

Aboriginal Heritage Management Strategy



The City of Newcastle acknowledges the traditional country of the Awabakal and Worimi peoples.

We recognize and respect their cultural heritage, beliefs and continuing relationship with the land, and that they are the proud survivors of more than two hundred years of dispossession.

City of Newcastle reiterates its commitment to addressing disadvantages and attaining justice for Aboriginal and Torres Strait Islander peoples of this community

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1.0 Executive Summary

The Awabakal and Worimi peoples are acknowledged as the traditional custodians of the land and waters of Newcastle. Aboriginal people lived a very rich and vibrant existence around Mulubinba (Newcastle) and Coquun (the Hunter River) before white settlement. Marine, avian, terrestrial life and bush tucker ensured food was abundant. Ceremonies and feasting were times for meeting new people, traditional teaching and learning opportunities, sharing resources and skills and trading implements with inland and other coastal clans. Shell middens at Meekarlba (Honeysuckle) and the tool making site at Pillapay Kullaitran (Glenrock Lagoon) are reminders of those gatherings.

The tangible and intangible cultural heritage of the Awabakal and Worimi peoples continues to enrich and inform contemporary Aboriginal and non-Aboriginal communities of Newcastle and the Hunter region. At the time of the 2016 Census there were 5,474 people living in Newcastle that identified as Aboriginal or Torres Strait Islander. This equates to 3.5% of the estimated resident Newcastle population of 160,919 and is an increase of 28% since 2011 (profile.id.com.au).

Newcastle's natural landscape features known cultural heritage sites including Whibayganba (Nobbys Headland). The dreaming tells of a notorious kangaroo that jumped from Tahlbihn Point, also known as Fort Scratchley, to the safety of Whibayganba (Nobbys Headland). That kangaroo remains hidden in the island, occasionally thumping its tail and making the land tremble, explaining the area's earthquake activity.

Aboriginal cultural heritage refers to both the material evidence of Aboriginal occupation (archaeological sites), and intangible expressions of Aboriginal culture (social and cultural values). Archaeological evidence of Aboriginal occupation is a finite and irreplaceable resource, providing crucial information on past occupation in Australia and providing a link for modern communities to the past. Intangible expressions of culture link generations of Aboriginal people over time, and can include places of spiritual, traditional, historical or contemporary cultural significance. These locations do not need to contain material evidence.

The key aims and objectives of this Strategy are:

- 1 To enhance our community's knowledge of and regard for Aboriginal cultural heritage items and places
- 2 To protect the City's Aboriginal heritage places for the benefit of everyone
- 3 To protect the integrity of heritage places by ensuring consistent and sympathetic treatments of cultural heritage artefacts and places
- 4 To invest in the care and promotion Newcastle's Aboriginal heritage places

This strategy summarises previous work completed by City of Newcastle to understand Aboriginal peoples' association with the land around Newcastle; the current legislative framework around management of Aboriginal sites; current initiatives underway across City of Newcastle to raise awareness and celebrate Aboriginal culture and strategies to ensure ongoing management of that culture. It includes an action table that will guide City of Newcastle and community decision making over the next three years by which time the NSW State government will have implemented a new legislative, regulatory and administrative framework for the management of Aboriginal cultural heritage based on a respectful vision of the world's oldest continuous living culture.

2.0 Introduction - why we need an Aboriginal Cultural Heritage Management Strategy

In New South Wales, the responsibility for managing and regulating cultural heritage is split between local and State government. Local government has the responsibility for local heritage, through environmental planning instruments, regulatory services and community engagement activities.

This Aboriginal Heritage Management Strategy (AHMS) outlines City of Newcastle's specific objectives, strategies and actions to ensure this is achieved. The AHMS draws on two key studies:

- 1 *Aboriginal Heritage Study*, Australian Museum Business Services (AMBS), 2005.
- 2 *Aboriginal Heritage Management Strategy*, Umwelt (Australia) Pty Ltd, 2016.

The key priority in the assessment of Aboriginal cultural heritage should be to identify all practicable measures to 'avoid harm and conserve the significant Aboriginal objects and declared Aboriginal places, along with their cultural heritage values' (as specified in the *Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW*). The management framework outlined in this strategy sets out a range of strategies and actions whereby City of Newcastle will meet community expectations and relevant legislative requirements, guidelines and codes.

This strategy summarises previous work completed to understand Aboriginal peoples' association with the land around Newcastle; the current legislative framework around management of Aboriginal sites; current initiatives underway across City of Newcastle to raise awareness and celebrate Aboriginal culture; as well as strategies and actions to ensure ongoing respectful management of that culture.

Aboriginal cultural heritage is a term that is broadly used to refer to 'places and items that are of significance to Aboriginal people because of their traditions, observances, lore, customs, belief and history' OEH (NSW Office of Environment and Heritage 2016). It encompasses both tangible and intangible values associated with sites, places, landscapes, stories, language and objects. These locations do not need to contain material evidence. It provides a dynamic and ongoing link between contemporary Aboriginal people and their ancestors, with continuity of many cultural values and obligations despite the significant impact of non-Aboriginal settlement of Australia. The importance of appropriately managing Aboriginal cultural heritage within the Newcastle Local Government Area (LGA) is recognised by the City of Newcastle (CN).

3.0 Background

In 2005, Australian Museum Business Services (AMBS) completed an Aboriginal Heritage Study for City of Newcastle. The study explored the Aboriginal Heritage of the Newcastle LGA, targeting key issues including:

- Environmental resources and characteristics
- Land use history and terrain integrity; and
- Patterning in archaeological site distribution

The Newcastle Aboriginal community was consulted as part of the study's development through City of Newcastle's Guraki Aboriginal Advisory Committee and through a reference group specifically established for this project. The community engagement phase of this study also included meetings with interested stakeholders to obtain Aboriginal community input on the project before it commenced. The key elements and learnings of the AMBS study are outlined below.

3.1 Environmental Resources and Characteristics

Research was undertaken to investigate the environmental resources, characteristics and terrain integrity of the Newcastle Local Government Area, to understand past Aboriginal land use and possible archaeological site distribution. Research demonstrated that resources influencing Aboriginal occupation of the region including water, stone, flora and fauna, were found throughout all areas of the LGA. Areas where a wide range of available subsistence resources or stone materials occurred, such as the Hunter estuary delta, the Hexham Swamp, the Stockton Bight, and the Black Hill Spur were found to be key locations in Aboriginal occupation of the region.

Key learning: Locations for Aboriginal occupation are likely to be found in areas including the Hunter estuary delta, the Hexham Swamp, the Stockton Bight, and the Black Hill Spur.

