

4. Working within legislation

This section outlines the existing management of The Gully, the relevant state and federal legislation influencing the preparation of The Plan as well as the local planning policies and strategies that influence The Plan preparation and the future management of The Gully.

The Gully Plan of Management has been prepared in reference to four core pieces of State Legislation;

- National Parks and Wildlife Act 1974
- Local Government Act 1993
- Crown Lands Management Act 2016
- Crown Land Management Regulation 2018

The primary Federal legislation relevant in the preparation of The Plan is *The Native Title Act 1993*.

4.1 Gully Cooperative Management Committee

The Gully Cooperative Management Committee is the body that oversees the management of The Gully and operates under Terms of Reference with representation from the GTOI and BMCC. The Gully Cooperative Management Committee has established objectives (see section 8.1) and operates within the limitations of the relevant state and federal legislation and effects the management of The Gully.

The Gully Cooperative Management Committee has had over ten years' governance experience and delivery of significant projects, including ongoing projects within The Gully which bring social, cultural and on-Country environmental beneficial outcomes. Fundamentally the GCMC governs all management aspects of this important Aboriginal Place. Through the Gully Cooperative Management Committee the Council and The Gully community will implement the recommendations of The Gully Aboriginal Place Plan of Management ensuring that the values embodied in the Aboriginal Place declaration, the true history of The Gully and the continuing on-Country outcomes, intertwined with cultural, social and kinship values continue into the future.

'To ensure that the values of The Gully Aboriginal Place are managed respectfully into the future, continuation of cooperative management approaches is essential.'

4.2 National Parks and Wildlife Act 1974

The *National Parks and Wildlife Act 1974* enables the protection and management of Aboriginal objects and places throughout the state on NSW. The Gully was gazetted as an Aboriginal Place under Part 6, Section 84 of the *National Parks and Wildlife Act* on 17 May 2002.

The *National Parks and Wildlife Act 1974* provides protection for all Aboriginal objects and sites by:

- Section 89A – requires notification of newly located Aboriginal objects.
- Section 90 – provides controls around impacts on Aboriginal sites and objects from a development or activity (through an Aboriginal Heritage Impact Permit - AHIP).
- Section 161 Notice - enables information about Aboriginal Places, objects and culture to be withheld – or kept confidential in the public interest.

The preparation of the Plan of Management for Aboriginal Places is a policy requirement under the *Aboriginal Places Policy 2011*. The Gully Aboriginal Place Plan of Management has been prepared in accordance with *The Declared Aboriginal Places Guidelines for Developing Management Plans*.

4.3 Local Government Act 1993

This Plan is also being prepared in accordance with the requirements of the *Local Government Act 1993* by addressing sections 36, Section 38, Section 40.

The Local Government Act 1993 governs the planning, management and use of Council lands. It requires all land vested in the Council to be classified as either 'community' or 'operational' land. All Council land within The Gully is classified as community land, and its use is for public purposes. The *Local Government Act 1993* requires the preparation of Plans of Management for community lands (Section 36) and prescribes the requirement for the preparation of a Plan of Management. In summary this includes:

- preparation requirement and matters to be addressed (36) – objective for management, performance targets means of assessment and review
- public exhibition and adoption of Plan of Management (sections 38, 39 and 40)
- the requirement for location of places and items of Aboriginal significance may be kept confidential throughout the plan of management process (section 36D) and is consistent with section 161 of the *National Parks and Wildlife Act 1973*.
- categorisation of land use under section 36 (4). Land categories applied to The Gully include:
 - (a) a natural area
 - (b) a sportsground
 - (c) a park
 - (d) an area of cultural significance
 - (e) general community use
- land that is categorised as a natural area within The Gully are further categorised as the following:
 - (a) bushland
 - (b) wetland
 - (c) watercourse

The Gully's land categorisation is shown in Map 5 Land categorisation map. The *Local Government Act 1993* stipulates the core objectives for each land category. The core objective for land categories of The Gully are outlined in Appendix 4.

4.4 Crown Lands Management Act 2016 and Crown Land Management Regulation 2018

The Gully Plan of Management has been prepared in accordance with the *Crown Lands Management Act 2016*, and *Crown Land Management Regulation 2018*, in addressing the following relevant sections.

- Division 3.4 Crown land managed by councils – section 3.23, item 6
- Division 3.6 Plans of Management and other plans
- Division 5.5 Leases over Crown land or 5.6 Licence over Crown land
- Division 8.2 Native Title Certificates – and relevant connection with the *Native Title Act 1993*

The Crown land parcels within The Gully are part of Katoomba Falls Reserve, incorporating the two sports ovals, Katoomba Tourist Park and adjoining picnic and toilet facilities. The reserve name, purpose, and classification is outlined in Table 5.

