

# Native title and council responsibilities

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## Quick reference guide for Councillors

March 2022

### Overview

Council Crown land managers (CLMs) are responsible for native title compliance for dedicated or reserved Crown land and land vested in a local council under Division 4.2 of the *Crown Land Management Act 2016* (CLM Act).

Under Part 8 of the CLM Act, council CLMs must comply with all requirements of the Commonwealth *Native Title Act 1993* (NT Act) and engage or employ at least one native title manager to fulfill these obligations. These guidelines have been developed to assist Councillors in understanding what these native title requirements are.

### What is the *Native Title Act 1993*?

Native title is how Australian law recognises the rights and interests that Aboriginal people and Torres Strait Islanders hold in land and waters under their traditional laws and customs. Native title is recognised and protected by the NT Act. The NT Act provides for the recognition and protection of native title and also establishes the ways in which future dealings affecting native title may proceed. Whilst the NT Act does not create any native title rights or interests, it provides us with laws to recognise and protect rights and interests that have existed before colonisation.

### Who are native title holders?

Native title holders are the group of Aboriginal people who hold these native title rights for an area according to their traditional laws and customs. They are the 'traditional owners' for the land and waters and may be formally recognised by the Federal Court through a native title determination. Native title holders still possess their native title rights and interests, even if a claim has not been lodged or determined by the Court.

### What are native title rights?

The nature and extent of native title rights can vary and may include exclusive possession, use and occupation of traditional country or non-exclusive native title rights, such as the right to access and camp or to hunt and fish on traditional country. The State must assume that native title exists if it does not hold evidence of extinguishment.

Native title rights often exist on Crown land managed by councils, and native title is relevant for all councils, regardless if there has been a native title determination.

### Who is responsible for compliance with the *Native Title Act 1993*?

Council, as the appointed manager of Crown land under the CLM Act, is responsible for ensuring compliance with the NT Act. If the NT Act is not complied with, activity will be invalid to the extent that it affects native title.

To support certain decisions made by council on the management and use of Crown land, a council's native title manager must provide a written report to the relevant decision makers in the council that a particular activity or act (e.g. a plan of management, issuing a lease or licence, public works activities) complies with native title legislation prior to council undertaking that activity on Crown land. The report should include compliance actions necessary to meet the requirements of the NT Act, including notification requirements.

The Department of Planning and Environment (Crown Lands) provides training to accredit council staff as native title managers. Where native title rights will be affected, traditional owners have legal rights that could lead to stop work orders and compensation.

## What are the native title requirements of councils under the Crown Land Management (CLM) Act 2016?

Councils are responsible for ensuring that all their activities on Crown land are carried out consistently with the CLM Act and the NT Act.

Under the CLM Act, councils are required to:

- Comply with all requirements of native title legislation in relation to land for which it is the Crown land manager (s8.10)
- Engage or employ at least one native title manager to ensure compliance with native title legislation (s.8.6(1))
- Obtain the written advice from their native title manager that the council complies with native title legislation when undertaking certain activities (s.8.7)
- Advise the Minister annually of the name/s of the council's native title manager/s (s.8.8)
- Pay compensation or indemnify the State against compensation liabilities for acts undertaken by councils that affect native title (s.8.12, 8.13)

## When do I need to seek native title manager advice?

Councillors should consider native title requirements at the start of project planning so any native title considerations can be addressed in the site selection and project planning phase. Before a council carries out an activity on Crown land it must first determine if there is a valid native title pathway. This is done by obtaining a report from your council's native title manager. Considering native title early in the project planning stage may help to avoid unnecessary costs and resources where alternatives could be considered.

For some projects on Crown land, you need to consider costs before proceeding, i.e. Indigenous Land Use Agreements (ILUAs) and s. 24FA protection. For further information regarding ILUAs and s. 24FA protection please consult with your council's native title manager.

**Types of activities on council managed Crown reserves that may require native title manager advice include (but not limited to):**

- Public works
- Granting leases, licences, permits, forestry rights, easements
- Construction
- Maintenance
- Planning works
- Developing Plans of Management
- Mortgaging land or allowing it to be mortgaged
- Imposing or agreeing to covenants, conditions, or other restrictions on use of the land

## What is the difference between Aboriginal land rights and native title?

Native title holders are separate stakeholders to Aboriginal Land Councils who make claims for land under the NSW *Aboriginal Land Rights Act 1983* (ALR Act).

<i>Native Title Act 1993 (Cwth)</i>	<i>Aboriginal Land Rights Act 1983 (NSW)</i>
Recognition of rights over land and waters	Grant of land rights (in freehold). In some instances in the Western Division, a lease in perpetuity might be granted (see s. 36(9A) of the ALR Act.
Claim made by native title holders - must establish customary connection to land.	Claim made by Aboriginal Land Councils/NSW Aboriginal Land Council - current day geographic connection.
Land held by Prescribed Body Corporates.	Land held by Local Aboriginal Land Councils or the NSW Aboriginal Land Council.
Claims over Crown land where native title rights have not been extinguished and where continuing connection to the land can be established.	Claims over Crown land not lawfully used or occupied, or required for an essential public purpose, or for residential land.
Non-exclusive rights (typically).	Exclusive rights (typically).
Claim determined by Federal Court.	Claim determined by Minister.

## How can I support Aboriginal rights and interests on Crown land?

Councillors should ask the following questions and seek information from the council:

1. Has native title been considered in developing this plan or recommending this activity on Crown land? Is native title affected by this act on Crown land?

Council's native title manager's report should be considered as part of decision making to ensure that native title impacts are identified, and any requirements are being met.

2. How is the activity complying with the NT Act requirements?

The native title manager's report on the activity should identify the valid future act pathway for the activity.

3. What notification procedures are required under the NT Act?

Do the native title holders or claimants have a right to comment, a right to object or negotiate on the activity on Crown land? It is important to ensure the appropriate procedural rights are followed, so that where native title rights are affected, the relevant native title groups are informed and consulted as required.

Know who the native title claimants or holders are in your local government area. CLMs are encouraged to form positive relationships with the native title claimants or holders in their local area as early as possible, regardless of whether there has been a Federal Court native title determination.

## How do I know what Crown land my council manages?

You can view details of the Crown land your council manages by visiting the Crown land [Reserve Manager Portal](#).

## Where can I find more information?

- [Introduction to native title for Councillors video](#)
- [Crown Reserve Manager website](#)
- [Native Title Manager Workbook](#)
- [Native Title Act 1993](#)
- [Crown Land Management Act 2016](#)
- [National Native Title Tribunal](#)
- [Office of the Registrar of Indigenous Corporations](#)
- [NTSCorp](#)
- [Developing Indigenous Land Use Agreements – a Guide for Local Government](#)

## Contact information

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