



Office of
Environment
& Heritage



**Guide to investigating, assessing
and reporting on Aboriginal
cultural heritage in NSW**

Part 6 National Parks and Wildlife Act 1974



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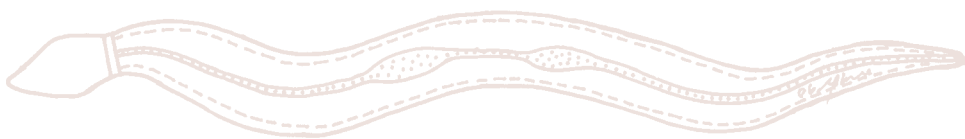
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Part 6 National Parks and Wildlife Act 1974



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Glossary

Aboriginal object A statutory term, meaning: ‘... any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises NSW, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains’ (s.5 NPW Act).

Declared Aboriginal place A statutory term, meaning any place declared to be an Aboriginal place (under s.84 of the NPW Act) by the Minister administering the NPW Act, by order published in the *NSW Government Gazette*, because the Minister is of the opinion that the place is or was of special significance with respect to Aboriginal culture. It may or may not contain Aboriginal objects.

Development area Area proposed to be impacted as part of a specified activity or development proposal.

Harm A statutory term meaning ‘... any act or omission that destroys, defaces, damages an object or place or, in relation to an object – moves the object from the land on which it had been situated’ (s.5 NPW Act).

Place An area of cultural value to Aboriginal people in the area (whether or not it is an Aboriginal place declared under s.84 of the Act).

Proponent A person proposing an activity that may harm Aboriginal objects or declared Aboriginal places and who may apply for an AHIP under the NPW Act.

Proposed activity The activity or works being proposed.

Subject area The area that is the subject of archaeological investigation. Ordinarily this would include the area that is being considered for development approval, inclusive of the proposed development footprint and all associated land parcels. To avoid doubt, the subject area should be determined and presented on a project-by-project basis.

Other relevant guides

You may also need to read the following documents, available from OEH:

- *Due diligence code of practice for protection of Aboriginal objects in NSW*
- *Aboriginal cultural heritage consultation requirements for proponents 2010*
- *Code of practice for archaeological investigation of Aboriginal objects in NSW*
- *Applying for an Aboriginal heritage impact permit: guide for applicants 2010*
- *Talking history: oral history guidelines*

Abbreviations used in this guide

AHIMS	Aboriginal Heritage Information Management System
AHIP	Aboriginal Heritage Impact Permit
OEH	Office of Environment and Heritage, Department of Premier and Cabinet
EP&A Act	Environmental Planning and Assessment Act 1979
ESD	ecologically sustainable development
NPW Act	National Parks and Wildlife Act 1974
NPW Regulation	National Parks and Wildlife Regulation 2009

Overview

Aboriginal people have occupied the NSW landscape for more than 42,000 years (Bowler et al 2003). Evidence and important cultural meanings relating to this occupation are present throughout the landscape. Aboriginal cultural heritage also lives in the memories, stories and associations of Aboriginal people to their traditional land or Country.

Aboriginal cultural heritage provides essential links between the past and present – it is an essential part of Aboriginal people’s cultural identity, connection and sense of belonging to Country. The effective protection and conservation of this heritage is important in maintaining the identity, health and wellbeing of Aboriginal people.

Part 6 of the *National Parks and Wildlife Act 1974* (NPW Act), administered by the Office of Environment and Heritage NSW (OEH), provides specific protection for Aboriginal objects and declared Aboriginal places by establishing offences of harm. Harm is defined to mean destroying, defacing or damaging an Aboriginal object or declared Aboriginal place, or moving an object from the land.

Anyone proposing to carry out an activity that may harm an Aboriginal object or a declared Aboriginal place must investigate, assess and report on the harm that may be caused by the activity they propose.

The investigation and assessment of Aboriginal cultural heritage is undertaken to explore the harm of a proposed activity on Aboriginal objects and declared Aboriginal places and to clearly set out which impacts are avoidable and which 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.

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. Your Aboriginal cultural heritage assessment report will support any application that you may make to OEH for an Aboriginal Heritage Impact Permit (AHIP) where harm cannot be avoided. Further information on AHIPs can be found in OEH’s *Applying for an Aboriginal Heritage Impact Permit: Guide for Applicants 2010* available at www.environment.nsw.gov.au/licences/applyforahip.htm

The purpose of this document is to provide:

- guidance on the process for investigating and assessing Aboriginal cultural heritage in NSW and
- OEH’s requirements for an Aboriginal cultural heritage assessment report.

1 Introduction

1.1 What is Aboriginal cultural heritage?

Aboriginal cultural heritage consists of any places and objects of significance to Aboriginal people because of their traditions, observances, lore, customs, beliefs and history. It provides evidence of the lives and existence of Aboriginal people before European settlement through to the present.

Aboriginal cultural heritage is dynamic and may comprise physical (tangible) or non-physical (intangible) elements. It includes things made and used in traditional societies, such as stone tools, art sites and ceremonial or burial grounds. It also includes more contemporary and/or historical elements such as old mission buildings, massacre sites and cemeteries. Tangible heritage is situated in a broader cultural landscape, so it needs to be considered within that context and in a holistic manner.

Aboriginal cultural heritage also relates to the connection and sense of belonging that people have with the landscape and each other. For Aboriginal people, cultural heritage and cultural practices are part of both the past and the present and that cultural heritage is kept alive and strong by being part of everyday life.

Aboriginal cultural heritage is not confined to sites. It also includes peoples' memories, storylines, ceremonies, language and 'ways of doing things' that continue to enrich local knowledge about the cultural landscape. It involves teaching and educating younger generations. It is also about learning and looking after cultural traditions and places, and passing on knowledge. It is enduring but also changing. It is ancient but also new.

Aboriginal cultural heritage provides essential links between the past and present – it is an essential part of Aboriginal people's cultural identity, connection and sense of belonging to Country. The effective protection and conservation of this heritage is important in maintaining the identity, health and wellbeing of Aboriginal people.

1.2 Relevant legislation

The NPW Act, administered by OEH, is the primary legislation for the protection of some aspects of Aboriginal cultural heritage in NSW. One of the objectives of the NPW Act is:

'... the conservation of objects, places or features (including biological diversity) of cultural value within the landscape, including but not limited to: (i) places, objects and features of significance to Aboriginal people ...' (s.2A(1)(b))

Part 6 of the NPW Act, administered by OEH, provides specific protection for Aboriginal objects and declared Aboriginal places by establishing offences of harm. Harm is defined to mean destroying, defacing, damaging an Aboriginal object or declared Aboriginal place, or moving an object from the land. There are a number of defences and exemptions to the offence of harming an Aboriginal object or declared Aboriginal place.

Under certain circumstances an AHIP may not be required, such as where the activity is trivial, negligible or of low impact. Part 6 of the NPW Act also provides for defences and exemptions. For more information see OEH's *Applying for an Aboriginal heritage impact permit: guide for applicants 2010* available at www.environment.nsw.gov.au/licences/applyforahip.htm or OEH's web page at www.environment.nsw.gov.au/licences/achregulation.htm.

