

# COMMUNITY ENGAGEMENT STRATEGY

Statutory requirements to enhance community  
engagement about Crown land dealings and activities

As required under the *Crown Land Management Act 2016*

## **ACKNOWLEDGEMENT**

In the spirit of respecting and strengthening partnerships with Australia's First Peoples, the Department of Industry—Lands & Water (the department) would like to acknowledge all Traditional Owners of the land of NSW and the spiritual, social, cultural and economic importance of lands and waters to Aboriginal peoples. The department pays its respects to the First Nations Peoples and their Elders past and present who hold the authority, memories, knowledge and traditions of a living Aboriginal cultures.

The department offers its deepest appreciation and respect for the First Peoples' continued connection and responsibility to the lands and waters in this country. The Community Engagement Strategy recognises the fact of prior and continuing Aboriginal custodianship of Crown land, and operates together with the *Aboriginal Land Rights Act 1983 (NSW)*. The Community Engagement Strategy recognises Aboriginal people's rights and interests in lands and waters in NSW.



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# MINISTER'S FOREWORD

I am pleased to present the NSW Government's Crown Land Community Engagement Strategy.

The *Crown Land Management Act 2016* delivers a new and welcome framework for communities to have their say in the management of Crown land.

Building upon an extended period of public consultation on the draft strategy in late 2017, community and stakeholder feedback has been considered and the resulting strategy and supporting documents have been finalised with that in mind.

We all use and enjoy Crown land, when we run onto a local sporting field, take a swim in the ocean baths or enjoy a picnic in our local park. Encouraging community use and enjoyment of Crown land is a priority and this strategy ensures community input in the decisions which may affect Crown land.

The Community Engagement Strategy will improve transparency and engagement about the management of Crown land. The Strategy lays out when engagement with the community must occur and at what level, giving local communities the opportunity to be involved and ensuring local voices are heard.

On behalf of the NSW Government I welcome the opportunity that this new strategy provides for the people of NSW to engage on the future of our Crown lands.

## **The Hon Paul Toole MP**

Minister for Lands and Forestry, and Minister for Racing



A handwritten signature in blue ink that reads "Paul Toole". The signature is written in a cursive style with a large initial 'P'.

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# GLOSSARY

The following terms and definitions apply throughout this Strategy:

Term	Definition
<b>Act</b>	Refers to the <i>Crown Land Management Act 2016</i> . Where other legislation is mentioned, the specific statute is referenced in full
<b>council CLMs</b>	Refers to Crown land managers that are local councils and who are managing Crown land under the provisions of the <i>Local Government Act 1993</i>
<b>Crown land</b>	Refers to the NSW Crown land estate, and has the same meaning as in the Act
<b>Crown land activity</b>	Refers to revocations of reservations or dedications of Crown land, or changes to a purpose for which Crown land is dedicated or reserved, preparation of plans of management over Crown land, and preparation of the State strategic plan for Crown land
<b>Crown land dealing</b>	Refers to sales, leases, licences, permits and vestings of Crown land
<b>consult activity</b>	Any activity which provides a means for community members who may be impacted by a proposed Crown land dealing or activity to provide feedback about that impact
<b>current community use and enjoyment</b>	Refers to the test for engagement adopted by this Strategy, which requires consideration of whether the community currently <u>either</u> uses <u>or</u> enjoys Crown land and whether a proposed dealing or activity may adversely impact upon that use or enjoyment
<b>decision-maker</b>	Refers to the minister or the minister's delegate responsible for making decisions about Crown land dealings and activities
<b>department</b>	Refers to the Department of Industry and its Lands & Water division  Where other agencies or departments are referred to, the specific department or agency name is referenced in full
<b>department secretary</b>	Refers to the secretary of the Department of Industry
<b>department staff</b>	Refers to all accountable people in the department responsible for making decisions about Crown land
<b>Guidance and Resources document</b>	Refers to the Community Engagement Guidance and Resources document, a non-statutory document developed to support the implementation of this Strategy
<b>mandatory requirements</b>	Refers to the mandatory requirements for each Crown land dealing and activity that is identified as within the scope of this Strategy and is assessed as having an impact on current community use and enjoyment of Crown land
<b>minister</b>	Refers to the minister who is responsible for administering the Act
<b>impact (on current community use and enjoyment)</b>	Refers to adverse or negative impacts on current community use and enjoyment. These impacts are determined by using the assessment tool in the Guidance and Resources document

<b>Term</b>	<b>Definition</b>
<b>inform engagement activity</b>	Any activity which provides a means for community members to receive information about a proposed Crown land dealing or activity
<b>non-council CLMs</b>	Refers to non-council Crown land managers (formerly referred to as reserve trust managers) who have been appointed to carry out the care, control and management of Crown land under the Act  'Category 1 non-council CLMs' are specified in the Crown Land Management Regulation 2018, being professional bodies with higher levels of capabilities  'Category 2 non-council CLMs' will be for all other managers including, for example, voluntary community boards and organisations
<b>mandatory requirements</b>	Refers to the requirements of this Strategy that responsible persons must comply with. Failure to demonstrate compliance with these requirements may result in the minister (or delegate) refusing to approve a dealing or activity. Further, where a dealing or activity has been approved, but has not been completed in accordance with the mandatory requirements, the validity of the dealing or activity may be challenged in court
<b>NSW</b>	Refers to New South Wales
<b>objects of the Act</b>	Refers to the objects specified in Section 1.3 of the Act
<b>participate activity</b>	Any activity that provides a means for collaboration between community members and decision-makers in the decision-making process for a proposed dealing or activity
<b>principles of Crown land management</b>	Refers to the principles of Crown land management specified in Section 1.4 of the Act
<b>responsible person</b>	Refers to the responsible persons for dealings and activities as specified in the Act, and includes the minister, Lands Administration Ministerial Corporation, department secretary, department employees involved in administering the Act and non-council Crown land managers
<b>short term</b>	In connection with a lease or licence, short term means a period of one year or less
<b>state</b>	Refers to New South Wales
<b>this Strategy</b>	Refers to the <i>Community Engagement Strategy</i> (this document)
<b>TSR</b>	Refers to a Travelling Stock Reserve
<b>walkshop</b>	an onsite tour/visit that can be held as a standalone activity or in conjunction with a meeting, briefing or community event such as a community information session



# INTRODUCTION

# 1



## 1.1 PURPOSE

The Community Engagement Strategy (this Strategy) is a statutory document developed by the Lands & Water division of the Department of Industry (the department).

Its purpose is to:

- set out procedures for community engagement that are to be followed by decision-makers when administering dealings or activities involving Crown land
- ensure decision-makers better understand how the community is currently using and enjoying Crown land before making decisions about dealings or activities that may impact that use and enjoyment.

This Strategy is a requirement of the *Crown Land Management Act 2016* (the Act).

## 1.2 OVERVIEW

The Act requires this Strategy to set out any procedures and other matters concerning community engagement about certain proposed dealings and activities on Crown land. This includes certain types of licences, leases, and permits, transfers of land, sales of Crown land and the preparation of plans of management.

This Strategy is to be followed for relevant dealings and activities undertaken by each of the following persons, who are responsible persons for dealings (as defined in the Act):

- the minister
- the secretary of the Department of Industry
- the Lands Administration Ministerial Corporation
- staff of the department
- non-council Crown Land Managers (non-council CLMs).

This Strategy is a valuable resource for the community and promotes a greater understanding about when and how engagement will be required to support decision-making about different Crown land dealings and activities.

Engaging the community can reveal valuable insights and support well-rounded decisions about dealings and activities affecting Crown land. Genuine engagement with communities will enable decision-makers to develop a more detailed or nuanced understanding of how people use and value Crown land.

The engagement approach adopted by this Strategy is a notable change from earlier Crown land engagement, which relied primarily on notification through newspapers and the NSW Government Gazettal process.

Together with the non-statutory Guidance and Resources document, this Strategy gives responsible persons a solid foundation from which to deliver engagement about Crown land dealings and activities. This engagement will be an input into final decisions under the Act about those dealings and activities.

## 1.3 STRUCTURE

This Strategy is designed to be easy-to-navigate. It sets out the requirements for community engagement that must be followed by people responsible for making decisions about dealings and activities on Crown land.

Parts 1 and 2 of this Strategy explain the context for the Strategy, including the legislative framework and the importance of engagement.

The table in Part 3 sets out all of the requirements imposed by this Strategy for each relevant dealing or activity. Each requirement is explained in detail in Parts 4, 5 and 6 of the Strategy.



## 1.4 GUIDANCE AND RESOURCES

This Strategy is supported by a separate non-statutory Community Engagement Guidance and Resources document (Guidance and Resources document). It complements this Strategy with a library of engagement templates and resources to provide practical day-to-day support.

