

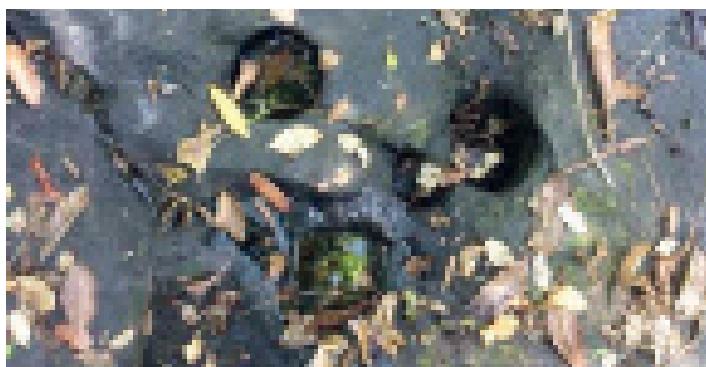
## 3 Frequently asked questions

### Aboriginal cultural heritage information series



This fact sheet outlines and answers some frequently asked questions about Aboriginal cultural heritage.

Photo above: Byrrill Ridge open campsite Photo by: Ian Fox



Grinding grooves, Doon Doon Source: Sally Cooper, TSC

*<sup>1</sup>Harm to an object or place includes any act or omission that:*

- (a) destroys, defaces or damages the object or place, or*
- (b) in relation to an object - moves the object from the land on which it had been situated, or*
- (c) is specified by the regulations, or*
- (d) causes or permits the object or place to be harmed in a manner referred to in paragraph (a), (b) or (c), but does not include any act or omission that:*
  - (e) desecrates the object or place, or*
  - (f) is trivial or negligible, or*
  - (g) is excluded from this definition by the regulations.*

Source: National Parks and Wildlife Act, 1974.

### Why are we now aware of Aboriginal cultural heritage?

Council has an important role as a land use manager and a consent authority in identifying, assessing and managing heritage objects and places in the local government area. This is supported by Federal, State and Local legislation and policy.

It is important to note that the actions to prevent 'harm'<sup>1</sup> to Aboriginal cultural heritage are not new. Legislation for the protection of Aboriginal cultural heritage has been in place since the introduction of the National Parks and Wildlife Act, 1974.

This Act makes it a prosecutable offence should harm be caused to Aboriginal cultural heritage.

Despite being well established, the statutory requirements are not well understood. Few people are aware of these legislative requirements, and for those that may be aware, it is often difficult to understand if and where there is a potential risk of harm and the actions required.

It is generally fair to say that historically the legislation is often enforced via prosecution when harm occurs, rather than through improving understanding and avoiding harm.

## 3 Frequently asked questions continued

The draft Aboriginal Cultural Heritage Management Plan 2017 (ACHMP) has been developed to assist property owners understand their statutory requirements and to understand their risk of harm.

### What is Aboriginal cultural heritage?

See Fact Sheet 2 of the Aboriginal Cultural Heritage Information Series and Part A of the draft ACHMP.

### What is the Aboriginal Cultural Heritage Management Plan (ACHMP)?

The Aboriginal Cultural Heritage Management Plan is the overarching document which outlines the framework for the identification, assessment and protection of Aboriginal cultural heritage in the Tweed. It includes a Thematic History, a suite of mapping and a Policy framework.

Fact Sheet 4 of the Aboriginal Cultural Heritage Information Series provides information on the mapping.

### What is the difference between Management of Aboriginal cultural heritage and Native Title claims?

**Native Title claims** fall under the Federal and State Native Title legislation and seeks to establish the existence of Native Title and confirm any rights.

A claimant application is made by a group of people, a native title claim group, who declare they hold rights and interests in an area of land and/or water according to their traditional laws and customs.

The native title claim group seek a decision from the Court that native title exists, so their rights and interests are recognised by the common law of Australia. This is called a native title determination. A determination is a decision by the Federal Court or High Court of Australia, or a recognised body, that native title either does or does not exist in relation to a particular area of land and/or waters.

