



INFORMATION SHEET

July 2023

Changes to *Land Administration Act 1997* and *Public Works Act 1902*

Requests for;

- Excision of managed crown reserve for a public work, or;
- Revocation of a management order for a public work without consent

This document is not intended as a comprehensive guide of the relevant factors involved in the excision of land from a managed Crown reserve for a public work nor revocation of a management order without consent for a public work under the *Land Administration Act 1997*.

Government Departments and Trading Enterprises should seek legal advice and contact the Department of Planning Lands and Heritage before submitting a request for excision or revocation.

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Introduction

The *Land and Public Works Legislation Amendment Act 2023* (LAPWLA Act) made a number of amendments to the *Land Administration Act 1997* (LAA), including;

- providing the ability for the Minister for Lands (Minister) to excise land from managed reserves for a public work, and to revoke a management order for a public work where a management body will not give consent,
- a new consultation process for certain actions affecting managed reserves, and
- a number of administrative improvements to the *Public Works Act 1902* (Public Works Act) to modernise the definition of “public work”.

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LAA Part 4 Reserves

Revocation of Management Order

Subsection 50(2) previously only allowed for the revocation of a management order without consent if it was considered to be “in the public interest” or for non-compliance with a management order or plan. Section 50 of the LAA has been expanded by the LAPWLA Act to enable the Minister to revoke a management order if the Minister considers it necessary for the purposes of a public work.

There has previously been some uncertainty around what is in the public interest. A particular public work may be in the interest of some of the public but not necessarily all of the public. The inclusion of the ability for the Minister to revoke a management order without consent for a public work (as defined in the Public Works Act) removes this uncertainty. Formal consultation under section 46A of the LAA is not required but procedural fairness would need to be afforded to the management body.

Excision of a Managed Reserve

Section 51 of the LAA has been amended to clarify that in addition to existing powers, the Minister may reduce the area of a reserve by excising an area from that reserve, if the Minister considers the excision is in the public interest or necessary for a public work.

Consultation Process

Part 4 of the LAA was also amended to provide for a new consultation process set out in Section 46A of the LAA. Before exercising certain powers under the LAA in relation to managed reserves, the Minister must give written notice to the management body, which then has 42 days in which to provide submissions or such longer period as the Minister allows.

The consultation process applies to the following managed reserve actions:

LAA Section	Description
42(3)	'Minor' amendments affecting Class A Reserves listed in Section 42(3) LAA
42(4)	'Major' amendments affecting Class A Reserves, subject to a parliamentary process as listed in Section 42(4) LAA
45(2) and (4)	Actions affecting reserves subject to the <i>Conservation and Land Management Act 1984</i> or <i>Swan Rivers Management Act 2006</i>
51(2)	Excisions from managed reserves where the Minister considers the excision is in the public interest or necessary for the purposes of a public work

Compensation and Interests

A new section 51AA provides that a management body (other than a State instrumentality which does not include Local Governments) may seek compensation under section 204 of the LAA for an excision (removal) of land from its managed reserve under or on the revocation of its management order.

A holder of a relevant interest in the excised land may also claim compensation under section 202 (for example a management order lessee). Compensation is limited to the depreciated value of any improvements and authorised structures on the excised portion of the reserve.

Any interest or caveat over the portion of the excised reserve will be extinguished unless the interest only applies to the excised portion of the land and/or the Minister specifies that the interest can continue.

High level process for requesting excision of land from a reserve for a Public Work or revoking a Management Order without consent for a Public Work*

* Each proposal will be considered on a case-by-case basis by the Minister. However, a starting point for any proposal will be the provision of evidence that genuine attempts to reach agreement with the management body for the excision of the relevant land or the revocation of a management order have been undertaken in the first instance by the Government Department or Agency.

Is the land required for a Public Work?