It provides step-by-step processes for responsible persons to follow when implementing this Strategy, and in particular, when determining the nature of engagement required by this Strategy.

FIGURE 1. PREVIOUS AND NEW ENGAGEMENT REQUIREMENTS ABOUT CROWN LAND



### ENGAGEMENT REQUIREMENTS UNDER THE OLD FRAMEWORK

**ENGAGEMENT ONLY APPLIED TO:**

- 1** Prior notice for sales and some leases
- 2** Notice provided at time of decision for changes to reserve purpose and some licences
- 3** Requirement to place plans of management on public display

**ENGAGEMENT PRIMARILY NOTIFICATION ONLY**



### ENGAGEMENT REQUIRED UNDER THE NEW FRAMEWORK

**ENGAGEMENT NOW APPLIES TO:**

- |   |  |
|---|--|
| <ul style="list-style-type: none"> <li><b>1</b> Reserve or dedication purpose</li> <li><b>2</b> Licences</li> <li><b>3</b> Leases</li> <li><b>4</b> Vestings</li> </ul> | <ul style="list-style-type: none"> <li><b>5</b> Sales</li> <li><b>6</b> Plans of management</li> <li><b>7</b> State strategic plan for Crown land</li> </ul> |
|---|--|

**ENGAGEMENT FOR MOST PROPOSED SALES, ALL DRAFT PLANS OF MANAGEMENT AND THE STATE STRATEGIC PLANS**

**PUBLIC SUBMISSIONS PROCESS AND ADDITIONAL ENGAGEMENT FOR ALL PLANS OF MANAGEMENT AND HIGH-IMPACT SALES**

**ENGAGEMENT BY A RANGE OF *INFORM*, *CONSULT* AND *PARTICIPATE* ACTIVITIES**

- | <b>INFORM</b>  | <b>CONSULT</b>   | <b>PARTICIPATE</b>  |
|--|--|---|
| <ul style="list-style-type: none"> <li>➤ department website</li> <li>➤ local advertisements</li> <li>➤ fact sheet or FAQ</li> <li>➤ letterbox drop</li> <li>➤ local signage</li> <li>➤ site signage</li> </ul> | <ul style="list-style-type: none"> <li>➤ community information event</li> <li>➤ Have Your Say site</li> <li>➤ online forum</li> <li>➤ submissions</li> <li>➤ survey</li> </ul> | <ul style="list-style-type: none"> <li>➤ targeted meetings</li> <li>➤ interactive workshop</li> <li>➤ onsite workshops</li> <li>➤ community advisory or consultative committee</li> </ul> |



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## **1.5 HOW THIS STRATEGY WAS PREPARED**

This Strategy was prepared by the department in consultation with department staff, community and community groups, peak body organisations, government agencies and non-council CLMs.

Gratitude is extended to all organisations and individuals who generously provided input and feedback and to those who made formal submissions during the public exhibition period.

All input has been considered and used to inform and strengthen the final version of this Strategy.

## **1.6 COMMENCEMENT OF THIS STRATEGY**

Once adopted by the minister, this Strategy will apply to all new Crown land dealings and activities on and from the commencement of Division 5.3 of the Act.

This Strategy will remain in force until it is altered or revoked by the minister.

## **1.7 COMPLIANCE WITH THIS STRATEGY**

‘Responsible persons for dealings’ (as defined in the Act) must comply with the requirements of this Strategy.

Failure of a non-council CLM to demonstrate compliance with the requirements of this Strategy may result in the minister (or delegate) refusing to approve a dealing or activity. Random audits will also be conducted to ensure compliance.

Further, where a dealing or activity has been approved, but has not been completed in accordance with the mandatory requirements of the Strategy, the validity of the dealing or activity may be challenged in court. However, in accordance with legal principles, any such dealing or activity would remain valid unless and until determined otherwise by a court.

The department has developed tailored processes, procedures and training materials to support responsible persons to meet the requirements of this Strategy (and in particular, the mandatory requirements of this Strategy).

## **1.8 REVIEW OF THIS STRATEGY**

A formal review of this Strategy document will be carried out after five years of its commencement.

The Act requires that future proposed amendments to this Strategy must be exhibited for 28 days, and public submissions must be called for, before any amendments can be approved by the minister.

The Guidance and Resources document is an evolving document that will be regularly reviewed and updated to ensure it remains in line with community expectations and state priorities.

# BACKGROUND

# 2



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## 2.1 CROWN LAND MANAGEMENT IN NSW

### 2.1.1 THE CROWN LAND ESTATE

The Crown land estate in NSW is a vast portfolio of more than 580,000 parcels of land covering some 34 million hectares. The majority of the estate by area is in the Western Division (around 30 million hectares) and is principally used for agricultural purposes.

Most other Crown land is allocated for public uses such as showgrounds, sporting fields, camping and recreation areas, travelling stock reserves, community halls and other public uses. A significant portion of Crown land is managed and protected for its environmental or heritage values, including beach and foreshore areas and nature reserves.

Crown land can also be used in other ways, such as leased or licenced for commercial or agricultural purposes. Where Crown land is no longer required for public use, it can occasionally be sold.

Crown land is both valued and valuable. It has a total value of \$12 billion<sup>1</sup> and provides vital social, cultural, economic and environmental benefits to local and regional communities and the people of NSW.

Hundreds of thousands of people from across NSW enjoy using Crown land each year.

Thousands of people from across NSW also play a critical role in helping to manage and look after Crown land.

### 2.1.2 CROWN LAND MANAGEMENT

Crown land is managed to benefit the people of NSW.

There are a wide range of mechanisms to manage Crown land under the Act. The majority of Crown land used for public purposes is managed by local councils or non-council CLMs. The department and other government agencies also manage some areas of Crown land, and other Crown land is managed by third parties via leases, licences or permits.

The department also manages the sale of Crown land not required for public purposes in accordance with the Act.

The *Aboriginal Land Rights Act 1983* provides that certain Crown land not needed by government can be claimed by and transferred to Aboriginal Land Councils for economic or cultural purposes.

Crown Land must also be managed in accordance with the *Native Title Act 1993*.

### 2.1.3 NEW CROWN LAND LEGISLATION

Previous legislation governing Crown land was complex and confusing. It comprised of eight different pieces of legislation and provided for only limited community engagement about Crown land, primarily through notification processes. There was no requirement to involve the community in meaningful discussion about Crown land decisions.

In 2012, the NSW Government began the first major review of Crown land in 25 years. This included detailed consultation and led to the 2014 Crown Lands Legislation White Paper, which set out a range of legislative proposals to support better Crown land management and community engagement.

<sup>1</sup> The total value of the Crown Estate changes each year.

After the review, the 2016 Parliamentary Inquiry into Crown Land Management provided an additional forum for stakeholders and the community to share their views on Crown land management. The same year saw the release of the NSW Auditor-General's report Sale and Lease of Crown Lands, which found that community involvement in decisions about the sale and lease of Crown land was limited.

In 2016, the NSW Parliament passed the new Act to deliver more modern, streamlined and transparent management of the state's vast Crown land estate.

The Act implements reforms identified through the Crown land management review. It provides a framework that will ensure Crown land continues to support and generate significant social, environmental and cultural benefits to the people of NSW.

Significantly, the Act also mandates for a Community Engagement Strategy—this Strategy—to improve community engagement and provide open and clear information about engagement requirements for key Crown land dealings and activities, including mandatory engagement requirements.

## 2.1.4 RECOGNISING ABORIGINAL RIGHTS

As Australia's First Peoples, Aboriginal peoples and communities have special rights and interests in Crown land. Native title rights can continue to exist over Crown land for all generations.

For the first time, the Act explicitly recognises and supports Aboriginal land rights, native title rights and interests, and Aboriginal peoples' and communities' involvement in the management of Crown land.

One of the objects of the Act is to facilitate the use of Crown land by Aboriginal peoples and communities and, where appropriate, enable the co-management of reserved Crown land.

The objects also acknowledge the spiritual, social, cultural and economic importance of Crown land to Aboriginal people.

## 2.1.5 DECISION-MAKING UNDER THE ACT

Community engagement supports informed decisions about Crown land.

It is just one of many factors under the Act that decision-makers must consider when assessing whether a proposed dealing or activity should be approved.

Other important considerations are the **objects** and **principles** of the Act.

### OBJECTS

One of the safeguards to make sure Crown land is managed and used for the benefit of the people of NSW are the objects of the Act. They set out the underlying purpose that guide decision-making and every decision under the legislation must be consistent with the objects.

The objects are to:

- provide for the ownership, use and management of the Crown land of NSW
- provide clarity concerning the law applicable to Crown land
- require environmental, social, cultural heritage and economic considerations to be taken into account in decision-making about Crown land
- provide for the consistent, efficient, fair and transparent management of Crown land for the benefit of the people of NSW
- facilitate the use of Crown land by the Aboriginal people of NSW because of the spiritual, social, cultural and economic importance of land to Aboriginal people and, where appropriate, to enable the co-management of dedicated or reserved Crown land
- provide for the management of Crown land having regard to the **principles** of Crown land management.