Table 5 Crown land status

| Reserve name | Reserve No. | Reserve Purpose | Address | Categories | Area Ha |
|--|-----------------------------|-------------------|---|--|---------|
| Part of Katoomba Falls Reserve | 71156 (Devolved to Council) | Public Recreation | 104-114 Cascade Street, Katoomba NSW 2780 L 95 DP 673 | Area of Cultural Significance Natural Area - Bushland Natural Area - Water Course | 1.104 |
| Part of Katoomba Falls Reserve | 1000486 | Public Recreation | 52 Neale Street Katoomba NSW 2780 L 7017 DP 1127446 | Area of Cultural Significance Natural Area - Bushland Natural Area - Water Course Sportsground | 0.355 |
| Katoomba Falls Reserve Part of Crown Reserve D | 500925 Part* | Public Recreation | 101 Cliff Drive Katoomba NSW 2780 L 593 DP 1102631 | Area of Cultural Significance Natural Area - Bushland Natural Area - Water Course Sportsground Park General Community Use | 8.632 |

*The Crown Reserve 500925 Part outside of the Gully Aboriginal Place, south of the Cliff Drive is to be covered in a separate plan of management

4.5 Respecting Native Title (*Native Title Act 1993*)

As part of the *Crown Lands Management (CLM) Act 2016*, Part 8, Native Title Rights and Interests, the Council is required through a Native Title Manager to provide written advice in relation to ensure that proposed activities for Crown land identified in Plans of Management comply with the *Native Title Act (NTA) 1993*.

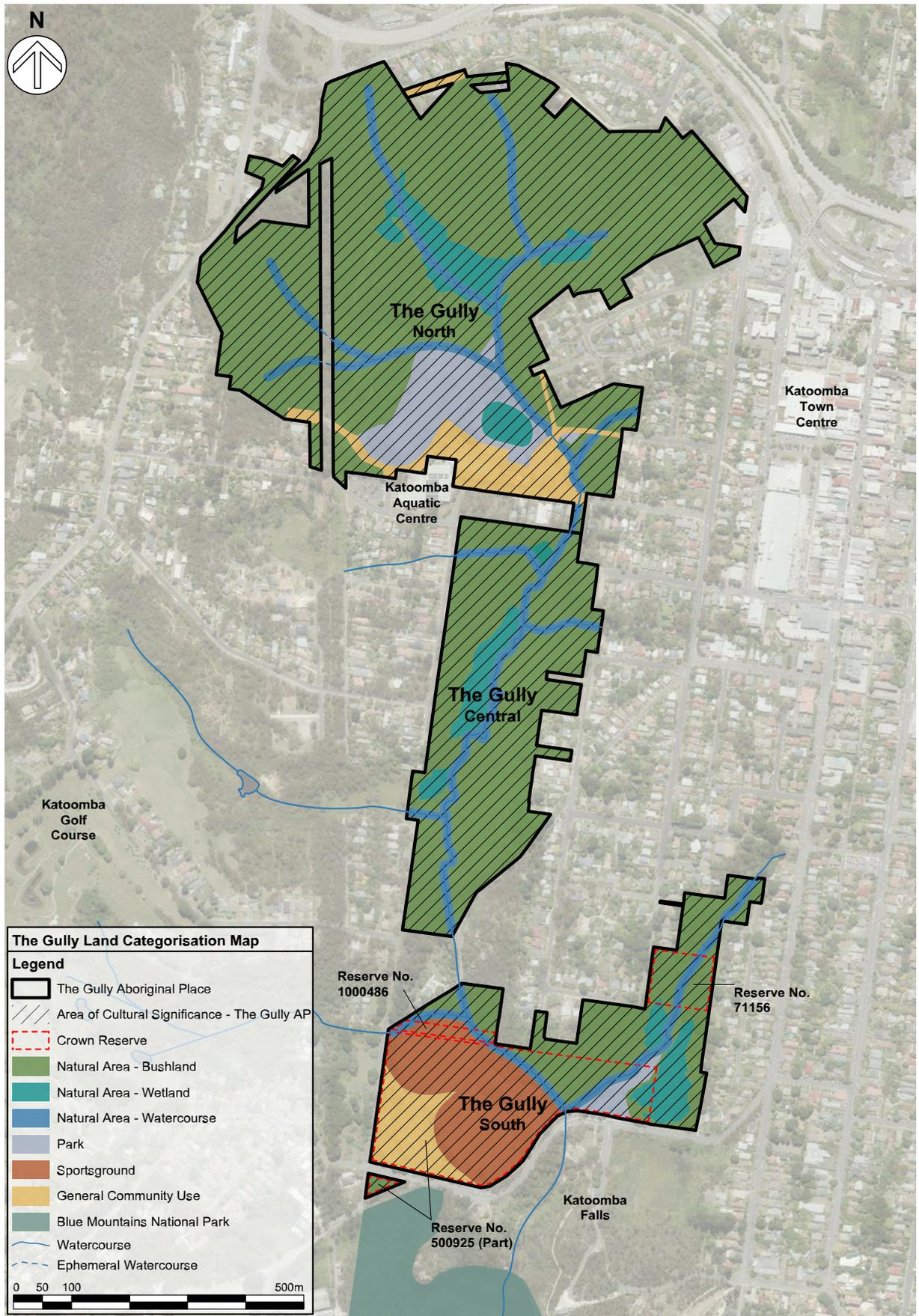
Within the overall boundary of the Gully Aboriginal Place there are three land parcels of Council managed Crown land that are subject to the CLM and the management of Native Title requirements.

