



Part E – General Controls – Environmental Controls

Chapter E10: Aboriginal Heritage

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1 INTRODUCTION

1. This part of the DCP provides a brief outline of the requirements for any development proposal upon a known or potential Aboriginal site containing Aboriginal objects or a place of Aboriginal cultural heritage significance.
2. This part of the DCP should be read in conjunction with the relevant Local Environmental Plan applying to the site and the National Parks and Wildlife Act 1974. The National Parks and Wildlife Act is the specific legislation for managing and conserving Aboriginal objects or places.
3. The significance of Aboriginal archaeological and cultural heritage is also recognised in the Environmental Planning and Assessment Act 1979 and relevant environmental planning instruments.
4. The National Parks and Wildlife Act 1974 makes it an offence to willingly and knowingly destroy damage or deface any Aboriginal relic without a permit. The Act also incorporates provisions for the protection and conservation of items or places with high cultural significance. A relic is defined as: Any deposit, object or material evidence (not being a handicraft made for sale) relating to indigenous and non-European habitation of the area that comprises New South Wales being habitation both prior to and concurrent with the occupation of that area by persons of European extraction.
5. If any unrecorded sites are found or disturbed during any development works, then all work must cease immediately, the site must be recorded, consultation must occur with the traditional land owner groups and permission sought from NPWS under the NPW Act, before any work can continue

2 AREAS OF POTENTIAL ABORIGINAL ARCHAEOLOGICAL /CULTURAL HERITAGE SIGNIFICANCE

2.1 General Comment

1. Wollongong LGA has a rich Aboriginal heritage and there are in excess of 1,100 recorded Aboriginal sites. However, there maybe many more undiscovered and / or unreported Aboriginal sites.

2.2 Development Controls / Requirements

1. As a pre-cautionary approach, Council will require an appropriate Aboriginal archaeological and cultural heritage assessment to be undertaken for any new land use activity or development upon the following land (except where that portion of land previously had an Aboriginal archaeological / cultural heritage significance assessment carried out, as part of a previous rezoning or development stage and in which identified that no Aboriginal heritage issues apply to the site):
 - (a) Any beach or coastal foredune area (ie both primary and secondary dunal areas) (excluding any portion of land subject to past development disturbance).
 - (b) Land within 40 metres from top of bank of any watercourse / riparian land (excluding any portion of land subject to past development disturbance).
 - (c) Land within 40 metres from the mean high water mark (MHW) of any estuary or tidal inlet (excluding any portion of land subject to past development disturbance).

- (d) Any land zoned Environmental Protection zone within the Illawarra Escarpment (excluding any portion of land which has been subject to past development disturbance).
- (e) Lands zoned Rural / Non-urban (excluding any portion of land which has been subject to past development disturbance).
- (f) Land within new 'greenfield' release areas (excluding any portion of land where a detailed Aboriginal archeological / cultural heritage impact assessment has been undertaken at the rezoning stage or where Development Consent has been previously granted for subdivision or development of that portion of the land).
- (g) All known sites containing either Aboriginal objects and / or places of Aboriginal cultural heritage significance.

Note¹: The NSW DECCW Aboriginal Heritage Information Management System (AHIMS) database provides a list of recorded sites containing Aboriginal objects or Aboriginal places of cultural heritage significance.

Note²: Council has a number of previous Aboriginal heritage studies which also identify certain known Aboriginal sites or places of cultural heritage significance to the Aboriginal community. In this regard, prospective applicants are encouraged to contact Council's Heritage Officer to determine whether any such previous study may assist in the assessment of Aboriginal heritage matters.

2. All prospective applicants are encouraged to undertake a search of the NSW Department of Environment, Climate Change and Water's (DECCW) Aboriginal Heritage Information Management System (AHIMS) database, in order to clarify as to whether the subject site contains any recorded Aboriginal object and / or is a place of cultural heritage significance. However, it should be noted that the AHIMS database may not represent a complete list of all Aboriginal sites or Aboriginal places of cultural heritage significance in a particular locality. The database only lists known recorded sites and hence, a locality may contain a number of undiscovered and / or unreported Aboriginal objects or sites.
3. All prospective applicants are reminded of the requirements of sections 86 - 91 of the National Parks and Wildlife Act 1974, and in particular, the requirement that any disturbance (ie excavation or construction work) to a site containing an Aboriginal object or human remains must immediately cease. Further, any person who discovers an Aboriginal object or human remains must immediately contact the Planning and Aboriginal Heritage Metropolitan Branch of DECCW as to the existence of the site.

