

5.1 Aboriginal Heritage

Objectives

- Protect and conserve Aboriginal cultural and spiritual sites within the Shire
- Ensure the impact of a proposed development on the heritage significance of an Aboriginal place, cultural value, landscape value or object is considered by adequate investigation and assessment processes.

Background

Aboriginal cultural heritage consists of places, traditions, beliefs, customs, values and objects that represent the living history of past Aboriginal generations and are of important cultural and heritage significance to Aboriginal people. It includes tangible and intangible values, such as Song Lines, Dreaming stories and ceremonies passed from generation to generation, as well as physical objects and places (source: NSW Department of Planning, Industry and Environment 2019)

Any activity that impacts on the landscape may impact on Aboriginal cultural heritage. In NSW protection of Aboriginal cultural heritage is provided by the *Environmental Planning and Assessment Act 1979*, *National Parks and Wildlife Act 1974* and *Heritage Act 1977*. Land owners have obligations regarding Aboriginal cultural heritage under these Acts.

Due Diligence Code of Practice

The *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* sets out a process for individuals and organisations to follow to determine whether an Aboriginal object will be harmed by an activity, whether further investigation is needed, and whether the application to harm requires an Aboriginal heritage impact permit. Following this code of practice is regarded as 'due diligence'. A person who exercises due diligence in determining that their actions will not harm Aboriginal objects has a defence against prosecution if they later unknowingly harm an object without an Aboriginal heritage impact permit.

Application

This Section applies to all development in the Bega Valley Shire that will disturb the natural ground surface except any 'Excluded land' that is not within 200m of an Aboriginal Heritage Information Management System (AHIMS) site or within an Aboriginal Place listed in BVLEP 2013 or within 50m of the mean high-water mark.

Excluded land includes where:

- 75% of the combined/total site area is already disturbed, or
- Works do not exceed existing disturbed footprint, or
- The site has previously been assessed for Aboriginal heritage

Note: Whilst a Due Diligence assessment on 'excluded land' is not required to accompany the Development Application, landowners should still satisfy themselves in relation to their responsibilities under the *Due Diligence Code of Practice*

5.1.1 Application requirements

• Basic assessment

Where a development will disturb the ground surface and the natural ground surface has not previously been significantly disturbed, the development application must demonstrate that a Due Diligence assessment has been undertaken. This includes (but is not limited to) submitting the

following documentation in accordance with *the Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW*:

- Whether the development meets the definition of *Excluded land*.
- A statement and results of a basic 200m AHIMS search. Where a site is identified within 200m of the development site the results of an extensive AHIMS search are required.
- A statement identifying whether the development site is partially or wholly within the area identified as having a high probability of Aboriginal cultural heritage values on the Aboriginal Cultural Heritage Landscape Map (see Figure 5.1b).
- A statement indicating whether there are landscape features that indicate the potential presence of Aboriginal objects. Landscape features include foreshore areas, creek lines, rocky areas, wetlands, ridge tops, ridgelines, headlands, sand dunes and caves. Figure 5.1a illustrates several landscape features where there is potential for Aboriginal sites to occur.

- **Assessment by a qualified person**

The Due Diligence assessment must be prepared by a suitably qualified person such as an archaeologist or someone with training in recognising Aboriginal landscapes and values where:

- The AHIMS search has identified the likelihood of an Aboriginal item within 200m of the development site, and/or
- The site is partially or wholly within the area identified as having a high probability of Aboriginal cultural heritage values on the Aboriginal Cultural Heritage Landscape Map (see Figure 5.1b).

- **Aboriginal Cultural Heritage Assessment Report**

An Aboriginal Heritage Impact Statement or Aboriginal Cultural Heritage Assessment Report prepared in accordance with the Office of Environment and Heritage *Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in New South Wales*, may be required where:

- The Due Diligence assessment has identified the potential for the site to contain an Aboriginal object or place of significance, or
- The development will have an impact on a known Aboriginal object or place.

- **Aboriginal Heritage Impact Permit**

Where a proposal seeks to destroy, remove or impact on an Aboriginal object, any development will be Integrated Development.

Figure 5.1a: Landscape features where there is potential for Aboriginal sites to occur.

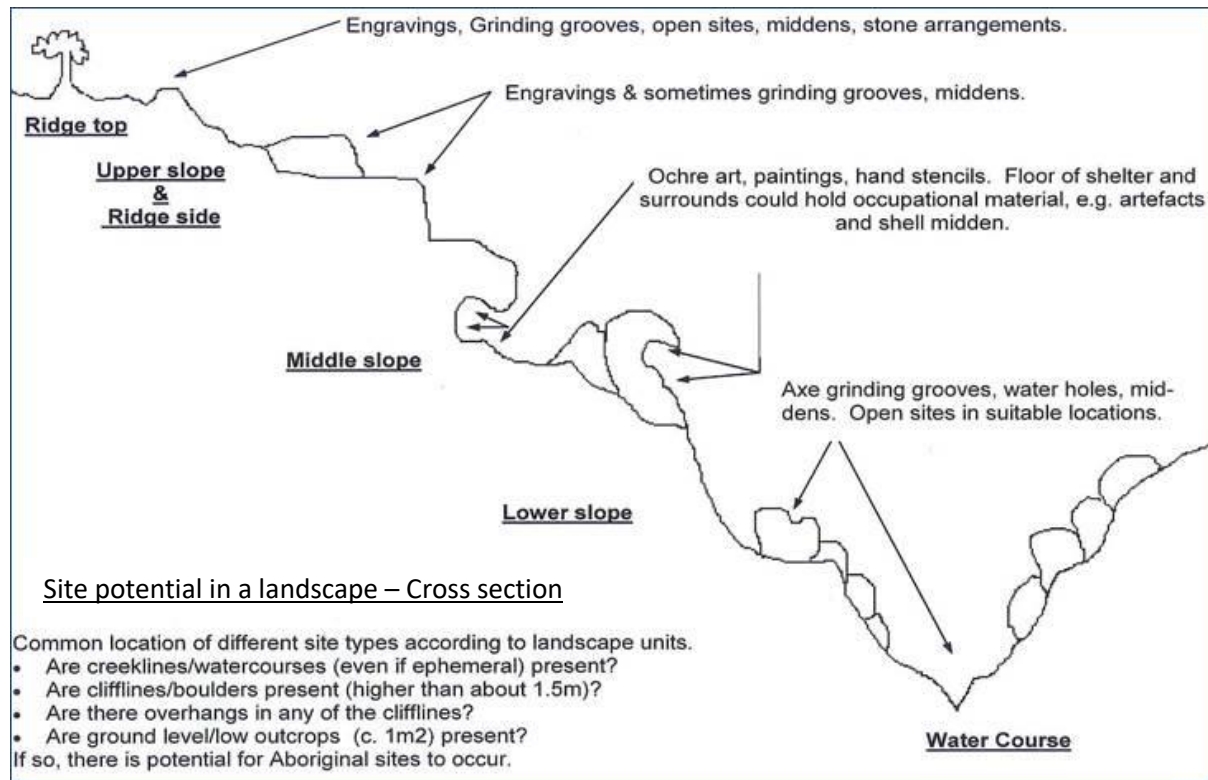


Figure 5.1b contains the Aboriginal Cultural Heritage Landscape Map which indicates areas which have a high probability of Aboriginal cultural heritage values, this includes land within:

- 500m from identified Aboriginal travel routes
- 500m from natural waterbodies and watercourses
- 500m from major waterways
- 1km from estuaries
- 1km from the coastline

Figure 5.1b: Aboriginal Cultural Heritage Landscape Map