3.2 History of Occupation and Landscape Modification

Ethno-historical records from the contact period were reviewed to summarise known information on the Aboriginal peoples, culture and material traditions of the Newcastle region of that time. This review refined understanding of the Aboriginal cultural heritage values of the Newcastle LGA, and also indicated the range of materials likely to be identified in surviving/extant archaeological sites. The history of colonial occupation of the region was also reviewed, to identify areas where archaeological materials may have been removed as part of industrial/residential development. This research found that although colonial settlement and land use was widespread in the region, the spatial and stratigraphic impact of that settlement is not adequately understood, and that areas with terrain integrity may be found throughout 'developed' landscape areas, including the Newcastle City Centre.

Key learning: the spatial and stratigraphic impact of colonial settlement is not adequately understood, hence archaeological sites may be found throughout 'developed' landscape areas, including the City Centre.

3.3 Archaeological Knowledge of the Region

Previous archaeological investigations conducted throughout the Newcastle LGA were reviewed, to identify recorded patterning in archaeological site distribution and composition. Case studies were identified for detailed review, based on relevance of study area,

investigation type and date completed. This review demonstrated that Aboriginal archaeological materials may occur in all landscape contexts within the Newcastle LGA. The density of sites varies between different landscape contexts, with sites more frequently identified around wetlands and watercourses within the Newcastle area. However, no landscape area within the Newcastle LGA should be considered archaeologically sterile unless determined so by an archaeological and/or cultural assessment.

Key learning: Aboriginal archaeological materials may occur in all landscape contexts within the Newcastle LGA

3.4 Analysis of the Newcastle LGA: Landscape Model of Archaeological Sensitivity

The environmental and archaeological data was used to develop a landscape model of archaeological sensitivity for the Newcastle LGA. This model indicates the probability (low, moderate, high or very high) of archaeological materials occurring within specific landforms and environmental areas. This probability was determined on two primary criteria: known site patterning and terrain integrity. This sensitivity analysis provides a broad assessment of archaeological site distribution within the Newcastle LGA, which can be used to develop strategies for the conservation and management of Aboriginal heritage. It does not however, replace the need for individual site investigation during the development process.

Key learning: previous finds and the degree of landscape disturbance can suggest the probability of archaeological materials being found.

3.5 Cultural Sensitivity of the Newcastle LGA

Cultural heritage places and objects within the landscape have significance to the contemporary Aboriginal community, and only Aboriginal community members can determine aspects of cultural significance. For the 2005 study, preliminary consultation was undertaken to discuss the social and cultural values of the Newcastle LGA.

Key learning: Ongoing consultation between City of Newcastle and the local Aboriginal community is required to ensure respectful management of Aboriginal cultural heritage.

3.6 Principles for Newcastle Aboriginal Heritage Management

An important set of principles were established in the 2005 Heritage Study and carry through into this strategy:

- i Aboriginal cultural heritage is to be recognised as a finite and valuable resource of the Newcastle LGA.
- ii Aboriginal community members are to be pivotal in the identification, assessment, and management of Aboriginal cultural heritage, as it is primarily Aboriginal people who should determine the significance of their heritage.
- iii Places of Aboriginal cultural value within the Newcastle LGA are to be actively conserved and managed to retain those cultural values. Appropriate conservation action will vary according to the level of significance.
- iv Aboriginal cultural heritage is to be actively managed during the development process, to ensure appropriate conservation and impact mitigation outcomes are achieved.
- v Compliance with relevant statutory controls, specifically the *National Parks and Wildlife Act (1974)* and the *Environmental Planning and Assessment Act (1979)*, is to be required for all development and heritage programs.

- vi Sustainable, ongoing management strategies for Aboriginal cultural heritage should be promoted within City of Newcastle and the broader community, through heritage training for City of Newcastle personnel and public interpretation programs.

Key learning: The principles outlined above have informed the preparation of this strategy.

4.0 Legislation and Policy Framework

The focus of current legislative controls across all levels of government relates to archaeological sites. All Aboriginal archaeological sites are protected by Commonwealth and State statutory controls, as detailed below. All controls need to be considered by City of Newcastle when determining development applications and other heritage works.

In this section we also introduce other relevant strategies of City of Newcastle that help define City of Newcastle's approach to Aboriginal heritage management.

4.1 Commonwealth Legislation

The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* is the principal Commonwealth legislation protecting Aboriginal heritage. The Act complements State legislation and is intended to be used only as a 'last resort' where State laws and processes prove to be ineffective. Under this Act the responsible Minister can make temporary or long-term declarations to protect areas and objects of significance under threat of injury or desecration. The Act also encourages heritage protection through mediated negotiation and agreement between land users, developers and Aboriginal people. On 17 December 1998, responsibility for administration of the *Heritage Protection Act* was transferred by Administrative Arrangement Orders from the former Aboriginal and Torres Strait Islander Commission (ATSIC) to the Environment and Energy portfolio and the Act is now administered by the Australian Government's Department of Environment and Energy.

The Burra Charter (International Council of Monuments and Sites (ICOMOS) Australia 1999) also provides guidance for the conservation and management of places of cultural significance (cultural heritage places). The Charter was adopted by Australia ICOMOS (the Australian National Committee of ICOMOS) in 1979 with recent revisions adopted in 2013. The Charter sets a standard of practice for those who provide advice, make decisions about, or undertake works to places of cultural significance, including owners, managers and custodians.

4.2 State Legislation

The primary piece of legislation relating to the management of Aboriginal heritage in New South Wales is the *National Parks and Wildlife Act 1974*. It is accompanied by the *National Parks and Wildlife Regulation 2009* and a number of key codes of practice, guidelines and requirements; namely:

- the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*
- *Applying for an Aboriginal Heritage Impact Permit: Guide for Applicants*
- the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* which is a technical guideline for the preparation of the archaeological component of the report
- the *Guide to Investigating, Assessing and reporting on Aboriginal Cultural Heritage in NSW* which includes specifications on report contents
- the *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* which provides further information and background to the consultation requirements specified in Section 80C of the NPW Regulation

All development activities in New South Wales are also subject to the provisions of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

The NSW State government has committed to reforming the way Aboriginal cultural heritage is managed through the creation of a standalone Aboriginal Cultural Heritage Act (ACH). At the time of writing this draft strategy the government is planning to introduce a draft Bill to Parliament that will present a contemporary and respectful vision for the management of Aboriginal cultural heritage in New South Wales.

Full implementation of the reforms including the ACH Act itself, schedules, regulations, policies and guidelines will not be completed until 2021. City of Newcastle has been advised by the NSW Office of Environment and Heritage to continue with the development and implementation of the draft Aboriginal Heritage Management Strategy with a view to amending the document as required when the new legal framework is in place.

Local Aboriginal Land Councils (LALCs) are democratically elected Aboriginal organisations with primary objectives to improve, protect and foster the best interests of their members and all Aboriginal persons within their boundary area. LALCs in New South Wales have key functions under the Aboriginal Land Rights Act 1983 to protect and promote Aboriginal culture and heritage, acquire and manage lands, and provide community benefits.

