

"Land in the State of New South Wales was traditionally owned and occupied by Aborigines. Land is of spiritual, social, cultural and economic importance to Aborigines. It is fitting to acknowledge the importance of such land to Aborigines and the need of Aborigines for land. The Government has accepted that as a result of past Government decisions the amount of land set aside for Aborigines has been progressively reduced without compensation."

fact sheet



New South Wales
Aboriginal Land Council
www.alc.org.au

FACT SHEET #3: The appeals process

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What happens after a claim is made?

Minister's decision

After a land claim is made, the Land and Property Management Authority assesses the current status and use of the land claimed and makes a recommendation to the Minister about whether the claim should be refused or granted. The Minister makes the ultimate to refuse or grant the claimed land.

Refusal

The Minister must refuse claims over Crown land that is being used or occupied, or is needed or likely to be needed for residential lands or for an essential public purpose. Claims are also refused if the land claimed is not Crown land.

Land Councils may unintentionally make claims over land that is not claimable because they do not have access to up to date information about the status of the land.

Appeals process

Claim refusals can be appealed by NSWALC or a LALC, depending on who made the claim. The appeal is to the Land and Environment Court of NSW.

The Appeals process within the *Aboriginal Land Rights Act 1983*, allows Land Councils to gain access to the Department's files relating to a land claim. The Legal Services Unit of NSWALC inspects the files for every NSWALC or LALC claim that has been refused or partially refused. It uses this information to make a recommendation about whether the claim should be appealed.

Once a claim is appealed, the Minister is entitled to provide different evidence to the Court and make new arguments about why the claim had to be refused other than the initial grounds of refusal. This is called a 'merits review.' Essentially this means the land claim is considered afresh with the Court as the new decision maker.

The Land and Environment Court's decision can then be appealed to the Full Court of the NSW Supreme Court, but this process is limited to an appeal on legal issues (known as questions of law) where one party alleges that the Land and Environment Court has not followed the correct

legal process in making a decision on the appeal.

This appeal does not take into account the merits of the claim.

Strike rate

NSWALC has won over 75 percent of the land claim refusals it has appealed.

Commonly held myths

Myth: NSWALC lodges appeals to intentionally block or delay development on strategic sites.

Truth: This has never been the case at NSWALC. All refusals made by the Minister are assessed on their legal merits, and, where it appears that a claim was incorrectly refused, a decision is made to pursue an appeal.