

Sydney Coastal Councils Group Inc

Boundaries and Barriers: Managing the Intertidal Zone A Local Government Perspective

Presentation by
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Performance and Compliance Group



Presentation

A General Overview of:

- local government boundaries in NSW;
- the requirements of the *Local Government Act 1993*, for managing land categorised as natural area - **foreshore**;
- the recently announced Independent Local Government Review Panel; and
- the upcoming review of the *Local Government Act 1993*.



How are local government areas created?

In NSW for an area to be constituted as a local government area, it must:

- have its boundaries defined by a proclamation; and
- be a single area of contiguous land.

Subject to this, the *Local Government Act 1993* provides that any part of NSW can be constituted as a local government area by Her Excellency the Governor, by a proclamation to that affect.

A proclamation to constitute or alter a local government area is made by the Governor on the recommendation of the Minister for Local Government. All proclamations are published in the NSW Government Gazette. (Section 204)



How are local government areas described in these proclamations?

Local government areas are generally defined in proclamations by using what is called a metes and bounds description.

(Section 704)

This is an extract of a metes and bounds description:

"Commencing at the intersection of the Murrumbidgee River and the boundary between the State of New South Wales and the Australian Capital Territory, near Cusacks Crossing; and bounded thence by that boundary, generally south-westerly to the source of Fastigata Creek; by a line westerly to Webbs Ridge; by that ridge generally north-easterly to the north-eastern corner of Lot 3, DP751811; by part of the eastern boundary of Lot 4, DP751811 northerly to the western prolongation of the east most northern boundary of the Parish of Cooree, County of Cowley;...."



Who prepares these metes and bounds descriptions?

Land and Property Information (LPI) prepares the metes and bounds descriptions that the Division uses in the preparation of proclamations to constitute or alter local government boundaries in NSW.

Contact Details:

Land and Property Information
Land and Property Management Authority
346 Panorama Avenue
PO Box 143
Bathurst NSW 2795
T: 02 6332 8200
F: 02 6331 8095



Where can I get a copy of our council's current boundary description?

The Division of Local Government has a complete record of all proclamations that alter the constitution of local government areas in NSW including proclamations for all past and present local council boundaries.

We maintain these records in what we call our "constitution files".

Often individual councils will keep a copy of proclamations for their local government area in their legal document storage facilities.

Councils seeking information on their current proclaimed boundary descriptions are welcome to contact me at the Division.



Public Place

A public place is defined in the Dictionary to the Local Government Act as:

- a public reserve, public bathing reserve, public baths or public swimming pool, or
- a public road, public bridge, public wharf or public road-ferry, or
- land that is declared by the regulations to be a public place for the purposes of this definition, or
- a Crown reserve comprising land reserved for future public requirements.



Public Place cont...

Public land or Crown land that is not:

- a Crown reserve (other than those referred to on the previous slide), or
- a common, or
- land subject to the Trustees of Schools of Arts Enabling Act 1902, or
- land that has been sold or leased or lawfully contracted to be sold or leased.



What land forms part of our local government area?

Under the *Local Government Act 1993*, the following land taken to be located within the boundaries of a local government area:

- land and water between high-water mark and low-water mark on the foreshores of an area
- The land and water enclosed by a straight line drawn between the low-water marks of consecutive headlands to any body of water on the foreshores of an area, and those foreshores
- Land on the boundary of an area is taken to be in the area if:
 - (a) it is reclaimed from tidal waters, or
 - (b) it is on the foreshores of the area and beyond low-water mark
- and it is privately owned or has a structure erected on it

However, this is subject to any specific variation identified in the proclamation constituting a particular local government area.

(Section 205)



Offences occurring on the boundaries of a local government area

I draw the participants' attention to a specific provision in the *Local Government Act* about offences committed on local government boundaries.

The Act provides that in proceedings for an offence alleged to have been committed on:

- any part of a public road, or
- on or in any part of a river, watercourse or tidal or non-tidal water, Subject to the above

Part of which forms the boundary of the area.

In proceedings it is not necessary to prove that the place where the offence is alleged to have been committed was on either side of the boundary. It is sufficient for the Council to prove that the place where the offence is alleged to have been committed is part of the road, river, watercourse or water.

The council of the area or the council of any adjoining area may take proceedings for any such offence.

(Section 702)



Community Land Management – Foreshore

Under the *Local Government Act*, public land is defined as land owned or controlled by council. However, it does not include:

- a) A road; or
 - b) Land to which the *Crown Lands Act 1989* applies (includes land that council controls but which is owned by the Crown); or
 - c) a common; or
 - d) land subject to the *Trustees of Schools of Arts Enabling Act 1902*; or
 - e) a regional park under the *National Parks and Wildlife Act 1974*.
- (Dictionary to the Act).

Council owned public land is required to be classified as '*community*' land or '*operational*' land.