## PRINCIPLES

The principles are key values that guide the management of Crown land for the people of NSW and they promote sustainable use and management of Crown land into the future.

The principles have not changed from those outlined in the *Crown Lands Act 1989*. However, under the new Act, the principles are now referenced in the objects. This means they are also relevant to decision-making under the Act.

The principles of the Act are that:

- environmental protection principles be observed in relation to the management and administration of Crown land
- the natural resources of Crown land (including water, soil, flora, fauna, and scenic quality) be conserved wherever possible
- public use and enjoyment of appropriate Crown land be encouraged
- where appropriate, multiple uses of Crown land be encouraged
- where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained in perpetuity
- Crown land be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the state, consistent with the above principles.

### 2.1.6 APPLYING THE OBJECTS AND PRINCIPLES

The objects of the Act apply to all aspects of decision-making around the use and management of Crown land, including every dealing and activity.

They are a fundamental consideration that are to be applied to every decision under the Act. All responsible persons must have regard to these objects when making decisions referred to in this Strategy. Other provisions of the Act and other relevant acts and laws, are factors that must also be considered in all decisions about Crown land.

## 2.2 LEGISLATIVE CONTEXT OF THIS STRATEGY

### 2.2.1 CROWN LAND DEALINGS AND ACTIVITIES

The Act provides that this Strategy may make provision for or with respect to the following Crown land dealings and activities:

- preparation of a state strategic plan for Crown land
- preparation of plans of management for Crown land under Division 3.6 of the Act
- alteration or removal of a purpose for which Crown land is dedicated or reserved
- the sale of Crown land under the Act
- transferring or vesting Crown land under the Act
- granting of leases, licences or permits over Crown land under the Act.

Further detail about each of these dealings or activities is set out below.

#### STATE STRATEGIC PLAN FOR CROWN LAND

The state strategic plan for Crown land sets the vision, priorities and overarching strategy for the management of Crown land in New South Wales, having regard to the objects of the Act and environmental, social, cultural heritage and economic considerations.

This is a new requirement of the Act and must be developed within two years of commencement of the Act.



#### NOTE

More information about state strategic plans for Crown land is contained in the Guidance and Resources document.

## PLANS OF MANAGEMENT

A plan of management under the Act outlines how reserved or dedicated Crown land (both referred to here as reserves) is to be used and managed.

It consolidates information about a reserve and its users and clearly states what, why, how and by whom the values of a reserve will be managed.

A plan of management considers the purpose for the reserve as well as other guidelines, policies and legal requirements that may apply.

A plan of management does not need to be lengthy. In some cases, it may be a brief written statement about how the reserve is to be managed in line with its purpose. In other cases, a more detailed document may be needed to deal with more complex physical features or multiple uses of a reserve.

It may be initiated by the department, the minister responsible for administering the Act, or a non-council CLM.

A draft plan of management may, with the approval of the minister, specify additional proposed purposes for a reserve. The Act states that a plan of management proposing additional purposes cannot be adopted unless the minister is satisfied that the additional purposes were:

- included in the draft plan of management when community engagement was conducted, or
- altered from those in the draft plan following representations made during community engagement.

Plans of management only have effect once they have been adopted by the minister.

Once a plan of management is adopted, the department or non-council CLM must implement it, ensuring that any leases or licences granted over the reserve comply with the requirements of the plan of management. No activities can be undertaken on the reserve unless they are in accordance with the plan of management.

## RESERVATIONS AND DEDICATIONS

The purpose of dedicating or reserving Crown land is to set it aside for a particular purpose, such as for environmental and heritage protection, recreation and sport, open space, community halls, special events and government services.

There are many types of reservations and dedications ranging from state parks, beaches and national surfing reserves, caravan and camping grounds, cemeteries, racecourses, showgrounds, community halls, sporting fields and parks, walking tracks, canoe and kayak trails, smaller ports and harbours to wharves.

The reservation and dedication activities covered by this Strategy are as follows:

### ALTERATION OF A RESERVATION OR DEDICATION PURPOSE

This will occur where there is a complete change of purpose. For example, when altering a reservation purpose from public recreation to conservation. A total change of a reservation or dedication purpose may be proposed in connection with a new use that will be authorised by a lease or licence.

### REMOVAL OF A RESERVATION OR DEDICATION PURPOSE

This will occur where there are multiple purposes for a reservation or dedication and one of these purposes is removed, meaning the land can no longer generally be used for that purpose.

### REVOCATION OF A RESERVATION OR DEDICATION

This will occur when the reservation or dedication is revoked completely, making the land vacant Crown land. This will generally occur before land is sold or leaves the Crown land estate in another way.

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## SALES

Crown land has always been available for sale if it is no longer required for government or broader community purposes and in doing so can benefit the state's economy.

Crown land is sold each year in response to the rights of some lessees (who have rights to purchase land in their lease or under legislation), to fill the need of third parties like other government agencies, and where the sale will achieve public or community benefits.

All sales must comply with the *Native Title Act 1993*.

## VESTINGS

To vest Crown land means to transfer the ownership of the land to a new person without requiring any payment of money. The Act empowers the minister to 'vest' Crown land in:

- local councils, but only if it is suitable for local use
- government agencies, but only if it is in the public interest to do so and the agency's functions make it an appropriate owner and manager of the land.

For land to be vested in **local councils** it must:

- have council consent prior to any transfer occurring—local councils will have the opportunity to consider the value of the land, including any resourcing implications, before agreeing to voluntary land transfers
- relate to land which sits wholly within the local government area of the council
- have the consent of the relevant claimant Local Aboriginal Land Council and the NSW Aboriginal Land Council if the land is subject to a claim under the *Aboriginal Land Rights Act 1983*.

Land vested in local councils will generally be vested as community land under the *Local Government Act 1993* and plans of management must be prepared by council to manage the use of vested land.

The Act enables the minister to vest Crown land in a **government agency** if it:

- is in the public interest to vest the land in the agency
- is the case that the agency would be an appropriate owner and manager of that land
- has the consent of the relevant claimant Local Aboriginal Land Council and the NSW Aboriginal Land Council if the land is subject to a claim under the *Aboriginal Land Rights Act 1983*.

## LEASES

A lease of Crown land generally enables exclusive use over a piece of land for a specific term and purpose. Leases can be granted by the minister (and by delegation, the department) or non-council CLMs.

Generally, leases are sought over Crown land where longer-term security of tenure is important to the user of the land. For example, where commercial or long-term uses are proposed and major financial outlay is intended by the proponent or may be required by the department.

Examples include farms and commercial activities such as restaurants, marinas, clubs, golf courses and caravan parks.

Leases can be granted by public tender, invitations for expressions of interest under special circumstances, direct negotiation, or transferred/assigned to another party.

Leases stimulate local economic activity and enhance service delivery.

All leases must be granted in compliance with the *Native Title Act 1993*.

## LICENCES

Licences are generally for non-exclusive use and for short terms. They can be granted by the minister (and by delegation, the department) and non-council CLMs to individuals, businesses and community organisations for purposes such as:

- domestic waterfront structures (for example, jetties, boat ramps and slipways)
- extraction industry operation (for example, quarries and dredging of sand from waterways)
- rural purposes
- water supply and access (for example, pump sites and pipelines for domestic use and irrigation)
- ports licences
- licenses authorising telecommunication infrastructure on Crown land
- short term purposes (for example, sporting events, site remediation works, and site investigations associated with potentially acceptable development proposals)
- small scale commercial businesses.

The department processes high volumes of licences each year, many requiring very short processing times.

All licences must be issued consistently with the *Native Title Act 1993*, which has its own mandatory procedures and in many instances requires native title holders be notified.

## ENCLOSURE PERMITS

An enclosure permit may be granted by the minister (and by delegation, the department) to allow a property owner to enclose a Crown road or watercourse within their property by fencing. An enclosure permit does not provide the holder with any title to the Crown road or watercourse.

When granting enclosure permits, the department ensures that the land remains available for community access (through the provision of gates) and that the proponent obtains the permission of adjoining landowners.

## 2.2.2 NON-COUNCIL CLM DEALINGS AND ACTIVITIES

Under the Act, non-council CLMs can exercise the minister's functions in relation to the land that they manage with the minister's consent.

Consent will not be issued to enable them to sell or vest land or take action in respect of reservations or dedications of Crown land. These dealings and activities will generally remain the responsibility of the minister and the department.

