
PART B: Site planning controls
Section B4 Aboriginal cultural heritage

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1.0 Introduction

Engaging with Aboriginal culture and heritage is more than physical objects and places of significance. It requires a better understanding of and connection with Country, including narratives and the relationship between places.

We live, work, and play on unceded lands and have a responsibility to respect and care for Country. As a result, our cultural landscapes should be managed and constructed to reflect their uniqueness. When designing and building on Country we need to consider the spiritual and cultural aspects of a living environment where tangible and intangible intersect with past, present, and future. To meet the current sustainability challenges and be better caretakers of our environment, architects, designers, and construction managers need to become familiar with Indigenous ways of knowing, being, seeing, and doing. This is done by acknowledging Country as the author, guide, and reference point for creating design that blends, moulds, and correlates with Australia's cultural landscape. Using best practices, we acknowledge those who walked before us.

Country, for Aboriginal people, relates to the cultural group and land to which they belong, and to their place of origin in cultural, spiritual and literal terms. Country includes the land, and also the waters and skies, the journeys between them and incorporates the tangible and intangible, knowledges and cultural practices, identity and reciprocal relationships, belonging and wellbeing.

Aboriginal cultural heritage consists of objects and places that are of significance to Aboriginal people because of their traditions, observances, lore, customs, beliefs, and history. It may comprise of physical or non-physical elements. There are many sites of special significance to Aboriginal communities, these should be preserved for all people, as a part of our heritage.

Aboriginal objects and places are protected in NSW under the *National Parks and Wildlife Act 1974* (NPW Act), administered by NSW Government. The NPW Act makes it an offence to willingly and knowingly harm or desecrate an Aboriginal object or Aboriginal place without a permit. Harm is defined as destroying, defacing, damaging or moving an object from the land.

2.0 Application

This section applies to all development where the proposal involves ground disturbance or excavation (including demolition works).

This section applies to all development where the proposal is referred to the Urban Design Review Panel and:

- a. the development consists of any of the following:
 - i. the erection of a building,
 - ii. the substantial redevelopment or the substantial refurbishment of an existing building,
 - iii. the conversion of an existing building, and
- b. the building concerned is at least three or more storeys, and
- c. the building concerned contains at least four or more dwellings and/or at least 245m² or more gross floor area.

3.0 Additional information

References

- *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010*, April 2010, Department of Environment, Climate Change and Water.
- *Aboriginal Heritage Study: Newcastle Local Government Area*, December 2005, Australian Museum Business Services.
- *Better Placed: Connecting with Country: Good practice guidance on how to respond to Country in the planning, design and delivery of built environment projects in NSW*, 2023. Sydney: Government Architect NSW.
- *The Burra Charter: The Australia ICOMOS Charter for Places of Cultural Significance*, 2013, Australia ICOMOS, A.C.T.
- *Code of Practice for Archaeological Investigation of Aboriginal Objects in New South Wales*, October 2010, Department of Environment, Climate Change and Water.

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

4.0 Objectives

1. Adopt a precautionary approach to Aboriginal cultural heritage that supports conservation of Aboriginal objects and places of heritage significance to Aboriginal people.
2. Identify and conserve Aboriginal objects and places of heritage significance to Aboriginal people within the local government area (LGA) and ensure it is respected and interpreted within development.
3. Ensure development is designed and planned to care for and connect with Country.

5.0 Definitions

A word or expression has the same meaning as it has in *Newcastle Local Environmental Plan 2012* ([LEP 2012](#)), unless otherwise defined. Other words and expressions include:

- **Aboriginal cultural significance** – the living, traditional and historical practices, representations, expressions, beliefs, knowledge, and skills (together with the associated environment, landscape, places, objects, ancestral remains and materials) that Aboriginal people value as part of their cultural heritage and identity.
- **Aboriginal place** – means any place declared by the Minister to be an Aboriginal place under the *NSW National Parks and Wildlife Act 1974*.
- **Compatible use** – a use which respects the heritage significance of a place. Such a use involves no, or minimal, impact on heritage significance.
- **Conservation** – is all of the processes of looking after a place to retain its heritage significance as defined by the Burra Charter including retention or reintroduction of use, retention of associations and meanings, maintenance, preservation, restoration, reconstruction, adaptation, and interpretation.
- **Country** – for Aboriginal peoples, Country relates not only to the cultural group and land to which they belong, it is also their place of origin in cultural, spiritual, and literal terms. Country includes not only the land, waters, and skies, but also incorporates the tangible and intangible knowledge, cultural practices, identity, reciprocal relationships, belonging and wellbeing.
- **Curtilage** – includes the area of land (including land covered by water) surrounding an Aboriginal object or Aboriginal place that contributes to its heritage significance and has the same meaning as in LEP 2012.
- **Declared Aboriginal place** – refer to 'Aboriginal place'.
- **Heritage significance** – also includes “Cultural Significance” and has the same meaning as in LEP 2012. It is embodied in the place itself, its fabric, setting, use, associations, meanings, records, related places and related objects. Places may have a range of values for different individuals or groups.
- **In the vicinity** – means the surrounding context, environment or setting of a heritage item or archaeological site.
- **Interpretation** – means all the ways of presenting the heritage significance of a place.
- **Place** – is a geographically defined area that may include elements, objects, spaces and views. Place may have tangible and intangible dimensions.
- **Restoration** – means returning the existing fabric of a building or work to a known earlier state by removing accretions or by reassembling existing components without the introduction of new materials.
- **Setting** – the context within which a building or structure is situated in relation to the surroundings.

For example, buildings, roof scapes, chimneys, valleys, ridges, trees, parks, gardens, view corridors, vantage points and landmarks may contribute to the setting of a building.

- **Use** – the functions of a place, including the activities and traditional and customary practices that may occur at the place or are dependent on the place.
- **View** – means an extensive or long range outlook towards a particular urban aspect or topographical feature of interest.

6.0 Application requirements

Development proposals are grouped into categories, which determine the level of information required with a development application. Both sub-sections 6.1 and 6.2 need to be considered; some development proposals will fall under both sub-sections.

6.1 Aboriginal due diligence application requirements

Development category	Application requirements	Explanatory notes
<p>Category 1: Any proposal that involves ground disturbance or excavation (other than point penetration, eg tent pegs, temporary fences or signs).</p>	<p>1.1 - Submit a copy of the Aboriginal Heritage Information Management System (AHIMS) 'Basic Search' conducted with a buffer of 200m of the development site (pdf version).</p> <p>1.2 - Submit supporting evidence to adequately demonstrate:</p> <ol style="list-style-type: none"> a. the development site (or development footprint) has been substantially disturbed over an equal or greater area and to an equal or greater depth and/or severity than would result from the proposed development or activity b. that there is, consequently, no likelihood of remnant tangible heritage materials. <p>1.3 - 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.</p> <p>1.4 - Where the AHIMS basic search does identify a registered site or a declared Aboriginal place within the area of search, follow the process outlined for Category 2 developments.</p> <p>1.5 - 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 cannot be adequately demonstrated, follow the process outlined for Category 4 developments.</p>	<p>The AHIMS is the online register of notified Aboriginal objects and declared Aboriginal places in NSW maintained by the relevant NSW Government authority. You can do your own search of AHIMS to discover if an Aboriginal object has been recorded or an Aboriginal place declared on a parcel of land.</p> <p>Aboriginal sites may exist on a parcel of land in the LGA even though they have not been recorded in AHIMS.</p> <p>The precautionary principle or a conservative approach will be applied when assessing claims of prior substantial disturbance. Documentary evidence to support the claim could include prior site plans/reports, or photographs, or contemporary reports providing an assessment of the degree of disturbance.</p> <p>The NPW Act makes it an offence to willingly and knowingly harm or desecrate an Aboriginal object or Aboriginal place without a permit. Harm is defined to mean destroying, defacing, damaging or moving an object from the land.</p> <p>Standard development consent conditions will alert the developer to NPW Act requirements in the event of an unexpected find.</p> <p>Should any Aboriginal objects be found or disturbed during development works not covered by a valid Aboriginal Heritage Impact Permit, excavation or disturbance of the area must stop immediately and the relevant NSW Government authority informed in accordance with the NPW Act. Works affecting Aboriginal objects on the site must stop until the relevant authority has been informed and the appropriate approvals are</p>

