

LEGISLATION AND POLICY FRAMEWORK



Relevant Legislation and Polices

This section describes the legislative and policy framework applying to Soldiers Point. The most relevant legislation applying to the use and management of Soldiers Point is the *Local Government Act 1993*, the *National Parks and Wildlife Act 1974* and the *Port Stephens Council Local Environmental Plan 2013*. Relevant sections are referenced below. Full versions of the legislation can be accessed at www.austlii.edu.au and Council's policies are also available online at www.portstephens.nsw.gov.au.

Local Government Act 1993

Soldiers Point is classified as community land (with the exception of the Yacht Club which is classified part Community Land and part Operational Land) under the *Local Government Act 1993*. Community land is defined as land that must be kept for the use of the general community and must not be sold. Community land must be categorised and managed according to the provisions of the *Local Government Act 1993*, *Local Government (General) Regulation 2005* and any other laws regulating the use of the land.



The area of Soldiers Point in each category is shown in Figure 4.

The Act establishes core objectives for all categories of community land, and Council must manage accordingly. Any additional objectives established by Council must comply with these core objectives. The core objectives for each category of community land at Soldiers Point are set out in Table 6.

Figure 4: Land Categorisation Map



LEGEND

-  Park, Natural Area Foreshore, Area of Cultural Significance
-  Area of Cultural Significance


-  Sportsground



Table 6 – Community Land Category Core Objectives

Park	Core Objectives
<p>Land should be categorised as a park under section 36 (4) of the Act if the land is, or is proposed to be, improved by landscaping, gardens or the provision of non-sporting equipment and facilities, for use mainly for passive or active recreational, social, educational and cultural pursuits that do not unduly intrude on the peaceful enjoyment of the land by others.</p>	<ul style="list-style-type: none"> - To encourage, promote and facilitate recreational, cultural, social and educational pastimes and activities, and - to provide for passive recreational activities or pastimes and for the casual playing of games, and - to improve the land in such a way as to promote and facilitate its use to achieve the other core objectives for its management.
Natural Area - Foreshore	Core Objectives
<p>Land should be categorised as a natural area under section 36 (4) of the Act if the land, whether or not in an undisturbed state, possesses a significant geological feature, geomorphological feature, landform, representative system or other natural feature or attribute that would be sufficient to further categorise the land as bushland, wetland, escarpment, watercourse or foreshore under section 36 (5) of the Act.</p> <p>Land that is 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.</p>	<ul style="list-style-type: none"> - 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.
Sportsground	Core Objectives
<p>Land which is used or proposed to be used primarily for active recreation involving organised sports or the playing of outdoor games</p>	<ul style="list-style-type: none"> - to encourage, promote and facilitate recreational pursuits in the community involving organised and informal sporting activities and games, and - to ensure that such activities are managed having regard to any adverse impact on nearby residences.



Table 6 - Community Land Category Core Objectives (continued)

Area of Cultural Significance	Core Objectives
<p>Land should be categorised as an area of cultural significance under section 36 (4) of the Act if the land is:</p> <p>(a) an area of Aboriginal significance, because the land:</p> <ul style="list-style-type: none"> (i) has been declared an Aboriginal Place under section 84 of the National Parks and Wildlife Act 1974, or (ii) whether or not in an undisturbed state, is significant to Aboriginal people in terms of their traditional or contemporary cultures, or (iii) is of significance or interest because of Aboriginal associations, or (iv) displays physical evidence of Aboriginal occupation (for example, items or artefacts such as stone tools, weapons, engraving sites, sacred trees, sharpening grooves or other deposits, and objects or materials that relate to the settlement of the land or place), or (v) is associated with Aboriginal stories, or (vi) contains heritage items dating after European settlement that help to explain the relationship between Aboriginal people and later settlers, or <p>(b) an area of aesthetic significance, by virtue of:</p> <ul style="list-style-type: none"> (i) having strong visual or sensory appeal or cohesion, or (ii) including a significant landmark, or (iii) having creative or technical qualities, such as architectural excellence, or <p>(c) an area of archaeological significance, because the area contains:</p> <ul style="list-style-type: none"> (i) evidence of past human activity (for example, below-ground features such as building foundations, occupation deposits, features or artefacts or above-ground features such as buildings, works, industrial structures, and relics, whether intact or ruined), or (ii) any other deposit, object or material that relates to the settlement of the land, or <p>(d) an area of historical significance, because of the importance of an association or position of the land in the evolving pattern of Australian cultural history, or</p> <p>(e) an area of technical or research significance, because of the area’s contribution to an understanding of Australia’s cultural history or environment, or</p> <p>(f) an area of social significance, because of the area’s association with Aboriginal life after 1788 or the area’s association with a contemporary community for social, spiritual or other reasons.</p>	<p>(1) To retain and enhance the cultural significance of the area (namely its Aboriginal, aesthetic, archaeological, historical, technical or research or social significance) for past, present or future generations by the active use of conservation methods.</p> <p>(2) Those conservation methods may include any or all of the following methods:</p> <ul style="list-style-type: none"> (a) the continuous protective care and maintenance of the physical material of the land or of the context and setting of the area of cultural significance, (b) the restoration of the land, that is, the returning of the existing physical material of the land to a known earlier state by removing accretions or by reassembling existing components without the introduction of new material, (c) the reconstruction of the land, that is, the returning of the land as nearly as possible to a known earlier state, (d) the adaptive reuse of the land, that is, the enhancement or reinforcement of the cultural significance of the land by the introduction of sympathetic alterations or additions to allow compatible uses (that is, uses that involve no changes to the cultural significance of the physical material of the area, or uses that involve changes that are substantially reversible or changes that require a minimum impact), (e) the preservation of the land, that is, the maintenance of the physical material of the land in its existing state and the retardation of deterioration of the land. <p>(3) A reference in subsection (2) to land includes a reference to any buildings erected on the land.</p>