3 PRELIMINARY INVESTIGATION SURVEY

3.1 Development Controls / Requirements

1. Where the subject land has been identified in Clause 2 in this chapter above and / or is within a recorded Aboriginal site under the AHIMS database, the applicant must engage an Aboriginal heritage consultant as well as a representative from the Illawarra Local Aboriginal Land Council and any registered native title holder / claimant (ie as identified in the National Native Title Register), to undertake a preliminary site survey.
2. The preliminary site survey is required to identify any place of potential Aboriginal cultural heritage significance, within the subject site.

4 KEY PROCEDURES TOWARDS THE PREPARATION OF AN ABORIGINAL ARCHAEOLOGICAL AND CULTURAL HERITAGE ASSESSMENT REPORT

4.1 General

1. Following the preliminary site survey, the preparation of a draft Aboriginal Archaeological and Cultural Heritage Assessment report will be required.
2. The Aboriginal Archaeological and Cultural Heritage Assessment report should be prepared by suitably qualified and experienced heritage consultant(s) who specialise(s) in Aboriginal archaeological and cultural heritage assessment.
3. Aboriginal stakeholder consultation is a critical part of preparing an Aboriginal Archaeological and Cultural Heritage Assessment report. Consultation with key Aboriginal stakeholders may assist the applicant to gain an understanding of cultural heritage significance of any Aboriginal site and / or Aboriginal place located upon the subject site. This may assist the applicant to modify the project design at an early stage bearing in mind the issues raised by key Aboriginal stakeholders, rather than such issues arising later in the Development Application assessment or determination stages.
4. In order to ensure all relevant Aboriginal archaeological and cultural heritage significance issues are properly considered in the Aboriginal Archaeological and Cultural Heritage Assessment report, Council recommends that the applicant's Aboriginal heritage consultant undertake written notification to the following organisations:
 - (a) The Illawarra Local Aboriginal Land Council;
 - (b) The Native Title Service of New South Wales;
 - (c) The Registrar of Aboriginal Owners (only if works are in a National Park); and
 - (d) NSW DECCW.
5. A formal invitation should also be provided to interested Aboriginal groups or individuals to register an interest in being consulted during the preparation of the Aboriginal Archaeological and Cultural Heritage Assessment report. This will require the applicant to place an advertisement in the public notices section of the following newspapers inviting interested groups or individuals to register their interest in being involved in consultation during the preparation of the Aboriginal Archaeological and Cultural Heritage Assessment report:
 - (a) The Koori Mail (fortnightly publication);
 - (b) The National Indigenous Times (fortnightly publication);
 - (c) The Mercury (daily publication); and
 - (d) The Advertiser (weekly publication).
6. The newspaper advertisements should provide details of the project and the relevant study area (preferably with a map) and should specify a reasonable closing date for the registration of interested parties after the last day of the newspaper advertisements (eg 14 calendar days).
7. A register of interested individuals or groups who responded to the notification letters and newspaper advertisements should be kept by the applicant to ensure all interested stakeholders will be consulted on Aboriginal cultural heritage matters, during the preparation of the Aboriginal Archaeological and Cultural Heritage Assessment report.

8. The register of interested stakeholders should include the following details:
 - (a) The name of each interested stakeholder;
 - (b) The name of any organisation the interested stakeholder may represent (if relevant);
 - (c) The contact details of the interested stakeholder (including postal address and daytime telephone / mobile telephone contact numbers); and
 - (d) The date of registration of each interested stakeholder.
9. Following the registration of interest, the applicant should organise an Aboriginal focus group meeting with all registered Aboriginal stakeholders.
10. At the first Aboriginal focus group meeting, the applicant should:
 - (a) Provide an overview of the main components of the project;
 - (b) Discuss the likelihood of Section 87 and Section 90 applications being required from NSW DECCW and outline the processes involved in making such applications as well as the Integrated Development Application procedures under section 91 of the Environmental Planning and Assessment Act 1979;
 - (c) Discuss the parameters in the preparation of the draft Aboriginal archaeological and cultural heritage assessment report, including whether further fieldwork is necessary to satisfactorily determine the archaeological or cultural heritage significance of the subject site;
 - (d) Invite the stakeholders to nominate appropriate knowledge holders for the preparation of the cultural heritage assessment; and
 - (e) Invite selected Aboriginal knowledge holders to participate in any fieldwork (if relevant).
11. It is also recommended that early consultation take place with the Planning and Aboriginal Heritage Metropolitan Branch of NSW DECCW (Regional Office - Parramatta) to determine what specific requirements DECC may have with respect to any future section 87 permit or section 90 consent to destroy application (ie as part of an Integrated Development Application under section 91 of the Environmental Planning and Assessment Act 1979).

