



New South Wales
Aboriginal Land Council

zoning in on aboriginal land and heritage protection

MAY 24, 2010

A SUBMISSION BY THE NSW ABORIGINAL LAND COUNCIL
TO THE NSW DEPARTMENT OF PLANNING



NSWALC submission in response to Department of Planning Options Paper: **Potential Amendments to the Standard Instrument**

May 24, 2010

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• For more information about this submission contact the
Policy and Research Unit of NSWALC on 02 9689 4444. Copies of
NSWALC's submissions can be downloaded from www.alc.org.au.



1. Introduction

This submission details the NSW Aboriginal Land Council's response to the Potential Amendments to the Standard Instrument – Options Paper released by the NSW Department of Planning on 31 March 2010.

The NSW Aboriginal Land Council welcomes the opportunity to provide comment on the issues raised in the Options Paper as well as broader issues relating to the protection of Aboriginal culture and heritage and the impact of Local Environment Plans (LEPs) on Aboriginal communities.

The recommendations outlined in this submission are designed to better protect Aboriginal culture and heritage in NSW, and to better recognise the rights of Aboriginal people to control and manage their culture and heritage. The recommendations are also designed to provide practical direction regarding appropriate processes for recording and managing Aboriginal heritage.



2. About Aboriginal Land Councils

The *Aboriginal Land Rights Act 1983 (NSW)* establishes Land Councils as the elected representatives for Aboriginal people in NSW.

At the state level, the NSW Aboriginal Land Council (**NSWALC**) is the peak representative body for the Aboriginal communities of NSW, and the largest member-based Aboriginal organisation in Australia. NSWALC is governed by a Council of nine Councillors, who are elected every four years. All Aboriginal people in NSW are eligible to join a Land Council and vote in Land Council elections.

NSWALC provides support to the network of 119 Local Aboriginal Land Councils (**LALCs**) that exist in NSW. LALCs are autonomous bodies which are governed by boards elected by local Aboriginal community members, every two years.

The responsibilities of NSWALC and LALCs under the *Aboriginal Land Rights Act 1983 (NSW)* includes the acquisition and management of land for the benefit of the Aboriginal community, and the **protection and promotion of Aboriginal culture and heritage**.

LALCs' culture and heritage activities vary across regions, but include: custodianship of culturally significant land; maintenance of Aboriginal sites; management of local site databases; heritage site assessments; management of cultural centres and keeping places; participation in advisory committees and a range of other projects to improve awareness and understanding of Aboriginal cultural heritage.

LALCs are also the largest Aboriginal land owner group in NSW. Land owned by LALCs is primarily free hold land, though some LALCs also hold other forms of land title including joint management leases over national parks. As per the *Aboriginal Land Rights Act (NSW)*, LALCs may choose to sell, develop, maintain or take other action regarding their land holdings, for the economic, social and cultural benefit of Aboriginal people living within their boundaries.



3. The impact of Local Environmental Planning laws on Aboriginal communities

LEPs play a significant role in determining how land and heritage is managed, within a Local Government Area. LEPs have the potential to significantly impact on access to, and use of, land by Aboriginal people, as well as the level of protection available to particular heritage sites or areas which Aboriginal people access for cultural purposes.

Most local councils in NSW have a current LEP in force. As it has not previously been a requirement for local councils to develop Aboriginal heritage strategies or provide for Aboriginal heritage in LEPs, across the state LEPs vary significantly in terms of how Aboriginal heritage issues are, or are not, recognised.

Through the *Environmental Planning and Assessment Act 1979 (NSW)*, in 2006 the NSW Government gazetted the Standard Instrument – Principle Local Environmental Plan also known as the LEP ‘template’.¹

The Standard Instrument LEP includes a compulsory provision to conserve buildings, landscapes, relics and sites, as well as larger areas like historic precincts. Currently, Aboriginal cultural heritage is included in this broader definition of ‘heritage item’, which are to be protected by being listed or mapped in the LEP.

