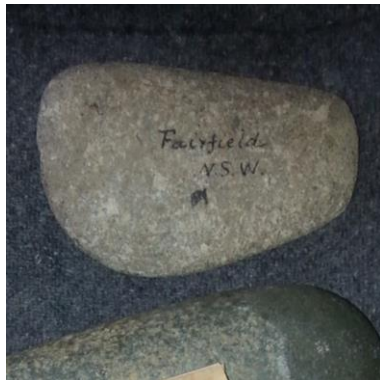


## FAIRFIELD CITY COUNCIL ABORIGINAL HERITAGE STUDY



## FINAL REPORT

Mary Dallas Consulting Archaeologists

May 2017

Report to Fairfield City Council

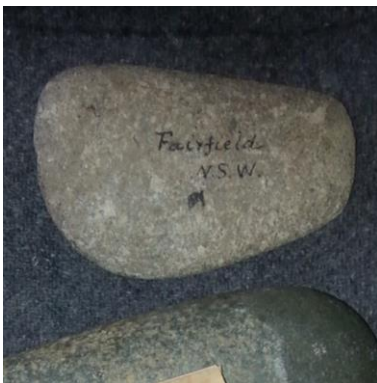


## FAIRFIELD CITY COUNCIL ABORIGINAL HERITAGE STUDY

Aboriginal people have lived in the Fairfield area for thousands of years. Their presence shaped the land encountered by the first Europeans and gave places like Cabramatta their name. Aboriginal people from a wide range of backgrounds have played an active part in Fairfield's history over the last century and continue to shape its present and future.

*A ground-edged hatchet (stone axe) from the Fairfield area*

Axes have been used by Aboriginal people for thousands of years to cut bark for canoes, containers and other implements from trees, and to climb trees to catch possums.



*Image Courtesy Fairfield City Museum & Gallery*

*The Male Orphan School building (Bonnyrigg House)*

Aboriginal children were brought to the orphan school farm from the Blacktown Native Institution in the 1820s.



*The Gandangara Local Aboriginal Land Council building, Canley Vale*

This building was purchased by Aboriginal people in the early 1980s and was a community hub for a number of years, as host to the Land Council and other Aboriginal community services.



*Scarred tree along Orphan School Creek, Canley Vale*

Among urban development, this tree is a link to the deep Aboriginal past.





## Table of contents

1.0 Introduction	7
1.1 The Fairfield City Council Aboriginal Heritage Study	7
1.2 What is Aboriginal Heritage?	9
1.3 Study Methodology	10
1.3.1 Aboriginal Community Consultation	10
1.3.2 Archival Research	10
1.3.3 Assessment and Management	11
1.4 Study Outline	11
1.5 Authorship and Acknowledgements	12
1.6 Note on the Use of Sources	12
1.7 Summary of Study Recommendations	13
1.7.1 Immediate Actions	13
1.7.2 Medium Term Actions (1-3 years)	13
1.7.3 Long Term Actions (3-5 years)	13
2.0 Aboriginal Community Consultation	14
2.1 Aboriginal People in Fairfield LGA	14
2.2 Study Consultation	15
2.3 Aboriginal Community Comments on Draft Study Report	18
2.4 Conclusions	18
3.0 The Local Setting of Fairfield LGA	19
3.1 The Landscape	19
3.2 Human Presence and Impacts	20
3.2.1 First Occupation to 1800s	21
3.2.2 1800s to 1950s	23
3.2.3 1950s to Today	24
3.3 Conclusions	24
4.0 Aboriginal History in the Fairfield LGA	25
4.1 First Occupation to 1800s	25
4.1.1 Initial Occupation	25
	3



4.1.2	Lifestyle and Resources	26
4.1.3	Early Contacts and Conflict	35
4.2	1800s to 1950s	38
4.2.1	Staying Connected	38
4.2.2	The Male Orphan School	39
4.2.3	Visiting and Moving In	41
4.3	1950s to Today	43
4.3.1	Making New Lives	43
4.3.2	Rights and Services	44
4.3.3	Continuing Connections	45
5.0	Aboriginal Heritage in the Fairfield LGA	48
5.1	Working Out What Remains	48
5.1.1	Existing Records and Registrations	48
5.1.2	Previous Research	50
5.1.3	Research for the Current Study	53
5.1.4	What Has Been Lost	54
5.2	Aboriginal Heritage in Fairfield LGA	55
5.2.1	First Occupation to early 1800s	55
5.2.2	1800s to 1950s	60
5.2.3	1950s to Today	62
5.3	Summary of Identified Aboriginal Heritage Places	66
5.4	What Else May Remain?	69
5.4.1	Pre- and Early Contact Archaeological Sites	69
5.4.2	Historical Aboriginal Places	70
6.0	Managing Aboriginal Heritage	71
6.1	Aboriginal Heritage Management In New South Wales	71
6.1.1	Principles of Aboriginal Heritage Management	71
6.1.2	Legislation and Policy	73
6.1.3	The Role of Local Government in Heritage Management	76
6.2	A Strategy for Managing Fairfield's Aboriginal Heritage	79



6.2.1	Engaging with the Aboriginal Community	80
6.2.2	Basis for Planning and Assessment Procedures	80
6.2.3	Procedures for Council Land Managers	86
6.2.4	Procedures for External Development Applications	90
6.2.5	Other Proposed Aboriginal Heritage Management Actions	95
6.2.6	Staffing, Training and Resources	97
6.2.7	Researching and Celebrating Aboriginal Heritage and History	97
7.0	Study Recommendations	99
7.1	Immediate Actions	99
7.2	Medium Term Actions (1-3 years)	99
7.3	Long Term Actions (3-5 years)	99
8.0	Bibliography	100
<b>Appendix A.</b> Aboriginal Community Consultation Records		
<b>Appendix B.</b> Current Aboriginal Heritage Listings		
<b>Appendix C.</b> Policy and Procedure Documents		

## **List of Tables**

Table 4.1.	Aboriginal uses of tree products in the greater Sydney Region.	29
Table 5.1.	Relative frequencies of site elements from Fairfield LGA.	57
Table 5.2.	Identified Aboriginal heritage places within the Fairfield LGA.	66

## **List of Figures**

Figure 1.1	Fairfield City in its regional context.	8
Figure 1.2.	The Fairfield LGA showing suburbs, major topography and creeklines.	8
Figure 2.1.	Local Aboriginal Land Council boundaries within the Fairfield LGA.	16
Figure 3.1.	Fairfield LGA showing topography and major creeks.	19
Figure 3.2.	The story of a silcrete spear point (Corkill 1999:23-25).	22
Figure 4.1.	Aboriginal people hunting possums in Sydney.	29



Figure 4.2. Kangaroo hunt.	30
Figure 4.3. Piece of worked silcrete from Carramar (scale in cms).	30
Figure 4.4. Jacques Boisseau's 'famille de sauvages' (1825)	32
Figure 4.5. M. Dubourg's 'Repose' (1813)	33
Figure 4.6. Initiation ceremony at Farm Cove in 1795.	34
Figure 4.7. Glass artefact from campsite #45-5-0866 to the south of Prospect Reservoir.	36
Figure 4.8. An Aboriginal couple and their child outside a homestead in western Sydney.	39
Figure 4.9. The Male Orphan School around 1840.	40
Figure 4.10. Blacktown Native Institution (late 19 <sup>th</sup> century).	40
Figure 4.11. Features of the Warali Wali Aboriginal History Trail.	46
Figure 4.12. Plantlines banner poles in use for NAIDOC 2008.	47
Figure 4.13. Mural at Bonnyrigg Public School.	47
Figure 5.1. Registered Aboriginal Sites within the Fairfield LGA.	56
Figure 5.2. Scarred tree along Orphan School Creek at Canley Vale (AHIMS #45-5-0729).	57
Figure 5.3. Location of AHIMS #45-5-1099 in the middle of the Hume Highway at Carramar.	58
Figure 5.4. Silcrete and quartz artefacts still present at AHIMS #45-5-1099 in the middle of the Hume Highway at Carramar.	58
Figure 5.5. Location of AHIMS #45-5-2811 along Orphan School Creek at Prairiewood.	58
Figure 5.6. Location of AHIMS #45-5-3697 along Orphan School Creek at Canley Vale.	59
Figure 5.7. Silcrete and quartz artefacts from AHIMS #45-5-3697.	59
Figure 5.8. Glass artefact from AHIMS #45-5-0866.	59
Figure 5.9. Stone axes in museum collections from the Fairfield area.	60
Figure 5.10. Bonnyrigg House, site of the former Male Orphan School.	61
Figure 5.11. Lansdowne Bridge at Lansvale.	62
Figure 5.12. The former Gandangara Local Aboriginal Land Council office at Canley Vale.	64
Figure 5.13. The Urimbirra building at Bonnyrigg.	64
Figure 5.14. Bonnyrigg Public School.	65
Figure 5.15. Aboriginal artwork in the Bonnyrigg School Playground.	65
Figure 5.16. The late Yvonne Clayton's house at Bonnyrigg.	65
Figure 5.17. The tree saved by Yvonne Clayton's campaigning along Bradfield Crescent at Bonnyrigg.	66
Figure 6.1. Proposed Potential Investigation Areas.	85





## 1.0

## Introduction

### 1.1 The Fairfield City Council Aboriginal Heritage Study

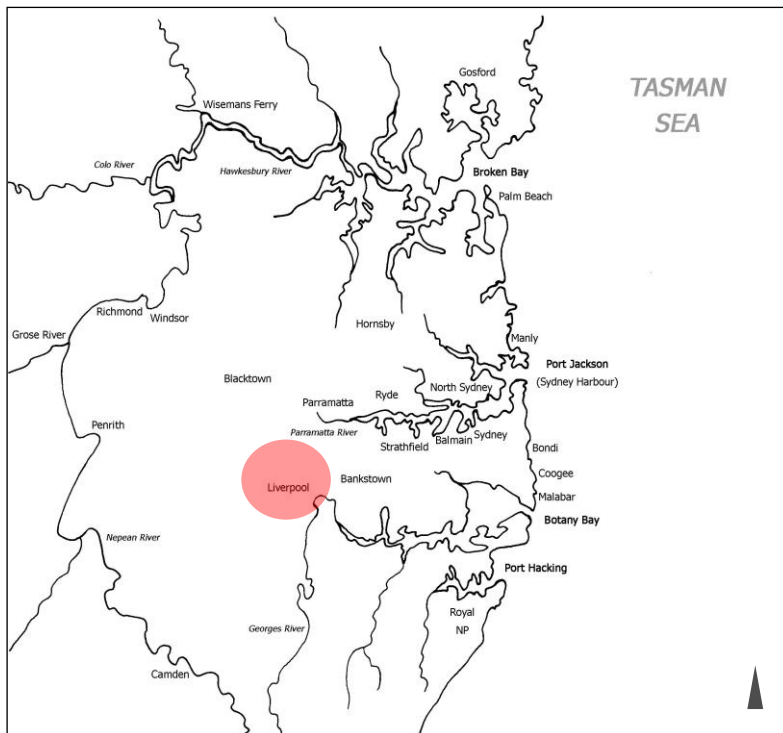
This report has been produced by MDCA [Mary Dallas Consulting Archaeologists] at the request of Fairfield City Council [Council]. It presents the results of an Aboriginal heritage study for the City of Fairfield undertaken at the request of Council. The study was undertaken between December 2015 and December 2016. An initial draft was provided to Council by MDCA in August 2016. Upon receipt of comments from Council a revised draft was sent for limited Aboriginal community comment in November 2016 with the current final report being produced in February 2017.

The main aims of the study were to:

- investigate the Aboriginal heritage and history of Fairfield City;
- identify, assess and record places of Aboriginal cultural significance and archaeological potential;
- explain why the places identified within Fairfield City are significant; and
- recommend ways of managing and conserving items of significance

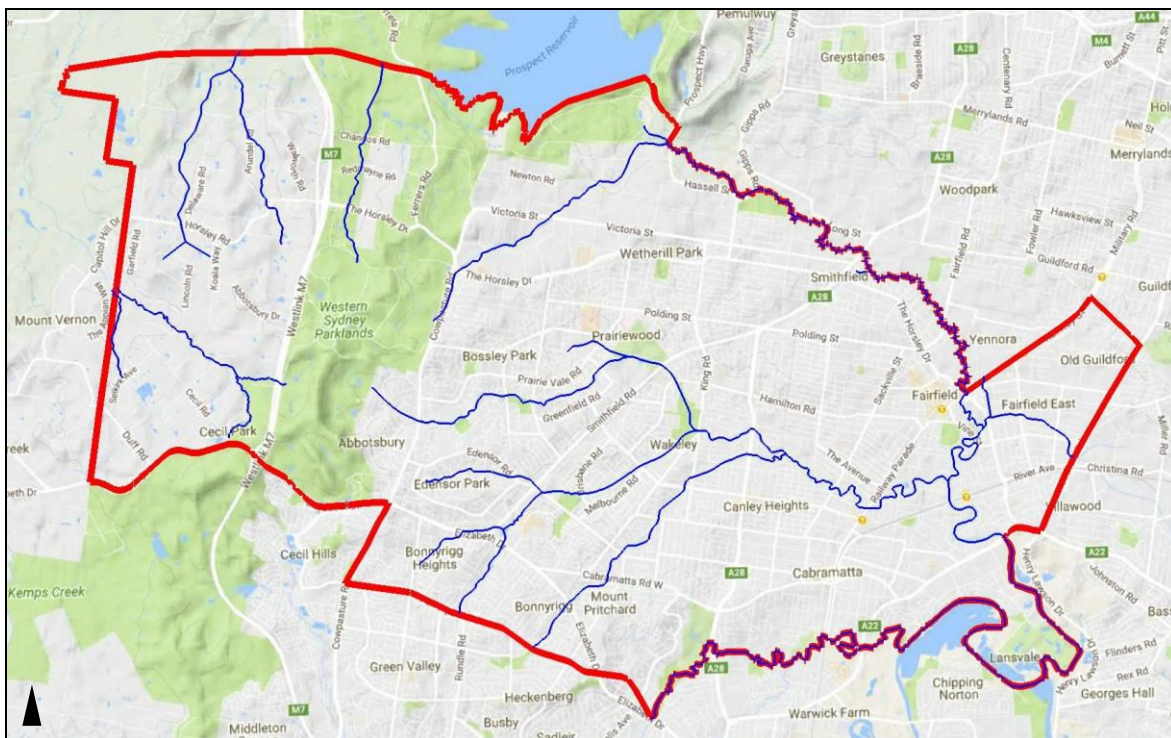
The study area investigated is the Fairfield Local Government Area (LGA), located within the Western Sydney region (**Figure 1.1**). It currently includes over 27 suburbs spread across an almost 104km<sup>2</sup> area. It contains densely occupied residential areas, industry, rural lands and portions of the Western Sydney Parklands (**Figure 1.2**). It is bounded by the LGAs of Liverpool to the south, Blacktown to the north and west, Cumberland to the northeast and Canterbury-Bankstown to the east. It stretches roughly from Prospect Reservoir in the north, to Prospect Creek, Villawood and Bass Hill in the east, to Cabramatta Creek, North Liverpool Road and Elizabeth Drive in the south and to Mt Vernon and Kemps Creek in the west. At the time of the 2011 census, Fairfield LGA featured a population of over 187,000 people, 1,323 of whom identified as Aboriginal or Torres Strait Islander people.

Council commissioned the study to provide a basis for Aboriginal heritage management within the planning context of Council, and to provide a resource which identifies the known Aboriginal history and heritage of the Fairfield City Local Government Area. No previous Aboriginal heritage planning study has been undertaken within the LGA, however several studies commissioned by Council in the late-1980s provided some initial information on the Aboriginal sites in the western portion of the LGA and along Orphan School Creek, and suggested ways to manage areas with the potential to contain currently undocumented Aboriginal archaeological sites. In recent years, Council commissioned historian Dr Stephen Gapps to research the history of the area, which was published in 2010 as the book *Cabrogal to Fairfield City: A History of a Multicultural Community*. The book contained the first published account of the history of Aboriginal connections to the Fairfield City area, though the information it contains has yet to be incorporated into Aboriginal heritage planning by Council. The current study has drawn on information from these and other studies and data sources, along with conversations with local Aboriginal community members, to provide an overview of Aboriginal history and its associated places within the LGA – from the earliest times until recent decades.



**Figure 1.1 Fairfield City in its regional context.**

[Base map Tuck 2010]



**Figure 1.2. The Fairfield LGA showing suburbs, major topography and creeklines.**

[Adapted from Google Maps terrain map 2016]





## 1.2 What is Aboriginal Heritage?

There has been considerable research in recent years as to what can and should constitute Aboriginal heritage in New South Wales (e.g. Byrne *et al.* 2001, Byrne & Nugent 2004, English 2002). Most people think of 'sites' when they think of Aboriginal heritage, such as rock engravings, shell middens or stone artefacts. These are all important, but it is now recognised that heritage can include any place used by Aboriginal people up to and including the present day. Not only that, but it is not just, or necessarily even, the physical remains of structures or sites that are significant, but the associations people have had or continue to have with those places – their social history and their social significance. Indeed, heritage places need not contain anything 'built' e.g. natural features with spiritual significance. Similarly, there does not need to be anything physically surviving of a structure or building that was used for the place to remain significant.

Aboriginal heritage then is about the places in which history 'happened'. This need not only be momentous events of broad significance. It can be the personal memories of one person or one family about things of significance to them. It is what can be put together to tell the story of how a person or group of people experienced life in a particular area at a particular time. Putting together that story also means linking places and considering places as part of a broader 'cultural landscape' – the way a particular group of people perceived and used their surroundings at a particular time. For example the way Aboriginal people viewed and moved through their familiar landscape of western Sydney in 1788 was very different to how Europeans, with ideas of 'normal' based on their own homelands, experienced it. It was also very different to how the Aboriginal descendants experienced it 50 or 100 years later, and different again to how families moving to Bonnyrigg from country NSW 30 years ago experienced it. Reconstructing past 'landscapes' requires both history (what happened when) and heritage (where it happened) and an appreciation of the connections between places.

What do we do with heritage? It is a misconception about heritage and heritage management that it is about 'saving' every old building or site from destruction. One of the main tasks of any heritage project, including studies like this, is to determine what is significant and why, and work out the most appropriate means of managing this significance, not just or even necessarily the physical remains of a place itself. In some cases this may be achieved through permanent signage onsite (even where nothing physical remains of the place), or an arts project such as a photographic exhibition or oral histories, or a website. It may also include the physical protection of a place from development impact, sometimes best achieved by keeping its location hidden, or with limited access, from the general public. In this way, heritage management can be as much about celebration, remembrance and recognition as it is about physical protection.

In the Fairfield area, Aboriginal heritage places are associated with all of the periods of European occupation from initial settlement to the present day, but also represent occupation back many thousands of years before this. The types of heritage places and associated histories which are already documented within the area include:

- Pre-European occupation sites – including campsites, scarred trees and other evidence of occupation and lifestyles.
- Early colonial era – campsites with European materials, historical evidence of conflict and early colonial assimilation policies.



- Later 19<sup>th</sup> and Early 20<sup>th</sup> century – Aboriginal people continuing to live within the area, both with and apart from European residents.
- Mid to late 20<sup>th</sup> century – individuals and families moving to the area for a range of reasons, and migration from country NSW and elsewhere in Sydney to government housing estates, the formation of Aboriginal service organisations, arts and cultural groups.

### **1.3 Study Methodology**

The study involved several main components, which were undertaken concurrently as described below.

#### **1.3.1 Aboriginal Community Consultation**

In accordance with the study brief, limited Aboriginal community consultation was undertaken for the study. As discussed in **Section 2.2**, this initially involved discussions with the Gandangara Local Aboriginal Land Council and an Aboriginal heritage study working group set up by Council, and attempted discussions with the Deerubbin Local Aboriginal Land Council. From these initial meetings, further discussions were held with individuals and local Elders groups to identify places of significance to the local Aboriginal community.

#### **1.3.2 Archival Research**

Archival research was undertaken to review heritage and museum records as context for the study, as well as provide primary research for the study history and to research specific Aboriginal heritage places.

Research was undertaken at the State Library of NSW (SLNSW), State Records NSW (SRNSW), Fairfield Local Studies Collection, OEH Aboriginal Heritage Information Management System Aboriginal Site Register and Report Archive (the AHIMS Register) and State Heritage Register and Inventory and of specialist reports held privately. In addition, published and unpublished material from past studies by MDCA historian Dr Paul Irish was utilised. Research was also undertaken of online resources such as the National Library TROVE website and various catalogues and listings. Information was also sought from the Australian Museum and local historical societies and museums about Aboriginal artefacts potentially from the study area in their collections.

Sources examined include primary archival material such as government documents, newspaper reports, maps, images, register recordings, unpublished specialist heritage and other reports and a range of printed sources. This research did not aim to systematically search all sources but to broaden the scope of past histories, start to fill some important chronological gaps and to investigate what further records may exist.



### 1.3.3 Assessment and Management

The information gathered during archival research and contributed by the Aboriginal community was compiled into a list of places identified as having significance to the Aboriginal community. The most appropriate means of managing these places was then considered, leading to the development of a recommended Aboriginal heritage management system.

## 1.4 Study Outline

This report is designed to be read in order as each proceeding section provides the context to the next. The sections are as follows:

- **Section 2** profiles the Aboriginal people of the Fairfield area and details the Aboriginal community consultation undertaken for the study.
- **Section 3** provides relevant contextual information for the study in order to demonstrate how the particular environment and historical impacts within the study area have shaped the history of Aboriginal connections and determined what has physically survived of that history.
- **Section 4** of the report provides an outline Aboriginal history of the study area. It does not seek to be definitive or conclusive, but rather to be broad in scope to capture the wide range of ways Aboriginal people have connected to the study area over thousands of years and up to the present day, many of which have only been poorly or partly written about before.
- **Section 5** looks at the heritage of the history discussed in the previous section. That is, what remains in the landscape as places, associations and landscapes which can help to tell the story of Fairfield's Aboriginal past. It begins by reviewing existing sources and registrations before describing the heritage places associated with the various periods of Fairfield's Aboriginal history.
- **Section 6** discusses how Fairfield's Aboriginal heritage can be managed. It begins by reviewing the role of local government in heritage management, and the various ways in which Aboriginal heritage can be managed. It then reviews the heritage places identified by the study and presents a recommended management strategy.
- **Section 7** provides a specific set of short, medium, long term or ongoing management recommendations to enact the recommended Aboriginal heritage management system and other suggestions outlined in the previous section.

**Appendix A** contains a summary of the specific Aboriginal community consultations undertaken during the study, including documentation provided as responses to the draft version of the current report.

**Appendix B** contains details of existing heritage listings and museum collection holdings.

**Appendix C** contains relevant policy and procedure documentation referred to in the report.



## **1.5 Authorship and Acknowledgements**

The current report was written primarily by Dr Paul Irish. Dan Tuck and Paul Irish wrote the Aboriginal history section. Archival research was undertaken by Dan Tuck and Paul Irish with contributions by Tamika Goward, and final GIS mapping was produced by Nathan Spooner. Aboriginal community consultation was primarily undertaken by Paul Irish and Tamika Goward.

MDCA wish to thank Andrew Mooney, Harumi Watanabe and Edward Saulig for their management of the project and to heritage advisor Zoran Popovic and other Council staff who contributed knowledge and expertise and reviewed portions of this report and planning procedures. MDCA also wish to thank Des Smith for organising and participating in many of the Aboriginal community meetings undertaken for the study; Brad Maybury for assisting with community contacts for the study; Barry Gunther (RMS) for discussing his local expertise and providing historical and heritage materials pertinent to the study; Helen Johnson for investigating Aboriginal objects in the Fairfield City Museum and Gallery collections; Marilyn Gallo for valuable assistance in locating making available historical materials in the Fairfield local studies collection; and the staff of a range of other local and state museums and repositories for their assistance and advice in searching their collections for relevant records.

The authors also especially acknowledge the support and information provided by the Aboriginal people of the Fairfield City area individually and via a number of Aboriginal community organisations including the Gandangara and Deerubbin Local Aboriginal Land Councils, the Guntawang Aboriginal Women's Group, the Lil Possums playgroup at Bonnyrigg Public School and the Miller Elders Group.

## **1.6 Note on the Use of Sources**

Please note that specific permission to publish graphic materials obtained from previous publications or archival records has not been obtained for the current study. Should it be proposed to publish the current study, such permission would need to be sought from copyright holders and/or custodians. In addition, where possible, permission should be sought from people depicted in photographs within the report in the event of publication of the current study, or proposed use of this material for other purposes.



## 1.7 Summary of Study Recommendations

Based on the research and Aboriginal community consultation undertaken for the study, and in particular the discussions in **Section 6.0** and with reference to current legislative and policy requirements, the following recommendations are made. They are grouped according to assessed urgency as immediate, medium (1-3 years) and long (3-5 years) term proposed actions. These actions are to be undertaken by Council's Strategic Planning Branch unless otherwise specified.

### 1.7.1 Immediate Actions

- Adopt the Aboriginal heritage management system described in **Section 6.0**, and specifically, incorporate the procedures detailed in **Sections 6.2.3** and **6.2.4** into Council's operations.
- Incorporate the supplied GIS map layers and attribute data into the Council GIS system with appropriate linkages to other relevant layers (e.g. Local Aboriginal Land Council boundaries).
- Provide Council staff working within the system with a checklist/manual of how to use the Aboriginal heritage management system, and provide them with adequate training in its use.
- Obtain the first AHIMS Site information data under the Aboriginal Heritage Information Licence Agreement with OEH (once submitted and processed).
- Ensure that the Standard Conditions outlined in **Section 6.2.5** are incorporated into all future development consents.

