



# fact sheet

## ABORIGINAL CULTURE AND HERITAGE



New South Wales  
Aboriginal Land Council

## Local Councils and Public Land

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This Fact Sheet provides information about the role of local councils in managing public land. It is one of a series of Planning Fact Sheets which have been developed for Local Aboriginal Land Councils (LALCs) and the Aboriginal community by the NSW Aboriginal Land Council (NSWALC).

**Please Note:** While all care has been taken in the preparation of these Fact Sheets, they are not a substitute for legal advice in individual cases. The information in these Fact Sheets is current as of March 2011.

### What Public Land is controlled by Local Councils?

There are two types of Public Land is land that is vested in, or under the control of, Local Councils (with some exceptions, such as roads and crown reserves).<sup>1</sup>

When a Local Council acquires Public Land it is classified as either:

- Community Land, or
- Operational Land.

**Community Land** includes parks, reserves or sports grounds. Land classified as Community Land *cannot be sold* by the Local Council.

**Operational Land** is not generally open to the public but may be used for public purposes such as works depots or garages. It may also be held as a

temporary asset by the Council. Operational Land can be sold or developed for private use.

### Management of Community Land

Community Land is required to be used and managed in accordance with a 'plan of management' which is to be developed by the Local Council.<sup>2</sup>

A plan of management places each piece of Community Land into one or more of five categories which impact on how they can be used.<sup>3</sup> These are:

- Natural area,
- Sports ground,
- Park,
- Area of cultural significance, or
- General community use.

Community Land is still subject to zoning controls and a plan of management operates as an additional control over that piece of land.

### Who can access Community Land?

Community Land is generally open to the public. It can also be leased or licensed for certain purposes.<sup>4</sup> These purposes include:

- Public utilities,

<sup>1</sup> As defined in the *Local Government Act 1993*.

<sup>2</sup> See section 35 of the *Local Government Act 1993*

<sup>3</sup> See section 36 of the *Local Government Act 1993*

<sup>4</sup> See section 46 of the *Local Government Act 1993*

- Council housing,
- Filming projects,
- Goods, services and facilities connected with public recreation and/or the physical, cultural, social and intellectual welfare or development of persons. These can include maternity welfare centres, kindergartens, child care centres, surf life saving clubs, or restaurants,
- Purposes described as a 'core objective' of that category of land, or
- Other purposes described in the regulation.

In most circumstances a lease or a license may only be granted on land classified as Community Land if the plan of management expressly allows a lease or license for the purpose concerned.

For information concerning the category of, and access to, particular pieces of Community Land contact your Local Council.

### Are there restrictions on Community Land?

Restrictions on Community Land include:

- The land cannot be sold, exchanged or dispensed of in any way,
- The council can only grant a lease or license over community land for certain purposes, which must be expressed in the Plan of Management for the land,
- Community Land must be managed in accordance with the plan of management, and
- Community Land may only become a public road where the road is necessary for the public enjoyment of the land.

### What if Community Land contains areas of cultural significance?

A Local Council can make a resolution that an area of community land is an 'area of cultural

significance' if the Local Council considers that there is Aboriginal, historical or cultural significance on the land.

This means that the land classified as culturally significant must be managed to retain and enhance the cultural significance of the area for past, present or future generations, by the 'active' use of conservation methods.<sup>5</sup>

This can mean restoring the land to enhance its cultural values and restricting the types of development allowed on the land.

If you think that an area of Public Land should be declared as an area of cultural significance, write to your Local Council and elected Councillors to make a formal request.

### How is Public Land classified or reclassified?

Public Land can be classified or reclassified as either Community or Operational Land by:

- *A resolution of the Local Council.* If land that is newly acquired by the Council is not classified as Community Land or Operational Land within 3 months of acquiring the land, it becomes Community Land by default;<sup>6</sup> or
- *Through a Local Environmental Plan (LEP).* The recently amended Standard Instrument LEP template, which all new LEPs must comply with, allows Public Land to be classified or reclassified.

The Local Council, or other relevant planning authority (RPA), must place all Public Land in the appropriate schedule. Operational land will appear in Part 1 or 2 of Schedule 4 and Community Land will appear in Part 3 of Schedule 4. This means that Public Land that was Community Land can be reclassified by being moved into Part 1 or 2 of Schedule 4.

<sup>5</sup> Conservation methods are outlined in section 36H of the *Local Government Act 1993*

<sup>6</sup> See section 31, 32, or 33 of the *Local Government Act 1993*

However, a Council must arrange a public hearing if a draft LEP (or planning proposal) seeks to reclassify Community Land as operational land.<sup>7</sup>

If the Public Land to be classified or reclassified is not owned by the council, the landowner's consent is required.<sup>8</sup>

For more information on the Standard Instrument LEP and zoning see NSWALC Planning Fact Sheet 2 – *Introduction to Local Environmental Plans (LEPs)*, and Fact Sheet 6 – *Land Zoning and Local Environmental Plans (LEPs)*.