Certain dealings carried out by a non-council CLM will not require the minister's consent, depending on the categorisation of the non-council CLM. Category 1 non-council CLMs are professional entities who have been determined to have governance expertise and high levels of capability, and accordingly can issue longer-term leases and licences (up to 10 years) without the minister's consent. All other non-council CLMs are Category 2 non-council CLMs. Category 2 non-council CLMs must obtain the minister's consent to issue any leases, as well as any licences with a term of more than one year (including any option to renew).

This Strategy applies to all dealings and activities carried out by non-council CLMs, whether or not the minister's consent is required. However, if the department (on behalf of the minister) seeks to undertake a dealing or activity on Crown land managed by a non-council CLM, the department will be responsible for meeting the applicable requirements of this Strategy.

### **2.2.3 DEALINGS AND ACTIVITIES THAT ARE OUTSIDE THE SCOPE OF THIS STRATEGY**

Under the Act, this Strategy can only make provision for engagement on the specific dealings and activities outlined in section 2.2.1.

This Strategy does not apply to:

- strategic or policy-related decisions or to future uses of Crown land such as land allocation, apart from engagement about the State strategic plan for Crown land
- dealings and activities that are carried out under other legislation; for example, native title or local government legislation.

Some types of dealings and activities which are outside the scope of this Strategy are outlined in more detail below.

#### **LOCAL COUNCILS MANAGING CROWN LAND**

The Act does not extend any obligations under this Strategy to local council Crown land managers (council CLMs) appointed to manage Crown land under the Act. Council CLMs that manage Crown land must comply with the detailed community engagement requirements of the *Local Government Act 1993* which include the preparation of plans of management.

In cases where local councils propose a sale of Crown land, the department must follow the requirements for sales set out in this Strategy before deciding whether to provide consent.

#### **PURCHASABLE LEASES**

The grant to any lease where the lessee has rights under the Act to purchase their property is excluded.

#### **DEALINGS AND TRANSFERS OF LAND REQUIRED OR PERMITTED UNDER OTHER ACTS**

The Act excludes transfers of Crown land under other Acts from the scope of this Strategy, including:

- transfers of land under or in accordance with the *Aboriginal Land Rights Act 1983*
- acquisition of Crown land by government agencies and local councils under other legislation, such as the *Land Acquisition (Just Terms Compensation) Act 1991*
- transfers of land under the *Government Property NSW Act 2006*
- sale of Crown roads under the *Roads Act 1993*.

Also excluded from this Strategy are the:

- granting of permits and other authorisations over Crown roads under the *Roads Act 1993*.

#### **OTHER DEALINGS AND ACTIVITIES INVOLVING CROWN LAND**

The Act excludes many other department-led decisions and activities from the scope of this Strategy, including:

- other functions and activities under the Act such as:
  - › categorisation, appointment and recruitment of non-council CLMs
  - › adding a purpose for reserved or dedicated Crown land
  - › reserving or dedicating Crown land
  - › categorisation of Crown land under the *Local Government Act 1993*
  - › consideration of whether land is suitable for local use under Section 4.6 of the Act
  - › granting purchasable leases and forestry rights
  - › granting of funds under Crown Land Reserves Improvement Fund
  - › transfers of Crown land holdings
  - › alterations to dealings conducted under Section 7.3 of the Act
  - › fee increases

- management of TSRs by Local Land Services under the *Local Land Services Act 2013*
- granting land owners consent to a development application being lodged for a proposal on Crown land under the *Environmental Planning & Assessment Act 1979*
- forestry matters, which are dealt with under the *Forestry Act 2012*.

The department is also involved in a range of government reviews relating to Crown land. Involvement in such reviews is not and will never be subject to the requirements of this Strategy.

Various departmental projects and activities including those relating to infrastructure, natural resource management, bushfire mitigation, and contaminated land are not captured in this Strategy.

Exclusion of such projects from this Strategy does not prevent the department from carrying out appropriate engagement to support these activities.

## 2.3 COMMUNITY ENGAGEMENT AND THIS STRATEGY

### 2.3.1 ENGAGING ABOUT CROWN LAND

Engagement is a broad term with different meanings for different people. For some people, it can be as simple as receiving information. To others, it implies giving feedback or collaborating in decision-making.



#### NOTE

##### WHAT ELSE CAN ENGAGEMENT ACHIEVE?

Engagement does not necessarily aim to achieve consensus among all participants. It is, however, ideal for gaining a better understanding of critical issues and attitudes.

An important part of engaging about proposed Crown land dealings and activities will be to clearly and openly articulate how feedback and input may be used to support **decision-making**.

Setting clear objectives helps manage expectations and makes clear what factors will be inputs into the decision.

The engagement approach adopted by this Strategy is based on the widely-recognised Organisation for Economic Co-operation and Development approach to government-citizen engagement.

This approach recognises the importance of community input during the decision-making process so people can provide feedback and different views can be considered.

Respectful and meaningful engagement can help responsible persons understand different perspectives and manage risk. Done well, it can

also generate useful insights into how a site is used and enjoyed which can inform decision-making and support better local outcomes.

The spectrum of government-citizen engagement methods and activities mandated by this Strategy are the *inform*, *consult* and *participate* approaches outlined in Table 1.

Table 1 is referred to in Part 4, in describing the type of engagement to be carried out on proposed dealings or activities.



TABLE 1. ENGAGEMENT APPROACH AND ACTIVITIES

Engagement approach	What it looks like	Engagement activity options under this Strategy
 <b>INFORM</b>	<p><b>Informative engagement is one-way communication</b> providing reliable, balanced and objective information.</p> <p>It includes informing people that engagement is starting, making information readily available for people to access, and making sure information reaches target groups.</p>	<ul style="list-style-type: none"> <li>• department website (mandatory)</li> <li>• advertisement/notice in local newspaper</li> <li>• fact sheet or FAQ</li> <li>• letterbox drop</li> <li>• local signage (e.g. community hall, local shop, library)</li> <li>• site signage</li> </ul>
 <b>CONSULT</b>	<p><b>Consultative engagement is two-way communication</b> designed to obtain feedback about ideas, proposals and important activities and dealings.</p> <p>Consultation is generally based on an explanation of the issues and being clear about the level of influence people have on decisions.</p>	<ul style="list-style-type: none"> <li>• community information event</li> <li>• NSW Government Have Your Say website</li> <li>• online forum</li> <li>• submissions</li> <li>• survey</li> </ul>
 <b>PARTICIPATE</b>	<p><b>Participatory engagement is a two-way process</b> that enables collaboration between the community and decision-makers. The process helps identify issues and views, particularly about high-impact or potentially sensitive dealings.</p> <p>Community can collaborate with decision-makers—although responsibility for the final decision still rests with the department or non-council CLM.</p>	<ul style="list-style-type: none"> <li>• targeted meetings</li> <li>• interactive workshop</li> <li>• workshops (onsite tour/visit)</li> <li>• community advisory or consultative committee</li> </ul>

## 2.3.2 ENGAGEMENT PRINCIPLES ADOPTED BY THIS STRATEGY

The following principles for engagement should be used to guide responsible persons as they conduct engagement activities with the community and stakeholders to ensure engagement is delivered consistently and effectively.

**TABLE 2. PRINCIPLES OF ENGAGEMENT**

Engagement principle	Why it is important
<b>EVIDENCE-BASED</b>	The calculated impact on current community use and enjoyment of Crown land will determine the appropriate level of engagement.
<b>PROPORTIONATE</b>	Engagement is consistent, proportionate and reflects the likely impact of the dealing or activity on current community use and enjoyment.
<b>ACCESSIBLE</b>	Engagement is informed by best-practice approaches and supported by activities that are accessible and easy for people to understand and use.
<b>TIMELY</b>	Activities to support engagement about Crown land dealings and activities are delivered according to this Strategy and within specified timeframes.
<b>TRANSPARENT</b>	Engagement is conducted openly, fosters respect and trust, and is professional, honest and consistent.

## 2.3.3 ENGAGING WITH THE COMMUNITY

Crown land dealings and activities are of interest to many individuals, groups and agencies.

Broadly, Crown land stakeholders are people or groups with a direct interest in a Crown land issue or decision about a proposed dealing or activity.

It is important for responsible persons to apply local knowledge and insights when considering who may be interested in a dealing or activity. This could include people who live locally or those who are members of shared interest groups or communities of interest.



### NOTE

**The Guidance and Resources document** provides an overview of potential stakeholders and interest groups, ranging from government agencies, business and commerce groups, environment and conservation groups, recreational organisations, peak bodies and special interest groups.

However, this list is not exhaustive and responsible persons should also consider who may have a direct interest in the outcome of a proposed dealing or activity, who uses and enjoys a site, and how to encourage input from the broader community as well as organised and interested groups.

### 2.3.4 ENGAGING WITH THE ABORIGINAL COMMUNITY

Strengthening relationships and engagement with Aboriginal peoples and communities about Crown land is a priority for this Strategy.