### 1.7.2 Medium Term Actions (1-3 years)

- Undertake relevant amendments to the Fairfield City Wide DCP.
- Develop a fact sheet for applicants, outlining Council's Aboriginal heritage requirements.
- Develop a procedure to ensure that all relevant future staff are trained in the use of the Aboriginal heritage management strategy.
- Obtain AHIMS Register data updates every 12 months as per the Aboriginal Heritage Information Licensing Agreement and renew the agreement as required.
- Council's Place and Community Development section to develop an Aboriginal oral history recording program specifically focussed on the identification of places of Aboriginal historical and heritage significance as discussed in **Section 6.2.5** as part of future Operational Plans.
- Council's Place and Community Development section to discuss the potential for Aboriginal site tours with the Gandangara and Deerubbin Local Aboriginal Land Councils and Fairfield City Council Aboriginal Advisory Committee as discussed in **Section 6.2.5**. If the idea is supported, consider the role Council may play in funding and/or facilitating the development of these tours.

### 1.7.3 Long Term Actions (3-5 years)

- Within five years, review the current study and Aboriginal heritage management system to ensure its continuing usefulness and ensure its compliance with any amended state legislative or policy requirements. Make any amendments as required, and incorporate any further information about Aboriginal heritage places obtained through oral history or other research which has not yet been added into the Aboriginal heritage management system.





## 2.0

## Aboriginal Community Consultation

This section summarises the Aboriginal community consultation undertaken as part of the Aboriginal heritage study. Further records of consultation including written responses to the draft version of the current report can be found in **Appendix A**.

### 2.1 Aboriginal People in Fairfield LGA

When Europeans arrived in Sydney in the late 18th century, the Fairfield area was home to a clan of Aboriginal people known as the Cabrogal, whose name derived from the cobra 'worm' (actually a mollusc) which grows in submerged timber and was eaten by the Cabrogal (see Gapps 2010:33-40 and further discussion in **Section 4.0**). We do not know the precise extent of the lands over which the Cabrogal were custodians, but their estate possibly extended south to the Georges River and north to around the Prospect area. Linguistic boundaries are equally uncertain, and many groups were multilingual. The Cabrogal most likely affiliated more closely with the language of the Cumberland Plain (known today as Darug) to the north, and probably also spoke the Dharawal language from the Georges River area and further south.<sup>1</sup> Descendants of the Cabrogal, perhaps mixed with the survivors of other neighbouring groups after the devastating smallpox epidemic of 1789, continued to identify with the broader Fairfield and Liverpool areas until at least the 1840s. After this time, local identities and affiliations become more difficult to trace.

As far as we know, there are no descendants of the Cabrogal alive today whose families have continuously identified with the Fairfield/Liverpool area since before the arrival of Europeans. Instead, people today primarily identify with the much broader area in which the Darug language was spoken. Today there are several hundred people actively identifying as descendants of Darug-language speaking Aboriginal people. Most identify as descendants of Aboriginal woman Maria Lock (nee Luttrell) who grew up on the northern Cumberland Plain, and many more who have been notified of their descent but choose not to actively acknowledge their Aboriginal ancestry. Some of these people also trace their genealogy back to an Aboriginal woman named Sarah Castles, who lived along Cabramatta Creek in the 1840s (Sarah is discussed further in **Section 4.0**). She was probably a local woman, though we have no definite evidence of her ancestry.

Most (if not all) of the approximately 1,200 people living within the Fairfield LGA who identified as Aboriginal in the 2011 census trace their Aboriginal ancestry back to areas outside of the Fairfield LGA (and commonly outside of the Sydney region).<sup>2</sup> They or their families have resettled in the area from other parts of New South Wales and occasionally further afield, mostly since the Second World War. Many of these Aboriginal people arrived as part of government housing and resettlement schemes from the 1950s, and some families have now lived in the area for several generations, whilst others have arrived more recently or stayed relatively briefly. Very little research has been undertaken into the experiences and histories of the resettlement community as a whole

---

<sup>1</sup> Gapps provides a detailed review of the complex and often confusing arguments about clan and language (see pp 30-44).

<sup>2</sup> In the 2011 census, 1,202 people identified as Aboriginal within the LGA. Another 23 identified as having both Aboriginal and Torres Strait Islander ancestry, and a further 98 identified as Torres Strait Islander.



in Fairfield. We know of their experiences largely through several oral histories undertaken of individuals in recent years (see Fairfield City Museum & Gallery 2007, Fairfield Oral History website<sup>3</sup>, and others featured in the recent *Talk the Change/Change the Talk* Aboriginal history exhibition at the Fairfield City Museum and Gallery). The broader context of Aboriginal migration has begun to be sketched out in other studies (see for example Morgan 2006 and Cowlishaw 2009), though each area is likely to have its own unique historical background and characteristics.

## 2.2 Study Consultation

Consultation for the heritage study was undertaken in accordance with the study brief, which initially involved consultation with the following groups (see summary in **Appendix A1**):

- **Fairfield City Council's Aboriginal Advisory Committee.** Council organised the formation of an Aboriginal heritage study working group, comprising some members of the Advisory Committee and others interested in the project. MDCA presented to the working group on 11/2/16 at Fairfield City Council and discussed past research, places of significance and Aboriginal community members that the working group considered relevant to consult in relation to the project. MDCA also presented to the Advisory Committee at Council on 14/3/16 and had a similar discussion. Advisory Committee members were supplied with copies of the draft study report in November 2016 for their review and intended discussion with MDCA at their meeting of 12/12/16. That meeting was cancelled due to lack of a quorum. As the next meeting was not scheduled until after the study was to be finalised, members were sent a follow up request asking them to provide any comments to MDCA or Committee Coordinator Des Smith by end of January 2017. Des Smith also contacted committee members to seek comments, but none were provided.
- **Gandangara Local Aboriginal Land Council.** Local Aboriginal Land Councils (LALCs) operate across NSW under the *Land Rights Act* 1983. Membership of LALCs is open to Aboriginal people residing within the administrative boundaries of the LALC. Fairfield LGA is within the boundaries of both the Gandangara LALC and Deerubbin LALC as shown in **Figure 2.1**. The functions of Local Aboriginal Land Council are described in Section 52 of the Act, Part 4 of which states:

*A Local Aboriginal Land Council has the following functions in relation to Aboriginal culture and heritage:*

*(a) to take action to protect the culture and heritage of Aboriginal persons in the Council's area, subject to any other law,*

*(b) to promote awareness in the community of the culture and heritage of Aboriginal persons in the Council's area.*

Initial discussions were held with Land Council Aboriginal heritage officer Brad Maybury on 18/1/16 and again as a member of the Aboriginal heritage study working group on 11/2/16. Brad suggested contacting former Gandangara LALC Aboriginal heritage officer Barry Gunther. In addition discussions were held with then LALC Chair Len Malone at the Gandangara LALC office in Liverpool on 9/3/16, as well as a presentation to the local Aboriginal Land care group.

---

<sup>3</sup> <http://fairfieldcity.oralhistory.com.au/>



Mr Malone is also a former Fairfield City Council Aboriginal community worker and has a great depth of local knowledge. It was agreed that a study workshop would be held at the Gandangara LALC office for interested LALC members and Len also arranged for MDCA to present to the LALC meeting of 16/3/16 at Liverpool TAFE to promote the workshop. The workshop was held on 21/3/16. There were few attendees but those present included Cecilia Campbell, who ran the Koori Youth Program (an important community service organisation based for a time at Canley Vale). The LALC was subsequently contacted in April 2016 to discuss their potential support for an Aboriginal Heritage Information Licence Agreement between Council and the OEH, to allow Council to hold Aboriginal site data and in November 2016 was provided with a draft copy of the study report for their review and comment. In January 2016 the Land Council endorsed the recommendations of the study and the Licence Agreement as per the letter in **Appendix A2**.

- **Deerubbin Local Aboriginal Land Council.** Past experience with Deerubbin LALC on similar projects suggested that they were unlikely to participate in the Aboriginal heritage study. Initially CEO Kevin Cavanagh was contacted via email on 19/1/16 to introduce the study. A number of attempts were then made over the following two months to speak with Mr Cavanagh, but they were unsuccessful. The LALC was subsequently contacted in April 2016 to discuss their potential support for an Aboriginal Heritage Information Licence Agreement between Council and the OEH, to allow Council to hold Aboriginal site data and in November 2016 was provided with a draft copy of the study report for their review and comment. In January 2016 the Land Council endorsed the recommendations of the study as per the letter in **Appendix A2**.

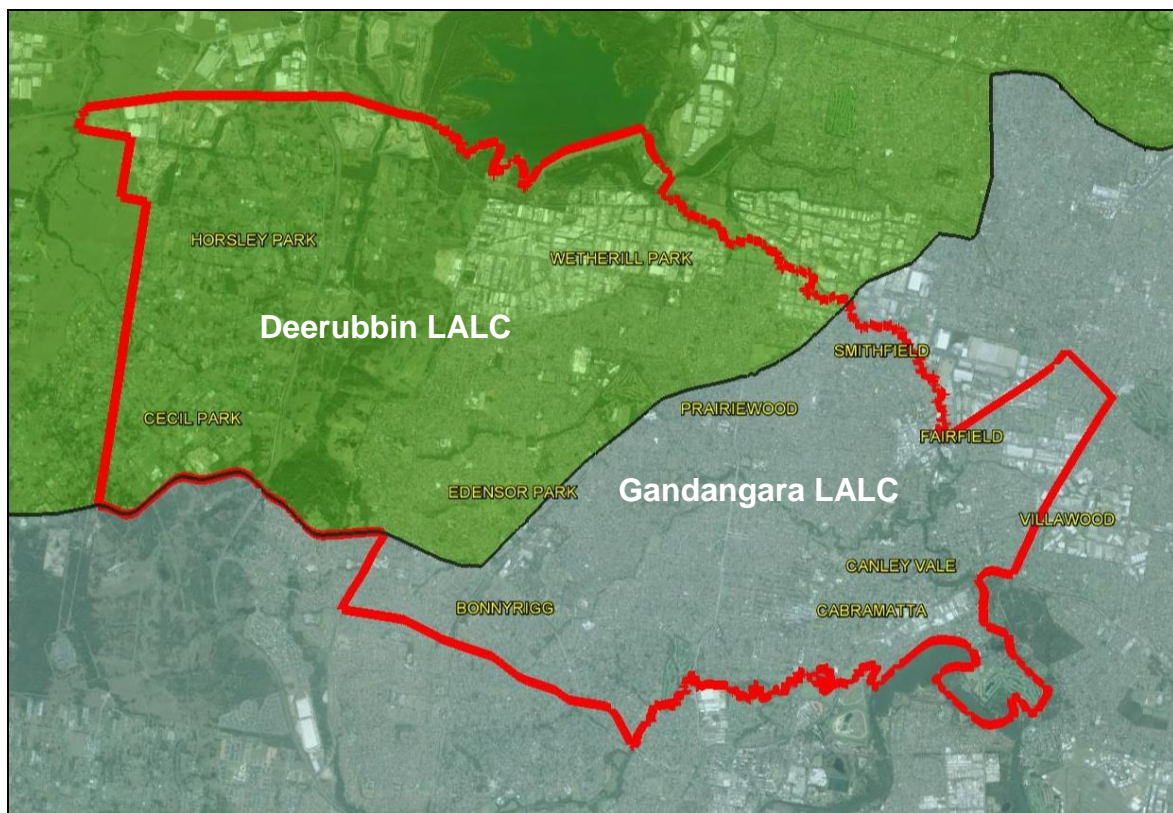


Figure 2.1. Local Aboriginal Land Council boundaries within the Fairfield LGA.



Based on initial study meetings with the above groups, a number of individuals and Elders groups were also consulted across the LGA. MDCA were greatly assisted in these meetings by Council's Aboriginal community officer Des Smith, who used his extensive community networks to make contact with relevant people and facilitate meetings. In preparation for these further meetings, MDCA compiled a folder of newspaper articles and other historical materials from the initial study research to act as a catalyst for discussions. The articles often included information about the activities of people present at the meetings or their families and were very well received, with multiple requests for more copies. Some of these materials are reproduced or referred to in **Section 4.0**.

The following additional people and groups were consulted about the study:

- **Guntawang Aboriginal Women's Group.** MDCA met with the Guntawang group at their fortnightly meeting on 23/02/16 at the Bonnyrigg Community Centre. The group was formed by Wendy Morgan and Cathy Banton three years ago to provide a place for Aboriginal women in the local Fairfield area to meet and socialise while working on a range of different craft projects. MDCA presented to the group and had a discussion about the experiences of group members with the Fairfield LGA. Some members had been in the area for over 50 years, while others moved to the area more recently. Further discussions were held with the group on 13/12/16 at the Gandangara LALC to discuss the draft report and its major findings, and any further information that could be provided on the Aboriginal heritage places identified during the study.
- **Barry Gunther.** Barry was formerly Gandangara LALC Aboriginal and heritage officer and has worked in a similar capacity for the RMS (former RTA) for the past eight years. Barry also grew up locally (in Green Valley). Paul Irish of MDCA met with Barry on 25/02/2016 at his RMS office in Parramatta. Barry was able to provide some further community contacts and his perspectives and knowledge about Aboriginal sites and places of Aboriginal historical significance within the LGA. He also assisted the study by providing some historical contextual materials and information about the RMS Aboriginal community consultation process in relation to heritage projects.
- **Lil Possums Playgroup.** MDCA met with the group at their weekly meeting at Bonnyrigg Public School on 30/03/16, along with Des Smith and Harumi Watanabe from Council. The playgroup was started about 15 years ago to bring school parents together and also to familiarise young children with the school before they attend. A general discussion followed MDCA's presentation of the study and its initial findings. In particular, the group was able to provide valuable information on the Aboriginal community that developed at Bonnyrigg in the 1980s and 1990s and the organisations that were established to service that community. Further discussions were held with the group on 30/11/16 to discuss the draft report and its major findings, and any further information that could be provided on the Aboriginal heritage places identified during the study. Several important clarifications were made and a further Aboriginal heritage place identified in relation to this meeting.
- **Miller Elders Group.** MDCA met with the Elders group on 2/05/2016 at the Budyari Aboriginal Community Health Centre at Miller along with Des Smith from Council. Some of the dozen people present were also part of the Guntawang Aboriginal Women's Group and were already familiar with the study. After a presentation by MDCA, folders of historical materials were passed around and a general discussion over lunch ensued. Members of the group include





discussed their varied reasons for moving to the area at different times over the past 50 years, and did not identify any additional places to those already noted in the study (see **Section 5.0**). Further discussions were held with the group on 5/12/16 to discuss the draft report and its major findings, and any further information that could be provided on the Aboriginal heritage places identified during the study.

In total MDCA discussed the study with 30-40 Aboriginal different community members (some were present at multiple meetings). Those consulted included a good cross section of the experiences of Aboriginal people within the LGA over the past 50 years. They include long and short-term residents, organisers of current and past service organisations, and people living across a number of different parts of the LGA. Many are senior members of their families and their knowledge in part represents the broader experiences of these people. Although the consultation was targeted, it is considered sufficient for the purposes of the study, and in compliance with the study brief. For example, the same places of historical Aboriginal significance were often raised by different people at different meetings, which provided a valuable means of ensuring that places had collective meaning rather than just being significant to the personal history of a particular individual or group.

### **2.3 Aboriginal Community Comments on Draft Study Report**

Written comments were received in relation to the draft Aboriginal heritage study from the Gandangara and Deerubbin LALCs, which together represent many of the Aboriginal people living within the Fairfield LGA. Both organisations endorsed the recommendations of the report. In addition, in all follow up meetings with community organisations and Elders groups in November and December relating to the draft report, no concerns were raised about the report or its recommendations and the findings of the study were broadly supported.

### **2.4 Conclusions**

The Aboriginal community consultation undertaken for this study has demonstrated the widespread interest among Aboriginal people living in, or associated with, the Fairfield LGA in the identification and protection of Aboriginal heritage. The consultation has resulted in the identification of five places of Aboriginal historical significance to the contemporary Aboriginal community, and there is support for the protections that the proposed heritage management procedures recommended in this report will bring to Aboriginal heritage places within the LGA.

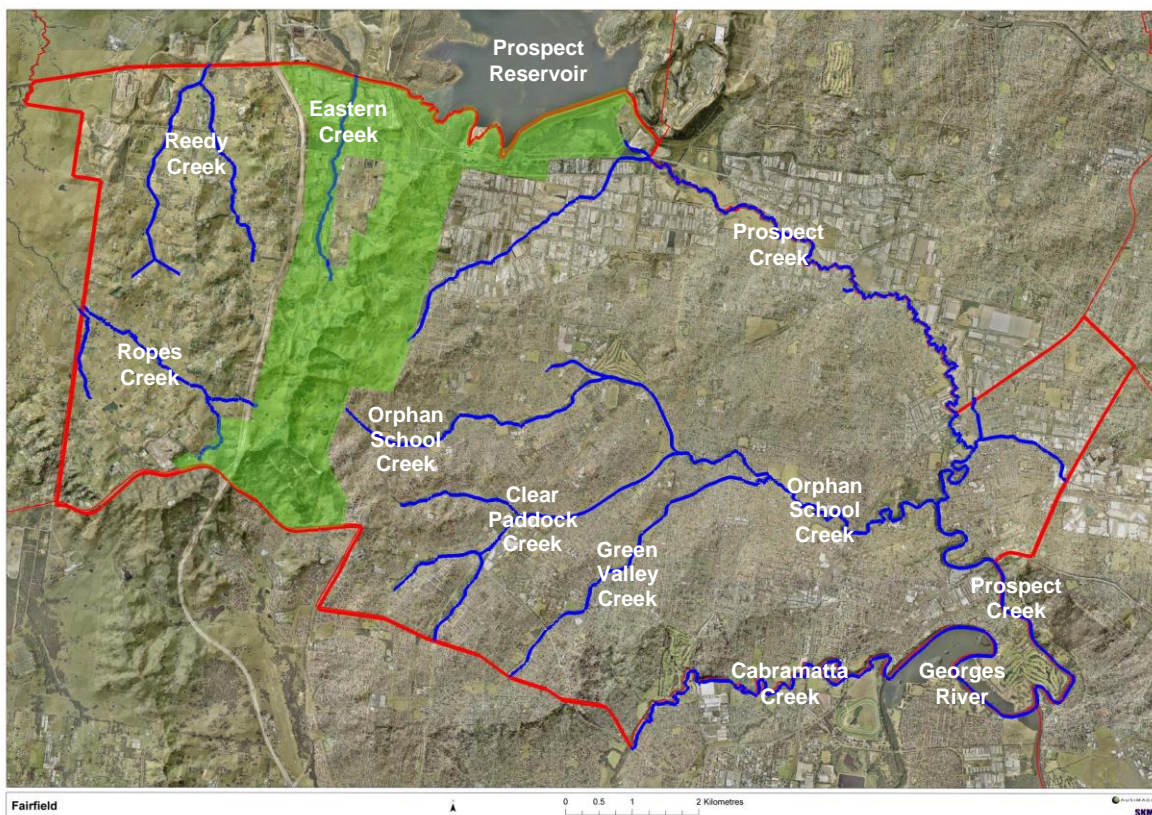


## 3.0

## The Local Setting of Fairfield LGA

### 3.1 The Landscape

It is important to consider the environmental setting upon which the activities of Aboriginal and other people have taken place. This is not just for thoroughness, but because the environment has actively shaped and determined these activities. Indeed even the boundaries of the LGA are partly defined by environmental features (creek lines). The geology and topography of the study area have influenced the availability of water and other resources which in turn have influenced both Aboriginal and European settlement in this area. The pattern of European settlement has then also affected the way Aboriginal people have moved into the area over the last century from outside of Sydney. All of this has affected the history and resultant heritage of the area.



**Figure 3.1. Fairfield LGA showing topography and major creeks.**

[Adapted from map supplied by Fairfield Council. Green shaded area is the Western Sydney Parklands].

Fairfield LGA lies within a broader physiographic area known as the Cumberland Plain, which is characterised by low hills and gently sloping landforms and alluvial flats of the main rivers which drain the plain. This area is relative flat compared to the mountains to the west and geologically uplifted areas to the south and north. The LGA contains two major catchments which are divided by a major ridgeline known as Devils Back Ridge which runs south from the western end of Prospect Reservoir (**Figure 3.1**). To the west of this ridge are the upper reaches of Ropes Creek, Reedy Creek and Eastern Creek which flow north and west across the Cumberland Plain and eventually



into the Hawkesbury River. To the east of the ridge the major stream systems of Cabramatta Creek, Prospect Creek and Orphan School Creek drain into the Georges River at the south-eastern corner of the LGA.

The study area is largely underlain by shale bedrock, which characteristically slowly erodes to form rounded hills and long creek lines in sharp contrast to more gullied landforms associated with sandstone country to the north and west. This shale (known as the Bringelly Shale within the study area) includes deposits of quartz, shale, laminate, claystone and fine grained sandstone. Along major creek lines this is overlain (buried) in parts by Quaternary-age alluvium materials consisting of sand, silt, clay and gravel deposits.

With regard to stone resources potentially available to Aboriginal people in the past for the purposes of manufacturing flaked stone artefacts, the Cranebrook Formation, the Rickabys Creek Formation and St Marys Formation are the three principal geological formations in the Sydney region. None of these deposits are located within the study area. The Cranebrook and Rickabys Creek Formations are generally exposed only at depth as buried units in deeply incised cuttings or creek profiles, or where gravels have been exposed and are visible on ridgelines. It is unclear at present therefore as to when these deposits may have been exposed in the past, and how frequently the potentially useful stone resources contained in these formations may have been exploited by Aboriginal people over time for the creation and/or maintenance of tools and other implements. St Marys Formation is Tertiary in age and is well represented across the Cumberland Plain and represents one of the principal sources of locally derived silcrete that is known to have been extensively used by people in the past for the creation of flaked stone artefacts. Exposures of the St Marys Formation are known to occur along Plumpton Ridge and at Marsden Park nearly 20km to the north of the Fairfield LGA.

Prior to European land clearance in the early 1800s and ensuing pastoral use of the land, the original vegetation of the study area consisted of open eucalypt woodland in which trees were widely spaced and the ground cover was dominated by a grassed understorey. A wide range of plant and animal resources would have been available to Aboriginal people in the pre-contact past and for some time after the arrival of Europeans, as land clearance took a considerable time (e.g. see **Section 3.2.2**). The use of these resources is discussed in **Section 4.1.2**.

### **3.2 Human Presence and Impacts**

The following section provides a brief overview of the major impacts to the area now encompassed by Fairfield City. It is not a comprehensive history of the area, and more detail can be found in other sources (e.g. Gapps 2010, George 1991). It has two aims. The first is to provide a brief sketch of the major impacts which have shaped the landscape and created, destroyed or preserved Aboriginal heritage as context for later discussions on what has survived of that heritage. The second is to emphasise that change and *history* have always been part of Aboriginal culture. There is a tendency to view pre-European contact Aboriginal culture as unchanging and unchanged and therefore to view the arrival of Europeans as the first 'event' that occurred in the lives of western Sydney's Aboriginal people. Archaeology tends to reinforce this by providing evidence of the long term but little detail of the everyday. If we are to understand the history and heritage of Aboriginal people in both the pre- and post-contact periods we need to take a different view.



### 3.2.1 First Occupation to 1800s

Over the thousands of years that Aboriginal people have lived in the Fairfield area, they created and curated the landscape first seen in the late 1700s by Europeans. It seems likely that the firing of the land recorded by early Europeans had taken place for some time, though the relationship of deliberate and natural burns and its antiquity is likely to be complicated and difficult to discern in the archaeological record (Mooney *et al.* 2007). Burning was carried out by Aboriginal people for a range of reasons, such as hunting of land and tree-dwelling mammals or the clearing undergrowth. Whether deliberate or not, the cumulative effect of natural and cultural burning was the park-like appearance of the Cumberland Plain recorded by early Europeans, with open eucalypt woodland “perfectly clear of bush, through which you might, generally speaking, drive a gig in all directions, without any impediment in the shape of rocks, scrubs, or close forest” (Cunningham 1827[1966]:47-48).

Burning would also have served to regularly destroy Aboriginal sites like trees from which Aboriginal people removed bark for a range of reasons or into which toe-holds were cut to climb trees. We now regard such sites as heritage and rightly wish to protect them especially as they are diminishing in number and no longer being created in the Sydney region. However this was not the case in the pre-contact past, where sites were re-used but also had a limited life span (e.g. trees eventually die or burn in fires along with any scars they contained). Although we understand little about the cultural and spiritual practices of Aboriginal people in western Sydney, there does not seem to be any evidence that scarred trees<sup>4</sup> were actively preserved in the long term by Aboriginal people.

The absence of outcropping sandstone within the study area means that apart from scarred trees, almost all other archaeological evidence of the pre-contact Aboriginal use of the study area that has survived is in the form of stone artefacts on or below the current ground surface. Consequently it can be difficult to imagine how Aboriginal people actually lived. We know something of this from early historical records and images, and from the more diverse archaeology of rock art and middens found in other parts of Sydney, but there is little physical evidence to help us the remains of the past as the accumulated heritage of individuals. This is compounded by the fact that few sites can be accurately dated. There is no easy solution to this, but it is perhaps useful to bear the following in mind when considering ‘Aboriginal sites’ in the Fairfield LGA:

- Every stone artefact was made, and each piece of bark removed from a tree, on a particular day by a particular person for a particular purpose.
- Each of those people had a name and a family. They were primarily traditionally linked to a particular area but had links to other areas and people across and perhaps beyond the Sydney region through marriage and extended family. Their parents, their siblings, spouses and children all had a slightly different set of links due to the nature of their own blood and marriage ties. So the composition of groups who used the land (‘bands’) and those traditionally linked to particular areas (‘clans’) was constantly always subtly changing as new relationships formed and with

---

<sup>4</sup> A distinction is made here with the carved trees found in the southwest of Sydney (but not within the Fairfield LGA) which were culturally significant (for example marking the location of burials) and were most likely actively preserved by Aboriginal people.





births and deaths. This is often lost in attempts to reconstruct and map clan and language 'boundaries' as if these were permanently fixed. In reality there was a lot more change within and between generations in how people lived on a daily basis and the places individuals and families could and did visit.

