

Draft Community Lands Reclassification Policy

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Proposed by Total Environment Centre

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Background

The *Local Government Act 1993* requires that all land controlled by a Council to be classified as either 'community land' or 'operational land'.

The purpose of classification is to clearly identify land that should be kept available for use by the general public (community), and land that is required for other (operational) purposes. The major consequence of classification is that it determines the way in which council can deal in land.

Community land cannot be sold (except in limited defined circumstances), and cannot be leased or licensed for more than 21 years. No such restrictions apply to operational land. Therefore, it is not possible to sell community land or place it under a long-term lease unless it is first reclassified as operational land. This may only be achieved by a local environmental plan, and in some limited circumstances, by resolution of the council.

The process of reclassification was subject to extensive amendment in the Local Government Act, with the intent of reducing the scale of alienation of community land. This Policy seeks to ensure a high standard of implementation.

There have been many instances in the past where private bodies have obtained leases or other interests over land that is now classified as community land. Such bodies include social, sporting and recreational clubs. In recent years a number of such clubs have sought reclassification of the sites they occupy, so as to enable the granting of long-term leases or outright ownership. Such requests raise important public interest issues, and require careful scrutiny by the public and council.

In addition some councils regard community land as a 'land bank' for future residential or commercial development.

There are also instances of parcels of community land that may no longer serve a useful purpose. There may be a case for disposing of such land, and replacing it with more worthwhile land or public facilities. In other cases, council-owned land held for investment purposes has been classified as community land by administrative error or oversight. In all cases, the public is entitled to scrutinise proposals to reclassify community land.

This Policy sets out a consistent and transparent process, with relevant assessment criteria, for determining requests or proposals to reclassify community land to operational land or sale or long-term lease of operational land, previously community land. It aims to protect the community's interest in public land. In particular, it aims to ensure that community land that is of environmental, social or cultural significance is not reclassified as operational land. It also requires proposals to reclassify community land to be justified in terms of a **significant** net positive benefit to the community, with consideration given to a wide range of financial, social, economic and environmental issues, before reaching such a conclusion.

The contents of this Policy will be of interest to the whole community. This Policy is intended for use by all Councils in NSW and should be part of the council wide environment plan. Consequently the community should be better informed and be able to participate in the reclassification process.

TEC would like to thank Newcastle Council, whose 'Draft Public Land Policy' this document is based on, and Doug Lithgow for his tireless work to keep community lands in community hands in the Lake Macquarie area.

1. Preliminary

Title

This policy is called *Community Land Reclassification Policy* ('the Policy').

Status

The Policy is:

- adopted by resolution of the Council, as an amendment to the Local Environment Plan
- a policy document for the purposes of the *Freedom of Information Act 1989*
- required to be listed in the Council's *Summary of Affairs* published under that Act.

Commencement

The Policy commences on a date to be nominated by the Council.

2. Purpose

This policy recognises that community land is for the benefit of present and future generations to be used for recreation, conservation, rehabilitation or the maintenance of essential public services.

The purpose of the Policy is to provide consistent and transparent criteria for determining requests or proposals:

- for the reclassification of community land as operational land, or
- for the sale or long-term lease of operational land previously classified as community land.

The policy applies to both requests that are initiated by external parties, and proposals that are initiated by the Council.

3. Objectives

The Policy has the following objectives:

- to ensure that requests or proposals for the reclassification of community land, or for the sale or long-term lease of operational land (previously classified as community land) are determined according to consistent criteria that are open to scrutiny by the public
 - to protect the community's interest in public land
 - to ensure that community land that is of neighbourhood, regional, state or national environmental, social or cultural significance requiring the protection of this classification is not reclassified as operational land
 - to enable the reclassification of community land as operational land, or the sale or long-term lease of that land, but only where there is a substantial and long term demonstrable benefit to the community.
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4. Definitions

In this Policy, the following expressions have special meanings. Definitions for expressions marked (*) are drawn from the *Local Government Act 1993*.

community land*: land that is classified as community land under Division 1 of Part 2 of Chapter 6 of the *Local Government Act 1993*.