Community vs Operational Land

The primary distinction between community land and operational land classifications is that

- **Operational land** can be alienated from the public, ie: sold or leased for more than 21 years.
- **Community land** cannot be sold, is subject to restrictions to ensure its long term retention for the public and is required to be used and managed in accordance with an adopted plan of management.



Plans of Management

"A plan of management" is a document that provides the framework for managing community land. It provides the "why, how and by whom" community land should be managed.

Plans of management **must** be prepared for all **community land**. They are not only required under the Act but are an essential management tool.

Plans of management:

- are prepared by councils in consultation with their community;
- identify the important features of the land (eg: natural significance, sportsground);
- clarify how council will manage the land; and in particular
- indicate how the land may be used or developed.



Plans of Management cont...

Plans of management for community land **must** include:

- the category of land;
- the objectives and performance targets;
- the means of achieving the performance targets;
- the manner of assessment (achieving performance targets);
- express authorisations for granting estates; and
- provisions applying to the granting estates, including the circumstances where a council will call for tenders for leasing land for periods in excess of 5 years.



Categorisation of Community Land

The categorisation of community land:

- is intended to focus a council's attention on the essential nature of the land, how it should best be managed and is the key to its management.
- will determine the core objectives for the land.



Core Objectives

The core objectives for categories of community land were introduced into the Act and Regulations by amendments in 1998. The core objectives impact on the management of community land in the following ways:

- Community land must be managed in accordance with the core objectives for its relevant category.
- Once land is categorised, the core objectives apply automatically to the land. Plans of management should set out how these objectives are to be achieved and assessed.
- The ability for a council to grant any estate (eg an easement, lease or licence) must comply and be consistent with the core objectives for the particular category.

(Sections 36E to 36N)



The Categories

Local Government Act requires community land to be categorised as one or more of the following:

- a natural area
- a sportsground
- a park
- an area of cultural significance
- general community use



The Categories cont...

Community land categorised as **natural area** needs to be further categorised as one or more of the following:

- bushland
- wetland
- escarpment
- watercourse
- foreshore
- a category prescribed by the regulations

(Section 36)



Land Categorised as Natural Area - Foreshore

The core objectives for management of community land categorised as foreshore are:

- to maintain the foreshore as a transition area between the aquatic and the terrestrial environment, and to protect and enhance all functions associated with the foreshore's role as a transition area, and
- to facilitate the ecologically sustainable use of the foreshore, and to mitigate impact on the foreshore by community use.

(Section 36N)



Natural Area - Foreshore

Local Government (General) Regulation 2005 provides that land categorised as a natural area should be further categorised as foreshore under section 36(5) of the Act if the land is situated on the water's edge and forms a transition zone between the aquatic and terrestrial environment.

This means that community land should not be categorised as foreshore just because it is located within reasonable proximity to the ocean, if that community land that is not touched by water.



Natural Area – Foreshore cont...

The foreshore category should only be used in relation to land that is wet at high tide and dry at low tide. For example:

- Rock platforms in tidal zone should have a foreshore categorisation.
- Beach side land above the tidal zone should not. (clause 111)

Councils should review their plans of management to ensure that they do not have community land incorrectly categorised as foreshore.

This is because the requirements for the management of community land in this category is quite stringent. Particularly in relation to the council's ability to grant estates over this category of land.



Natural Area - Watercourse

Land Categorised as Natural Area – Watercourse

A similar situation exists in relation to community land categorised as a natural area - watercourse .

The core objectives for the management of this community land with this categorisation are contained in section 36M and the guidelines for management of community land categorised as watercourse are set out in clause 110 of the Local Government General Regulation 2005.



Independent Local Government Review Panel

The Local Government Review Panel

The establishment of the Review Panel is an outcome of Destination 2036 conference held in Dubbo in 2011. At this conference councils identified the three greatest challenges as:

- infrastructure and asset management;
- financial sustainability; and
- coping with the changing nature of their populations and demographics.

The Panel will investigate and identify options to address these challenges and look at:

- governance models;
- structural arrangements; and,
- voluntary boundary changes for local government in NSW.



Local Government Review Panel cont...

The Panel

- Will consult widely with communities and local government stakeholders
- Will consider councils' ability to:
 - support the needs of their communities;
 - deliver services and infrastructure efficiently;
 - provide local representation and decision making;
 - the financial sustainability of each council area; and,
 - any barriers that inhibit, or incentives that could encourage, voluntary boundary changes.
- The Panel is independent from the operations of the Division of Local Government.



Local Government Review Panel cont...

Local Government Review Panel contact information:
Website Address: www.localgovernmentreview.nsw.gov.au

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Local Government Act Review

The Local Government Act has been in place since 1993.

Although the Act has been amended during this time, it has not undergone a comprehensive review since 1998.

The NSW Government has made a commitment to the local government sector to proceed with a comprehensive review of the Act.



Local Government Act Review cont...