These parcels are also within the Agreement Area of the Gundungurra Indigenous Land Use Agreement (Gundungurra ILUA) a 10-year, legally binding agreement under the NTA between the Gundungurra Traditional Owners as parties to the ILUA and a number of land and water managers, including the Blue Mountains City Council.

The Gundungurra ILUA establishes an alternative regime which prescribes activities that can occur on Council managed Crown lands within the Agreement Area to which Native Title may apply aligning with Future Acts (Part 2, Division 3) of the NTA. The Gundungurra ILUA fulfils the requirements of the CLM through the alternative regime by setting out processes responding to three classes of activities which apply to all Council managed lands within the agreement area where Native Title has not been extinguished.

Activities proposed on the land within The Gully Aboriginal Place that are subject to this Plan are covered by the Gundungurra ILUA, Native Title matters relevant to this plan will be dealt with in strict accordance with that agreement. Proposed activities that have been endorsed in this Plan covered by the Gundungurra ILUA and the CLM will also be subject to approval through the Council's Part 5 Assessment of the NSW Environment *Planning and Assessment Act 1979*. to ensure compliance with Native Title matters prior to any activity being undertaken.

Map 5 Land categorisation map



4.6 Local Environmental Plan

The Gully is covered by two zonings under the 2015 LEP. The Public Recreation (RE1) zone covers the area around the Katoomba Sports and Aquatic Centre, and the section of Katoomba Falls Reserve including the Sporting Oval, Caravan Park and Maple Grove picnic area. The remaining area of The Gully is zoned E2 Environmental Conservation.

Objectives of Public Recreation zone RE1 are to:

- enable land to be used for public open space or recreational purposes.
- provide a range of recreational settings and activities and compatible land uses.
- protect and enhance the natural environment for recreational purposes.
- enhance the quality of life of residents and visitors and improve the amenity of the villages in the Blue Mountains through the provision and management of open space.

Objectives of Environmental Conservation Zone E2 are to:

- protect, manage and restore areas of high ecological, scientific, cultural or aesthetic values.
- prevent development that could destroy, damage or otherwise have an adverse effect on those values.
- encourage land restoration works on disturbed bushland areas.
- restrict the development of private land that would be inappropriate because of physical characteristics or high bush fire hazards, but only where less restricted development is permitted elsewhere on the land due to split zoning.
- maintain biodiversity in the Blue Mountains.

4.7 Strategic planning

The Gully Plan is being developed with reference to a number of concurrent strategic land planning initiatives by Council. Relevant strategic plans include:

- *Blue Mountains Community Strategic Plan 2035*
- *Scenic Southern Escarpment Master Plan (2019/20)*
- *Open Space & Recreation Strategic Plan (2018)*
- *Former Katoomba Golf Course Plan of Management (2019)*
- *Water Sensitive Blue Mountains Strategic Plan (2019)*
- *Integrated Transport Strategic Plan 2035*

The Blue Mountains Community Strategic Plan provides the strategic direction for civic leadership to guide the social, economic and environmental aspirations of the community. The Gully Plan of Management responds in part to three strategies with the Blue Mountains Community Strategic Plan including:

- **Protect Objective 2.4.a** – work in partnership with Traditional Owners and other Aboriginal communities to Care for Country by respecting, sharing and incorporating traditional indigenous knowledge.
- **Care Objective 3.1.h** – implement initiatives that support the Blue Mountains being a leader and model for reconciliation with Aboriginal and Torres Strait Islander People.
- **Thrive Objective 6.1.d** – implement economic development strategies that benefit local priority groups including Aboriginal people, and provide local employment opportunities

The Scenic Southern Escarpment Master Plan is a strategic plan for the management and development of nature and culture-based recreational activities at key visitor destinations in Katoomba, Leura and Wentworth Falls.

The Open Space & Recreation Strategic Plan provides a strategic policy for managing open space and the provision of sport and recreation facilities in the City of the Blue Mountains. Under the Open Space & Recreation Strategic Plan, the proposed provision of recreational activity (play) for Katoomba Falls includes move the body (e.g. running), kinetic (swings), social and explore. The Gully's proposed play provision includes social, explore and kinetic. These proposed play provisions are broadly consistent with the findings from the site user survey (preferred activity in The Gully). The provision for both passive and active recreational facilities in The Gully will continue to be required in the future. This includes the potential for upgrades and improvements to recreational and sporting facilities in response to community demand.

The development of a Plan of Management for the former Katoomba Golf Course will guide future use and recreation for the site and will be developed in context with The Gully Plan of Management and the above mentioned strategic plans.

The Water Sensitive Blue Mountains Strategic Plan (Pending Adoption 2019) provides for a coordinated approach to water management across Council to protect the world heritage values of the catchment and will guide the approach to water management in The Gully, including Caring for Country objectives and related cultural actions.

The Integrated Transport Strategic Plan 2035 and ensuing local transport and parking plans for the Katoomba Falls precinct will review the range of access and visitation issues affecting the area and will include a review of existing transport infrastructure within Maple Grove and Katoomba Ovals.

