

**Attachment 10**  
**Aboriginal Heritage Impact Assessment**

# A guide for preparing an Aboriginal Heritage Impact Assessment

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## Introduction

This guide outlines the requirements of Woollahra Municipal Council in relation to the assessment of the potential Aboriginal heritage impacts of proposed activities.

In New South Wales, the *National Parks & Wildlife Act 1974* (the 'NPW Act') provides legal protection for both 'Aboriginal objects' and 'Aboriginal places' as defined in the Act. Aboriginal objects can include Aboriginal campsites in rockshelters and in the open, painted and engraved art, places of burial and also artefacts of stone, bone or shell that were used by Aboriginal people in the past.

Woollahra contains many documented Aboriginal heritage sites, and it is likely that more undocumented sites also survive. Declared Aboriginal Places are places of special significance for Aboriginal culture in NSW that have been gazetted under the NPW Act. There are currently no registered 'Aboriginal places' within the Woollahra Local Government Area.

Under the NPW Act it is an offence to 'harm' Aboriginal objects either knowingly (s86(1)) or unknowingly (s86(2)), or to harm an Aboriginal Place (s86(4)). It is also a priority for planning at local, district and state level, to ensure that Aboriginal heritage is considered in relation to proposed development activities.<sup>1</sup> This guide sets out Council's requirements for Aboriginal Heritage Impact Assessments to ensure that Aboriginal heritage can be identified and protected.

## What is an Aboriginal Heritage Impact Assessment?

Heritage NSW administers the NPW Act and the regulation of the legal protections for Aboriginal heritage. They have produced guidelines about how the potential Aboriginal heritage impacts of development and other activities should be assessed.<sup>2</sup>

There are different types of Aboriginal heritage assessments depending on the scale of the activity, and whether impacts to Aboriginal heritage are proposed.<sup>3</sup> The Aboriginal Heritage Impact Assessment outlined in this guide meets all of the requirements set out by Heritage NSW under the NPW Act.

An Aboriginal Heritage Impact Assessment will consider the potential Aboriginal heritage impacts of the proposed activity by examining relevant registers and contextual information; by conducting an inspection; and by consulting with the La Perouse Local Aboriginal Land Council. The assessment report will identify, in accordance with the legal protections of the NPW Act, whether the proposed activity could result in harm to Aboriginal objects.

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<sup>1</sup> E.g. Woollahra Local Strategic Planning Statement 2020 (Priority 5); Eastern City District Plan 2018 (Planning Priority B10).

<sup>2</sup> OEH 2011 *Guide to investigating, assessing and reporting on Aboriginal cultural heritage in NSW* (available at [www.environment.nsw.gov.au/research-and-publications/publications-search/guide-to-investigating-assessing-and-reporting-on-aboriginal-cultural-heritage-in-nsw](http://www.environment.nsw.gov.au/research-and-publications/publications-search/guide-to-investigating-assessing-and-reporting-on-aboriginal-cultural-heritage-in-nsw)).

<sup>3</sup> DECCW 2010 *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales* (available at [www.environment.nsw.gov.au/research-and-publications/publications-search/due-diligence-code-of-practice-for-the-protection-of-aboriginal-objects-in-new-south-wales](http://www.environment.nsw.gov.au/research-and-publications/publications-search/due-diligence-code-of-practice-for-the-protection-of-aboriginal-objects-in-new-south-wales)).

### Why is an Aboriginal Heritage Impact Assessment required?

Aboriginal objects (sites) are legally protected by the NPW Act whether they are currently documented or not. Aboriginal sites currently documented within Woollahra are often associated with particular landforms (e.g. outcropping sandstone) but many areas with these same types of landform have not been inspected to find Aboriginal sites.