Responsible persons should identify and acknowledge Aboriginal peoples and communities who may have an interest in, or be impacted by, a proposed dealing or activity early in the engagement process.

A key step will be to seek advice from Aboriginal community groups and organisations, such as Prescribed Bodies Corporate, Local Aboriginal Land Councils, Aboriginal Land Rights Network, native title representative bodies and local Aboriginal service providers. Together with Aboriginal community and traditional owner groups, they can provide guidance on cultural norms, values and sensitivities and other important local information.

This Strategy respects and acknowledges existing consultation rights under the *Native Title Act 1993* and any Indigenous Land Use Agreements. Engagement under the Strategy must be conducted in addition to these existing engagement arrangements.



#### NOTE

**The Guidance and Resources document** developed to support this Strategy refers responsible persons to guidance materials for engaging with local Aboriginal peoples and communities.

In addition to the requirements of this Strategy, responsible persons must comply with the significant notification and engagement obligations under the *Native Title Act 1993* when dealing with Crown land.

# OVERVIEW OF THE COMMUNITY ENGAGEMENT REQUIREMENTS

# 3



### 3.1 PRINCIPLES USED TO DEVELOP THE ENGAGEMENT REQUIREMENTS

This Strategy seeks to ensure there is appropriate engagement before important decisions are made about Crown land that affect the community. For example, before land leaves the Crown estate, or where there is a proposed change to the use of land that may have an adverse impact on the community's current use and enjoyment of the land.

However, for some types of dealings, there will generally be little to no impact on the community's current use and enjoyment. For example, there will be no impact on the community's current use and enjoyment where a licence over Crown land is being re-granted or renewed for the same purpose. Requiring community engagement on dealings that would very rarely impact the community's use and enjoyment of a site would not be a good use of limited resources.

The requirements of this Strategy are consistent with the engagement principles outlined in Table 2, being that engagement should be:

- evidence-based
- proportionate
- accessible
- timely
- transparent.

### 3.2 COMMUNITY ENGAGEMENT REQUIREMENTS

A responsible person proposing to undertake a dealing or activity must comply with the requirements of this Strategy that apply to that dealing or activity as set out in Table 3.

Further information about each requirement is set out in Parts 4, 5 and 6 of this Strategy.

Where they apply, the following requirements are **mandatory requirements** for the purpose of Section 5.8 of the Act:

- application of the 'current community use and enjoyment' test
- assessment of whether the impact is minimal, moderate or high
- carrying out engagement on the proposed dealing or activity
- consideration of the outcomes of the engagement process.

It is important to note that this overview only relates to the engagement requirements of this Strategy. Other engagement may also be required under other legislation.

For example, the minister, department staff and non-council CLMs must comply with significant notification and community engagement obligations when dealing with Crown land under the *Native Title Act 1993*.

 Means the requirement does not apply

 Means the requirement applies only if the community use and enjoyment test applies and is satisfied

 Means the requirement does apply



## NOTE

This Strategy sets the minimum requirements for dealings and activities. In doing so, it does not prevent responsible persons from conducting additional engagement to suit local circumstances or stakeholders.

**TABLE 3. OVERVIEW OF ENGAGEMENT REQUIREMENTS**

No.	Dealing or activity	Apply the current community use and enjoyment test	Assess whether the impact is minimal, moderate or high	Carry out engagement on the proposed dealing or activity	Consider the outcomes of the engagement process	Publish notification of completed dealing or activity on the department's website
1.	Preparing the state strategic plan					
2.	Preparing plans of management (including alterations to existing plans of management)					
3.	Altering a purpose for reserved or dedicated Crown land under Section 2.15 of the Act <sup>2</sup>					
4.	Removing a purpose for reserved or dedicated Crown land under Section 2.14 of the Act <sup>2</sup>					
5.	Revoking a reservation or dedication under Sections 2.7 or 2.11 of the Act to facilitate transfers of Crown land referred to in items 7 to 9 of this table, or under other Acts <sup>3</sup>					

<sup>2</sup> Engagement requirements for this activity may be carried out concurrently with the engagement requirements for the grant of any associated lease or licence.

<sup>3</sup> Engagement is not required under this Strategy as these revocations are required to give effect to decisions being made under other Acts which are outside the control of the department or where the transfers themselves do not require engagement under this Strategy. Proposals to revoke dedications must still be published in the NSW Government Gazette and tabled in each House of Parliament, which can disallow the proposed revocation of the dedication.

No.	Dealing or activity	Apply the current community use and enjoyment test	Assess whether the impact is minimal, moderate or high	Carry out engagement on the proposed dealing or activity	Consider the outcomes of the engagement process	Publish notification of completed dealing or activity on the department's website
6.	Revoking a dedication or reservation under Sections 2.7 or 2.11 of the Act for any other purpose <sup>4</sup>					
7.	Sales of Crown land to leaseholders with a right under the lease or Act to purchase, or apply to purchase, the leased land <sup>5</sup>					
8.	Sales of Crown land to current tenure holders using the land as their principal place of residence <sup>6</sup>					
9.	Sales or transfers of Crown land under an Indigenous Land Use Agreement or determination of native title under the <i>Native Title Act 1993</i> <sup>7</sup>					
10.	Sales of Crown land proposed by local councils <sup>8</sup>					

<sup>4</sup> Engagement requirements for this activity may be carried out concurrently with engagement requirements for any associated lease, sale or vesting of the land.

<sup>5</sup> Engagement is not required under this Strategy as these sales will not impact current community use and enjoyment, and in some cases the purchase application cannot be refused.

<sup>6</sup> Engagement is not required under this Strategy as land is being used as a home, the sale will not impact any current community use or enjoyment. The privacy of the domestic purchaser should also be protected.

<sup>7</sup> Engagement is not required under this Strategy as these sales and transfers occur under another Act, and are therefore outside the control of the department.

<sup>8</sup> The department is to carry out this engagement on behalf of the local council before deciding whether to provide consent to the sale.

No.	Dealing or activity	Apply the current community use and enjoyment test	Assess whether the impact is minimal, moderate or high	Carry out engagement on the proposed dealing or activity	Consider the outcomes of the engagement process	Publish notification of completed dealing or activity on the department's website
11.	Sales of Crown land for any other purpose under the Act					
12.	Return of land that has escheated to the Crown <sup>9</sup>					
13.	Vesting Crown land under the Act					
14.	Grant of leases					
15.	Departmental grant of licences for the purposes of enabling water supply; <sup>10</sup> domestic waterfront licences; <sup>11</sup> short-term licences; <sup>12</sup> authorising telecommunication infrastructure <sup>13</sup>					

<sup>9</sup> Engagement is not required under this Strategy to transfer land back to the previous owner where land has escheated to the Crown.

<sup>10</sup> These licences cover activities such as pumpsites, underground pipelines, bore sites, aboveground pipelines, irrigation channels, drainage channels, irrigation levees and water storages. Pre-decision engagement is not required under this Strategy due to the high volume of transactions and minimal impact on community use and enjoyment of this licence type.

<sup>11</sup> Pre-decision engagement is not required under this Strategy as this has limited impact on current community use and enjoyment as the community does not generally have access to the land where the licenced waterfront structure is located. Any new material works will generally require development consent, which will also require engagement, as appropriate.

<sup>12</sup> Pre-decision engagement is not required under this Strategy as it would be impractical given the limited duration of any impact on current community use and enjoyment and short processing times. Some licences may subject to engagement prior to development consent being granted by the relevant local council.

<sup>13</sup> Engagement is not required under this Strategy as it would unnecessarily duplicate engagement already required under other codes and guidelines. Other engagement requirements apply for most telecommunication infrastructure proposals under government and industry codes applicable to carrier licensees and the development assessment process, as outlined in the NSW Planning Guideline for NSW Telecommunication Facilities. These processes provide the opportunity for community concerns, such as visual impacts, to be raised. The department also requires proponents to provide evidence they have consulted with relevant non-council CLMs and groups that use the reserve.

No.	Dealing or activity	Apply the current community use and enjoyment test	Assess whether the impact is minimal, moderate or high	Carry out engagement on the proposed dealing or activity	Consider the outcomes of the engagement process	Publish notification of completed dealing or activity on the department's website
16.	Re-grant of licences or permits to the same person for the same purpose <sup>14</sup>					
17.	Grant of short-term licences by non-council CLMs <sup>15</sup>					
18.	Grant of all other licences					
19.	Grant of enclosure permits <sup>16</sup>					
20.	Completion of dealings or activities which have been approved or are before a decision-maker for approval when this Strategy commences <sup>17</sup> that have, prior to completion, complied with any pre-decision requirements under the repealed Act <sup>18</sup>					

<sup>14</sup> Pre-decision engagement is not required under this Strategy as this has no impact on current community use and enjoyment, given the licence is being granted on substantially the same terms to the previous licence (other than in relation to rent, commencement date and expiry date).