4.3 City of Newcastle Framework

City of Newcastle's existing strategies and plans, guide our current approach to Aboriginal heritage management.

4.3.1 Newcastle 2030 Community Strategic Plan

Through *Newcastle 2030*, our Community Strategic Plan (adopted 2010 and updated in 2018), the Newcastle community has strongly expressed its aspiration that in 2030, culture, heritage and place are valued, shared and celebrated (Objective 3.2). Also, that we will be a creative, culturally rich and vibrant community (Objective 4.3). A specific strategy to achieve this is to acknowledge and respect local Aboriginal history, cultural heritage and peoples.

4.3.2 Newcastle Local Environmental Plan 2012

The Newcastle Local Environmental Plan (NLEP) was revised in 2012. The LEP is established under the provisions of the *NSW Environmental Planning and Assessment Act 1979* (EP&A Act). It provides guidance for development activities within the LGA, including criteria for development to be considered exempt or complying (and therefore not required to be subject to development consent) and provisions relating to heritage conservation.

Part 3 (Clause 3.3 (2)(g)) of the Newcastle LEP specifies that exempt or complying development must not be carried out on any environmentally sensitive area, with this clause including 'land identified in this or any other environmental planning instrument as being of high Aboriginal cultural significance.'

Clause 5.10 establishes the requirements for development consent in relation to heritage conservation. The objectives of this clause include conservation of Aboriginal objects or Aboriginal places of heritage significance. In accordance with these provisions, development consent is required for any activity that will involve:

- demolishing or moving an Aboriginal object
- disturbing or excavating an Aboriginal place of significance
- erecting a building on land on which an Aboriginal object is located or that is within an Aboriginal place of heritage significance
- or subdividing land containing an Aboriginal object or Aboriginal place of heritage significance.

There are exceptions to these provisions, including activities that meet the requirements for exempt development.

With reference to consideration of the effects of development, Sub-clause 8 of Clause 5.10 specifies, that for developments in an Aboriginal place of significance, the consent authority must 'consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment' and 'notify the local Aboriginal communities about the application and take into consideration any response received within 28 days after the notice is sent.'

4.3.3 Local Planning Strategy 2015

The Local Planning Strategy, (LPS) is a comprehensive land use strategy to guide the future growth and development of Newcastle to 2030 and beyond. The Strategy implements the land use directions from Newcastle 2030 and underpins the NLEP 2012, providing a land use planning platform to move towards a smarter, more liveable and sustainable Newcastle.

4.3.4 Heritage Strategy 2013-2017

In 2014, City of Newcastle adopted the *Heritage Strategy 2013-2017* to guide City of Newcastle's approach to the management of heritage in the Newcastle. The Heritage Strategy draws from both the Community Strategy Plan (*Newcastle 2030*) and the *Newcastle Heritage Policy 2013*. The *Heritage Strategy* provides detailed actions and an implementation framework based on the key strategic directions of *Newcastle 2030* and the *Heritage Policy*.

Importantly, the Heritage Strategy adopted the following strategies which will provide the framework for this document:

- 1 Knowing our heritage - enhancing our community's knowledge of and regard for local heritage items and places.
- 2 Protecting our heritage - City of Newcastle will protect and conserve the City's heritage places for the benefit of everyone.
- 3 Supporting our heritage - City of Newcastle protect the integrity of heritage places by ensuring consistent and sympathetic uses, physical and aesthetic treatments and outstanding interpretations.
- 4 Protecting our heritage - Newcastle's significant heritage places are a unique historical resource and represent an asset for the continuing educational, cultural and economic enrichment of the region. City of Newcastle will invest in the promotion and care of these assets as part of the City's economic and cultural development.

4.3.5 Cultural Strategy 2016-2019

City of Newcastle's *Cultural Strategy 2016-19* was adopted in 2015. Strategy Number 12 (twelve) in this document seeks to increase engagement with the local Aboriginal community in consultation with City of Newcastle's Guraki Aboriginal Advisory Committee. Specific actions relate to establishing an Aboriginal reference group, increase programming by Aboriginal and Torres Strait Islander people, establishing a permanent display with Newcastle Museum telling local Aboriginal history and investigating an indigenous garden or trail embracing community, learning and reconciliation.

The *Cultural Strategy 2016-2019* also contains an action to establish local stories and cultural identity, including Aboriginal identity as criteria for the selection of cultural programming across City of Newcastle.

5.0 Planning and Assessment Process

In practical terms, the provisions of the *NSW National Parks and Wildlife Act 1974* (NPW Act) do not differentiate the requirement for an evaluation of potential impacts to Aboriginal cultural heritage based on the nature of planning approval. That is, all activities involving ground surface disturbance should be subject to some level of assessment under the NPW Act.

There are however, two key types of assessment:

- i) due diligence
- ii) Aboriginal Cultural Heritage Assessment

5.1 Planning Approval Flowchart

Figure 1 summarises the Aboriginal cultural heritage assessment process and should be followed by land owners as well as City of Newcastle officers undertaking project work.

The flowchart references, that in some circumstances, it will be necessary to undertake further Aboriginal cultural heritage evaluation. Depending on circumstances, this evaluation could involve further assessment under the due diligence code (potentially involving input from Aboriginal cultural heritage specialists and/or Aboriginal parties) or may involve the completion of an Aboriginal Cultural Heritage Assessment. In circumstances where harm cannot be avoided, an Aboriginal Heritage Impact Permit (AHIP) is required from the NSW Office of Environment and Heritage (OEH). The application for an AHIP must be informed by an Aboriginal Cultural Heritage Assessment. This would then trigger an Integrated Development process.

In relation to exempt/complying development, the due diligence code specifies that an activity on land that has been disturbed that comprises exempt development or was the subject to a complying development certificate issued under the NSW EP&A Act is a low impact activity. However, the defence of carrying out a low impact activity does not authorise harm to known Aboriginal objects. That is, even if the activity is exempt or complying development on disturbed land, it is necessary to confirm that the activity will not result in harm to a previously recorded site. Hence, it is necessary that a search of the Aboriginal Heritage Information Management System (AHIMS) database be conducted for all development applications to ensure that there are no recorded sites in the vicinity, as specified in the flowchart. (refer Section 7.1.1)

It is critical that all aspects of any assessment process undertaken are documented in writing and that the results of any AHIMS searches are retained, referred to the relevant LALC and can be produced on request. As part of the approval process, it is also recommended that any development site identified by the AHIMS search and/or located within an identified Aboriginal place contain conditions of consent issued by City of Newcastle. These standard conditions will specify that any Aboriginal object is identified over the course of approved development activities and is not the subject of an AHIP; the object should not be harmed at all, work should cease immediately and OEH notified in accordance with Section 89A of the NP&WA 1974.