Although the introduction of standard minimum requirements for the recognition of Aboriginal heritage in LEPs is welcome, there are a significant number of problems which the Aboriginal community has identified with the current Standard Instrument LEP, as outlined in the following sections of this submission. Some of these issues are addressed by the changes outlined in the Department of Planning Potential Amendments to the Standard Instrument – Options Paper.

All local councils in NSW are now required to develop a LEP which complies with the Standard Instrument ‘template’ by 2013. Many local councils have already begun preparing new LEPs to comply with the Standard Instrument. A small number of local councils have completed their new LEPs. In addition, any amendments to LEPs or new LEPs which started after 1 July 2009 are required to use a new process for approval. This new LEP process is known as the ‘gateway’ process.

• **To assist the Aboriginal community to understand the new process for the development of LEPs the NSW Aboriginal Land Council has developed a series of Planning Fact Sheets, available from our website www.alc.org.au or by contacting the NSWALC Policy and Research Unit on 02 9689 4444.**

1. The Standard Instrument – Principle Local Environmental Plan can be accessed at: <http://www.legislation.nsw.gov.au/maintop/view/inforce/epi+155a+2006+cd+0+N>



4. Other laws impacting on Aboriginal heritage in NSW

In providing comment on the *Potential Amendments to the Standard Instrument – Options Paper*, NSWALC also notes that there are a number of other laws which impact on the management of Aboriginal heritage in NSW.

This includes the key law in NSW for the protection and management of Aboriginal culture and heritage - the *National Parks and Wildlife Act 1974 (NSW)*. The *National Parks and Wildlife Act (NSW)* gives the Director-General of Department of Environment, Climate Change and Water (DECCW) responsibility for the proper care, preservation and protection of 'Aboriginal objects' and 'Aboriginal places'.

The Director-General can prosecute people who unlawfully destroy or damage Aboriginal objects or places and can also issue stop work or interim protection orders.

DECCW maintains a database of known Aboriginal 'places' and 'objects', known as the Aboriginal Heritage Information Management System, or **AHIMS**. AHIMS includes over 60,000 site records.

Where a development may impact on an Aboriginal object or place, the developer will usually be required to get a permit from DECCW before proceeding. The Director-General of DECCW has the power to issue these permits, called Aboriginal Heritage Impact Permits (or **AHIPs**)².

The provisions of the *National Parks and Wildlife Act (NSW)* apply in addition to any requirement in the Development Approval process imposed by a local council.

Similarly, certain Aboriginal sites or areas may be protected through the *Heritage Act 1977 (NSW)*. This Act establishes the State Heritage Register for natural, cultural and built heritage places or objects that are of State heritage significance. This can include Aboriginal cultural heritage. There are currently a small number of Aboriginal heritage sites protected through a listing on the State Heritage Register.

Again, the provisions of the *Heritage Act 1977 (NSW)* generally apply in addition to any requirements imposed by a local council through a LEP. Once an item of significance is listed on the State Heritage Register, major changes to it usually require the approval of the Heritage Council.

For more information about the *National Parks and Wildlife Act* and other laws for the protection of Aboriginal cultural heritage in NSW see Culture and Heritage Fact Sheets which are available to download from the NSWALC website www.alc.org.au.

2. *National Parks and Wildlife Act 1974 (NSW)*, ss 86, 87, 90



Other laws which can offer some protection against development to Aboriginal sites include:

- The *Environment Protection and Biodiversity Conservation Act 1999 (NSW)*;
- The *Native Title Act 1993 (Cth)*; and
- The *Aboriginal and Torres Strait Islander Heritage Protection Act 1984 (Cth)*.

A major criticism of the system for managing Aboriginal culture and heritage in NSW is the lack of consistency between environmental, planning and heritage laws. The laws can make it confusing for developers, land owners, and local councils to know when and how Aboriginal heritage issues need to be addressed.