Further information on legislation relating to Aboriginal cultural heritage in NSW is in Appendix A.

1.3 Rights and interests of Aboriginal people in their cultural heritage

OEH recognises and acknowledges Aboriginal people as the primary determinants of the cultural significance of their heritage. In recognising these rights and interests, all parties concerned with identifying, conserving and managing cultural heritage should acknowledge, accept and act on the principles that Aboriginal people:

- are the primary source of information about the value of their heritage and how this is best protected and conserved
- must have an active role in any Aboriginal cultural heritage planning process
- must have early input into the assessment of the cultural significance of their heritage and its management so they can continue to fulfil their obligations towards their heritage and
- must control the way in which cultural knowledge and other information relating specifically to their heritage is used, as this may be an integral aspect of its heritage value.

1.4 Consultation with Aboriginal people

Consultation with Aboriginal people is an integral part of the process of investigating and assessing Aboriginal cultural heritage. Aboriginal people who hold cultural knowledge about the area, objects and places that may be directly or indirectly affected by the proposed activity must be given the opportunity to be consulted. This is done through the process of investigating, assessing and working out how to manage the harm from the proposed activity.

Consultation must adhere to the requirements set out in clause 80C of the NPW Regulation where:

- an application for an AHIP will be made, or
- undertaking test excavation according to OEH's *Code of practice for archaeological investigation of Aboriginal objects in NSW*.

OEH also recommends following these requirements wherever there is any uncertainty a proposed activity could potentially harm any Aboriginal objects or places and the proponent is required to undertake a cultural heritage assessment.

These requirements are further explained in OEH's *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010*.

2 Investigating and assessing Aboriginal cultural heritage

The NPW Act requires proponents to exercise 'due diligence' to determine whether a proposed activity could harm Aboriginal objects or declared Aboriginal places.

If you do not know whether an activity may harm Aboriginal objects or declared Aboriginal places, follow the *Due diligence code of practice for protection of Aboriginal objects in NSW 2010*, available at www.environment.nsw.gov.au/legislation/DueDiligence.htm.

If this reveals further investigation is necessary, follow this guide to investigate and assess the Aboriginal cultural heritage that may be affected by the proposed activity.

Although the NPW Act refers specifically to Aboriginal objects and places, the investigation requires a broader focus than just the objects or places. It must also uncover knowledge about their context.

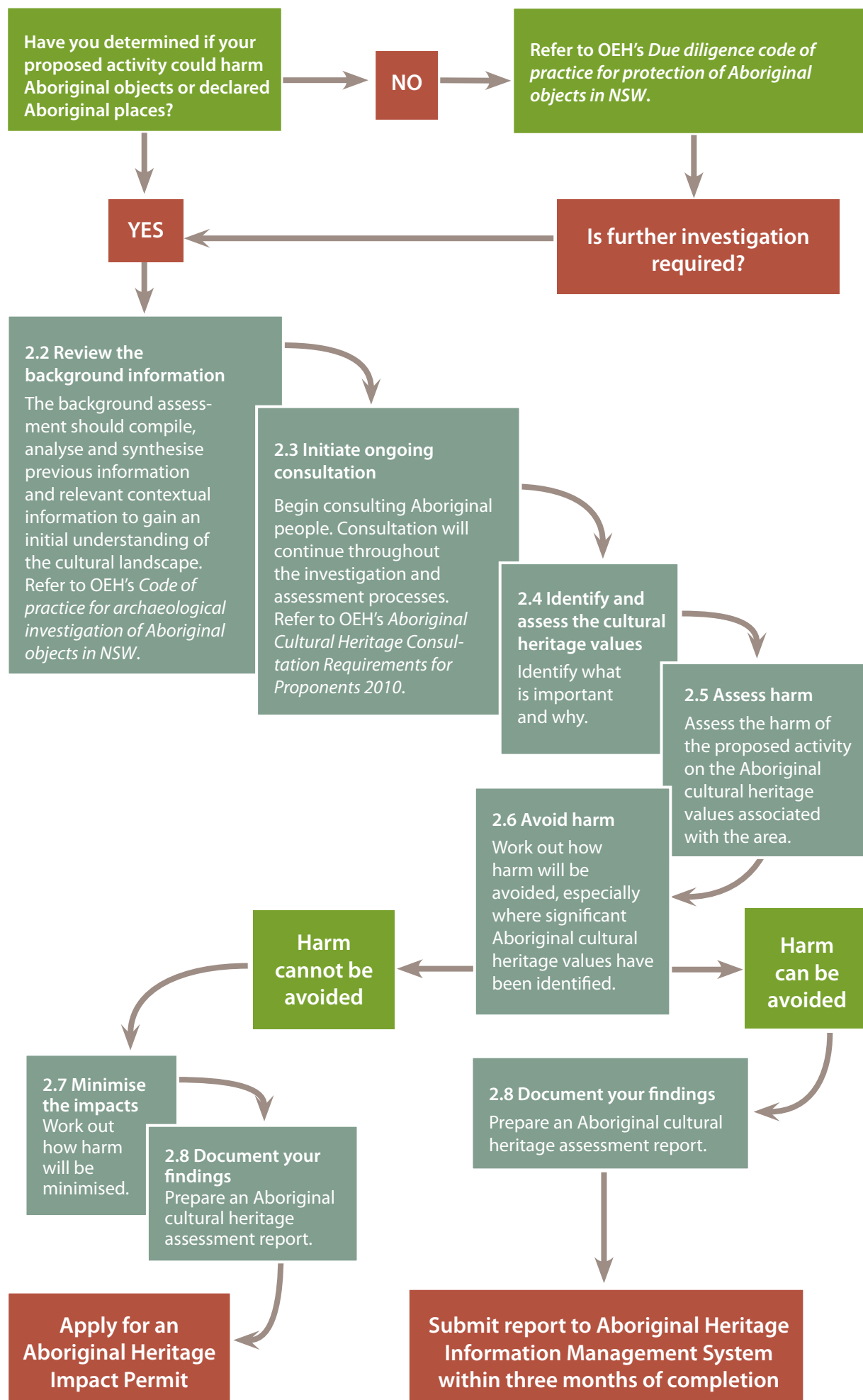
The importance of context can be appreciated by comparing an isolated object displayed in a museum case with the same object in its original landscape setting. Objects and places in the landscape don't exist in isolation. Without their context, they may have no meaning, or their meaning may be diminished or altered.

This is why proponents must investigate and assess the cultural heritage values of any area that may be affected by the proposed activity. Through consultation with Aboriginal people, this process puts the objects and places into a context that reveals their meaning and significance.

2.1 Process overview

It is not possible to document every circumstance and define the appropriate investigative method to use for each and every investigation and assessment of Aboriginal cultural heritage. However, when investigating and assessing Aboriginal cultural heritage the decision-making process used must rely on a sequence of collecting and analysing information. This process is outlined in Figure 1.