If the Court determines that native title rights and interests exist, the group must set up a prescribed body corporate to hold the rights and interests, as an agent, or in trust, for the group.

**Management of Aboriginal cultural heritage** falls under the National Parks and Wildlife Act, 1974 and seeks to avoid harm to Aboriginal objects or places.

**It is important to understand that this Aboriginal cultural heritage management plan is NOT related to any Native Title Claim nor does it have any impact on land ownership. Therefore finding Aboriginal cultural heritage on your property does NOT lead to a native title claim and should NOT be feared.**

Instead the management plan seeks to provide guidance for property owners to avoid inadvertent 'harm' to any Aboriginal object or place, with the aim of understanding, respecting and protecting our indigenous history.

Further information on Native Title can be found on the website: [www.nnt.gov.au](http://www.nnt.gov.au)

Further information on the protection of Aboriginal cultural heritage can be found on the Office of Environment and Heritage website: [www.environment.nsw.gov.au/topics/aboriginal-cultural-heritage](http://www.environment.nsw.gov.au/topics/aboriginal-cultural-heritage)

### What is the Thematic History and where can I find it?

The Thematic history is not a chronological history of the Aboriginal history of the Tweed. Instead it is based on themes identified as important to the Aboriginal community to assist understanding of the Aboriginal community of the Tweed.

It is not intended as a complete history, rather it references other historic documents and sources.

The Thematic History is included as Attachment 1 to the draft ACHMP.



Midden in an urban soil profile Hastings Point  
Source: Tweed Shire Council

## 3 Frequently asked questions continued

### My land is mapped as Aboriginal Place of Heritage Significance - what do I need to do?

See Fact Sheet 5 of the Aboriginal Cultural Heritage Information Series and Part C5 of the draft ACHMP.

### My land is mapped as Predictive Aboriginal Cultural Heritage- what do I need to do?

See Fact Sheet 6 of the Aboriginal Cultural Heritage Information Series and Part C6 of the draft ACHMP.

### My land is unmapped - what do I need to do?

Land which is not mapped as *Aboriginal place of heritage significance* (known) or *Predictive Aboriginal cultural heritage* does not automatically mean there is no presence of Aboriginal cultural heritage. The potential for Aboriginal cultural heritage remains and so the legislative requirements to avoid harm continue to apply. Further information is available in Part C7 of the draft ACHMP.

The legislative requirements for 'harm' as discussed in Part D of the draft Aboriginal Cultural Heritage Management Plan continue to apply to all land.

### I haven't had to do any assessment before, why now?

Generally assessment requirements for Aboriginal cultural heritage have been poorly understood or complied with. Despite having poorly considered ACH in the past this is not a justification for continuing to do so into the future.

The draft ACHMP seeks to shine a light on what the legislative requirements are and to assist property owners in meeting their statutory requirements.

### What is an Aboriginal cultural heritage assessment?

Aboriginal cultural heritage assessment is a general term used to describe the processes undertaken to assess the potential for harm to Aboriginal cultural heritage values and to clearly identify those impacts that are avoidable and those that are not.

The process comprises a sliding scale of investigation and assessment to firstly determine the likelihood of Aboriginal cultural heritage value; the location and extent of any cultural heritage objects or place; potential for harm to those values; whether potential harm can be avoided; and where impacts cannot be avoided, to provide context and justification for why the harm is acceptable.

### When do I have to undertake a comprehensive Aboriginal cultural heritage assessment?

A comprehensive Aboriginal Cultural Heritage Assessment, under the NPW Act and associated Guidelines is required when applying for an Aboriginal Heritage Impact Permit (AHIP) when harm cannot be avoided.

An Aboriginal Cultural Heritage Assessment (Comprehensive) may also be required where an applicant is unable to demonstrate harm can be avoided.

Further information can be found in Parts C and D of the draft ACHMP.