There is a clear need in NSW for improved integration of relevant heritage laws to reflect international best practice. This is particularly the case in light of the recent commitment by the Federal Government to the principles in the *UN Declaration of the Rights of Indigenous Peoples (UNDRIP)*, endorsed by the Federal Government on 3 April 2009.³

The NSW Minister for the Environment, the Hon Frank Sartor MP, recently confirmed the NSW Government's commitment to develop consolidated, stand alone Aboriginal heritage legislation.⁴ The NSW Opposition, during debate in the NSW Parliament regarding the *National Parks and Wildlife Amendment Bill 2010*⁵ also indicated support for stand alone Aboriginal heritage legislation.

NSWALC is heartened by the bi-partisan commitment to reform. For more than two decades there have been calls for the development of an Aboriginal Cultural Heritage Bill for NSW from NSWALC and the Aboriginal community.

NSWALC strongly supports wide-ranging reform of the Aboriginal culture and heritage system through the development of an Aboriginal Cultural Heritage Bill and an Aboriginal Cultural Heritage Commission based on international best practice and recognition that the ownership of Aboriginal cultural heritage lies with Aboriginal people.

3. The Hon. Jenny Macklin, 'Statement on the United Nations Declaration on the Rights of Indigenous Peoples' Speech at Parliament House, Canberra, 3 April /2009, available at: http://www.jennymacklin.fahcsia.gov.au/statements/Pages/un_declaration_03apr09.aspx

4. See Minister Sartor's Media release 25 February 2010 'Aboriginal Cultural Heritage Laws Get Strengthened': <http://www.environment.nsw.gov.au/resources/MinMedia/MinMedia10022502.pdf> and Minister Sartor's 'Agreed to in Principle' speech in Parliament on 25 February 2010 in relation to the National Parks and Wildlife Amendment Bill 2010: [http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/131a07fa4b8a041cca256e610012de17/60ed5c6afd5dbd6ca2576d3001c232e/\\$FILE/LA%20Nat%20Parks6.pdf](http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/131a07fa4b8a041cca256e610012de17/60ed5c6afd5dbd6ca2576d3001c232e/$FILE/LA%20Nat%20Parks6.pdf)

5. *National Parks and Wildlife Amendment Bill 2010* accessible at the NSW Parliament website: <http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/131a07fa4b8a041cca256e610012de17/60ed5c6afd5dbd6ca2576d3001c232e?OpenDocument>



5. Zoning issues

LEPs set the blueprint for future development and conservation in a given area by allocating 'zones' to different parcels of land. Each zone has a number of objectives, which indicate the principle purpose of the land. The zone will limit what can be done with that land.

Previously, local councils could define their own zones meaning that there was a large variety between local councils.

Once an LEP has been finalised, zoning categories may be difficult to change. Once an LEP has been adopted the only way that a property owner can seek an exemption to the requirements and limitations is to either:

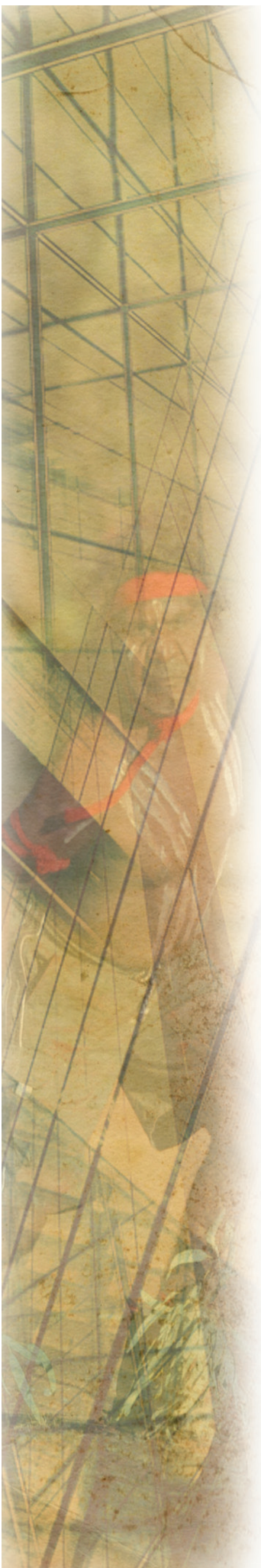
- Amend the LEP, or
- Apply for a special permit to use the land in a way not set out in the LEP.