Figure 1: The process for investigating and assessing Aboriginal cultural heritage



Skills to investigate and assess Aboriginal cultural heritage

The investigation and assessment of Aboriginal cultural heritage should make use of all relevant disciplines. The assessment of cultural significance is more than a component of an archaeological assessment or investigation. It cannot be assumed that any one practitioner will have the full range of skills required to investigate and assess cultural significance and harm. During this task it may be necessary to engage additional practitioners with special expertise.

2.2 Review of background information

The purpose of carrying out a background assessment is to compile, analyse and synthesise previous information and relevant contextual information to gain an initial understanding of the cultural landscape. This is primarily a desktop exercise with provision for field visits.

Gaining an initial understanding of the cultural landscape requires information, such as:

- the physical setting or landscape
- history of the peoples living on that land
- material evidence of Aboriginal land use.

Decisions on whether or not a proposed activity is likely to cause harm should not be based on a single source of information. Only a multi-faceted approach will ensure understanding the cultural landscape.

For more information on cultural landscapes refer to OEH's fact sheet: *What is an Aboriginal cultural landscape?* It is available at www.environment.nsw.gov.au/licences/consultation.htm.

Information gathered while applying the *Due diligence code of practice for the protection of Aboriginal objects in NSW* can be used in this step.

2.2.1 Physical setting or landscape description

The land's character greatly influences how Aboriginal people interact with it. Therefore describing the landscape (the physical setting of the land to be assessed) and its resources is essential to understanding the nature of the cultural landscape.

The aim of this description is to provide a clear association between the types of occupation evidence and the landscapes they are found in. The landscape context should also help identify the range of resources available to Aboriginal people living there.

So when compiling the description, the landscape and landform units used for the study (at the different levels of landscape, landscape unit, landform, topographic unit) must be described and mapped. The landscape features, places and natural resources of interest to the Aboriginal people from that area; for example, watercourses, food resources and other inorganic resources (e.g. stone or ochre) must also be identified and mapped.

The physical setting review or landscape description must adhere to OEH's *Code of practice for archaeological investigation of Aboriginal objects in NSW*, available at www.environment.nsw.gov.au/licences/archinvestigations.htm.

2.2.2 History

Historic information of Aboriginal people living on the land includes relevant archival, historic and ethnohistoric sources as well as existing data bases such as the NSW Aboriginal Heritage Information Management System (AHIMS) and Australian Government and State heritage registers.

This research will provide the historical narrative of the peoples who have and continue to live in the region. It will also assist in identifying and mapping any important places, landscapes and features which may be affected by the proposed activity. There may no longer be any physical evidence of places identified through this process (such as structures, planted vegetation or landscape modifications).

Local histories often pay little attention to the Aboriginal history of the locality and can present Aboriginal people as invisible, unrelated to important local historical events, or passive victims of colonisation. So while local historical information will provide important and valuable starting points, when investigating historic values involving Aboriginal people and obtaining oral history is important.

2.2.3 Material evidence of Aboriginal land use

There may be material evidence of Aboriginal land use in the study area. Information from previous archaeological studies can provide a context and baseline for what is known about Aboriginal cultural heritage there. Describing any material evidence of Aboriginal land use should be undertaken in three steps:

- review and analyse previous archaeological work (if any) within the study area and vicinity
- develop a predictive model of Aboriginal site distribution and
- undertake a field inspection and survey of the study area.

The review will indicate the nature and range of occupation evidence expected within the specific landscape contexts. The field inspection will provide a record of any material evidence that can be observed. Each step must be adhere to OEH's *Code of practice for archaeological investigation of Aboriginal objects in NSW*, available at www.environment.nsw.gov.au/licences/archinvestigations.htm.

2.2.4 Limits on the use of existing information

Note any limits on using any available existing information. For example:

- Aboriginal people involved in previous studies or surveys may not have disclosed the existence of places with cultural heritage values as they may not have been under immediate threat when the earlier study was undertaken
- a report from AHIMS does not represent a comprehensive list of all Aboriginal objects or sites in a specified area as it lists recorded sites only and is mostly a record of survey effort.

2.3 Consultation with Aboriginal people

Consultation must adhere to the requirements set out in clause 80C of the NPW Regulation. These are further explained in OEH's *Aboriginal cultural heritage consultation requirements for proponents 2010*.

Clause 80C of the NPW Regulation

Some requirements of this clause include:

- Providing each registered Aboriginal party with detailed information regarding the activity that may be the subject of the proposed application within 28 days after the closing date for the registration of interests.
- Providing the registered Aboriginal parties with at least 28 days to comment on any proposed methodology to be used in preparing the cultural heritage assessment report to be submitted with the application (as referred to in clause 80D).
- Seeking information from the registered Aboriginal parties (in relation to the area of land to which the proposed application relates) on:
 - whether there are any Aboriginal objects of cultural value to Aboriginal people in the area
 - whether there are any places of cultural value to Aboriginal people in the area (whether they are Aboriginal places declared under s.84 of the Act or not).
- Providing the registered Aboriginal parties with at least 28 days to comment on a copy of the draft cultural heritage assessment report.

2.4 Identification and assessment of cultural significance

Heritage consists of things we value today that we wish to pass onto the next generation. It represents a point in time and a dynamic shared history and includes an 'ever-expanding and all-encompassing set of ideas' (Boer & Wiffen 2006).

Assessing the cultural significance of a place means defining the reasons *why* a place is culturally important. Assessing and defining cultural heritage is often challenging as it attempts to articulate individual and collective senses of identity, history and connection with an area or place and can often be emotive (Davidson 1991). However, it is only after understanding which places are culturally significant and why that any decisions can be made about managing them. Once all the reasons for a place's importance are set out, it is possible to assess any changes that may be caused by a proposed activity. This helps ensure any changes do not damage, diminish or remove the reasons for a place's importance. Assessing cultural significance, therefore, involves two main steps:

- identifying the range of values present across the study area
- assessing why they are important.

Values: The Burra Charter

The identification and assessment of cultural heritage encompasses the four values of the Burra Charter: social, historical, scientific and aesthetic values (Australian ICOMOS 1999).

2.4.1 Identifying values

This stage is used to identify the social, historic, scientific and aesthetic values present across the subject area.

The information collected at stage 2.2 can be used to help identify these values. The review of background information and information gained through consultation with Aboriginal people should provide insight into past events. These include how the landscape was used and why the identified Aboriginal objects are in this location, along with contemporary uses of the land.

Information gaps are not uncommon and should be acknowledged. They may require further investigation to adequately identify the values present across the subject area. It may be helpful to prepare a preliminary values map that identifies, to the extent of information available, the:

- known places of social, spiritual, cultural value, including natural resources of significance
- known historic places
- known Aboriginal objects and/or declared Aboriginal places and
- potential places/areas of social, spiritual, cultural value, including natural resources, historic or archaeological significance.

Places of potential value that are not fully identified or defined should be included as 'sensitive' areas to target further investigation.

Social or cultural value

Social or cultural value refers to the spiritual, traditional, historical or contemporary associations and attachments the place or area has for Aboriginal people. Social or cultural value is how people express their connection with a place and the meaning that place has for them.

