



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 details how the Aboriginal community and Local Aboriginal Land Councils (LALCs) can use those laws to apply for protection of cultural sites. 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 Resource Centre 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 19 January 2011.

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 can protect a site from development or destruction and attract funding to maintain, protect or promote the site.

Most kinds of protection of sites under current laws are free and Aboriginal groups are encouraged to apply for multiple protections over the same site.

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

The *National Parks and Wildlife Act 1974* is the main law for the protection of Aboriginal sites in NSW. The Department of Environment, Climate Change and Water (DECCW) administers this Act.

It is generally unlawful for a person to damage an Aboriginal site in NSW without permission from DECCW, but in order for this protection to apply a site must be *recognised* as an Aboriginal 'object' or 'Aboriginal Place', or another form of protected area under the Act.

Aboriginal groups and other persons may choose to notify DECCW of the location of Aboriginal sites. Recognised Aboriginal sites are recorded by DECCW on the Aboriginal Heritage Inventory 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 also 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'. 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 DECCW on 1300 361 967. Fact Sheets are also available about the fines for unlawful harm to Aboriginal objects and places, and the permits

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authorising such harm that may be issued by DECCW under the *National Parks and Wildlife Act*.

Local Councils and LEPs

Aboriginal groups can also seek to have a site's heritage value recognised by Local Councils. It is now a requirement for Local Councils to consider Aboriginal heritage, along with other kinds of 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** and advice for Local Councils about Cultural Mapping 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- *Protecting Aboriginal Sites through the State Heritage Register*, or contact the NSW Heritage Branch on (02) 9873 8500 or at www.heritage.nsw.gov.au.

National and Commonwealth Heritage Lists

Applications can be made to the Federal Minister 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.

For more information contact the Australian Heritage Council on (02) 6274 1111 or visit www.environment.gov.au/heritage.

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 phone the Federal Department of Environment (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).

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.

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 includes 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) 9235 6300.

Voluntary Conservation Agreements If a landholder is interested in protecting an area

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containing special Aboriginal objects or places, 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 DECCW on 1300 361 967 or www.environment.nsw.gov.au/cpp/.

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

All options outlined in this Fact Sheet require groups to write up the story of the site 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 that the different Departments may also do their own consultation with other people and the public, which can 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.

Access and management rights?

Protections under current laws do not generally guarantee access to a site or management participation, but some protection schemes do.

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. **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.

Also, 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 see the NSWALC *Site Protection, Culture and Heritage*, and *Planning* Fact Sheets available from www.alc.org.au, or by calling the NSWALC Resource Centre on (02) 9689 4444.

For further advice about protecting Aboriginal culture and heritage, contact the NSW Environmental Defender's Office on (02) 9262 6989 or at www.edo.org.au.

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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
Aboriginal Places	NSW Department of Environment, Climate Change and Water (DECCW) 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 - Protecting Aboriginal Places under the <i>National Parks & Wildlife Act</i>
Recognition in a Local Environment Plan (LEP)	Your Local Council NSW Department of Planning Ph: (02) 9873 6111 www.planning.nsw.gov.au NSW Heritage Branch Ph: (02) 9873 8500 www.heritage.nsw.gov.au	Anyone	Notify Local Council, negotiation	Free	Public or private	No	Yes, the NSW Department of Planning	Planning Fact Sheet 3 – Planning Laws and Aboriginal culture and heritage
NSW State Heritage Register	NSW Heritage Branch Ph: (02) 9873 8500 www.heritage.nsw.gov.au	Anyone	Form (lengthy)	Free	Public or private	No	Yes, via the Heritage Branch	Site Protection Fact Sheet 4 - Protecting Aboriginal Sites through the NSW State Heritage Register
National & Commonwealth Heritage Lists	Australian Government Department of Sustainability, Environment, Water, Population and Communities (SEWPC) Ph: (02) 6274 1111 www.environment.gov.au	Anyone	Form (simple)	Free	Public or private	No	Yes, via SEWPC	Site Protection Fact Sheet 9 – Protecting Aboriginal sites through the Federal Government
Voluntary Conservation Agreements	DECCW as above	Landowners, lessees of Crown land, local councils	Negotiation between landholder & Minister	Free	Private	Negotiable	Options available, visit www.grantslink.gov.au	
Word Heritage List	SEWPC as above or UNESCO http://whc.unesco.org	Federal Government	Letter to Minister	Free	Public or private	No	As above	
Indigenous Protected Areas	SEWPC as above	Aboriginal people	Negotiation with Federal Government	Free	Aboriginal owned or controlled	Yes	Yes, Indigenous Protected Areas Program	
Emergency Protection	Varies	Varies	Varies	Free	Public or private	Generally no	No	Site Protection Fact Sheet 8 – Emergency Protection for Aboriginal Sites in NSW

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