Midden site Wooyung  
Source: Ian Fox



## 3 Frequently asked questions continued

### How do I undertake an Aboriginal cultural heritage assessment?

This process is informed by the Office of Environment and Heritage Guidelines, including:

- *Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW (2011)*
- *Aboriginal Cultural Heritage Consultation Requirements or Proponents (2010)*
- *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (2010)*
- *Applying for an Aboriginal Heritage Impact Permit: Guide for Applicants (2011)*
- *Guide to Aboriginal Heritage Impact Permit Processes and Decision-making (2011)*

### Who can undertake an Aboriginal cultural heritage assessment - can I do this myself?

An assessment demonstrating harm can be avoided generally requires a good understanding of the legislation, and specialist advice of either an Aboriginal cultural heritage expert and/or archaeologist and consultation with the Tweed Byron Local Aboriginal Land Council (TBLALC) to inform the assessment.

Where a comprehensive Aboriginal Cultural Heritage Assessment is to be undertaken, this will require specialist Aboriginal cultural heritage and/or archaeological advice.

The OEH *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (2010)* stipulates the minimum qualifications required. As a minimum an Archaeologist (with the minimum stated qualifications) skilled in Aboriginal cultural heritage is required. The OEH *Aboriginal Cultural Heritage Consultation Requirements or Proponents (2010)* sets out the consultation requirements.

### Why do I have to consult with the Tweed Byron Local Aboriginal Land Council (TBLALC)?

It is widely recognised at all levels of government that the Aboriginal people are the custodians of their cultural knowledge. This is reflected in Federal, State and Local government policy and is a key part of the draft Aboriginal Cultural Heritage Management Plan framework.

The TBLALC are entrusted under the provisions of the Land Rights Act, 1983 with taking action to protect the cultural and heritage of Aboriginal people and to promote the awareness of Aboriginal culture and heritage in the Tweed.

Tweed Shire Council acknowledges and respects the connection of Aboriginal communities to their ancestral country and the right of Aboriginal people's interests and unique cultural responsibilities to be part of the consultation process.

Tweed Shire Council has worked closely with the TBLALC, the Aboriginal Advisory Committee and the Aboriginal community through the development of this plan to identify Aboriginal cultural heritage in a manner that is acceptable to the Aboriginal people. This has included development of processes that are inclusive and engaging of the Aboriginal community and knowledge whilst integrating with the NSW planning and development assessment framework and processing efficiency requirements and expectations.

### How do I consult with the TBLALC?

You may consult directly with the TBLALC through their contact details in Appendix 4 of the Draft ACHMP.

You may also use a planning consultant to undertake this consultation for you, however this is not required.

## 3 Frequently asked questions continued

### How much will an Aboriginal cultural heritage assessment cost me?

An Aboriginal cultural heritage study will have a cost and as with all specialist studies these costs will vary. The cost of the assessment will depend on the level of assessment required and the risk of harm: whether it is a relatively simple assessment or whether a comprehensive assessment and a permit is required where harm cannot be avoided. Applicants are advised to seek a number of quotes.

### Will an Aboriginal cultural heritage assessment delay my development consent?

Any Aboriginal cultural heritage assessment required, including consultation with the TBLALC, is to be undertaken at the design stage of your proposal, before submitting a development application, and the documentation is to be submitted with your development application.

Whilst there may be more time required at the design stage, the processing of the development application should not be unduly delayed, subject to the information submitted being suitably prepared.

There will inevitably be delays should the Aboriginal cultural heritage assessment find harm cannot be avoided and where an AHIP is to be sought.

### I live in an urban area - why does this affect me?

Generally the *Aboriginal Place of Heritage Significance* mapping layer has avoided urban developed land, except where the nature of the Aboriginal cultural heritage is significant.

If you are within a built up urban area and your land is mapped *Aboriginal Place of Heritage Significance* this is because there is known Aboriginal cultural heritage in the immediate vicinity and/or site.

Whilst there has been European settlement in the Tweed for some 100 years, there has been Aboriginal settlement of the Tweed for some 10,000 years. Aboriginal people lived in and enjoyed the same areas we live in and enjoy today.

A common misconception is that where there has been disturbance of the land, such as the construction of dwellings, there is no further risk of harm to Aboriginal cultural heritage. This is not necessarily or always the case.

