



fact sheet

ABORIGINAL CULTURE AND HERITAGE



New South Wales
Aboriginal Land Council

Protecting Aboriginal Places under the *National Parks and Wildlife Act 1974*

3

This Fact Sheet provides information about how Aboriginal people can apply to have important sites protected as Aboriginal Places under the *National Parks and Wildlife Act 1974 (NSW)*.

It is one of a series of Fact Sheets which have been developed for Local Aboriginal Land Councils (LALCs) by the NSW Aboriginal Land Council (NSWALC) about different options for the protection of Aboriginal sites in NSW.

For an overview of other forms of site protection, see the NSWALC Site Protection Fact Sheet series available from www.alc.org.au or by calling the NSWALC Policy and 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.

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

The *National Parks and Wildlife Act 1974 (NPW Act)* is the main law for the protection of Aboriginal sites in NSW.

The Chief Executive of the Office of Environment and Heritage (OEH) is responsible for the proper care, preservation and protection of Aboriginal 'objects' and Aboriginal 'places' recognised under the NPW Act.

Harm to known Aboriginal 'objects' and 'places' is generally not permitted without an approval from OEH via an Aboriginal Heritage Impact Permit (AHIP).

Aboriginal Heritage Information Management System (AHIMS)

The AHIMS is a database kept by OEH, containing information on more than 60,000 Aboriginal places, objects and values in NSW. Developers and local councils are encouraged to search AHIMS to identify potential impacts on Aboriginal sites. However AHIMS is not comprehensive database and is known to contain some errors.

Contact the AHIMS Registrar at OEH on (02) 9585 6380 or visit OEH's website for more information. www.environment.nsw.gov.au

OEH have also developed a free basic online search facility called the **AHIMS web service**. www.environment.nsw.gov.au/awssapp.

Aboriginal Places

The *National Parks and Wildlife Act 1974 (NSW)* allows Aboriginal people to apply to have important sites recognised and declared as 'Aboriginal Places'.

The Minister for Environment may declare a site an Aboriginal Place if he or she is satisfied that the place 'is or was of special significance with respect to Aboriginal culture'.ⁱ

Declaration is free, and offers protection for an entire area rather than a specific 'object'.

Aboriginal people are encouraged to apply to OEH to have important areas declared as an Aboriginal Place.

A total of 96 Aboriginal places have been declared in NSW since 1974 (as of 2013). These are listed on the OEH website at:

www.environment.nsw.gov.au/conservation/AboriginalPlacesNSW.htm.

Offences for harming an Aboriginal Place

Changes to the *National Parks and Wildlife Act* in 2010 have introduced higher penalties for unlawful damage to Aboriginal objects and places.

From 1 October 2010 a person can be found guilty of an offence if they harm Aboriginal heritage, even if they did not 'know' the site was an Aboriginal object or place (See Fact Sheet 6 *Fines and New Offences* on the NSWALC website). The NPW Act includes some defences that may be used where harm is caused to an Aboriginal object, but these defences are not available where harm is caused to an Aboriginal Place.

How are Aboriginal Places protected?

While the declaration of a site as an Aboriginal Place covers the entire area of the site, it does not necessarily protect the site from all harming activities.

When OEH is considering whether to issue a permit to do harm to an Aboriginal Place, it will only prevent activities that would harm the values or characteristics identified in the application and assessment process.

This makes it important to include:

1. A clear explanation of the cultural values attached to the site, including significance;
2. Why the site needs to be protected; and
3. What activities/impacts/harm the site needs to be protected from.

What areas can be listed as an Aboriginal Place

OEH has a policy which recognises that different places are significant in different ways. This can

include spiritual, historical, social, educational, natural history or other significance.

Aboriginal Places might recognise the location of reserves, meeting places, burials, massacres or political activism, spiritual or ceremonial sites, significant objects and their relationship with the land, particular natural or landscape features, or archaeological sites.

Significance can include the stories connected with a place and the cultural attachment Aboriginal people have with the land. This might not require any physical evidence of Aboriginal occupation or the presence of particular objects.

Examples include the Three Biripi Brothers Mountains near Port Macquarie (spiritual site), The Gully at Katoomba (meeting place), and Ukerebagh Island in the Tweed River (Neville Bonner's birthplace, former reserve and settlement, and teaching and recreation site).

Can an Aboriginal Place be declared on privately owned land?

Yes, an Aboriginal Place can be declared on public or private land. However landholders will be consulted throughout the process.

Protecting Secret or Sacred Places

All Aboriginal Places are publicly listed on the OEH website. Where Aboriginal groups want a secret or sacred place protected, they can request that its exact location is not made public and local landmarks be given for reference instead. Developers and AHIP applicants are encouraged to contact OEH about when planning projects close to these landmarks.

What an Aboriginal Place declaration doesn't do

The declaration of an Aboriginal Place **does not affect who owns the land** - the current landowner retains their title.

The declaration of an Aboriginal Place **does not provide access** rights for Aboriginal people - this can only be achieved through an agreement negotiated with the landholder.

While a landholder cannot destroy, damage or deface an Aboriginal Place without a permit, they are **not** required to conserve the values of the site or prevent natural deterioration.

