

NATIVE TITLE MANAGER ADVICE
(pursuant to section 8.7 of the *Crown Land Management Act 2016*)

Date of advice: 21 May 2020

Acronyms used in this advice:

NTA - means Native Title Act 1993
 LGA - means Local Government Act 1993
 CLMA - means Crown Land Management Act 2016
 ILUA – Indigenous Land Use Agreement

BASIS OF ADVICE

Relevant land	Part of Lot 7002 in DP107853 and Part Lot 531 in DP902158 being part of Kremer Park, Kiln Street, Portland (Reserve 40981)
Proposed Act	Demolition of old toilet block and installation of new exeloo toilet facilities on the same footprint
Lithgow City Council's responsibility for the land	Council was appointed Crown Land Manager on 7 May 1999 pursuant to Government Gazette of the State of NSW dated 7 May 1999
Is the relevant land subject to an ILUA?	No
Is the relevant land affected by a current native title claim?	Yes, the relevant land is the subject of <u>active</u> native title application NC2018/002 filed by Warrabinga-Wiradjuri #7
Is the relevant land affected by a current Aboriginal land claim?	No
Is the land excluded land?	No
Is the Proposed Act a Past Act	No
Will or might the Proposed Act affect Native Title?	Yes, the Proposed Act might affect Native Title under section 227 and section 226(2)(d) of the NTA
Future Act Regime	Section 24JA is relevant to the Proposed Act
Council is required to comply with the following procedural rights before commencing the Proposed Act	Notify any representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants in relation to the land or waters covered by the reservation AND give them an opportunity to comment on the act.

NATIVE TITLE MANAGER ADVICE
(pursuant to section 8.7 of the *Crown Land Management Act 2016*)

Documents attached in support of this advice	<ol style="list-style-type: none">1. Six maps image identifying site of Proposed Act2. Gazette 17 October 1906 reserving 40981 for public recreation3. Gazette 7 May 1999 appointing Council of the City of Lithgow as reserve trust manager of reserve 409814. Section 24JA(1) NTA5. Section 24JB NTA6. Definition of “public work” under NTA7. Notice and opportunity to comment

ADVICE

This advice is limited to the Proposed Act. If any further act is proposed on the land please request advice for that particular activity.

At the date of this advice, Reserve 40981 comprises an oval, 2 x toilet blocks, grandstand, community building, cricket nets, horse stables, playground, tennis courts, clubhouse and a skate park. Due to the various public works on the land it is likely that native title rights and interests have been extinguished. However, only the Federal Court can determine whether native title rights and interests are extinguished.

In my opinion the Proposed Act will affect native title because it is a fixture on part of the land; however, the Proposed Act **complies** with the applicable provisions of the NTA being a valid future act under section 24JA(1).

As the Proposed Act involves the construction of a public work there IS a procedural right for any registered native title bodies corporate and native title claimants to be notified of the proposed Future Act and to be afforded an opportunity to comment (section 24JB(6) of NTA). Attached is a copy of the Notice and Opportunity to Comment which allows 30 days to comment.

Compensation - Should native title be determined to exist, at some future date, Council may be liable for compensation under the provisions of the NTA and the CLMA, for the impact on native title rights and interests resulting from the Proposed Act.

Sandra Politi
Native Title Manager
Lithgow City Council

[2159]

Department of Lands,
Sydney, 17th October, 1906.

SITE FOR SUBURBAN LANDS AT CURRABUBULA.

HIS Excellency the Governor, with the advice of the Executive Council, directs it to be notified that, in pursuance of the provisions of the 101st section of the Crown Lands Act of 1884, the following portion of Crown Lands is declared to be set apart as the site for the suburban lands at Currabubula.

JAMES ASHTON.

EASTERN DIVISION.

LAND DISTRICT OF TAMWORTH

Amended boundaries of suburban lands at Currabubula.

County of Buckland, parish of Currabubula, containing an area of 2,215 acres. The Crown Lands within the following boundaries: Commencing at the easternmost south-east corner of portion 91; thence bounded by portions 16, 271, and 287 east to portion 234; by portions 234 and 88 north to Currabubula Creek; by a line north-easterly to south-west corner of portion 139; by portions 139 and 115 north to the north-east corner of portion 328; by portions 115, 102, and 218 west to portion 325; by portion 325 generally south-westerly to portion 125; and by portions 125, 136, 137, and 91 south to point of commencement,—but exclusive of the town lands, notified 4th May, 1899.

NOTE.—In lieu of suburban boundaries of Currabubula, notified 6th December, 1890, which are hereby revoked. [Ms. 1906-2,741.]

