



## **Operational Guidelines for Aboriginal Cultural Heritage Management**

**(A due diligence Code of Practice)**

**13 September 2010**

Next review

September 2013

Policy and guidelines for the exercise of due diligence and for the documentation of minimum standards to assess impacts, locate and manage Aboriginal sites and places; and for processes to address issues relevant to Aboriginal people

## Contents

1.0	Introduction	4
2.0	FNSW Policy and Strategies	6
2.1	Aboriginal cultural heritage management policy	6
2.2	Strategies to protect cultural heritage	6
3.0	Legislative Requirements	7
3.1	Due diligence defence	7
3.2	Aboriginal Heritage Impact Permit	8
3.3	Duty of notification	8
3.4	Low Impact Activity	9
4.0	Description of Forestry Activities and Potential Aboriginal Site Locations	10
4.1	Extent of FNSW operations	10
4.2	Types of forestry activities and their potential impacts	11
4.3	Aboriginal cultural heritage site types and their general locations	12
5.0	The Assessment Process	14
5.1	Identifying Aboriginal Places	14
5.2	Identifying Known Aboriginal Sites	15
5.3	Discovering new Aboriginal sites	15
5.4	Notification of New Aboriginal Sites	16
5.5	Further Investigation and Impact assessment to determine need for AHIP	16
5.6	Record keeping	16
6.0	Consultation	17
6.1	Consultative framework	17
6.2	Details of regional consultation process	19
6.3	Engaging the Aboriginal community for field work	22
6.4	Consultation background and principles	22
6.5	Consultation records	23
6.6	Information sharing	24
7.0	Operational Guidelines	24
7.1	Training requirements	24
7.2	Operational planning	24
7.3	Operational plan inductions	24
7.4	Mapping standards	25
7.5	Field investigation to locate known sites	25
7.6	Field marking	26
7.7	Operational supervision and monitoring	26
7.8	Reporting operational outcomes	27
8.0	Data Management	28
8.1	Use of Aboriginal site data	28
8.2	Aboriginal heritage information management system	28
8.3	FNSW databases	28
8.4	Aboriginal community data sources	28
8.5	Data management for new sites	29
9.0	Site management	29
	Appendices & Attachments	31

**Abbreviations:**

ACHO:	Aboriginal cultural heritage officer
FNSW:	FNSW
LAC:	Local Aboriginal community
LALC:	Local Aboriginal land council
DECCW:	Department of Environment Climate Change and Water
AHIS:	Aboriginal heritage information management system
AHIP	Aboriginal Heritage Impact Permit

**Reason for revising the Guideline:**

Under the *National Parks and Wildlife Act 1974* (NP&W Act), including the 2010 amendments, it is an offence to harm an Aboriginal object.

The Guideline has been amended to ensure that FNSW exercises due diligence in determining that its actions would not harm Aboriginal objects.

**Important changes/additions include:**

- Description of the environment & landscapes in which forestry activities take place
- Examples of a typical range of Aboriginal objects likely to occur in the area
- Description of various forestry activities and their potential impacts
- Mandatory use of AHIMS data and associated website
- Mandatory notification of all new sites found
- Minimum protective measures for Aboriginal sites
- Need to seek an Aboriginal Heritage Impact Permit (AHIP)

## 1.0 Introduction

Aboriginal cultural heritage includes physical and spiritual sites, places, objects, stories, oral histories, flora, fauna and documents relating to Aboriginal occupation before and after European contact. Evidence of the long history of occupation by Aboriginal people, and their use of naturally occurring resources, can be seen in items in the landscape. The identification and management of these items within forests is important to the protection of Aboriginal cultural heritage in NSW. Forests may contain plants used as food and medicine or animals that are totems or sought for food. The habitats that support this flora and fauna are important to Aboriginal people.

Aboriginal communities place spiritual and cultural value on some locations because they feature in dreaming stories or because of historic events or traditions linked to the land, such as initiation or birthing sites. Consideration of matters arising from Aboriginal association with particular areas, and issues relating to cultural and spiritual beliefs requires close involvement with Aboriginal communities during operational planning.

FNSW acknowledges that Aboriginal people should determine the significance of their heritage. The involvement of Aboriginal people is integral to understanding Aboriginal heritage and formulating management responses to culturally important objects and places.

In the past, if a person harmed an Aboriginal object **unknowingly**, that could be used as a defence in court. However the *National Parks and Wildlife Act 1974* (NP&W Act) has recently been amended. Under section 86 of that Act it is now an offence to harm an Aboriginal object even if the offender did not know it was an Aboriginal object. In other words, ignorance is no longer a defence.

Under the NP&W Act **harming** an Aboriginal object includes to:

- Destroy, deface, damage or desecrate an object
- Move an object from the land on which it is situated
- Cause or **permit** an object to be harmed

A due diligence process enables people to have confidence that if the process is followed, and it determines that there is no likelihood of harming Aboriginal objects, then there is a defence against prosecution.

Harm does not include something that is trivial or negligible. Examples of what might be a trivial or negligible act are picking up and replacing a small stone artefact, breaking a small Aboriginal object below the surface when you are gardening, crushing a small Aboriginal object when you walk on a track, or picnicking, camping or other similar recreational activities.

In the context of protecting Aboriginal cultural heritage, due diligence involves taking reasonable and practicable measures to determine whether actions will harm an Aboriginal object. A code of practice must ensure that the requirements for due diligence outlined in the Code meet the common law understanding of due diligence in NSW where due diligence constitutes:

“reasonable and practical measures taken to determine whether an action or omission would harm an Aboriginal object, such that a court could conclude that the actions of a person who has harmed an Aboriginal object would not be considered negligent or otherwise at fault and had turned his or her mind to the likely risks of his or her actions or omissions”

This FNSW code of practice – this Operational Guideline for Aboriginal Cultural Heritage Management has been developed to assist FNSW exercise due diligence when carrying out activities that may harm Aboriginal objects and to either ensure the protection of Aboriginal cultural heritage objects or sites or determine whether it should apply for consent to harm in the form of an Aboriginal Heritage Impact Permit (AHIP).

Under the NP&W Act, including the 2010 amendments it is an offence to harm an Aboriginal object:

- Which the person knows is an Aboriginal object (a 'knowing offence')
- Whether or not a person knows it is an Aboriginal object (a 'strict liability offence').

A person or organisation who exercises due diligence in terms of this Code of Practice in determining that their actions would not harm Aboriginal objects has a defence against prosecution for the strict liability offence if they later unknowingly harm an object without an AHIP. The due diligence defence is not available for activities which harm Aboriginal places.

This Guideline sets out a procedure which, when followed, will satisfy the due diligence requirement. It sets out the reasonable and practicable steps which FNSW can take to:

- Identify whether or not Aboriginal objects are present or likely to be present in an area
- Consider whether or not their activities are likely to harm Aboriginal objects (if present) and
- Determine whether an AHIP is required.

This guideline covers all forestry operations as defined in the IFOAs and the *Forestry and National Parks Estate Act 1998* as undertaken by FNSW and their contractors.

Aboriginal Cultural Heritage in Plantations authorised under the *Plantations & Reforestations Act 1999*, are managed in accordance with the provisions of the Plantations and Reforestation Code.

This Guideline will be reviewed in three years from the date of implementation.

## **2.0 FNSW Policy and Strategies**

### **2.1 Aboriginal cultural heritage management policy**

FNSW is committed to protecting and managing Aboriginal cultural heritage in cooperation with Aboriginal communities and in accordance with legislative obligations.

In order to effectively identify and manage cultural heritage, FNSW will:

- Communicate effectively with Aboriginal community representatives
- Ensure that, where there is potential for any impact on cultural heritage, forest management policies and practices are sensitive and respond to the needs and attitudes of Aboriginal people
- Ensure that operational planning addresses cultural heritage requirements
- Make available resources to address heritage responsibilities
- Ensure that employees or contractors whose work may impact on cultural heritage are trained appropriately
- Promote Aboriginal cultural awareness and respect among staff and contractors
- Explore opportunities to work with Aboriginal people
- Respect confidentiality about the location and details of Aboriginal sites and cultural knowledge shared by Aboriginal communities
- Refer inquiries from third parties on cultural heritage or sites to local Aboriginal community representatives.
- Develop consultation and operational guidelines<sup>1</sup> to implement this policy.

### **2.2 Strategies to protect cultural heritage**

Aboriginal cultural heritage items are irreplaceable. When conducting forestry operations, FNSW will apply management controls to minimise damage and harm to Aboriginal sites or objects during activities such as plantation establishment, road works, fire management and timber harvesting.

Sound forest management practices will:

- Protect Aboriginal objects, sites and spiritual places
- Protect intellectual knowledge
- Provide for cultural access to animal and plant species, sought for food or for medicinal purposes; and
- Identify opportunities to participate in joint ventures or co-manage areas of forest

---

<sup>1</sup> These guidelines identify the processes to implement the policy for Aboriginal cultural heritage management.

The involvement of Aboriginal communities is crucial in cultural heritage management planning. Aboriginal people must be consulted about proposed activities early in the planning process and be given an opportunity for meaningful input.