5.2 Due diligence assessment

The completion of a due diligence assessment in accordance with the *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales* or another relevant code as specified in the NPW Regulation, is critical to determining whether an activity may

result in harm to an Aboriginal object. The NPW Act establishes that a person who demonstrates due diligence in assessing that their actions will not harm Aboriginal objects has a defence against prosecution for the strict liability offence if they unknowingly harm an Aboriginal object. The key steps in the due diligence code are not replicated here however this can be accessed via the following link.

<http://www.environment.nsw.gov.au/resources/cultureheritage/ddcop/10798ddcop.pdf>

Under the due diligence code, a due diligence assessment can be relatively simple (consisting of desktop components only and not requiring specialist input) or may be a relatively detailed assessment (including the completion of site inspections and provision of specialist input). The scale of the assessment is closely linked to the presence or absence of previously recorded archaeological sites, the level of disturbance within the activity area, the nature of the activity and the potential sensitivity of the activity area. Further information regarding the due diligence code is provided as notes to the Aboriginal Heritage Assessment flowchart discussed in **Figure 1** and **Figure 2**

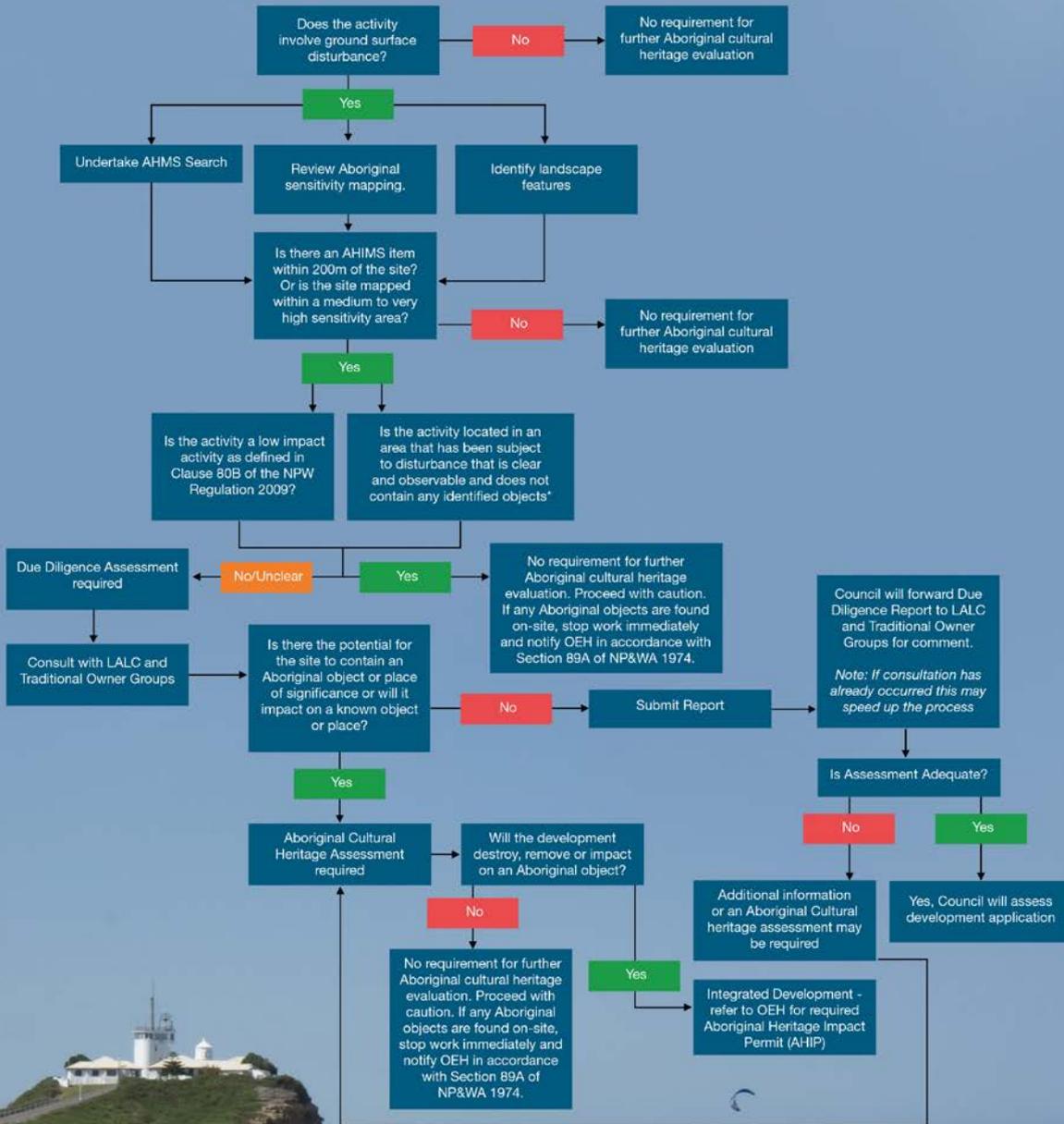
5.3 Aboriginal Cultural Heritage Assessment

The completion of an Aboriginal Cultural Heritage Assessment is typically undertaken where it is known or considered likely that the proposed activity will impact on Aboriginal heritage either identified by AHIMS and/or identified by the LEP as an Aboriginal place will require the proponent to obtain an Aboriginal Heritage Impact Permit (AHIP). Section 80D of the NPW Regulation specifies the requirements for the completion of a cultural heritage assessment report and Section 80C describes the consultation process to be undertaken prior to lodging an AHIP application. As noted above, NSW Office of Environment and Heritage has also produced a number of codes of practice/guidelines including:

- The *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (DECCW 2010a), which is a technical guideline for the preparation of the archaeological component of the report.
<http://www.environment.nsw.gov.au/resources/cultureheritage/10783FinalArchCoP.pdf>
- The *Guide to Investigating, Assessing and reporting on Aboriginal Cultural Heritage in NSW* (OEH 2011), which includes specifications on report contents.
<http://www.environment.nsw.gov.au/resources/cultureheritage/20110263ACHguide.pdf>
- The *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* (DECCW 2010b), which provides further information and background to the consultation requirements specified in Section 80C of the NPW Regulation.
<http://www.environment.nsw.gov.au/licences/consultation.htm>

An Aboriginal Cultural Heritage Assessment is a far more comprehensive document than a due diligence assessment and typically undertaken by an archaeologist or anthropologist, in consultation with Aboriginal parties. The required process for consultation with Aboriginal parties as part of an Aboriginal Party Consultation is summarised in **Figure 3**.