Changes to land zoning as a result of an LEP, or another Environmental Planning Instrument (EPI), have the potential to significantly limit the options for use or development of land by LALCs. For this reason local councils are strongly encouraged to consult with LALCs to ensure that zoning decisions are not inconsistent with the long term interests and aspirations of the LALCs, and the Aboriginal community which they represent.

Decisions which may have a negative impact on a LALC could include a decision to exclude LALC land from commercial zoning, thus limiting the options for the LALC to develop the land and deliver economic benefits back to the local Aboriginal community.

Generally, to ensure effective consultation, additional time may be required to allow a LALC to respond to a planned rezoning proposal than the minimum required by the *Environmental Planning and Assessment Act 1979 (NSW)*.

The issue of rezoning may need to be considered by a LALC members' meeting, which may take several weeks to organise. Providing notice to the LALC in several forms, such as a letter, a follow up phone call and an email, is also recommended.



6. Summary of Recommendations

- NSWALC strongly supports the removal of 'Aboriginal objects and places' from the definition of heritage item to ensure that Aboriginal cultural heritage will no longer need to be placed on a public map in a LEP.
 - NSWALC supports the broader definition of Aboriginal cultural heritage noted in the Standard Instrument LEP that recognises that Aboriginal heritage is not limited to specific sites but also includes landscapes and more contemporary heritage such as massacre sites and missions.
 - Local councils are encouraged to work with LALCs, and other relevant Aboriginal groups, to reach agreements about how information provided by the Aboriginal community will be used or displayed.
 - The Department of Planning should work with NSWALC, LALCs and other Aboriginal organisations and groups to explore different ways of including Aboriginal heritage in LEPs or other environmental planning instrument. This could include developing 'heritage zones', or utilising confidential mapping layers about Aboriginal heritage information in close consultation with local Aboriginal communities.
 - NSWALC recommends that the Department of Planning work with NSWALC to develop advice for relevant planning authorities and local councils about working with LALCs and Aboriginal communities to determine how Aboriginal culture and heritage can best be addressed at the local level and/or through LEPs.
 - NSWALC recommends that the Department of Planning work with NSWALC to develop and distribute material for the Aboriginal community and LALCs as well as developers and land owners. It is recommended that the Department of Planning develop information packs and hold information sessions and workshops for Aboriginal people and LALCs.
- NSWALC recommends that the Department of Planning ensure that the revision of the definitions relating to Aboriginal cultural heritage do not limit protection of Aboriginal heritage through the heritage conservation clause in the Standard Instrument LEP, or more generally.
- The Aboriginal heritage subclause in the Standard Instrument⁶ should refer to the Aboriginal cultural heritage provisions set out in Part 6 of the *National Parks and Wildlife Act (NSW)* to ensure consistency. Alternatively, advice should be included in practice notes about the application of the *National Parks and Wildlife Act (NSW)*.
 - LALCs should be listed in clause 5.10(8)(b) as a key group to be notified about any developments that may impact on Aboriginal cultural heritage, or heritage studies that may be undertaken.

NSWALC's detailed response to the individual changes proposed to the Aboriginal heritage provisions in the *Standard Instrument Options Paper* are outlined in the following sections.

6. Standard Instrument – Principle Local Environmental Plan, cl 5.10(8)



7. Recommendations in response to proposed reforms

- a. Removing Aboriginal heritage from the definition of 'heritage item'

The current 'heritage conservation' clause (clause 5.10) is a compulsory clause in the *Standard Instrument – Principle Local Environment Plan*⁷. The heritage conservation clause outlines the level of protection available to 'heritage items' that are identified in LEPs.

The current Standard Instrument LEP may help to protect 'heritage items', 'heritage conservation areas' and 'archaeological sites' by requiring development consent for certain works to a heritage item or heritage conservation area⁸.

The current definition of 'heritage item' includes Aboriginal heritage.⁹ The Standard Instrument also provides for heritage impact assessments to be undertaken¹⁰, heritage conservation management plans to be prepared¹¹, and for consent authorities to notify the Heritage Council¹² or Aboriginal communities¹³ about certain developments.