- For each activity or artefact represented archaeologically, each person was simultaneously using and doing many other things which have not physically survived. For example a stone spear point may be all that survives of a diverse range of equipment, most of which was organic (made from wood or plant material) and has long since disintegrated. Similarly the making of the stone artefact or the bark container was part of a broader range of activities such as food gathering, or perhaps travel to participate in ceremony. Each person had and experienced these other things. **Figure 3.2** is one archaeologist's attempt to personalise the story of how an artefact ended up in a rockshelter on the Hawkesbury from a quarry near Blacktown (probably Plumpton Ridge). Although it is largely speculative, there is archaeological or historical evidence for many of the activities discussed and it is a good example of putting people back into the archaeological past.

A red silcrete bondi point (backed blade) was found in a rockshelter on the Hawkesbury River. It was just 2cm long and its tip was missing. Archaeologist Tessa Corkill imagines how it might have gotten there:

*Years ago a man went to a hill to collect some stone to make spear barbs and other useful items for trade at a get-together near the big river in a few weeks time. He needed the good yellow stone as he planned to have it heated up before he made the tools, and he knew from long experience that this was the best kind. The fact that his wife could make the yellow stone change to the colour of blood and get shiny inside, so it made a really sharp edge, was known far and wide, and his cousins who owned the hill were happy to let him take as much as he wanted. One day soon he was going to make some more of his famous implements for them too.*

*The man carried away as many big pieces as he could manage, to the place where his group was camped between two creeks, and gave them to his wife to cook-up in her special fire-pit. It took a few days but when she dug them up again they were just right, a bright red colour and nice and shiny inside.*

*He made plenty of spear barbs and other things to trade, some from the shiny red stone and some from other stones he'd collected. Luckily there were lots of good pieces left over, that would be useful for jobs around the camp, like scraping skins and roots. Lots of little bits remained too, mixed up in the sand and mud around his work-place.*

*Six weeks later he went to the big meeting, taking all the stone implements he'd made during the last few months for trading. He exchanged a few with a young man who'd travelled a long way to get to the meeting, from his home lands near the sea, where the sun rose. In return he accepted some lyre-bird feather ornaments and a new bone nose-piece. Some of the implements he gave to the young man were red spear barbs, made from the once yellow stone he'd collected six weeks before.*

*After the meeting the young man headed home with his friends. On the way he stopped off at a big rock shelter where he knew his uncle's family was camping for a while. He owed his uncle some favours so he helped catch yabbies for dinner and shinned up a tree to get some honey and some beeswax for them. When he left the next day he gave his uncle some of the stone implements he'd got at the meeting. His uncle especially liked one of them, a glossy red spear barb. He thought he'd keep it safe to take on a long trip after the summer - they were going north, across the big river and up the old track to the big valley beyond the hills. It might bring him luck, the colour and shine were like the petals of the waratah, a special flower for him, it was too good to use on a spear.*

*In the autumn they set off, keeping to the ridgeline all the way north until they came near the big river. Here they camped in a rockshelter they knew. Some friends were there too and they talked long after dark. In the morning "uncle" thought he'd show one of his friends his red spear barb - he came from a place where they only had white stone or shell to use on spears and the red stone was something special. But when "uncle" opened up his bag the stone was broken. To carry it like this might bring him bad luck, so he buried it in a corner of the shelter before they left on their way north.*

*The broken spear barb lay buried for many, many, many years, long after the people came no more, until it was thrown up by a wombat, digging a hole in the back of the shelter. Soon, an archaeologist came by ....*

**Figure 3.2. The story of a silcrete spear point (Corkill 1999:23-25).**

[Reproduced with permission of the author]



- People's lives were not an endless cycle of movement between the same places. Although some sites were used repeatedly over many generations, we also know that 'new' sites were established at various times even if we don't know the reasons. Also, just as today, there were always 'things happening'. A rare archaeological example of this is the recent find of the 4,000 year old remains of an Aboriginal man at Narrabeen in north-eastern Sydney who had been speared to death (McDonald *et al.* 2007). Although we will never know his name or the reason he was killed, his death was the result of a particular action he took, an 'event' in his and other peoples' lives which would have been discussed and known for some time afterwards.

Unfortunately, the very time when individual Aboriginal people become much more visible through the historical record was also the single greatest moment of change in the many thousands of years of Aboriginal occupation in Sydney. Soon after the arrival of the first Europeans in 1788, introduced diseases like smallpox swept across the Cumberland Plain in advance of European settlement or even exploration of this area. Although diseases did not end Aboriginal existence in western Sydney, they claimed many lives and greatly affected the way surviving Aboriginal people lived. From a heritage point of view, this was a time when many places ceased to be used or looked after, and when new 'heritage' (like scarred trees) was being created at a much lesser rate than before. It did not cease, as finds of glass worked into artefacts show, but since that time Aboriginal sites have become limited and diminishing in number (Irish & Goward 2012).

### 3.2.2 1800s to 1950s

The first European settlements within the Fairfield LGA were established on the southern side of Prospect Creek at Smithfield in the 1790s. In 1803, around 50km<sup>2</sup> of land (around half the size of the LGA) between Cabramatta and Prospect Creeks was set aside by the governor to be leased out as farmland to support the colony's newly established orphan schools. Part of the grant, centred on Bonnyrigg House, became the Male Orphan School in the 1820s, while other parts of the grant were sold off around the same time. The purchaser of around 6.5km<sup>2</sup> of land in the Smithfield area in the 1830s was John Brennan, who had ambitions of creating a major Sydney agricultural market there. Though an economic downturn prevented the markets from thriving, the effect was to draw attention to the potential of the Fairfield area. Until that time, it had existed as an out of the way place, not on major transport routes and not on a major river as most of the major Sydney towns were in this period.

The construction of the Southern Railway line in the 1850s, passing through Fairfield and Cabramatta, spurred the development of timber cutting operations, market gardens, vineyards and orchards. In the second half of the nineteenth century and up to the 1950s, the townships steadily grew while forests were steadily cut down and the ground ploughed for agriculture. These activities would have felled many of the Aboriginal scarred trees within the LGA, while ploughing along creek flats would have disturbed the remains of Aboriginal campsites. It is probably during this period that some of the ground edged hatchets (stone axes) now within the Australian Museum collections were first discovered (though they were not handed to the museum until later).

The other major impact of this period was the construction of Prospect Reservoir to the immediate north of the LGA in the 1880s. Although construction of the dam wall and feeder canals grossly disturbed parts of the area, the flooding of upper Prospect Creek catchment has submerged (but probably not destroyed) archaeological evidence in this area.





### 3.2.3 1950s to Today

Although residential subdivision of the LGA area had occurred prior to the Second World War, it was large scale government housing programs in the 1950s to 1960s, and again from the 1980s, as well as urban and industrial expansion continuing until the present day which has given Fairfield its current character. The eastern two thirds of the LGA are now densely covered with residential and industrial development, while upper creeklines have been channelised and flood mitigations works have impacted the major creeklines. By contrast, the western third of the LGA has returned a rural character, with some extractive industry in the north-western corner.

Prior to heritage and environmental planning laws in the 1970s, such developments would have resulted in total disturbance of any Aboriginal archaeological remains existing there and no investigations were carried out prior to destruction. Since that time, assessment of potential impacts to Aboriginal heritage has resulted in the identification of many sites and excavation of some of these which has provided much evidence about how Aboriginal people lived in the LGA, but not necessarily resulted in preservation of the sites. An important aspect of the post-war period and the creation of new housing areas has been the consequent migration of many Aboriginal people from within and outside of Sydney to the Fairfield LGA, which has its own unique history and heritage (see **Sections 4 & 5**).

### 3.3 Conclusions

From the review above it should be clear that Fairfield City's Aboriginal history and heritage has been shaped by natural as well as cultural forces. Focus in heritage investigations has tended to be on pre-contact Aboriginal archaeology and 'traditional' Aboriginal cultural practices. The arrival of Europeans has been seen as very, if not totally, destructive of both that culture and its heritage. Whilst there have been severe social and heritage impacts, it should also be clear that many of the 'European' activities which have impacted pre-contact Aboriginal heritage have themselves had an Aboriginal historical aspect, and have therefore involved the creation of new Aboriginal associations. Heritage studies have long recognised that heritage is not restricted to tangible, physical, made 'things', but also includes the associations people have with things and places, including both built and natural features. Bearing this in mind, the destructive processes of European 'development' can also be seen to have led to the creation of new layers of Aboriginal heritage. Recognising these layers requires a deeper understanding of the history of Aboriginal associations with the study area, which is the subject of the next section.



## 4.0

## Aboriginal History in the Fairfield LGA

This section outlines the types of associations Aboriginal people have had with the Fairfield area from earliest times to the present, and how these might relate to 'heritage'. It draws primarily on previously published accounts with some additional primary research. It is not a definitive Aboriginal history of the Fairfield LGA. The recent *Cabrogal to Fairfield City* book (Gapps 2010) already provides an excellent overview of the Aboriginal associations with the area up until the twentieth century, but does not discuss in detail the history of Aboriginal resettlement in the area since the 1950s. While much of that history is yet to be explored, this section aims to sketch out some major themes and developments, as they provide the context to why particular places are considered important to Aboriginal people today.

### 4.1 First Occupation to 1800s

#### 4.1.1 Initial Occupation

It is clear that the long Aboriginal occupation and use of the Sydney region asserted by Aboriginal oral tradition is amply supported by archaeological evidence from the region. The oldest dated evidence extends back over 1,000 generations with two rockshelter sites in the Blue Mountains and its foothills dating to around 20,000 years ago (Stockton & Holland 1974, Nanson *et al.* 1987, Attenbrow 2010:Table 3.1). Even older sites have been dated in open contexts at Penrith (40,000 years, Nanson *et al.* 1987) and Parramatta (30,000 years, McDonald 2005), though at such sites the association between stone artefacts and the dated samples can be difficult to definitively prove (Attenbrow 2010:20).

Aboriginal people are therefore likely to have been in the Fairfield City area for many thousands of years. A single radiocarbon age determination has been obtained from the Fairfield LGA. It dates a piece of wood submerged in the same layer of sediment as a stone axe along Prospect Creek at Carramar (AHIMS Site #45-5-0740) to sometime between around 1,700 and 2,050 years ago.<sup>5</sup> The axe was found 7.5m below the surface during excavations for a pipeline in 1980, and there are few details available to be sure that the wood and axe are likely to be directly related, but this age is in line with many other dates across the Cumberland Plain, which are from within the last 3,000 years.

Because of the lack of definite dates for archaeological sites within the LGA it is not currently possible to tell how many people used them, for how long at a time or how often. We also do not know which campsites were in use at exactly the same time (and therefore by the same or neighbouring groups). Given that stone artefacts are virtually the only evidence archaeologists have had to reconstruct how Aboriginal people lived, it is perhaps not surprising that models of Aboriginal occupation have tended to look at where sites generally are found in the landscape rather than consider the underlying behaviours which influenced site location. A recent overview of the results of more than 20 years of archaeological excavations in the Rouse Hill Development

---

<sup>5</sup> SUA-1473 1890 ± 90 BP. Richard Gillespie (Centre for Archaeological Science, University of Wollongong) via email 7/3/16.



Area provides the most comprehensive conclusions that can currently be drawn from the archaeological evidence (White & McDonald 2010). This concludes that Aboriginal people either most often or most intensively used<sup>6</sup> the terraces or lower slopes above creeks with permanent water for camping. Also, campsites on larger streams showed a greater range of activities than those in the upper reaches of creek catchments. Unfortunately, there is little evidence that allows us a sense of how and why people moved around the landscape. In fact, almost all of the evidence for the daily lives of Aboriginal people in western Sydney comes from the early contact period.

#### **4.1.2 Lifestyle and Resources**

Observations of early European settlers in the late-18th and early-19th centuries have left a rich range of sources about how Aboriginal people lived in the western Sydney area. Unfortunately, very few of these observations are confirmed in the archaeological record, which means we must be careful about assuming that historically observed practices had always been undertaken. Saying that Aboriginal people have the oldest living culture in the world, or that the Dreaming is timeless are often mistakenly taken to mean that Aboriginal culture never changed or adapted prior to the arrival of Europeans in 1788. In fact, the archaeological record shows that new technologies were introduced at various times, and that Aboriginal people lived through major environmental changes such as rising sea levels at the end of the last ice age. Therefore it is likely that many of the activities recorded historically were undertaken in that way for several thousand years at most.

Several early colonial observers noted that there were distinct coastal and inland populations of Aboriginal people in the greater Sydney area at the time of first settlement. First fleet diarist and marine Watkin Tench referred to the latter, who lived west of Parramatta, as the 'woods tribes'. While there was clearly movement, trade and contact between the hinterland and coast, those people living semi-permanently or intermittently on the coast relied heavily on the resources that the ocean and its tributaries provided while those further inland lived off the land with an emphasis on its grasslands, woodland, swamps and creeks.

#### **Clans, Languages and Boundaries**

At the time Europeans arrived in Sydney the region was made up of the clan estates of over twenty different Aboriginal clan groups. These were likely to have numbered between 25-60 people and comprised several extended family groups that shared "patrilineal" descent (i.e. descent through the male line), common language and totemic association. Each clan had an 'estate' over which they had primary but often not exclusive access and use rights. The Fairfield LGA is likely to have been associated with clans such as the Cabrogal, and possibly others for which we have little reliable information.

Much effort has gone into establishing the 'boundaries' of these estates but there is little information on which to base this, especially in the western Sydney region. The most reliable conclusions are those drawn from the cautious and thorough analysis of Dr Val Attenbrow in her book *Sydney's Aboriginal Past* (2010:22-29). Other clans are mentioned in the historical record but there has been a lot of speculation and assumption used to determine their location and

---

<sup>6</sup> In other words, there are more artefacts found in these locations. As noted it is not possible to tell if this means more frequent use or more intensive but less regular use.



'boundaries' which are simply not sustained by the evidence, and Attenbrow describes some of the obvious errors associated with some of these renderings. The main reason we have little information about clan boundaries is the fact that these clan structures were badly and permanently damaged by the ravages of early smallpox epidemics. It is also because the groups described by early European observers were foraging bands, not clans, a distinction they were not aware of and which continues to be misunderstood (e.g. Kohen 1993:15).

On a daily basis Aboriginal people lived in bands that comprised at various times some or all of a particular clan plus the women married into that clan from other clans. These bands therefore were multi-lingual groups with direct and distant familial, custodial, and ceremonial connections that extended far beyond the 'boundaries' of an individual clan estate. We do not know how these bands referred to themselves but it is possible that some of the names assumed to be clan names were actually the names of foraging bands.

After the decimation of smallpox, it was rare for Aboriginal people to be described as being of a particular clan, and in the early to mid-1800s groups were commonly identified as a 'tribe' associated with a particular area. For example in the Fairfield city area were groups such as the Liverpool tribe and the Prospect (Weymaly) tribe. These groups are best understood as bands which, due to depopulation began to draw members from increasingly larger areas. They are an Aboriginal response to the European colony which incorporated traditional Aboriginal social patterns. Their relationship to the early recorded Cabrogal clan is not clear, as Gapps meticulously details in *Cabrogal to Fairfield City* (2010:33-44).

There is little evidence that Aboriginal people considered language to be a primary means of cultural identification in the pre-contact past. As noted above, clans were the primary territorial groupings, and in practical terms Aboriginal people travelled in multi-lingual bands and routinely encountered people of different languages. Relationships between clans appear to have been relatively independent of language, though there were cultural differences recognised by Aboriginal people in early colonial Sydney between the 'coast' and 'inland' or 'woods' groups and there has been much speculation as to whether this reflected a linguistic 'boundary'.

Language has assumed a much greater importance in recent decades across the region as a means of collective identification, given that clan structures have significantly altered. As Attenbrow has noted (2010:35) it is sometimes hard to separate how language functioned traditionally in Sydney from the ways in which descendants of these people now used these terms as a form of collective identity.

That a language known as Dharug<sup>7</sup> was spoken in the western Sydney region was established by surveyor and anthropologist R.H. Mathews in the late 1800s. However even Mathews was unsure about the boundaries and location of that language. His field notebooks include reference to the language spoken in the Blacktown area in the late 1800s as "Jum'ma –Blacktown talk", but further information was not provided (Wood & Williams 2001:34). It is beyond the scope of the current study to review the complex arguments for language 'boundaries' except to note that much has been stated as definite and absolute that is now beginning to be questioned and new 'discoveries'

---

<sup>7</sup> A range of spellings are common, and the preferred use by descendants of the speakers of this language is *Darug*.



are being made (e.g. see Wilkins & Nash 2008, Steele 2005, Ford 2010, Wafer & Lissarague 2008) which themselves require further research.

More generally, in relation to a lot of the 'assumed' knowledge about clan and language boundaries, Powell & Hesline (2010) have called for a thorough rethink of the assumptions used to underpin these arguments. More attention should also be paid to the historical movements of Aboriginal people until the restrictions of the Aborigines Protection Board and its missions and reserves from the 1880s. This is likely to say much about the traditional connections and movements of Aboriginal people, not because these were unchanged from pre-contact times, but because Aboriginal people had connections outside of the Sydney region prior to the arrival of Europeans, which are not sufficiently recognised at present.

### **Foods**

First fleet officer Watkin Tench noted in his writings (1961[1793]:230) that the woods tribes (which would include the Cabrogal):

*Depend but little on fish as the river yields only mullets, and that their principal support is derived from small animals which they kill, and some roots (a species of wild yam chiefly) which they dig out of the earth.*

The 'small animals' referred to by Tench are known to have included kangaroos, wallabies, bandicoots and possums and numerous varieties of birds (e.g. **Figure 4.1**). The 'roots' referred to include the wild yam as well as the edible tubers of various orchards, lilies and ferns. In addition to these protein and starch rich staples were numerous other foods of the plains and forests including (Kohen 1995, Attenbrow 2010):

**edible fruits** such as geebung, lily pilies, currants, figs, kangaroo apples, mulberries and five corners

**honey** from the hives of small black native bees (which was used both as a foodstuff and as the base of an intoxicating drink)

**fish** such as mullet, bass, garfish, estuary perch as well as eels, freshwater crayfish, mussels, tortoises and toredo worms (cobra) from the creeks/rivers

**birds** such as ducks, hens and emus from the plains and swamps

**reptiles** such as snakes, lizards and goannas.

The Cabrogal are said to have regarded the cobra worm (a soft mollusc that lives in submerged timber) as a particular delicacy, and from which their clan name is said to derive (Gapps 2010:34). Cobra worms were found across a much broader area, and it is not clear if they were more frequent, more valued, or of a different type in the estate of the Cabrogal to be singled out in this way, but they were clearly important foods to the Cabrogal. French explorer Francis Barrallier observed Aboriginal people harvesting cobra worms from their holes in a submerged piece of wood in the mountains to the southwest of Sydney in 1802 (Barrallier in Gapps 2010:40). He described them using

*... a switch about twelve inches long and the thickness of a fowl's feather ... One of the extremities of this stick is provided with a hook. ... and having widen[ed] the hole ... with their axe ... dip their switch into the hole, and, by means of the hook, draw it out, and eat it greedily.*





**Figure 4.1. Aboriginal people hunting possums in Sydney.**

[Source: NLA nla.pic-an8936122, M. Dubourg's 'Climbing Trees', from Clark, J. 1813 *Field Sports of the Native Inhabitants*. It shows Sydney Aboriginal men using a mogo (stone hatchet) to cut foot notches for the purpose of getting at possums and sugar gliders. Several trees with these notches have been found in the region, though they are rare (see Irish 2004)].

## Weapons and Implements

### Wood and Plants

Even though land clearing and development have removed many of the old growth trees within the Cumberland Plain, ethnohistorical records indicate that the forests and woodland were of great importance to the Aboriginal people of the region who made use of a variety of tree species for the sourcing of the aforementioned foods; the production of huts and canoes; and the manufacture of tools and implements. **Table 4.1** highlights some of the uses to which tree products were traditionally put. Trees retaining scars of this use are rare in the study area and becoming more so.

**Table 4.1. Aboriginal uses of tree products in the greater Sydney Region.**

[Table formatted from information in Attenbrow 2010 & Kohen 1995]

Timber	A variety of tree species were used for the manufacture of clubs, shields, spears & spear throwers (woomerars) (e.g. <b>Figure 4.2</b> )
Fibres	Bark fibres from the Hibiscus tree that grew along river & creek margins were woven to produce fishing nets. These were often cast over shoaling mullet. Other plant fibres were used for fishing lines, twine & bags
Bark	Bark shelters (gunyahs) were constructed of bark sheets placed over a framework of saplings Babies were wrapped in soft tea-tree bark & slung in woven fibre bags. Bark from eucalypts was used for the production of canoes & coolamons (water carriers)
Saps	Saps & gums were used as adhesives
Hollow logs	Hollow logs were used as river bed fish traps
Flowers, nectars, leaves & fruits	Flowers, nectars, leaves & fruits were collected for processing as food, drinks & medicaments. Select plants (e.g. Acacia) were used to make fish poisons



**Figure 4.2. Kangaroo hunt.**

[Source: NLA nla.pic- an8936131, M. Dubourg's 'Hunting the Kangaroo', from Clark, J. 1813 *Field Sports of the Native Inhabitants*.]

### Stone

While trees and forest products provided the fundamentals of the material culture of the Aboriginal people of the Cumberland Plain, other natural materials were also used. In particular within the Western Sydney area, archaeological and ethnographic evidence has shown us that stone was used to create tools and weapons such as ground-edge axes (mogos), blades and the barbs of spear points. Stone types are known to have included silcrete (**Figure 4.3**), silicified wood, quartz and volcanics (including basalt and tuff). As a consequence of their inherent hardness and durability we know more about stone artefacts from archaeological sites than we do about any other artefactual material. These less hardy organic items such as wood, fibres, skins, animal parts and hair decompose quite quickly in buried soil contexts in western Sydney and are rarely found in the region.



**Figure 4.3. Piece of worked silcrete from Carramar (scale in cms).**

['Unspectacular' examples have been deliberately chosen. Most artefacts that are found in archaeological surveys and excavations are, like this one, not obvious implements such as spear points, but it is possible to tell that artefacts like this were utilised by Aboriginal people by the way the smaller pieces have been removed. Microscopic analysis of artefacts like this could potentially tell if they have been used and even what they were used for by the plant or blood residues left on edges. Unfortunately this work is expensive and time consuming and has not been performed on many artefacts from the Cumberland Plain, though they have been excavated in their hundreds of thousands over the last three decades].



### **Silcrete**

If there is any one type of stone that characterises Aboriginal archaeological sites of Western Sydney it is silcrete. This hard, lustrous, silicious rock - often found as river bed cobbles and outcroppings - was worked into a variety of tool types and is frequently revealed in archaeological contexts as blades, points, cores and debitage (**Figure 4.3**).

Technically, silcrete is an indurated soil duricrust formed when silica is dissolved and re-solidifies as a crystalline cement. This chemically created sedimentary rock is widespread within Australia's regolith (rock mantle) and ranges from yellow-white to deep red in colour (with colour differences due to both natural variation and deliberate firing).

It has been suggested that 'rights' to the stone where it outcropped in ridges in the Plumpton area were traditionally held by a specific clan. The red stone that barbed the 'death spear' that killed Governor Phillip's game keeper John McIntyre (December 1790) was described as a red stone that is generally thought to have been silcrete.

Refer Attenbrow 2010; Kohen 1995: 6 & 55; <http://australianmuseum.net.au>

### **Animal Products**

In inland locations, particularly during winter, animal skins were sewn together with awl-driven sinews to form cloaks which kept out the ravages of the cold. Early colonists noted that the cloaks were made of possum, kangaroo and flying fox (as well as bark). Although generally thought to have been smaller and perhaps less frequently used than in places like Victoria and on the Murray River, these cloaks were highly prized and in some instances decorated on the interior with patterns made from the 'edgy part of a bivalve shell' (Barrallier [1802] in Attenbrow 2010:107). Animals also provided sinews for rope and twine, bone for awls and spear points and teeth, talons, feathers and fur for decoration.

### **Transport**

Several historians have accurately described the Aboriginal people of Sydney as being 'canoe cultures' due to the universal use of the bark canoe as a mode of rapid transport wherever there was a sufficiently large waterway (Gapps 2010:40-42). Canoes were generally constructed of eucalypt bark with lightweight thwart framing. They were usually bound at each end by plant fibres and some were also sealed with xanthorrhoea gum and lined with soft bark or cabbage tree palms. Serviceable but somewhat flimsy craft, these canoes were used to navigate waterways and rivers and also functioned as mobile fishing platforms. The characteristic canoe shaped scars or markings on old eucalypts that denote Aboriginal removal of bark for canoe construction are a significant feature of Australia's Aboriginal landscape though are very rare in the Sydney region. The presence of large creeks in the eastern part of the Fairfield LGA, and the Georges River to the south suggest that canoes would have been used extensively in these areas. Otherwise Aboriginal people travelled on foot via ridgelines and creek lines as suggested by the patterning of Aboriginal archaeological remains.



## Accommodation

Aboriginal people in the greater Sydney area lived in various styles of accommodation in a wide variety of occasional and semi-permanent settlements. As a general rule, shelter was routinely provided by rock shelters or outcrops, small structures, or large hollowed out trees (Attenbrow 2010:105). On the Cumberland Plain however, the absence of outcropping sandstone meant that options were limited to bark huts (gunyahs). R. Howitt in his book *Impressions of Australia Felix* (1845:284) described the construction of such huts as follows:

*It is not uninteresting to watch them at the vocation of miam-making: stripping off from the trees large and thick sheets of bark, driving forked stakes into the ground to receive the cross tree, against which they rear the bark, and complete the whole with a covering of green boughs.*

Captain John Hunter (cited in Attenbrow 2010:105) contrasted the dwellings of Aboriginal people on the coast with those inland - somewhat derisively - as follows:

*... they generally shelter themselves in such cavities or hollows in the rocks upon the sea shore, as may be capable of defending them from rain ...*

*In the woods, where the country is not very rocky, we sometimes met with a piece of the bark of a tree, bent in the middle, and set upon the ends, with the piece set up against the end on which the wind blows. This hut serves them for habitation, and will contain a whole family; for when the weather is cold, as is the case in winter, they find it necessary to lie very close for the benefit of that warmth to which each mutually contributes a share. These bark huts (if they deserve even the name of huts) are intended, as we have discovered lately, for those who are employed in hunting the kangaroo, opossums, or in short, any other animals which are to be found in the woods.*

**Figure 4.4** and **Figure 4.5** show campsite gunyahs in the Sydney region. Both are variations on the traditional shelter - formed from a framework of saplings and covered with bark sheet.