4.2 Review of Draft Assessment Methodologies for the Aboriginal Archaeological and Cultural Heritage Assessment Report

1. The draft assessment methodologies for the Aboriginal Archaeological and Cultural Heritage Assessment report should be provided to the registered Aboriginal stakeholders for comment. The stakeholders should be given 21 days to review and comment on the draft assessment methodologies.

4.3 Preparation of The Aboriginal Archaeological and Cultural Heritage Assessment Report

4.3.1 General

1. The draft Aboriginal Archaeological and Cultural Heritage Assessment report should be undertaken in accordance with the finalised methodologies as requested by the registered stakeholders. The archaeological assessment and cultural heritage assessment methodologies may be implemented either concurrently or independently of each other.

2. The Aboriginal Archaeological and Cultural Heritage Assessment report should address a range of matters including (but not necessarily limited to) the following:
 - (a) Description of the location and components of the project (including any ancillary works);
 - (b) Description and appropriate mapping of the study area;
 - (c) Detailed review of any previous archaeological and cultural heritage assessment reports concerning the subject site or within immediate locality of the subject site;
 - (d) The assessment as to the proposal's potential impact upon any site containing an Aboriginal object or Aboriginal place of significance;
 - (e) A comprehensive assessment as to the archaeological heritage significance of the subject site;
 - (f) A comprehensive assessment as to the Aboriginal cultural heritage significance of the subject site;
 - (g) Detailed results of the archaeological and anthropological / ethnographic research / assessment of the subject site as well as any historical observation in connection with the subject site;
 - (h) Assessment of the cumulative impacts of the development on Aboriginal objects in the region taking into account the ecologically sustainable principle of intergenerational equity; and
 - (i) Recommended archaeological and anthropological strategies or measures required to be implemented during construction and post construction phases of the development.

4.3.2 Archaeological Assessment

1. The archaeological assessment component in the Aboriginal Archaeological and Cultural Heritage Assessment report should address a range of matters, including (but not necessarily limited to) the following:
 - (a) Locational context;
 - (b) Description of the proposed development;
 - (c) Scope and objectives of the archaeological assessment;
 - (d) Archaeological context of the subject site and surrounding locality;
 - (e) Site Conditions, including details of past land use activity and any associated ground disturbance impacts;
 - (f) Survey Methodology for the field investigation, recording and analysis by which the objectives of the study will be achieved;
 - (g) Identification of landscape classification and land units being used for the study to include any paleo-features (ie mapped in relation to sites and potential archaeological deposits (PADs) and identified sensitive areas);
 - (h) Survey strategy rationale, including sampling strategies and survey coverage and whether the survey was modeled on any input from an local Aboriginal Community Group, Native Title claimant or registered Aboriginal Stakeholder,;

- (i) Field work results, including sample areas and description of survey methods adopted and mapping of any different survey methods used (e.g. vehicle or foot surveys);
 - (j) Survey coverage and effectiveness of the survey coverage for detecting potentially buried Aboriginal sites;
 - (k) Detailed site / PAD descriptions, including tabulated data (ie artefact assemblages should be assessed and compared with previous recordings and descriptions of sites / PADs must be detailed and consistently analysed);
 - (l) Archaeological significance assessment, including the significance criteria and attributes used in the assessment being supported by the information presented on the archaeological and landscape context of the site(s) (eg representativeness, rarity, information potential, potential meanings, social / historical values);
 - (m) Evaluation of any potential direct and indirect impacts on identified Aboriginal sites;
 - (n) Evaluation of any areas of archaeological sensitivity and archaeological potential;
 - (o) Mapping of areas of high and low archaeological significance;
 - (p) Conclusion as to the potential impacts of the proposed development on any identified site / PAD;
 - (q) Recommended conservation measures for areas identified as of “high archaeological significance”; and
 - (r) Description of proposed mitigation works required.
2. The following maps should be incorporated in the archaeological assessment:
- (a) Location of the study area (ie 1:25,000 map series or smaller scale, where available);
 - (b) Development site layout;
 - (c) Survey landscape units and PAD sites;
 - (d) Land units and topographical features;
 - (e) Land surface history, including identified disturbed areas and intact deposits;
 - (f) Archaeological sensitivity mapping; and
 - (g) Archaeological potential for conservation and / or further investigations.