Aboriginal Heritage Assessment Flowchart



*Refer to accompanying notes

Accompanying Notes:

Note 1:

As previously discussed, the archaeological sensitivity mapping that accompanies this strategy is prepared at a broad scale and does not give direct consideration to localised conditions and disturbance. The due diligence code of practice (as described in Section 5.0) identifies that disturbance affects archaeological sensitivity and specifies 'Land is disturbed if it has been the subject of a human activity that has changed the land's surface, being changes that remain clear and observable.' The areas identified as having medium or high archaeological sensitivity therefore may include areas that, with more detailed consideration, may have been disturbed in a manner that has impacted on their archaeological potential.

In accordance with the provisions of the due diligence code, assessment of proposed works with areas of medium to high archaeological sensitivity should therefore include consideration of the extent and nature of previous disturbance (including but not limited to the construction/maintenance of existing or former infrastructure, construction/maintenance of access roads, construction and maintenance of existing buildings, vegetation clearance and landscaping) with reference to the extent of proposed works.

For example, if the proposed works are limited to an area that is known to be fill and all impacts are to be within the filled area, then the proposed activity is located within an area that has been previously excavated to establish existing building footings and services, that area has been subject to clear and observable disturbance and does not require further Aboriginal cultural heritage evaluation. However, if the proposed works were to extend beyond the known or likely depth of prior excavation in a landform that has been identified as being of medium or high archaeological sensitivity, then further assessment will be required. This is particularly relevant for developments in areas with deep soil profiles (such as sand dunes) where intact deposits may remain substantially below the depth of the current ground surface.

Due diligence assessments can be completed as a desktop exercise however in many circumstances it will be necessary to undertake a visual inspection to ensure that the outcomes of the assessment are specific and supportable. Where it is necessary to undertake an inspection of the area to clarify its archaeological potential, the inspection must be done 'by a person with expertise in locating and identifying Aboriginal objects.'

Where the due diligence assessment identifies that there are no Aboriginal objects and that the area has been subject to clear and observable disturbance, resulting in a low likelihood of harm to Aboriginal objects, there is no requirement for further Aboriginal cultural heritage evaluation.

Note 2:

Where insufficient information is available to demonstrate that the proposed works will not impact on an identified Aboriginal object and/or are located within an archaeologically sensitive landscape that has not been subject to disturbance, it will be necessary to undertake further Aboriginal cultural heritage evaluation. This can take the form of more detailed advice from a suitably qualified person (such as a specialist in the assessment of Aboriginal cultural heritage) regarding the likelihood that Aboriginal objects may be present and subject to disturbance by the proposed works. This may include the requirement to undertake test excavations (noting that test excavations must be in accordance with relevant codes, guides and requirements as discussed in Section 5.0).

Where the assessment identifies that the proposed works will result in harm to Aboriginal object(s) and the proposed works cannot be altered to avoid this harm, it will be necessary to seek an Aboriginal Heritage Impact Permit (AHIP) from OEH (noting that AHIPs are not required for activities approved as State Significant Development or State Significant Infrastructure). Prior to seeking an AHIP, it will be necessary to undertake an Aboriginal Cultural Heritage Assessment in accordance with the codes, guides and requirements detailed in Section 5.0.

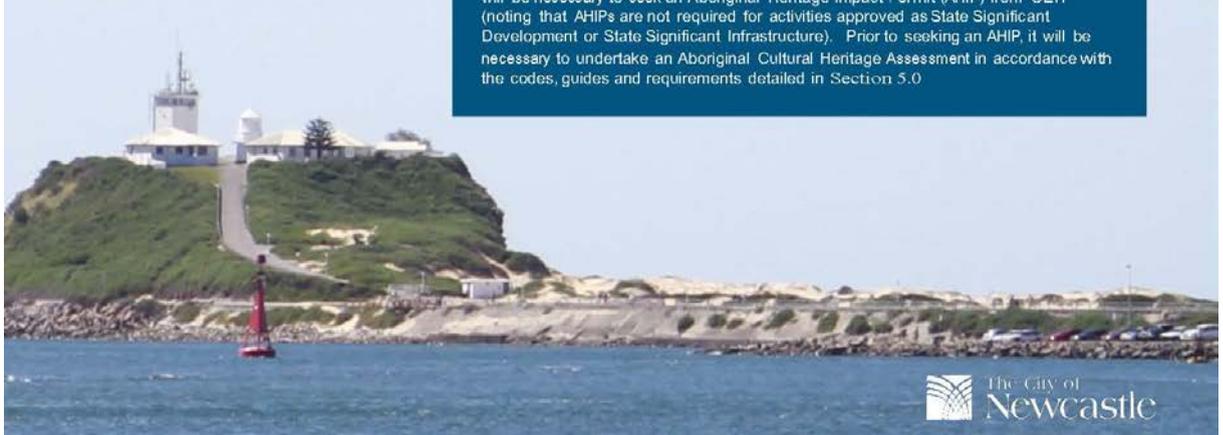
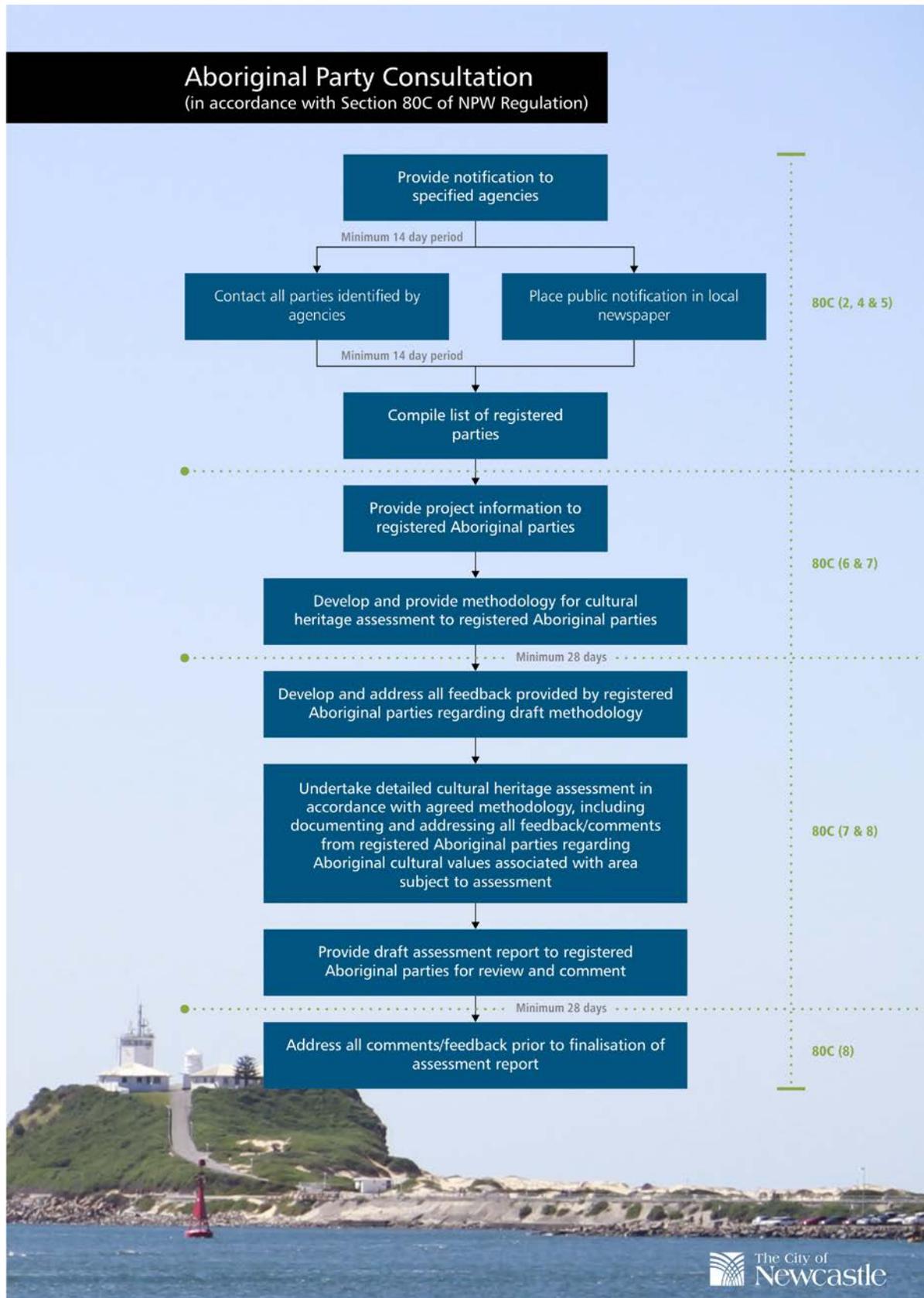