[2161]

Department of Lands,
Sydney, 17th October, 1906.

RESERVES FROM SALE AND LEASE.

HIS Excellency the Governor, with the advice of the Executive Council, directs it to be notified that, in pursuance of the provisions of the 101st section of the Crown Lands Act of 1884 and the 39th section of the Crown Lands Act of 1889, the lands hereunder described shall be reserved from sale pending determination of the portions to be set apart for the public purposes hereinafter respectively specified, and reserved and exempted from lease generally, and they are hereby reserved and exempted accordingly.

JAMES ASHTON.

For Drain.

CENTRAL DIVISION.

LAND DISTRICT OF WYALONG.

No. 40,976 from sale (40,976 from lease generally). County of Gipps, parish of Wyalong, containing an area of about 1 rood. The Crown Lands within 15 links on each side of the centre drain embraced in portion 419 extending from the eastern boundary of that portion in a northerly direction to its northern boundary,—shown on plan G. 2,021-1,871. [Occ. 1906-8,634.]

For Public Recreation.

EASTERN DIVISION.

LAND DISTRICT OF LITHGOW.

No. 40,951 from sale (40,982 from lease generally). County of Roxburgh, parish of Cullen Bullen, town of Portland, containing an area of 9 acres 1 rood 30 perches. The Crown Lands within the boundaries of section 53,—shown on plan catalogued Portland 64. [Ms. 1906-16,291.]

For Travelling Stock and Camping.

LAND DISTRICT OF MAITLAND.

No. 40,963 from sale (40,964 from lease generally). County of Northumberland, parish of Gosforth, containing an area of 3 roods 22 perches. The Crown Lands within the following boundaries: Commencing at the intersection of the northern side of the Great Northern Road with the left bank of Windermere Creek, at a point west 126·8 links from the south-western corner of John Baylis' 1 acre 0 rood 13 perches, shown on Certificate of Title, volume 959, folio 211; and bounded thence by part of the north-western side of that road south-westerly 363·15 links; by a fenced line northerly 375 links; by a line easterly 298·5 links to the left bank of Windermere Creek aforesaid; by that bank of that creek upwards, to the point of commencement,—as shown on plan catalogued Ms. 1,195 Md.

NOTE.—The above was resumed for water reserve at Lochinvar by notice in Gazette No. 648, of 11th December, 1903, pages 9109 and 9110. [Ms. 1906-15,889.]

[2163]

Department of Lands,
Sydney, 17th October, 1906.RESERVE FROM SALE, LICENSE, AND LEASE
GENERALLY FOR TRAVELLING STOCK AND
CAMPING.

HIS Excellency the Governor, with the advice of the Executive Council, directs it to be notified that, in pursuance of the provisions of the 101st section of the Crown Lands Act of 1884 and the 39th section of the Crown Lands Act of 1889, the land hereunder described shall be reserved from sale pending determination of the portion to be set apart for travelling stock and camping, and reserved and exempted from license and lease generally, and it is hereby reserved and exempted accordingly.

JAMES ASHTON.

WESTERN DIVISION.

LAND DISTRICT OF WILLYAMA.

Within the boundaries of Western Lands Lease 194.

No. 41,017 from sale (41,018 from license and lease generally). County of Farnell, parish of Byjerkerro, containing an area of 16½ acres. The Crown Lands within the following boundaries: Commencing at the most northerly north-west corner of portion M.L. 298 of 23 acres 3 roods; and bounded thence by a south-west boundary of that portion bearing south 1½ degrees 54 minutes east 12 chains 50 links; thence by a north-western boundary of that portion bearing south 70 degrees 6 minutes west 13 chains to a north-west corner of that portion; thence by a line bearing north 19 degrees 54 minutes west 12 chains 50 links; and thence by a line bearing north 70 degrees 6 minutes east 13 chains, to the point of commencement.

[W.L.B. 1906-8,511]

[2168]

Department of Lands,
Sydney, 17th October, 1906.RESERVE FROM SALE FOR TRAVELLING STOCK
AND CAMPING.

HIS Excellency the Governor, with the advice of the Executive Council, directs it to be notified that, in pursuance of the provisions of the 109th section of the Crown Lands Act of 1884, the Crown Land hereunder described is hereby defined, set apart, and reserved from sale "For the passage of stock travelling pursuant to the provisions contained in the Act 41 Victoria No. 19, or any Act amending the same," and for camping place for travelling stock.

JAMES ASHTON.

EASTERN DIVISION.

LAND DISTRICT OF TAMWORTH.

Within Borah Creek resumed area No. 21A.