the Council: the council to which this Policy applies.

long-term lease: a lease, licence or other estate or interest in land, the term of which exceeds 21 years (including any period for which the lease, licence or other estate could be renewed by the exercise of an option).

net present value: the discounted value of the expected financial benefits of a project, less the discounted value of expected financial costs. Future costs and benefits are thus discounted to their current or present value.

operational land*: land that is classified as operational land under Division 1 of Part 2 of Chapter 6 of the *Local Government Act 1993*.

public land*: any land (including a public reserve) vested in or under the control of the council, but does not include:

- a public road, or
- land to which the *Crown Lands Act 1989* applies, or
- a common, or
- land subject to the Trustees of Schools of Arts Enabling Act 1902, or
- a regional park under the National Parks and Wildlife Act 1974.

public reserve* means:

- a public park, or
- any land conveyed or transferred to the council under section 340A of the *Local Government Act 1919*, or
- any land dedicated or taken to be dedicated as a public reserve under section 340C or 340D of the *Local Government Act 1919*, or
- any land dedicated or taken to be dedicated under section 49 or 50 of the *Local Government Act 1993*, or
- any land vested in the council, and declared to be a public reserve, under section 37AAA of the *Crown Lands Consolidation Act 1913*, or
- any land vested in the council, and declared to be a public reserve, under section 76 of the *Crown Lands Act 1989*, or
- a Crown reserve that is dedicated or reserved:
 - for public recreation, or
 - for a purpose that is declared to be a purpose that falls within the scope of this definition by means of an order published in the Gazette by the Minister administering the *Crown Lands Act 1989*,

being a Crown reserve in respect of which a council has been appointed as manager of a reserve trust for the reserve or for which no reserve trust has been established, or

- land declared to be a public reserve and placed under the control of a council under section 52 of the *State Roads Act 1986*, or

- land dedicated as a public reserve and placed under the control of a council under section 159 of the *Roads Act 1993*,

and includes a public reserve of which a council has the control under section 344 of the *Local Government Act 1919* or section 48, but does not include a common.

5. Reclassification of community land

Requests or proposals for the reclassification of community land as operational land are to be assessed according to the following process (refer to **Figure 1**).

Step 1: Are there any public interest issues affecting the land?

Step 1 involves assessing requests or proposals according to the criteria contained in **Table 1**.

This step seeks to identify whether there are any issues of public interest pertaining to the land, particularly inherent qualities that cannot be readily recreated on or transferred to other land parcels.

If any of the matters referred to in **Table 1** are identified as being applicable and the protection of the classification is required, further assessment should cease, and the land should not be reclassified as operational land. However, if none of these matters are identified as being applicable, assessment may proceed to **Step 2**.

Step 2: Will reclassification enable a significant net positive benefit for the community?

Step 2 involves assessing requests or proposals according to the criteria contained in **Table 2**.

This step seeks to identify the relative costs and benefits to the community of implementing the request/proposal. In order to protect the community interest, it is necessary to demonstrate that a change from the status quo will be significantly advantageous to the community in overall terms. This entails comparing the proposal with the 'status quo', and possibly with other options as well.

Community benefit is a broad concept that encompasses a wide range of social, economic, financial and environmental considerations. Both monetary and intangible values must be evaluated and compared.

Likely impacts for each issue referred to in **Table 2** are to be considered, and the results presented in an Impact Display Table. A qualitative assessment of all identified impacts should then be carried out to determine whether there is a significant net positive benefit to the community.

When testing 'significance' the following three general measures should be used;

1. There should be a demonstrable and sustainable physical, environmental or social benefit or improvement to this site or another site flowing on from a decision to reclassify
2. There should be a significant number and type of people who are likely to benefit from the proposed reclassification
3. The proponent should be able to demonstrate a high level of support from non-vested interests for the proposed reclassification

If there is demonstrated to be a significant net positive benefit for the community, steps may be commenced to reclassify the land as 'operational land' in accordance with the *Local Government Act 1993*. If there is no such benefit demonstrated, the status quo should be retained.