An Aboriginal Heritage Impact Assessment will assist Council in determining if Aboriginal objects are present and may be impacted by a proposed activity, in accordance with the heritage provisions of the Woollahra LEP 2014. In addition, if an Aboriginal Heritage Impact Assessment concludes that impacts are unlikely, the report provides a legal defence to the offence of ‘unknowingly’ impacting Aboriginal objects under the NPW Act if they are uncovered during construction.<sup>4</sup>

### When is an Aboriginal Heritage Impact Assessment required?

The first step to ascertain if an Aboriginal Heritage Impact Assessment is required is consulting the Aboriginal Heritage Sensitivity mapping available on Council’s website under MAPS.

The following circumstances may apply to land:

- 1) The area is partly or wholly located within an area of Aboriginal Heritage Sensitivity. An Aboriginal Heritage Impact Assessment is required. Refer to Council DA Guide requirements outlined below.
- 2) The area is partly or wholly located within an area of Potential Aboriginal Heritage Sensitivity. Applicants are required to prepare an Aboriginal Heritage Impact Assessment in certain circumstances, as per the following figure 1.

2a) Does the proposal involve excavation as defined in the Woollahra LEP?  <i>Definition - “excavation” means the removal of soil or rock, whether moved to another part of the same site or to another site, but does not include garden landscaping that does not significantly alter the shape, natural form or drainage of the land.</i>	Yes	An Aboriginal Heritage Impact Assessment may be required and will be determined by Council’s officers in accordance with the Woollahra Aboriginal Heritage Management Strategy.
	No	See question 2b.
2b) Is there sandstone (rock) exposed anywhere within the area containing the proposed activity?	Yes	An Aboriginal Heritage Impact Assessment may be required and will be determined by Council’s officers in accordance with the Woollahra Aboriginal Heritage Management Strategy.
	No	No Aboriginal Heritage Impact Assessment is required.

<sup>4</sup> National Parks & Wildlife Act 1974 [s86(2)]

- 3) The area is completely outside an area of Aboriginal Heritage Sensitivity. Applicants are not required to prepare an Aboriginal Heritage Impact Assessment but standard DA conditions may still apply.

Please note that if Council does not require an Aboriginal Heritage Impact Assessment for a particular development proposal, this does not remove the legal protections provided by the NPW Act for ‘unknowing’ harm to Aboriginal objects.

It is recommended that all applicants undertake Aboriginal heritage Due Diligence in accordance with the Heritage NSW Code of Practice.<sup>5</sup> This does not need to be presented to Council as part of a development application, but will provide proponents with a defence to the offence of unknowing harm if Aboriginal objects are unexpectedly found during construction works.

#### *Timing the preparation of an Aboriginal Heritage Impact Assessment*

It is recommended that all applicants seek advice from Council to determine whether an Aboriginal Heritage Impact Assessment is required, either as a pre-DA meeting or via direct enquiry to Council. New information is regularly being obtained by Council and may not be reflected in the Heritage NSW Aboriginal Heritage Information Management System. This will avoid applicants being requested to provide an Aboriginal Heritage Impact Assessment after submission of their DA.

Aboriginal Heritage Impact Assessments may identify areas which require avoidance or a need for further investigation. As such, they should be prepared at the beginning of the design process when options are being considered. Where further investigations are required, these may have timing consequences with respect to Aboriginal heritage approvals and the requirements for more detailed reporting. Adequate time should also be allowed for the involvement of the La Perouse Local Aboriginal Land Council as outlined below.

#### *Who should prepare an Aboriginal Heritage Impact Assessment?*

Aboriginal Heritage Impact Assessments should be prepared by suitably qualified Aboriginal heritage consultants. Contact details for consultants can be found on the website of the Australian Association of Consulting Archaeologists.<sup>6</sup>

Assessments must also be prepared in consultation with the La Perouse Local Aboriginal Land Council. The administrative boundaries of the Land Council include the entire Woollahra LGA, and the Land Council includes families with historical and cultural connections to the area. Under the *Aboriginal Land Rights Act 1983 (NSW)*, Land Councils have a responsibility ‘to promote the protection of Aboriginal culture and the heritage of Aboriginal persons’ within their boundaries.<sup>7</sup> Generally, the engaged heritage consultant will make contact with the Land Council as part of the Aboriginal Heritage Impact Assessment.