### **3.0 Legislative Requirements**

One of the key objects of the *National Parks and Wildlife Act 1974* (NP&W Act) provides for the conservation of objects, places or features of cultural significance to Aboriginal people within the landscape.

Part 6 of the NP&W Act provides protection for Aboriginal places and objects. In particular this part provides offence and permit conditions in relation to harming or desecrating Aboriginal objects or places and provides that the presence of newly found Aboriginal objects must be made known to Department of Environment Climate Change and Water (DECCW) and recorded on the Aboriginal heritage information and management system (AHIMS).

The NP&W Act provides for the declaration by the Minister of Aboriginal places where it is believed the place was or is of special significance to Aboriginal culture (s.84).

The Act defines Aboriginal objects as:

*Any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.*

### **3.1 Due diligence defence**

Due diligence is a legal concept describing a standard of care. Exercising due diligence means considering the likely risks of a proposed course of action. Due diligence requires consideration of obligations under the NP&W Act, and the consideration and adoption of a course of action that is directed towards preventing a breach of the NP&W Act.

In the context of protecting Aboriginal cultural heritage, due diligence involves taking reasonable and practicable measures to determine whether actions will harm an Aboriginal object. Following this code of practice does not provide certainty about the existence of Aboriginal objects.

If a person already knows or believes that an activity they propose to carry out will harm Aboriginal objects, then they do not need to go through the due diligence process. In most cases, they must apply to DECCW for an AHIP. Information related to applications for permits can be obtained through the DECCW website. If an AHIP is granted and activities are undertaken in accordance with the conditions of an AHIP, there is a valid defence to prosecution under the NP&W Act.

Following successful due diligence, an activity may be undertaken though always with caution. Work should be stopped and DECCW notified if any objects are found. The due diligence defence does not authorise continuing harm.

The NP&W Act provides that a person who exercises **due diligence** in determining that their actions will not harm Aboriginal objects has a defence against prosecution for the strict liability offence at section 86(2) of the Act if they later unknowingly harm an object without an AHIP.

Section 87(3) of the Act provides for requirements for due diligence to be contained within a **Code of Practice** adopted or prescribed by the *National Parks and Wildlife Regulation 2009* ("the regulations"). Other Codes of Practice can also provide specific due diligence guidance for certain **classes of activity** or for particular **industry sectors**. When such a Code of Practice is complied with, it may instead be relied upon as a due diligence defence for the relevant activity or industry operation.

The Director General of DECCW may set **Minimum Standards** for Due Diligence Codes of Practice. A Code of Practice cannot be adopted or prescribed by the regulations unless the Minister for Climate Change and the Environment is satisfied that these Minimum Standards have been met by that code. FNSW's code of practice (this Guideline) meets those minimum standards.

### 3.2 Aboriginal Heritage Impact Permit

If harm to Aboriginal objects cannot be avoided, application must be made for an Aboriginal Heritage Impact Permit (AHIP) under section 90 and 90(A) of the NPW Act.

In instances where an AHIP is required, the DECCW website has further information. See

<http://www.environment.nsw.gov.au/conservation/aboriginalculture.htm#whattodo> for information that is required to support an application for an Aboriginal Heritage Impact Permit (including impact assessment and community consultation) and other relevant information. All AHIP applicants must undertake consultation in accordance with clause 80C of the *National Parks and Wildlife Regulation 2009*. These requirements may also be followed where there is uncertainty about potential harm and you are undertaking a cultural heritage assessment.

### 3.3 Duty of notification

The NPW Act requires that, if a person finds an Aboriginal object on land and the object is not already recorded on AHIMS, they are legally bound under 89A of the Act to notify DECCW as soon as possible of the object's location. This requirement applies to all people and to all situations.

If a person finds an Aboriginal object which is not recorded on AHIMS, they should contact DECCW as soon as is practicable. Notification procedures are at: <http://www.environment.nsw.gov.au/licence/AboriginalHeritageInformationManagementSystem.htm>



The maximum penalty for failing to notify DECCW of the location of an Aboriginal object under s.89A is \$11,000 for individuals and a further maximum penalty of \$1,100 for each day the offence continues. For a corporation the penalty is \$22,000 and for continuing offences a further maximum penalty of \$ 2,200 will apply for each day the offence continues.

### 3.4 Low Impact Activity

The NPW Regulation removes the need to follow the due diligence process if carrying out a specifically defined low impact activity. As a result, you are not required to follow this code or any other due diligence process if your activity meets this criteria, some of which are listed below. It is important to note that this defence does not apply to situations where you already know there is an Aboriginal object. This defence does not authorise harm to known Aboriginal objects.

The following low impact activities are prescribed in the regulation as a defence against the strict liability s86 (2) offence.

#### *Clause 80B Defence of carrying out certain low impact activities: section 87 (4)*

- (1) It is a defence to a prosecution for an offence under section 86(2) of the Act, if the defendant establishes that the act or omission concerned:
  - (a) was maintenance work of the following kind on land that has been disturbed:
    - (i) maintenance of existing roads, fire and other trails and tracks,
    - (ii) maintenance of existing utilities and other similar services (such as above or below ground electrical infrastructure, water and sewerage pipelines), or

Other activities meeting this requirements (including grazing) can be found in Clause 80B of the NPW Regulation.

- (2) Subclause (1) does not apply in relation to any harm to an Aboriginal culturally modified tree.
  - (2) In this clause, **Aboriginal culturally modified tree** means a tree that, before or concurrent with (or both) the occupation of the area in which the tree is located by persons of non-Aboriginal extraction, has been scarred, carved or modified by an Aboriginal person by:
    - (a) the deliberate removal, by traditional methods, of bark or wood from the tree, or
    - (b) the deliberate modification, by traditional methods, of the wood of the tree.

**Note.** For more information regarding Aboriginal culturally modified trees see [www.environment.nsw.gov.au/conservation/AboriginalScarredTrees.htm](http://www.environment.nsw.gov.au/conservation/AboriginalScarredTrees.htm)

- (4) For the purposes of this clause, land is ***disturbed*** if it has been the subject of a human activity that has changed the land's surface, being changes that remain clear and observable.

Note: Examples of activities that may have disturbed land include the following:

- (a) soil ploughing,
- (b) construction of rural infrastructure (such as dams and fences),
- (c) construction of roads, trails and tracks (including fire trails and tracks and walking tracks),
- (d) clearing of vegetation,
- (e) construction of buildings and the erection of other structures,
- (f) construction or installation of utilities and other similar services (such as above or below ground electrical infrastructure, water or sewerage pipelines, stormwater drainage and other similar infrastructure),
- (g) substantial grazing involving the construction of rural infrastructure
- (h) construction of earthworks associated with anything referred to in paragraphs (a)–(g).

#### **4.0. Description of Forestry Activities and Potential Aboriginal Site Locations**

##### **4.1 Extent of FNSW operations**

The largest areas of forest in NSW are concentrated on the coast and coastal escarpment. Forest types range from moist subtropical rainforest on the far north coast to the dry cypress pine forests of the Pilliga, from the alpine forests of the Snowy Mountains to the river red gum forests along the Murray/ Murrumbidgee Rivers.

State forests comprise around 7.9% of the forested area of the State. These forests are managed by FNSW for multiple use on an ecologically sustainable basis.

Timber from State forests is used in home construction for framing, flooring and weather boards; furniture, tools and toys; railway sleepers; bridge girders; wharf piles; telephone and electricity poles; fence posts; props for underground mining; pulpwood for paper and building boards and other uses.

Some State forest areas are leased to farmers for grazing to supplement fodder supplies and reduce fire risks. They are also a source of rock, gravel and sand and provide recreational opportunities.

State Forests comprise both native and planted forests. The native forest area is approximately 2.1 million hectares centred around the far north and far south coasts and the Pilliga region. The planted forests comprise 280,000 ha centred around Tumut, Bombala, Bathurst and Walcha.

## **4.2 Types of forestry activities and their potential impacts**

The major forestry operations carried out in State Forests are road-building; clearing; planting; silviculture practices; harvesting; and fire control. These activities all could have some impact on archaeological sites. Guidance on how these activities can be modified or relocated to avoid landscape features or Aboriginal objects can be found in section 9.0

### **4.2.1 Road building**

The building of main roads, access roads and fire trails including the construction of batters, excavation of borrow pits and construction of crossings, and sediment traps all have the potential to disturb Aboriginal cultural heritage items. Most susceptible are surface items and open sites of all kinds.

### **4.2.2 Silviculture practices**

Silvicultural practices carried out on maturing forests, such as thinning and culling may also have an impact, however they will be relatively unimportant in an area that has been previously been cleared and planted.

### **4.2.3 Harvesting**

Harvesting is the next major cause of disturbance after roading in a naturally regenerated forest. There are three components including felling extraction and loading. The impacts depend on the intensity and the technique used in the area. The most intensive being the integrated logging for sawlog and woodchips in Eden with the selective harvesting on the north coast having the least impact.

In felling, the main disturbance is due to the fall of the tree and is consistent with the size of the tree. Extraction of felled trees to dumpsite along snig tracks also results in some disturbance. Similarly, conversion of the tree at the felling site or at the log dump and associated loading also causes some level of disturbance.

