



fact sheet

ABORIGINAL CULTURE AND HERITAGE



New South Wales
Aboriginal Land Council

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Using the law to protect Aboriginal sites in NSW

This Fact Sheet outlines the main laws for the protection of Aboriginal heritage in NSW, and *some* of the options Aboriginal communities and Local Aboriginal Land Councils (LALCs) can use to apply for protection of cultural sites and areas. A summary table is also provided.

This is one of a series of Site Protection Fact Sheets which have been developed for LALCs by the NSW Aboriginal Land Council (NSWALC). Copies of the Fact Sheets are available from www.alc.org.au or by calling the NSWALC Policy & Programs Unit on 02 9689 4444.

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 this Fact Sheet is current as of February 2015.

Applying for protection of a site

There are a number of different options available to Aboriginal groups and LALCs seeking long-term legal protection for Aboriginal sites in NSW.

Most options under the law do not guarantee access to a site, but may protect a site from development or destruction and attract funding to maintain, protect or promote the site. It is important to consider the potential benefits and limitations of various options.

To report damage or imminent threats to Aboriginal sites, urgently contact the NSW Office of Environment and Heritage on 131 555 or 02 9995 5000. Note: The NSW Government is conducting a review of Aboriginal culture and heritage laws in NSW. Please visit: www.environment.nsw.gov.au/achreform

Protection under the *National Parks and Wildlife Act 1974 (NSW)*

The *National Parks and Wildlife Act 1974 (NP&W Act)* is the main law for the protection of Aboriginal sites in NSW. The NSW Office of Environment and Heritage (OEH) administer this Act.

It is generally unlawful for a person to 'harm' an Aboriginal 'object' or declared 'Aboriginal place' in NSW without permission from OEH.

Aboriginal groups and other persons may choose to notify OEH of the location of Aboriginal sites. Recognised Aboriginal sites are recorded by OEH on the Aboriginal Heritage Information Management System (AHIMS). While there are some protocols for protecting sensitive information, AHIMS is also used to provide information to other groups such as developers.

Aboriginal groups can apply for protection of an area by requesting that the Minister for the Environment declare it an 'Aboriginal Place', 'Aboriginal Area' or even a 'National Park' or another reserve type (See NSWALC Site Protection Fact Sheet 3: *Aboriginal Places*). There are also **joint-management** options that may be available for Aboriginal groups to jointly manage National Parks with the Government. For more information about joint-management contact the Office of the Registrar *Aboriginal Land Rights Act* www.oralra.nsw.gov.au.

Nomination is free, and recognised areas can attract funding.

For more information on how to apply for the protection of areas under the *National Parks and Wildlife Act* see Fact Sheet 3 – *Protecting Aboriginal Places under the NP&W Act* or contact OEH on 1300 361 967.

Local Councils and LEPs

Aboriginal groups can seek to have the heritage values of a site recognised by Local Councils. It is now a requirement for Local Councils to consider Aboriginal heritage, along with non-Aboriginal heritage as part of their Local Environment Plans (**LEPs**).

Notification of the location of sites to a Local Council will encourage the Council to consider those sites when deciding whether or not to approve developments. However, ***Councils have various methods to record sites and LALCs are encouraged to negotiate about protocols for how cultural information will be dealt with.***

For more information about Local Councils and Aboriginal Heritage see the **NSWALC Planning Fact Sheets** available from www.alc.org.au.

NSW State Heritage Register

Under the *Heritage Act 1977* (NSW), LALCs and other persons can apply to the Heritage Council to have a site which is of 'state significance' listed on the NSW State Heritage Register. Listing is free and the permission of the Heritage Council is generally required before a site is harmed or altered.

For more information see the NSWALC Site Protection Fact Sheet 4, or contact the NSW OEH on (02) 9873 8500 or at <http://www.environment.nsw.gov.au/heritage/index.htm>.

National and Commonwealth Heritage Lists

Applications can be made to the Federal Minister for the Environment to have an Aboriginal site which is of 'outstanding heritage value to Australia' listed on the National or Commonwealth Heritage Lists.

Under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)*, listed sites must have a management plan. Approval is generally required for proposed actions which could impact on a site's national heritage values.

Anyone can nominate a place for listing, the application form is simple, and applying is free.

World Heritage Areas

Applications can be made to the Australian Government to have a site which is of 'outstanding universal heritage value' to the world recognised as a World Heritage Area. Requests to the Federal Minister are free.

Listing provides international protection, and means Federal Government approval is required for any action that will have a significant effect on the area.

For more information on National and Commonwealth Heritage lists or World Heritage Areas, contact the Australian Heritage Council on (02) 6274 1111 or visit: www.environment.gov.au/heritage.

Indigenous Protected Areas (IPAs)

If Aboriginal groups own or have control over lands or seas, they can apply to the Federal Government to have the area recognised as an Indigenous Protected Area (**IPA**). There is also the potential for IPA's to be established on non-Aboriginal owned lands, where there is agreement of other parties, such as government agencies.

Groups enter into agreements with the Federal Government to promote and preserve cultural values and biodiversity in IPAs in line with international standards. Recognised IPAs can attract funding.

IPAs are a not legally recognised. The application process is free, but can take some time to develop. The Federal Government often works closely with applicants. For more information phone (02) 6274 1111 or visit: www.environment.gov.au/indigenous/ipa.