The current heritage conservation clause notes, "*Heritage items, heritage conservation areas and archaeological sites (if any) are shown on the Heritage Map. The location and nature of any such item, area or site is also described in Schedule 5.*" (emphasis added)

One of the key concerns regarding the current heritage clauses in the Standard Instrument is that it is rarely appropriate to include Aboriginal heritage places on public maps attached to LEPs.

While many Aboriginal sites are publicly known and generally open to the public, within any Local Government Area as a whole there will be some sensitive sites for which the community may want to keep the location or details secret.

The Department of Planning Options Paper proposes to address this issue by removing Aboriginal heritage from the definition of heritage item as follows:

heritage item means a place, building, work, relic, moveable object, precinct, archaeological site, or tree:

(a) shown on the Heritage Map as a heritage item, and

(b) the location and nature of which is described in Schedule 5, and

(c) specified in an inventory of heritage items that is available at the office of the Council.¹⁴

7. The Standard Instrument – Principle Local Environmental Plan can be accessed at: <http://www.legislation.nsw.gov.au/maintop/view/inforce/epi+155a+2006+cd+0+N>

8. Standard Instrument – Principle Local Environmental Plan, cl 5.10(2)

9. Standard Instrument – Principle Local Environmental Plan, cl 1.4

10. Standard Instrument – Principle Local Environmental Plan, cl 5.10(5)

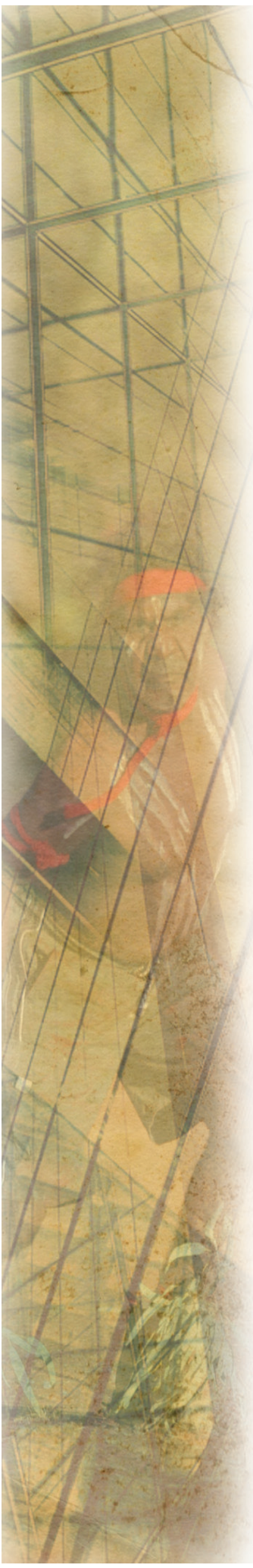
11. Standard Instrument – Principle Local Environmental Plan, cl 5.10(6)

12. Standard Instrument – Principle Local Environmental Plan, cl 5.10(7) and 5.10(9)

13. Standard Instrument – Principle Local Environmental Plan, cl 5.10(8)

14. See page 8, Dept of Planning, Potential Amendments to the Standard Instrument – Options Paper, March 2010, available at:

<http://www.planning.nsw.gov.au/LinkClick.aspx?fileticket=6eolEpVjJDo%3d&tabid=212&language=en-AU>



This change would mean that Aboriginal heritage would no longer be required to be identified on a public map in the LEP. This would assist in protecting the location and nature of Aboriginal heritage against damage or destruction.

However, it must be ensured that alternative mechanisms for protecting Aboriginal cultural heritage are developed and implemented by local councils and other relevant planning authorities (RPAs).

NSWALC strongly supports the removal of 'Aboriginal objects and places' from the definition of heritage item to ensure that Aboriginal cultural heritage will no longer need to be placed on a public map in a LEP.

b. Definitions of Aboriginal heritage

The Options Paper does not propose any amendments to the definitions of 'Aboriginal object', however, does propose amendments to the definition of 'Aboriginal place of heritage significance', also to remove the requirement for public mapping:

Aboriginal object means any deposit, object or other material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of an area of 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.