<sup>15</sup> Pre-decision engagement is not required under this Strategy as it would be impractical given the limited duration of any impact on current community use and enjoyment and short processing times. Due to the limited resources of many non-council CLMs, post-decision notification of short term licences is also not required under this Strategy.

<sup>16</sup> Engagement is not required under this Strategy as these permits have no impact on current community use and enjoyment, since any enclosed land must remain accessible by the community (i.e. gates must be installed). Applicants must also obtain permission from adjoining landowners. Enclosure permits do not provide the permit holder any title to Crown road or watercourse.'

<sup>17</sup> This also includes dealings or activities where further actions or decisions may be required to complete the dealing or activity after the approval, but only to give effect to the approval. For example, if the sale of land on particular terms has been approved or is before a delegate for approval when this Strategy commences, then this may apply even though finalisation of the sale requires preparation and execution of a sale contract after commencement of this Strategy.

<sup>18</sup> 'Repealed Act' refers to the Act which applied to the dealing or activity prior to the commencement of the new Act. For example, the sale of land or grant of a lease for a term exceeding five years must have complied with requirements to advertise the intention to sell or lease the land under Section 34 of the *Crown Land Act 1989*.

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## 3.3 MINISTERIAL WAIVERS

Acknowledging the importance of community engagement in making decisions regarding Crown land, there will be circumstances where complying with the requirements of this Strategy before a final decision is made will be inappropriate or not in the broader public interest. For example, when there is a need to undertake emergency works or works required to meet health and safety imperatives.

The minister may waive any or all requirements that engagement be carried out under this Strategy prior to a final decision being made about a dealing or activity (conditionally or unconditionally), on one or more of the following bases:

- in emergency or exceptional circumstances
- to enable approved NSW Government priorities that require Crown land
- where the minister is satisfied that a waiver is in the public interest
- where the minister is satisfied that other legislation is applicable and delivers the same or better engagement (e.g. through planning approval processes).

Waivers **cannot** be granted:

- after a dealing or activity has been carried out (that is, waivers cannot be issued retrospectively)
- in relation to plans of management, state strategic plans, or sales of Crown land for which engagement is required under Part 3 of this Strategy.

Notification of a completed dealing or activity subject to a ministerial waiver must be published on the department's website, accompanied by the basis (or bases) on which a waiver was granted.

**ASSESSING CURRENT  
COMMUNITY USE AND  
ENJOYMENT**

**4**



## 4.1 ABOUT THE TEST

Encouraging public use and enjoyment of Crown land is one of the principles of Crown land management, referred to in the objects of the Act that decision-makers should consider. One of the main reasons this Strategy requires engagement with the community before certain decisions are made, is to obtain the public's views about their use and enjoyment of the land.

The current community use and enjoyment test requires consideration of whether the community currently uses or enjoys Crown land.

The test can be triggered even where there is no active use but the community is enjoying the site for its social, cultural or heritage values. To ensure that engagement about Crown land is proportionate and targeted, as set out in Table 3 in Part 3, this Strategy generally requires

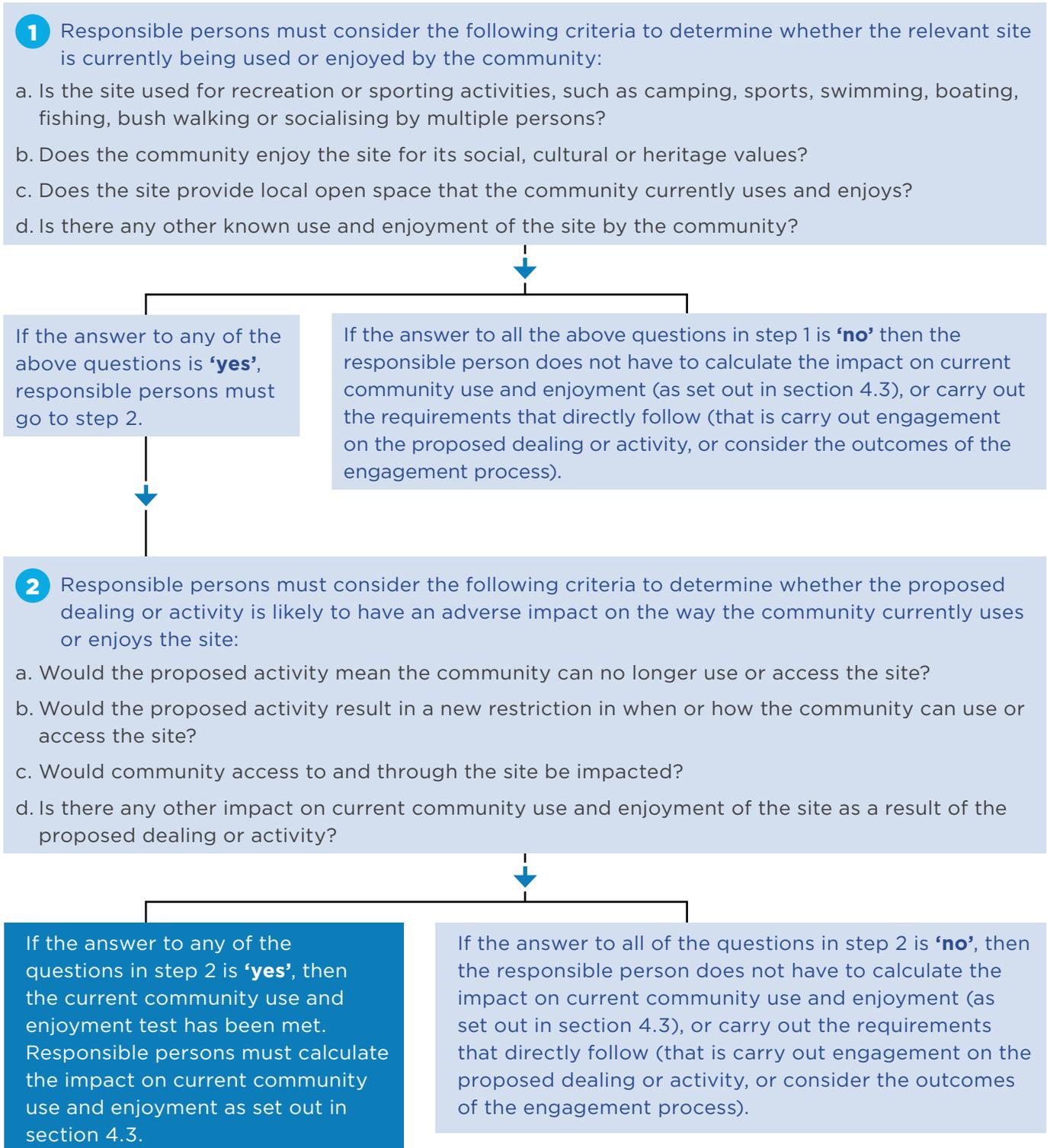
engagement for licences, vestings and changes to reserves and dedications only where there is a potential impact on current community use and enjoyment. Requirements have not been imposed for dealings and activities where it is unlikely that this test will be met.

Recognising the high level of community interest in sales, leases, plans of management and the state strategic plan, this Strategy requires that community engagement must always be carried out to support decision-making about these dealings and activities regardless of whether the community currently uses and enjoys Crown land—and so application of this test is not required.



## 4.2 APPLYING THE CURRENT COMMUNITY USE AND ENJOYMENT TEST

Where so required by Table 3 in Part 3, it is a **mandatory requirement** of this Strategy that responsible persons apply the current community use and enjoyment test as follows:



## 4.3 ASSESSING COMMUNITY USE AND ENJOYMENT

### APPLICATION

The following mandatory requirement applies:

If Part 3:

- a. requires a responsible person to apply the current community use and enjoyment test, and the test has been met (that is the responsible person has assessed that a proposed dealing or activity will have an impact on current community use and enjoyment), or
- b. directly requires a responsible person to calculate the impact on current community use and enjoyment.

### THE REQUIREMENT

The responsible person must assess whether the likely level of impact that the proposed dealing or activity will have on the community's current use and enjoyment will be **minimal, moderate** or **high**, having regard to:

- a. the degree to which current use and enjoyment is reduced with respect to either when or how the land can be used
- b. the proportion of the local or broader community that will be affected.

### RATIONALE

This assessment will enable the responsible person to carry out appropriate engagement for the proposed dealing or activity.

It can apply even if application of the community use and enjoyment test does not.

For example, in the case of sales, leases and plans of management, the current community use and enjoyment test in 4.2 does not apply, as this Strategy requires pre-decision engagement for all proposed sales and plans of management and notification of all proposed leases regardless of the impact on current community use and enjoyment of the land.

