* is required)

(ii) once development consent, a complying development certificate, or a major project approval is obtained.

Environmental assessment may be required

Where a proposed development is 'development that does not need consent', LPMA (or a reserve trust) will generally be required, under Part 5 of the *Environmental Planning and Assessment Act 1979*, to assess the environmental impact of that development when deciding whether to issue an authorisation under the *Crown Lands Act 1989*. The proponent may be required to prepare a 'review of environmental factors' to assist.

Land subject to Aboriginal Land Claims and Native Title Claims

If there are any Native Title issues or unresolved Aboriginal Land Claims associated with the Crown land, LPMA may not be able to permit a development proposal on that land, or issue landowner consent to allow the making of an application to another authority until these issues are resolved.

Development on land near Crown land

The approach of LPMA to nearby development is that:

- site-specific impacts should be contained within the proposed development site
- proposed development should not need to rely on adjoining Crown land, eg. for services or amenity
- proposed development should not adversely affect Crown land, its management and its enjoyment by the community in general, now and in the future.

Various issues may arise in relation to development near Crown land. The following specific advices are not exhaustive. It is a good idea to discuss proposed development adjoining or near Crown land with the local LPMA office.

Access

Development should not restrict current or future access to any Crown land.

Crown land should not be used as a means of access to freehold land. Such access should be via a public road or right-of-way over other land. This includes:

- any potential 'secondary' access, ie. sheds or garages or other specific-use spaces should not include openings (other than openings for reasonable informal foot access) that can only be accessed via Crown land
- temporary access for construction purposes.

Any development that proposes access over Crown land (other than Crown roads) must include that Crown land and the proposed access arrangement as an integral component of the development application (DA). As such, LPMA consent, as landowner, must be included with the DA, and any approved access will need to be formalised under the *Crown Lands Act 1989*. (See also the advice below in respect to Crown roads).

Boundary encroachments

Development sites adjoining Crown land must be accurately surveyed to ensure there will be no encroachments either during construction (eg. for storage of materials, access by construction vehicles etc.) or on-going occupation. An accurate survey is particularly important for land adjacent to Crown waterways where erosion and accretion can occur.

LPMA will request that any development consent include a condition requiring physical delineation of the boundary to ensure no such encroachments.

Storm water run off

Uncontrolled stormwater can degrade Crown land and down-stream environments through erosion, sedimentation, the altering of nutrient levels, increasing levels of pollution, the spread of weeds, and exacerbated flooding. These impacts can increase land management costs and limit current and future values of the Crown land.

The design of stormwater measures should be part of an overall stormwater management plan based on an assessment of potential impact on adjoining land. Developments adjoining Crown land should not lead to a redirection of the flow, or a change in the volume and peak discharge of stormwater onto Crown land.

Design measures to address these matters (eg. on-site detention and/or infiltration and subsurface discharge) should not be located on Crown land. If use of Crown land in this way is to be sought, it must be included as an integral component of the DA. As such, LPMA consent, as landowner will need to be included with the DA, and any approved structures will need a formal tenure under the *Crown Lands Act 1989*.

Erosion and sedimentation

Development may increase the intensity and/or frequency of erosion and sedimentation as a result of the clearing of vegetation, increasing the area of impermeable surfaces, changes in land management practices, or concentration of flows. LPMA will request that consent authorities ensure appropriate erosion and sedimentation control measures are imposed on development consents and are correctly followed during construction and subsequent occupation.

Most local Councils have specific requirements in this regard. Reference can also be made to *Managing Urban Stormwater – Soils and Construction* (Landcom 2004) and *A Resource Guide for Local Councils: Erosion and Sediment Control* (Department

of Environment and Climate Change, 2006). Soil and water management plans may need to be developed where there is particular increased risk of sedimentation or erosion.