Aboriginal place of heritage significance means:

(a) the site of one or more Aboriginal objects or a place that has the physical remains of pre-European occupation by, or is of contemporary significance to, the Aboriginal people. It can (but need not) include items and remnants of the occupation of the land by Aboriginal people, such as burial places, engraving sites, rock art, midden deposits, scarred and sacred trees and sharpening grooves, or

(b) a natural Aboriginal sacred site or other sacred feature. It includes natural features such as creeks or mountains of long-standing cultural significance, as well as initiation, ceremonial or story places or areas of more contemporary cultural significance.¹⁵

NSWALC notes that the definition of 'Aboriginal place of heritage significance' is broader than the definition that appears in the *National Parks and Wildlife Act (NSW)*, which limits the protection of Aboriginal heritage to places declared by the Minister.¹⁶

15. See page 15, Dept of Planning, Potential Amendments to the Standard Instrument – Options Paper, March 2010

16. *National Parks and Wildlife Act 1974 (NSW)*, s84



As outlined in the NSWALC *More than Flora and Fauna* submission released in 2009¹⁷ the limited definition of 'Aboriginal object' and 'Aboriginal place' has been criticised by the Aboriginal community for reflecting an outdated archaeological view of Aboriginal culture which focuses on the location of specific objects or the features of particular places, as

opposed to focusing on the significance of features, places and history within the broader area, including how the Aboriginal community wants to protect or use the broader 'cultural landscape'.

While it is positive that the definitions of Aboriginal heritage included in the Standard Instrument LEP are not limited to the narrow definitions that are contained in the *National Parks and Wildlife Act (NSW)*, to avoid confusion it is recommended that standard advice be provided to local councils regarding the interaction between the Standard Template LEP provisions and the provisions of other relevant legislation.

This could also encourage effective planning of Aboriginal heritage issues and community consultation, where required, in the early planning stages of a development.

NSWALC supports the broader definition of Aboriginal cultural heritage noted in the Standard Instrument LEP that recognises that Aboriginal heritage is not limited to specific sites but also includes landscapes and more contemporary heritage such as massacre sites and missions.

NSWALC recommends that the Department of Planning ensure that the revision of the definitions relating to Aboriginal cultural heritage do not limit protection of Aboriginal heritage through the heritage conservation clause in the Standard Instrument LEP, or more generally.

17. More than Flora and Fauna available on the NSWALC website at: <http://www.alc.org.au/issues/culture--heritage.aspx>



c. Mapping Aboriginal cultural heritage

As noted above, issues of mapping Aboriginal heritage are of key importance to Aboriginal communities. Often information about places of Aboriginal cultural significance is confidential or sensitive. Aboriginal communities may be able to pass on information about the significance of a place in order to ensure that it is protected, but may not want that information recorded on a public map, as may be attached to an LEP.

Areas of importance to the Aboriginal community are not limited to particular sites or objects. In order to determine the cultural importance of an area the wider landscape often needs to be considered. Lands or waters may be very significant to an Aboriginal community, even if a specified site or object is not present. Local councils are encouraged to consult with LALCs to discuss how best to effectively 'map' the places of Aboriginal culture and heritage significance in their LGA.