Places of social or cultural value have associations with contemporary community identity. These places can have associations with tragic or warmly remembered experiences, periods or events. Communities can experience a sense of loss should a place of social or cultural value be damaged or destroyed.

There is not always consensus about a place's social or cultural value. Because people experience places and events differently, expressions of social or cultural value do vary and in some instances will be in direct conflict (Johnston 1992). When identifying values, it is not necessary to agree with or acknowledge the validity of each other's values but it is necessary to document the range of values identified.

Social or cultural value can only be identified through consultation with Aboriginal people. This could involve a range of methodologies, such as cultural mapping, oral histories, archival documentation and specific information provided by Aboriginal people specifically for the investigation.

When recording oral history:

- identify who was interviewed and why
- document the time, place and date the interview was conducted
- describe the interview arrangements (the number of people present, recording arrangements, information access arrangements)
- provide a summary of the information provided to the person being interviewed
- summarise the information provided by each person interviewed.

More information on conducting oral history projects can be found in OEH's publication *Talking history: oral history guidelines* available at www.environment.nsw.gov.au/conservation/TalkingHistoryOralHistoryGuidelines.htm.

Occasionally information about social value may not be forthcoming. In these circumstances, document the consultation process but make it clear in the discussions and conclusions about social value that this was the case.

Historic value

Historic value refers to the associations of a place with a historically important person, event, phase or activity in an Aboriginal community. Historic places do not always have physical evidence of their historical importance (such as structures, planted vegetation or landscape modifications). They may have 'shared' historic values with other (non-Aboriginal) communities.

Places of post-contact Aboriginal history have generally been poorly recognised in investigations of Aboriginal heritage. Consequently the Aboriginal involvement and contribution to important regional historical themes is often missing from accepted historical narratives. This means it is often necessary to collect oral histories along with archival or documentary research to gain a sufficient understanding of historic values.

Scientific (archaeological) value

This refers to the importance of a landscape, area, place or object because of its rarity, representativeness and the extent to which it may contribute to further understanding and information (Australian ICOMOS 1988).

Information about scientific values will be gathered through any archaeological investigation undertaken. Archaeological investigations must be carried out according to OEH's *Code of practice for archaeological investigation of Aboriginal objects in NSW*, available at www.environment.nsw.gov.au/licences/archinvestigations.htm.

Aesthetic value

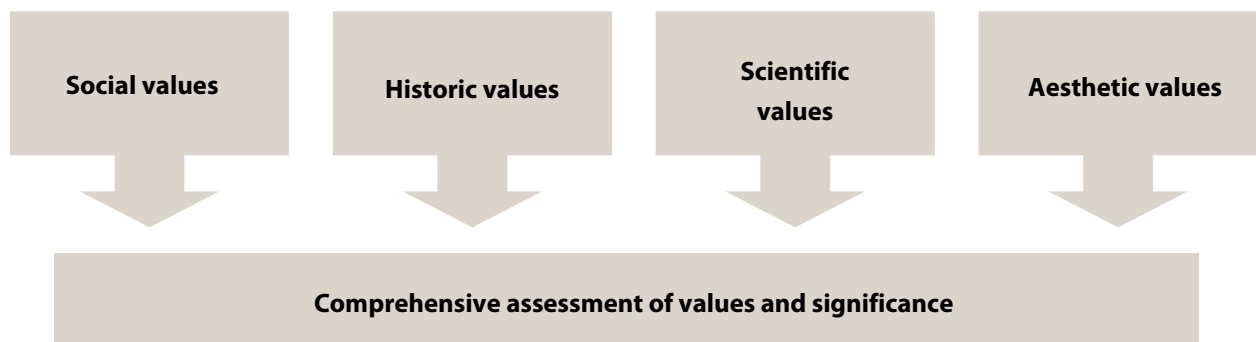
This refers to the sensory, scenic, architectural and creative aspects of the place. It is often closely linked with the social values. It may consider form, scale, colour, texture and material of the fabric or landscape, and the smell and sounds associated with the place and its use (Australian ICOMOS 1988).

2.4.2 Assessing values and significance

This stage is used to assess and discuss the cultural significance of the values identified at stage 2.4.1 by consulting Aboriginal people and to prepare a statement of significance.

The assessment of values is a discussion of *what* is significant and *why*. This is shown diagrammatically in Figure 2.

Figure 2: Assessing values and significance



An assessment of values is more than simply restating the evidence collected at stage 2.2 and 2.4.1. Rather, the assessment should lead to a statement of significance that sets out a succinct summary of the salient values drawn from 2.4.1.

Aesthetic, historic, scientific and social values are commonly interrelated. All assessments of heritage values occur within a social and historic context; therefore all potential heritage values will have a social component.

The assessment and justification in the statement of significance must discuss whether any value meets the following criteria (NSW Heritage Office 2001):

- does the subject area have a strong or special association with a particular community or cultural group for social, cultural or spiritual reasons? – social value
- is the subject area important to the cultural or natural history of the local area and/or region and/or state? – historic value
- does the subject area have potential to yield information that will contribute to an understanding of the cultural or natural history of the local area and/or region and/or state? – scientific (archaeological) value
- is the subject area important in demonstrating aesthetic characteristics in the local area and/or region and/or state? – aesthetic value.

Assessment of each of the criteria (above) should be graded in terms that allow the significance to be described and compared; for example, as high, moderate or low. In applying these criteria, consideration should also be given to (DSEWPC):

- **Research potential:** does the evidence suggest any potential to contribute to an understanding of the area and/or region and/or state's natural and cultural history?
- **Representativeness:** how much variability (outside and/or inside the subject area) exists, what is already conserved, how much connectivity is there?
- **Rarity:** is the subject area important in demonstrating a distinctive way of life, custom, process, land-use, function or design no longer practised? Is it in danger of being lost or of exceptional interest?
- **Education potential:** does the subject area contain teaching sites or sites that might have teaching potential?

Discuss what is significant and why – this should be summarised into a statement of significance. Thus the statement of significance is a succinct summary of the salient values drawn from 2.4.1. The following extract gives an example.

Extract : The cultural significance of Lake Victoria

Social significance

Lake Victoria is of exceptionally high social significance to Aboriginal people because it has spiritual associations as a place of burial and as the location of the Rufus River Massacre. Combined, these establish its symbolic role as a memorial of Aboriginal loss and dispossession. Continuing traditional and historic association with local Aboriginal families has maintained this significance, which extends to the lake and its environment as a whole; culturally recovery of the role of the lake in traditional mythical stories may enhance it. Lake Victoria is also of social significance to non-Aboriginal people with historic or contemporary ties.

Aesthetic significance

Lake Victoria has moderate to high aesthetic significance as a natural landscape because of the visual contrast it provides as a very large lake set into a semi-arid landscape. The nature and integrity of the landscape is closely related to the spiritual and cultural values of the Lake.

Historic significance

Lake Victoria has a very high historic significance because:

- It demonstrates the distinctive way of traditional Aboriginal society at a unique geographical conjunction of the cultures of the lower Murray River and of the Darling River in western NSW.
- It is associated with the historic land wars between Aborigines and Europeans and is the location of one of the key events in that conflict, the Rufus River Massacre.
- It is associated with the history of pastoralism in the Western Division of NSW and with long-term relationships between Aboriginal people and pastoralists, and between Aboriginal people and land.