All these operations disturb the ground; the overall disturbance however depends on the intensity of the operation.

The most vulnerable type of site is a campsite, where the scatter of stone artefacts can be displaced by road building and harvesting activities. Rock shelters are less vulnerable in that they are located in terrain generally unsuitable for road building and harvesting. They can however be damaged if machine operation in close proximity disturbs the fragile rock and it falls in and disturbs the deposit beneath, which has implications for gathering historical information.

Grinding grooves may be protected in creek beds but they can occur on exposed rock slabs and thus are susceptible to damage by falling logs and machinery. The same applies to engravings, stone arrangements and open shell middens. Carved and scarred trees are susceptible to being cut down or damaged by machinery or falling logs.

#### **4.2.4 Clearing**

Clearing followed by plantation establishment creates disturbance especially when it is followed by ripping or ploughing before planting. Any new plantation development occurs on substantial cleared land and the clearing of any remnant native vegetation is limited to isolated paddock trees. With regard to the potential impact upon any **Aboriginal culturally modified tree**, the Plantation and Reafforestation Regulation 2001 specifically provides for the identification and protection of such cultural significant items. Any plantation establishment performed under authorisation of the *Plantation and Reafforestation Act 1999*, must be performed in a manner consistent with requirements of the Plantation and Reafforestation Regulation (Code), 2001

#### **4.2.5 Fire Control Practices**

Fire trail construction, along with dam or depot construction has the potential to impact on Aboriginal sites. The impact of hazard reduction burning however is less obvious as it is widely known that Aborigines often conducted low intensity burns.

### **4.3 Aboriginal cultural heritage site types and their general locations**

There is a close relationship between the location of archaeological sites and certain characteristics of the environment related to terrain and geology. For stone artefact sites and rockshelter occupation and art sites the requirements are quite specific and predictable, mainly to do with topographic constraints on movement, ecological productivity and the nature of the local geology. Less is known about ceremonial archaeological sites (e.g. boras) except to note these are generally rare particularly in areas remote from the major river valleys. Natural feature mythological and/or ceremonial sites most frequently occur on prominent landmarks, and thus may occur in State forest, although these too will be rare.

On the basis of the environmental, archaeological and historical evidence discussed above stone artefact sites are likely to be the most common site type. Generally ceremonial/mythological sites, burials, historic campsites and massacre sites will be rare within State forests, particularly given the level of disturbance forests have already undergone, although surviving sites will be highly significant and every effort should be made to identify them and provide for their management. Their locations will be difficult to predict or to establish through sample survey techniques. However, as yet, unrevealed knowledge concerning such sites is undoubtedly held by local people and may be revealed through oral history investigations.

A more detailed guide to the potential location of these sites in State forests is provided below:

#### **4.3.1 Artefact scatters in and around open campsites**

Artefact scatters may occur anywhere across the landscape. The typical locations for these sites are on ridge lines, spurs and along streams and swamps. Stone artefact sites located on ridge lines are generally small. A common interpretation placed on these ridge line sites is that they were pathways that people used to traverse the

countryside.

#### **4.3.2 Rockshelter occupation and art sites.**

Rockshelters suitable for occupation can occur in most rock strata although sandstone and limestone weather in a way that produces many more potential shelters than do other rock types. Most shelter sites here are located on streams, both because this is where rocks tend to outcrop and because campsites generally are located near water. Rock outcrops on steep slopes or on tops of hills are unlikely to have much evidence of occupation in them, although art on walls and ceilings and stone arrangements may occur in these locations.

#### **4.3.3 Quarries/Primary Reduction Sites**

A quarry is defined as stone source where Aborigines obtained stone or ochre for artefact manufacture. A stone source may be a vein outcrop or a surface deposit of loose rock or pebble. These sources are generally located where rock outcrops in ranges or along watercourses with pebble beds.

A primary reduction site is the location where the initial production of the stone artefact blanks takes place before the tools are used and further modified. Primary reduction sites are generally located at or within close proximity to quarry sites.

#### **4.3.4 Axe grinding grooves**

Axe grinding grooves are the abrasion scars resulting from the sharpening of stone hatchets on rock. These sites can be identified by smooth linear or ovoid depressions in sandstone outcrops. Sandstone is chosen for grinding as it has the necessary abrasive properties and water is used as the wetting agent. As a consequence, these sites are invariably located within sandstone outcrops in close proximity to water.

#### **4.3.5 Scarred trees**

Scarred trees are trees from which bark or wood have been removed for the making of shelters and implements such as containers, shields and canoes. They are very common in riparian areas. Away from rivers they are fairly rare, especially in upland forested areas where most scarred trees have been destroyed by tree-felling and bushfires.

#### **4.3.6 Carved Trees**

Carved trees are trees which have linear designs or figurative patterns carved onto their bark or wood. They often surround bora grounds or areas known to be used in the past for ceremonial purposes. Some carved trees were also used to mark boundaries and therefore can be found in many varied areas.

#### **4.3.7 Stone arrangements**

Stone arrangements consist of stone cairns or linear arrangements which may have

ceremonial significance. Although knowledge of the distribution of this site type is less certain than for others, they could occur anywhere. However, there is a tendency for these sites to occur on fairly remote vantage points in forests in south east NSW. They are also quite common in western NSW

#### **4.3.8 Boras**

Bora grounds are places where initiation ceremonies were performed. The most common form consists of earthen rings 2 to 40 metres in diameter. Bora grounds occur only in south-eastern Australia and are generally rare. In north-east NSW, they are more common than anywhere else in south-eastern Australia. They mainly occur on soft sediments in or near river valleys, although they occasionally occur on high places on rocky ground where they may be associated with stone arrangements.

#### **4.3.9 Burials**

Traditional burials occur singly and in groups. They tend to be found in sediments near streams, although they may also occur in caves. Very few burials have been recorded in areas of rugged terrain, or are likely to be recorded, due to the following factors. People are most likely to be buried in the vicinity of the main focus of occupation (i.e. river valleys) and where soft sediments are available. Where soft sediments are present in the uplands they tend to have already suffered a fair degree of disturbance. Cave burials are likely to be restricted to sandstone outcrops.

#### **4.3.10 Site complexes**

Site complexes are localities where there are a number of sites of Aboriginal and/or archaeological significance. Site types that occur here include stone arrangements, bora rings and rockshelter occupation and art sites.

Pictorial representations of some of these objects and further descriptions are in **Attachment 1**

### **5.0 The Assessment Process**

#### **5.1 Identifying Aboriginal Places**

Aboriginal Places are declared by the Minister under s.84 of the NP&W Act. The location of Aboriginal Places is made available to the public via the government gazette (available through the NSW Services, Technology and Administration website [www.services.nsw.gov.au](http://www.services.nsw.gov.au)). The places are also listed on the DECCW website.

Regions must consult the DECCW website for locations of the Aboriginal Places. The due diligence defence is not available for activities which harm Aboriginal

Places. If the operation being planned may 'harm' an Aboriginal Place, the Region must apply for an AHIP.

## **5.2 Identifying Known Aboriginal Sites**

Regions will determine from readily available sources of information what is already known regarding the presence of Aboriginal objects on the land where it is proposed to carry out the activities. This should include a search of the Aboriginal Heritage Information Management System (AHIMS) records for that area, FNSW databases with information from previous surveys, research papers and advice from the local Aboriginal groups including the LAC with responsibility for protection in the area in relation to objects which may not be recorded on AHIMS. Regions should note that presence/absence site information on AHIMS is freely available to FNSW staff from the new public web search service (to commence in October 2010). Information on accessing this service and more detailed site information can be obtained through the DECCW – FNSW Aboriginal Heritage Information Licence Agreement (AHILA) currently being re-negotiated.

After obtaining records from AHIMS of any recorded Aboriginal objects the Region should confirm that these objects can actually be located in the area of proposed activity. If the information on AHIMS appears not to be up to date or is inaccurate the Region should contact the AHIMS registrar on (02) 9585 6471 or (02) 9585 6345 or (02) 9585 6157 for further advice.

## **5.3 Discovering new Aboriginal sites**

As a minimum, Regions will assess the area where it is proposed to carry out forestry activities that are not "low impact activities" to determine the likelihood of Aboriginal objects being present on that land. If the land has not been disturbed by previous activity, this should include consideration of whether the land contains landscape features that indicate the likely presence of Aboriginal objects (see section 4.3)

Where the initial investigation show a high likelihood of Aboriginal objects occurring, because of landscape features, Regions will undertake a desktop assessment and visual inspection of the land where it is proposed to carry out the activities so that a person might confirm whether or not Aboriginal objects are present. This visual inspection must be done by a person with expertise in locating and identifying Aboriginal objects. This person with expertise will be the Aboriginal Cultural Heritage Officer, an Aboriginal person or landholder with experience in locating and identifying Aboriginal objects or a consultant with appropriate qualifications or training in locating and identifying Aboriginal objects. An example of the field process is in Section 6.2.1

Where the desktop assessment and/or visual inspection does not indicate that there are (or are likely to be) Aboriginal objects, operations can proceed with caution without an AHIP application. Guidance on how activities can be modified or relocated to avoid landscape features or Aboriginal objects can be found in section 9.0

## **5.4 Notification of New Aboriginal Sites**

Whilst undertaking forestry operations an Aboriginal object is found, work must stop and appropriate buffers applied as per Section 9.0.