National Parks and Wildlife Act 1974

All Aboriginal sites in NSW are protected under the National Parks and Wildlife Act 1974 (NP&W Act), administered by the Office of Environment and Heritage (OEH). Under this Act it is considered an offence to harm Aboriginal Places or objects. Table 9 illustrates the values of the area and outlines the types of activities that may harm the Aboriginal Place and which activities are either prohibited, require an Aboriginal Heritage Impact Permit (AHIP) issued under Part 6 of the National Parks and Wildlife Act 1974 or require advanced notice to the registered stakeholders.

Part 6 of the NP&W Act provides specific protection for Aboriginal heritage. The relevant key sections are below:

- particularly significant Aboriginal sites by the Minister for the Environment (s.84),
- penalties relating to harming or desecrating Aboriginal objects and places (s.86),
- defences to prosecution and exemptions (s.87), including the process of due diligence,
- the requirement to notify the Director-General when finding a new site (s.89A),
- the issue and use of Aboriginal Heritage Impact Permits (AHIP) (s.90),
- the role of the Aboriginal Heritage Information Management System (AHIMS) (s.90Q), and
- the Director General's right to issue stop-work orders, interim protection orders and remediation directions (Part 6a, Division 1-3).

Where harm to an Aboriginal object or place cannot be avoided, an Aboriginal Heritage Impact Permit (AHIP) can be issued by the Chief Executive of the OEH under Part 6 of the NP&W Act.

Environment and Planning Assessment Act

In addition to the NP&W Act, the Environmental Planning and Assessment Act (EP&A Act) is another key piece of legislation relevant to Aboriginal Heritage.

The primary function of the EP&A Act is that 'environmental impacts' be considered in land use planning and decision making. By definition 'environmental impacts' in NSW includes Aboriginal heritage.

Part III, Part IV and Part V are the three relevant sections (along with associated regulations, schedules and guidelines) in the EP&A Act relevant to Aboriginal heritage.

Port Stephens Local Environmental Plan 2013

The Council owned land comprising Soldiers Point is zoned RE1 Public Recreation. The objectives of this zone are:

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.

Other Relevant Legislation, Policies and Documents

Australian Government

- Disability Discrimination Act 1992; and
- Environment Protection and Biodiversity Conservation Act 1999.

NSW Government

- Anti-Discrimination Act 1977;
- Building Professionals Act 2005;
- Children (Protection and Parental Responsibility) Act 1997;
- Companion Animals Act 1998;
- Companion Animals Regulation 2008;
- Contaminated Land Management Act 1997;
- Environmental Planning and Assessment Act 1979;
- Environmental Planning and Assessment Regulation 2000;
- Food Act 2003;
- Heritage Act 1977;
- Land Acquisition (Just Terms Compensation) Act 1991;
- National Parks and Wildlife Act 1974;
- Noxious Weeds Act 1993;
- Protection of the Environment Operations Act 1997;
- Public Health Act 2010;
- Public Interest Disclosures Act 2008;
- Retail Trading Act 2008;
- Roads Act 1993;
- State Environmental Planning Policies (Infrastructure);
- Water Management Act 2000; and
- Work Health and Safety Act 2011.

Port Stephens Council

- Alcohol in Parks and Reserves Policy
- Foreshore Dinghy Storage
- Tree Management Policy and Procedures

Relevant Office of Environment and Heritage Documents

- The Draft Soldiers Point Aboriginal Place nomination Assessment Report, OEH, 2014
- The Soldiers Point Aboriginal Place Aboriginal Heritage Impact Permit (AHIP) application





Soldiers Point Tennis Club