**Figure 4.4. Jacques Boisseau's 'famille de sauvages' (1825)**

[Source: NLA nla.pic-an9032049].





**Figure 4.5. M. Dubourg's  
'Repose' (1813)**

[Source: NLA nla.pic-an8936131].

### **Cultural Beliefs & Ceremony**

In traditional Aboriginal society most aspects of life were 'intimately associated with religious beliefs'. These were expressed through stories and ritual that belonged to the 'dreaming' or dreamtime – an Aboriginal concept that links the past to the present (Attenbrow 2010:127).

#### ***Spirituality***

Unfortunately, our collective knowledge of specific beliefs and practices in the Sydney region is very limited. Aboriginal beliefs were often derided as mere superstitions by early colonists and detailed ethnographic recording did not commence (if at all in some regions) till the 1870s. In addition, Aboriginal elders were not always able to pass information on from one generation to the next once Europeans had arrived.

Generally however, it appears that the 'religious system' for south-eastern Australia (Victoria, NSW and southern Queensland) featured:

- Universal belief in an 'all-father' supreme creative being; and
- Practical religion/spirituality based on rites of passage (Attenbrow 2010:126-129).

#### ***Creator***

Commonly held Aboriginal beliefs in south-eastern Australia included the existence of a supreme being or creator spirit known by a variety of names but most commonly referred to as Baiame. Generally it was held that Baiame came from the sky to the land and created all the rivers, mountains, and forests. He was also responsible for the creation of all aspects of culture and gave the people their laws of life, traditions and songs, and their culture. It was also believed that he created the first initiation site - the bora.



Baiaame was closely associated with another ancestral being (often depicted as one legged or with a much exaggerated penis) referred to as Daramulan. The relationship and status of the two varied according to location, and in some instances they were one and the same.

### **Totems**

In day-to-day life, it appears that the most immediate religious concerns related to what we commonly refer to as totems - connections between man and nature and ultimately to the ancestral beings. Totems (generally animals, plants or objects) influenced or regulated many aspects of individual and group life including marriage and movement. Totemic creatures from the broader Sydney area included the possum, emu, bandicoot, wallaby, kangaroo, wombat and black snake. Not surprisingly, totems were integral to ritual and ceremony.

### **Ceremony**

In South-eastern Australia, bora (a Kamilaroi term) was the name given to both a male initiation ceremony and the site on which it was performed. As ethnologist R. H. Mathews wrote (1917:423), the bora was:

*... an educational system for the initiation of youths into the privileges and obligations of manhood.*

Initiation ceremonies differed between Aboriginal groups, but all involved ceremony associated with the creator figure Baiame, and ritual practice (including law, dance, scarification and other bodily modification).

Details of initiation ceremonies from the greater Sydney region are limited. Perhaps the best recorded example occurred in part at Farm Cove (Circular Quay) in 1795 (**Figure 4.6**). This was a well-attended event which included people from the coast as well as those from 'the woods'. This ceremony, which was described by First Fleet Lieutenant-Colonel David Collins, featured:

- use of a cleared area as a ceremonial ground
- presence of koradjis (clever men) who oversaw and undertook the significant rituals
- ritual dance, instruction, parading and offerings
- the 'man-making' of at least three young men (including Nanbaree and Caruey) who were subject to front tooth evulsion and other rites of passage.



**Figure 4.6. Initiation ceremony at Farm Cove in 1795.**

[Source: SLNSW a1341015h. Engraving from Collin's 1802 *An Account of the English colony in New South Wales*].



### 4.1.3 Early Contacts and Conflict

#### First Contacts

First contacts between Aboriginal people and Europeans in the Fairfield area happened soon after the arrival of the First Fleet in 1788. It is quite likely that local Aboriginal people had travelled east and seen Europeans prior to the first European explorations into the area, and at any rate would have had some advanced information from coastal peoples. The land around the lower reaches of Port Jackson was quickly found to be unsuitable for European style farming and as a consequence, exploration in search of arable lands commenced. Throughout the 1790s and early 1800s a number of exploratory parties crossed through parts of what is now the Fairfield LGA, and escaped convicts probably also passed through the area. Little is recorded from this period that can definitely be tied to the specific Fairfield city area.

#### Smallpox

In 1789, before any real or lasting contacts had been made with Aboriginal people in the Fairfield city area, a devastating smallpox epidemic swept around Sydney Harbour before spreading west with Aboriginal people fleeing the disaster. This disease, often in combination with other introduced contagious illnesses, wreaked havoc on the Sydney Aboriginal population and rapidly effected Aboriginal populations elsewhere. It is believed to have claimed the lives of up to half of the Aboriginal people in Sydney, though we will never know how it affected the Cabrogal and other local groups because it affected them before Europeans recorded anything about their prior numbers. Governor Phillip recorded that:

*It is not possible to determine the number of natives who have been carried off by this fatal disorder. It must be great; and judging from the information of the native now living with us, and who had recovered from the disorder before he was taken, one half of those who inhabit this part of the country died.<sup>8</sup>*

#### Smallpox

Smallpox is an infectious disease unique to humans that is caused by the airborne transmission of the variola virus. The disease is thought to have emerged in human populations around 10 000 years ago. The virus localises in the small blood vessels and manifests as a characteristic maculopapular rash, and later, raised fluid-filled blisters.

Defined as either major or minor, the former has a mortality rate of 1% while malignant and hemorrhagic versions of the latter account for a death rate closer to 35%. It is believed that the disease has been responsible for up to 500 million deaths in the 20<sup>th</sup> century alone.

After successful vaccination campaigns pioneered in the 19th century and expanded in the 20th, the World Health Organisation certified the eradication of smallpox in December 1979. It is one of only two significant diseases that have been eradicated by humans.

Other communicable diseases such as influenza, tuberculosis and sexually transmitted diseases such as syphilis are also likely to have had a profoundly negative affect on Sydney's Aboriginal people in the first decades after the arrival of Europeans in Sydney.

<sup>8</sup> Dispatch from Phillip to Sydney 13 February 1790 in HRA Series 1, Volume 1: 159

**Conflict**

The last decade of the 18th century and the first decade of the 19th century was characterised by a number of conflicts and wars between white settlers, soldiers and Aboriginal people. Not all instances of conflict were reported or recorded so the precise nature of conflicts within the study area is difficult to determine. As the colony grew, the spread of land tenure to emancipated convicts and soldier settlers resulted in armed clashes as Aboriginal people found themselves both harassed and cut off from traditional lands. This was particularly on the near-lawless margins or frontiers of white settlement to the north, south and west of Sydney (particularly in the Nepean, Georges, and Hawkesbury River districts) but also included areas closer to the Fairfield area.

The establishment of farms in the early 1890s around Prospect Hill, including several grants within the study area at present day Smithfield, led to a series of violent conflicts between Europeans and Aboriginal people. As historian Grace Karskens has demonstrated, this violence was rarely indiscriminate. Antagonists were often 'intimate enemies', who knew 'their attackers and their victims by name and face' from prior peaceful interactions (Karskens 2009:449 and Ch 13). At Prospect this scenario is suggested by a number of sites containing glass pieces worked in the same way as stone tools (see below and **Figure 4.7 & Figure 5.8**). They show that Aboriginal people were living close to the Prospect farms and most likely interacting with them to obtain raw materials for these artefacts.



**Figure 4.7. Glass artefact from campsite #45-5-0866 to the south of Prospect Reservoir.**

[scale in cms]

There were also concerted campaigns led by Aboriginal warriors to resist the incursions of Europeans across Sydney, of which the best known is Pemulwuy. Pemulwuy appears to have been a Bidjigal man with seeming affiliations to the north and west of Parramatta and to the Georges River and Botany Bay (Tench 1793[1961]:89). An imposing and near-mythical figure he was distinguished by the fact that he had a left eye defect, variously described either as turned, specked or blemished (Tench 1793[1961]:89, Smith 2001:82). Pemulwuy's campaign ranged across western Sydney and the Georges River and by the turn of the 19th century European settler tolerance of his group's sporadic raids was at an all-time low. Governor King issued the following orders in May 1801:



*From the wanton manner in which a large body of natives, resident in the Parramatta, Georges River, and Prospect Hill, have attacked and killed some of the Government sheep, and their threat of murdering all white men they meet, which they put into execution by murdering Daniel Conroy, stock-keeper, in a most savage and inhumane manner, and severely wounding Smith, settler; and as it is impossible to foresee to what extent their present hostile menaces may be carried, both with respect to the defenceless settlers and the stock, the Governor has directed that this as well as all other bodies of natives in the above district to be driven back from the settler's habitations by firing at them.<sup>9</sup>*

This general order to drive Aboriginal people back from settlement areas heralded the commencement of over a decade of severe black and white conflict in these districts. However, the personal relationships which built between individuals meant that both sides usually knew who was 'friendly' and 'unfriendly'. For example, in 1814, while a frontier war was raging between Aboriginal people and soldiers and armed settlers nearby in south-western Sydney, Aboriginal people assisted other soldiers to capture bushrangers along the Devil's Back ridge within today's Western Sydney Parklands (Gapps 2010:122). In the same year to the south along the Georges River, settler John Wentworth felt quite safe fishing with 'friendly' local Aboriginal men despite the armed conflict nearby (Liston 1988:52).

Of course this does not mean that violence did not occur within the study area. An Aboriginal heritage study in the 1980s noted a second-hand and anecdotal reference to 'a massacre site somewhere along Orphan School Creek' (Matthews et. al. 1989:17). Whilst statements such as this should not automatically be assumed to be historical accurate, it is also possible that they are an historical echo of events that happened perhaps at that location or elsewhere in the early colonial period. They remind us how little we know about this period of Fairfield's colonial history.

Frontier conflict in Sydney continued into the 1810s and culminated in a war between displaced Aboriginal people, settlers and the Government to the south-west of the study area between 1814 and 1816. This war grew out of continued animosity exacerbated by extended drought conditions. At the height of the violence and at the behest of struggling landholders, Lachlan Macquarie (Governor from 1810 to 1821) ordered several punitive attacks on Aboriginal people to the west of Sydney. During one attack in April 1816, Macquarie's forces killed fourteen Aboriginal men, women and children at a site near Appin in Sydney's southwest. This event, during which soldiers hung the bodies of two dead Aboriginal people from trees as a warning to would be revenge attackers, became known as the 'Appin Massacre' (Liston 1988:54). After the massacre, hostilities largely ceased in the Sydney region and a new era of European-Aboriginal relations commenced. Devastated by dislocation and depopulation due to small pox, neglect and violence against them, and with reduced access to traditional food resources and reserves, Aboriginal people had to regroup and interact with Europeans in order to stay connected to their traditional lands.

---

<sup>9</sup> King to John King 21 August 1801, HRA, 1(3): 250



## 4.2 1800s to 1950s

### 4.2.1 Staying Connected

In the first half of the nineteenth century, the study area was only relatively sparsely occupied by Europeans. Large portions of the study area had been alienated for the Orphan School, and land grants such as the Abbotsbury and Horsley Estates. However, these and other homesteads remained cleared patches in a vast woodland, connected by a network of rudimentary roads and tracks. The study area was out of the main stream of development across Sydney, due to its distance from major rivers in particular, along which all of the early main towns in the region were established.

The area is likely to have been used by Aboriginal people regrouping after the devastating smallpox epidemic. Unfortunately it is hard to be specific about who these people were and exactly where they were living, as there are few historical records of the area from this time. We know however that a group of Aboriginal people associated generally with the Liverpool area continued to exist throughout the nineteenth century. These are likely to be the people described as the 'Liverpool tribe' in the 1830s and 1840s but we cannot be sure whether they represent Cabrogal people or a broader amalgam of different groups. They are mentioned most often at Liverpool because this was the local administrative hub where Aboriginal people interacted with Europeans. It was at St Lukes in Liverpool that some Aboriginal people baptised their children in the 1820s and 1830s, and it was where police magistrates handed out a government blanket annually to Aboriginal people. Where these people went when they left public view in Liverpool is not known, but it is likely that some at least resided within the study area.

The only definite trace we have from this time is of an Aboriginal woman known as Sarah Castles (c1819 – 1849), who was living along Cabramatta Creek in the 1840s with her European husband Benjamin Castles.<sup>10</sup> Sarah had a daughter Sarah Ann in 1847 before both she and her infant second daughter died in 1849. Sarah Ann later married a western Sydney Aboriginal man William Lock and there are some people today who can trace their ancestry back to Sarah Castles through Sarah Ann and William's children. We do not know Sarah Castle's maiden name or where she was 'from'. Some researchers have speculated that she was the daughter of an Aboriginal man from Prospect Creek named Charley Moran, but the blanket return evidence used to support this idea assumes a connection between a listed 'Sarah' and Charley Moran which does not match her known age (Kohen 1993:98-101). It is likely however that Sarah had an ancestral connection to the Cabramatta Creek area, as it was common in this period for Aboriginal people to continue living in broad areas of traditional affiliation.

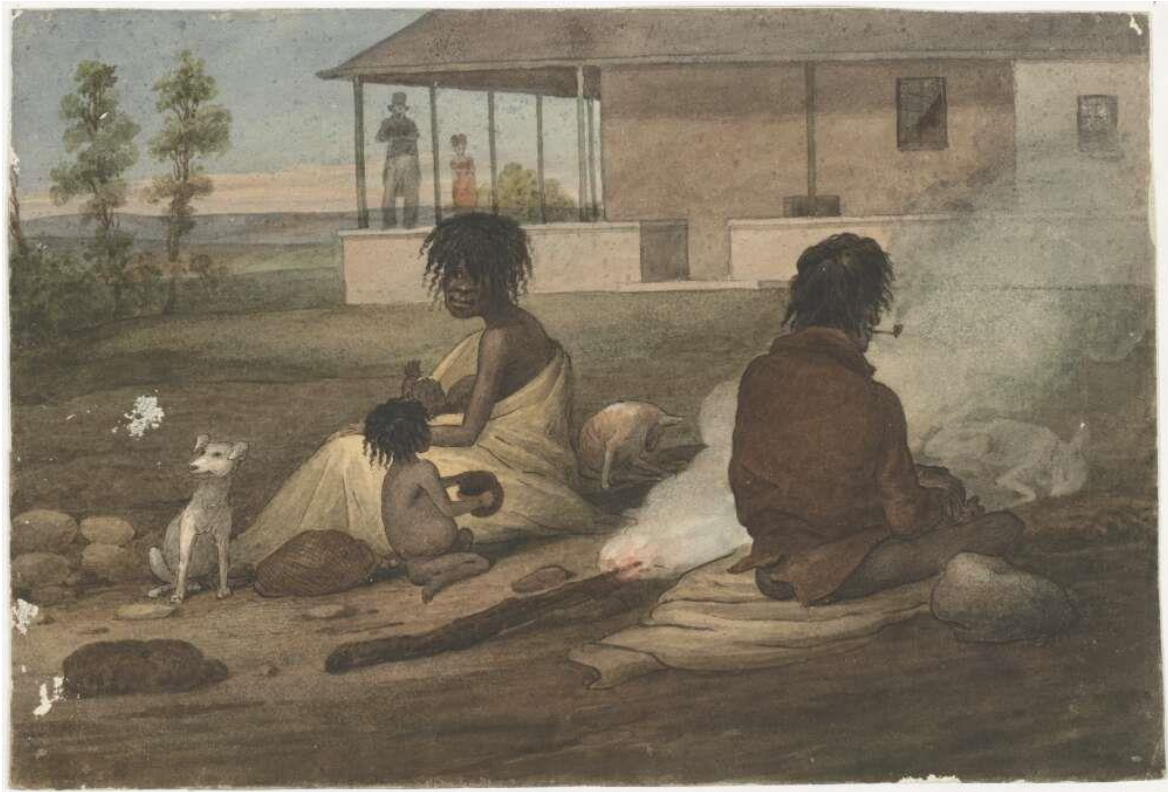
Further north on the Cumberland Plain, to the southwest, and along the coast to the east we have records of Aboriginal people living and working on large estates throughout the nineteenth century (Irish 2010, Irish *in press*, Karskens 2009:537-9, Kohen 1993: Ch7). This kind of existence is captured in a painting by Augustus Earle around 1826 which depicts an Aboriginal family near either Erskine Park to the immediate northwest of the study area or at Casula to the southeast

---

<sup>10</sup> Death Record of Mary Castles 11 August 1849 and Sarah Castles, 28 August 1849 (Society of Australian Genealogists, Church of England in Australia - Parish registers, 1839-1970, SAG Reel 12, frame 285).



(**Figure 4.8**). We know of a large camp of Aboriginal people near Prospect in the 1830s (Hassall 1902:17-18) and also along the Georges River to the south (see Goodall & Cadzow 2009). Given this extensive evidence it seems highly likely that a similar situation existed on the large estates such as Abbotsbury and Horsley and others within the study area, but no details of these have yet emerged from the research for this or other studies.



**Figure 4.8. An Aboriginal couple and their child outside a homestead in western Sydney.**

[Source: Earle, A. c.1826. *A native family of New South Wales sitting down on an English settlers farm* (National Library of Australia PIC Solander Box A33 #T83 NK12/45). This painting may be from Casula, or as Karskens argues (2009:538) Erskine Park].

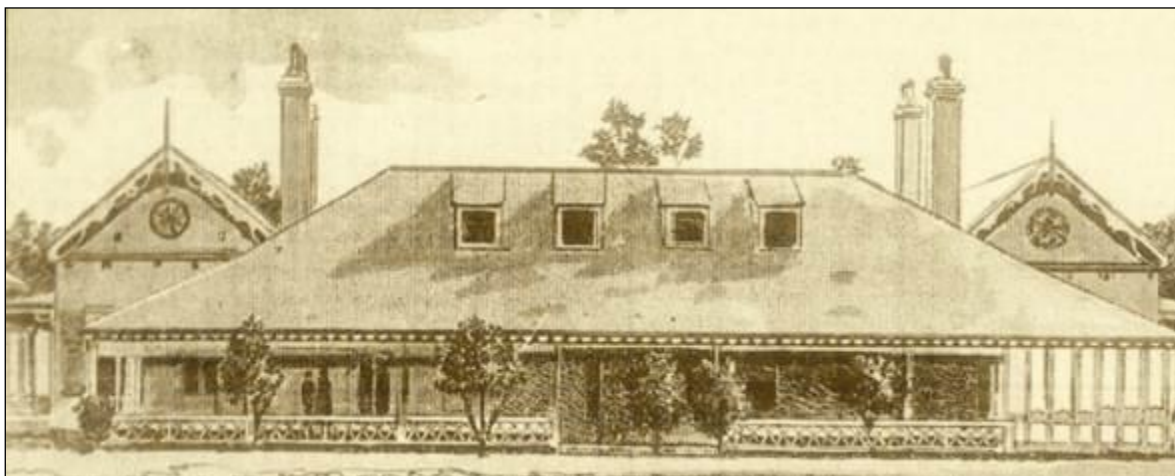
#### 4.2.2 The Male Orphan School

The Male Orphan School operated at Bonnyrigg between 1824 and 1850 as a place for boys to attend school and learn farm work to set them up as future labourers (**Figure 4.9 & Figure 5.10**). During that period more than 800 children attended the school. Not all had no parents. Some were destitute and could not be looked after, and others were technically defined as orphans because they had no father (Starr & Wheller 2005:5-9). When the Male Orphan School opened, there was already a school for Aboriginal children established in 1814 by Governor Macquarie called the Parramatta Native Institution (see Brook & Kohen 1991). By 1823 this school had closed and the remaining students were shifted to the Blacktown Native Institution (**Figure 4.10**). Some of the students were said to be from Liverpool and may therefore have had connections to the study area.



**Figure 4.9. The Male Orphan School around 1840.**

[Source: *Orphan school, Charlie's birth place, 3 miles from Liverpool, New South Wales, sketched in April 1840. Charlie born on 5 April 1840 (State Library NSW V1B / Live / 2)*]



**Figure 4.10. Blacktown Native Institution (late 19<sup>th</sup> century).**

[Source: British Museum Collection - presented in Sharpe 2005:5. Image dates to the time when the building was the residence of Sydney Burdekin who was a member of the Aborigines Protection Board].



In 1824 four boys were sent to the Male Orphan School at Bonnyrigg from the Blacktown Native Institution when it was temporarily abandoned. At least three of them (Billy, Wallace and Johnny) appear to have returned to Blacktown in 1826 when the Native Institution reopened under Christian Missionary Society member William Hall (Gapps 2010:149, Brook & Kohen 1991). By 1827 Hall was overseeing nine Aboriginal children from a range of areas as well as four New Zealand Maori. As had happened previously at Parramatta, illness plagued the institution and by 1829 most of the students had died. The Blacktown Native Institution and settlement lingered until 1833 when it was closed and the buildings auctioned off. During 1829, the students who had survived illness at the Blacktown Native Institution were transferred to Liverpool where they were put under the care of the head of the Male Orphan School's Reverend Robert Cartwright.

The Aboriginal associations with the Male Orphan School are important because they are stories of the treatment of Aboriginal children in the wake of the colonial frontier. The Male Orphan School is linked into the broader history of early colonial attempts at Aboriginal welfare, a story which takes in not just the Blacktown and Parramatta Native Institutions, but also Governor Macquarie's attempts to create settled Aboriginal fisher farmer communities around Sydney Harbour in the 1810s and 1820s. From a local Aboriginal historical point of view, it does not appear that further Aboriginal children were present after the early 1830s (though further research may reveal later connections). When the school closed in 1850 it does not appear to have had any ongoing significance to Aboriginal people. This contrasts the Blacktown Native Institution for example, where Aboriginal people continued to live in an adjacent settlement long after the Institution closed (see Brook & Kohen 1991).

#### **4.2.3 Visiting and Moving In**

From the 1850s, there are few records of Aboriginal people in the broader Fairfield/Liverpool area, and they rarely identify the details of individuals. We know from blanket distribution records and later Aborigines Protection Board annual census records that around 15 Aboriginal people continued to associate with Liverpool until the mid-1890s – but we do not know who they were or what they were doing.<sup>11</sup> In the mid-1890s the numbers fall to just 2-3 people and continue at that level over the next decade. It is possible that people moved away, perhaps to La Perouse which by then was one of the largest Aboriginal settlements in the Sydney region. This broader context is interesting, but it does not tell us whether any Aboriginal people continued to live in the study area, particularly those with ancestral connections.

By the end of the 19th century, the government was becoming deeply involved in the affairs of Aboriginal people through the Aborigines Protection Board (established in 1883). More and more Aboriginal people were coming to live on reserves gazetted by the Board or on Aboriginal missions, at places like La Perouse, Blacktown (Richmond Road), Picton, Katoomba and along the Hawkesbury River at Sackville. Aboriginal people were increasingly monitored by government, and it does not appear that there were any major Aboriginal settlements, and certainly no missions or reserves within the study area. By the 1930s there are no records of a group of local Aboriginal people living in the area. For example, when the historic Lansdowne Bridge celebrated its

---

<sup>11</sup> See Colonial Secretary's correspondence for the 1860s to 1880s and Aborigines Protection Board annual reports for the 1890s and 1900s.



centenary in 1934, a group of Aboriginal people from La Perouse were involved. The local newspaper reported that the procession over the bridge was led by “a party of aboriginals from La Perouse in war-paint and loin-clothes [who] played tunes on gum leaves, and gave displays of boomerang throwing and corroborees” (Anon 1934). A century before, on the opening of the bridge, a similar procession was led by a ‘cart in which were two emus, driven by a native boy’ (Anon 1836). It is possible in 1836 that the boy was locally connected, though he may equally have been someone known to the organisers from somewhere else.

Not all Aboriginal people lived under the government’s watchful eye however. Some chose to live more independently, such as at the well-documented Aboriginal settlement at Salt Pan Creek off the Georges River from the 1910s to the late-1930s (Goodall & Cadzow 2009). It is possible that some Aboriginal people lived in a similar manner within the study area. Several Aboriginal descendants have suggested that this occurred along Prospect and Cabramatta Creeks up until the 1950s (see Gapps 332-337), but these places require further investigation. Salt Pan Creek, and indeed almost all Aboriginal settlements in the preceding century across Sydney, are documented at some level in newspapers, Council records or government correspondence (see Irish *in press*). By contrast, the places within the study area appear only to be documented by individuals, who each give differing accounts of location and use. They do not appear to be recollected by non-Aboriginal residents, despite many of the same stretches of creek being popular as swimming holes for local residents. None of the Aboriginal people contacted in the current study, some of whom have lived in the area for over 50 years, could recollect these settlements either. It may be that they are more related to particular families or individuals rather than being communal settlements.

By the early 20th century, Aboriginal people were beginning to move into Sydney from country areas, looking for work and seeking respite from the oppressive monitoring of the Aborigines Protection Board. Some found work that utilised their rural skills, such as working at abattoirs at Homebush Bay or Riverstone (Irish 2005, Irish 2010). It is possible that some Aboriginal people moved into the study area too around this time, though no specific records have yet been found. Caution needs to be shown in asserting the Aboriginality of people who lived in the area in this period, particularly where they do not appear to have made this assertion themselves. For example Stanley Kohen (1907–1942) is said to have been an Aboriginal man who lived at Cabramatta in the 1930s, before serving in new Guinea during the Second World War, where he was killed in action in 1942 (Kohen 1993:108-9, 138). No newspaper records from the time, or his military service record or marriage certificate assert an Aboriginal identity (though this was not unusual in this period of intense discrimination and segregation). However, more telling, is that a detailed examination of the asserted Aboriginal ancestral connections of Stanley Kohen undertaken in response to a native title claim for western Sydney, show his genealogy to contain serious errors and assumptions that demonstrate that his supposed Aboriginal ancestor is in fact an immigrant (Flynn 2001:156-9).

