

5.04 Aboriginal Heritage

Amendment history

Version Number	Date Adopted by Council	Commencement Date	Amendment Type
1	15/11/2011	15/06/2012	New
2	27/09/2016	24/10/2016	Amended

Savings provisions

Any development application lodged but not determined prior to this section coming into effect will be determined taking into consideration the provisions of this section.

Land to which this section applies

This section applies to all land to which Newcastle Local Environmental Plan 2012 applies and to land outside of the Port of Newcastle lease area to which State Environmental Planning Policy (Three Ports) 2013 applies.

Development (type/s) to which this section applies

Development that will, or is likely to affect, the heritage significance of an Aboriginal place or object.

Related sections

The following sections of this DCP may also apply to development to which this section applies:

- 5.05 Heritage Items
- 5.06 Archaeological Management
- 6.02 Heritage Conservation Areas.

Applicable environmental planning instruments and legislation

The provisions of the following listed environmental planning instrument/s (EPI) and legislation also apply to development applications to which this section applies:

- Newcastle Local Environmental Plan 2012
- *National Parks and Wildlife Act 1974*.
- National Parks and Wildlife Regulation 2009

In the event of any inconsistency between this section and the above listed environmental planning instruments, the environmental planning instrument will prevail to the extent of the inconsistency.

Note 1: Additional environmental planning instruments may also apply in addition to those listed above.

Note 2: The *Environmental Planning and Assessment Act 1979* enables an environmental planning instrument to exclude or modify the application of this DCP in whole or part.

Associated technical manual/s

- *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales*, October 2010, Department of Environment, Climate Change and Water.
- *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*, September 2010; Department of Environment, Climate Change and Water.
- *Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW*, April 2011, Office of Environment and Heritage, Department of Premier and Cabinet
- Newcastle Aboriginal Heritage Study, 2005.

Additional information

Aboriginal cultural heritage regulation can be found at: www.environment.nsw.gov.au

Definitions

A word or expression used in this development control plan has the same meaning as it has in Newcastle Local Environmental Plan 2012, unless it is otherwise defined in this development control plan.

Other words and expressions referred to in this section are defined within Part 9.00 - Glossary, of this plan, and include:

- **The Code** - refers to the Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales.
- **Aboriginal cultural heritage** means Aboriginal objects and declared Aboriginal places as defined under the *National Parks and Wildlife Act, 1974*.

Note: *The National Parks and Wildlife Act, 1974* defines **Aboriginal objects** as: any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.

Aboriginal place means any place declared to be an Aboriginal place under Section 84.

Aims of this section

1. To provide guidance to developers about appropriate investigations and assessments required to determine the likely impacts of a development on Aboriginal cultural heritage.
2. To encourage a precautionary approach to Aboriginal cultural heritage that supports conservation of Aboriginal heritage and places of significance to Aboriginal people.

5.04.01 Due diligence and development assessment

Objectives

1. Ensure due diligence is followed before carrying out development that may harm Aboriginal objects.
2. Provide an integrated process for managing Aboriginal cultural heritage in the assessment of development applications.
3. Ensure there is an integrated process for managing Aboriginal cultural heritage and development assessment that considers the views of Aboriginal stakeholders.
4. Ensure reasonable steps are taken to consider if Aboriginal cultural heritage may be present and avoid harm to that heritage.
5. To ensure the effect of a proposed development on the heritage significance of an Aboriginal place or any Aboriginal object is considered by adequate investigation and assessment.

Note 1: *The Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales* (the Code) provides a process whereby a reasonable determination can be made as to whether or not Aboriginal objects will be harmed by an activity, whether further investigation is warranted and whether the activity requires an Aboriginal Heritage Impact Permit (AHIP) application be submitted to the Office of Environment & Heritage.

Note 2: To find out if there are any notified Aboriginal objects or declared Aboriginal places on the land, check the Department of Environment and Heritage website.

Controls

1. Where a development will disturb the ground surface, provide documentation to satisfy the consent authority that the due diligence process has been followed. The documentation should include (but is not limited to) the following:
 - A statement indicating the results of the AHIMS database search and any other sources of information considered.
 - A statement indicating whether there are landscape features that indicate the presence of Aboriginal objects.

Note: Aboriginal objects are often associated with particular landscape features such as rock shelters, sand dunes, waterways, waterholes and wetlands. Check the Code for more detailed information.

- A statement indicating whether the proposed development is likely to harm Aboriginal objects.
- A statement indicating whether an Aboriginal Heritage Impact Permit (AHIP) is required.

Note: Section 91 of the *Environmental Planning and Assessment Act, 1979* provides that a development is integrated development if it requires the grant of an Aboriginal Heritage Impact Permit under Section 90 of the *National Parks and Wildlife Act, 1974* in order for it to be carried out.

2. Where required, prepare an Aboriginal cultural heritage assessment to assess the impact of the proposed development on Aboriginal cultural heritage consistent with the Office of Environment and Heritage *Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW*.
3. Where required, prepare an Aboriginal cultural heritage assessment report consistent with the Office of Environment and Heritage *Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW* that includes strategies to avoid or minimise harm to Aboriginal objects and places of cultural significance.
4. Where the investigation and assessment requires the preparation of an Aboriginal cultural heritage assessment report, provide documentation to satisfy the consent authority that the relevant Aboriginal community and stakeholders have been involved in the decision making process.

Note 1: The investigation and assessment of Aboriginal cultural heritage is undertaken to assess the harm of a proposed development on Aboriginal objects and declared Aboriginal places and to identify those impacts that are avoidable and those that are not. Harm to significant Aboriginal objects and declared Aboriginal places should always be avoided wherever possible. Where harm to Aboriginal objects and declared Aboriginal places cannot be avoided, proposals that reduce the extent and severity of harm to significant Aboriginal objects and declared Aboriginal places should be developed.

Note 2: An Aboriginal cultural heritage assessment report is a written report detailing the results of the assessment and recommendations for actions to be taken before, during and after an activity to manage and protect Aboriginal objects and declared Aboriginal places identified by the investigation and assessment. The Aboriginal cultural heritage assessment report will support any application that you may make to the Office of Environment and Heritage for an Aboriginal Heritage Impact Permit (AHIP) where harm cannot be avoided.

Source: Office of Environment and Heritage website, www.environment.nsw.gov.au