No. 40,961. County of Darling, parish of Rangiri, containing an area of about 2·0 acres. The Crown Lands within the following boundaries: Commencing on the right bank of Borah Creek, at the north-east corner of portion 6; and bounded thence by that portion and portion 44 south to the northern side of the road from Gunnedah to Barraba; by that road easterly to portion 30; by that portion and portion 7 to Borah Creek aforesaid; and by that creek upwards, to point of commencement.

[Ms. 1906-15,450]

[2164]

Department of Lands,
Sydney, 17th October, 1906.

RESERVE FROM AFTER-AUCTION SALE.

HIS Excellency the Governor, with the advice of the Executive Council, directs it to be notified that, in pursuance of the provisions of the 39th section of the Crown Lands Act of 1889, the land hereunder described shall be and is hereby temporarily reserved from after-auction sale.

JAMES ASHTON.

CENTRAL DIVISION.

LAND DISTRICT OF NYNGAN.

No. 41,002. Counties of Canbelago and Flinders, parishes of Hermitage and Boree, respectively: All unalienated and unreserved lands within the village and suburban boundaries of the village of Hermitale.

[Aln. 1906-13,957A.]

ESTABLISHMENT OF A RESERVE TRUST AND APPOINTMENT OF TRUST MANAGER

- (1) PURSUANT to section 92 (1) of the Crown Lands Act 1989, the reserve trust which is the trustee of a reserve specified in Column 1 of the Schedule at the date hereof is dissolved.
- (2) PURSUANT to section 92 (1) of the Crown Lands Act 1989, the Reserve Trust specified in Column 2 of the Schedule is established under the name stated in that Column and is appointed as trustee of the Reserves specified in Column 1 of the Schedule.
- (3) PURSUANT to section 95 of the Crown Lands Act 1989, the Corporation specified in Column 3 of the Schedule is appointed to manage the affairs of the reserve trust specified in Column 2. File No. OE97A7.

RICHARD AMERY, M.P.
 Minister for Agriculture, and
 Minister for Land and Water Conservation.

SCHEDULE

COLUMN 1	COLUMN 2	COLUMN 3
Reserve No. 83012 at Ben Bullen for public purpose of Resting Place, notified on 20 January 1961	Ben Bullen Resting Place (R83012) Reserve Trust	Council of the City of Lithgow
Reserve No. 80616 at Bindo for the public purpose of Public Recreation notified 2 May 1958	Bindo Public Recreation (R80616) Reserve Trust	Council of the City of Lithgow
Reserve No. 72786 at Blackman's Flat for the public purpose of Children's Playground notified 16 July 1948	Blackman's Flat Children's playground (R72786) Reserve Trust.	Council of the City of Lithgow
Reserve No. 87691 at Bowenfels for the public purpose of Children's Playground notified 13 March 1970	Bowenfels Children's Playground (R87691) Reserve Trust.	Council of the City of Lithgow
Reserve No. 190100 at Lidsdale for the public purpose of Public Recreation notified 10 July 1992	Lidsdale Bush Fire Brigade (R190100) Reserve Trust.	Council of the City of Lithgow
Reserve No. 78970 at Lidsdale for the public purpose of Public Recreation notified 12 October 1956.	Lidsdale Public Recreation (R78970) Reserve Trust.	Council of the City of Lithgow
Reserve No. 47336 at Meadow Flat for the public purpose of Public Recreation notified 10 January 1912.	Meadow Flat Public Recreation (R47366) Reserve Trust.	Council of the City of Lithgow
Reserve No. 40981 at Portland for the public purpose of Public Recreation notified 17 October 1906.	Portland Public Recreation (R40981) Reserve Trust.	Council of the City of Lithgow
Reserve No. 46129 at Portland for the public purpose of Public Recreation notified 21 December 1910.	Portland Public Recreation (R46129) Reserve Trust.	Council of the City of Lithgow
Reserve No. 49823 at Portland for the public purpose of Public Recreation notified 8 April 1914.	Portland Public Recreation (R49823) Reserve Trust.	Council of the City of Lithgow
Reserve No. 58304 at Portland for the public purpose of Public Recreation notified 25 September 1925.	Portland Public Recreation (R58304) Reserve Trust.	Council of the City of Lithgow
Reserve No. 71140 at Portland for the public purpose of Baby Clinic notified 28 January 1944.	Portland Baby Clinic (R71140) Reserve Trust.	Council of the City of Lithgow
Reserve No. 59812 at Wallerawang for the public purpose of Public Recreation notified 15 July 1927.	Wallerawang Recreation (R59812) Reserve Trust.	Council of the City of Lithgow

Commonwealth Consolidated Acts

NATIVE TITLE ACT 1993 - SECT 24JA Acts covered by this Subdivision

NATIVE TITLE ACT 1993 - SECT 24JA

Acts covered by this Subdivision

Reservations etc.