That is not to say that Aboriginal people were not moving into the study area at this time. Henry (Harry) Finch (c.1915-1968) and his family lived from the 1940s in a house at Smithfield from the 1940s, while his father ‘Old Man Finch’ lived in bush at the western end of the suburb (Gapps 2010:338, Anon 1968). Harry drove one of the local bus routes and was well-regarded in the neighbourhood, as was his wife Pat, who was the Smithfield postmaster. At this stage, families like





the Finch's were fairly isolated, but from the 1960s, Aboriginal began to move into the Fairfield area in much greater numbers.

### 4.3 1950s to Today

#### 4.3.1 Making New Lives

The vast majority of Aboriginal families now living in the Fairfield area arrived from country areas after the Second World War as part of large scale Housing Commission resettlement programs, and more recently independent of such programs. The reasons for the moves were complex and varied and the best illustrations are the recollections of the Aboriginal people who made the move, often via the inner city as a first stop. Lynn Larson, who studied the phenomenon of mass Aboriginal migration into Sydney in the 1970s, summarised it this way.

Increasing Aboriginal population figures, decreasing employment opportunities and the rigidity of social relations in the rural areas served as 'push factors' in the Aboriginal rural-urban migration process...Many migrated to urban areas, pulled by the perceived opportunities for better living conditions, better employment and education facilities and a raise in social status. Although by 1966 over twenty-five per cent of Aborigines lived in urban areas, the majority lived in urban places outside the major city centres. By 1971, the urban component of the Aboriginal population had nearly doubled, with fifteen per cent...living in the major urban areas. (Larsen 1973:35)

From the early 1960s, the Housing Commission began to construct large number of houses in areas such as Mt Pritchard, Smithfield, Canley Vale and Green Valley (George 1991:198). Two women consulted during the current study arrived at this time and found themselves as some of the only Aboriginal people in the area. At this time, Aboriginal people were just starting to create their own organisations to help the continuous stream of Aboriginal migrants into Sydney find their feet. The first of these was the city based Foundation for Aboriginal Affairs, which was only just beginning to make contact with Aboriginal people across the Sydney area by the mid-1960s.<sup>12</sup>

Aboriginal families had to make-do as best as they could in an environment that was still quite racist. When Freda Simpson moved into Smithfield in the late 1960s for example, unbeknownst to her, the neighbourhood families 'put a petition around the street to ask if they could actually move an Aboriginal family in there, coming from the inner city.' One of her neighbours, whom she later became good friends with, later told Freda that 'we signed it and said we didn't want an Aboriginal family living here?'<sup>13</sup>

Until the 1980s, there were no Aboriginal service organisations in the Fairfield LGA. That development coincided with the construction of the Housing Commission suburb of Bonnyrigg in the early 1980s, which included housing for nearly 4,000 people in houses and units in what was formerly bush and cleared paddocks (George 1991:198). Aboriginal people were among the many

---

<sup>12</sup> See <http://www.sydneybarani.com.au/sites/foundation-for-aboriginal-affairs/>

<sup>13</sup> Transcript of oral history interview with Freda Simpson  
[http://fairfieldcity.oralhistory.com.au/interviews/simpson\\_freda/simpsonf\\_fullstory.htm](http://fairfieldcity.oralhistory.com.au/interviews/simpson_freda/simpsonf_fullstory.htm)





who moved there and this is reflected by a doubling in the Aboriginal population of the Fairfield LGA from 423 in 1981 to 849 in 1986 (Anon 1989).

Among the first Aboriginal residents of Bonnyrigg in the early 1980s were Mavis Mae Robinson and the late Yvonne Clayton. Yvonne and Mae were both taken from their families as children to the Cootamundra Girls Home, a place run by the Aborigines Protection Board to train Aboriginal girls for domestic service. They met each other at Cootamundra, and both later lived in different parts of Sydney before obtaining houses at Bonnyrigg. Yvonne had been living in Leichhardt and found it a big change moving to Bonnyrigg. She said that

when I first moved out there, I know, I went to the Department, I went to the Department of Housing, because I felt lost, I felt like I was at the back of the world, I thought oh my god, I'm in the scrub, god look at all the trees around me oh my god I'm out in the bush. I did I felt like I was out in the bush and I was, I hated it. I hated it. The kids loved it of course, all these things to explore especially the creeks and the snakes being around them. There was snakes around there.<sup>14</sup>

Both Mavis and Yvonne came to like living at Bonnyrigg and were deeply involved in helping to create a sense of community for the Aboriginal people who had come from many different areas around the state.

#### 4.3.2 Rights and Services

As the Aboriginal population within the Fairfield and Liverpool areas grew in the 1960s and 1970s, it became evident that there was a need for culturally appropriate, Aboriginal run services to help Aboriginal people and bring them together as a community. In the early 1980s, the long-running push for Aboriginal land rights in New South Wales led the government to enact the *Land Rights Act* in 1983. The Act allowed for the formation of Local Aboriginal Land Councils, which had the ability to lodge claims over certain types of Crown Land. In areas like the study area where there were no Aboriginal social or service organisations already in existence, Land Councils also filled this gap.

When the Gandangara Local Aboriginal Land Council was formed soon after the passing of the Act in 1983, it had no premises. At first members met at different places within the Land Council's boundaries, but after privately saving money for several years, some members were able to purchase a house at 15 Delamere Street in Canley Vale. Funding was later obtained but the Land Council used necessary maintenance as a means of training and employing local Aboriginal people through the CDEP (Cook & Goodall 2013:251-2). Throughout the 1980s the property was a social and administrative hub for the Aboriginal community of Fairfield and Liverpool, and was remembered in this way by several people consulted during this study (**Figure 5.12**). It housed the Koori Youth program in the 1980s which assisted children and young adults with education and training. The Land Council moved to its current premises in Liverpool in the early 1990s but still leases out the Delamere Street building as a residential house.

---

<sup>14</sup> Transcript of oral history interview with Yvonne Clayton  
[http://fairfieldcity.oralhistory.com.au/interviews/clayton\\_yvonne/claytony\\_fullstory.htm](http://fairfieldcity.oralhistory.com.au/interviews/clayton_yvonne/claytony_fullstory.htm)



The Land Council building was sited at Canley Vale due to the availability of a suitable house, rather than it being a geographic centre of the local Aboriginal community. For the most part Aboriginal families were relatively spread out across the Fairfield LGA. The exception was Bonnyrigg, and this led to the concentration of a number of activities and services there. The most significant of these was the Urimbirra Aboriginal and Torres Strait Islander Corporation, which was established in a leased house near the central shopping area and Bonnyrigg Public School in the late 1980s. It operated education, training and childcare programs for over 15 years before closing in the late 1990s. By this time, the Aboriginal population was decreasing as the Housing Commission began to move people to other areas such as Campbelltown, while others left as Bonnyrigg developed a bad reputation. Despite this move away, Bonnyrigg Public School has remained a focal point for Aboriginal families in the area, as well as ex-students with their own children who now live in other areas. It was designed to be shaped like a lizard (though one 'leg' was later damaged in a fire) and has retained a close involvement with the local Aboriginal community through its school programs and the Lil Possums Aboriginal playgroup.

From 2007 the Department of Housing has run the locally christened 'New Leaf' program to renew and rebuild public housing in Bonnyrigg. Just down the road from Bonnyrigg Public School is the former Cabrogal Cottage, which served as the community meeting place for the New Leaf program, including art workshops and Aboriginal community gatherings and had Aboriginal artwork on its walls. In the last two years the New Leaf program has been taken over by the not-for-profit organisation St George Community Housing and the community hub has moved to a more central location within the broader housing estate area.<sup>15</sup> New Leaf is now actively encouraging Aboriginal families to move back into the area and has supported local services such as the Lil Possums Playgroup and employs an Aboriginal work to assist in this process. A range of community activities are now supported by New Leaf, including annual NAIDOC celebrations and art projects.<sup>16</sup>

Fairfield Council has also played an increasingly active role in supporting the local Aboriginal community, encouraged by local Aboriginal community members and organisations. In 1994, Council undertook an Aboriginal consultation project to determine the best means of engaging with the local Aboriginal community. In more recent years, Council has employed Aboriginal community liaison workers and formed an Aboriginal Advisory Committee. It has sponsored local Aboriginal organisations and public art projects, and has now engaged formally with its planning responsibilities for Aboriginal heritage through the current study.

### 4.3.3 Continuing Connections

Today there are more than 1,200 Aboriginal people living across the Fairfield LGA, and many more have historical links back to the area because either they or their families have lived there in the past. Although the Fairfield LGA does not contain a definable, geographically confined 'Aboriginal community' in the way that areas such as La Perouse, Redfern, Campbelltown and Mt Druitt do, many Aboriginal people feel a sense of identity and affinity with the area. There are a number of

---

<sup>15</sup> Roma Omari (New Leaf Place Coordinator) *pers. comm.* 7/12/16.

<sup>16</sup> See for example <http://www.newleafcommunities.com.au/news.asp?pid=25&id=106>

ways this has been expressed. We can see it through the dedication of a number of Aboriginal community members to be part of the Fairfield City Council Aboriginal Advisory Committee, ensuring that there is a local Aboriginal voice to guide and advise Council. It is also expressed through the formation in recent years of local Elders groups and playgroups, and their contribution to creating public artworks and crafts and their engagement with the recent *Talk the Change/Change the Talk* Aboriginal history exhibition at the Fairfield City Museum and Gallery.

Perhaps the most visible way in which Aboriginal people in the Fairfield area have expressed both respect for the Aboriginal past and their own sense of connection is through public art. Some of the notable public art projects undertaken over the past decade include<sup>17</sup>:

- The *Warali Wali Aboriginal Heritage Trail* along the Prospect Creek Cycleway – this features a series of interpretive artworks and path markers installed in 2004 which tell traditional stories. Most striking are three concrete pillars arranged around a central rock, each covered in ceramic tiles which have been painted, carved, moulded and pressed (**Figure 4.11**).
- *Plant Lines Banner Poles* at Bonnyrigg – Aboriginal artist Joe Hurst created the poles with a blacksmith using a design developed in conjunction with the Fairfield Council Aboriginal Advisory Committee and student (**Figure 4.12**).
- Aboriginal Artworks at Bonnyrigg Public School – a number of Aboriginal artworks have been created over the last few decades at Bonnyrigg Public School by students, parents and Elders. They reflect the significance of the school to the local Aboriginal community and the cultural pride of students. See also as a means of see **Figure 4.13** and **Figure 5.15**.

Artworks by local artists can also be found in the office of New Leaf at Bonnyrigg and in several public murals such as the recently unveiled Cabramatta History Wall in Dutton Lane.



**Figure 4.11. Features of the Warali Wali Aboriginal Heritage Trail.**

Image courtesy Fairfield City Council.

<sup>17</sup> Information provided by Fairfield City Council.



**Figure 4.12. Plantlines banner poles in use for NAIDOC 2008.**

Image courtesy Fairfield City Council.



**Figure 4.13. Mural at Bonnyrigg Public School.**

As with most of Aboriginal Australia, the population is growing but it is a young population (around a third are children under the age of 14). They will add the next chapters to Fairfield's Aboriginal story.



## 5.0

## Aboriginal Heritage in the Fairfield LGA

The history in the previous chapter outlined some of the main connections Aboriginal people have had with the Fairfield area over tens, hundreds and thousands of years. This section outlines the physical aspect of those associations – places, things and landscapes. Identifying this heritage aspect of Fairfield's Aboriginal history is a complex task. Existing records are dispersed and difficult to interpret and some information is held in the memories of Aboriginal people today and is not recorded in written form. It is important therefore to understand the accuracy and extent of existing information sources to appreciate what is known, has been lost, and what may yet be discovered. The discussion of sources in this section is followed by a review of the types of heritage items and places associated with the various periods of Fairfield's Aboriginal history (**Section 5.2**), which forms the basis for the proposed management framework discussion in **Section 6.0**.

### 5.1 Working Out What Remains

#### 5.1.1 Existing Records and Registrations

##### The OEH AHIMS Register

The Office of Environment and Heritage (OEH) Aboriginal Heritage Information Management System (the AHIMS Register) is the central New South Wales repository that compiles information on Aboriginal archaeological sites and other places of Aboriginal significance. Primarily, and particularly in the case of Fairfield LGA, it consists almost entirely of pre-contact archaeological sites rather than places of significance from after historical period. The AHIMS Register includes information on sites/places that has in some cases been gathered (and occasionally updated) over a considerable period of time (some recordings originally dating back to the mid-20th century), and derives from a variety of sources ranging from data provided by academic and professional archaeological practitioners, Aboriginal community stakeholders, to amateur listings and historical references contained in published documents and a variety of personal published and/or unpublished reminiscences.

As a consequence, the register can often contain considerable data errors and discrepancies about precise site location information, updated site descriptions and associated documentation that may be pertinent to any given site, and details about existing conditions of sites (whether for example they still survive and/or may have been destroyed in the past). Errors in registered site location information, along with other data inaccuracies often mean that reliance upon a simple 'search' of the AHIMS Register may occasionally be inherently flawed when preparing detailed Aboriginal cultural heritage management documents for the use as planning tools by local council's (and other statutory organisations) with the responsibility to protect and manage Aboriginal cultural heritage. For example in the current study several errors of site type were noted and corrected (e.g. sites with incorrect coordinates, placing them in the wrong position and sometimes the incorrect LGA).

The OEH requires agencies such as Councils who wish to hold Aboriginal site information for the purpose of management to be subject to an Aboriginal Heritage Information Licence Agreement





(AHILA) between OEH and the applicant, preferably with the endorsement of relevant Local Aboriginal Land Councils. For the current study an AHILA was sought to allow the retention of relevant AHIMS Register data for management purposes.

The AHIMS Register was searched on 16/12/15 for an area around 1km larger than the LGA<sup>18</sup> to include sites which may be erroneously listed outside of the LGA (see **Section 5.2.1**). These results were then refined through checking of AHIMS Register records and original site recordings to determine whether each site was within the Fairfield LGA, and which of those sites were within the Western Sydney Parklands. The result of this process revealed that 87 Aboriginal sites had been registered within the LGA (see **Appendix B1**). These sites were located during archaeological investigations associated with urban expansion which has resulted in over 40 studies partly or wholly within the LGA over the last 40 years. It is not currently possible to accurately determine how many sites have been destroyed subsequent to their registration on the AHIMS Register so it is not known how many, and which sites are still extant without a detailed review of each site recording and accompanying report and possibly ground-truthing each site (see **Section 5.1.4**).

The AHIMS Register also lists Aboriginal Places, determined under s84 of the NPW Act to have “special significance” to Aboriginal people (e.g. historical settlements or mythological sites). No such places are currently declared within the Fairfield LGA<sup>19</sup>.

### The Australian Heritage Database

A search of the Australian Heritage Database (incorporating the Register of the National Estate)<sup>20</sup> was undertaken for Aboriginal heritage items within the Fairfield Local Government Area<sup>21</sup>. There are seven items listed that fall wholly or partly within the study area, none of which appear to be listed for their Aboriginal heritage values.

### The State Heritage Register and Inventory

A search of the *Heritage Office State Heritage Register* revealed that there are currently 8 listed places within the Fairfield Local Government Area<sup>22</sup>. None are listed for their Aboriginal heritage values and at least one (Bonnyrigg House) has historical Aboriginal associations which are not currently acknowledged on the State Heritage Register (see **Section 5.2**). A search of the *Heritage Office State Heritage Inventory* revealed that there are currently 131 listed places within the Fairfield Local Government Area<sup>23</sup>. None are listed for their Aboriginal heritage values.

---

<sup>18</sup> Two overlapping searches were undertaken using the GDA Datum. Search 1: Eastings 302000 - 315000, Northings 6244000 – 6256000. Search 2 Eastings 296500 - 302500, Northings 6247000 – 6256000.

<sup>19</sup> Online search 11/2/16 (<http://www.environment.nsw.gov.au/conservation/AboriginalPlacesNSW.htm>) of Aboriginal Place declarations prior to 2001, search of NSW Government Gazette for more recent listings.

<sup>20</sup> Note: on 11/2/2016 statutory references to the Register of the National Estate in the Environment Protection and Biodiversity Conservation Act 1999 and the Australia Heritage Council Act 2003 were repealed. The Register of the National Estate is therefore no longer a statutory heritage list, although it will continue to exist as an inventory of Australian heritage places that were registered between 1976 and 2007.

<sup>21</sup> Online search 10/2/16.

<sup>22</sup> Online search 10/2/16.

<sup>23</sup> Online search 10/2/16.



## Museum Collections

Enquiries were made at the Australian Museum and Fairfield Museum to determine whether any Aboriginal objects from the Fairfield LGA were held in their collections. The Australian museum holds records for 4 stone axes from 'Fairfield' but no more specific information is held about their provenance (see **Appendix B4**). The records suggest that these axes are currently on loan to Fairfield Museum, however images of the axes held by Fairfield Museum suggest that only three of the four are held there, and a fourth axe in the Fairfield Museum collection is not from the Australian Museum. Fairfield Museum does not hold any additional Aboriginal artefacts from the Fairfield area.

The Australian Museum also holds a number of flaked stone artefacts collected by archaeologist Michael Guider in the 1980s and 1990s from several locations around the LGA. The catalogue descriptions contain little information, but it can be determined that some of the artefacts were collected from registered Aboriginal sites, while others may represent additional site locations that are not currently registered on AHIMS. Resolving this issue would require a detailed examination of the collected artefacts and accompanying documentation which was considered outside the scope of the current study.<sup>24</sup>

### 5.1.2 Previous Research

Knowledge of Aboriginal heritage and history within the Fairfield LGA has largely come to light through archaeological/heritage and historical/genealogical research since the 1970s.

## Archaeological Research

Locating up-to-date documentation detailing the results of past Aboriginal archaeological and cultural heritage research and investigations in many parts of NSW is often difficult. There is currently no systematic way to accurately locate and access records of all Aboriginal cultural heritage studies that may have been completed and reported in recent times for any given study area.

The OEH AHIMS Register holds a catalogue of archaeological survey and excavation reports that have been lodged with this organisation over time, but this is presently incomplete and can best be searched a combination of geographical and keywords searching, as the study area of some reports has not been digitised. Survey and assessment reports which did not result in the registration of a new site and/or the re-recording of a previously known Aboriginal site and do not have an obvious suburb/place name in its title cannot readily be found on the AHIMS Register. Resolving this issue therefore generally requires searching through other available catalogued reports in the hope of identifying references that may be included for other studies that may have undertaken in any given area. For the current project, the OEH AHIMS Register *Docminder System* was searched for reports with keywords including all suburb names in the LGA.

---

<sup>24</sup> A similar exercise was undertaken by MDCA for an area east of the Fairfield LGA in 2014 and was a lengthy and sometimes inconclusive process.



Archaeological studies have been undertaken in the Fairfield area for over 30 years, closely related to the enactment of policy and legislative requirements for Aboriginal heritage investigations in planning contexts (see **Section 6.1.2**). They can be summarised as follows:

- In the 1980s, there were few archaeological investigations conducted in the Fairfield area for infrastructure projects and residential developments. They resulted in the identification of several open campsites and isolated stone artefacts, often associated with waterways (Hanrahan 1981; McDonald and Rola-Wojciechowski 1985; Dallas and Hanckel 1985; Byrne and Du Cros 1985). Most sites were found to be in disturbed areas such as exposed tracks and often deposited in secondary contexts.
- Two studies were undertaken at Council's request in the late-1980s. Both were undertaken by a team of Aboriginal students under the guidance of archaeologist David Bell as part of The Gandangara Eel Dreaming Project. This project was an Aboriginal initiative run out of the Gandangara Local Aboriginal Land Council at Canley Vale and funded by the Liverpool College of TAFE. It was an educational program that aimed to give participants a background on the Aboriginal heritage of the Western Sydney area as well as basic skills in Aboriginal site identification and recording. The first study (Cole *et. al* 1988) involved a survey of Orphan School Creek that resulted in the identification of three open campsites, two scarred trees and one site comprising both an open campsite and scarred tree. The second study (Mathews *et. al* 1989) a year later focused on the Horsley Park rural lands area at the western end of the LGA. During the survey two open campsites, one scarred tree and two isolated finds were recorded. Most of these were found on the flood plain and it was considered likely that sparse but consistent evidence of Aboriginal occupation would be present across the rural lands, particularly along the margins of Ropes Creek and several areas of potential were identified. It was recommended that Council consider heritage impact assessment prior to development proposals in areas which are known to have such potential. The Gandangara Eel Dreaming Project appears to have finished after this, as archaeologist David Bell moved to another job.
- A number of investigations during the 1990s and 2000s were initiated by the on-going construction of the Western Sydney Portal, the M7 Motorway and the Liverpool-Parramatta Busway (Brayshaw and Rich 1995, 1996; Mills 1998, 1999; Central West Archaeological and Heritage Services 2001; Haglund and Associates 2007). These large infrastructure projects have provided a window into the distribution of sites across the Fairfield LGA although producing results akin to previous studies. Test excavations commonly resulted in low-density assemblages of stone artefacts, occasionally with areas of artefact concentrations which led to salvage excavation (AMBS 2002a & b; Haglund and Associates 2007).
- A number of other studies during the 1990s and 2000s were associated with infrastructure such as quarries, as well as residential and industrial subdivisions and produced similar findings (Dallas and Navin 1991; Navin 1993; Curran 1994; Dallas 1994; Curran 1997, Navin Officer 2002; Central West Archaeological and Heritage Services 2003; Hyder Consulting 2005; Godden MacKay Logan 2007; Kelleher and Nightingale 2015). Open campsites and isolated stone artefacts again dominate the types of sites found and again. Sites were often found to be associated with the course of Hinchinbrook, Ropes, Reedy and Orphan School Creeks and their tributaries (Appleton 2002; Australia Museum Business Consulting 2004;



Godden MacKay Logan 2007; Therin 2007; Australia Museum Consulting 2013). Test and salvage excavations during this time have also led to the identification of more complex sites such as the large artefact scatters at the Sydney International Equestrian Centre (ERM 1997; Richards 2014) and at Oakdale Central Industrial Estate (GML 2013).

- Archaeological evidence of the use of the Sydney area by Aboriginal people after the arrival of Europeans remains under-reported as many archaeologists specialise either in pre-contact Aboriginal archaeology or European historical archaeology and overlook historical Aboriginal archaeology. An interesting exception to this trend occurs as a cluster of post-contact archaeological sites to the south of Prospect Reservoir at the northern edge of the Fairfield LGA, within Sydney Water Land (Smith 1989; Donlon and Comber 1991; Ngara Consulting 2003; Goward 2011). This cluster of sites is fairly unique in the larger Sydney context as post contact sites are rare and often isolated (Irish and Goward 2012). This particular area is also significant as it is less than 1km southwest of Prospect Hill, the site of a notable Aboriginal resistance event. The post-contact sites at Prospect comprise both stone tools as well as glass which has been modified and used in a similar way to stone. As glass was only introduced into the Aboriginal economy post European settlement, it gives us a unique insight into how Aboriginal people adapted to changing circumstance. Although many of the recordings are ambiguous (e.g. Smith 1989), making it difficult to determine the actual number of sites here, it is a significant phenomenon in the broader Sydney context.

The vast majority of these studies have been related to relatively small scale development projects and provide little information about the broader context of the Aboriginal use of the region. The difficulty of integrating these small scale results into a larger model is due to the fact there has been no comprehensive review of the results of the last three decades of archaeological research in the Cumberland Plain region. The closest and most applicable is a recent review of the results of a number of excavations in the Rouse Hill development area (White & McDonald 2010), the findings of which are reviewed in **Section 5.2.1** and provide an applicable guide to what pre-contact archaeology is likely to occur in the Fairfield area. A regional Aboriginal heritage review was commissioned in the early 2000s by the OEH (then DECC) and RTA in relation to the construction of the M7 Motorway. The report was never completed, and the preliminary draft sighted by the authors requires much further work and is in any case now very outdated.

### Historical Research

There have been three major past areas of historical research that are of relevance to the current study, and have either identified Aboriginal heritage sites or provided valuable context in which these can be understood. These are:

- The recent commissioned history of Fairfield undertaken by Dr Stephen Gapps (Gapps 2010). The theme of this book is the many cultures that have contributed to the history of the Fairfield area from the earliest Aboriginal occupation until the present day. The book contains a thorough account of the Aboriginal use of the area up until the mid-19th century, identifying places of significance and the cultural context of the Aboriginal groups who used the local area. From the 1850s to 1950s, there is little information about the Aboriginal use of the area, which reflects the fragmented archival record as much as it does the actual presence or absence of



Aboriginal people. Gapps also discusses a number of historical campsites of Aboriginal people used in the mid-20th century, but as he notes, the accounts of these often come from one individual and are seemingly at odds with the recollections of non-Aboriginal residents. This is discussed further in **Section 5.2.3**. Earlier historical works about the Fairfield area (e.g. George 1991, Pittard 1990) also contain valuable historical context, though do not identify specific Aboriginal places.

- A substantial amount of archival research has been undertaken over the last thirty years in relation to the history of the descendants of Aboriginal woman Maria Lock and other early colonial Aboriginal identities and their descendants. The research was been undertaken largely as a voluntary exercise by local historical researchers (most notably Dr James Kohen) first as a matter of personal interest and from the 1990s as part of research in support of a Native Title claim over much of the Sydney region, and focusses mainly further north on the Cumberland Plain than the Fairfield LGA. It provides a broader context for the Fairfield area, though some serious errors of historical and genealogical interpretation have been identified as part of reviews of this work in an academic and Native Title context (Flynn 2001, Ward 2001, Waters 2002, Wood & Williams 2001:34; see also Wilkins & Nash 2008).<sup>25</sup>
- There have been a couple of studies into the massive post-war Aboriginal migration into western Sydney (e.g. Morgan 2006, Cowlshaw 2009, and see also Goodall & Cadzow 2009). These provide a valuable regional context and contain personal accounts of Aboriginal people (see also Langford 1988), though they contain no information specifically about the Fairfield LGA. Some information is available through oral histories undertaken over the past decade (e.g. Fairfield City Museum and Gallery 2007 and the Fairfield Oral History project<sup>26</sup>). The focus of these histories is generally social history rather than the identification of significant places, but they have proven a valuable starting point for discussions with Aboriginal community members during the current study.