### **Having a say about the classification and reclassification of Public Land**

Where land is to be classified or reclassified through a resolution of the Local Council, the Council must give public notice of the proposed resolution. The public notice must specify a period at least 28 days during which submissions may be made to the Local Council.<sup>9</sup>

### **Having a say about a plan of management**

When developing or amending a draft plan of management for public land, the Local Council must give public notice of the draft plan, and allow at least 28 days for public exhibition. Submissions can be received for at least 42 days after the date on which the draft plan is placed on public exhibition.<sup>10</sup>

After considering all submissions received, the Local Council may decide to amend the draft plan or to adopt it without amendment.

If the Council decides to amend the draft plan it must publicly exhibit the amended plan again

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<sup>7</sup> *Local Government Act 1993*, s. 29.

<sup>8</sup> For more information about the general requirements for classification and reclassification of land through local environmental plans (LEPs) or planning proposals, and the main steps for classifying and reclassifying public land, see the Department of Planning practice note PN 09-003 'Classification and reclassification of public land through a local environmental plan', issued 12 June 2009, available at [http://www.planning.nsw.gov.au/lep/pdf/pn09\\_003\\_lep\\_classification.pdf](http://www.planning.nsw.gov.au/lep/pdf/pn09_003_lep_classification.pdf)

<sup>9</sup> *Local Government Act 1993*, s. 34.

<sup>10</sup> *Local Government Act 1993*, s. 38.

unless the Council thinks the amendments are not substantial.<sup>11</sup>

### **Can Public Land be claimed under the Land Rights Act?**

Land that can be claimed under the *Aboriginal Land Rights Act 1983* is Crown Land that:

- is able to be lawfully sold or leased, or reserved or dedicated for any purpose, under the *Crown Lands Consolidation Act 1913* [now the *Crown Lands Act 1989*], or the *Western Lands Act 1901*;
- is not lawfully used or occupied;
- is not, in the opinion of the Minister administering the *Crown Lands Act*, needed, nor likely to be needed as residential lands;
- is not needed, nor likely to be needed, for an essential public purpose; and
- is not the subject of a registered application for a determination of Native Title, or the subject of an approved determination of Native Title (other than a determination that no Native Title exists in relation to the land).

Whether or not Public Land can be successfully claimed under the *Aboriginal Land Rights Act* will depend on the ownership, nature and use of the land, and whether or not it complies with the above requirements.

If Crown land is owned by a Local Government Council or the Minister for Local Government then it is not claimable land under the Act. If, however, land is Crown land that is managed by the Local Council then depending on any reservation, need for and use and management of the land, it may be claimable.

Please contact the NSWALC Land Rights Unit on 02 9689 4444 if you have any queries about making a land claim or whether certain land is claimable land.

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<sup>11</sup> *Local Government Act 1993*, s. 40.

## National Parks

Under the *National Parks and Wildlife Act 1974* land, such as Crown land, may be reserved by the NSW Government as a national park or another reserve area, including a historic site, a state conservation area, a regional park, a karst conservation reserve, and Aboriginal area or a nature reserve.

The NSW Department of Environment, Climate Change and Water (DECCW) manages land reserved under the *National Parks and Wildlife Act 1974*. If a piece of community land previously controlled by a Local Council becomes reserved as a National Park or other kind of reserve, then it becomes the responsibility of DECCW and access to this land will depend on DECCW policies.

Some National Parks have an entry fee requirement. For further information on entry fees to National Parks visit the DECCW website: [www.environment.nsw.gov.au/NationalParks](http://www.environment.nsw.gov.au/NationalParks)

A park manager may waive entry fees where they apply. Current policy is that Aboriginal people are exempt from park entry fees for the purpose of undertaking cultural activity where they have prior written consent from the park manager and they can show their consent upon arrival at the park.

Activities that are permissible in National Parks may also be subject to a range of laws, such as *Threatened Species Conservation Act 1995* or the *National Parks and Wildlife Act*. However, some exemptions apply for Aboriginal people.

To find out more about National Parks, contact DECCW on **1300 361 967**.

NSWALC also has a series of Fact Sheets on Access to Country and National Parks available on the NSWALC website or at the number below.

### Where to find out more

For more information see the other NSWALC Planning Fact Sheets available from [www.alc.org.au](http://www.alc.org.au), or by calling the NSWALC Resource Centre on 02 9689 4444.

- Fact Sheet 1 – *Introduction to NSW Planning Laws*

- Fact Sheet 2 – *Introduction to Local Environmental Plans*
- Fact Sheet 3 – *Planning Laws and Aboriginal Cultural Heritage*
- Fact Sheet 4 – *Part 3A Developments*
- Fact Sheet 5 – *Local Councils and Public Land*
- Fact Sheet 6 – *Land Zoning and Local Environmental Plans*

### Useful contacts

For legal advice about protecting Aboriginal culture and heritage, contact the NSW **Environmental Defender's Office** on (02) 9262 6989 or at [www.edo.org.au/edonsw](http://www.edo.org.au/edonsw).

NSWALC Fact Sheets, including the 'Site Protection' series, are available from [www.alc.org.au](http://www.alc.org.au), or by calling the NSWALC Policy and Research Unit on 02 9689 4444.