Native Title

Native Title recognises certain rights for traditional owners over their traditional lands. This may include the right to negotiate for the protection of areas and access to sites. Obtaining formal recognition of Native Title can be a complex process, and groups are encouraged to seek advice from **NTSCORP** on (02) 9310 3188 or the **National Native Title Tribunal** on (02) 9227 4000.

Voluntary Conservation Agreements

If a landholder is interested in protecting an area containing Aboriginal cultural sites or areas, they can enter into a Voluntary Conservation Agreement with the NSW Minister for Environment.

Once agreed to by the current landholder and the Minister, the agreement provides legally enforceable, permanent protection which is attached to the title of the land, binding current and future landholders.

For more information about these agreements contact OEH on 1300 361 967 or:

<http://www.environment.nsw.gov.au/cpp/conservationpartners.htm>.

Emergency protection for sites under threat

The options listed in this Fact Sheet generally offer long-term protection to sites.

There are also a number of emergency protection options for Aboriginal sites under immediate threat. For more information see the NSWALC Site Protection Fact Sheet 8 - *Emergency Protection for Aboriginal Sites in NSW*.

Starting an application

Most options outlined in this Fact Sheet generally require groups to write up the story of the sites or areas they want protected, and why it is important. In some cases only a letter to a Minister is required, but often there is a specific form to fill out. The relevant Government Departments can usually help with this process.

How difficult is it to get a site recognised?

The process varies depending on which form of protection is being applied for, and who makes the decision. The application process can be quite detailed and take some time to complete, but generally the relevant Department can help.

Please note: Government Departments may do their own consultation with other people and the public, which may take some time.

Who can apply?

This varies. Generally any group or individual can apply. Applications are likely to be more successful with the support of the local Aboriginal community, and particularly traditional owners.

How much does it cost? The application processes for the various options outlined in this Fact Sheet are generally free. The main challenge is the time and effort it takes to collect all the information needed for the application or agreement.

What are the Access and management rights?

Protections under current laws do not generally guarantee access to a site or management participation, but some protection schemes do. It is important to discuss this with the Government Department of landholder.

Does site protection affect who owns the land?

Protections under current laws do not generally affect the ownership of the land.

Secret or sacred sites - Aboriginal groups can sometimes request that a secret/sacred site be protected but its location not made public.

Note: Not all the processes outlined in this Fact Sheet have proper protections in place for secret/sacred cultural information.

Groups are strongly encouraged to discuss this issue with the relevant Government Departments before starting the application process.

Is seeking site protection a "Land Dealing" under the Aboriginal Land Rights Act?

No. LALCs do not generally need to notify NSWALC that they are seeking to have a site protected.

If a protection involves the granting of a right or an interest over LALC land to another body it might be a land dealing that requires NSWALC approval. LALCs are encouraged to contact the NSWALC Commercial Unit on (02) 9689 4444 if they are unsure about land dealings provisions. Additionally, protections might affect the land value of an area, as they may remain in force even after the land is sold.

Where to find out more

For more information visit the NSWALC www.alc.org.au, or call the NSWALC Policy & Programs Unit on (02) 9689 4444. 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.

Overview of Site Protection Options in NSW

Name of Program	Agency & Contacts	Who can apply	Application Process & Timeframe	Cost & Funding	What kind of land?	Access rights?	Funding & grants	Additional NSWALC Resources
To report harm to Aboriginal sites	NSW Office of Environment and Heritage (OEH) Ph: 02 9995 5000	Anyone	Notify OEH	Free	All	n/a	n/a	
Aboriginal Places, or other NPW Act reserve	OEH Ph: 1300 361 967 www.environment.nsw.gov.au	Anyone	Form (simple), Lengthy process.	Free	Public or private	No	Yes, the <i>Protecting Our Places</i> scheme	Site Protection Fact Sheet 3
Recognition in a Local Environment Plan (LEP)	Your Local Council; NSW Department of Planning and Environment Ph: (02) 9228 6111 www.planning.nsw.gov.au NSW Heritage Branch Ph: (02) 9873 8500 http://www.environment.nsw.gov.au/heritage	Anyone	Notify Local Council, negotiation	Free	Public or private	No	Yes, the NSW Department of Planning	Planning Fact Sheet 3
NSW State Heritage Register	NSW Heritage Branch Ph: (02) 9873 8500 http://www.environment.nsw.gov.au/heritage	Anyone	Form (lengthy)	Free	Public or private	No	Yes, via the Heritage Branch	Site Protection Fact Sheet 4
National & Commonwealth Heritage Lists	Australian Government Department of the Environment Ph: (02) 6274 1111 www.environment.gov.au	Anyone	Form (simple)	Free	Public or private	No	Yes, via Dept of Environment	Site Protection Fact Sheet 9
Voluntary Conservation Agreements	OEH as above	Landowners, lessees of Crown land, local councils	Negotiation between landholder & Minister	Free	Private	Negotiable	Options available, visit www.grantslink.gov.au	Sustainable Land Use Information Sheet 8
World Heritage List	Dept of Environment as above or UNESCO http://whc.unesco.org	Federal Government	Letter to Minister	Free	Public or private	No	As above	
Indigenous Protected Areas	Department of Environment as above	Aboriginal people	Negotiation with Federal Government	Free	Public or private	Yes	Yes, Indigenous Protected Areas Program	
Emergency Protection	Varies	Varies	Varies	Free	Public or private	Generally no	No	Site Protection Fact Sheet 8

SITE PROTECTION

February 2015