		in place. Aboriginal objects must be managed in accordance with the NPW Act and severe penalties can be applied to corporations or individuals found to be in breach of it.
<p>Category 2: Any proposal involving ground disturbance or excavation (other than point penetration, eg tent pegs, temporary fences or signs) and where the AHIMS 'Basic Search' identifies a registered Aboriginal site or a declared Aboriginal place.</p>	<p>2.1 - Submit a copy of the AHIMS 'Extensive Search' (pdf version).</p> <ul style="list-style-type: none"> a. Submit supporting evidence to adequately demonstrate that the development site (or development footprint) has been substantially disturbed over an equal or greater area and to an equal or greater depth and/or severity than would result from the proposed development or activity b. that there is, consequently, no likelihood of remnant tangible heritage materials. <p>2.2 - Where the AHIMS extensive search does not identify any registered sites or declared Aboriginal places within the development site, or within the buffer of a declared Aboriginal place or AHIMS listed site, and where prior substantial disturbance is adequately demonstrated, no further information is required to be submitted.</p> <p>2.3 - Where the AHIMS extensive search does identify a registered site or declared Aboriginal place within the development site or within the buffer of a declared Aboriginal place or AHIMS listed site, follow the process outlined for Category 3 developments.</p> <p>2.4 - Where the AHIMS extensive search does not identify any registered sites or declared Aboriginal places within the development site or within the buffer of a declared Aboriginal place or AHIMS listed site, and where prior substantial disturbance cannot be adequately demonstrated, follow the process outlined for Category 4 developments.</p>	<p>Apply a buffer of 100m around a declared Aboriginal place when identifying development proposals in the vicinity of a declared Aboriginal place that warrants assessment.</p> <p>Apply a buffer of 100m around all listed/recorded sites, other than isolated finds where a 50m buffer will apply, when identifying development proposals in the vicinity of registered sites that warrants assessment. Include both destroyed and extant sites.</p>
<p>Category 3: Any proposal involving ground disturbance or excavation (other than point penetration, e.g. tent pegs, temporary fences or signs) and where the AHIMS 'Extensive Search' identifies a registered Aboriginal site or declared Aboriginal</p>	<p>3.1 - Follow the Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW (DECC, 2010) and either submit:</p> <ul style="list-style-type: none"> a. preliminary Aboriginal cultural heritage due diligence investigation – a desktop assessment and visual 	<p>The Aboriginal heritage sensitivity of the development site is to be identified in the documentation prepared in accordance with the due diligence assessment process.</p> <p>To undertake a preliminary site survey, engage an Aboriginal heritage consultant as well as a representative from the</p>