Bush fire management

All developments should be designed and sited with appropriate set backs and fire breaks so that they do not impact upon adjoining Crown land. This includes all bush fire protection measures (eg. asset protection zones, perimeter trails) required in *Planning for Bush Fire Protection 2006* (NSW Rural Fire Service), or any other requirement. Earlier provisions in the *Rural Fires Act 1997* that allowed for clearing to a stipulated distance on adjoining Crown land were repealed in 2002.

An easement to permit protection measures on adjoining Crown land may be considered for 'infill development' (as defined in *Planning for Bush Fire Protection 2006* – ie. single dwellings or extensions to buildings in existing subdivisions where on-site space is limited). Such proposals need to be included as part of any DA and will therefore need the consent of LPMA, as landowner, to that DA. LPMA will expect the proponent to first take all reasonable steps to minimise impacts on Crown land, including any encroachment, by appropriate siting of buildings and construction to an appropriate level in Australian Standard 3959-1999 (construction of buildings in bushfire-prone areas).

LPMA may also consider use of Crown land where the proposed development will lead to improved overall bush fire risk outcomes or reduce overall impacts on Crown land (compared to where the development does not proceed).

Refer to the separate more detailed LPMA Fact Sheets *Bush fire management for proposed development adjoining Crown land* (in respect to the matters introduced here) and *Crown land Asset Protection Zones* (in respect to existing APZ's on Crown land).

Flora and fauna values

The potential impact of a development on flora and fauna values, including corridors and edge effects, within Crown land needs to be considered. LPMA is interested in the potential overall effect on conservation values and management costs, in particular:

- the scale and proximity of the proposed development to Crown land, and the biodiversity values of that land
- whether particularly vulnerable areas are affected, such as coastal wetlands, remnant bushland, littoral rainforest, koala habitat, and habitat corridors
- whether affected flora and fauna species are protected under the *National Parks and Wildlife Act 1974* and/or listed as threatened under the *Threatened Species Conservation Act 1995* or the *Fisheries Management Act 1994*
- the likely impact of domestic pets and exotic vegetation.

Including areas of natural vegetation within a development may minimise potential edge effect impacts and provide essential linkages or corridors to maintain biodiversity.

Weed and pest management

Development may lead to the introduction of pests such as rabbits, predation of wildlife by domestic pets, and accelerated spread of weeds. Resources required to manage such impacts on Crown land can increase if not adequately addressed in the development itself, both during construction and in subsequent occupation.

If these impacts cannot be resolved, managed buffer areas within the development site may be required. Buffers can also link individual areas of fauna and flora habitat, including Crown land, and so assist in maintaining overall biodiversity values and minimising edge effects. If a buffer is not practical, other ways to minimise these issues need to be considered, eg. locating buildings away from Crown land boundaries, fencing, and landscaping (generally with native plants).

Visual impact

The visual impact of the proposed development, including any potential loss of public views, in relation to the current and future use and enjoyment of Crown land needs to be considered. Impacts may be ameliorated by appropriate location and/or scale of buildings, buffer areas and landscaping, and building materials and colours.

Open space

The open space values of Crown land should not be relied on to generate the appropriate level of amenity within adjoining development. Individual developments need to include their own recreation space and facilities in accordance with the demand likely to be generated by that development.

Implications of coastal processes

Much coastal and estuarine foreshore land may be affected by sea level rise and likely increased intensity of storm events due to climate change. Effects can include inundation and erosion; the need to cater for additional or relocated hazard reduction measures; and the need to relocate existing infrastructure, environmental protection areas, and other uses that may become constrained by changes in water boundaries.

Development should recognise these possibilities and cater for them within the development site without reliance on adjoining or nearby Crown land. This is particularly so where that Crown land may also be constrained by the impacts of such coastal processes.

The views of any reserve trust

Crown land may be managed by a reserve trust, for which a manager (which could be a local council or a community trust board) is appointed. Where this is the case, early discussion should be held with that manager in addition to LPMA to determine the views of the trust and, for development on the reserve itself, whether it would issue any required authorisations.