6. Sale or long-term lease of operational land that has been reclassified from community land

Requests or proposals for the sale or long-term lease of operational land are to be determined according to the following process (refer to **Figure 2**).

Note: This step is included here to ensure public interest issues are considered, particularly if time has elapsed between reclassification and a proposal for sale or long term lease and/or the circumstances of the land has changed.

Step 1: Are there any public interest issues affecting the land requiring protection from sale or long term lease?

Step 1 involves assessing requests or proposals according to the criteria contained in **Table 1**.

This step seeks to identify whether there are any issues of public significance pertaining to the land, particularly inherent qualities that cannot be readily recreated on or transferred to other land parcels.

If any of the matters referred to in Table 1 are identified as being applicable, further assessment should cease, and the land should not be sold or placed under long-term lease. However, if none of these matters are identified as being applicable, assessment may proceed to **Step 2**.

An exception applies to land subject to a long-standing lease or other private occupation. If there is no foreseeable prospect for replacing the occupation with one that facilitates access by the public generally, assessment may proceed to Step 2 despite the applicability of any of the matters referred to in Table 1.

Step 2: Will sale or long-term lease generate a significant net positive benefit for the community?

Step 2 involves assessing requests or proposals according to the criteria contained in **Table 2**.

This step seeks to identify the relative costs and benefits to the community of implementing the request/proposal. In order to protect the community interest, it is necessary to demonstrate that a change from the status quo will be advantageous to the community in overall terms. This entails comparing the proposal with the 'status quo', and possibly with other options as well.

Community benefit is a broad concept that encompasses a wide range of social, economic, financial and environmental considerations. Both monetary and intangible values must be evaluated and compared.

Likely impacts for each issue referred to in Table 2 are to be considered, and the results presented in an Impact Display Table. A qualitative assessment of all identified impacts should then carried out to determine whether there is a significant net positive benefit to the community.

When testing 'significance' the following three general measures should be used;

1. There should be a demonstrable and sustainable physical, environmental or social benefit or improvement to this site or another community land site flowing on from a decision to lease or sell
2. There should be a significant number and type of people who are likely to benefit from the proposed reclassification
3. The proponent should be able to demonstrate a high level of support from non-vested interests for the proposed reclassification

If there is demonstrated to be a significant net positive benefit for the community, steps may be commenced to sell the land or place it under long-term lease. If there is no such benefit demonstrated, the status quo should be retained.

The question of whether the use of the land is to be by sale or long-term lease should be determined according to whichever option in councils informed opinion, will realise the greatest net positive benefit for the community (or most advantageous to the community)

Where it is decided to sell operational land or place it under long-term lease, further assessment is to be conducted under **Step 3**.

Step 3: Should restrictions be placed on the terms of sale or long-term lease?

Step 3 involves assessing proposals according to the criteria contained in **Table 3**.

This step seeks to identify whether any restrictions on the terms of sale or lease are necessary in order to protect the community interest.

Suitable restrictions are to be applied relating to each matter referred to in Table 3 that is applicable to the proposal. For example, it may be necessary to impose legal agreements or covenants to address issues identified under **Step 1**.

Figure 1: Decision process for considering reclassification of community land

STEP 1

Are there any public interest issues affecting the land and are these such as to require the special protection of the community land classification?

- biodiversity conservation
- natural features
- cultural significance
- public health and safety
- public access
- local recreational uses
- social or community uses/facilities
- special legal status

- contamination.

YES →

Request/ proposal not proceeded with. Classification as community land retained.

NO



STEP 2

Will reclassification enable a significant net positive benefit for the community?

- financial impact
- land management impact
- impact on community use opportunities
- impact on enjoyment of community land
- social impact
- economic impact
- health impact
- decontamination costs

Impacts summarised in an Impact Display Table, and a qualitative assessment carried out.

NO →

Request/ proposal not proceeded with. Classification as community land retained.

YES



The request/ proposal may proceed in accordance with Part 2, Chapter 6 of the *Local Government Act 1993*.