If human skeletal remains are found during the activity, work must stop immediately, the area secured, prevent unauthorised access and contact is made with the NSW Police and DECCW.

Regions must notify DECCW as soon as possible of the location of these new object's not in the AHIMs. This requirement applies to all people and to all situations, including when you are following this code. Notification procedures can be found at: <http://www.environment.nsw.gov.au/licences/AboriginalHeritageInformationManagementSystem.htm>

## **5.5 Further Investigation and Impact assessment to determine need for AHIP**

Where either the desktop assessment or visual inspection indicates that there are (or are likely to be) Aboriginal objects in the area of the proposed activity, more detailed investigation and impact assessment will be required.

Regions must explore every avenue not to harm an Aboriginal object, however if after this detailed investigation and impact assessment a decision is made that harm will occur then an AHIP application must be made.

See

<http://www.environment.nsw.gov.au/conservation/aboriginalculture.htm#whattodo> for information that is required to support an application for an Aboriginal Heritage Impact Permit (including impact assessment and community consultation) and other relevant information.

If an AHIP is applied for Regions must undertake consultation in accordance with clause 80C of the National Parks and Wildlife Regulation 2009. These requirements may also be followed where there is uncertainty about potential harm and you are undertaking a cultural heritage assessment.

## **5.6 Record keeping**

Under the NP&W Act, a person has a defence to any prosecution alleging harm to an Aboriginal object if they show that they exercised due diligence to identify Aboriginal objects and reasonably decided that no Aboriginal objects would be harmed. To prove that the due diligence process has been followed, written records must be kept by the Region. AHIMs data is valid for 12 months so for any new ground disturbing activities after this period Regions should undertake another search of AHIMs.

## **6.0 Consultation**



## 6.1 Consultative framework

This framework provides a comprehensive consultative process in which regional issues can be discussed and documented with Aboriginal communities. It allows FNSW to take a consistent approach when consulting with the many Aboriginal groups associated with forestry activities across the state. The focus on reaching agreement at a local level allows arrangements to be tailored to the regional situation and history.

The objective is for FNSW to maintain communications with Aboriginal communities to ensure that planning incorporates Aboriginal interests. This includes site management, cultural heritage intellectual property rights and the cultural use of natural resources.

Principles of the framework:

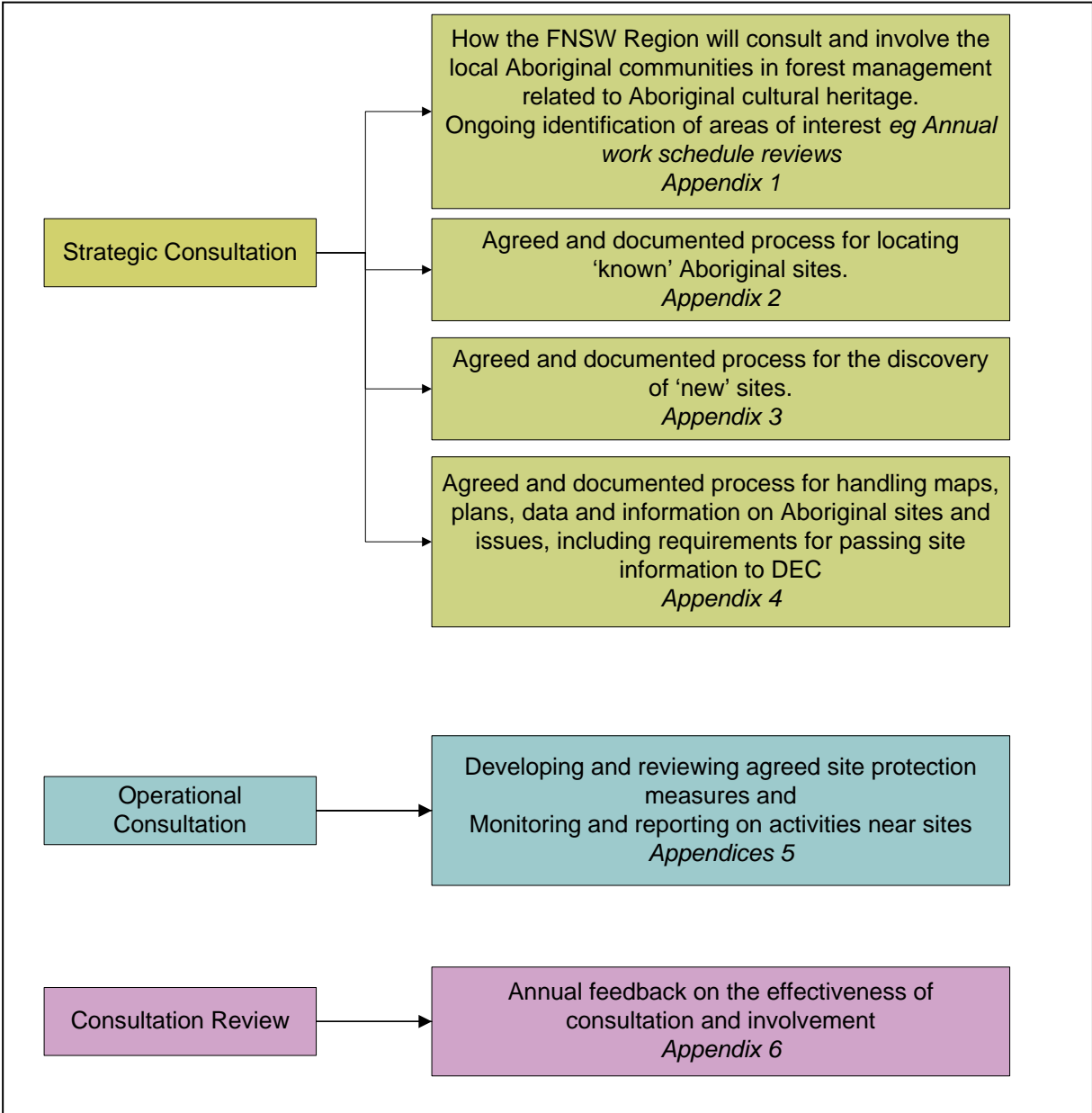
- FNSW will consider views expressed within the Aboriginal community;
- Cultural heritage liaison should involve people with cultural knowledge. This may involve Aboriginal land councils, registered native title claimants, Aboriginal elders or people with knowledge of areas where activities are proposed;
- Expectations for input will take into account the community's capacity to participate; and
- Consultation will be sensitive to gender-specific sites and issues.

### Required actions:

Each Regional Manager will develop a working relationship with the local Aboriginal community (LAC) as illustrated in chart 1. The section of this document, 'Contact with the Aboriginal community' provides additional guidance on Aboriginal involvement.

The resulting six locally produced documents are to be attached as appendices to this document and will provide direction for Regional staff when consulting with LACs.

**Chart 1 The Regional Consultation Process**



## 6.2 Details of regional consultation process

### 6.2.1 Strategic consultation elements

#### Consulting and involving LACs:

Within each Region, FNSW will work with Aboriginal people and organisations to identify the appropriate local Aboriginal communities to consult with for each of the forests they manage. Local protocols will be developed with LACs concerning notification of FNSW policy and annual work schedules, and for consultation on forestry operations such as timber harvesting; road works; hazard reduction burning; pest animal and weed control and plantation establishment activities.

Expected outcomes:

- Improved LAC knowledge of FNSW management and practices
- Improved FNSW knowledge of LAC interests and concerns in forest management; AND
- Documented consultation process between the FNSW Region and the LAC over Aboriginal cultural heritage management. Attach as Appendix 1

▪

#### Process for locating 'known' Aboriginal sites

Regions should seek agreement for procedures consistent with the minimum described in section 5.2 to:

- Locate previously recorded and registered sites during pre-operational planning<sup>2</sup>
- Deal with variations between actual field locations and recorded locations

Note: Data and information sources should include LAC, AHIMS, Forests NSW databases, landowners and research papers.

Expected outcomes:

- A documented process for operational planning consistent with the minimum standards described in 5.2 above and that meets LAC expectations. Attach as Appendix 2
- An improved shared knowledge of the general region with the LAC, including greater consensus on the extent and location of sites or interests that are known on the FNSW estate and on possible plantation establishment land, timber acquisition areas or proposed management agreement areas
- Greater confidence for FNSW staff about site locations
- Greater confidence for the LAC about management measures to protect sites

#### Process for discovering new sites

Regions should seek agreement on processes consistent with the minimum described in section 5.3 for discovering new sites:

- Across the FNSW estate
- Across the general landscape (where FNSW may be involved in acquiring land or timber or potentially be involved in forest management outside FNSW tenures)<sup>3</sup>; and

---

<sup>2</sup> Note: there are commercial in confidence issues with proposed areas and it should be recognised that it may not be possible for LAC to be involved in activities on areas such as proposed property acquisitions, joint ventures or FNSW managed operations on private property.