Scientific significance

Lake Victoria has exceptionally high scientific significance in its potential to yield information that will contribute to an understanding of Australia's natural and cultural history. Key areas of research: evolution of the Murray River; Holocene climatic and environmental change, last 200 years of Aboriginal settlement pattern and history; late Holocene intensification. Key locations within the geographic scope: southern lakebed, eastern beach and Talgarry Island. However, several aspects of the research would involve a holistic approach to the entire lake and its surroundings, so it would be misleading to limit this aspect of significance to specific sites.

Source: Prepared by J Hope for the Murray–Darling Basin Commission (1998), *Lake Victoria: finding the balance. A response to the competing interests of cultural heritage, environment and resource use*, Cultural Heritage Report, Canberra, Australia.

This statement of significance was reproduced with permission of the Murray–Darling Basin Authority.

2.5 Assessing harm

This stage is used to identify the nature and extent of the proposed activity and any potential harm to Aboriginal objects and/or declared Aboriginal places.

All the reasons for the subject area's importance should have been established at stage 2.4. This step is to assess any changes that may be caused by the proposed activity to ensure that it will not harm, diminish or remove the reasons for this importance. When assessing harm associated with a proposed activity, examine its potential effects on Aboriginal objects and declared Aboriginal places and their associated heritage values. This includes the extent to which the development or activity will change the surrounding landscape setting.

It is important to quantify both direct and indirect harm. This is necessary to determine what management is appropriate within the context of the values that were identified at stage 2.4.

Types of harm

Direct harm may occur as the result of any activity which disturbs the ground including, but not limited to, site preparation activities, installation of services and infrastructure, roadworks, excavating detention ponds and other drainage or flood mitigation measures, and changes in water flows affecting the value of a cultural site.

Indirect harm may affect sites or features located immediately beyond, or within, the area of the proposed activity. Examples of indirect impacts include, but are not limited to, increased impact on art in a shelter site from increased visitation, destruction from increased erosion and changes in access to wild food resources.

It is important that the harm described is specific to the Aboriginal object, group of objects or a declared Aboriginal place. This forms a picture of the overall effect of the proposed activity or development in relation to the Aboriginal heritage values (which were identified as significant at stage 2.4). It will reveal which of those values are at risk of being harmed and which objects and places are likely to remain unaffected.

When assessing likely harm on Aboriginal objects and places, consider the principles of ecologically sustainable development (ESD), in particular the precautionary principle and the principle of inter-generational equity.

Principles of ecologically sustainable development

The precautionary principle states that full scientific certainty about the threat of harm should never be used as a reason for not taking measures to prevent harm from occurring. The principle of inter-generational equity holds that the present generation should make every effort to ensure the health, diversity and productivity of the environment – which includes cultural heritage – is available for the benefit of future generations.

As a minimum, consideration of ESD principles should result in:

- An understanding of the cumulative impact of the proposal; for example, the nature and extent of the Aboriginal object or place proposed to be harmed in relation to other identified sites in the region
- ascertaining how, wherever practicable, harm to significant Aboriginal object(s) or place(s) can be avoided (see stage 2.6)
- establishing and assessing the risks and consequences of various options
- assessing the costs and benefits of various options to future generations
- suggesting actions (either on or off site) which are proposed to help to promote intergenerational equity.

2.6 Developing practical measures to avoid harm

This stage identifies what harm is avoidable and therefore what conservation outcomes will be achieved by a proposed activity. This must be done in consultation with Aboriginal people. All practicable measures must be taken to avoid harm and conserve the significant Aboriginal objects and declared Aboriginal places, along with their cultural heritage values identified in stage 2.4.

Consider whether or not the proposal can be redesigned to avoid the expected harm identified at stage 2.5. If harm can be avoided, there is no need for an AHIP application. Possible solutions may include reducing the area of a building footprint, changing its orientation, re-positioning built elements, re-routing infrastructure trenching or incorporating a no-development area into the design of the proposed activity.

A conservation outcome is a deliberate response to protect Aboriginal heritage values, including Aboriginal objects at risk of being damaged. A decision to permanently protect Aboriginal objects in the development area, through a mechanism such as a conservation agreement or covenant, will result in a long-term conservation outcome.

Criteria to use when assessing Aboriginal cultural heritage conservation outcomes include:

- whether or not the outcomes are focused on heritage values of significance to Aboriginal people
- whether or not the outcomes are focused on sites of high archaeological significance
- whether or not Aboriginal people support the proposed measures
- whether or not the measures provide permanent protection
- how protecting heritage values is integrated with protecting biodiversity and other environmental values (where appropriate)
- where the site or place reflects shared history of Aboriginal and non-Aboriginal people, this is acknowledged appropriately.

Conservation outcomes must be well-defined, measurable and achievable.

If it has been determined harm can be avoided, go to stage 2.8.

2.7 Management strategies to minimise harm

After exhausting the options for avoiding harm and providing sustainable conservation outcomes for Aboriginal objects and declared Aboriginal places, the next step is to develop management strategies to minimise the harm that was identified at stage 2.5. This must be done in consultation with Aboriginal people.

The type of management strategies proposed must be appropriate to the significance of Aboriginal heritage values, Aboriginal objects and/or Aboriginal places identified at stage 2.4.

When seeking input from Aboriginal people on management strategies to minimise harm, be confident the harm, identified at stage 2.5, is clearly understood.

Document the proposed method for managing any Aboriginal objects harmed by the proposed activity. Consideration must be given to managing any Aboriginal objects or other heritage values that will remain in the development area after completing the proposed activity. Future management must be approached as a conscious response to ensuring arrangements are in place for the ongoing protection, management and conservation of Aboriginal objects and other heritage values. When deciding on future management responsibilities, consider what will be practical, achievable and affordable.

2.8 Documenting your findings

To see how to document your findings in the form of an Aboriginal cultural heritage assessment report, go to section 3.

3 Preparing an Aboriginal cultural heritage assessment report

An Aboriginal cultural heritage assessment report is a written report documenting the process of investigation, consultation and assessment described in section 2. Section 3 shows how to compile this report.

In the case where harm can be avoided, documenting the findings in an Aboriginal cultural heritage assessment report is still recommended. The report should be submitted for registration on the AHIMS register within three months of completion. Appendix C has contact details for the AHIMS registrar.

In cases where harm cannot be avoided, an Aboriginal Heritage Impact Permit (AHIP) application may be made. Any application for an AHIP must be supported by an Aboriginal cultural heritage assessment report; this is a requirement of the NPW Regulation.

For further information on applying for an AHIP, see OEH's *Applying for an Aboriginal heritage impact permit: guide for applicants*. It is available at www.environment.nsw.gov.au/licences/investassessreport.htm or contact OEH's relevant Environment Protection and Regulation Group (EPRG) regional office. Each EPRG regional office has responsibility for their local area, so contact the office in the region the Aboriginal objects or declared Aboriginal places are located. Appendix B has a list and map of EPRG regions.