However, Part 5 of this Strategy requires **additional** engagement for dealings and activities that are assessed by the responsible person to have a high impact on current community use and enjoyment of the land. Therefore, while the current community use and enjoyment test does not apply, the assessment of the level of impact does.



Although not a requirement of this Strategy, engagement assessment templates (including weighted criteria) in the Guidance and Resources document should be used to ensure a proper assessment of the impact of proposed dealings and activities.

The score per criteria, together with consideration of local factors, are designed to enable responsible persons to calculate whether the likely impact on current community use and enjoyment of a proposed dealing or activity will result in a **minimal, moderate or high impact** assessment.

Local factors will include whether land is used by members of the public for recreation or sporting activities; whether it is enjoyed for its social, environmental, cultural and heritage values; or if it provides valuable open space.

# **CARRYING OUT ENGAGEMENT ON A PROPOSED DEALING OR ACTIVITY**

# **5**



## 5.1 THE ENGAGEMENT REQUIREMENTS

This Part provides detail about the requirement to carry out engagement on a proposed dealing or activity imposed:

- directly in Part 3, or
- because the community use and engagement test was required in Part 3 and that test was met, and the impact has been assessed as having a **minimal, moderate** or **high impact** on current community use and enjoyment.

Where they apply, these engagement activities are mandatory requirements for the purposes of Section 5.8 of the Act.



Where applied by Part 3, this Strategy sets out **mandatory requirements** for engaging with the community about proposed dealings and activities.

While the mandatory requirements provide a valuable foundation for meaningful engagement, responsible persons should consider conducting additional engagement activities to suit local circumstances and communities.

This approach will ensure transparency and openness in decision-making and promote outcomes that consider a range of opinions and views.

## 5.2 REQUIREMENTS FOR PREPARING THE STATE STRATEGIC PLAN

### THE REQUIREMENTS

It is a **mandatory requirement** of this Strategy that before any state strategic plan is approved, the responsible person must:

- a. publicly exhibit a copy of the proposed state strategic plan on the department's website for 42 days
- b. allow submissions to be made about the draft plan during the exhibition period.

### RATIONALE

The submissions process will enable the responsible person to develop a deeper understanding of community views about the vision, priorities and overarching strategy for managing Crown land contained in the draft plan.

It should be noted that in addition to the requirements of this Strategy, the Regulation also requires that the minister seek advice from the following organisations on the draft state strategic plan:

- Office of Local Government
- NSW Aboriginal Land Council
- NTSCORP
- Office of Environment and Heritage
- Department of Planning and Environment
- The Registrar General.

Any state strategic plan approved by the minister must then remain publicly available on the department's website in accordance with the Act.

The mandatory requirement of this Strategy and the requirements of the Act provide a foundation for engaging with the community and stakeholders about the draft state strategic plan. They do not preclude additional engagement being conducted to suit circumstances and stakeholders.

## 5.3 REQUIREMENTS FOR PREPARING PLANS OF MANAGEMENT

### THE REQUIREMENTS

1. It is a **mandatory requirement** of this Strategy that before a plan of management is adopted under Section 3.36 of the Act or altered under Section 3.37 of the Act, the responsible person must:
  - a. publicly exhibit a copy of the proposed plan on the department’s website for 42 days
  - b. allow submissions to be made about the draft plan during the exhibition period.
2. It is also a **mandatory requirement** that if the responsible person assessed that the plan of management would have a **high impact** on current community use and enjoyment of the land (as per section 4.3), the person must, before a plan is adopted or altered, carry out at least one engagement activity from the participate category of engagement approaches in Table 1 in section 2.3.1 in respect of the draft plan of management.

#### > NOTE

The assessment template for plans of management in the Guidance and Resources document contains steps to follow to ensure the mandatory requirements for plans of management are met.

In this section there is also information about additional engagement that could be carried out with the community earlier in the process to inform development of the draft plan of management. This pre-draft engagement is not, however, a mandatory requirement of this Strategy.

## 5.4 REQUIREMENTS FOR PROPOSED SALES OF CROWN LAND

### THE REQUIREMENTS

1. If pre-decision engagement for a sale is required by Part 3, and the responsible person assessed the proposed sale (and any associated revocation) to have a **minimal or moderate impact** on current community use and enjoyment, it is a **mandatory requirement** of this Strategy that, before any final decision to approve a sale is made, the responsible person must:
  - a. publish a notice of the proposed sale and any associated revocation of a reservation or dedication over that land on the department’s website for 28 days
  - b. allow submissions to be made about the proposed sale (and revocation, where relevant).
2. If pre-decision engagement for a sale is required by Part 3, and the responsible person assessed the proposed sale (and any associated revocation) to have a **high impact** on current community use and enjoyment, it is a **mandatory requirement** of this Strategy that, before any final decision to approve a sale is made, the responsible person must:
  - a. publish a notice of the proposed sale (and any associated revocation of a reservation or dedication over that land) on the department’s website for 42 days
  - b. allow submissions to be made about the proposed sale (and revocation, where relevant)
  - c. carry out at least one engagement activity from the ‘participate’ category of engagement approaches in Table 1 in section 2.3.1 in respect of the proposed sale and any associated revocation.

#### > NOTE

The assessment template for sales in the Guidance and Resources document contains steps to follow to ensure the mandatory requirements for sales are met.

## 5.5 REQUIREMENTS FOR PROPOSED LEASES

### THE REQUIREMENTS

1. If the responsible person assessed the proposed lease (and any associated reservation or dedication change) to have a **minimal impact**<sup>18</sup> on current community use and enjoyment, it is a **mandatory requirement** of this Strategy that, before any final decision to grant a lease is made, the responsible person must publish a notice of the proposed lease on the department's website for 28 days.
2. If the responsible person assessed the proposed lease (and any associated reservation or dedication change) to have a **moderate impact** on current community use and enjoyment, it is a mandatory requirement of this Strategy that, before any final decision to grant the lease is made, the responsible person must:
  - a. publish a notice of the proposed lease (and activity, if relevant) on the department's website for 28 days
  - b. carry out at least one engagement activity from the 'consult' category of engagement approaches in Table 1 in section 2.3.1 in respect of the proposed dealing or activity.
3. If the responsible person assessed the proposed lease (and any associated reservation or dedication change) to have a **high impact** on current community use and enjoyment, it is a **mandatory requirement** of this Strategy that, before any final decision to grant the lease is made, the responsible person must:
  - a. publish a notice of the proposed lease (and activity, if relevant) on the department's website for 42 days
  - b. carry out at least one engagement activity from the 'consult' category of engagement approaches in Table 1 in section 2.3.1 in respect of the proposed lease (and activity, if relevant)

- c. carry out at least one engagement activity from the 'participate' category of engagement approaches in Table 1 in section 2.3.1 in respect of the proposed lease (and activity, if relevant).

### > NOTE

The assessment templates for leases in the Guidance and Resources document contains steps to follow to ensure the mandatory requirements for engagement are met.

## 5.6 REQUIREMENTS FOR PROPOSED CHANGES TO RESERVATIONS AND DEDICATIONS, VESTINGS, AND LICENCES

### THE REQUIREMENTS

1. If pre-decision engagement for a proposed change to a reservation or dedication, vesting, or grant of a licence is required by Part 3, and the responsible person assessed the proposed dealing or activity to have a **minimal impact** on current community use and enjoyment, it is a **mandatory requirement** of this Strategy that, before any final decision to approve the dealing or activity is made, the responsible person must publish a notice of the proposed dealing or activity on the department's website for 28 days.
2. If pre-decision engagement for a proposed change to a reservation or dedication, vesting, or grant of a licence is required by Part 3, and the responsible person assessed the proposed dealing or activity to have a **moderate impact** on current community use and enjoyment, it is a **mandatory requirement** of this Strategy that, before any final decision to approve the dealing or activity is made, the responsible person must:
  - a. publish a notice of the proposed dealing or activity on the department's website for 28 days

<sup>18</sup> Minimal impact may also include those leases that have nil impact.)

- b. carry out at least one engagement activity from the ‘consult’ category of engagement approaches in Table 1 in section 2.3.1 in respect of the proposed dealing or activity.
3. If pre-decision engagement for a proposed change to a reservation or dedication, vesting, or grant of a licence is required by Part 3, and the responsible person assessed the proposed dealing or activity to have a **high impact** on current community use and enjoyment, it is a **mandatory requirement** of this Strategy that, before any final decision to approve the dealing or activity is made, the responsible person must:
- a. publish a notice of the proposed dealing or activity on the department’s website for 42 days
  - b. carry out at least one engagement activity from the ‘consult’ category of engagement approaches in Table 1 in section 2.3.1 in respect of the proposed dealing or activity
  - c. carry out at least one engagement activity from the ‘participate’ category of engagement approaches in Table 1 in section 2.3.1 in respect of the proposed dealing or activity.