- Over time, as operations return to areas previously investigated

Criteria for developing regional processes for discovering new sites:

- Geographic area e.g. entire or part of the region
- Historic knowledge of Aboriginal occupation
- Location and types of known sites on and within five kilometres of the area. Note: when consulting, use maps of appropriate scale
- The extent and intensity of previous discovery work
- Ground visibility during past discovery work
- Landform features including topography and vegetation affecting the likelihood of finding new sites
- Extent and level of past disturbance
- Current ground visibility
- Proposed operational activities
- Timing of proposed discovery work relative to proposed activities
- Field sampling intensity and procedures to focus effort in areas with highest likelihood for new sites
- Field procedures

Example of field procedure:

Initial investigation will involve Aboriginal cultural heritage officers, staff or community consultants examining the most likely areas (e.g. rock overhangs, river flats, saddles, level to gently sloped areas and stream flats) on foot, looking for stone objects such as cutting tools, hammer stones, stone axes, stone arrangements. Rock overhangs and cliffs should be examined for rock engravings, art or potential occupation deposits, and trees for unnatural scars.

An Aboriginal heritage pre-operational inspection report should be completed for each compartment or operational area. Areas inspected and lines traversed must be recorded on the compartment or operational map attached to the report, regardless of whether sites were located, as this provides evidence of search effort and is useful for future planning, and will record areas searched where sites were not evident.

Surveyor's flagging tape will be used to temporarily mark any suspected objects until the ACHO has the opportunity to consult with the Aboriginal community.

The ACHO and Aboriginal community consultant (inspecting the site) will determine in the field, and by reference to the community and others if necessary (e.g. archaeologist selected in consultation with the Aboriginal community), whether a potential site is Aboriginal heritage.

Where places or suspected objects are confirmed as Aboriginal sites or objects the extent and boundary of sites must be determined in the field. Management and protection of the site will be discussed with LAC and FNSW staff with a minimum buffer, for Regional Manager approval.

---

<sup>3</sup> This landscape model would be used by FNSW staff for any discovery work on 3rd party lands such as joint ventures or private property where access by LAC may not be possible.

Site details are recorded on the AHIMS form, entered into the FNSW database, a copy forwarded to the LALC and either a copy forwarded to the DECCW. The site is then considered to be a 'known site' and protection prescriptions are included in the operational plan. Field marking is implemented as required in the plan.

Note: Data and information sources should include LAC, research papers, and EIS reports.

Expected outcomes:

- A documented process for operational planning that meets LAC expectations consistent with the standard as outlined above. Attach as Appendix 3.

#### Process for managing Aboriginal cultural heritage information

Regions should seek LAC agreement on procedures for handling data and information on Aboriginal sites and issues including:

- Details of instruction to third-parties requesting information from FNSW on Aboriginal sites or heritage
- How information on Aboriginal sites is shown on operational maps and plans; including constraints on distributing maps and plans
- Details to be recorded in FNSW databases
- Data expected to be provided to LAC
- Regions must however ensure that all new sites found during pre-harvest survey or otherwise are loaded into the AHIMS database in compliance with the new section 89A of the NPW Act.

Expected outcomes:

- Documented, unambiguous procedures for protecting the confidentiality of Aboriginal site information. Attach as Appendix 4.
- Documented notification and record of LAC preferences about site information.

#### **6.2.2 Operational consultation**

##### Developing and reviewing agreed site protection measures

Regions should seek agreement with the LAC on site management issues consistent with the minimum described in section 9.0 on known sites, including:

- Identifying the LAC representatives to propose protective management prescriptions
- Requirements for reviewing or confirming existing or standard management prescriptions for sites in proposed operational areas
- Procedures for developing and recording agreements and approvals on protective management prescriptions

Expected outcomes:

- A documented, unambiguous procedure for developing and recording protective management prescriptions for each site. Attach as Appendix 5.

### Monitoring and reporting activities near sites

Regions should seek agreement with the LAC on the process for notifying non-conformances with agreed prescriptions or processes.

Expected outcomes:

- A documented, unambiguous procedure for notifying non-conformances with agreed prescriptions. Attach as Appendix 5
- A high level of LAC confidence in and support for FNSW management and procedures

### **6.2.3 Annual consultation review**

Regions will review the effectiveness of consultation with the LAC annually. The Region will seek agreement on the process to review consultation.

Details of the proposed participants, location and agenda for annual meetings will be confirmed before the review meeting.

- Documentation for participants, includes:
  - Non-compliance and non-conformance reports related to Aboriginal heritage, progress on implementing corrective and preventative actions, impacts and outcomes of actions
  - Records of consultation
  - Records of site management prescriptions reviewed or developed during the preceding period

Expected outcomes:

- A highly credible consultative procedure
- A high level of LAC confidence in and support for FNSW management and procedures
- A documented, unambiguous procedure reviewing the success of FNSW liaison with the LAC. Attach as Appendix 6

### **6.3 Engaging the Aboriginal community for field work**

LAC or other Aboriginal representatives engaged for field site location or identification work should be experienced. Contracts should cover a defined period, such as six or 12 months, be agreed with the group (e.g. LALC and FNSW), and specify the payment rate, survey method and reporting requirements. Refer to Appendix 9 for an example of the form of a suitable contract. Consultation records detailing arrangements and outcomes will be kept on FNSW Regional files.

### **6.4 Consultation background and principles**

*Pro-active communication*

FNSW plays an important role in informing Aboriginal communities about the likely impact of management activities. Potential conflicts will be minimised if Aboriginal people are involved in identifying and assessing sites and cultural places, including discussions about managing and minimising the impact of operational management. Aboriginal representatives should be involved early in the planning process in order to foster mutual trust and conduct discussions about site management in a culturally appropriate manner.

#### *Contact with the Aboriginal community*

Contact with the local Aboriginal land council (LALC), registered native title claimants and other recognised groups may be necessary to identify issues and concerns about proposed operations. The most appropriate contacts will be cultural knowledge-holders or custodians with authority to speak (by descent, historical association or entrusted knowledge) or other Aboriginal community groups that are active in heritage conservation; Divisions should not be made in isolation of the land council. Protocols developed with LACs will provide further advice on agreed procedures. An occasional (two-three yearly) advertisement in local media inviting Aboriginal communities to review FNSW Regional operational plans would demonstrate commitment to inclusiveness and transparency.

Meetings, on-site visits and inspections provide opportunities to resolve issues and develop measures to protect cultural sites. If community meetings are held, the venue must be convenient to local people — for example, a land council office rather than a FNSW office.

#### *Consultation maps*

Maps used for consultation with the LAC on operational planning:

- Are scaled to identify the location and extent of operations over the planning period<sup>4</sup>
- Identify known sites and areas surveyed within five kilometres of the operational area in order to consider the context of Aboriginal sites within the landscape and future management requirements

#### *The role of FNSW Aboriginal staff*

Consultation will be organised by FNSW Aboriginal Cultural Heritage Officers (ACHO), Aboriginal Coordinators or an officer nominated to coordinate Aboriginal liaison. Regional Managers will ensure these staff are briefed on current NSW operations, management processes and proposals.

## **6.5 Consultation records**

The consultation process and outcomes from consultation must be documented and filed. The Aboriginal community consultation record form (attachment 2) is used to

---

<sup>4</sup> Where operations are planned for private property or joint venture lands, the operational area may be very broad but still indicate to the LAC the areas where they should advise Forests NSW of known sites.

record the contact person, participant, organisation or group, location of identified sites and community requirements for site management.

## **6.6 Information sharing**

To foster trust and involvement, FNSW staff will share relevant information held in compartment histories and databases with members of the LAC. This includes recorded information about sites, previous community advice and prescriptions implemented to manage these places.

Leadership by FNSW Aboriginal staff helps promote open dialogue. Cultural concerns are more likely to be revealed when trust is established between parties. Information provided by Aboriginal groups must be handled sensitively. Staff and Aboriginal representatives must handle photographic material and information, in accordance with procedures agreed with the LAC.

## **7.0 Operational Guidelines**

### **7.1 Training requirements**

Industry and Investment provides Aboriginal cultural awareness training to FNSW staff. Contractors also receive Aboriginal cultural awareness training through FNSW-approved training organisations. Training promotes a broad appreciation of Aboriginal cultural values and communicates the legal basis for FNSW to implement heritage protection measures.

Regional Managers must ensure that staff are trained in the consultation and management processes outlined in this guideline.

### **7.2 Operational planning**

Regional planning staff implement the discovery process for 'new' sites over the proposed operational area. This involves procedures for consultation, considering existing information, field investigation and marking, and site mapping. Implementation and outcomes records are kept with the operational planning documentation.

Planning will consider known and recorded Aboriginal sites (collate information from AHIMS, FNSW databases and the LAC). Operational plans will include at least specific minimum protection measures.

### **7.3 Operational plan inductions**

Operational staff and contractors must be aware of legal obligations to ensure that sites are not disturbed or damaged unless an AHIP has been obtained. At the pre-operational briefing, planning staff will inform staff and contractors of management requirements and exclusion areas. The induction will include reference to operational maps, prescriptions in plans, field marking and field inspection. A list of inductees will be kept with the operational plan.



