

A Guide to Aboriginal Cultural Heritage

This guide explains how Council reviews Development Applications for lodgement having regard to legislative requirements in NSW.

Legislative Requirements

Assessment of Aboriginal cultural heritage is assessed under the legislation below:

- The objectives of the [Environmental Planning and Assessment Act 1979](#) (EP&A Act) includes the sustainable management of built and cultural heritage (including Aboriginal heritage). Clause 4.46 of the EP&A Act states assessments which require an Aboriginal Heritage Impact Permit (AHIP) are integrated development. The [Environmental Planning and Assessment Regulation 2021](#) provisions integrated development and consultation requirements for development which require an AHIP.
- *Central Coast Local Environmental Plan 2022* defines Aboriginal heritage to “include (but is not limited to) places that are declared under Section 84 of the *National Parks and Wildlife Act 1974*”. [Clause 5.10 of the CCLEP](#) requires the consent authority to “in respect of a heritage item or heritage conservation area, consider the effect of the proposed development on the heritage significance of the item or area concerned”.
- The [National Parks and Wildlife Act 1974](#) (NPWS Act) governs the protection of Aboriginal heritage for NSW, with Heritage NSW being the appropriate regulatory authority. Items and places listed under the NPWS Act are listed on the AHIMS website and available to the public with a free login. The standard assessment for Aboriginal heritage is through a NPWS Act Aboriginal Heritage Due Diligence assessment.
- Pursuant to the [State Environmental Planning Policy \(Resilience and Hazards\) 2021](#), Aboriginal cultural heritage, practices and places are required to be considered within coastal use or coastal area.
- The Department of Climate Change, Energy, the Environment and Water (DCCEEW) is the appropriate regulatory authority for harm to Aboriginal heritage.

All landowners have obligations regarding Aboriginal cultural heritage under the abovementioned legislation. The cost associated with complying with the above-mentioned legislation regarding Aboriginal cultural heritage must be borne by the applicant.

Lodgement Requirements

- There are two mechanisms which trigger the requirement for additional information or Due Diligence Assessment (DDA) to be submitted:
 1. An AHIMS search identifies one or more registered Aboriginal heritage sites within 200m of the development; or
 2. The proposed development is located within a “high-risk area”, and the excavation footprint is undisturbed.

Note: The Due Diligence code of practice identifies areas considered to be “high risk” if the ground surface is undisturbed. These areas include land located within 200m of water, or located within the sand dune system, or located on a ridge top, ridgeline or headland, or located within 200m below or above a cliff face, or within 20m of a rock cave, shelter or cave mouth.

- The first step in the development assessment process which involves vegetation removal and/ or ground disturbance is an [AHIMS search](#).

Aboriginal objects, items and places are registered on the AHIMS website and available to the public with free login. The assessment process involves a free [AHIMS search](#) within 200m of the proposed disturbance site using lot and DP or residential address.

This ‘Basic Search’ simply identifies how many Aboriginal places or objects exist within the defined search area (if any). Zero (0) indicates there aren’t any sites or a number (e.g. 2) would indicate there are two sites located within the defined search area. These results can be viewed immediately online.

If sites are identified, the user is then asked to request an ‘Extensive Search’. An ‘Extensive Search’ provides more detailed information about the identified site, including the type of site (e.g. scarred tree, burial, midden), in some cases who recorded the site, or whether a report exists about the site.

The Department of Climate Change, Energy, Environment and Water (DCCEEW) decides what information about a registered site is to be given out as a result of an Extensive Search and what information is to be kept confidential. A fee is currently charged by the DCCEEW for an ‘Extensive Search’ request, with additional costs for GIS or express services. These fees are able to be waived by DCCEEW for Aboriginal organisations and Local Aboriginal Land Councils.

- Where the AHIMS basic search **does not** identify any registered sites or declared Aboriginal places within the area of search, and where prior substantial disturbance is adequately demonstrated, no further information is required to be submitted with a development application other than a saved copy of the AHIMS Basic Search and a statement confirming disturbance history and justified exclusion from high-risk areas.
- If the AHIMS search indicates that there are Aboriginal Heritage objects / sites **near** the subject site, but **not on the subject site**, the following options are available:
 1. Obtain an Aboriginal Heritage Due Diligence assessment, conducted by an Archaeologist which will then dictate if further consideration is required. The AHIMS search and Aboriginal Heritage Due Diligence assessment must be submitted at the time of lodgement; or

2. Council acknowledges the time and cost associated with obtaining an Aboriginal Heritage Due Diligence assessment. As such, in lieu of sourcing an Aboriginal Heritage Due Diligence assessment and upon confirmation that the proposed development is located within 200m of an AHIMS registered site, but not located on the land of proposed development, Council may also accept all 'site cards' and any 'archaeological reports' for all AHIMS registered site. These site cards and reports must indicate that the proposed works will not impact upon the items of heritage and must be provided at lodgement. Refer to '[how to search for Aboriginal Sites for due diligence](#)' for details on how to request these documents and the associated cost.
- Where the AHIMS 200m search indicates that there are Aboriginal Heritage objects on the subject site OR the disturbance footprint is "**high risk**", a Due Diligence Assessment must be submitted with the application at lodgement.
 - Where a proposal is confirmed as **potentially harming** Aboriginal heritage by way of the recommendations contained with the Aboriginal Heritage Due Diligence assessment, an Aboriginal Cultural Heritage Report (ACHAR) will be required to inform the requirement for an Aboriginal Heritage Impact Permit (AHIP).

If the ACHAR confirms that Aboriginal objects are present or likely to be present and an activity will harm those objects, then an AHIP application will be required as prescribed under section 90a of the *National Parks and Wildlife Act 1974*.

An AHIP application may be accepted before a decision or determination under the EP&A Act is made, but as a general rule an AHIP will not be issued (where it is determined that an application should be granted) before any necessary development consent has been obtained or determination made. As such, any application requiring an AHIP must be lodged as integrated development and be supported at lodgement by the ACHAR.

Further assistance

Central Coast Council offers a range of services, free of charge, to discuss preliminary development and zoning matters with Council staff members including town planners, building surveyors and development engineers.

Paid services including written advice, pre-development meetings and post-consent can also be requested.

Should you require clarification on any component of this document further assistance can be provided by Councils Development Advisory Services Section. Alternatively, you can contact Heritage NSW on 02 9873 8500 or via email on heritagemailbox@environment.nsw.gov.au.