Figure 3 Aboriginal Party Consultation Flowchart



6.0 Current Initiatives

City of Newcastle has commenced a range of engagement actions that seek to promote awareness and respect of Aboriginal culture and heritage. Elements of our approach are outlined below:

6.1 Commitment to Aboriginal and Torres Strait Islander Peoples

On 14 April 1998 City of Newcastle signed a commitment acknowledging the right of Aboriginal and Torres Strait Islander peoples of Newcastle to live according to their own values and cultures. This document was co-signed by the then Aboriginal and Torres Strait Islander Commissioner as well as local Aboriginal community leaders.

6.2 Guraki Aboriginal Advisory Committee

City of Newcastle Guraki Committee is a formal committee of City of Newcastle created for the purpose of providing advice to City of Newcastle on Aboriginal and Torres Strait Islander culture and heritage. The Committee gives life to City of Newcastle's 1998 Commitment to Aboriginal and Torres Strait Islander Peoples and seeks to engage indigenous people in local government decision making. The Guraki Committee was engaged to provide guidance and feedback during this strategy's development.

[Guraki Aboriginal Advisory Committee - Newcastle City Council](#)

6.3 Guidelines for Acknowledgement of Country

City of Newcastle developed its first Reconciliation Action Plan (RAP) in 2013, made under the auspices of Reconciliation Australia. This document outlines actions that City of Newcastle will take to promote reconciliation in the workplace such as cultural awareness training for non-indigenous employees and the employment of indigenous people. City of Newcastle's second iteration of its RAP includes a community toolkit which provides guidelines for on Acknowledgement of Country wording at meetings. Refer link below:

<http://intranet/Business-Units/Corporate-Services/Council-Legal-services/Wiki/Acknowledgement-of-Country>

6.4 Aboriginal Dual Naming of Landforms

The Aboriginal Dual Naming of Landforms project was developed in 2012 by City of Newcastle's Guraki Committee. The dual naming of eight landforms in the Newcastle LGA was endorsed by the NSW Geographical Names Board in 2016. City of Newcastle has allocated funding for the installation of interpretative signage at the eight dual named locations with work scheduled to be completed in 2018. In addition to this work, NSW OEH has provided grant funding for the development of a virtual reality package that immerses the viewer in a pre-contact landscape at the eight dual named locations. The virtual reality package will be launched during NAIDOC Week in July 2018 (insert web link prior to strategy publication) Details of the Aboriginal place names and their pronunciation can be found at the link listed below:

[Dual naming - Geographical Names Board of NSW](#)

6.5 Aboriginal Employment Strategy 2018-2021

City of Newcastle's Aboriginal Employment Strategy (AES) outlines key priorities and actions to be delivered by City of Newcastle in its commitment to investing in Aboriginal employment and economic

consecutive strategy and aims to add to the foundations set by our previous strategies building employment, retention and career development of Aboriginal staff and to more effectively engage with the Newcastle Aboriginal community.

<http://newcastle.nsw.gov.au/Newcastle/media/Documents/Strategies,%20Plans%20and%20Policies/Strategies/Aboriginal-Employment-Strategy-2018-2021.pdf>

6.6 Newcastle Museum

Newcastle Museum is dedicated to honouring the traditions and diversity of Aboriginal people and cultures. Newcastle Museum has created the Mulubinba Map to guide visitors through some of the significant local histories of our indigenous peoples, exploring themes of work, leisure, and culture and highlighting some of our most cherished objects in the Museum collection. The Museum has worked with Aboriginal people to ensure that every element of the permanent galleries has Aboriginal representation. The only area without representation is Supernova Science Centre and that omission is being redressed.

Newcastle Museum is a proud participant in NAIDOC week and targeted employment programs to ensure representation and inclusion. The collecting of Aboriginal objects is in accordance with Museums Australia's National Policy. No sacred items are collected and Aboriginal keeping places will be prioritised for ownership of Aboriginal objects. All collecting activity and collection management processes are in accordance with the International Council of Monuments Code of Ethics, combating Illicit trade and within the framework of the NSW Heritage Office's Movable Heritage Principles.

6.7 Art Gallery

City of Newcastle Art Gallery owns a broad range of artwork art by Aboriginal and Torres Strait Islander Australians. The Aboriginal art collection was started in the 1960s with the donation of Arnhem Land barks from Dr Stuart McDougall and developed over subsequent decades through donation and specific purchase to incorporate works of art including barks, sculptural poles, paintings, works on paper and drawings.

The collection has been developed to incorporate works by artists from diverse language groups and communities that include the foundations of the Western Desert Art Movement from Papunya Tula in the 1970s, to the expansion of art communities and practice in art centres from States including WA, SA, QLD and the NT, through to contemporary practitioners working in photography, video and multimedia. The collection aims to expand to reflect Aboriginal and Torres Strait Islander art as a contemporary Australian art form.