All Aboriginal cultural heritage assessment reports submitted to OEH (either to the AHIMS register or to support an AHIP application) must be accompanied by the Aboriginal cultural heritage assessment report cover sheet provided in Appendix D.

3.1 Report contents

An Aboriginal cultural heritage assessment report must contain:

- a description of the Aboriginal objects and declared Aboriginal places located within the area of the proposed activity
- a description of the cultural heritage values, including the significance of the Aboriginal objects and declared Aboriginal places, that exist across the whole area that will be affected by the proposed activity and the significance of these values for the Aboriginal people who have a cultural association with the land
- how the requirements for consultation with Aboriginal people have been met (as specified in clause 80C of the NPW Regulation)
- the views of those Aboriginal people regarding the likely impact of the proposed activity on their cultural heritage (if any submissions have been received as a part of the consultation requirements, the report must include a copy of each submission and your response)
- actual or likely harm posed to the Aboriginal objects or declared Aboriginal places from the proposed activity, with reference to the cultural heritage values identified
- any practical measures that may be taken to protect and conserve those Aboriginal objects or declared Aboriginal places and
- any practical measures that may be taken to avoid or mitigate any actual or likely harm, alternatives to harm or, if this is not possible, to manage (minimise) harm.

Reports that do not cover these points are unlikely to be adequate so the AHIP application is likely to be refused.

Care must be taken in presenting information that may be culturally sensitive to Aboriginal people. Culturally sensitive and/or restricted information must be clearly identified in the report.

3.1.1 Information – detail

The level of information required for the report will vary considerably according to such factors as:

- the number of Aboriginal objects or declared Aboriginal places present in the area
- the significance of the heritage values being addressed
- the complexity of the issues that these values raise
- the nature of the Aboriginal community associated with the area
- the extent of previous survey and other information-gathering for the area and
- the complexity of the proposed activity.

3.1.2 Presentation and maps

The information supplied to support your application must present a well-justified case for the expected harm.

- present information in plain English
- number all pages
- clearly reference citations from other reports, articles and figures using the Harvard style (author, date) referencing
- provide a comprehensive glossary of technical terms used.

Maps must be clearly readable and presented at an appropriate scale. The scale considered appropriate will differ according to the feature being shown. Aerial photographs may provide the necessary coverage for interpreting features and events at a landscape scale.

Maps must include:

- a title, legend, scale, north point, date and source or name of author (company name where appropriate)
- Map Grid Australia references around the margins and datum information using the Map Grid of Australia 1994 (MGA94) cartesian coordinate system where applicable.

3.2 Table of contents

A typical list of contents would include:

Title page

Executive summary

Table of contents

- 1 Introduction
- 2 Description of the area
- 3 Consultation process
- 4 Summary and analysis of background information
- 5 Cultural heritage values and statement of significance
- 6 The proposed activity
- 7 Avoiding and/or mitigating harm
- 8 Recommendations

Glossary

References

Appendices

Executive summary

The report should contain a short concise summary of the report, outlining the aims, results and recommendations.

1. Introduction

The introduction should contain the following information:

- details of the legal entity wishing to carry out the proposed activity and, where applicable, any consultants engaged
- a brief description of the location, nature, scope and objectives of the proposed activity
- an outline of the relevant statutory controls, including the development context applicable to the site
- objectives of the Aboriginal cultural heritage assessment.

2. Description of the area

Clearly define the subject area contained within the report. This must include:

- Topographic map(s) of area's location which clearly defines the boundaries and proposed geographic extent of the proposed activity.
- The exact description and plan of the area showing cadastre information including lot and DP, local government area, parish and zone. The description and locality plan must also show the location of the proposed activity in relation to adjoining land and allotments.
- A description of land where Aboriginal objects or declared Aboriginal places are proposed to be harmed, as well as proposed exclusion areas where no harm is allowed. This description should also include any Aboriginal object, or Aboriginal site or place of significance to the Aboriginal community that is known to occur immediately adjacent to, or to extend across, the boundary between lands subject to the investigation and assessment and adjoining lands or tenure.
- A description of the environment as relevant to the proposed project. This must include, but need not be limited to, geology and soils, landforms, topography, vegetation and waterways present across the study area. Photographs can be included to give a visual description of the study area. Support this description with maps of land units, topography and the location and extent of disturbed and intact areas.
- A description of Aboriginal peoples past and/or current use of land as relevant to the proposed project and surrounding areas. You must identify, describe and map landscape features, places and natural resources on the land that are of interest to the Aboriginal people from that area; for example, watercourses, food resources and other inorganic resources (e.g. stone or ochre).

3. Consultation process

Describe the consultation process initiated at stage 2.3 and how it was carried out through the investigation and assessment.

This section must also include:

- a list of registered Aboriginal parties
- documented evidence of the efforts to contact and consult with Aboriginal people
- a description of any relevant community protocols that were observed
- copies of any submissions received throughout the consultation process
- your response to each submission.

4. Summary and analysis of background information

Present the information compiled, analysed and synthesised at stage 2.2 of the investigation and assessment. Based on the information collected stages 2.2, 2.3 and 2.4, provide a description and insight into what events took place in the past, how the landscape was used and why the identified Aboriginal objects are in this location.

Document any information gaps and make sure all sources are clearly cited using Harvard style (author, date) referencing.

5. Cultural heritage values and statement of significance

This contains a clear description of the heritage values present across the area of the proposed activity that were identified at stage 2.4 along with the process used to derive these. The identified heritage values must be clearly supported by the information compiled, analysed and summarised in section 3 of the report. The aim is to provide a simple expression of why the place is of value, not to restate the evidence presented in section 4.

Also provide the assessment and discussion of significance determined at stage 2.4, including the criteria used.

Refer to submissions (where available) from registered Aboriginal parties that demonstrate their involvement and their views about the identification of heritage values and assessment of their significance.

6. The proposed activity

The description of the proposed activity should be comprehensive and clear to anyone unfamiliar with either the area or the proposed activity. All aspects and phases of the proposed activity should be described, along with its estimated timing. The description must include, but need not be limited to:

- a summary of the history of the area (previous land uses, previous impact assessments and their results)
- clear documentation of what is being proposed in relation to the activity
- identification of any proposed staging and timing (start and finish) of the proposed activity
- clear identification of the potential harm of the proposed activity on the Aboriginal objects and/or declared Aboriginal places
- an assessment of the Aboriginal cultural heritage values relating to the proposed activity site that are likely to be directly or indirectly affected by the proposal
- a clear statement justifying the objectives of the proposed activity.

7. Avoiding and minimising harm

This section of your report must contain a clear description and rationale for the measures identified at stage 2.6 to ensure that harm is avoided and that places of significance to Aboriginal people have been conserved.

Where harm from a proposed activity cannot be avoided, provide a clear description of the proposed management strategies identified at stage 2.7.

In addition to these strategies, also provide:

- Justification for any likely harm, including a discussion of any alternatives considered for the proposal. This must demonstrate how all feasible options to avoid or minimise harm were considered.
- Documentation revealing how you considered the principles of ESD, including cumulative impacts.