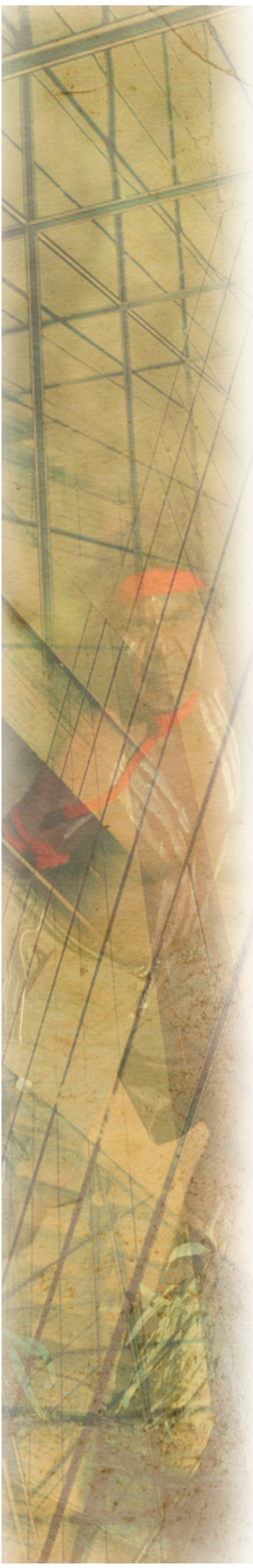
The LALC or NSWALC may be able to provide advice regarding this. The Culture and Heritage Division of DECCW may also be of assistance.

While the DECCW AHIMS database holds information about many sites, it is not a comprehensive register of all Aboriginal sites. It is strongly recommended that AHIMS only be used in conjunction with other measures for cultural heritage assessment. While there have been some proactive attempts to comprehensively map Aboriginal site data across NSW, to date these have been limited.

Local councils are encouraged to work with LALCs, and other relevant Aboriginal groups, to reach agreements about how information provided by the Aboriginal community will be used or displayed.

In some cases LALCs also hold databases with information about sites, which they may be able to provide to a local council or relevant planning authority in relation to a LEP or planning proposal, in order to ensure that the local council identifies areas of significance to the Aboriginal community.

This means that it is most appropriate for local Aboriginal communities to be involved in any matters concerning their cultural heritage.



It is also important to note that the Aboriginal community may not want to pass on information to local councils, even on a confidential basis. In such circumstances the local council should seek to negotiate with the community to provide sufficient information to allow areas to be offered protection.

Options for mapping Aboriginal heritage that local councils may want to consider could include:

- Developing a list of site numbers in an LEP, which are publicly available but do not include enough details to locate sensitive areas, or
- Allocating cultural sensitive zones to particular areas which include significant sites, without providing enough detail to pinpoint specific locations or details about sensitive sites.

The Department of Planning should work with NSWALC, LALCs and other Aboriginal organisations and groups to explore different ways of including Aboriginal heritage in LEPs or other environmental planning instrument. This could include developing 'heritage zones', or utilising confidential mapping layers about Aboriginal heritage information in close consultation with local Aboriginal communities.

d. Development of guidance material

The current legislative and policy context in NSW addresses Aboriginal culture and heritage in a complex and often unintegrated manner.

NSWALC is not aware of any policies that are used by the Department of Planning in relation to Aboriginal cultural heritage, except for the draft consultation guidelines for Part 3A major projects. However, the provisions set out in a LEP, may be different from those set out in Part 3A major projects or required under the *National Parks and Wildlife Act (NSW)*.

DECCW has more than twenty policies, guidelines and regulatory tools relating to Aboriginal cultural heritage¹⁸. It is unclear how the various culture and heritage policies managed by DECCW, interact with Department of Planning and local council procedures.

More clarity and transparency is needed about the policies which guide how local councils and the Department of Planning manage, assess and protect Aboriginal cultural heritage and how these relate other agencies' policies and relevant legislation.

There is a clear need for more guidance material to be developed and communicated which simply explain the impact and use of LEPs and, more broadly, planning laws in NSW on areas of importance to Aboriginal people.

18. See DECCW's Operational Policy – Protecting Aboriginal Cultural Heritage, page 22, last accessed 14/05/2010, available at: <http://www.environment.nsw.gov.au/resources/cultureheritage/09122ACHOpPolicy.pdf>



NSWALC understands that the Department of Planning will be producing practice notes for local councils and relevant planning authorities in relation to Aboriginal heritage issues.

As noted above, it is important that the Aboriginal community is consulted about how information is collected and recorded, and that a local council is flexible in its approach to how Aboriginal culture and heritage can best be included in its LEP.