<p>place within the development site, or within the buffer of an AHIMS listed site or declared Aboriginal place.</p>	<p>inspection – where either of these indicate there are (or likely to be) Aboriginal objects in the area of the proposed activity, more detailed investigation and impact assessment (AHCAR) will be required (go to 3.1(b)). Where either of these do not indicate there are (or are likely to be) Aboriginal objects in the area of the proposed activity, the report can recommend works proceed with caution without applying for an Aboriginal Heritage Impact Permit (AHIP) under the NPW Act</p> <p>b. an Aboriginal Cultural Heritage Assessment Report (AHCAR) – a detailed investigation and impact assessment in line with the <i>Guide to investigating, assessing and reporting on Aboriginal Cultural Heritage in NSW</i> (OEH, 2011) – where after this detailed investigation and impact assessment it is determined that harm will occur to Aboriginal objects or a declared Aboriginal place then an AHIP application under the NPW Act must be made.</p> <p>These documents are to be prepared by a suitably qualified and experienced heritage consultant(s) who specialise(s) in Aboriginal archaeological and cultural heritage assessment.</p>	<p>applicable Local Aboriginal Land Council (LALC) and any registered native title holder / claimant (i.e., as identified in the National Native Title Register).</p> <p>The need to prepare an AHCAR will depend on the findings of the preliminary site survey. If the proposal will harm a known Aboriginal object or Aboriginal place, an Aboriginal Heritage Impact Permit will be required under the NPW Act. This is separate to development consent. It is your responsibility to obtain the permit from the relevant NSW Government authority, separate to the development assessment process.</p> <p>A development consent can't be acted on if the relevant NSW Government authority requires but has not issued a permit. The NPW Act makes it an offence to willingly and knowingly harm or desecrate an Aboriginal object or declared Aboriginal place without a permit. Harm is destroying, defacing, damaging or moving an object from the land.</p>
<p>Category 4: Any proposal involving ground disturbance or excavation (other than point penetration, e.g. tent pegs, temporary fences or signs), and where the AHIMS basic search does not identify any registered sites or declared Aboriginal places in the area of search or where the AHIMS extensive search does not identify any registered sites or declared Aboriginal places within the development site, or the buffer of a declared Aboriginal place or AHIMS listed site, and where prior substantial disturbance cannot be adequately demonstrated – where the development site:</p>	<p>4.1 - Submit supporting evidence to confirm whether the development site is within an Environmentally sensitive area, contains mature trees that may be over 150 years old, and is within a landscape sensitive setting.</p> <p>4.2 - Where the site is within an Environmentally sensitive area or contains mature trees that may be over 150 years old, or is within a landscape sensitive setting, follow the process outlined for Category 3 developments.</p> <p>4.3 - Where the site is not within an environmentally sensitive area and does not contain mature trees that may be over 150 years old, and is not within a landscape sensitive setting, no further information is required to be submitted.</p>	<p>The precautionary principle or a conservative approach will be applied when assessing claims of sites that contain mature trees that may be over 150 years old. Such trees may have the potential for Aboriginal scarring, with both living and dead trees considered (including stumps, stags and fallen logs).</p>

<ul style="list-style-type: none"> a. is within an 'Environmentally sensitive area' as defined in Clause 3.3(2) of LEP 2012; or b. contains mature trees that may be over 150 years old; or c. is within a 'landscape sensitive setting': <ul style="list-style-type: none"> i. within 200m of a waterbody ii. within a sand dune system iii. on a ridge top, ridge line or headland iv. within 200m below or above a cliff face v. within 20m of or in a cave, rock shelter, or a cave mouth. 		
<p>Category 5: Any proposal that does not meet the development threshold for Categories 1 to 4 above.</p>	<p>5.1 - No further information is required to be submitted.</p>	<p>Both sub-sections 6.1 (Aboriginal due diligence application requirements) and 6.2 (Connecting with Country application requirements) need to be considered; development proposals may fall under both sub-sections.</p>