### 5.1.3 Research for the Current Study

There are gaps in our understanding of the Aboriginal history and heritage of the Fairfield area. These gaps are not easily nor quickly filled and much is beyond the scope of the current study, particular in relation to the fragmentary archival record of the late-19th and early-20th century use of the area by Aboriginal people. The focus of research for the current study was therefore on identifying the gaps through review and providing examples of sources and perspectives which need to be taken further in order to provide a comprehensive Aboriginal history of the area. Archaeological research for the project involved a review of current research and reporting as well as some field inspection to check the accuracy and condition of a sample of existing registered sites. Archival research for the study has sought to review the contents of local and other archives and identify potentially relevant information, and has also drawn on previous research by MDCA

---

<sup>25</sup> With the exception of Wilkins & Nash 2008 this research is unpublished but has been sighted by the authors.

<sup>26</sup> <http://fairfieldcity.oralhistory.com.au/> (accessed 15/2/2016).





associates into Aboriginal historical and archaeological associations into the study area (e.g. Irish 2010, Irish 2011, Irish & Goward 2012).

The following repositories have been consulted, though not all potentially relevant records were examined at each:

- NSW State Library (Mitchell Library and State Reference Library)
- State Records NSW
- Fairfield Local Studies Collection at the Whitlam Library in Cabramatta (including images, unpublished reports, Council minutes, vertical files and published books)
- Australian Museum Aboriginal and Torres Strait Islander Collection
- Fairfield City Museum & Gallery (including review of recent Talk the Change/Change the Talk Aboriginal history exhibition)
- OEH AHIMS Register (including Archaeological Reports Catalogue)

The following internet or digitised resources were examined:

- Australian Heritage Database
- Mitchell Library InfoKoori Database
- National Library of Australia Trove
- Royal Australian Historical Society Journal online catalogue
- State Heritage Inventory
- State Heritage Register
- Australian Institute of Aboriginal & Torres Strait Islander Studies Library and Audio-Visual Collection catalogue

#### **5.1.4 What Has Been Lost**

Before turning to consider what has been recorded about Aboriginal heritage in the LGA and what unrecorded heritage may also remain, it is important to consider the following points about what has been lost:

- The fact that the known Aboriginal archaeological sites within the LGA comprise almost exclusively deposits of stone artefacts is largely a factor of archaeological preservation. It does not at all reflect the activities of Aboriginal people in the past. It is simply that other remains of these activities (such as wooden tools, bones, seeds, bark shelters and most scars from bark removal on trees) have not survived either due to natural decay or historical impacts.
- More places await discovery but much has been lost to historical impacts.



- Many of the Aboriginal associations which gave pre and post-contact Aboriginal places their significance to Aboriginal people have been lost. This knowledge was largely not recorded, and though some information has been passed down through generations, much as not survived.
- The loss of cultural knowledge about some places does not mean that they have no significance to contemporary Aboriginal communities, but the significance which may be attributed to these places today, which is important in its own right, is not necessarily the same as the significance that these places previously held. 'Re-connection' with places of past significance to Aboriginal ancestors is an ongoing and evolving process (e.g. Harrison 2003).
- The destruction or removal of the physical evidence of Aboriginal use of a place does not necessarily remove the Aboriginal social significance of that place.

It is then crucial that we act to preserve what remains, but also to *understand* its significance, and recognise that the values associated with particular places can change over time.

## 5.2 Aboriginal Heritage in Fairfield LGA

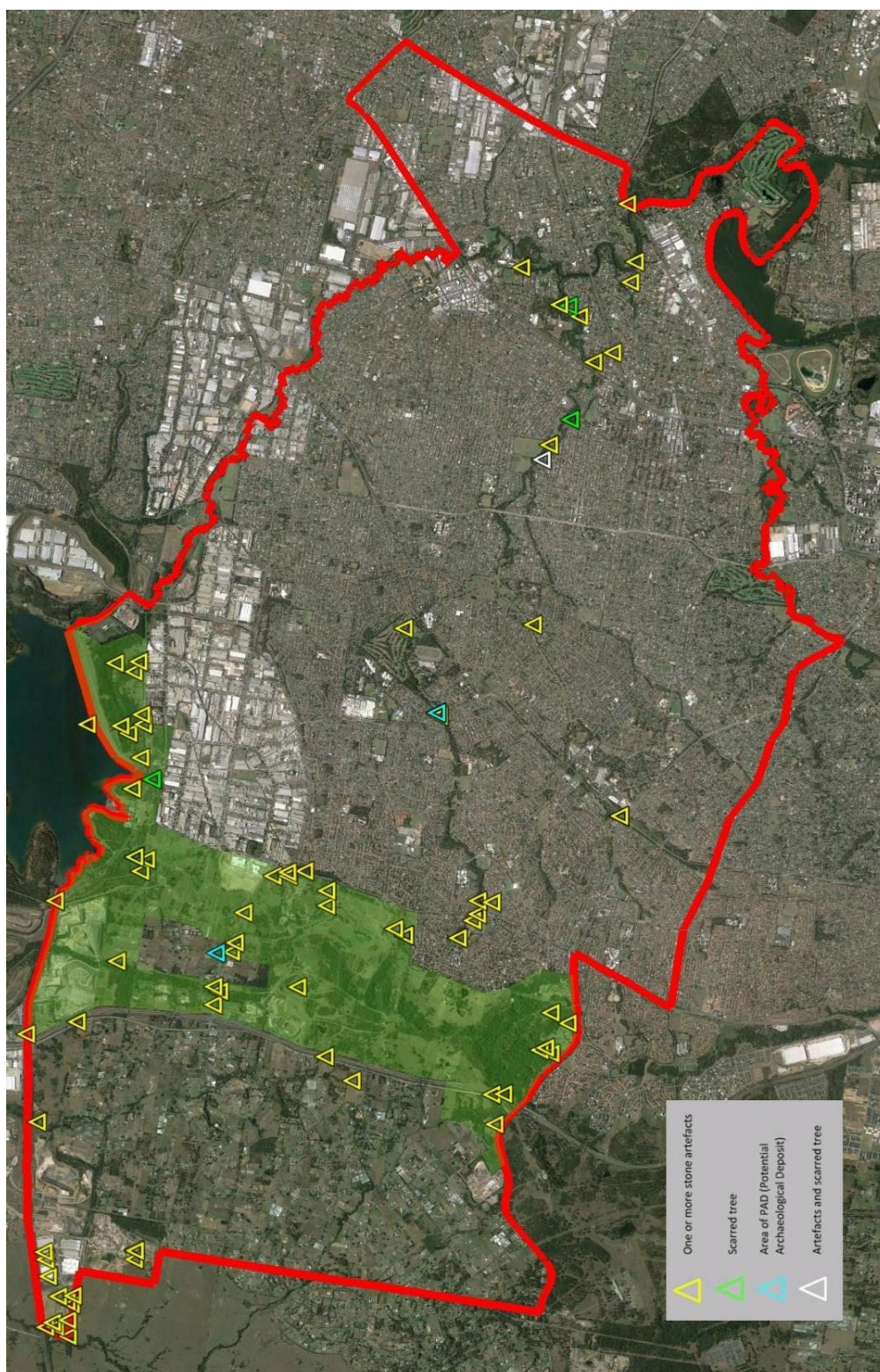
This section identifies some of the places of Aboriginal heritage significance within the Fairfield LGA. As noted in previous sections, there is more research, particularly the oral memory of contemporary Aboriginal communities, that could identify further places of Aboriginal significance, particularly from the mid to late twentieth century. The places described below are summarised in **Appendix B1** and their approximate locations are shown in **Figure 5.1**. Full records of these places, including map coordinates and/or cadastral information has been provided to Fairfield City Council as part of the management system outlined in **Section 6.0**.

### 5.2.1 First Occupation to early 1800s

#### Archaeological Sites

There are currently 87 registered Aboriginal sites in the AHIMS Register within Fairfield LGA. **Table 5.1** shows the relative frequency of site elements (as some sites can contain more than one element). This shows that almost all (93%) of the recorded and registered evidence of past Aboriginal occupation is in the form of surface scatters or subsurface deposits of stone artefacts, or areas in which the latter are suspected of occurring (Potential Archaeological Deposits) (**Figure 5.1**). Over 90% of sites contain less than 10 recorded artefacts, which reflects the relative frequency of 'surface scatters' of artefacts, but also masks the fact that many recorded sites have not been excavated and may contain many more artefacts beyond those currently exposed on ground surfaces. In addition, several stone axes have been located over the last century along the major creeks within the LGA (see **Figure 5.9**).

Less than 5% of sites are scarred trees, reflecting their limited survival as a result of natural attrition and historical land clearing. It should also be noted that many trees which have possibly been culturally modified are recorded and registered as a precaution, and the true number of such sites is probably even less than currently appears on the AHIMS Register. During the course of the study, several possible scarred trees were brought to our attention, but consideration of commonly used criteria showed that these are unlikely to have been scarred by Aboriginal people (e.g. Irish 2004).



**Figure 5.1. Registered Aboriginal Sites within the Fairfield LGA.**

Note: Green shaded area represents Western Sydney Parklands and Sydney Water lands.





Table 5.1. Relative frequencies of site elements from Fairfield LGA.

Site Type	Excluding WSP & Sydney Water Land	Whole of LGA
Open Campsite/ Isolated Find	38 (84%)	78 (90%)
Open Area of Potential Archaeological Deposit (PAD)	3 (7%)	3 (3%)
Scarred Tree	4 (9%)	6 (7%)
<b>Total Number (%) of Elements</b>	<b>45 (100%)</b>	<b>87 (100%)</b>

According to current information from the AHIMS register, only 2 of the 87 presently recorded sites have been destroyed. It appears this information is not up to date as it is known that a significant number of sites have been destroyed under a permit following projects such as the M7 Motorway and the Liverpool to Ashfield Pipeline. The result of this is that very few sites are left outside of creek reserves. The distribution of sites is shown in **Figure 5.1**. Although there is a broad correlation with watercourses (see discussion below), the distribution is just as much related to areas where sites have been looked for (urban and other development and infrastructure over the last 40 years) or not (developments prior to that time during which Aboriginal sites were not recorded). Some examples of surviving sites are shown in **Figure 5.2 to Figure 5.9**. As these show, Aboriginal sites, particularly stone artefacts, have survived even in highly disturbed locations such as the median strip of the Hume Highway, or along channelised creek courses. As all Aboriginal objects are protected under the *National Parks & Wildlife Act 1974*, irrespective of their condition, this suggests that a cautious approach to assuming the absence of Aboriginal sites in areas of historical disturbance.



**Figure 5.2. Scarred tree along Orphan School Creek at Canley Vale (AHIMS #45-5-0729).**

Stone artefacts were found near the tree when it was first recorded in 1988, grass cover has now obscured these.



**Figure 5.3. Location of AHIMS #45-5-1099 in the middle of the Hume Highway at Carramar.**



**Figure 5.4. Silcrete and quartz artefacts still present at AHIMS #45-5-1099 in the middle of the Hume Highway at Carramar.**



**Figure 5.5. Location of AHIMS #45-5-2811 along Orphan School Creek at Prairiewood.**

Test excavations retrieved over 350 stone artefacts from this site and several other sites are located nearby. No artefacts are currently visible.





**Figure 5.6. Location of AHIMS #45-5-3697 along Orphan School Creek at Canley Vale.**

The site was recorded by an amateur archaeologist in the 1990s.



**Figure 5.7. Silcrete and quartz artefacts from AHIMS #45-5-3697.**

Although artefacts were most likely collected from this site at the time of recording in the 1990s, others have since eroded to the surface, suggesting that further undocumented artefacts are also present.



**Figure 5.8. Glass artefact from AHIMS #45-5-0866.**

This artefact is part of a scatter or glass artefacts within Sydney Water lands near Prospect Reservoir. It represents relatively rare archaeological evidence ongoing occupation of the area in the early colonial period (see Goward 2011).



**Figure 5.9. Stone axes in museum collections from the Fairfield area.**

Photo courtesy Fairfield City Museum and Gallery 2016.

This information shows that sites within the study area overwhelmingly comprise stone artefacts in open contexts. This is consistent with the prevalence of this site type across the Cumberland Plain. Site types such as rock shelters, engravings and grinding grooves are not present within the study area. This is due to the lack of geological features such as rock outcrops that would provide suitable structures and surfaces for the creation and use of these sites.

It is also clear that sites in the Fairfield LGA are commonly found along creeks and their tributaries. This is also a common trend in site distribution as areas within proximity to reliable water are known to have been more intensively used by Aboriginal people and are also more commonly preserved as environmental conservation zones and green spaces. Sites are also commonly recorded in areas subject to intensive archaeological investigation due to assessment prior to large-scale infrastructure and development, as is also consistent with general trends in the broader Sydney context.

In addition to archaeological sites, there are potentially other places which retain Aboriginal cultural significance from this period. No specific places were identified during the course of the current study, such as burials or ceremonial grounds. However, the Devils Back Ridge, extending through the Western Sydney Parklands south from Prospect Reservoir is likely to have been a major Aboriginal walking track through the area (Gapps 2010:86-87). As such it is likely to have had places of cultural significance along its course.

### 5.2.2 1800s to 1950s

The Aboriginal history of this period encompasses a range of places which reflect the effects of early colonial conflict, government policies towards Aboriginal people, inter-cultural relations, independent Aboriginal living, death and burial. For the most part, specific places identified with this history have mainly been recorded outside of, but close to, the Fairfield LGA. For example early sites of conflict at Prospect are located to the north-east of the LGA, a land grant lived on by western Sydney woman Maria Lock and her family from around 1833 to 1844 is located two kilometres to the south of the LGA, and a number of historical associations are documented in the Liverpool area to the immediate south-east.



Aboriginal people are likely to have continued to live in settlements at specific places within the LGA, but these specific locations have yet to be identified. For example, we know from across western Sydney that Aboriginal people often lived on the large properties and often developed relationships with the European families who lived there (Irish 2010, Irish *in press*). Evidence of these relationships was sought in relation to several properties within the LGA which were owned by the same families throughout much of the nineteenth century (e.g. Abbotsbury and Horsley Park), but no specific information was found. We also know that Aboriginal people such as Sarah Castles in the 1840s were living along Cabramatta Creek in the 1840s, but we do not know exactly where. So whilst it is likely that places with Aboriginal associations from the 19<sup>th</sup> and early 20<sup>th</sup> centuries exist, they are only likely to be uncovered through careful research, noting the forensic detail needed to ensure that a person and their ancestry and genealogy is not mistakenly pieced together.

### Male Orphan School at Bonnyrigg

The only definite place associated with this period of Fairfield's Aboriginal history is the Male Orphan School at Bonnyrigg. Aboriginal children were present at the school for some of the period of its use from the 1820s to 1850. Bonnyrigg House was the central home within the orphan school complex (**Figure 5.11**). Most of the paddocks of the associated farm are now part of the surrounding residential suburbs, however the house and around 0.5 hectares of land comprising Lots 21 DP791849 and Lot 210 DP794462 form part of a State Heritage Register listing of Bonnyrigg House (SHR #281).<sup>27</sup> A further 1.3 hectares comprising Lots 10-19 in DP1178857 (formerly Lot 1 in DP845279) to the north and west of these lots is also listed for its historical archaeological values on the Fairfield LEP Heritage Schedule (Item #I01390). Neither of these local or state heritage listings reference the presence of Aboriginal people at the Male Orphan School, however these existing protections ensure that these associations are likely to be considered in the event that any proposed future impacts in these areas.



**Figure 5.10. Bonnyrigg House, site of the former Male Orphan School.**

---

<sup>27</sup> see <http://www.environment.nsw.gov.au/heritageapp/ViewHeritageltemDetails.aspx?ID=5045030> for listing.





**Figure 5.11. Lansdowne Bridge at Lansvale.**

### **Lansdowne Bridge**

The only other European historical structure with definite Aboriginal associations from this period is the Lansdowne Bridge over Prospect Creek on the Hume Highway at Lansvale, where Aboriginal people were involved in both the opening in 1836 and its centenary in 1936 (**Figure 5.11**). The bridge is already provided with heritage protection on the State Heritage Register (SHR #1472) and LEP Heritage Schedule (Item #1570211) for its European historical and architectural values.<sup>28</sup> Although these listings do not note the Aboriginal presence at the opening and centenary, these associations can potentially be explored in relation to any assessments required in relation to future impacts to the bridge.

### **5.2.3 1950s to Today**

The Aboriginal history of this period encompasses largely places associated with resettled Aboriginal people from other areas of region and state. They are largely places associated with the establishment of services as well as places of congregation for social and cultural purposes. There are many more places from this period which could potentially be considered as having Aboriginal heritage significance, but this will be dependent upon further information and input from the Aboriginal community. This also applies to asserted Aboriginal camps along Cabramatta and Prospect Creeks in the 1950s and 1960s, which are discussed above, and at more length in Gapps' book (2010:333-340). As discussed above, further information is needed to determine exactly where these camps were and how they functioned, and whether they can be considered specifically Aboriginal settlements or had a broader range of occupants.

As discussed in **Section 4.0**, with the exception of the Bonnyrigg area in the 1980s and 1990s, the Fairfield LGA has been a place to live rather than a geographic centre for the Aboriginal community. Instead, nearby areas such as Green Valley and Liverpool have tended to be where Aboriginal people gravitated towards, and hence the location of service and social organisations. The following places with Aboriginal associations from this period are listed in broad chronological order based on their time of use.

---

<sup>28</sup> See <http://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=5051374> for listing.



### **Gandangara Local Aboriginal Land Council Building, Canley Vale**

A residential house at 15 Delamere Street in Canley Vale was the first home of the Gandangara Local Aboriginal Land Council from around 1984 (**Figure 5.12**). Throughout the 1980s the property was a social and administrative hub for the Aboriginal community of Fairfield and Liverpool, and was remembered in this way by several people consulted during this study. It housed an Aboriginal children's playgroup and the CDEP in the 1980s, and the Koori Youth program in the 1990s (Anon 1985, 1993). In the early 1990s the Land Council took over its current premises in Moore St, Liverpool, after the NSW Aboriginal Land Council moved from there to its current office at Parramatta. The Delamere Street building is still owned by the Land Council but is now a residential house. It is still regarded as a significant place in the local Aboriginal community.

### **Urimbirra Aboriginal and Torres Strait Islander Corporation building, Bonnyrigg**

Urimbirra Aboriginal and Torres Strait Islander Corporation was set up in the late 1980s to meet the needs of the substantial number of indigenous people who had been moving into the new social housing area of Bonnyrigg since the early 1980s. It occupied a building near the school and shopping centre at 6 Bonnyrigg Avenue on a 99 year lease (see **Figure 5.13**). Urimbirra was a significant community hub throughout the 1990s and until the early 2000s, running education, training and childcare programs. During their tenure, Urimbirra was responsible for planting the trees in the current garden. When Urimbirra closed, the building was offered to other tenants and no longer houses any Aboriginal organisations.

### **Bonnyrigg Public School, Bonnyrigg**

Since the 1980s, Bonnyrigg Public School has been a focal point for Aboriginal people in the local area. It has functioned as more than just a school, with an Aboriginal Education Officer and programs ensuring that Aboriginal children and their families are welcomed and supported at the school. The school grounds contain several Aboriginal artworks, and now hosts a cultural learning room for Aboriginal students (see **Figure 5.14** and **Figure 5.15**). For approximately six and a half years an Aboriginal playgroup called Lil Possums has operated within the school each week, which has served to bring parents together and familiarise young children with the school before they attend. Although many Aboriginal people have moved away from the Bonnyrigg area over the past 15-20 years, some ex-students bring their own children from far afield to Bonnyrigg Public School because of the established support networks in place there, and some current students are the third generation of their families to attend the school. The school is highly regarded by Aboriginal families past and present as a significant place to Aboriginal people currently in the area and to the history of Aboriginal people at Bonnyrigg over the past 35 years.

### **Yvonne Clayton's House, Bonnyrigg**

Yvonne Clayton was a long term resident and community Elder in Bonnyrigg from 1981 until her passing in 2013. She was involved in many community activities and her house at 30 Bradfield Crescent was both a meeting place and refuge for Aboriginal people (see **Figure 5.16**). The house is remembered fondly by many Aboriginal people today as a local landmark.





### Yvonne Clayton's Tree, Bonnyrigg

In the 1990s, Council proposed to cut down a mature gum tree in a reserve several houses down from Yvonne Clayton's house (see **Figure 5.17**). Many community members recall Yvonne's vocal and active leadership of a campaign against this proposal, which was eventually successful. The fight to save the tree is remembered today as a testament to Yvonne's will and determination.<sup>29</sup> Yvonne's actions have preserved the tree for current and future residents, and it serves as a kind of memorial to Yvonne in the local Aboriginal community.



**Figure 5.12.** The former Gandangara Local Aboriginal Land Council office at Canley Vale.



**Figure 5.13.** The Urimbirra building at Bonnyrigg.

---

<sup>29</sup> See this recent example <http://www.newleafcommunities.com.au/news.asp?pid=25&id=106> . Further information about these events were sought through a search of local newspapers from the period but no additional details were located.



**Figure 5.14. Bonnyrigg Public School.**



**Figure 5.15. Aboriginal artwork in the Bonnyrigg School Playground.**

The artwork was produced in 2013 by parents in the Little Possums Playgroup.



**Figure 5.16. The late Yvonne Clayton's house at Bonnyrigg.**



Figure 5.17. The tree saved by Yvonne Clayton's campaigning along Bradfield Crescent at Bonnyrigg.

### 5.3 Summary of Identified Aboriginal Heritage Places

Based on the review of history and heritage in this and the previous section, the following places have been identified as Aboriginal heritage places within the Fairfield LGA, and are incorporated into the Aboriginal heritage management system outlined in **Section 6.2**.

**Table 5.2. Identified Aboriginal heritage places within the Fairfield LGA.**

Place Names	Type of Place	Current Heritage Listings
Cowpasture Road	Aboriginal site - Open Campsite	AHIMS #45-5-0273
Bosley Park	Aboriginal site - Open Campsite	AHIMS #45-5-0274
Orphan School Creek 6	Aboriginal site - Open Campsite, Scarred Tree	AHIMS #45-5-0729
Orphan School Creek 5	Aboriginal site - Open Campsite	AHIMS #45-5-0730
Orphan School Creek 4	Aboriginal site - Open Campsite	AHIMS #45-5-0731
Orphan School Creek 3	Aboriginal site - Scarred Tree	AHIMS #45-5-0732
Orphan School Creek 2	Aboriginal site - Open Campsite	AHIMS #45-5-0733
Orphan School Creek 1	Aboriginal site - Scarred Tree	AHIMS #45-5-0734
Carawood Park Caramar	Aboriginal site - Isolated Find	AHIMS #45-5-0740
GPR 1 (Prospect Reservoir)	Aboriginal site - Open Campsite	AHIMS #45-5-0765
PR 2 (Prospect Reservoir)	Aboriginal site - Open Campsite (glass artefacts)	AHIMS #45-5-0766
PR 3 (Prospect Reservoir)	Aboriginal site - Open Campsite (glass artefacts)	AHIMS #45-5-0767
PR 4 (Prospect Reservoir)	Aboriginal site - Open Campsite	AHIMS #45-5-0768



## Fairfield City Council Aboriginal Heritage Study

Place Names	Type of Place	Current Heritage Listings
Scarred Tree Prospect Reservoir	Aboriginal site - Scarred Tree	AHIMS #45-5-0800
PB1 (Prospect Reservoir)	Aboriginal site - Open Campsite	AHIMS #45-5-0801
PB2 (Prospect Reservoir)	Aboriginal site - Open Campsite	AHIMS #45-5-0802
PB3 (Prospect Reservoir)	Aboriginal site - Open Campsite	AHIMS #45-5-0803
PB4 (Prospect Reservoir)	Aboriginal site - Open Campsite	AHIMS #45-5-0804
PA1;Prospect Reservoir;	Aboriginal site - Open Campsite	AHIMS #45-5-0805
PA2;Prospect Reservoir;	Aboriginal site - Open Campsite	AHIMS #45-5-0806
Prospect Tunnel;PT 1;	Aboriginal site - Open Campsite	AHIMS #45-5-0836
TPP 1;Prospect Reservoir;	Aboriginal site - Open Campsite	AHIMS #45-5-0866
TPP2;Prospect Reservoir;	Aboriginal site - Scarred Tree	AHIMS #45-5-0867
PP1;Prospect Reservoir;	Aboriginal site - Open Campsite	AHIMS #45-5-0868
Abbotsbury 1;	Aboriginal site - Open Campsite	AHIMS #45-5-0920
Abbotsbury 2;	Aboriginal site - Open Campsite	AHIMS #45-5-0921
Abbotsbury 3;	Aboriginal site - Open Campsite	AHIMS #45-5-0922
Abbotsbury 4;	Aboriginal site - Open Campsite	AHIMS #45-5-0948
Abbotsbury 4 - duplicate of 45-5-0948	Aboriginal site - Open Campsite	AHIMS #45-5-0980
Hume Highway;	Aboriginal site - Open Campsite	AHIMS #45-5-1099
SCR Abbotsbury	Aboriginal site - Open Campsite	AHIMS #45-5-2021
Cowpasture Road;Bossley Park;	Aboriginal site - Open Campsite	AHIMS #45-5-2022
PGH2;Monier PGH;	Aboriginal site - Isolated Find	AHIMS #45-5-2046
PGH1;Monier PGH;	Aboriginal site - Isolated Find	AHIMS #45-5-2057
FCF1;	Aboriginal site - Open Campsite	AHIMS #45-5-2354
IF10	Aboriginal site - Isolated Find	AHIMS #45-5-2476
IF11	Aboriginal site - Isolated Find	AHIMS #45-5-2477
OSC-IF-1	Aboriginal site - Isolated Find	AHIMS #45-5-2523
OSC-IF-2	Aboriginal site - Isolated Find	AHIMS #45-5-2524
CPC-OCS-1	Aboriginal site - Open Campsite	AHIMS #45-5-2535
CPC-OCS-1	Aboriginal site - Open Campsite	AHIMS #45-5-2536
DLC2	Aboriginal site - Isolated Find	AHIMS #45-5-2563
DLC1	Aboriginal site - Open Campsite	AHIMS #45-5-2567
EC8,	Aboriginal site - Isolated Find	AHIMS #45-5-2582
OSC-OS-1/PAD 3	Aboriginal site - PAD	AHIMS #45-5-2650
PAD-OS-7	Aboriginal site - Open Campsite	AHIMS #45-5-2721
WSO-IF-1	Aboriginal site - Open Campsite	AHIMS #45-5-2795
WSO-IF-2	Aboriginal site - Open Campsite	AHIMS #45-5-2796
OSC-OS-1	Aboriginal site - Open Campsite	AHIMS #45-5-2811