Guides and training packages tailored for the Aboriginal community would be a useful tool that could be used to provide advice about the planning framework in NSW. Advice about the impact of development on Aboriginal cultural heritage could be produced for developers, land owners, and the broader community. This will allow more clarity and transparency in planning processes. Training packages could include advice about:

- Provisions in LEPs for protecting Aboriginal heritage and other relevant laws such as the *National Parks and Wildlife Act 1974 (NSW)*,
- Options for protecting and managing Aboriginal heritage,
- Undertaking heritage studies when preparing LEPs and planning proposals,
- Best practice Aboriginal heritage assessment methodology¹⁹, and
- Undertaking consultation with the Aboriginal community and working with LALCs.

NSWALC recommends that the Department of Planning work with NSWALC to develop and distribute material for the Aboriginal community and LALCs as well as developers and land owners. It is recommended that the Dept of Planning develop of information packs and roll out information sessions and workshops for Aboriginal people and LALCs.

19. The proposed amendments to subclause 4 outlined in the Options Paper refers to the Heritage Branch website for advice on heritage assessment methodology. However, the advice currently on this website relating to Aboriginal heritage is not very detailed and requires updating.



e. Consultation with Aboriginal communities

There are currently a number of laws that may help to protect Aboriginal cultural heritage, and

options such as including Aboriginal heritage in a Development Control Plan (DCP), where there is agreement with the local Aboriginal community.²⁰ However, it is unclear whether local councils will develop their own protocols with the Aboriginal community about identifying Aboriginal heritage, or whether the process will rely on the provisions set out in the *National Parks and Wildlife Act (NSW)*.

The Aboriginal heritage subclause in the Standard Instrument²¹ should refer to the Aboriginal cultural heritage provisions set out in Part 6 of the *National Parks and Wildlife Act* to ensure consistency. Alternatively, advice should be included in practice notes about the application of the *National Parks and Wildlife Act (NSW)*.

It is important to clarify and provide more detail about how the proposed changes to subclause 5.10(8) would interact with the *National Parks and Wildlife Act (NSW)*, and to provide more guidance for local councils and relevant planning authorities about the importance of identifying Aboriginal heritage early in planning processes, by consulting with the LALCs and local Aboriginal community.

LALCs should be listed in clause 5.10(8)(b) as a key group to be notified about any developments that may impact on Aboriginal cultural heritage, or heritage studies that may be undertaken.

The Options Paper also proposes changes to the Aboriginal heritage subclause that would require 'adequate investigation and assessment' of a proposed development on Aboriginal heritage.

20. Noted on page 7 of the Options Paper

21. Standard Instrument – Principle Local Environmental Plan, cl 5.10(8)



LGA and LALC boundaries are different, so more than one LALC may need to be notified. The proposed insertion to recognise the culture and heritage role of LALCs²² is included below in underlined text. Contact details of all LALCs in NSW and a LALC/LGA boundary map can be downloaded from www.alc.org.au.

5.10 Heritage conservation [compulsory]

(8) Aboriginal Objects and Aboriginal Places of heritage significance

The consent authority must, before granting consent under this clause to the carrying out of development involving an Aboriginal object or an Aboriginal place of heritage significance:

(a) consider the effect through adequate investigation and assessment, of the proposed development on the heritage significance of the Aboriginal object or Aboriginal place of heritage significance known or reasonably likely to be located at the place, and

(b) notify the Local Aboriginal Land Council/s and local Aboriginal communities (through notification in writing and in other such ways as it thinks appropriate) about the application and take into consideration any response received within [insert a number no less than 21 days] after the notice is sent.

In the Dictionary, reword 'place of Aboriginal heritage significance' to 'Aboriginal place of heritage significance', remove the reference to the 'Heritage Map' and move the definition under 'Aboriginal object' in the Dictionary order.²³

• For more information about this submission contact the Policy and Research Unit of NSWALC on 02 9689 4444. Copies of NSWALC's submissions can be downloaded from www.alc.org.au.

22. See Aboriginal Land Rights Act 1983 (NSW), s 52(4)

23. Page 7, Dept Planning, Options Paper, March 2010