- Evidence that the input by Aboriginal people has been considered when determining and assessing real or potential harm, developing options and making final recommendations to ensure that outcomes can be met by the proposed activity. This should include documenting discussions with Aboriginal people about the importance given to alternate conservation outcomes.

Do not propose any avoidance, conservation and/or mitigation measures that are not possible or outside the financial viability of your proposed activity.

8. Recommendations

Provide a clear and succinct summary of what is being proposed and all commitments made in the report.

References

List the authors, title, date and publisher for any reports, articles or books referred to in the report.

Appendices

Appendices may be necessary. These are likely to include:

- letters from registered Aboriginal parties
- AHIMS site cards
- technical reports such as any reports prepared as a result of undertaking archaeological investigations according to OEH's *Code of practice for archaeological investigation of Aboriginal objects in NSW* (available at www.environment.nsw.gov.au/licences/archinvestigations.htm); for example, the survey and test excavation report.

Photographs may be included as an appendix, or may be inserted where relevant throughout the report text.

Remember

- Where harm can be avoided, any documentation of your findings should be submitted to the AHIMS registrar for registration on the AHIMS register.
- Where harm cannot be avoided, your application for an AHIP along with all supporting documentation must be sent to your relevant ERPG Office.

References

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- Bowler J M, Johnston H, Olley JM, Prescott, JR, Roberts RG, Shawcross W & Spooner NA, 2003, 'New ages for human occupation and climatic change at Lake Mungo, Australia', *Nature*, vol. 421, 30 January, pp. 837–40.
- Davidson G 1991, The meaning of Heritage, in Davison G & McConville C (eds) *Heritage handbook*, Allen & Unwin, Melbourne.
- Department of Sustainability, Environment, Water, Populations and Communities, *Criteria for the Register of the National Estate*, accessed 5 Jan 2011 at www.environment.gov.au/heritage/places/rne/criteria.html
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- Hope J 1998, *Lake Victoria: finding the balance. A response to the competing interests of cultural heritage, environment and resource use*, Cultural Heritage Report, Murray–Darling Basin Commission, Canberra, Australia.
- NSW Heritage Office 2001, *Assessing heritage significance*, NSW Heritage Office, Sydney, Australia.

Appendices

Appendix A: Legislation relating to Aboriginal cultural heritage in NSW

The following legislation provides the primary context for Aboriginal heritage management in NSW: the *National Parks and Wildlife Act 1974* (NPW Act), the *Environmental Planning and Assessment Act 1979* (EP&A Act) and the *Heritage Act 1977* (the Heritage Act). Other relevant legislation includes the *Aboriginal Land Rights Act 1983*, the *Native Title Act 1993* (Cth), the *NSW Native Title Act 1994* and other Australian Government legislation.

A.1 National Parks and Wildlife Act 1974

The NPW Act is administered by OEH and is the primary legislation for the protection of some aspects of Aboriginal cultural heritage in NSW. One of the objectives of the NPW Act is:

‘... the conservation of objects, places or features (including biological diversity) of cultural value within the landscape, including but not limited to: (i) places, objects and features of significance to Aboriginal people ...’ (s.2A(1)(b))

Part 6 of the NPW Act provides specific protection for Aboriginal objects and places by making it an offence to harm them. If harm to Aboriginal objects and places is anticipated, apply for an AHIP.

A list of declared Aboriginal places can be found at:

www.environment.nsw.gov.au/conservation/AboriginalPlacesNSW.htm

Further information on the NPW Act can be found at:

www.legislation.nsw.gov.au/viewtop/inforce/act+80+1974+first+0+N

A.2 Environmental Planning and Assessment Act 1979

The EP&A Act, administered by the NSW Department of Planning and Infrastructure, provides planning controls and requirements for environmental assessment in the development approval process. It also establishes the framework for Aboriginal heritage values to be formally assessed in the land-use planning and development consent processes.

Further information on the EP&A Act can be found at: www.legislation.nsw.gov.au

A.3 Heritage Act 1977

The Heritage Act, administered by NSW Office of Environment and Heritage, protects the states’ natural and cultural heritage. Aboriginal heritage is primarily protected under the NPW Act but may be subject to the provisions of the Heritage Act if the item is listed on the State Heritage Register or subject to an interim heritage order (IHO).

The Heritage Act established the NSW Heritage Council, which provides advice and recommendations to the Minister for Heritage. The Minister approves the listing of items and places on the State Heritage Register and can also prevent the destruction, demolition or alteration of items of potential heritage value through an IHO until the significance of the item has been assessed.

Further information on the Heritage Act can be found at www.legislation.nsw.gov.au.

A.4 Aboriginal Land Rights Act 1983

The *NSW Aboriginal Land Rights Act 1983* (ALR Act), administered by NSW Department of Education and Communities, establishes the NSW Aboriginal Land Council (NSWALC) and Local Aboriginal Land Councils (LALCs). The Act requires these bodies to:

- (a) take action to protect the culture and heritage of Aboriginal persons in the council’s area, subject to any other law

- (b) promote awareness in the community of the culture and heritage of Aboriginal persons in the council's area.

These requirements recognise and acknowledge the statutory role and responsibilities of NSWALC and LALCs.

The ALR Act also establishes the registrar whose functions include, but are not limited to, maintaining the Register of Aboriginal Land Claims and the Register of Aboriginal Owners.

Under the NSW Aboriginal Lands Right Act 1983, the registrar is to give priority to the entry in the register of the names of Aboriginal persons who have a cultural association with:

- (a) lands listed in Schedule 14 to the NPW Act
- (b) lands to which section 36A of the ALR Act applies.

Note

Schedule 14 of the NPW Act lists lands of cultural significance to Aboriginal persons that are reserved or dedicated under that Act.

Section 36A of the ALR Act applies to lands that are the subject of a claim by one or more Aboriginal Land Councils under s.36 of that Act and that the crown lands Minister is satisfied would be claimable lands except for the fact that the lands are needed, or likely to be needed, for the essential public purpose of nature conservation.

A.5 Native title legislation

The Native Title Act 1993 (Cth) (NTA) provides the legislative framework to:

- (a) recognise and protect native title
- (b) establish ways in which future dealings affecting native title may proceed and to set standards for those dealings, including providing certain procedural rights for registered native title claimants and native title holders in relation to acts which affect native title
- (c) establish a mechanism for determining claims to native title
- (d) provide for, or permit, the validation of past acts invalidated because of the existence of native title.

The *NSW Native Title Act 1994* was introduced to make sure the laws of NSW are consistent with the Commonwealth's NTA on future dealings. It validates past and intermediate acts that may have been invalidated because of the existence of native title.

The National Native Title Tribunal has a number of functions under the NTA, including maintaining the Register of Native Title Claims, the National Native Title Register and the Register of Indigenous Land Use Agreements and mediating native title claims.

A.6 Other Acts

The Australian Government *Aboriginal and Torres Strait Islander Heritage Protection Act 1984* (Cth) may be relevant if any item of Aboriginal heritage significance to an Aboriginal community is under threat of injury or desecration and state-based processes are unable to protect it. The *Environment Protection and Biodiversity Conservation Act 1999* (Cth) may also be relevant to some proposals, particularly where there are heritage values of national significance present.