(1) This Subdivision applies to a future act (the **later act**) if:

(a) an act (the **earlier act**) took place before the later act and on or before 23 December 1996;

and

(b) the earlier act was valid (including because of Division 2 or 2A); and

(c) the earlier act:

(i) was done by the Crown in right of the Commonwealth, a State or Territory; or

(ii) consisted of the making, amendment or repeal of legislation by the Commonwealth, a State or Territory; and

(d) the earlier act contained, made or conferred a reservation, proclamation, dedication, condition, permission or authority (the **reservation**) under which the whole or part of any land or waters was to be used for a particular purpose; and

(e) the later act is done in good faith:

(i) under or in accordance with the reservation; or

(ii) in the area covered by the reservation, so long as the act's impact on native title is no greater than the impact that any act that could have been done under or in accordance with the reservation would have had.

reserved for
public recreation
17/10/1906

Example 1: A future act consisting of the creation of a national park management plan might be covered by subparagraph (e)(i), if the land concerned was reserved for the establishment of the national park before 23 December 1996.

Example 2: A future act consisting of the grant of a forestry licence might be covered by that subparagraph, if the grant is done under or in accordance with a dedication for forestry purposes made before 23 December 1996.

Example 3: Subparagraph (e)(ii) might apply if particular land was reserved as a hospital site before 23 December 1996, and instead a school is later built on the land.

Leases

(2) This Subdivision also applies to a future act (the **later act**) if:

(a) an act (the **earlier act**) took place before the later act and on or before 23 December 1996;

and

(b) the earlier act was valid (including because of Division 2 or 2A); and

(c) the earlier act was done by the Crown in right of the Commonwealth, a State or a Territory;

and

NATIVE TITLE ACT 1993 - SECT 24JB

Treatment of acts covered by section 24JA

Validation of act

- (1) If this Subdivision applies to a future act, the act is valid.

Extinguishment consequences--public works

- (2) If the act consists of the construction or establishment of a public work:

- (a) the act extinguishes any native title in relation to the land or waters on which the public work (on completion of its construction or establishment) is situated; and
- (b) the extinguishment is taken to have happened when the construction or establishment of the public work began.

Extinguishment consequences--not public works

- (3) If the act does not consist of the construction or establishment of a public work, the non-extinguishment principle applies to the act.

Compensation

- (4) The native title holders are entitled to compensation for the act in accordance with Division 5.

Who pays compensation

- (5) The compensation is payable by:
 - (a) if the act is attributable to the Commonwealth--the Crown in right of the Commonwealth; or
 - (b) if the act is attributable to a State or Territory--the Crown in right of the State or Territory.

Notification of public works

- (6) If the act consists of the construction or establishment of a public work, then, before the act is done, the person proposing to do the act must:

- (a) notify, in the way determined, by legislative instrument, by the Commonwealth Minister, any representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered native title claimants in relation to the land or waters covered by the reservation or lease that the act, or acts of that class, are to be done in relation to the land or waters; and
- (b) give them an opportunity to comment on the act or class of acts.

Notification of national, State and Territory park management plans

- (7) If the act consists of the creation of a plan for the management of a national, State or Territory park intended to preserve the natural environment of an area, then, before the act is done, the person proposing to do the act must:

- (a) notify, in the way determined, by legislative instrument, by the Commonwealth Minister, any representative Aboriginal/Torres Strait Islander bodies, registered native title bodies corporate and registered

“**public work**” means:

(a) any of the following that is constructed or established by or on behalf of the Crown, or a local government body or other statutory authority of the Crown, in any of its capacities:

(i) a building, or other structure (including a memorial), that is a fixture; or

(ii) a road, railway or bridge; or

(iia) where the expression is used in or for the purposes of Division 2 or 2A of Part 2--a stock-route; or

(iii) a well, or bore, for obtaining water; or

(iv) any major earthworks; or

(b) a building that is constructed with the authority of the Crown, other than on a lease.

Note: In addition, section 251D deals with land or waters relating to **public works**.

Reference: SDP/PN62010



21 May 2020

Blackshield Lawyers
Level 28, AMP Tower,
140 Georges Terrace
PERTH WA 6000

Also by email simon@blackshield.net

Dear Sirs

**Warrabinga-Wiradjuri # 7 – Federal Court File No. NSD857/2017
Notice and Opportunity to Comment on Future Act proposed by Lithgow
City Council (Crown land Lot 53 in DP902158 and Lot 7002 in DP107853)**

Please find enclosed our Notice and Opportunity to Comment in accordance with section 24JB of the *Native Title Act 1993*.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Sandra Politi'.