## 7.4 Mapping standards

Maps produced by FNSW containing Aboriginal site information must be marked: *Confidential — for restricted distribution only.*

### *Consultation maps*

Maps produced by FNSW for consultation with Aboriginal communities will:

- Be produced to professional standards
- Be scaled appropriately
- Include legends and scale, production version date/time, author and approval information

### *Operational plan and text*

Pre-operational planning includes a desktop review and mapping of Aboriginal sites within and near the operational area, and exclusion zones. Cross-referenced information on site type and approved prescriptions will be provided on the map or on attached pages to help field staff locate and identify field locations and plan the mark-up. Where the Aboriginal community has identified the presence of sensitive sites, planning maps showing sites will be returned to planning staff for retention or destruction. Procedures are documented in the agreement with the LAC, refer to Appendix 4.

Operational plans and maps must include the protection of all identified and recorded Aboriginal sites within and near the operational area, and management prescriptions for each site.

The method of identification on the operational copy of the map and in the text should be documented in the agreement with the LAC. If a symbol is used on the map, the corporate standard “\*” is used. A second map that does not show Aboriginal sites will be produced for harvest plans and any additional maps available for public release. Agreement should be sought from the LAC on whether plans and maps with symbols need to be recalled from contractors after the operation and recorded as being collected on the operational clearance certificate.

If a generic ‘modified harvest area’ is used on the map and described as a ‘special prescription’ in the text, rather than an Aboriginal site symbol, sufficient detail must be provided in the pre-operational briefing to each operator and staff member to ensure protection occurs. If mark-up starts before the pre-operational briefing, the field supervisor may need a briefing before mark-up.

## 7.5 Field investigation to locate known sites

Agreement with the LAC will determine the need for and timing of field inspections to locate recorded sites before operational activities. If a field inspection reveals an error in DECCW AHIMS data, FNSW must advise DECCW of the error.

Forest litter or ground flora can mask recorded sites and isolated objects. Unless there is evidence that a location is wrong, the recorded location must be marked in the field and protected during operations.

## 7.6 Field marking

There are two aspects of site protection: averting known or predicted threats, and maintaining the site in its desired state. All known sites must be avoided or protected by buffers and or other management strategies as described in section 9.0

Operational plans contain prescriptions to protect Aboriginal sites or objects. Sites buffers are marked before operations begin.

When planning a hazard reduction burn, vulnerable sites such as scarred trees should be found and protection work (raking or dozing) carried out before burning. Where possible, use temporary marking such as ribbon or aerosol paint on nearby trees or features. Buffers should be marked, not the site itself.

Marking is usually carried out by the field supervisor. The ACHO or community representative who found the site in the pre-operational inspection should guide the supervisor to the location.

Marking follows the tree-marking code:

<b>Activity</b>	<b>Method</b>	<b>Symbol or marker</b>
Harvesting	Tape or spray paint on trees	Three horizontal lines/bars
Road works	Paint or tape plus 'stake' at each end of road section	100mm X 50mm stake, projecting 75 cm above ground
Plantation establishment	Reference posts or fencing around object	Solid post or fencing
Hazard reduction burning and other activities	Stake or peg, tape or paint to mark locations	Determined locally, documented for systematic application

## 7.7 Operational supervision and monitoring

If a potential 'new' Aboriginal site is found during operations, work stops near the site (e.g. impose the minimum exclusion distance in the Plantation and Reafforestation Code) until the site has been investigated and a management prescription is added to the operational plan.

#### Procedure for new sites discovered during operational activity

- Step 1* Mark the possible site and exclude from operations pending further investigation.
- Step 2* The ACHO and Aboriginal community consultant inspect the site and determine whether the site is heritage. Community members or other experts may be consulted.
- Step 3* The extent and boundary of the site are determined in the field. LACs and FNSW staff discuss management and protection; outcomes are approved by the Regional Manager. Prescriptions are added as amendments to operational plans. The buffer distance is marked according to the marking standard.
- If a site cannot be avoided, and objects are not considered significant by the LAC, FNSW will seek support from the knowledge-holders for an application to DECCW for an AHIP. Guidance may be sought from knowledge-holders about salvaging artefacts.
- Step 4* Site details are recorded on the AHIMS form, entered into the FNSW database and copies sent to the relevant Aboriginal group, the LALC and DECCW.

Field supervisors will monitor compliance with operational plan conditions.

### **7.8 Reporting operational outcomes**

FNSW will report the results of operational compliance to the LAC.

## **8.0 Data Management**

### **8.1 Use of Aboriginal site data**

FNSW accepts that information may be culturally sensitive and therefore should be kept confidential. FNSW will adopt the following procedures to protect information:

- Reports must state that Aboriginal site information cannot be reproduced in public documents without the consent of the LAC.
- Site and other information provided by Aboriginal people will only be used by FNSW staff for consultation, planning and operational supervision. Information is not released to the public.
- Information is available to the Aboriginal community on request through the ACHO, Aboriginal coordinator or other qualified Regional representative.
- Inquiries from third parties about Aboriginal cultural heritage or site information will be referred to LAC representatives. Regional Managers will ensure that agreed procedures are implemented.
- The processes for Aboriginal involvement and the protection of heritage include consideration of data management procedures, which are assessed during the annual consultation review.

### **8.2 Aboriginal heritage information management system**

The Aboriginal heritage information management system (AHIMS) is a statutory register of Aboriginal sites maintained by DECCW and is the primary source of information about the location of known Aboriginal sites in NSW. An electronic AHIMS database contains summary data for information held on site cards, in slide and photographic collections, and site recording forms.

FNSW has a Memorandum of Understanding with DECCW to share data from AHIMS for sites on State forests and within a five-kilometre buffer. A Data Licence Agreement covers the exchange of data (Appendix 7).

Each Region has a copy of regional DECCW AHIMS data. The data available through AHIMS contains only site details resulting from areas already investigated, where the data has been provided to DECCW and the record updated.

### **8.3 FNSW databases**

FNSW maintains Regional databases of Aboriginal sites recorded on State forests. The database uses registered AHIMS data, compartment histories and consultation to provide an inventory of known sites on land being controlled by FNSW. Regional databases may contain information additional to AHIMS data, gained through consultation and negotiations. There is likely to be a lag between sending data to DECCW and receiving updated AHIMS data.

### **8.4 Aboriginal community data sources**

Recorded data will need to be supplemented by the results of community consultation.

## **8.5 Data management for new sites**

When a site is confirmed as Aboriginal cultural heritage, details are recorded on the DECCW AHIMS site recording form (Appendix 8). Regional agreements (Appendix 4) provide the Regional Manager with direction for notifying site details to DECCW. Under the NP&W Act FNSW is required to report all new Aboriginal sites and objects to the AHIMS database.

## **9.0 Site management**

Activities can be modified or relocated to avoid harm to landscape features or Aboriginal objects.

Management procedures may vary depending on the nature and significance of a site and the proposed activity. Site procedures may involve:

- Consideration of the requirements of the Plantation Reafforestation Code of Practice
- Establishment of defined exclusion zones
- Variation of operations, including reduced harvesting intensity, restriction of off-road machinery or vehicles
- Exclusion or inclusion of fire
- Protection works
- Interpretation works

Other considerations include:

- Cultural sensitivity of landscape
- Evidence of past disturbance
- Aboriginal community involvement in fieldwork and schedules for payment
- Aboriginal cultural significance of sites, and the site-types present
- Significance of Aboriginal sites and their heritage value to the wider community
- Direct and indirect impacts on Aboriginal sites and cultural places that would result from the proposed operation and subsequent rehabilitation
- Regional priorities for the protection of sites and objects
- Opportunities for conserving adjacent similar sites
- Negotiation of actions for field implementation
- Need to obtain AHIPs

The above consideration will determine the management prescriptions including the following minimum buffers:

- Scarred or Carved Trees – 20 metres
- Artefact Scatter or Aboriginal Place or Relic – 10 meters
- Single Burial Site – 20 meters, however for a Burial zone with multiple sites, increased buffer zone will be created in consultation with LAC

- Other Sites – 10 meters

However the final protective measures over and above these minimum will be determined in consultation with the LAC.

Relocation of the activity is the preferred alternative when an activity is planned for an area which has, or has been shown in the due diligence process to be likely to have, Aboriginal objects. If this is not possible, and due diligence has shown that a planned activity may harm Aboriginal objects, further assessment and consideration of an AHIP application should be made.

.See

<http://www.environment.nsw.gov.au/conservation/aboriginalculture.htm#whattodo> for information that is required to support an application for an Aboriginal Heritage Impact Permit (including impact assessment and community consultation) and other relevant information. Regions must undertake consultation in accordance with clause 80C of the *National Parks and Wildlife Regulation 2009*. These requirements may also be followed where there is uncertainty about potential harm and you are undertaking a cultural heritage assessment.

## **Appendices**

Regions are to develop and include as attachments to these guidelines Appendices 1-6.

