

6 Land mapped as Predictive Aboriginal Cultural Heritage

Aboriginal cultural heritage information series



This fact sheet provides information about the process and assessment requirements for land mapped as Predictive Aboriginal Cultural Heritage.

Photo above: Pippis
Photo by: Christine Slabb of Get Creative



Yuli
Photo by: Christine Slabb of Get Creative

What land is mapped as Predictive Aboriginal Cultural Heritage?

The Predictive mapping layer provides a spatial guide to the high probability of the presence of Aboriginal cultural heritage due to a number of the criteria as outlined in the draft Aboriginal Cultural Heritage Management Plan 2017 (ACHMP) Section B2 - Mapping Explained.

The development of the predictive mapping has essentially undertaken the first key steps of assessment as outlined in the Office of Environment and Heritage (OEH) *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (The Code)*. These include:

- Requirement 1 - Review of previous archaeological work;
- Requirement 2 - Review of the landscape context;
- Requirement 3 - Summarise and discuss the local and regional character of Aboriginal land use and its material traces; and
- Requirement 4 - Predict the nature and distribution of evidence.

On this basis the potential for ACH to be found within the predictive layer is well evidenced.

This section provides the management framework and recommended actions for a range of development types within the Predictive Aboriginal cultural heritage mapping layer.

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What cultural assessment is required?

Whilst generally development within the predictive mapped area will not require any mandatory level of assessment to accompany the application, applicants and certifiers are advised that this mapping layer identifies landscapes with a higher probability of the presence of Aboriginal cultural heritage. It is also noted that the NPW Act requirements to avoid harm to any Aboriginal cultural heritage still apply. Accordingly applicants and certifiers are strongly advised to take a precautionary approach, to follow the risk assessment recommendations in this section and to discuss the scope of their proposals early with the Tweed Byron Local Aboriginal Land Council (TBLALC) to understand if there may be any potential risk of harm.

Council may, during the assessment of any application, refer the application to the TBLALC for their comments should they consider this is required. Subsequent advice by the TBLALC will be considered in the assessment and may result in the need for further ACH assessment.

What consultation with the Aboriginal community is required?

Generally any consultation is required up-front at the planning and design phase of development to ensure a proposal may avoid harm to ACH.

The ACHMP Section C6 provides a guideline to the level of consultation and assessment required based on a risk matrix. Development or works considered to be low risk may proceed with caution. For development or works considered to be medium/high risk early consultation with the Aboriginal community is strongly advised. The key first point of contact is the Tweed Byron Local Aboriginal Community (TBLALC). Appendix 4 of the ACHMP provides the Aboriginal Groups and contacts for the Tweed Shire.

The ACHMP Section C3.1 provides further information on the consultation requirements.

Where harm cannot be avoided statutory consultation requirements apply and must be met.

Who may undertake the cultural assessment?

Understanding the appropriate level and type of assessment required takes specific expertise. Whilst some assessments may not require suitably qualified experts, and may be done by individuals, the *Aboriginal Place of Heritage Significance* mapped layer indicates the presence of known ACH and a greater need to assess the potential for harm.

Cultural assessment for the mapped *Predictive Aboriginal Cultural Heritage* is best undertaken by an Archaeologist or Aboriginal cultural heritage expert as outline in the ACHMP Part C1.3 Consultation Requirements.

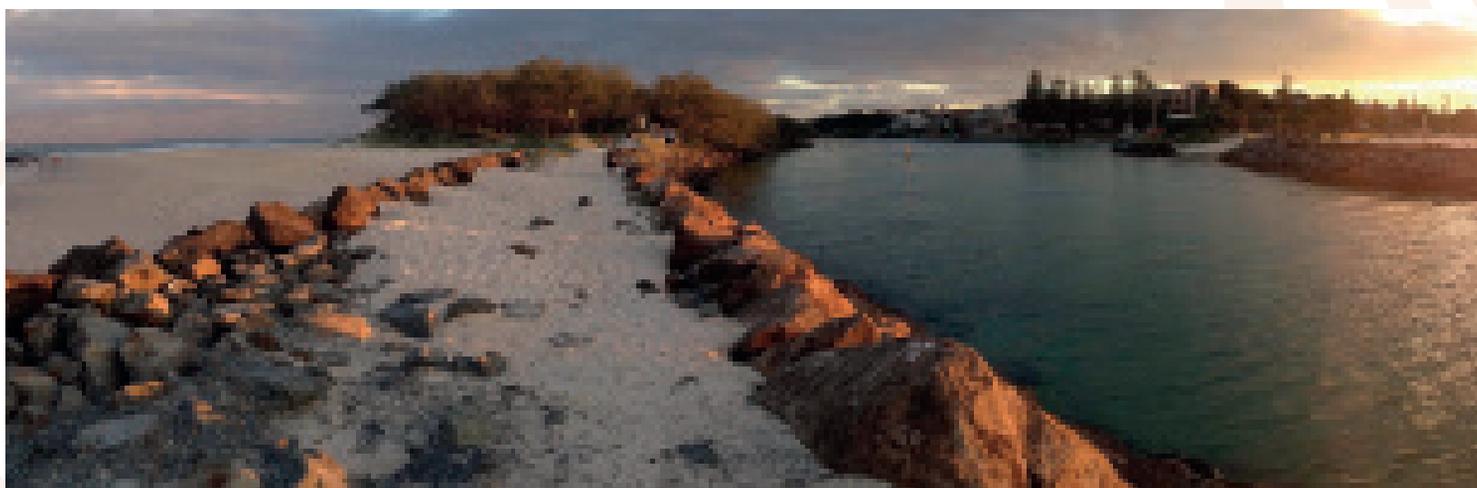


Photo above: Cudgen Creek
Photo by: Christine Slabb of Get Creative

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When is the cultural assessment to be undertaken?

Any assessment and consultation is to be undertaken **prior** to submitting a development application and the reports and evidence of Aboriginal community consultation submitted with the DA.

Applicants may also choose to directly engage an archaeologist /cultural heritage consultant to undertake the assessment and assist with consultation with the TBLALC.

Whilst the assessment requirements for *Predictive Aboriginal Cultural Heritage* are not mandatory applicants who have not undertaken the recommended level of assessment and cause harm will have a reduced defence against prosecution and their development may be affected by lengthy delays to undertake the required assessment and seek the required permits.

Applicants and certifiers are advised that the legislative requirements to avoid harm remain.

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 members of 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 or waters.

If the Court finds 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.



Photo above: Tweed River
Photo by: Christine Slabb of Get Creative

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Management of Aboriginal cultural heritage falls under the National Parks and Wildlife Act, 1979 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.

Where can I get further information?

The ACHMP Part C6 outlines the process requirements for land mapped as *Predictive Aboriginal Cultural Heritage*.

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

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

Further information may also be sought through a of Heritage Consultant with Aboriginal Cultural heritage expertise.