Sandra Politi
NATIVE TITLE MANAGER

Encl.

NOTICE AND OPPORTUNITY TO COMMENT

(pursuant to section 24JB(6) of Native Title Act, 1993)

To:	Warrabinga-Wiradjuri # 7 c/- Blackshield Lawyers Level 28, AMP Tower, 140 Georges Terrace PERTH WA 6000 simon@blackshield.net
And to:	NTSCorp Limited P O Box 2105 STRAWBERRY HILLS NSW 2012 Information@ntscorp.com.au
Date of issue:	21 May 2020
Section of Native Title Act:	Section 24JA and 24JB(6)
Department/agency:	Lithgow City Council
Contact name:	Sandra Politi
Email:	sandra.politi@lithgow.nsw.gov.au
Telephone number:	(02) 6354 9999
Facsimile number:	(02) 6351 4259
Reference number:	SDP/PN62010
<p>An application has been received by Lithgow City Council for the following approval.</p> <p>The approval, if granted, will permit the proposed Future Act to happen. The activity, if approved, will commence only after notification and consideration of all comments. In addition, if approved, the activity will be approved indefinitely.</p>	
Type of approval/s:	Development approval
Under what state act:	Environmental Planning and Assessment Act 1979
Location of activity:	Part Kremer Park, Kiln Street, Portland Part Lot 531 in DP902158 and Part Lot 7002 in DP107853
Proposed Future Act:	Demolition of old toilet block and installation of new exeloo toilet facilities on the same footprint
Maps/Plans:	A six maps image identifying the location is attached

Name of registered native title claimant group/s or name of registered native title body corporate:	Warrabinga-Wiradjuri #7

You are invited to comment upon the proposed future act outlined above.

Any comments must be in writing and must be received by Monday 22 June 2020

Please send your comments to:

**Sandra Politi
Native Title Manager
Lithgow City Council
180 Mort Street
LITHGOW NSW 2790
Email: council@lithgow.nsw.gov.au**

Reference: SDP/PN62010



21 May 2020

NTSCorp Limited
P O Box 2105
STRAWBERRY HILLS NSW 2012

Also by email information@ntscorp.com.au

Dear Sirs

**Warrabinga-Wiradjuri # 7 – Federal Court File No. NSD857/2017
Notice and Opportunity to Comment on Future Act proposed by Lithgow
City Council (Crown land Lot 53 in DP902158 and Lot 7002 in DP107853)**

Please find enclosed our Notice and Opportunity to Comment in accordance with section 24JB of the Native Title Act 1993.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'Sandra Politi', is located below the 'Yours sincerely' text.

Sandra Politi
NATIVE TITLE MANAGER

Encl.

NOTICE AND OPPORTUNITY TO COMMENT

(pursuant to section 24JB(6) of Native Title Act, 1993)

To:	Warrabinga-Wiradjuri # 7 c/- Blackshield Lawyers Level 28, AMP Tower, 140 Georges Terrace PERTH WA 6000 simon@blackshield.net
And to:	NTSCorp Limited P O Box 2105 STRAWBERRY HILLS NSW 2012 Information@ntscorp.com.au
Date of issue:	21 May 2020
Section of Native Title Act:	Section 24JA and 24JB(6)
Department/agency:	Lithgow City Council
Contact name:	Sandra Politi
Email:	sandra.politi@lithgow.nsw.gov.au
Telephone number:	(02) 6354 9999
Facsimile number:	(02) 6351 4259
Reference number:	SDP/PN62010
An application has been received by Lithgow City Council for the following approval.	
The approval, if granted, will permit the proposed Future Act to happen. The activity, if approved, will commence only after notification and consideration of all comments. In addition, if approved, the activity will be approved indefinitely.	
Type of approval/s:	Development approval
Under what state act:	Environmental Planning and Assessment Act 1979
Location of activity:	Part Kremer Park, Kiln Street, Portland Part Lot 531 in DP902158 and Part Lot 7002 in DP107853
Proposed Future Act:	Demolition of old toilet block and installation of new exeloo toilet facilities on the same footprint
Maps/Plans:	A six maps image identifying the location is attached

Name of registered native title claimant group/s or name of registered native title body corporate:	Warrabinga-Wiradjuri #7

You are invited to comment upon the proposed future act outlined above.

Any comments must be in writing and must be received by Monday 22 June 2020

Please send your comments to:

**Sandra Politi
Native Title Manager
Lithgow City Council
180 Mort Street
LITHGOW NSW 2790
Email: council@lithgow.nsw.gov.au**