Reclassification may only be effected by way of a local environmental plan. The draft local environmental plan must be publicly exhibited, and must be the subject of a public hearing under section 68 of the *Environmental Planning and Assessment Act 1979*.

Additional public hearings provisions

Advertising

In addition to the notification, the advertisement for any public hearing should also refer to any common use names for each site and must contain a list of viewable display documents (see below) and easy to understand location maps (eg street directory) of relevant sites.

Hearings should be held between the hours of 6pm and 10pm on weekdays or business hours on Saturdays and should not attempt to cover more than 4 proposed reclassifications per hearing.

Additional information

Where applicable the following documents should be made available to the public at the Council offices (with photocopying available at cost) before the hearing within the advertising timeframe, and during the hearing itself;

- Report of Step 1 & 2 from this process
- Submissions made relating to the site
- Plan of the site - including, where relevant, existing categorization, buildings, natural features, boundaries, access routes etc
- Plan of Management - existing or proposed
- Reports pertaining to cultural and archaeological significant sites or features
- Biodiversity or wildlife surveys, assessments or reports
- Contamination audits of potentially contaminated sites eg bowling greens & sports clubs (for chemicals such as herbicides and insecticides) - Contamination audits should be completed for all such sites by council.
- Assessment of present and future residential open space, social service needs
- List of alternative potential uses
- Relevant covenants or current title deeds
- Lease details, licenses and rental charges and constitution of existing leaseholders

Figure 2: Decision process for considering sale or long-term lease of operational land (previously community land)