1. Regional agreement(s) on processes for liaison with the local Aboriginal community.
2. Regional agreement(s) on processes for locating known sites.
3. Regional agreement(s) on processes for discovering 'new' sites.
4. Regional agreement(s) on processes for managing Aboriginal cultural heritage information.
5. Regional agreement(s) on processes for developing management prescriptions to protect Aboriginal cultural heritage, monitor and report plan implementation, including reporting of compliance or non-conformance with management prescriptions
6. Regional agreement(s) on processes for providing annual feedback on the effectiveness of the region's consultation and involvement of the LAC in forest management
7. AHIMS data licence (copy)
8. AHIMS standard site record form
9. Example of a contract for engaging ACH consultants

## **Attachments**

1. Pictorial representation of Aboriginal Objects & description
2. Aboriginal Community Consultation Record Form

**Stone artefacts** are a common type of Aboriginal object, and include stone tools, spear points, surface scatters, grinding stones, ground-edge axes, and other implements that were used for a variety of purposes, such as in the preparation of food or to make nets, baskets and other tools. Stone artefacts often have sharp edges, or of a stone type that is different from the natural rock in the area.

Another type of stone artefact is a ground-edge axe, which can come in different shapes, but they are usually round or oval. They are sometimes rounded and narrow at one end, and slightly broader and straighter at the cutting edge.

Because stone artefacts do not rot or rust they are often the primary physical evidence of Aboriginal occupation in a particular area. They can also provide important information about past Aboriginal people's settlement patterns, lifestyle and other connections, such as trade.

The presence of stone artefacts in an area may indicate that either a place was previously used by Aboriginal people, or that the area continues to be a place of significance, which may include sensitive sites such as men's or women's areas which may require a buffer zone to maintain. In some cases it will be appropriate to consider removing stone artefacts from where they are found (salvage), following advice from DECCW and Aboriginal groups.

Stone artefacts are often small, so they can be difficult to protect. Erosion and weathering activities such as ditch digging and ploughing can disturb stone artefacts. They can also be broken when trampled by animals, or when run over by vehicles.



Stone Artefacts. Photo by Mark Flanders, DECCW



**Oven or hearth sites** are the remains of a domestic open fireplace. Domestic open fireplaces have been used in populated places throughout Australia to provide warmth and lighting. They are also used for cooking food and sometimes to signal from one group to another.

These hearths are roughly circular piles of burnt clay or heat fractured rock with associated charcoal fragments, burnt bone, shell and stone artefacts.



Hearth Sites Photo by Steve Meredith, DECCW

**Rock art** includes paintings and drawings that generally occur in rock overhangs, caves and shelters. Stencils of hands, paintings or drawings of animal or people figures and animal tracks are common and have often been created using ochre, white pipeclay or charcoal. Engravings commonly occur on open, flat surfaces of rock such as on sandstone outcrops, although some occur in vertical rock faces and in rock shelters. Examples of engravings include outlines of people or animals, but may also include patterns, tracks and lines. Rock art is of high cultural significance to Aboriginal people, and many sites are still regarded as sacred, or of ceremonial significance. Rock art sites are important link to the past for Aboriginal people today. Rock art sites can also provide important information about the daily life and culture of Aboriginal people before European contact, and many sites are hundreds or thousands of years old. Rock art sites can be easily damaged as they can be prone to erosion and vandalism. Touching rock art or disturbing a shelter floor in the immediate vicinity of the rock art can cause damage, as can movement on or over surfaces with rock art. Sites may also suffer from vegetation growth or removal. Effective management of rock art sites can include drainage, fencing, graffiti removal, and visitor control.



Mutawintji hand stencils. Photo by Pat Laughton DECCW



**Shell Middens** are commonly made up of the remains of edible shellfish, and could be the result of a single meal or many different meals at the same location over many years. A midden may also contain fish and animal bones, stone tools, or charcoal. They can vary in size and depth. Middens are sometimes associated with burials. Middens can be found on headlands, sandy beaches and dunes, around estuaries, swamps and tidal stretches of creeks and rivers, and along the banks of inland rivers, creeks and lands. Middens may also be found in the open or in rock shelters. Middens can indicate that a place was, and may continue to be, a key meeting place of significance. Middens can also provide information about the environment that existed when Aboriginal people collected the shellfish, such as changes in species, and tools or raw materials that were used. Middens which contain burials are particularly significant. Middens are amongst the most fragile cultural sites. They can be exposed by wind or degraded by human and animal activity. Effective management of midden sites may include stabilising the surface, such as encouraging vegetation cover, or by restricting access to the site such as erecting fencing.



Shell Midden. Photo by Warren Mayers, DECCW

**Axe grinding grooves** are oval shaped indentations generally on flat and soft rock surfaces, such as sandstone outcrops. Aboriginal people made the grooves when shaping and sharpening stone axes by grinding them against the rock. Grooves can vary in size, shape and number. Sites with 20 to 60 grooves are not uncommon and some sites have more than 200.

Axe grinding grooves are important because they provide information about Aboriginal stone tool technology. They are often found along the edges of creeks, lakes or swamps as water was needed to keep the stone clean and cool. In areas where suitable outcrops of rock were not available, transportable pieces of stone were used for sharpening or grinding tools. Axe-grinding grooves provide important information about how stone tools were made.

As sandstone is relatively soft, it is prone to weathering, erosion and trampling by animals. Human activities such as mining, road infrastructure, damming, clearing, ploughing and construction can also destroy these sites. Management options can include stock and erosion control.



Axe Grinding Stones. Photo by Hilton Naden, DECCW



**Aboriginal culturally modified (scarred and carved) trees** are trees that show the scars caused by the removal of the bark or wood for the making of, for example, canoes, vessels, boomerangs, shelters and medicines. The shape and size of the scar may indicate the purpose for which the bark or wood was removed from the tree. In some regions of NSW, trees were carved with intricate patterns and designs for ceremonial purposes, or to mark country boundaries or burials.

Carved trees associated with burial sites are usually in groups of two or more trees. Carved trees associated with ceremonial grounds may have also been used for educational purposes. Scarred and carved trees occur in various locations across NSW.

Scarred and carved trees are significant to the descendants of the Aboriginal people living today. Scarred and carved trees are becoming rarer in NSW as trees decay, are burnt, or are destroyed.

It is important to note that the defence to a prosecution contained in Clause 80B of the *National Parks and Wildlife Regulation 2009* relating to certain low impact activities does not apply in relation to any harm to an Aboriginal scarred tree. Ensuring that scarred trees are not harmed will likely include insuring effective buffer zones are used, as their significance is often part of the broader landscape.



Carrington Scarred Tree. Photo by Warren Mayers, DECCW

**Quarry sites** are sites where Aboriginal people manufactured stone tools or collected ochre for painting and decoration. Quarry sites may be found in areas of rock outcrops and can be identified by the presence of artefacts such as flaked stone. Quarry sites vary in size. They may be one or two flaked boulders or a single pit, but can also incorporate many large outcrops over large areas.

As stone was an important resource for Aboriginal people, quarries are often associated with other nearby Aboriginal sites and cultural material. In NSW a variety of stone types were quarried for particular purposes. Quarries also provide information about trade routes and other activities.

Human activities such as mining, road building, damming, clearing and construction can disturb or destroy Aboriginal quarries. Natural processes such as weathering and erosion can also cause the gradual breakdown of stone outcrops.

Aboriginal quarries can be protected by management actions such as by controlling stock and managing erosion.



Daruka Axe Quarry Tamworth. Photo by Bruce Cohen, DECCW



**Stone arrangements** are places where Aboriginal people have positioned stones deliberately to form shapes or patterns, and can include large circular or linear arrangements, piles of stones, rock markers or more elaborate groupings that can depict animals or other designs. Aboriginal people also use stone arrangements for other purposes, such as for fish traps.

Stone arrangements have significant cultural heritage value because they are usually related to ceremonies, such as meetings or marriages. **Bora rings**, which are one or more raised earth rings, were used for male initiations. They are generally rare due to their vulnerability to disturbance. The stones are long lasting, but their arrangements can be damaged or destroyed. If stones are disturbed, the pattern and its significance may be lost. Ploughing, brush cutting, logging and large grazing animals can also cause disturbance. Management options around Aboriginal stone arrangements can include stock, weed and erosion control.



Stone Arrangement. Photo by M Sharp, DECCW

**Burials.** Aboriginal people had a variety of customs for honouring the dead and laying them to rest and were among the first people in the world to use cremation. However, Aboriginal burials may be found in a variety of landscapes throughout NSW, although most frequently they are found in middens, sand dunes, lunettes, bordering dunes and other sandy or soft sedimentary soils. Human activities such as sand mining, stock grazing, ripping rabbit warrens, ploughing and even trail bike riding and four-wheel driving can devastate burial sites.

Aboriginal ancestral remains are very sensitive and significant to Aboriginal people. If human remains are found or disturbed, it is requirement that a person:

- Not further disturb or move these remains
- Immediately cease all work at the particular location

- Notify DECCW's Environment Line on 131 555 and the local police as soon as practicable and provide available details of the remains and their location, and
- Not recommence any work at the particular location unless authorised in writing by DECCW.

### **Landscape features and natural sacred sites**

Many features of the landscape, such as mountains, waterholes, caves, and rock formations, are regarded as highly sacred sites to Aboriginal people. In addition, the flora and fauna species that inhabit these landscapes also carry Aboriginal cultural significance. In some cases, an inspection of the immediate area will show no physical evidence of prior occupation or usage by Aboriginal people.