6.2 Connecting with Country application requirements

Development category	Application requirements	Explanatory notes
<p>Category A: Any proposal that is referred to the Urban Design Review Panel and:</p> <ul style="list-style-type: none"> a. the development consists of any of the following: <ul style="list-style-type: none"> i. the erection of a building, ii. the substantial redevelopment or the substantial refurbishment of an existing building, iii. the conversion of an existing building, and b. the building concerned is at least three or more storeys, and c. the building concerned contains at least four or more dwellings and/or at least 245m² or more gross floor area. 	<p>1.1 - Development proposals are to be accompanied by a Connecting with Country strategy to ensure the development is designed and planned to care for and connect with Country.</p>	<p>Development proposals referred to the Urban Design Review Panel are to include a Connecting with Country strategy.</p> <p>Connecting with Country strategy identifies design measures for the development to respect and respond (where relevant) to:</p> <ul style="list-style-type: none"> • Identified significant cultural sites, places, views, dual-named landscape features, traditional movement corridors and narratives of Country; • The natural landscape, including topography and native vegetation by providing clear and legible links (within the road network and public domain) between ridgetops, creek lines and coastal waters, and retaining native vegetation clusters and corridors through the siting of buildings; and • Natural systems, including significant tributaries and waterways in the Hunter River catchment by avoiding significant impacts to ecological condition and the function of ecosystems as well as protect and restore native riparian vegetation. <p>The Aboriginal cultural heritage values of place (natural, aesthetic, historic, scientific, social, and spiritual) are interdependent and overlapping, and have tangible and intangible dimensions. Places have a collective value and should not be considered in isolation. Each place is situated within a wider cultural landscape that are connected to each other in a complex web spanning both time and space.</p> <p>Eight landscape features in the LGA are officially dual-named with their traditional Aboriginal names. The names are based on Aboriginal references to the landmarks documented in maps, sketches and geological descriptions dating back to as early as 1798. They are:</p> <ul style="list-style-type: none"> • Whibayganba (Nobbys Head) • Tahlbihn (Flagstaff Hill / Fort Scratchley) • Burrabihngarn (Pirate Point, Stockton) • Yohaaba (Port Hunter) • Coquun (Hunter River: South Channel) • Khanterin (Shepherds Hill) • Toohrnbing (Ironbark Creek) • Burraghinhbihng (Hexham Swamp) <p>Refer to <i>Better Placed: Connecting with Country: Good practice guidance on how to</i></p>

		<i>respond to Country in the planning, design and delivery of built environment projects in NSW, 2023. Sydney: Government Architect NSW for further information and guidance on how development can be designed and planned to care for and connect with Country.</i>
<p>Category B: Any proposal that does not meet the development threshold for Category A above.</p>	<p>2.1 - No further information is required to be submitted.</p>	<p>Both sub-sections 6.1 (Aboriginal due diligence application requirements) and 6.2 (Connecting with Country application requirements) need to be considered; development proposals may fall under both sub-sections.</p>

7.0 General provisions

Objectives		
<ol style="list-style-type: none"> 1. Ensure due diligence is followed before carrying out development that may harm Aboriginal objects and Aboriginal places of heritage significance. 2. Ensure reasonable steps are taken to consider if Aboriginal cultural heritage may be present and avoid harm to that heritage. 3. Ensure development is designed and planned to care for and connect with Country. 4. Ensure development provides high-quality cultural interpretation to improve understanding and connection to Country. 		
Controls (C)	Acceptable solutions (AS)	Explanatory notes
C-1.Development avoids or minimises harm to Aboriginal objects or Aboriginal places of heritage significance.	<p>AS-1.Any areas of Aboriginal cultural heritage value in, or adjoining, the proposed development, including areas in the development site (or footprint) are identified and reasonable steps are taken to avoid harm to that heritage.</p> <p>AS-2.Achieves the Application Requirements of Category 1, 2, 3 or 4 above.</p>	<p>Possible uses for sites with identified Aboriginal cultural heritage include passive open space, environmental conservation, and riparian corridors.</p> <p>If the proposal will harm a known Aboriginal object or Aboriginal place, an Aboriginal Heritage Impact Permit (AHIP) is required under the NPW Act. This permit is separate to development consent. It is your responsibility to obtain the permit from the relevant NSW Government authority, separate to the development assessment process.</p> <p>The development consent cannot be acted on if the permit is required and not issued by the relevant State Government authority, as the NPW Act makes it an offence to willingly and knowingly harm or desecrate an Aboriginal object or declared Aboriginal place without a permit. Harm is defined to mean destroying, defacing, damaging or moving an object from the land.</p>
C-2.Development retains, conserves and does not detract from the features and cultural values of the Aboriginal object or declared Aboriginal place.	<p>AS-1.Development is appropriately sited to ensure the curtilage and setting of the Aboriginal object or declared Aboriginal place is retained and conserved.</p> <p>AS-2.Achieves the Application Requirements of Category 1, 2, 3 or 4 above.</p>	
C-3.Development is compatible with the Aboriginal cultural significance of the place.	<p>AS-1.Development avoids land containing high Aboriginal heritage sensitivity.</p> <p>AS-2.Achieves the Application Requirements of Category 1, 2, 3 or 4 above.</p>	The Aboriginal heritage sensitivity of the development site is to be identified in the documentation prepared in accordance with the due diligence assessment process.