The Act review will look at changes to the legislative framework required to facilitate the initiatives identified in the Destination 2036 Action Plan.

The initiatives identified in the Destination 2036 Action Plan are:

- Efficient and effective service delivery in local government
- Quality governance and leadership in local government
- Financial sustainability in local government
- Appropriate, flexible structural models in local government, and
- Strong relationships within local government



Local Government Act Review cont...

The Act review will include significant engagement and consultation with:

- the wider NSW community, and
- local government sector stakeholders

The Division expects the Act review to result in legislation that:

- is comprehensive and easily understood,
- is more streamlined,
- reduces red tape and bureaucracy.
- assists in the delivery quality services and infrastructure to the community



Current Legislation

NSW local councils are subject to a wide range of State and Commonwealth legislation.

The Acts and Regulations that affect councils can be categorised as:

- The Principal Act, and
- Acts and regulations that have significant impacts on councils, and
- Acts and regulations that may have some impact on the operation of councils or enable councils to meet their obligations.

There may be other legislation that impacts on councils, given the scope of functions of local councils and the ongoing legislative amendment process.



Current Legislation cont...

The following list gives a guide to some of the legislation, under which councils have obligations, it is **NOT** a definitive list:

Principal Legislation

Local Government Act 1993
Local Government (General) Regulation 2005



Current Legislation continued

Legislation that has a significant impact on council operations:

- Companion Animals Act 1998
- Environmental Planning and Assessment Act 1979
- Fluoridation of Public Water Supplies Act 1957 & Regulation 1992
- Food Act 1989
- Impounding Act 1993
- Impounding (Penalty Notice Offences) Regulation 1993
- Justices (Short Description of Local Government Offences) Regulation 1993
- Noxious Weeds Act 1993
- Protection of the Environment Operations Act 1997
- Public Health Act 1991
- Roads Act 1993 & Regulations
- Traffic (Savings and Transitional) Regulation 1993
- Water Supply Authorities Act 1987



Current Legislation cont...

- Library Act 1939
- Marine Parks Act 1997
- National Parks & Wildlife Act 1974
- Noise Control Act 1975
- Occupational Health and Safety Act 1983
- Ombudsman Act 1974
- Pollution Control Act 1970
- Protected Disclosures Act 1994
- Privacy & Personal Information Protection Act 1998
- Recreational Vehicles Act 1983
- Rural Fires Act 1997
- Sales Tax (Exemptions and Classifications) Act 1992 (Commonwealth)
- State Authorities Superannuation Act 1987
- State Emergency and Rescue Management Act 1989
- State Emergency Services Act 1989
- State Records Act 1998



Current Legislation continued

- Strata Schemes (Freehold Development) Act 1973
- Strata Schemes (Leasehold Development) Act 1986
- Swimming Pools Act 1992
- Swimming Pools Regulation (No 2) 1992
- Threatened Species Conservation Act 1995
- Trade Practices Act 1974 (Commonwealth)
- Traffic (Parking Regulation) Amendment 1993
- Training Guarantee Act 1990 (Commonwealth)
- Unhealthy Building Land Act 1990 & Regulations 1991
- Waste Minimisation and Management Act 1995
- Waste Recycling and Processing Service Act 1970
- WorkCover Administration Act 1989
- Crown Lands Act 1989
- Coastal Protection Act 1979
- State Emergency Services Act 1989
- Environmental Planning and Assessment Act 1979 & Regulation



Current Legislation cont...

Legislation having an impact on council operations or meeting their obligations

- Anti-Discrimination Act 1977
- Building and Construction Industry Long Service Payments Act 1986
- Building Services Corporation Act 1989
- Charitable Fundraising Act 1991
- Children (Care and Protection) Act 1987
- Coastal Protection Act 1979
- Contaminated Land Management 1997
- Community Land Development Act 1989
- Community Land Management Act 1989
- Community Welfare Act 1987



Current Legislation cont...

- Construction Safety Act 1912
- Conveyancing Act 1919
- Copyright Act 1968 (Commonwealth)
- Crimes Act 1900
- Crimes Act 1900 (Extracts)
- Crown Lands Act 1989
- Dangerous Goods Act 1975
- Disability Discrimination Act 1992 (Commonwealth)
- Environmentally Hazardous Chemicals Act 1985
- Essential Services Act 1988
- Factories Shops and Industries Act 1962
- Fire Brigades Act 1989



Current Legislation cont...

- Freedom of Information Act 1989
- Fringe Benefits Tax Act 1986 (Commonwealth)
- Heritage Act 1977
- Home and Community Care Act 1985 (Commonwealth)
- Human Rights and Equal Opportunity Commission Act 1992 (Commonwealth)
- Income Tax Act (various) (Commonwealth)
- Land Acquisition (Just Terms) Compensation Act 1991



My Contact Information

If you have any questions about this presentation you can contact me.

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