There is increasing awareness that in sensitive areas, even where there has been historic ground disturbance, there is still the potential to find and harm Aboriginal cultural heritage. This is especially relevant in the [former] coastal dune systems, headland and estuarine environments given the softer soil/sand structure and the potential for finds of Aboriginal cultural heritage at greater depths. This is also relevant in paleo coastline<sup>2</sup> environments.

<sup>2</sup> Paleo coastlines are the evidence of coastlines formed when sea levels were higher. These are often significantly further inland than current coastlines.

### I have been farming for years what does this mean for me?

The requirements of the *National Parks and Wildlife Act* to avoid harm to Aboriginal cultural heritage continue to apply and as such it is recommended that land owners undertake a due diligence to consider the potential risk of harm to Aboriginal cultural heritage.

The *National Parks and Wildlife Regulation 2009* Section 80B provides for the carrying out certain low impact activities. These activities may include:

- farming and land management on land that has been disturbed, such as cropping, water storage, fences, irrigation infrastructure, flood or erosion works;
- farming and land management that involves maintenance of storage areas (grain, fibre and fertiliser), water storage, irrigation and flood infrastructure, fences, erosion control; and
- grazing of animals

Notwithstanding, if a person discovers an Aboriginal object in the course of undertaking any of the activities listed in Section 80B, the person should not harm the object, as the person may be committing an offence under section 86 (1) of the Act (the offence of knowingly harming an Aboriginal object) and should obtain an Aboriginal heritage impact permit, if needed.

### 3 Frequently asked questions continued

#### Can I do exempt or complying development?

The State Environmental Planning Policy (Exempt and Complying Development Codes 2008), known as the Code SEPP, outlines the types of work that may be undertaken either as exempt development ie no development consent required, or complying development, which provides for a faster development approval process for low impact development.

However, some work may be excluded from being exempt or complying development where carried out within an "environmentally sensitive area".

The draft Aboriginal Cultural Heritage Management Plan identifies known Aboriginal cultural heritage within areas mapped as *Aboriginal Place of Heritage Significance* and notes, for the use of the draft ACHMP, this means the same as *high Aboriginal cultural significance* and therefore is excluded as an "environmentally sensitive area" from the Code SEPP and a range of other SEPPs, including SEPP Infrastructure; SEPP Mining, Petroleum Production and Extractive Industries.

Therefore, if your land is identified on the map as *Aboriginal Place of Heritage Significance*, the Code SEPP may not apply. Council's Duty Planner and/or Strategic Planner(s) will be available to assist you if you are uncertain.

#### What if I want to landscape or put in a veggie garden?

Generally speaking many of these activities are considered minor and ordinarily would not require consent from Council. The Aboriginal cultural heritage assessment requirements underpinning this management plan are triggered where a development application is required.

However, care should still be undertaken to avoid harm in areas mapped as *Aboriginal Place of Heritage Significance* and the provisions of the National Parks and Wildlife Act to avoid harm still apply.

#### Where can I get further information and assistance?

The draft ACHMP provides the legislative, cultural and planning context and requirements for the protection of Aboriginal cultural heritage for the Tweed Shire.

This is available on the Council website: [www.tweed.nsw.gov.au](http://www.tweed.nsw.gov.au) under On Exhibition

Further information may be accessed through Tweed Shire Council's Strategic Planning and Urban Design Unit on (02) 6670 2503.

Further information from the Aboriginal community may be accessed on the Tweed Byron Local Aboriginal Land Council on (07) 5536 1763 or on their website: [www.tblalc.com.au](http://www.tblalc.com.au)

Further information on the National Parks and Wildlife Act and Guidelines can be accessed through the Coffs Harbour Regional Office on (02) 6651 9525 or on their website: [www.environment.nsw.gov.au/topics/aboriginal-cultural-heritage](http://www.environment.nsw.gov.au/topics/aboriginal-cultural-heritage)



Cudgera Creek Estuary  
Source: Ian Fox