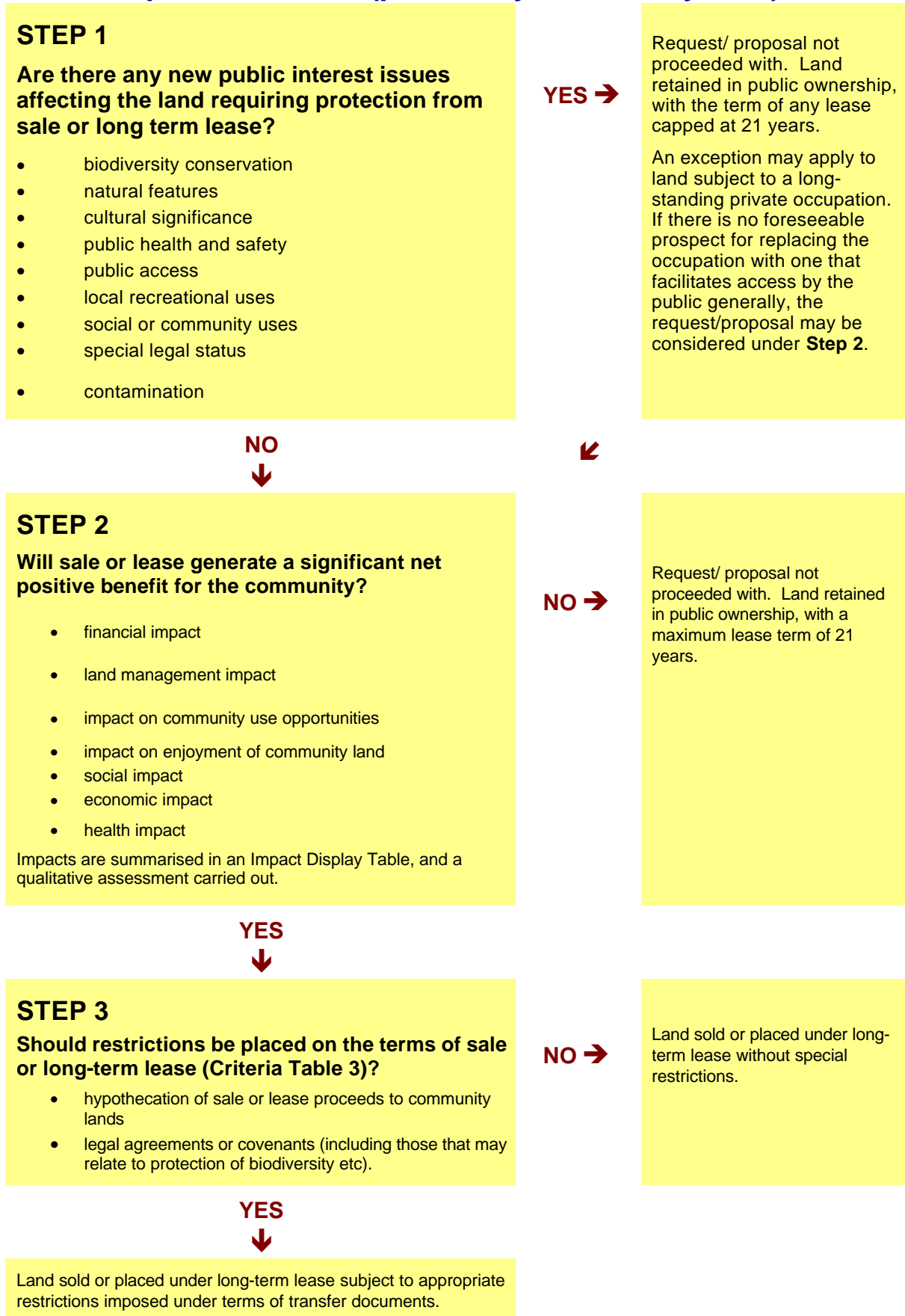


TABLE 1:Criteria for Step 1 assessment

Are there any public interest issues affecting the land?

ISSUE	CRITERIA
Biodiversity conservation	<p>Is the land of significance to biodiversity conservation?</p> <p>Examples:</p> <ul style="list-style-type: none"> • native vegetation remnants that are relatively unmodified or capable of being restored to such a condition • habitat of threatened species, populations or ecological communities • existing or proposed wildlife corridors or vegetated links.
Significant natural features	<p>Does the land contain a significant natural feature, or form an integral component of the setting of such a feature?</p> <p>Examples:</p> <ul style="list-style-type: none"> • geological, geomorphological, watercourse, scenic or other natural features.
Cultural significance	<p>Does the land contain an item of Aboriginal, historical or cultural significance, or form an integral component of the setting of such an item?</p> <p>Examples:</p> <ul style="list-style-type: none"> • sites that are of traditional significance to Aboriginal persons • sites containing items recorded on heritage registers • sites with important historical or community associations.
Public health & safety	<p>Is the land subject to environmental hazards with an unacceptable level of risk to life or property?</p> <p>Examples:</p> <ul style="list-style-type: none"> • high-hazard flood, landslip or coastal hazard zones • contaminated land that presents a significant risk of harm to human health or the environment eg bowling or sports clubs.
Public access and use	<p>Does the land:</p> <ul style="list-style-type: none"> • provide access to community land, recreational benefits or to facilities used by the public? • provide an existing or foreseeable demand for the provision of access or recreational use+? <p>Examples:</p> <ul style="list-style-type: none"> • access to foreshores, beaches, watercourses or other natural features • access recreation, education, transport, meeting room and other community facilities • provision of improved connectivity in pedestrian or cycle networks.
Special legal status	<p>Does the community have a special legal interest in the land?</p> <p>Examples:</p> <ul style="list-style-type: none"> • the land is a dedicated public reserve • access to the land is obtained across a public reserve • the land is subject to a trust or an instrument executed by a donor or transferor that gives the community a special interest in the land.

TABLE 2:Criteria for Step 2 assessment**Will there be a significant net positive benefit for the community?**