7.0 Developing a Management Framework

The general statements provided by the AMBS (2005: Section 10) regarding the Aboriginal heritage framework remain broadly applicable. This document also provides clear and specific strategies to allow City of Newcastle to further develop and implement this management framework. Section 8 then outlines key actions to implement the framework.

The key priority in the assessment of Aboriginal cultural heritage should be to identify all practicable measures to "avoid harm and conserve the significant Aboriginal objects and declared Aboriginal places, along with their cultural heritage values" (as specified in the *Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW*). The management framework provided below sets out a process by which this can be achieved in accordance with relevant legislative requirements, guidelines and codes.

7.1 Consideration to establishing and maintaining a database of Aboriginal archaeological sensitivity and sites

This section provides guidance regarding obtaining and managing information key to informing City of Newcastle regarding the location of Aboriginal archaeological sites and areas of sensitivity.

7.1.1 AHIMS Data

The Aboriginal Heritage Information Management System (AHIMS) database is maintained by the NSW Office of Environment and Heritage (OEH) and includes information on all registered Aboriginal archaeological sites in New South Wales. Reviewing the results of an AHIMS search is a critical step in considering whether a proposed activity may result in harm to Aboriginal objects and therefore is a key component in evaluating proposed development activities. In addition (as will be discussed below), considering the location of known archaeological sites should be a critical step in maintenance planning activities for City of Newcastle

Any individual, company or entity can request a search of the AHIMS database for any sites that may have been recorded within a specific parcel or area of land. Searches can be undertaken as a basic search (identifies if there are any sites present within the search area but does not provide details) or an extensive search (includes information on sites including specific site locations, site type, site status). In order to protect sensitive information, sites may be restricted such that detailed information is not available without further consultation. In addition, if the search results for an extensive search include a high number of sites, search results will not be released.

It is possible to obtain detailed site data for an unlimited number of sites but this must be done under an Aboriginal Heritage Information Licence Agreement (AHILA) issued by OEH. An AHILA specifies the conditions under which the data will be held by the applicant and will typically require the applicant to consult with Aboriginal parties prior to seeking the AHILA.

City of Newcastle may wish to consider obtaining an AHILA for the Newcastle LGA. Any site data obtained under an AHILA would have restrictions on its use but could be available to specified representatives of City of Newcastle for the purposes of managing City of Newcastle activities and informing planning assessments and evaluations. Alternatively, City of Newcastle can undertake individual site searches for its activities and require applicants to undertake searches to inform any planning approvals. City of Newcastle carries out AHIMS searches when registering all DAs.

7.1.2 Archaeological sensitivity mapping

The archaeological sensitivity mapping undertaken by AMBS (2005) and reviewed as part of the current strategy also forms a key component in the City of Newcastle's strategy for managing Aboriginal cultural heritage. City of Newcastle will retain this information as part of its spatial data system and access to the information will be provided to staff for planning and assessment purposes. The sensitivity mapping should be subject to periodic review. In addition, where specific development priorities are identified (such as strategic land release areas), it may be valuable to review the sensitivity mapping at the refined scale of the specified area to allow for more detailed mapping that takes into account localised disturbance and environmental conditions. In such situations, engagement with Aboriginal parties will also allow for consideration of Aboriginal cultural sensitivity.

It is also recommended that consideration should be given to including the sensitivity mapping as part of planning instrument (LEP supported by DCP) to ensure that this information is utilised by proponents as part of the planning approvals process. This is particularly relevant with reference to exempt and complying development, which currently does not require specific consideration of Aboriginal heritage.

7.2 Planning Proposals

The completion of a planning proposal has different implications for the management of Aboriginal cultural heritage. A planning proposal does not necessarily involve direct impacts to Aboriginal cultural heritage (and therefore it is not possible to assess that the proposal will involve harm) but may provide a framework whereby activities that may result in harm to Aboriginal objects may be proposed. For example, the rezoning of an area of land to make it suitable for residential sub-division does not directly result in harm to Aboriginal objects within the rezoned area. However, the subsequent construction of infrastructure and housing may have direct impacts. For this reason, the requirements for Aboriginal cultural heritage assessment for a planning proposal are slightly different from those identified in the flowchart.

NSW OEH advise that the information provided to support a planning proposal should identify whether Aboriginal cultural heritage values are known or likely to occur within the area subject to the planning proposal. As a minimum, the planning proposal should be prepared by a suitably qualified person (as defined in the *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales* (DECCW 2010a) and should include:

- The results of a search of the AHIMS database
- An evaluation of whether the area subject to the planning proposal contains areas of Aboriginal cultural sensitivity (noting the outcomes of the archaeological sensitivity mapping undertaken as part of this strategy)
- The completion of a site inspection to identify any Aboriginal objects that may be present within the area and to further assess the archaeological potential of the area based on factors including levels of disturbance and types of landforms present.
- Consultation with Aboriginal parties. NSW OEH specify that this consultation should be undertaken in accordance with *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010*
- Provision of recommendations for future management of Aboriginal cultural heritage within the area subject to the planning proposal including any mechanisms for conservation of Aboriginal heritage and any requirements for additional assessment or archaeological investigation, potentially including obtaining AHIPs if required.

It is noted that it is rare for proponents to seek an AHIP for a planning proposal and that NSW OEH will generally not issue AHIPs for activities until the specific activity is the subject of a valid planning approval.

7.3 Management of City of Newcastle Activities

In order to ensure that maintenance and land management activities undertaken by or on behalf of City of Newcastle are conducted with reference to the requirements of the NPW Act, the activities must be considered as specified in the flowchart provided.

It is noted that the majority of maintenance activities will typically fall within the definition of low impact activities, which includes, for example maintenance of existing roads, utilities and other services. However, it is important to recognise that the defence of carrying out a low impact activity does not authorise harm to known Aboriginal objects and should only be applied when there are no previously recorded archaeological sites in the vicinity of the proposed activity.

Similarly, where city of Newcastle is obliged to undertake a Review of Environmental Factors (REF) for proposed works, the REF must incorporate an assessment of Aboriginal cultural heritage undertaken following the steps outlined in the flowchart.

8.0 Looking to the future: actions and evaluation

As we learn more about Aboriginal cultural heritage, each action listed below will be evaluated in its contribution to the overall delivery of the strategy. It is recommended that this strategy be reviewed when the proposed new legal framework being developed by the NSW State Government is implemented. Furthermore, City of Newcastle may elect to review this strategy at a shorter timeframe should monitoring of its implementation identify a significant need for review.