Part 3A developments can also 'switch off' any Aboriginal Place protections: see NSWALC Planning Fact Sheet 4 - *Part 3A developments*.

How to get an Aboriginal Place declared

Who can nominate an Aboriginal Place?

Anyone can nominate a site as a potential Aboriginal Place, including individuals and groups. Nomination is likely to be more effective when supported by the Aboriginal community.

Step 1 - Contact OEH

Contact the OEH and Heritage Division on 02 9873 8500, or an Aboriginal Heritage Conservation Officer in your local OEH office to request an Aboriginal Place Nomination Form and information package.

These resources are also available on the OEH website at:

<http://www.environment.nsw.gov.au/conservation/AboriginalPlacesNSW.htm>

Step 2 – Complete the Nomination Form & Statement of Values

Complete the short Aboriginal Place Nomination Form.

The Aboriginal Place application must include a Statement of Values that clearly explains the site's significance and story, why it needs protection and what it needs protection from. This might include identifying particular objects or landscape features like specific trees, rocks or rivers, and important historical events or activities. You should explain the stories attached to the place, its history, value, cultural or educational significance to Aboriginal people, any current threats, and the current or desired use of the place.

Step 3 - OEH assessment and consultation

OEH has a policy which requires it to identify and consult all 'stakeholders' before deciding whether to recommend a site to the Minister.

After receiving a nomination, OEH will identify relevant stakeholders and conduct preliminary research, assessment and mapping.

Cultural knowledge holders who know about the site and its significance (such as Aboriginal groups, Elders, traditional custodians, family groups and representative bodies like LALCs) should be consulted about the significance of a proposed Aboriginal Place.

OEH will also consult other stakeholders including private landowners, landholders including lessees, licensees, managers, Government agencies, Councils and others.

In assessing the nomination, OEH considers:

- Is there enough information about the site's cultural values and significance?
- Is there any conflict in the Aboriginal community about the value or significance of the site, or its location?
- Is the declaration of an Aboriginal Place the most appropriate form of protection? Would other protections be more appropriate?

Step 4 – OEH briefing note

If OEH is satisfied that the site should be declared an Aboriginal Place, they will prepare a briefing note to the Minister for Environment. Any lobbying after this should be directed at the Minister.

Step 5 - Declaration by the Minister

If the Minister decides to declare an Aboriginal Place, the Aboriginal Place will be established by order published in the NSW Government Gazette, which is available at www.nsw.gov.au/gazette.

How many Aboriginal Places are there?

At February 2015, there were 94 places declared in NSW.

Funding for Aboriginal Places

Aboriginal Places can attract funding under OEH's *Protecting Our Places* program.

Substantial grants are available for projects aimed at restoring or rehabilitating culturally significant Aboriginal sites, or educating Aboriginal and other communities about the natural environment and its significance to Aboriginal people.

Application forms, guidelines and information workshop dates may be accessed by contacting OEH or visiting the *Protecting Our Places Grants* page of the OEH website at:

<http://www.environment.nsw.gov.au/grants/pop.htm>

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

The *National Parks and Wildlife Act 1974* includes some other ways for areas to be protected.

Aboriginal Areas

Under the *National Parks and Wildlife Act 1974 (NSW)*, sites can also be declared as 'Aboriginal Areas' to preserve, protect and prevent damage to objects or places on lands which are of special significance to Aboriginal people.ⁱⁱ

Reservation as an Aboriginal Area requires OEH to acquire the land, or that the land is unoccupied Crown Land.

Reservation as an Aboriginal Area may be considered where access to the land for cultural purposes would be difficult without a change in ownership or management, or where high levels of maintenance are required. As of February 2015, there are currently 18 Aboriginal Places in NSW. The list can be found at:

ⁱ *National Parks and Wildlife Act 1974 (NSW)*, s 84.

ⁱⁱ *National Parks and Wildlife Act 1974 (NSW)* ss 30K & 62

ⁱⁱⁱ *National Parks and Wildlife Act 1974 (NSW)* s 30K

<http://www.environment.nsw.gov.au/nationalparks/parktypes.aspx?type=aboriginalarea>.

Historic Sites

Under the Act, a place can also be established as a 'Historic Site' to protect and promote its culture and heritage values.ⁱⁱⁱ Historic Sites can contain both Aboriginal and non-Aboriginal heritage. They might be associated with historical events, or contain buildings, places, features or landscapes of cultural significance. As of February 2015, there are currently 15 Aboriginal Places in NSW. The list can be found at:

<http://www.environment.nsw.gov.au/nationalparks/parktypes.aspx?type=historicsite>

For more information on Aboriginal Areas and Historic Sites contact OEH on 1300 361 967 or 02 9995 5000, or at www.environment.nsw.gov.au.

Emergency protection

If a site is under immediate threat, for example from development, a number of emergency protection options may be available. See NSWALC Site Protection Fact Sheet 8 - *Emergency protection for sites under threat*.

More information

For more information on site protection, see the NSWALC Site Protection Fact Sheet series available at www.alc.org.au, or by calling the NSWALC Policy & Programs Unit on 02 9689 4444.