4.3.3 Cultural Heritage Assessment

General Comment

Aboriginal cultural heritage consists of places and items that are of significance to Aboriginal people because of their traditions, observances, customs, beliefs and history. Aboriginal cultural heritage is dynamic and may comprise physical (or tangible) or non-physical elements. This may include items made in earlier times such as stone tools, art sites and ceremonial or burial grounds, as well as recent evidence such as mission buildings, massacre sites and cemeteries.

Cultural Heritage Impact Assessment Requirements

1. The cultural heritage assessment component of the Aboriginal Archaeological and Cultural Heritage Assessment report should provide detailed archaeological and anthropological / ethnographic assessment of the subject site as well as any historical observation in connection with the subject site. The cultural heritage assessment should include a range of matters including (but not necessarily limited to) the following:
 - (a) A preliminary assessment to determine if the project is likely to have an impact on Aboriginal cultural heritage.
 - (b) Identify any Aboriginal cultural heritage values associated with the study area through consulting with local Aboriginal people with cultural knowledge or responsibilities for country in which the proposed project occurs.
 - (c) Written and oral research of Aboriginal cultural heritage of the study area and surrounding locality.
 - (d) Understanding the significance of the identified Aboriginal cultural heritage values.
 - (e) Assessing the impact of the proposed development on Aboriginal objects and Aboriginal places.
 - (f) Describing and justifying the proposed outcomes and alternatives.
 - (g) Documenting the Aboriginal cultural heritage impact assessment and the conclusions and recommendations to afford appropriate protection of areas of high Aboriginal cultural heritage significance.
 - (h) Any other relevant matter pertaining to the study area.
2. As part of the preparation of draft Aboriginal Archaeological and Cultural Heritage Assessment report, a Section 87 permit application may need to be made with the NSW DECCW, in order to enable appropriate test excavation(s) to be carried out. The results of any test excavation search should be detailed in the draft Aboriginal Archaeological and Cultural Heritage Assessment report.
3. Following the completion of the draft Aboriginal Archaeological and Cultural Heritage Assessment report, the applicant should invite all registered Aboriginal stakeholders to attend an Aboriginal focus group meeting to enable the proponent to discuss the findings and recommendations of the draft report.
4. It is recommended that all comments made at an Aboriginal focus group meeting be formally recorded and the minutes of the meeting be forwarded to all registered stakeholders (including those stakeholders who were not in attendance at the meeting). The written notification to the registered stakeholders should also include advice that written comments on the draft report may be provided to the applicant within a reasonable timeframe (e.g. 21 days) and a statement that any comments received during this period will be duly considered in the completion of the final report.
5. The full details of consultation with the registered stakeholders (including the Illawarra Local Aboriginal Land Council and any registered Native Title claimants) should be included in the Aboriginal Archaeological and Cultural Heritage Assessment report. This may include a written statement from relevant stakeholders regarding the proposed development and any potential impact upon the archaeological and / or cultural heritage significance of any Aboriginal archaeological object or Aboriginal place and / or recommended mitigation measures to ameliorate potential development impacts.
6. All records of communication (written or verbally) between the applicant, the Illawarra Local Aboriginal Land Council, any registered Native Title claimants and all other registered stakeholders should also be included in the final report.