Action Table

1. Knowing our Heritage: enhancing our community's knowledge of and regard for Aboriginal cultural heritage items and places.			
Objective	Action	Responsibility	Performance Indicator
1.1. Recognise, document and present indigenous heritage in the Newcastle LGA	1.1.1 Facilitate the Guraki Aboriginal Advisory Committee to provide advice to City of Newcastle on matters relating to culture and heritage	Manager Corporate and Community Planning	Hold four (minimum) Guraki meetings per calendar year. Table relevant City of Newcastle projects and programs with the committee for advice. Publish Committee Minutes on City of Newcastle's website
	1.1.2 Conserve, exhibit and interpret Aboriginal artefacts and art held in the Newcastle Gallery and Museum collections	Museum Director Gallery Director	Collections appropriately conserved, curated and displayed
1.2 Re-launch City of Newcastle's 1998 Commitment to Aboriginal and Torres Strait Islander Peoples of Newcastle	1.2.1 Develop launch concept with Guraki Aboriginal Advisory Committee, prepare media strategy and deliver launch in July 2018	Manager Corporate and Community Planning	Launch event held and online content published
2. Protecting our Heritage: City of Newcastle will protect the City's Aboriginal heritage places for the benefit of everyone.			
Objective	Action	Responsibility	Performance Indicator
2.1 Provide decision making tools and resources with respect to	2.1.1 Revise and update existing sensitivity mapping for use in	Manager Corporate and Community Planning	Revise and update sensitivity mapping and publish to reflect

Aboriginal cultural heritage protection	decision making. Engage Local Aboriginal Land Councils (LALCs) and other interested members of the Aboriginal communities in this process	Manager Regulatory and Assessment. Manager Civic Construction and maintenance. Manager Assets and Projects	local Aboriginal community cultural requirements. Sensitivity mapping adopted by City of Newcastle. Add sensitivity mapping to s10.7 Certificates and City of Newcastle's GIS system for the identified heritage places.
	2.1.2 Produce new section of Newcastle Development Control Plan 2012 (NDCP) to guide decision making. This includes details of the appropriate notification and consultation process with LALCs and Traditional Owner Groups. Engage LALCs and other interested members of the Aboriginal communities in this process	Manager Regulatory and Assessment	Produce new NDCP section developed and published to reflect local Aboriginal community cultural requirements. New NDCP section adopted by City of Newcastle. DA checklist for applicants, s4.15 Assessment checklist for DA officers and advice on City of Newcastle's website amended to incorporate this new guidance and assessment process.
	2.1.3 Consider incorporating sensitivity mapping into the Newcastle Local Environmental Plan 2012 (NLEP) as part of the review of the Local Planning Strategy (LPS) process. Engage LALCs and other interested members of the Aboriginal communities in this process	Manager Corporate and Community Planning Manager Regulatory and Assessment If considered appropriate by the LPS process, NLEP sensitivity mapping Planning Proposal approved by City of Newcastle, with gateway approval and gazetting by NSW Department of Planning & Environment (DoPE)	Sensitivity mapping considered in the review of the LPS. If considered appropriate by the LPS process, NLEP sensitivity mapping planning proposal approved by City of Newcastle and gazetted by DoPE

2.2 Improved awareness of Aboriginal culture	2.2.1 Develop and deliver regular awareness training for city of Newcastle staff using qualified Aboriginal community members	Manager HR Operations Manager Regulatory and Assessment Manager Parks and Recreation Manager Civil Construction and Maintenance	Annual training delivered in a targeted manner to City of Newcastle staff and as part of employee inductions
2.3 Ensure due diligence practices observed in City of Newcastle operations	2.3.1 Incorporate Aboriginal Heritage Assessment obligations into City of Newcastle's Review of Environment Factors (REF) process	Manager Assets and Projects Manager Civil Construction and Maintenance	REF document amended and followed in works planning and maintenance activities. At the commencement of all REF processes AHIMS searches are undertaken and documented.
	2.3.1 Incorporate Aboriginal Heritage Assessment obligations into the s4.15 assessment of DAs During the registration of all DAs AHIMS searches are undertaken and documented, and the agreed process for DA heritage referrals is followed. Ensure standard conditions of consent are included informing applicants of their legal obligations under NP&WA 1974 for every DA consent issued for sites located within the identified sensitive Aboriginal area.	Manager Regulatory and Assessment	s4.15 assessment checklist amended and followed in DA assessment process.
2.4 Support the nomination of Aboriginal cultural themed State Heritage Register (SHR) Listings	2.4.1 Collaborate with local Aboriginal communities in SHR Listings	Manager Corporate and Community Planning Manager Regulatory and Assessment	SHR Listings undertaken in partnership with Aboriginal communities
2.5 Collaborate in NSW Office of Environment & Heritage (OEH) repatriation and conservation works programs	2.5.1 Support local Aboriginal communities in OEH repatriation and conservation works programs	Manager Corporate and Community Planning. Manager Parks and Recreation.	Repatriation programs undertaken in partnership with Aboriginal communities

3. Supporting our Heritage: City of Newcastle protects the integrity of heritage places by ensuring consistent and sympathetic treatments of cultural heritage artefacts and places.			
Objective	Action	Responsibility	Performance Indicator
3.1 Nomination of Aboriginal places	3.1.1 City of Newcastle commits to working with Aboriginal Land Councils and other interested members of the Aboriginal community to explore suitable areas for nomination	Manager Regulatory and Assessment	Incorporate existing and proposed Aboriginal Places in the NLEP
4. Respecting our Heritage: Newcastle's significant Aboriginal heritage places represent an asset for the continuing educational, cultural and economic enrichment of the region. City of Newcastle will invest in the promotion and care of these assets as the City evolves.			
Objective	Action	Responsibility	Performance Indicator
4.1 Build trust and improve engagement with local Aboriginal community through City of Newcastle's Guraki Committee	4.1.1 Establish an indigenous reference group to advise on cultural programming development	Museum Director Gallery Director Manager Civic Services Manager Corporate and Community Planning	Group formed in 2016 and meets regularly
	4.1.2 Increase programming of works by Aboriginal and Torres Strait Islander Peoples	Museum Director Gallery Director	Advice received from reference group to inform programs
	4.1.3 Establish a permanent display within Newcastle Museum telling local Aboriginal stories	Museum director	Local Aboriginal stories on display in the Museum
	4.1.4 Investigate the development of an indigenous cultural place as a cultural site embracing the community and contributing to positive reconciliation outcomes	Manager Corporate and Community Planning	Discussion/options paper prepared

9.0 References

<http://www.environment.nsw.gov.au/resources/cultureheritage/ddcop/10798ddcop>

<http://www.environment.nsw.gov.au/resources/cultureheritage/10783FinalArchCoP>

<http://www.environment.nsw.gov.au/resources/cultureheritage/20110263ACHguide> <http://www.environment.nsw.gov.au/licences/consultation.htm>

[Guraki Aboriginal Advisory Committee - City of Newcastle](#)

[Dual naming - Geographical Names Board of NSW Aboriginal Heritage Study - March 2005](#)

[Aboriginal-Heritage-Management-Strategy-Nov16.](#)

newcastle.nsw.gov.au