Conditions on former Crown land (now sold)

When any Crown land is to be sold or converted to freehold title, the Minister for Lands may impose:

- conditions relating to that sale or requiring certain actions in respect to the land (refer s.36, 37 and 38 *Crown Lands Act 1989)*
- covenants or other restrictions to protect the environment or prevent subdivision or separate dealing of multiple lots (refer s.77A and 77B).

Development must be consistent with any such conditions.

Further, s.77B(5) of the *Crown Lands Act 1989* requires the consent of the Minister for Lands to any proposed subdivision of land to which a covenant under s.77B applies. Any request for consent in such cases should be referred to the local LPMA office. (Note that s.77A and 77B override any Local Environmental Plan (LEP) provision inserted under s.28 of the *Environmental Planning and Assessment Act 1979* relating to covenants – unless that LEP provision specifically provides otherwise.).

Use of Crown roads

The Crown road network is an historical network of land reserved to facilitate access should such need arise. Only a small proportion of Crown roads have been formed for actual vehicular access; most remain as 'paper' roads only. LPMA does not normally undertake road construction works and has limited resources in this regard. As such, LPMA does not support the development of Crown roads for new or more intensively-used access to private property unless arrangements to transfer such road to the local council are also proposed.

In addition, LPMA will only consider allowing works on Crown roads where:

(a) those works are minor and do not alter the natural terrain, and

(b) there is an existing track or road, and

(c) the road serves an existing development, or is required for access to Crown land or other public land, and

(d) no increase in intensity of use of property accessed by the road is proposed.

The cost of such works must be borne by the proponent.

Any person proposing access via a Crown road to serve a proposed development should discuss the matter with LPMA prior to lodging any Development Application.

Work proposed on a Crown road must be approved by LPMA under sections 71 or 138 of the *Roads Act 1993* on behalf of the Minister for Lands as Roads Authority. (Any approval required under s. 138 may be able to be obtained at the same time as an associated development consent under the *Environmental Planning and Assessment Act 1979* – as 'integrated development' under that Act. Refer to that Act and associated Regulation for procedures for integrated development).

Fire trails on Crown roads have been developed specifically for the purpose of facilitating access for bush fire fighting purposes and should not be considered as available for general vehicular access to adjoining freehold land. The ability to provide such access will need to be assessed by LPMA in each case.

The procedures for the sale of a Crown road or transfer to a local Council are set down in the *Roads Act 1993* and accompanying Regulation. These involve advertising and consideration of public submissions. The time required for this should be kept in mind where sale or transfer of a Crown road is sought.

Land and Property Management Authority
Crown Lands

NSW GOVERNMENT

Fees

Normal LPMA fees relating to Crown land matters apply.

LPMA policies in relation to specific types of development

Contact the local offices of LPMA in relation to its policies and requirements for specific types of development including:

– domestic waterfront facilities (jetties, boatsheds, etc)

– caravan parks

– marinas and other commercial waterfront activities

– telecommunication facilities.

Other LPMA-managed land

In addition to Crown land, LPMA owns and manages an extensive portfolio of land through the State Property Authority, Sydney Harbour Foreshore Authority, Office of Strategic Lands, Hunter Development Corporation, Lake Illawarra Authority and Festival Development Corporation. Contact should be made with these agencies where development is proposed near to land they manage.

Other legislation

This guide does not address requirements under other NSW legislation that may apply to a specific development.

Contacting LPMA

LPMA has offices across NSW. Contact details are available from www.lpma.nsw.gov.au.

Disclaimer

This fact sheet is not to be taken as legal advice. In preparing this fact sheet the Land and Property Management Authority has made every reasonable effort to provide accurate guidance on applicable legislation and other matters. However, the law is complex and constantly changing. The Land and Property Management Authority accepts no responsibility for any loss or damage caused as a result of reliance on information contained in or omitted from this fact sheet.

Land and Property Management Authority

Head office
1 Prince Albert Road
Queens Square
SYDNEY NSW 2000

T 1300 052 637
61 2 9228 6666
F 61 2 9233 4357