<p>C-4. Development adjoining, or adjacent to, an Aboriginal object or Aboriginal place should have no impact on that object or place.</p>	<p>AS-1. Achieves the Application Requirements of Category 1, 2, 3 or 4 above.</p>	<p>Apply a buffer of 100m around a declared Aboriginal place when identifying development proposals within the vicinity of a declared Aboriginal place that warrants assessment.</p> <p>Apply a buffer of 100m around all listed/recorded sites, other than isolated finds where a 50m buffer will apply, when identifying development proposals within the vicinity of registered sites that warrant assessment. Include both destroyed and extant sites.</p>
<p>C-5. Development is designed to care for and connect with Country.</p>	<p>AS-1. Development is appropriately designed and sited to ensure the scenic and cultural heritage connections and values of native vegetation clusters, waterways, coastal waters, riparian lands and ridgelines are preserved and/or restored.</p> <p>AS-2. The design and planning of Category A development proposals are underpinned by and include a Connecting with Country strategy ensuring long-term conservation and restoration (where relevant) outcomes for Country.</p> <p>AS-3. Achieves the Application Requirements of Category A above.</p>	<p>Development proposals referred to the Urban Design Review Panel are to include a Connecting with Country strategy that identifies development design measures that respect and respond (where relevant) to:</p> <ul style="list-style-type: none"> • identified significant cultural sites, places, views, dual-named landscape features, traditional movement corridors and narratives of Country • the natural landscape, including topography and native vegetation by providing clear and legible links (within the road network and public domain) between ridgetops, creek lines and coastal waters, and retaining native vegetation clusters and corridors through the siting of buildings • natural systems, including significant tributaries and waterways in the Hunter River catchment by avoiding significant impacts to ecological condition and the function of ecosystems as well as protect and restore native riparian vegetation <p>The Aboriginal cultural heritage values of place (natural, aesthetic, historic, scientific, social, and spiritual) are interdependent and overlapping, and have tangible and intangible dimensions. Places have a collective value and should not be considered in isolation. Each place is situated within a wider cultural landscape that are connected to each other in a complex web spanning both time and space.</p> <p>Eight landscape features in the LGA are officially dual-named with their traditional Aboriginal names. The names are based on Aboriginal references to the landmarks documented in maps, sketches and geological descriptions dating back to as early as 1798. They are:</p> <ul style="list-style-type: none"> • Whibayganba (Nobbys Head) • Tahlbihn (Flagstaff Hill / Fort Scratchley) • Burrahingarn (Pirate Point, Stockton) • Yohaaba (Port Hunter) • Coquun (Hunter River: South Channel) • Khanterin (Shepherds Hill) • Toohrnbing (Ironbark Creek) • Burrahingarn (Hexham Swamp) <p>Refer to <i>Better Placed: Connecting with Country: Good practice guidance on how to respond to Country in the planning, design and delivery of built environment projects in NSW, 2023</i>. See <i>Sydney: Government Architect NSW</i> for further information and guidance on how development can be designed and planned to care for and connect with Country.</p>

<p>C-6.Development provides high quality Aboriginal cultural heritage interpretation at the site to improve understanding and sense of place within the community.</p>	<p>AS-1.Development provides high quality Aboriginal cultural heritage interpretation at the site, appropriate for the level of heritage significance to improve understanding and connection to Country.</p>	<p>Cultural heritage interpretation may include heritage or cultural values interpretation, artwork, signage, public access, guided walks, electronic media, architectural design and built form etc. Any interpretation or signage is to be delivered in consultation with relevant local Aboriginal stakeholders, considering the sensitivity of Aboriginal cultural heritage, knowledge, and values.</p>
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