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<sup>5</sup> DECCW 2010 *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales* (available at [www.environment.nsw.gov.au/research-and-publications/publications-search/due-diligence-code-of-practice-for-the-protection-of-aboriginal-objects-in-new-south-wales](http://www.environment.nsw.gov.au/research-and-publications/publications-search/due-diligence-code-of-practice-for-the-protection-of-aboriginal-objects-in-new-south-wales)).

<sup>6</sup> [www.aacai.com.au/membership/directory/](http://www.aacai.com.au/membership/directory/)

<sup>7</sup> *Aboriginal Land Rights Act 1983* (NSW), s52(1)(m).

### *Content and format of an Aboriginal Heritage Impact Assessment report*

The Aboriginal Heritage Impact Assessment should consider all potential direct and indirect/inadvertent impacts, not just to Aboriginal objects within the development footprint, but also to those located elsewhere within the property. For this reason, it is advisable to consider the entire property in the assessment. This will also provide valuable information for future uses of the property.

All Aboriginal Heritage Impact Assessment reports submitted to Council have to:

- ▶ meet the requirements for Due Diligence as per the Heritage NSW *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*;
- ▶ meet Council specific requirements as outlined in the Aboriginal Heritage Sensitivity mapping;
- ▶ contain evidence of Aboriginal community consultation with the La Perouse Local Aboriginal Land Council;
- ▶ include evidence of a current search of the AHIMS Aboriginal Sites Register (no more than 3 months old and with at least a 200m buffer around the property), and consideration of relevant previous Aboriginal heritage investigations in or near the property;
- ▶ consider relevant environmental and historical context to determine the possible presence of sensitive landforms or features and to assess the impact of past historical activities;
- ▶ involve a field inspection, or justification as to why an inspection was not considered necessary;
- ▶ document the measures considered to avoid harm to known or potential Aboriginal objects from the proposed activity;
- ▶ contain clear recommendations for the protection of known or potential Aboriginal objects from the proposed activity (likely impacts, measures to avoid impact, a need for further investigations or a recommendation for seeking an Aboriginal Heritage Impact Permit).
- ▶ provide clear recommendations to update the Aboriginal Heritage Sensitivity map for part or all of the area investigated (either to acknowledge a newly recorded Aboriginal site or potential site or to conclude that part or all of the investigated area is not sensitive).
- ▶ ensure that a copy of the report and any updated Aboriginal site information is provided to the Heritage NSW Aboriginal Heritage Information Management System and to the La Perouse Local Aboriginal Land Council; and
- ▶ be submitted to Council in the form of a typed report. Handwritten statements will not be accepted.

Due Diligence Aboriginal Heritage Assessment - Source of information	
Information	Source of information
Extensive search of AHIMS (less than 12 months old)	Heritage NSW
Landscape and Environmental Context	Topography, geology, soil landscapes, vegetation, land use history and current land use
Archaeological Context	Review of previous archaeological/heritage studies on the area available from Heritage NSW or other repositories.
Site Prediction	Desktop Assessment and Visual Inspection to assess the likelihood of unregistered Aboriginal sites
Report recommendations	
<p>Recommendations for:</p> <ul style="list-style-type: none"> <li>the protection of known or potential Aboriginal objects from the proposed activity (likely impacts, measures to avoid impact, a need for further investigations or a recommendation for seeking an Aboriginal Heritage Impact Permit).</li> <li>provide clear recommendations to update the Aboriginal Heritage Sensitivity map for part or all of the area investigated (either to acknowledge a newly recorded Aboriginal site or potential site or to conclude that part or all of the investigated area is not sensitive).</li> </ul>	