The Minister will firstly assess if the proposal meets the definition of a public work in accordance with section 51 of the LAA. A new definition of public work has been inserted into section 3 of the LAA, providing that it has the meaning given in Schedule 1 of the Public Works Act. The definition of public work has been updated under the Public Works Act to reflect modern public works.

Proposal and Site Details

Information will need to be provided to the Minister clearly detailing the public benefit of the proposal to the locality and State of Western Australia. In reaching a decision on whether to excise a portion of a managed reserve, the Minister would need to consider all relevant factors relating to:

- the existing use and future potential use;
- the relative merits of each use; and
- site specific issues and analysis (e.g., why the site was selected and consideration into whether there is a viable, alternative site for the proposed public work).

A checklist of relevant key matters to consider prior to making a request to the Minister can be found at page 4 of this Information Sheet.

Is the land required for the Public Work, currently utilised for a Public Work?

The nature of managed reserve tenure means that it may already be utilised for an existing public work. Where a request is made to excise a portion of a managed reserve for a public work, or the revocation of a management order is required for a public work and the current reserve is utilised for or includes a public work, in addition to the above requirements under Proposal and Site Details above, the Minister will need to consider:

- the impacts to the existing reserve, public work and community; and
- the relative benefits of the proposal for the new public work and the benefit to the community and State.

Justification will need to be provided to the Minister clearly detailing the public benefit of the proposal to the locality and the State of Western Australia, in comparison with the existing public work. This includes sufficient information to demonstrate the overall greater public benefit in the proposed new public use on the reserve land.

The Minister would need to consider and balance the community benefit of the two public works and a cost-benefit analysis, in making the decision to replace one public work (or part of a public work) with another. Any cost-benefit analysis should include consideration of the amount of compensation that the State would be required to pay under Part 10 of the LAA, where relevant.

Consultation with the Management Body and Submitting a Request

A request to excise whole or part of a reserve for a public work or the revocation of a management order for a public work should only proceed where a proponent has demonstrated genuine and real attempts to negotiate with the management body.

A Government Department or Agency or Trading Enterprise making a request to the Minister will need to first demonstrate that a negotiated outcome by agreement was sought but did not eventuate. Sufficient evidence will need to be provided in the request demonstrating the attempts to negotiate an agreed outcome with the management body, for a reasonable period of time and that any alternatives to the excision or revocation have been properly considered and rejected for genuine reasons.

Consideration of Submission and Consultation by the Minister for Lands

Once a request is submitted, the Minister will consider information provided and particularly any comments or objections to assess whether procedural fairness was afforded. If the Minister is satisfied the above (and any other relevant) requirements have been addressed in the submission and determines that the land may be suitable to be excised for the proposed public work, the Minister will write to the relevant management body and provide a minimum timeframe of 42 days for submissions. In the case of revocation of a management order procedural fairness must be afforded to the management body as is required in any administrative decision. The minimum timeframe for consultation will mirror the requirements of section 46A of the LAA for consistency.

If the above requirements have not been met the application will not proceed.

Decision by the Minister for Lands

After the 42-day consultation period (or any longer period allowed by the Minister on application by the management body), the Minister will consider all comments and submissions received and may choose to proceed with the excision or revocation request or reject the request.

Checklist of Key Considerations for Request

- Is the land or revocation of the management order required for a Public Work?
- What is the current public use/community benefit of the reserve land under consideration?
- Is the land required for the Public Work, also currently utilised for a Public Work in its own right?
- Detailed site evaluation.
 - Have any alternative sites been considered and rejected? Why was this site selected?
 - Include justification for the total area required for the public work.
- Description of impacts to the ongoing use of the current reserve, including identification of area required.
- Outline any interests which are to continue upon excision or revocation, and
 - Is the interest inconsistent with the Public Work?
- What are the benefits of the proposal to the community and broader State of Western Australia?
- Has sufficient evidence been documented demonstrating attempts to negotiate an agreed outcome with the management body, for a reasonable amount of time?
 - Has the management body provided objections to the excision and revocation?
 - What are the comments and key concerns?