## Fairfield City Council Aboriginal Heritage Study

Place Names	Type of Place	Current Heritage Listings
Glen Elgin	Aboriginal site - Open Campsite	AHIMS #45-5-2819
Fairfield GC	Aboriginal site - Open Campsite	AHIMS #45-5-2820
HP1	Aboriginal site - Open Campsite	AHIMS #45-5-2857
DTAC 1	Aboriginal site - Open Campsite	AHIMS #45-5-2859
DTAC 2	Aboriginal site - Open Campsite	AHIMS #45-5-2860
DTAC 3	Aboriginal site - Open Campsite	AHIMS #45-5-2861
HP 2	Aboriginal site - Open Campsite	AHIMS #45-5-2862
A-IF-1	Aboriginal site - Open Campsite	AHIMS #45-5-2884
A-IF-2	Aboriginal site - Open Campsite	AHIMS #45-5-2885
A-OS-1	Aboriginal site - Isolated Find	AHIMS #45-5-2886
Clear Paddock Creek	Aboriginal site - Open Campsite	AHIMS #45-5-2911
Horsley Dr PAD	Aboriginal site - PAD	AHIMS #45-5-3082
PGH3	Aboriginal site - Open Campsite	AHIMS #45-5-3095
OSC 1	Aboriginal site - Open Campsite	AHIMS #45-5-3269
PC1	Aboriginal site - Open Campsite, PAD	AHIMS #45-5-3272
Oakdale IF 1	Aboriginal site - Isolated Find	AHIMS #45-5-3381
Oakdale Campsite 2	Aboriginal site - Open Campsite	AHIMS #45-5-3383
Oakdale Campsite 6	Aboriginal site - Open Campsite	AHIMS #45-5-3387
A-OS-2 (Liverpool)	Aboriginal site - Open Campsite	AHIMS #45-5-3631
WR1 (Prospect)	Aboriginal site - Open Campsite	AHIMS #45-5-3684
JP 1 (Canley Vale)	Aboriginal site - Open Campsite	AHIMS #45-5-3697
Prospect Pipehead (PP) 3	Aboriginal site - Open Campsite	AHIMS #45-5-3952
Carramar ST/ Marsden Park Artefact Scatter	Aboriginal site - Scarred Tree	AHIMS #45-5-4301
Oakdale Central 1	Aboriginal site - Isolated Find	AHIMS #45-5-4327
Oakdale Central 2	Aboriginal site - Isolated Find	AHIMS #45-5-4328
Oakdale Central 3	Aboriginal site - Isolated Find	AHIMS #45-5-4329
Oakdale Central 4	Aboriginal site - Isolated Find	AHIMS #45-5-4330
Site within Steeplechase Track	Aboriginal site - Open Campsite	AHIMS #45-5-4488
The Horsley Drive IF 1	Aboriginal site - Open Campsite	AHIMS #45-5-4677
The Horsley Drive IF 2	Aboriginal site - Open Campsite	AHIMS #45-5-4678
The Horsely Drive AFT 7	Aboriginal site - Open Campsite	AHIMS #45-5-4679
The Horsley Drive AFT 8	Aboriginal site - Open Campsite	AHIMS #45-5-4680
The Horsley Drive AFT 1	Aboriginal site - Open Campsite	AHIMS #45-5-4681
The Horsley Drive AFT 2	Aboriginal site - Open Campsite	AHIMS #45-5-4682
The Horsley Drive AFT 3	Aboriginal site - Open Campsite	AHIMS #45-5-4683
The Horsley Drive AFT 4	Aboriginal site - Open Campsite	AHIMS #45-5-4684





Place Names	Type of Place	Current Heritage Listings
The Horsley Drive AFT 6	Aboriginal site - Open Campsite	AHIMS #45-5-4685
The Horsley Drive AFT 5	Aboriginal site - Open Campsite	AHIMS #45-5-4686
Gandangara LALC building	Aboriginal community and services	None
Urimbirra Aboriginal and Torres Strait Islander Corporation building	Aboriginal community and services	None
Bonnyrigg Public School	School and Aboriginal community hub	None
Yvonne Clayton's House	Private house	None
Yvonne Clayton's Tree	Marker of historical event	None
Male Orphan School house and surrounds	Government Institution	SHR #281, SHI #I01390

## 5.4 What Else May Remain?

The Aboriginal heritage management system outlined in **Section 6.0** is based on a review of what is known about the Aboriginal history and heritage of the Fairfield LGA and a consideration of what further as-yet undocumented places may also occur. In particular, as most of the physical evidence of past Aboriginal use in the LGA is likely to be in the form of pre-contact archaeological remains such as stone artefacts, it is important to outline the thinking behind the assessment of which areas may be considered to retain Aboriginal archaeological sensitivity.

### 5.4.1 Pre- and Early Contact Archaeological Sites

On the basis of over 30 years of archaeological survey and excavation across the Cumberland Plain, correlations have been noted in site distribution which may help determine both where campsites may occur and also the likely density and type of stone artefacts and hence range of past activities which may be represented in different locations (e.g. JMcDCHM 1999:19-21, White & McDonald 2010). This and other research suggests that:

- archaeological evidence in Fairfield LGA will mainly consist of stone artefacts on and/or below the current ground surface. Occasionally these will be associated with features such as hearths or stone heat treating pits. Scarred trees may also be found though these will be very rare and are often incorrectly recorded due to uncertainties about cultural origin and age (Irish 2004).
- most sites will date to the last 3,000 years or so and possibly more recently than this.
- Aboriginal people utilised all elements of the landscape from ridgetops to minor creeks to major creek confluences but the type and density of stone artefacts at campsites varies with the permanence of available freshwater. For example the highest densities of artefacts have been found 50-100m from the banks of permanent streams whereas upper creek catchments and minor ridgetops have sparser and less continuous evidence. Represented activities also vary, with greater frequency of stone knapping more likely to take place at the former locations. In other words flat areas close to permanent water but above flood zones were,



perhaps unsurprisingly, most frequently used. Most archaeological evidence within the Fairfield LGA is likely to occur within 200m of watercourses and major ridgelines.

#### 5.4.2 Historical Aboriginal Places

In general predictive statements cannot be made about places likely to have historical Aboriginal associations as rapidly changing historical circumstances preclude the kind of modelling that is possible for the pre-contact period. Most places will come to light only through additional archival and oral historical research that may be undertaken in the future and which falls outside of the scope of the current study. However it is possible that there will be associations with the following places:

- **Early colonial estates:** further and more detailed archival research into the large 19th century estates within the LGA such as Abbotsbury and Horsley Park may recover records of ongoing Aboriginal associations with these areas. Primary documents such as family papers and correspondence with the Colonial Secretary.
- **Major rural and other industries:** Records already show Aboriginal associations with rural industries and factories within the region. Additional research within records of these places is likely to uncover further associations both with known and previously unknown places.
- **Aboriginal Oral History:** very little Aboriginal oral historical research has been undertaken within the Fairfield LGA, and none prior to the current study has focussed on the identification of places of significance to the Aboriginal community. Further information could be obtained about the places outlined above in the Bonnyrigg area, and others within the LGA through an oral history project. Further investigation through oral history and archival research is also needed to determine the location and historical use of several places asserted to be Aboriginal camps along Prospect and Orphan School Creeks in the 1950s and 1960s (see discussion above).



## 6.0

## Managing Aboriginal Heritage

This section starts by considering how Aboriginal heritage is managed within New South Wales and the role that Local Government plays in this process. It then discusses the proposed management strategy for Fairfield City Council, to provide a means of acting to protect, promote and celebrate local Aboriginal history and heritage. In addition to meeting legal and procedural requirements for the protection of Aboriginal heritage, Councils also has more general obligations to its Aboriginal residents, and so come additional recommendations are made in relation to ways that integrate a valuing of Aboriginal heritage and history into a wider context, considering the range of ways Aboriginal history and heritage can be recognised, valued and celebrated by Council and used to educate the broader public about the significant role Aboriginal people have played in the history of the Fairfield area.

### 6.1 Aboriginal Heritage Management In New South Wales

#### 6.1.1 Principles of Aboriginal Heritage Management

Aboriginal heritage is currently largely managed through a system of NSW government legislation and policy which provides legal protection for items of Aboriginal heritage significance. Aboriginal heritage places are generally managed or looked after by the owner of the land on which they occur, in consultation with relevant Aboriginal individuals or organisations, and through advice and permits from the OEH. If heritage places are threatened by natural forces or are the subject of frequent visits [deliberate or incidental] they would require an active form of management. Many Aboriginal sites neither require nor receive active management. Although not often explicit in heritage policy and legislation, procedures are guided by heritage management principles established and explained in the Burra Charter (Marquis-Kyle & Walker 2004). It is important to outline these principles to provide the background to Council's role within the overall system and the recommended management procedures outlined in **Section 6.2**.

#### Aboriginal Involvement

1. Aboriginal people have the right to be involved in decisions affecting their cultural heritage, and in the on-going management of their cultural heritage. Aboriginal involvement in management should be continuous and at the level they consider appropriate.
2. Identify which Aboriginal people or group have rights to speak for, and/or have interests in the place under consideration by wide and inclusive consultation. All Aboriginal groups, organisations and individual owners or custodians with a possible interest in the place should be involved but their level of involvement may vary according to their rights and interests. This should be supported by good technical planning and effective negotiation and mediation processes. In general terms this should include Local Aboriginal Land Councils, Registered



Native Title claimants and Aboriginal Owners, but may also involve other Aboriginal individuals or organisations with historical or cultural links to the area under consideration.<sup>30</sup>

3. Local level planning should be integrated with regional planning and acknowledge that Aboriginal connections and significance are not restricted to current bureaucratic boundaries.

#### **All interests to be considered**

4. The concerns of all relevant interest groups to be taken into account. Some places have cultural values for both Aboriginal people and other groups in the community. All relevant groups should be consulted to allow agreement to be reached on the future of the place.

#### **Cultural significance**

5. The aim of cultural heritage place management is to look after the cultural significance of a place. The "Cultural Significance" of a place describes the value or importance the place has to a community and includes the "social, aesthetic, historic, or scientific value of the place for present, past or future generations". The term "social value" includes spiritual values. The Cultural Significance of a place can change over time and is not necessarily linked to, or determined by, the presence or intactness of physical remains.

#### **Process and actions**

6. Decisions about cultural heritage places are to be made as a result of a conscious and logical planning process. This process, guided by and maintaining the cultural significance of the place, takes into account all the management issues affecting the place and identifies the objectives for the management of the place.

Actions affecting places should be considered only after the cultural significance of the place has been established, and in consultation with relevant Aboriginal people or groups.

Physical intervention or other management actions are taken to support cultural significance and should be the minimum required to achieve this aim. Actions which preserve cultural significance have top priority. Management of cultural significance need not always involve physical preservation of structures or heritage items.

#### **Making and keeping records**

7. Records of places, records of decisions made about them and records of actions taken at heritage places should be made, kept, stored and accessed in a culturally appropriate way. Ownership of, storage and use of, and access to information be openly agreed at the outset of a project with the people who own, provide or have rights to the information. Availability of information supports the cultural significance of the place.

---

<sup>30</sup> *Registered Native Title Claimants* and *Aboriginal Owners* are specific terms under the Commonwealth Native Title Act (1993) and Land Rights Act (1983) respectively. There has been a tendency in recent years to use terms such as 'Traditional Owners' or 'Native Title Claimants' without reference to these specific legislative contexts, and usually without definition. In this report the legal definitions are used.



### 6.1.2 Legislation and Policy

Although some Federal legislation deals with Aboriginal heritage, in practical terms this will rarely be invoked in Aboriginal heritage matters concerning Council. Two pieces of state legislation provide protection for Aboriginal heritage management and a third governs the way these protections are managed in the planning system.

#### National Parks & Wildlife Act (1974)

The *National Parks & Wildlife Act* (1974) provides statutory protection for all Aboriginal 'objects' (consisting of any material evidence of the Aboriginal occupation of NSW) under Section 90 of the Act, and for 'Aboriginal Places' (areas of cultural significance to the Aboriginal community) under Section 84. It is an offence to harm either an Aboriginal object or Aboriginal Place in NSW. The Act defines an Aboriginal 'object' as:

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

The protection provided to Aboriginal objects applies irrespective of the level of their significance or issues of land tenure. However, areas are only gazetted as Aboriginal Places if the Minister is satisfied that sufficient evidence exists to demonstrate that the location was and/or is, of special significance to Aboriginal culture. As noted above, there are no such places gazetted or proposed for gazettal within the Fairfield LGA.

The Act is administered by the Office of Environment & Heritage (OEH).<sup>31</sup> Amendments to the NPW Act in 2010 have retained an offence to knowingly *harm* an Aboriginal object [s86(1)] but greatly increased penalties for such offences. The amendments have also introduced a strict liability offence for any *harm* (i.e. knowingly or unknowingly) to Aboriginal objects [s86(2)] or Aboriginal places [s86(4)] without a valid and applicable Aboriginal Heritage Impact Permit under Section 90 of the Act. *Harm* is defined as:

*"any act or omission that:*

- (a) destroys, defaces or damages the object or place, or*
- (b) in relation to an object—moves the object from the land on which it had been situated, or*
- (c) is specified by the regulations, or*
- (d) causes or permits the object or place to be harmed in a manner referred to in paragraph (a), (b) or (c)" [Section 5(1)]*

It is a defence to the strict liability offence of harm to an Aboriginal object under s86(2) if a process of Due Diligence was followed which reasonably determined that the proposed activity would not

---

<sup>31</sup> From the long standing title of National Parks & Wildlife Service (NPWS) to the Department of Environment and Conservation (DEC), Department of Environment and Climate Change (DECC) and most recently the Department of Environment, Climate Change and Water (DECCW). It is useful to know these names and initials as they are commonly found in older documents.





harm an Aboriginal object [s87(2)]. Due Diligence assessment can take a number of forms, including a generic process developed by the OEH (DECCW 2010a – see **Appendix C1**)<sup>32</sup> or one of an equivalent standard. An exemption is also provided [s87(4)] for ‘low impact activities’ in ‘disturbed land’ which result in unknowing damage to an Aboriginal object, including a range of common farm and track maintenance activities (see **Appendix C1**). These may be of particular relevance to some Council maintenance activities, as discussed further in **Section 6.2.2**. It is noted that although the definition of ‘disturbed’ land under the NPW Act appears to preclude the presence of Aboriginal heritage, this is not the case, as Aboriginal objects and substantial intact Aboriginal archaeological deposits can, and are known to, survive below and between such areas of disturbance. A cautious approach should therefore be taken as recommended below.

Impacts to Aboriginal objects require an Aboriginal Heritage Impact Permit (AHIP) under s90 of the Act which can be issued by the Director-General of the OEH (by delegation). All AHIP applications must be accompanied by an Aboriginal Cultural Heritage Assessment report and can only be submitted in conjunction with evidence of development approval. The Aboriginal Cultural Heritage Assessment report documents the archaeological assessment of the study area and proposed impacts, in accordance with OEH guidelines (DECCW 2010b)<sup>33</sup>. The assessment must include full documentation of a prescribed process of Aboriginal community consultation (DECCW 2010c)<sup>34</sup>, which requires placing a public advertisement to seek expressions of interest in the project (or more precisely the AHIP to be sought) as well as directly notifying Local Aboriginal Land Councils and government agencies dealing with Aboriginal communities in the area. People or organisations can register as “Registered Aboriginal Parties” which provides them with a right to review and comment on aspects of AHIP applications, and to provide advice on Aboriginal cultural and historical significance. Many Aboriginal groups or individuals became further involved in the process by paid consultation during the course of the assessment including archaeological survey. Many groups were set up precisely to provide this function. The guidelines explicitly do not provide an automatic right for paid or unpaid involvement in archaeological survey or other fieldwork and this is negotiated as a commercial arrangement directly between development proponents and Aboriginal people seeking such work.

AHIPs can be issued for specific objects or cadastral features (e.g. whole of lot) and can be staged by amendment to include provision for archaeological test excavations followed by salvage or impact. OEH policy provides for archaeological test excavations to be carried out without an AHIP as long as undertaken in full compliance with the 2010 *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW* (DECCW 2010b). There are a number of restrictions on where and how such excavations can take place. Most notably they cannot be used for the investigation of places of suspected historical (i.e. post-contact) Aboriginal heritage. However, it is under this Code that most (if not all) archaeological test excavations within the Fairfield LGA will take place in coming years. This is important, as test excavations can (and should) take place prior to the lodgement of a Development Application, such that final management recommendations can be considered as part of the Development Application assessment.

---

<sup>32</sup> See <http://www.environment.nsw.gov.au/licences/archinvestigations.htm>

<sup>33</sup> See <http://www.environment.nsw.gov.au/licences/archinvestigations.htm>

<sup>34</sup> See <http://www.environment.nsw.gov.au/licences/consultation.htm>



In most cases Council will be dealing with the process outlined above but there are some exceptions. These include projects deemed to be of State Significance under Part 4 of the *Environmental Planning & Assessment Act*, and projects previously approved or currently being assessed under the now repealed Part 3A (Major Projects) provisions of the Act, as well as some activities which are undertaken “in-house” by state government authorities on land which they own. In addition to the fact that Councils are not the determining authority in these cases, major project developments in particular do not require Aboriginal heritage impact approvals under the NPW Act but do require a process of investigation broadly parallel to that under the act. An updated policy has however not been produced by the Department of Planning & Infrastructure to accommodate the 2010 changes to the NPW Act described above.

### **NSW Heritage Act 1977**

The NSW Heritage Act 1977 is the principle document governing the management of heritage items (relics and places containing relics) in NSW. The Act is administered by the Heritage Branch of the OEH<sup>35</sup>, though its operations are largely separate to those sections of the OEH administering the *NPW Act*. The Heritage Branch is governed by the Heritage Council of NSW, whose members are appointed by the Minister responsible for heritage in NSW.

Aboriginal heritage sites or objects are not specifically protected under the ‘relics’ protection provisions of the *NSW Heritage Act 1977*, where a relic is defined as:

*any deposit, artefact, object or material evidence that:*

- (a) relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, &*
- (b) is of state or local heritage significance.*

However the Act also regulates the establishment of heritage registers, under which places of Aboriginal heritage significance (both pre- and post-European contact) can be listed. The Heritage Branch maintains the State Heritage Register (SHR) which lists items which are deemed to be of State significance. Any development proposal that is likely to impact on items on the SHR generally requires NSW Heritage Council approval under s60 of the Heritage Act.

In addition the Heritage Branch maintains the State Heritage Inventory (SHI) which includes items of local significance listed by local Councils and other state government agencies. Where such items also have state significance they may also be listed on the SHR. For example in the Fairfield LGA the Male Orphan School, which has both European and Aboriginal heritage significance, is listed on both the SHR and SHI.

Items are generally listed on the SHI after their recognition through local government heritage studies, which in the case of Fairfield LGA was completed in 1993 (Perumal Murphy Wu Pty Ltd 1993). These are then listed on a Heritage Schedule attached to Local Environmental Plans which requires the potential impact of proposed developments to be assessed. Proposed impact on items on the SHI may require NSW Heritage Council approval under s140 of the Heritage Act. It should be noted however that local government heritage studies have rarely considered Aboriginal

---

<sup>35</sup> Formerly known as the Heritage Office, and most recently the Heritage Branch of the Department of Planning.



heritage and particularly not post-contact Aboriginal heritage places, and consequently few have been listed by any Councils in NSW.

### **Environmental Planning & Assessment Act (1979)**

The way in which Aboriginal heritage is managed with respect to proposed development impacts is set out in the provisions of the Environmental Planning & Assessment Act 1979 (the 'EP&A Act'). The EP&A Act has three main parts of direct relevance to Aboriginal cultural heritage. Namely, Part III which governs the preparation of planning instruments, Part IV which relates to development assessment process for local government (consent) authorities and Part V which relates to activity approvals by governing (determining) authorities (and is of less relevance to the current study). Councils can be determining authorities in relation to their own works and often do not require the same assessment rigour as other proponents (although under the recently amended NPW Act with its strict liability provisions, Councils are still required to exercise Due Diligence and require AHIP approvals for site impacts).

Part III deals primarily with the production of state and local environmental planning instruments which can and do involve provisions for Aboriginal heritage. For example State Environmental Planning Policies (Division 2) such as governing Growth Centre precinct developments, Local Environmental Plans (Division 4) and Development Control Plans (Division 6). Recent amendments to the EP&A Act have allowed for the production of standardised Local Environmental Plans (LEPs) using a common template. This template also allows for the listing of places of Aboriginal heritage significance on LEP heritage schedules (which previously in practice contained almost exclusively places of non-Aboriginal heritage significance). This issue is addressed below in relation to Council (**Section 6.1.3**).

Part IV deals with the process of obtaining development consent from local government authorities, including the requirement for documentation of an assessment of potential development impacts in certain cases. It also describes the process for *integrated development* (Division 5) which are those development proposals requiring a permit or consent from a state government authority (for example the OEH in relation to Aboriginal heritage).

### **6.1.3 The Role of Local Government in Heritage Management**

Local government in its responsibility for the amenity of cities, towns and suburbs and rural areas, prepares and implements plans which determine future land use. Local government also assesses and approves most development applications other than those of state or regional significance or which have a particular environmental significance. Local government also has other powers in relation to the environment including the enforcement of building standards and importantly is also a 'developer' itself through its activities on Council lands.

The responsibilities and requirements of the EP&A Act mean that local government plays a key role in heritage conservation. It is their responsibility to use development control mechanisms to protect items of Aboriginal heritage. The responsibilities of Local Government include:

- implementing heritage legislation at local level by ensuring local planning and development control is sensitive to cultural heritage,



- conserving places of heritage significance which are located on land owned or managed by local government,
- providing opportunities for public involvement in the conservation of cultural heritage, encouraging public awareness and sensitivity to heritage and initiating heritage education programs.

### Local Environmental Plans

The main systematic way that Council can act to protect and manage Aboriginal heritage is through provisions within its Local Environmental Plan. In 2006 the NSW Government enacted a template (known as the *Standard Instrument*) to standardise the form and content of local environmental plans across the state, through which local government controls development within their respective local government areas. The current Fairfield LEP 2013 has been prepared using this template.

The *Standard Instrument* initially contained provisions for heritage management that generally required the same documentation for Aboriginal and non-Aboriginal heritage items and places. However, in February 2011, an amendment to the 2006 *Standard Instrument* was announced in response to feedback from public consultation. In relation to Aboriginal heritage, aspects of Aboriginal heritage management have now been separated from non-Aboriginal heritage. As such the revised and current *Standard Instrument* template contains the following provisions of relevance to Council and its role in protecting and managing Aboriginal heritage:

- Under standard Dictionary definitions two types of Aboriginal heritage are defined and recognised:
  1. **Aboriginal object:** has the same definition as the *National Parks & Wildlife Act*.
  2. **Aboriginal place of heritage significance:** is an area of land identified through an Aboriginal heritage study such as the current study, which includes pre-contact physical evidence and natural or built places of long-standing cultural significance or contemporary cultural significance. Essentially this is a very broad definition, and may include **Aboriginal Places** as defined by the *National Parks & Wildlife Act*.

There is also provision to define “Environmentally Sensitive Areas” (Part 3.3, Clause 2(g)) on the basis that they contain “high Aboriginal cultural significance” though no definition is provided and there is no detail about how this significance might be established.

- Aboriginal heritage places can be listed and mapped on Schedule 5 (Environmental Heritage) of the Local Environmental Plan if “agreement is reached with the Aboriginal community”. It is noted that neither the “Aboriginal community” or the process for reaching or defining “agreement” is outlined within the 2011 revisions or attendant practice notes. Importantly, these items need not be listed (publically available) and this does not affect their protection. Furthermore, Aboriginal heritage places can be listed on Schedule 5 but need not be mapped on the accompanying Heritage Map (unlike items of non-Aboriginal heritage significance where this is required).
- Under Clause 5.10 local government development consent is required in the case of proposed impacts to Aboriginal heritage items or areas containing these items (Section 2), unless the applicant advises that the proposed works will not adversely affect the heritage significance of





the item or area, or is being done to conserve the item or area. This, however, does not preclude requirements to obtain Aboriginal Heritage Impact Permits under the *National Parks & Wildlife Act 1974*.

- As a consequence of the above, development proposals which may impact areas or items of Aboriginal heritage significance will require some form of “heritage management document” to consider these potential impacts and appropriate mitigative measures.

### Development Control Plans

Development Control Plans (DCPs) provide another means of ensuring that there is adequate assessment of potential impacts to Aboriginal heritage, and local enforcement of heritage protection legislation. DCPs provide more specific guidance on how local development can occur within a specific part of the LGA or across the whole LGA by specifying General Controls in relation to a specific issue such as Aboriginal heritage protection. For example a DCP can spell out when an Aboriginal heritage assessment is required (e.g. in what areas/circumstances) and what such assessments must include for development applications to be assessed. Fairfield City Council currently has a Citywide Development Control Plan (2013) which addresses heritage requirements generally but provides no specific requirements or procedures for Aboriginal heritage.

### Review of Environmental Factors

Council development activities are guided by a process of environmental assessment known as a Review of Environmental Factors (REF). The amount of detail required in an REF is related to the nature and location of the proposed activity. Council is currently guided in these matters by the 2009 *Fairfield City Council Works Projects Environmental Assessment and Approvals Procedures Manual*. Section 4.5 of the Manual requires Aboriginal heritage impacts to be considered, but no specific procedures or requirements are outlined. As a consequence, the level of detail in considering Aboriginal heritage impacts has been dependent on the existing levels of awareness of Council staff. Fortunately, as some samples provided to MDCA demonstrate, this awareness is relatively high and has led to both detailed in-house and occasional external consultant reports dealing with the potential Aboriginal heritage impact of Council works.