ISSUE	CRITERIA
Financial impact	<p>Will the proposal have a positive financial impact for the Council (expressed in terms of net present value)?</p> <p>Considerations:</p> <ul style="list-style-type: none"> costs: capital costs, operating and maintenance costs, replacement costs of buildings and equipment, externality costs (eg increased maintenance costs for adjoining public land) benefits: capital gains, revenue streams, cost savings, externality benefits (eg increased property values for adjoining public land).
Environmental impact	<p>Will the proposal have a positive impact on the Council's ability to manage the land to maintain ecological processes.</p> <p>Considerations:</p> <ul style="list-style-type: none"> issues pertaining to relevant State of the Environment reporting and related management responsibilities minimising air pollution wildlife habitat, seed dispersal etc
Land management impact	<p>Will the proposal have a positive impact on the Council's ability to manage nearby community land in accordance with relevant plans of management?</p> <p>Considerations:</p> <ul style="list-style-type: none"> practicality of proposed perimeter boundaries (eg shape, length) compatibility of adjoining land uses and management practices implications for bushfire management, site remediation (eg bowling greens) stormwater management, weed control, litter control, access control or other land management issues.
Impact on community use opportunities	<p>Will the proposal have a positive impact on the extent of available recreational or other community use opportunities?</p> <p>Considerations:</p> <ul style="list-style-type: none"> adequacy of current supply and demand for active recreation, passive recreation and other community use opportunities will alternative opportunities need to be provided?
Impact on enjoyment of community land	<p>Will the proposal have a positive impact on the quality of the public's enjoyment of community land?</p> <p>Considerations:</p> <ul style="list-style-type: none"> overshadowing, views, visual impact on landscape and scenery character, appearance and aesthetics of buildings or streetscapes parking, loading, pedestrian, disabled and other access conflicts air emissions, noise, safety, or other land use conflicts.
Social impact	<p>Will the proposal have a positive social impact?</p> <p>Considerations:</p> <ul style="list-style-type: none"> neighbourhood safety and crime community structure: identity, cohesion and severance culture and community values special needs groups: children, youth, aged, women, disabled, etc.
Economic impact	<p>Will the proposal have a positive impact on the local economy?</p> <p>Considerations:</p> <ul style="list-style-type: none"> employment local economic development.

TABLE 3: Criteria for Step 3 assessment

Should restrictions be placed on the terms of sale or lease?

ISSUE	CRITERIA
Former community land	<p>All proceeds from the sale or lease of land that was formerly community land should be allocated to the purchase of replacement community land, or to the enhancement of public facilities or management of community land.</p> <p>Example:</p> <ul style="list-style-type: none">• a parcel of cleared land is sold, and the proceeds are used to purchase land that contains an important remnant of natural vegetation.
Biodiversity conservation	<p>A suitable legal agreement or covenant should be registered on relevant title documents where this is necessary to protect the biodiversity conservation value of community land from inappropriate land use or land management practices.</p> <p>Example:</p> <ul style="list-style-type: none">• a positive covenant relating to stormwater, bushfire or weed management along bushland perimeters.
Significant natural features	<p>A suitable legal agreement or covenant should be registered on relevant title documents where this is necessary to protect a significant natural feature or its setting from inappropriate land use or land management practices.</p> <p>Example:</p> <ul style="list-style-type: none">• a restrictive covenant relating to the location, height, appearance or design of buildings in the vicinity of a scenic feature.
Cultural significance	<p>A suitable legal agreement or covenant should be registered on relevant title documents where this is necessary to protect an item of cultural significance or its setting from inappropriate land use or land management practices.</p> <p>Example:</p> <ul style="list-style-type: none">• a restrictive covenant relating to the location, height, appearance or design of buildings in the vicinity of a heritage item.
Public health & safety	<p>A suitable legal agreement or covenant should be registered on relevant title documents where this is necessary to protect the public from unacceptable risks to life, property or the environment.</p> <p>Example:</p> <ul style="list-style-type: none">• a positive covenant relating to the implementation of hazard mitigation measures.
Public access	<p>A suitable legal agreement, right of way or dedication of public road should be registered on relevant title documents where this is necessary to confer a right of public access, either across the land or in an alternative location.</p> <p>Example:</p> <ul style="list-style-type: none">• the dedication of a pathway as public road on a registered plan of subdivision.
Land use conflicts	<p>A suitable legal agreement or covenant should be registered on relevant title documents where this is necessary to protect adjoining public land from the impacts of inappropriate land use or land management practices.</p> <p>Example:</p> <ul style="list-style-type: none">• a restrictive covenant prohibiting stipulated activities.