

3 Heritage legislation framework

Heritage information series



This fact sheet outlines the legislative requirements related to the consideration of heritage significance.



*Murwillumbah Railway station and yards is
a State heritage listed*

Heritage legislative requirements

Heritage sites, places and objects in NSW are protected from unsympathetic development by several pieces of legislation, depending on the type of significance that the site exhibits or potentially exhibits. All the legislation discussed below is available online from various websites.

Applicable local environmental plan (LEP)

Tweed currently has three local environmental plans (LEPs), LEP 2012 applying to the Tweed City Centre, LEP 2014 applying to the remainder of the Shire and LEP 2000 remains in force for those areas deferred from LEP 2014. The LEP contains a schedule of listed heritage items, archaeological sites and conservation areas and states whether an item is of State or Local significance. This schedule identifies items and areas that have been assessed and determined to have heritage significance.

The LEP also includes objectives and clauses which regulate when development consent is required for works to, or in the vicinity, of an item of heritage significance. This framework guides heritage impact assessment and provides conservation incentives which typically operate to allow a broader range of land use options than the particular zoning may ordinarily permit.

Development of a heritage item, within a conservation area, or in the vicinity of an item must be consistent with the heritage provisions of the LEP and DCP.

Additional information can be accessed from the Tweed Shire Council website under Plans and Policies and [Heritage](#).

**Information on the LEP and DCP is
available on Council's website at**

[Planning Policies](#)

National Parks and Wildlife Act, 1974

The NSW National Parks and Wildlife Act governs the protection and preservation of Aboriginal Cultural Heritage.

A detailed set of guidelines for Due Diligence Assessments and Aboriginal Cultural Heritage Management and consultation exist and are administered by the Office of Environment and Heritage (OEH). It is beyond the scope of this fact sheet to discuss the implications of Aboriginal Heritage, however, any development in the following areas will generally require a due diligence assessment:

- Within 200m of a water source;
- In or near to a coastal dune system;
- Within 20m of a cave mouth or within a cave itself; or
- On a ridgeline.

Consultation with council and OEH should be undertaken where any doubt or potential for Aboriginal Heritage exists. Additionally, OEH maintains a detailed set of guidelines and reference documents on their website.

NSW Heritage Act, 1979

The NSW Heritage Act governs the protection and maintenance of all heritage and provides specific requirements for State significant items.

State items require joint consent with the NSW Heritage Office and Tweed Council for proposals that may impact a State item's significance. Development in association with a State item must satisfy not only local planning controls, but also State planning controls for heritage.

Within the Tweed Shire there are only two State listed items, the remainder are local heritage items.

Environmental Planning and Assessment Act, 1979

The EP&A Act provides planning controls and requirements for environmental assessment in the development approval process. The EP&A Act requires that consideration be given to environmental impacts as part of the land use planning process. In NSW, environmental impacts are interpreted as including cultural heritage impact. Three parts of the EP&A Act are most relevant to Heritage; Part 3 relates to planning instruments, including those at local and regional levels; Part 4 controls development assessment processes; and Part 5 refers to approvals by determining authorities.

Consent authorities have a responsibility to apply Section 79C – *Matters for Consideration of the Act* when assessing and determining an application.

As part of the DA process within Part 4 above, applications in relation to a State Interim Heritage Order (IHO) or item requiring referral to the NSW Heritage Branch as Integrated Development is undertaken in accordance with s91 of the Act.

Environmental Protection and Biodiversity Conservation Act, 1979

The EPBC Act is Commonwealth legislation which provides protection for:

- Places of National significance (listed on the National Heritage Register);
- Places of heritage significance that are owned or managed by the Commonwealth government or its agencies (listed on the Commonwealth Heritage List); and
- Places of World Heritage Significance (listed on the World Heritage List).

Specific advice would need to be sought should a development be occurring at, or in the vicinity of a place listed on the National, Commonwealth or World Heritage lists.

State Environmental Planning Policy (Exempt and Complying Development Code) 2008, Code SEPP

The State Environmental Planning Policy (Exempt and Complying Development Code) 2008, known as the Code SEPP, provides a set of standards for low risk and low impact development, which may be undertaken without the need for a development application, known as "exempt" development.

Some exempt development may be carried out even though the property may contain a heritage item or be within a conservation area, subject to meeting the standards specified for the development type and can only be carried out on the appropriate land specified in the policy. The criteria should be read and understood.

Generally Complying development may not be undertaken in association with a heritage item or within a heritage conservation area, however, may be possible on part of land subject to a heritage item or conservation area.

The Code SEPP is a State Government Policy and can be accessed through the NSW legislation website.



Mount Warning Dam