For example, a notice about a proposed lease may specify details about the proposed lease and any associated change to the reservation or dedication (such as alteration to the purpose). Where this Strategy requires engagement in addition to the notice posted on the department website, the engagement process can apply to both the proposed lease and the proposed change to the reserve purpose.

**> NOTE**

To determine the engagement requirements of a proposal that requires a change to a reserve or dedication, the responsible person should refer to the relevant section of the Guidance and Resources document templates for licences, leases, sales, vestings and plans of management.

## 5.7 MONITORING ENGAGEMENT

It is essential to monitor engagement at critical steps in the engagement process to ensure engagement activities remain on track and responsible persons can adjust engagement if required.

For example, it may be necessary to review the original assessed level of impact on current community use and enjoyment of a proposed dealing or activity in light of information that emerges from community engagement.

**> NOTE**

If further engagement is required before a decision can be made, the responsible person should reassess the engagement approach and use additional engagement activities to engage with the community and other stakeholders.

**> NOTE**

The assessment templates for reserves and dedications, vestings, and licences in the Guidance and Resources document contains steps to follow to ensure the mandatory requirements for engagement are met.

### STREAMLINING PROCESSES FOR CHANGES TO RESERVATIONS AND DEDICATIONS

Often a change to a reservation or dedication covered by this Strategy is proposed only to facilitate another dealing or activity under this Strategy.

Rather than conducting two separate engagement processes, any pre-decision engagement requirements for a proposed licence, lease, vesting or sale can also include the associated impact to the reservation or dedication.

**DECISION-MAKING  
AND NOTIFICATION OF  
COMPLETED DEALINGS**

**6**



## 6.1 THE REQUIREMENTS FOR DECISION-MAKING

Section 6.2 provides detail about the requirement of this Strategy to consider the outcomes of the engagement process which may be required for a dealing or activity:

- directly in Part 3, or
- because the community use and engagement test was required in Part 3 and that test was met, and engagement on the proposed dealing or activity was required under Part 5 of this Strategy.

Section 6.3 provides detail about the requirement of this Strategy to publish notification of a completed dealing or activity which may be required for a dealing or activity in Part 3.

## 6.2 REQUIREMENT TO CONSIDER ENGAGEMENT OUTCOMES

### THE MANDATORY REQUIREMENT

1. Where applicable under Part 3, it is a **mandatory requirement** of this Strategy that the outcomes of community engagement must be considered by responsible persons and decision-makers as part of the final decision-making process.

### OTHER REQUIREMENTS

2. An engagement findings report must be completed by the responsible person for the department or, where appropriate, non-council CLM. The information recorded in the engagement findings report must summarise the engagement outcomes and be used as an input to the final decision-making process.

### RATIONALE

It is expected this report will be submitted to the final decision-maker to ensure the mandatory requirements of this Strategy are complied with and the issues raised during community engagement are considered as part of the final decision.



### NOTE

Responsible persons should use the engagement findings report template provided in the Guidance and Resources document to record and summarise the results of the community engagement process.

## **CONSIDERATION OF ENGAGEMENT OUTCOMES IN THE CONTEXT OF DECISION-MAKING**

Engaging the community prior to decision-making can reveal valuable local insights and support informed decisions about Crown land.

While community engagement is an important contributor to the final decision, it is not the sole or determining factor.

As outlined in Part 2, there are many other factors involved in this decision-making process, including the objects of the Act. The objects, including the object that references the principles, apply to all decisions made about the management and use of Crown land.

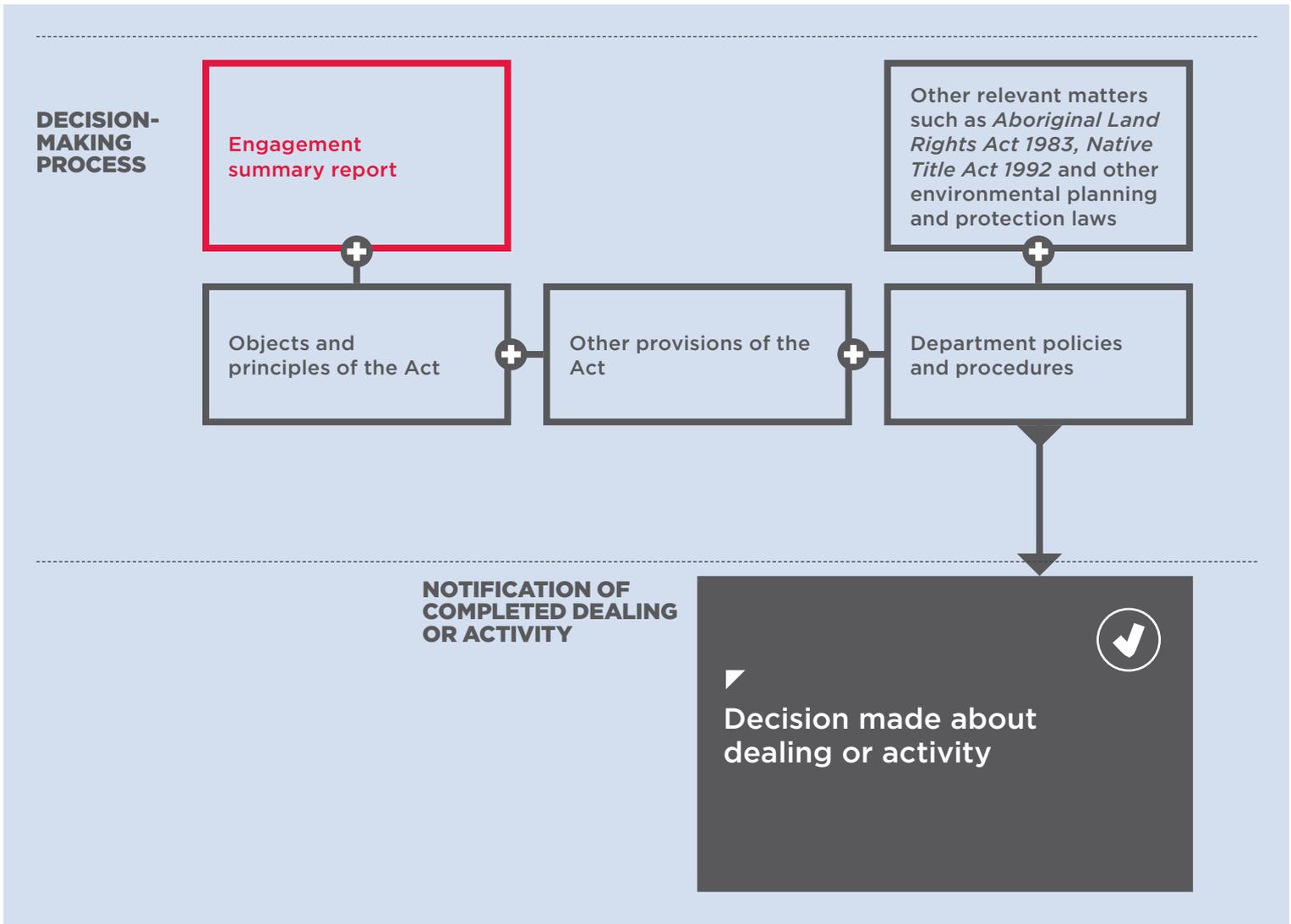
Although not a requirement of this Strategy, decision-makers should also consider:

- information gathered through community engagement processes
- other provisions of the Act, including specific requirements and restrictions that apply to different dealings and activities
- other relevant matters such as requirements under the *Aboriginal Land Rights Act 1983*, *Native Title Act 1993* and other environmental planning and protection laws
- other relevant departmental policies and procedures, government objectives and priorities.



The diagram below provides an overview of the decision-making process and how engagement outcomes are considered.

**FIGURE 2. HOW ENGAGEMENT OUTCOMES ARE CONSIDERED IN DECISION-MAKING**



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## **6.3 REQUIREMENT TO NOTIFY THE COMMUNITY OF COMPLETED DEALINGS AND ACTIVITIES**

### **THE REQUIREMENT**

Once the engagement process is finished, it will be important to close the loop on engagement and inform people of approved dealings and activities under this Strategy.

Therefore, where required by Part 3, it is a requirement of this Strategy that notification of a completed dealing or activity is published on a designated area on the department's website.

In the case of licences, leases and plans of management conducted by non-council CLMs, notice of the approved dealing or activity may also be posted on the relevant non-council CLM website, where one exists (if any).







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The information contained in this publication is based on knowledge and understanding at the time of writing (April 2018).

However, because of advances in knowledge, users are reminded of the need to ensure that information upon which they rely is up to date and to check currency of the information with the appropriate officer of the Department of Industry or the user's independent adviser.

## **IMAGES**

Images on front cover, pages 9, 21, 33 and 46 courtesy of Destination NSW.