Significant landscape features:

- May be recorded on AHIMS as Aboriginal objects
- May have been designated 'Aboriginal places' under the *National Parks and Wildlife Act*, in which case disturbance of the area is unauthorised without a permit
- May be marked with signage
- May have been recorded through other regional mapping processes undertaken by DECCW, the local CMA, heritage assessment of the Local Council or Local Aboriginal Land Council.

### **Further information about Aboriginal sites in NSW**

*Aboriginal scarred trees in New South Wales, a field manual* (DEC and Andrew Long 2005), available at [www.environment.nsw.gov.au/conservation/AboriginalScarredTrees.htm](http://www.environment.nsw.gov.au/conservation/AboriginalScarredTrees.htm).

*Lost but not forgotten: a guide to methods of identifying Aboriginal unmarked graves* (NPWS, 2003) available at <http://www.environment.nsw.gov.au/nswcultureheritage/LostButNotForgotten.htm>

*Cultural landscapes and park management: a literature snapshot. A report for the cultural landscapes: connecting history, heritage and reserve management research project* (Department of Environment and Climate Change 2008), available at <http://www.environment.nsw.gov.au/resources/cultureheritage/07137cultlandresearch.pdf>

*Aboriginal culturally significant landscapes in the Hunter-Central Rivers Region*, Hunter-Central Rivers CMA guide, 2009, available at <http://www.hcr.cma.nsw.gov.au/uploads/res/Publications/acsl.pdf>

*Site Identification*, Victorian Mini Poster Series, Department of Planning and Community Development, 2008, available at <http://www.aboriginalaffairs.vic.gov.au/web7/aavmain.nsf/headingpagesdisplay/publications+forms+and+resourcesaav+mini-poster+series>



Forms

**Aboriginal Community Consultation Record**

Note: To be completed by ACHO/Aboriginal coordinator or nominated representative and attached to relevant file or plan

This records each stage of consultation with the Aboriginal community

- Notice of proposed operational schedules
- Report new sites discovered in pre-operational planning procedures or during operations
- Development of management prescriptions

If insufficient space is provided, please make reference below and attach additional pages.

Details for **written communication** informing community of tactical plan, operational plan etc.

Organisation

Representative

Date

FNSW employee

Site details

Issues

Details of courtesy follow up **phone call** to Aboriginal community

Organisation

Representative

Phone number

Date

FNSW employee

Site details

Issues

Details of **meetings** with Aboriginal community members

Organisation

Representative

Date

Location

FNSW

employee

Site details

Issues raised

## Example of a contract for engaging ACH consultants

### FNSW

Agreement made on the .....between the ..... and Department Primary Industries FNSW Southern Region.

(hereinafter and in the general conditions of contract attached hereto called the "Consultant") of the one part and the FORESTRY COMMISSION OF NEW SOUTH WALES trading as FNSW (hereinafter and in the said attachment called "FNSW") of the other part.

WHEREAS —

- i) FNSW wishes to inspect proposed logging areas and other areas as requested for the presence of sites of Aboriginal significance for up to 100 man hours in the period between December 2004 and December 2005 within the Southern Forestry Region.
- ii) The Consultant is prepared, subject to provisions of the agreement to be so engaged; and to provide a written report within 14 days of each inspection, and
- iii) The parties hereto desire to enter into this agreement so that upon their signing the provisions hereunder shall have full force and effect.

Now it is hereby agreed as follows:

### SERVICES TO BE PROVIDED BY THE CONSULTANT

The Consultant shall undertake joint field-based Aboriginal site inspections with FNSW staff for logging areas and other areas as advised from time to time by FNSW. The Consultant shall provide a written report of the result of each inspection and shall also provide reports in the attached format for all archaeological sites encountered during the course of each inspection.

The fact that the Consultant is under the terms of this Agreement to be engaged in providing consultancy service for FNSW is not to be construed in such manner as to imply that the Consultant or any person employed by the Consultant is the employee of FNSW or Her Majesty Queen Elizabeth II or is employed under the *Public Sector Management Act 1998* of the said State nor shall the Consultant or any of his employees represent themselves as being the servant of FNSW or Her Majesty.

The provisions of the *Superannuation Act 1916*, and the regulations thereunder shall not apply to the engagement of the Consultant under this Agreement or to any person employed by the Consultant in the course of the Consultant carrying out his obligations under this Agreement.

The Consultant shall not, unless with the prior written approval of FNSW, assign his interest in this Agreement.

The Consultant shall have access to information of FNSW relevant to the inspections proposed under this Agreement, and FNSW shall render all reasonable advice and information to the Consultant to allow him to achieve the terms of this Agreement.

Except as necessary to obtain advice and opinions from local Aboriginal groups, the Consultant shall not disclose or make public any information or material acquired or produced in connection with or by the performance of the consultancy services without proper approval, in writing, from FNSW.

For each logging or other area required by FNSW to be inspected under the terms of this contract, the Consultant shall be supplied with a map detailing the extent of proposed disturbance, and the proposed methodology and maximum time frame for undertaking the inspections within that area.

## **RATES AND CHARGES**

FNSW shall pay to the Consultant a sum of \$xx per hour for consultancy services, on production of the report and detailed invoice. Consultancy fees are inclusive of GST. Persons engaged will be paid for shifts commencing and finishing at the person's home on each day of field inspections, plus an additional hour to finalise reports for each area.

In addition to the hourly rate, FNSW shall reimburse the Consultant for use of a single vehicle in travel legitimately required to undertake field inspections by the shortest practical return route from the person's home to the inspection area or arranged meeting place with State Forest staff. This additional payment will be made by referencing the Consultant's claim to local CMA 1:25,000 maps, and will be at the rates of \$xx cents per kilometre for all travel on 'roads' and \$xx cents per kilometre for all travel on 'tracks' as marked on those maps. Travel fees are inclusive of GST.

Subject to the reasonableness of the claim, FNSW shall pay the invoice within fourteen (14) days of receipt.

## **TERMINATION OF AGREEMENT**

If the Consultant fails to carry out any of the obligations or duties required of him under this agreement, FNSW may determine this Agreement forthwith by notice in writing to the Consultant up to the date of determination and will pay all moneys due to such date. Such notice will be deemed to be in full satisfaction and discharge of all claims whatsoever the Consultant has or may have against FNSW.

The Consultant shall ensure that all official documents are kept secure and confidential at all times. In general terms, any confidential information obtained shall not be used either during the course of this Agreement, or thereafter, without first obtaining the permission of FNSW. Failure to do so may lead to termination of this Agreement or other legal action.

## **INSURANCE, WARRANTIES AND INDEMNITIES**

The Consultant will effect and maintain all insurances required for the protection of his employees engaged in the provision of consultancy services under the Agreement and, in particular, insurances required under Workers Compensation Legislation.

The Consultant hereby releases and indemnifies and will keep indemnified FNSW, Her Majesty and the Government of New South Wales from and against all liability including but not limited to actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs (including solicitor and client costs), charges, expenses and penalties which arise directly or indirectly for any negligent or wrongful act or omissions of the Consultant, its employees, contractors or agents done or omitted to be done in the course of carrying out the consultancy services hereunder included but not limited to, any physical injury and death to persons and damage to property or from any, or omission in breach of any, condition or warranty of the agreement AND this release and indemnity has effect notwithstanding that such act or omission was done, or omitted to be done, under the authority or in consequence of this Agreement and notwithstanding that any time waiver or other indulgence has been given to the Consultant in respect of any obligation of the consultant under this Agreement AND IT IS HEREBY EXPRESSLY AGREED AND DECCWLARED that the obligations of the Consultant under this Sub-clause will continue after the expiration or other determination of this agreement in respect of any act, deed, matter or thing happening before such expiration or determination.

IN WITNESS WHEREOF the parties have executed this Agreement:

Signed by the delegate of the  
FORESTRY COMMISSION OF NEW SOUTH ) \_\_\_\_\_  
WALES Trading as FNSW

In the presence of: ) \_\_\_\_\_

Signed by: ) \_\_\_\_\_

For: ) \_\_\_\_\_

In the presence of: ) \_\_\_\_\_

## **AGREEMENT SPECIFICATION**

Joint inspections between the consultant and FNSW staff shall be undertaken in areas/compartments as advised from time to time by FNSW.

For each area/compartment required by FNSW to be inspected, the consultant shall be provided with a map identifying the location of areas on which the inspections are to be focussed.

For proposed logging areas, inspections shall be focussed on existing roads and log dump sites, proposed roads and log dump sites and prominent ridge lines on the boundary of, and within, the net harvestable area of the compartment, as indicated in yellow on the maps provided.

For other areas, inspections shall be focussed on the areas proposed for disturbance, as indicated on the maps provided.

The methodology for inspections consists of driving and/or walking along the routes of the existing and proposed roads and log dumps, and along the prominent ridge lines, or along the other areas proposed for disturbance, while searching for signs of Aboriginal activity. As a guide, the rate of inspection should be about 2km of route per hour.

Indicative inspection routes and total inspection times shall be provided by FNSW to the consultant to assist in planning the work schedule.

If signs of activity are identified, the location of the site must be recorded, using a GPS recorder, and the characteristics of the site recorded on the data sheets provided by FNSW.