5 APPLICATION LODGEMENT REQUIREMENTS

5.1 General procedures for lodgement of Integrated Development Applications and Other Development Applications

1. The lodgement of an Integrated Development Application is required where development is proposed upon a site identified as containing an Aboriginal archaeological site or place of cultural heritage significance, pursuant to the provisions of Section 91 of the Environmental Planning and Assessment Act 1979, since the separate concurrence approval is required from NSW DECCW under Section 90 of the National Parks & Wildlife Act 1974 for a consent to destroy permit.
2. Alternatively, an application may be made directly with DECCW for a permit under Section 87 or Section 90 of the National Parks and Wildlife Act 1974, prior to the lodgement of a Development Application. Documentary evidence of any such permit must be provided in support of any Development Application lodged upon a site containing a recorded Aboriginal site.
3. Where the Aboriginal Archaeological and Cultural Heritage Assessment report concludes that there is no identified impact on any Aboriginal object or place but there is an impact on significant Aboriginal cultural heritage values that are not covered by the National Parks and Wildlife Act 1974, a Development Application may be lodged (if a Section 90 consent to destroy permit is not required).
4. Any Integrated Development Application or Development Application upon a site referred to in clause 2 of this chapter and / or containing a recorded Aboriginal site under the NSW DECCW AHIMS database must be supported by a final Aboriginal Archaeological and Cultural Heritage Assessment report, at the time of lodgement of the application.
5. A copy of the final Aboriginal Archaeological and Cultural Heritage Assessment report should also be provided by the applicant to the Illawarra Local Aboriginal Land Council, any registered Native Title claimant and all other registered stakeholders, either prior to or immediately after the lodgement of the Development Application.

6 PUBLIC EXHIBITION PROCESS

6.1 Public Exhibition and Notification Procedures

1. A minimum 31 day public exhibition period will apply to any Integrated Development Application.
2. For any Development Application (ie where a permit under Section 87 or Section 90 of the National Parks and Wildlife Act 1974 has already been obtained from NSW DECCW), a 14 day minimum public exhibition period will apply.
3. The application will be exhibited at least once in the following newspapers / publications:
 - (a) The Koori Mail (fortnightly publication);
 - (b) The National Indigenous Times (fortnightly publication); and
 - (c) The Advertiser (weekly publication).
4. In some cases, Council may, at its discretion, also advertise in the Illawarra Mercury.
5. As part of the public exhibition process, written notification will be provided to the following:
 - (a) The Illawarra Local Aboriginal Land Council;

- (b) The Native Title Service of New South Wales;
 - (ic) The Registrar of Aboriginal Owners (only if works are in a National Park); and
 - (d) All registered interested Aboriginal groups or individuals involved in the preparation of the Aboriginal Archaeological and Cultural Heritage Study. Note: The heritage consultant must ensure that the Aboriginal Archaeological and Cultural Heritage study contains the full list of all Aboriginal groups or individuals involved in the study with the respective contact / mailing address details.
6. Council may in certain cases also send written correspondence to the following government departments / authorities:
- (a) NSW Department of Environment, Climate Change and Water (DECCW) (ie in cases where the application is not an Integrated Development Application and hence, the application is not automatically forwarded to DECCW);
 - (b) The Registrar of the National Native Title Tribunal (ie where a site is subject to a Native Title claim); and
 - (c) The Regional Manager of the NSW Department of Aboriginal Affairs.

7 ASSESSMENT AND DETERMINATION OF DEVELOPMENT APPLICATIONS

7.1 Assessment Procedures for Integrated Development Applications and Other Development Applications

1. For Integrated Development Applications, Council is required to obtain from the NSW Department of Environment, Climate Change and Water (DECCW) the general terms of approval under section of the National Parks and Wildlife Act 1974, prior to any consent being granted (except in cases where DECCW fails to inform Council whether or not it will grant the approval in accordance with the procedural timeframe requirements contained in the Environmental Planning and Assessment Regulation 2000).
2. However, Council is still required to assess the application on its merits pursuant to the requirements of Section 79C of the Environmental Planning and Assessment Act 1979. Therefore, it is open to Council to either approve or refuse an application based on a range of considerations under Section 79C, notwithstanding the fact that NSW DECCW may have granted general terms of approval to the Integrated Development Application or DECCW may have not informed Council of its decision within the procedural timeframe requirements of the Act and Regulations.
3. In cases where NSW DECCW has informed Council that it will not grant an approval under section 90 of the National Parks and Wildlife Act 1974, Council will formally refuse to grant consent to the application.
4. Other Development Applications (ie where approval has already been granted by NSW DECCW) will still be subject to rigorous assessment, pursuant to the "Matter for Consideration as listed under Section 79C of the Environmental Planning and Assessment Act 1979.