Appendix B: OEH Environment Protection and Regulation Group regional offices

Metropolitan

Parramatta

Office of Environment and Heritage, Department of Premier and Cabinet
Planning and Aboriginal Heritage Section

PO Box 668

Parramatta NSW 2124

Phone (02) 9995 5000

Fax (02) 9995 6900

North East

Coffs Harbour

Office of Environment and Heritage, Department of Premier and Cabinet
Planning and Aboriginal Heritage Section

Locked Bag 914

Coffs Harbour NSW 2450

Phone (02) 6659 8294

Fax (02) 6651 6187

North West

Dubbo

Office of Environment and Heritage, Department of Premier and Cabinet
Environment and Conservation Programs

PO Box 2111

Dubbo NSW 2830

Phone (02) 6883 5330

Fax (02) 6884 9382

South

Queanbeyan

Office of Environment and Heritage, Department of Premier and Cabinet
Landscape and Aboriginal Heritage Protection Section

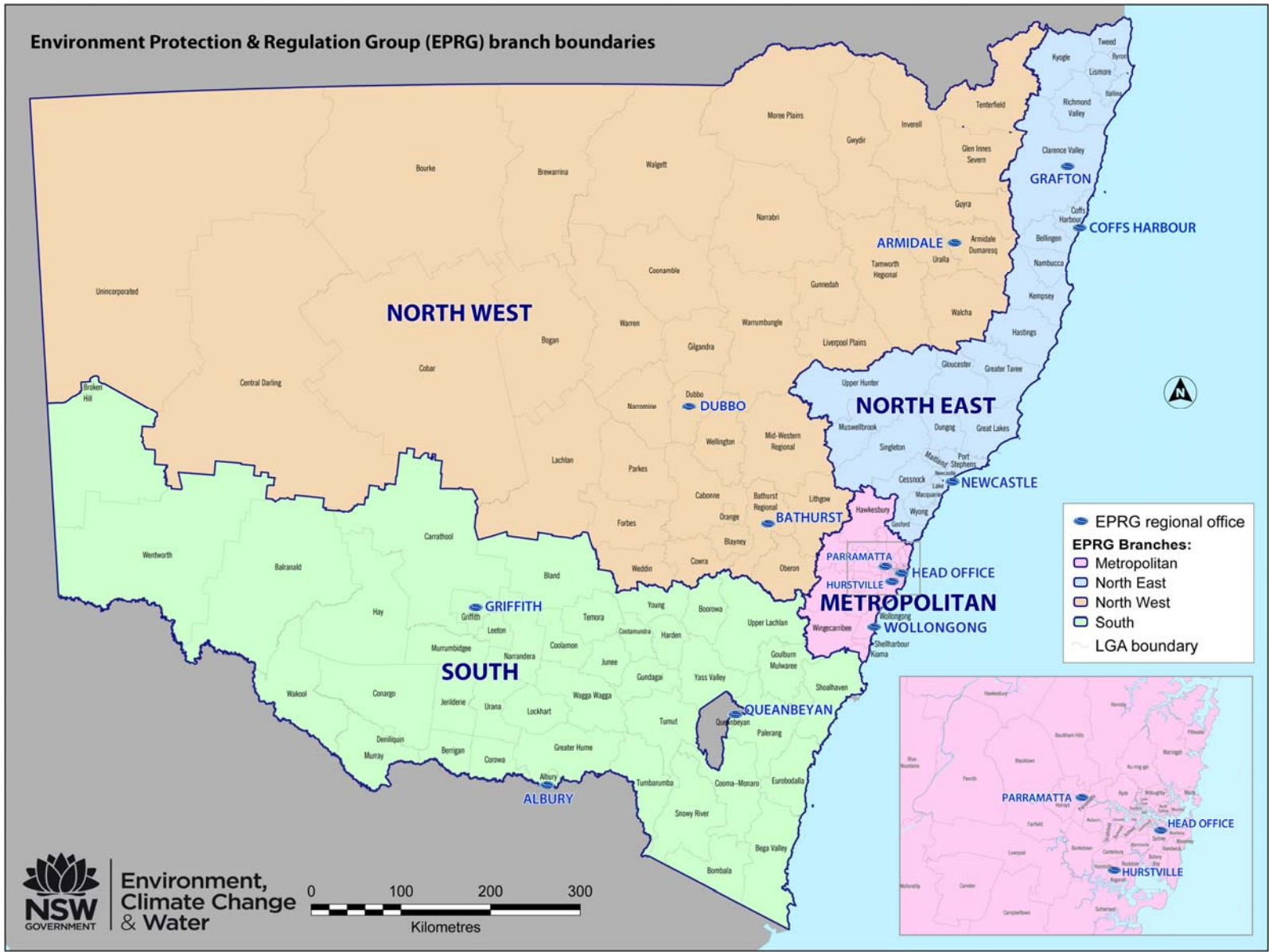
PO Box 733

Queanbeyan NSW 2620

Phone (02) 6229 7188

Fax (02) 6229 7001

See www.environment.nsw.gov/contact for street locations.



Appendix C: Aboriginal Heritage Information Management System

Aboriginal cultural heritage assessment reports must be sent to:

Aboriginal Heritage Information Management System
PO Box 1967
Hurstville NSW 2220

Aboriginal cultural heritage assessment reports should ideally be submitted electronically (on CDs) in PDF format (not password protected).

Also recommended is sending survey boundaries in GIS shape-files format (CAD or MapInfo formats are not supported). These files should contain a single polygon (multi-part if more than one non-adjacent area was surveyed) and the name of the report as the main table attribute.

Appendix D: Aboriginal cultural heritage assessment report cover sheet

Report title _____

Author(s) name _____

Author(s) contact details Address _____
Email _____ Phone _____
Fax _____

Address of subject area No _____ Street _____
Suburb _____ State _____ Postcode _____
Title reference _____
Local government area _____
Other _____

Report prepared for Company name _____
Contact person _____
Address _____

Email _____
Phone _____ Fax _____

Date of report _____

Use of report/ confidentiality _____

This report is not confidential except as expressly stated

This report may be used by OEH in a number of ways including: placing it in a database; generally making hard and electronic copies available to the public; and communicating the report to the public. However, if this report (or part thereof) is confidential or sensitive please advise OEH and any restrictions as to use of this report in the space above, otherwise leave it blank.

Copyright owner of the report

Circumstances under which report was prepared Provide information about the circumstances which led to the preparation of the report. For example: is the author the copyright owner of all material (including images) in the report? Was the author retained by a commissioning party and, if so, did the agreement contain a clause about copyright ownership? Was the report first published in Australia and/or was it prepared under the direction or control of a state department, agency or statutory corporation.

Indemnity

If the person/entity who claims to be the copyright owner of the report is not entitled to claim copyright in the report, he/she/it indemnifies all persons using the report in accordance with the National Parks & Wildlife Act 1974 against any claim, action, damage or loss in respect of breach of copyright.