### Western Sydney Parklands Plan of Management

The Western Sydney Parklands occupies around 15% (roughly 15km<sup>2</sup>) of the total area of the Fairfield LGA. These lands are not managed by Council, but by the Western Sydney Parklands Trust, guided by the *Western Sydney Parklands Plan of Management 2020*. The Plan does not contain any specific Aboriginal heritage management procedures, but does include some broader statements and directions that outline an intention to protect Aboriginal heritage within the parklands. These include:

- A Caring for Country statement which acknowledges Traditional Aboriginal custodians, and commits to working ‘in a respectful manner with the Indigenous Australians in Caring for Country and aim to treat Indigenous people, their cultural heritage, customs and beliefs with respect’.
- Strategic Direction Objective 6 which is to ‘Protect and enhance the Parklands’ Indigenous and Non-Indigenous cultural heritage’ through ‘partnerships with local Indigenous individuals and groups to understand, protect and celebrate the Indigenous heritage and



cultural values of the Parklands.’ This includes active research to discover heritage sites and the development of a heritage register for the Parklands.

#### **Other Relevant Local Government Policies, Plans and Activities**

Although planning policies are treated separately and have specific requirements, the broad approach to heritage management advocated in this study suggests that Council should use these measures in tandem with other strategies for the protection and celebration of the Aboriginal history and heritage of Fairfield LGA to provide meaningful outcomes for Aboriginal people. There are several Council initiatives which can be mentioned here, including:

- The Fairfield City Council Statement of Commitment between Council, Gandangara Local Aboriginal Land Council and the local Aboriginal community in 2005, which acknowledges the Aboriginal history of Fairfield and commits to work cooperatively with the local Aboriginal community on a range of projects and services.<sup>36</sup>
- The formation of an Aboriginal Advisory Committee and engagement of a dedicated Aboriginal community worker.
- Council support for Elders groups.
- Council’s commissioning of the Gapps 2010 Cabrogal to Fairfield City history, with a specific brief to include consideration of Aboriginal heritage.
- Council’s commissioning of the current Aboriginal heritage study.

## **6.2 A Strategy for Managing Fairfield’s Aboriginal Heritage**

This section outlines a proposed approach across a number of areas which are assessed as necessary for Council to better manage, protect and celebrate the Aboriginal heritage of the Fairfield LGA. The elements of this approach relate to the specific recommendations in **Section 7.0** and are based on the research and Aboriginal community consultation undertaken for the study as well as the heritage principles and legal and policy obligations outlined above. It is important to note that under this system Council is both a determining authority as well as a proponent (for developments on Council land).

The proposed strategy involves the following three elements:

- **Planning and Assessment Procedures** – these are generally closely linked to the legal and policy obligations of Council and development proponents in relation to Aboriginal heritage.
- **Staffing, Training and Resources** – both to implement formal planning requirements as well as the other elements of the strategy.
- **Research and Celebrating Aboriginal History and Heritage** – recognising that much is still to be learned about Fairfield’s history and heritage and that celebrating and promoting it is an important part of protecting heritage in parallel to formal planning processes.

---

<sup>36</sup> See [http://www.fairfieldcity.nsw.gov.au/homepage/84/aboriginal\\_and\\_amp\\_torres\\_strait\\_islanders](http://www.fairfieldcity.nsw.gov.au/homepage/84/aboriginal_and_amp_torres_strait_islanders)



### 6.2.1 Engaging with the Aboriginal Community

The active participation and endorsement of the Aboriginal community is essential for any or all of the elements of the proposed strategy for the management of Aboriginal heritage within the Fairfield LGA to succeed. The most appropriate means of doing so are:

- In matters relating to Aboriginal heritage assessment, engaging with the relevant Local Aboriginal Land Councils (Deerubbin and Gandangara) for the area under consideration. Local Aboriginal Land Councils have a statutory responsibility in relation to Aboriginal heritage and needs to be part of ongoing processes of Aboriginal heritage management, including by Council, in order to discharge its functions under the Aboriginal Land Rights Act (1983). In some cases, other Aboriginal individuals or organisations may be appropriate to consult in relation to heritage matters due to their specific historical or cultural connections to the area under consideration. In the event that Native Title Claimants or Aboriginal Owners are officially registered within the LGA, they should also be involved in the management of Aboriginal heritage within the LGA.
- In matters relating to places identified as having known historical significance to the Aboriginal community, it is appropriate in the first instance to seek the guidance of Council's Aboriginal Advisory Committee to determine who may need to be consulted in relation to each particular place.

### 6.2.2 Basis for Planning and Assessment Procedures

This study recommends the creation of an Aboriginal Heritage Management System to be applied to the assessment of proposed developments within the Fairfield LGA (including proposals by Council). It also considers Council's potential role in relation to complying development and other developments which do not require approval by Council under the formal development application process. It acknowledges the heritage requirements of the standard instrument (LEP) and current NSW legislative and policy requirements relating to Aboriginal heritage management.

Similar, but slightly different procedures are required for works on Council lands and private development applications to Council. Both are supported by the same mapping and same assumptions, but will be used by different staff within Council. The procedures outlined below are based on the following:

- Current best Aboriginal heritage practice;
- The legal requirements of the *National Parks & Wildlife Act 1974* (including requirements for Due Diligence assessment), the *National Parks & Wildlife Regulation 2009* and the *Environmental Planning & Assessment Act 1979* (including s117 directions relating to Council's obligations in relation to the conservation of Aboriginal objects and places);



- The current OEH Due Diligence Aboriginal Heritage Assessment flowchart<sup>37</sup> (adapted to take into account information available to Council through this study). It is noted that the OEH *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales* allows for organisations such as Council to formulate their own Due Diligence procedures (see DECCW 2010a:8-9);
- A review of existing Council policy and practice (e.g. 2009 Environmental Assessment and Approvals Procedures Manual for Fairfield City Council Works Projects and examples of existing REF/Due Diligence assessments undertaken by Council, Fairfield Citywide Development Control Plan 2013);
- A review of the provisions of the 2014 *Western Sydney Parklands Plan of Management 2020*;
- The need for a system that allows proponents of activities to meet both Council requirements and legal obligations in one process, with no unnecessary duplication;
- A review of procedures currently implemented in adjacent Councils as whole of LGA policies or release area specific policies (e.g. growth centres precincts);
- The type of archaeological remains likely to occur in Potential Investigation Areas and the possible depth below ground surface of these remains; and
- The type of proposed activity to ensure that the requirements are commensurate with the level of potential impact. In particular, exceptions to some NPW Act provisions on the basis of minor activities and levels of ground disturbance have been noted (see further discussion below). **It should be noted however that none of these exceptions allow for impacts to known Aboriginal sites.**

The proposed Aboriginal Heritage Management System consists of two components:

- GIS Map Layers of 'Potential Investigation Areas' (supplied to Council)
- An actions flowchart and accompanying notes that are outlined below.

It requires Council staff responsible for the environmental assessment of proposed Council works or planners reviewing external Development Applications to:

1. Consult the Council GIS to determine if the proposed activity takes place within a Potential Investigation Area.
2. If the answer is yes, consult the Aboriginal Heritage Assessment Procedures flowchart and notes to determine what further enquiries or investigations are required.

As discussed below, these procedures could be formally enacted through an amendment to the Fairfield City Wide DCP.

---

<sup>37</sup> As per 2010 OEH *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*.



### Mapping of Potential Investigation Areas

**NOTE:** The term 'disturbed land' is specifically defined and used in the NPW Act and Regulation in relation to some assessment requirements (discussed further below). To avoid confusion with the more common and less specific usage of the term in Aboriginal heritage management to describe land that has been impacted historically, this report uses the term 'historical impact'.

Potential Aboriginal Heritage Investigation Areas were identified from an assessment of archaeological sensitivity based on landform and known historical impact. The basic units for determination were current lot boundaries and current LEP zonings. The following steps were taken to identify the Potential Investigation Areas:

- Registered Aboriginal site locations were obtained from the OEH AHIMS Aboriginal Sites Register and original records were consulted to refine known site locations, as well as ground-truthing of selected sites.
- Based on archaeological research and current heritage policy, lands within 200m of creeklines and major ridgelines are considered to be archaeologically sensitive. In other words, these are the landforms most likely to have been used intensively by Aboriginal people in the past.
- Each current LEP zone was given a default sensitivity based on the likely nature of historical impact. All but RE1 and E2 lands were assumed to be 'not sensitive' unless proven otherwise. RE1 and E2 zones were assumed to be 'sensitive' unless subject to significant historical impact. Rural lands were considered sensitive if within 200m of a ridgeline or creekline.
- A review of lands within 200m of creeklines and ridgelines in each land use zone was undertaken through a review of current aerial photography, historical aerials photographs (back to 2002, 1995, georeferenced 1983 topographic maps and where available 1943 aerial), topography, geology, landform and historical evidence. This resulted in the identification of a number of areas of relatively low historical impact within LEP zones initially considered to have no sensitivity, as well as a number of RE1 and E2 lands which were clearly historically impacted and did not retain sensitivity.
- Further information about historical impacts were obtained from Council staff about lands affected by the Unhealthy Building Land Policy and other information about past uses of specific allotments.
- Aboriginal community consultation to determine places of historical or cultural significance to the contemporary Aboriginal community. This resulted in the identification of several allotments with some historical and contemporary significance.
- A historical review of Aboriginal associations with the Fairfield LGA, which resulted in the identification of one place (the Male Orphan School) as having historical Aboriginal associations, and located additional information about other places identified through Aboriginal community consultation.





### Low Impact Activities and Disturbed Land

The OEH requirement to undertake Due Diligence Aboriginal heritage assessment for proposed activities has exemptions for 'low impact activities' in 'disturbed lands'. These are defined by the NPW Regulation and may be subject to change, but current definitions (as of November 2016) of both terms can be seen in **Appendix C1**. The list of 'low impact activities' in the Regulation is lengthy and includes many common open space maintenance activities that would routinely be undertaken by Council. The list of 'disturbed lands' in the Regulation is equally long and includes areas of past land clearing, road and track construction or building construction. As Aboriginal objects in the Fairfield LGA are most likely to occur within the top 0.5m of an original soil profile (except in deeper alluvial deposits along major creeks and rivers), it may seem that few activities undertaken by Council or external applicants would be subject to either Due Diligence Aboriginal Heritage Assessment or the closely aligned procedures of the Aboriginal Heritage Management System developed for Fairfield Council as part of this study. However, there are several important qualifications that need to be taken into account.

- The NPW Regulation exemption for 'low impact activities' in 'disturbed land' does not mean that no consideration of the potential Aboriginal heritage impacts of your activity needs to be undertaken. The exemption applies only to the strict liability offence for harm to Aboriginal objects under s86(2) of the NPW Act 1974 (as amended). It **does not apply** to the offence for knowingly harming Aboriginal objects under s86(1) of the NPW Act. The implications of this are as follows:
  - For **all proposed activities**, you need to first establish whether a known Aboriginal object may be impacted by your activity by searching the OEH AHIMS Register of Aboriginal Sites (this is a layer on the Council GIS). If the activity is close to a known site and may potentially impact that site, then Due Diligence Aboriginal Heritage Assessment would be required to determine whether impacts will in fact occur.
  - Even if your activity does not appear to potentially impact a known Aboriginal object, you could still be guilty of an offence under s86(1) if an Aboriginal object is exposed and subject to harm during construction. Lands can be 'disturbed' by the addition of introduced fill which can act to preserve underlying natural soil horizons containing Aboriginal objects. Along major creeklines, soil deposits with the potential to contain Aboriginal objects may be deeper than the horizon disturbed by ploughing or land clearance. If Aboriginal objects are uncovered during development activities, then they are protected under s86(1) and works would need to cease until appropriate management procedures (such as seeking an Aboriginal Heritage Impact Permit) can be determined. This can create lengthy delays. The strong preference for both heritage protection and project efficiency is to identify and manage potential impacts as much as possible prior to construction.
- The exemption for 'low impact activities' in 'disturbed land' does not apply to Aboriginal scarred trees whether or not they are 'known' through recording on the AHIMS Register.
- The exemption only applies to 'low impact activities' **in** 'disturbed land'. It does not apply to other activities in 'disturbed land'. For example, constructing a house on land defined under the Regulation as 'disturbed' is not an exempt activity.



The Aboriginal Heritage Management System takes this into account by ensuring the following:

- Areas within 50m of the registered location of all Aboriginal sites within Fairfield LGA are designated Potential Investigation Areas and require some further consideration (though not necessarily Aboriginal Heritage Assessment). Updates of registered site information are provided every 12 months by licence from the OEH to ensure that this remains up to date. In other words, as new sites are documented, they will become new Potential Investigation Areas.
- Within Potential Investigation Areas, some lands may still be considered 'disturbed land' for the purpose of the NPW Regulation exemption, but this is best determined on a case by case basis. For example, some lands along major creeklines are historically impacted in their uppermost levels but may contain deeper buried archaeological remains. Whether this potential may to trigger Aboriginal Heritage Assessment will depend on the nature and depth of the proposed impact.

### **Types of Potential Investigation Areas**

Based on the review outlined, a GIS Map layer of Potential Investigation Areas was created. It is a single layer, but there are three separate types of Potential Investigation Area. When a particular Potential Investigation Area is selected on the Council GIS, the attribute data will describe what type of Potential Investigation Area it is. This will be one of the following:

#### **1. Areas of Relatively Low Historical Impact within 200m of Creeklines or Major Ridgelines**

To the east of the Western Sydney Parklands these comprise land parcels identified through the review of land zonings and historical impacts. For the remainder of the LGA (the rural lands and Western Sydney Parklands), these comprise all lands within 200m of creeklines or major ridgelines.

#### **2. Land within 50m of Known Aboriginal Sites**

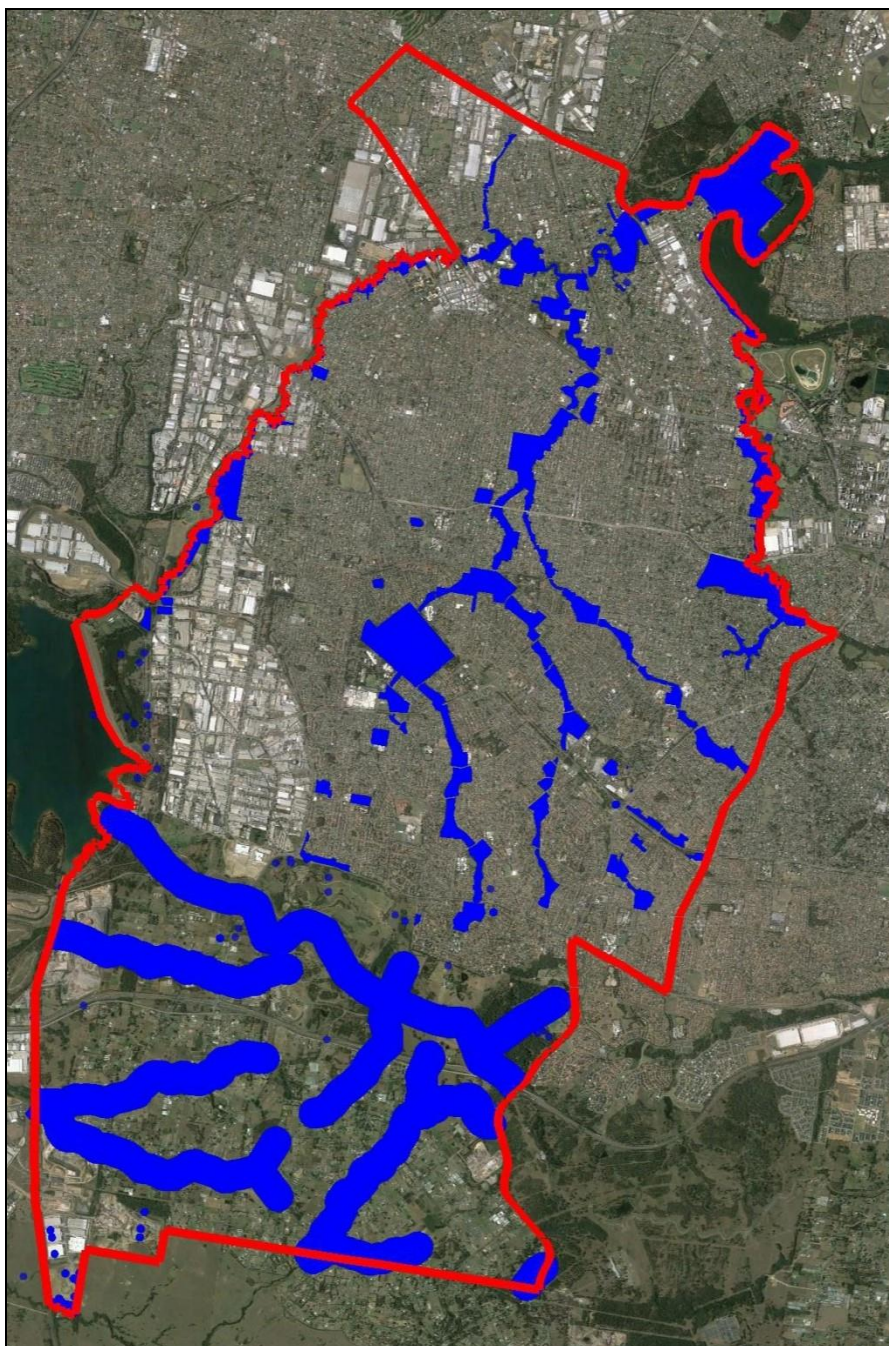
The 50m buffer is included as a precaution that takes into account the fact that sites are identified by single points but may extend over a greater area, and some site locations are only approximately known. The attributes table for each of these areas provides further information (where available) on the known extent of these sites e.g. if the site is known to be contained within a creek reserve and therefore does not extend onto adjacent private lands. As outlined below, further examination of original site recordings (these will be provided to Council) may be required in some cases.

At present, all registered Aboriginal sites are incorporated into the Potential Investigation Areas map layer. However, over time, new sites will be recorded and revisions may be made to existing recordings (e.g. revised coordinates may be determined through field inspection). An Aboriginal Heritage Information Licence Agreement is currently being drawn up between Council and the Office of Environment & Heritage, which manages the NSW Register of Aboriginal Sites (Aboriginal Heritage Information Management System). This will result in annual updates to this information. On receipt from OEH, this updated information (if not provided in a GIS format) will need to be converted into a GIS map layer and replace the existing 'Aboriginal Site Locations' layer, to ensure that the layer is kept up to date.



### 3. Aboriginal Historical Places

These consist of five areas with contemporary or historical Aboriginal significance. Each are identified by allotments and trigger a different process of potential further investigation as identified in the attributes table and outlined below.



**Figure 6.1. Proposed Potential Investigation Areas.**

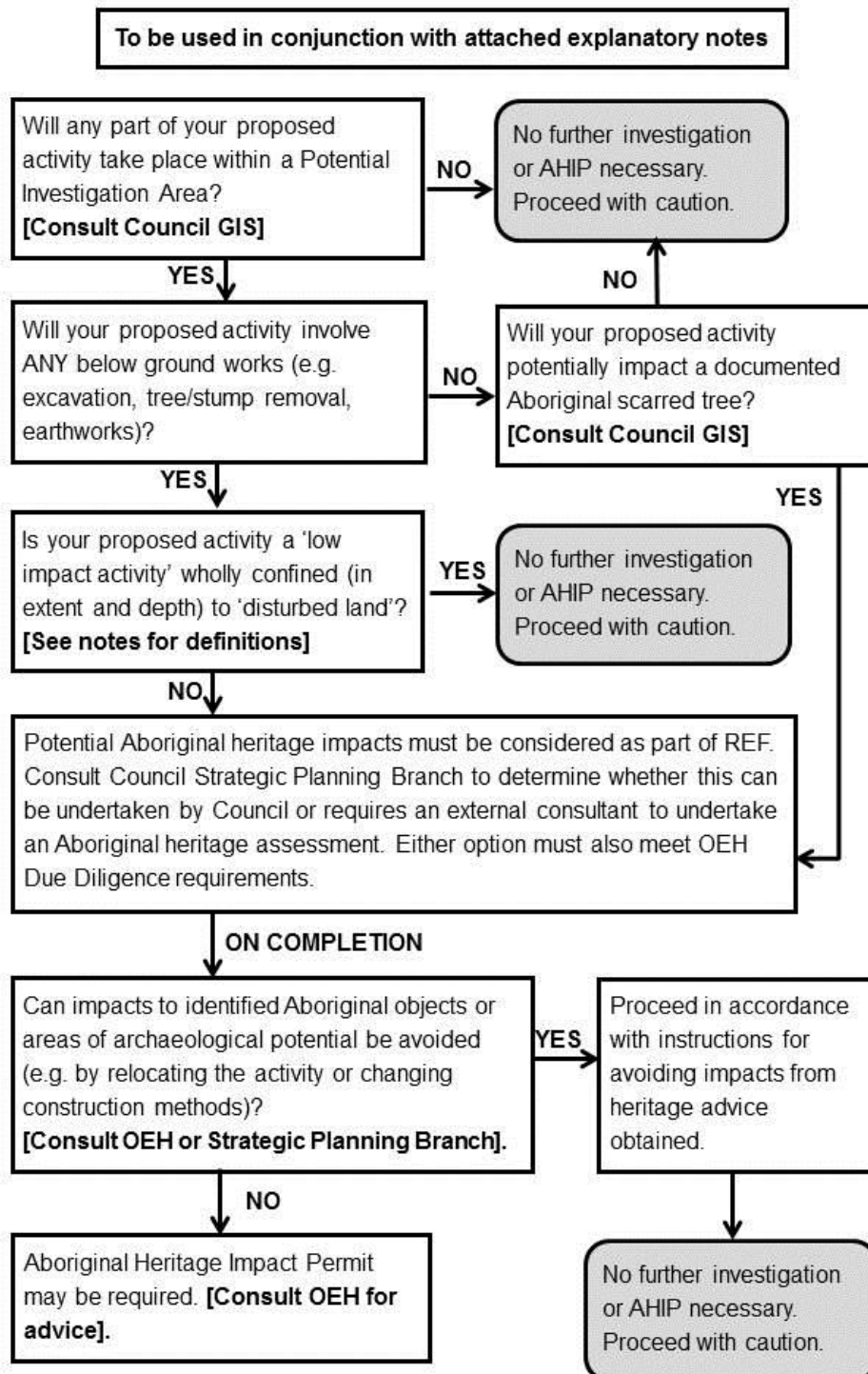
Note that this is a static rendering of GIS layers with explanatory attribute data that will sit on the Council GIS.





### 6.2.3 Procedures for Council Land Managers

Council Land Managers undertaking ANY works within Council reserves should be required to follow the flow chart below (and explanatory notes) prior to finalising planning of their proposed activity, with advice from the Council Strategic Planning Branch as required.





### Explanatory notes

These procedures are designed to ensure that Council activities do not impact on any known or potential items of Aboriginal heritage. Whether an Aboriginal site was known to be there or not, any impacts can attract large fines under s86 of the *National Parks & Wildlife Act*. It is very important that the potential impacts of even minor activities is considered.

<b>Using Potential Investigation Areas</b>	<p>When you click on a Potential Investigation Area, the attribute data will tell you</p> <ul style="list-style-type: none"><li>• why it has been assessed as a Potential Investigation Area (ie within 200m of creekline or ridgeline, within 50m of known Aboriginal site, area of historical Aboriginal significance).</li><li>• the extent of the Potential Investigation Area (e.g. it may tell you if it is considered to extend onto private land from creek reserves)</li><li>• the Aboriginal heritage management requirements. In most cases it will refer you to this flowchart and notes.</li></ul> <p>If you unsure about how to proceed, consult Council's Strategic Planning Branch.</p>
<b>Scope of an Activity</b>	<p>It is important that you consider all aspects of your proposed activity that may impact Aboriginal heritage. This may include things beyond the immediate site of works, such as:</p> <ul style="list-style-type: none"><li>• Where will you stockpile materials?</li><li>• How will you access the worksite? E.g. will heavy vehicles be used which may disturb the ground surface?</li></ul>
<b>Low Impact Activities</b>	<p>The term 'low impact activity' has a specific legal definition according to the <i>National Parks &amp; Wildlife Regulation</i> 2009. This is the only definition that applies. These activities are exempted from some of the legal requirements of the Act but only if carried out on land that is considered 'disturbed' under the Regulation. 'Low impact activities' proposed in lands that are not 'disturbed' are not exempt and may require Aboriginal heritage assessment. See <a href="http://www.legislation.nsw.gov.au/">http://www.legislation.nsw.gov.au/</a> for up to date Regulations. Definitions current at November 2016 are provided in <b>Appendix C1</b>.</p>
<b>Disturbed Land</b>	<p>The term 'disturbed land' has a specific legal definition according to the <i>National Parks &amp; Wildlife Regulation</i> 2009. This is the only definition that applies. See <a href="http://www.legislation.nsw.gov.au/">http://www.legislation.nsw.gov.au/</a> for up to date Regulations. Definitions current at November 2016 are provided in <b>Appendix C1</b>.</p> <p>Land is not classified as disturbed for the purpose of the Act if it contains a known Aboriginal site.</p> <p>The designation 'disturbed land' under the Regulation does not mean that Aboriginal objects may not survive. In the Fairfield LGA, Aboriginal objects are most likely to occur within the top 0.5m of an <b>original soil profile</b> in areas of weathering shale bedrock, and possibly considerably deeper in alluvial deposits along major creeks and rivers. It should be noted however that historical impact can also include the <b>addition</b> of introduced materials as fill, and can therefore have acted to preserve underlying natural soil horizons. Determining whether historical activities have impacted original soil profiles or not often requires expert assessment. For this reason, always act with caution and do not assume that 'disturbed land' will have removed all Aboriginal objects, and seek expert advice if necessary.</p>





<b>Proceeding with Caution</b>	<p>Aboriginal objects are still legally protected even it has been determined that they are unlikely to be present within the area of the activity. If any Aboriginal objects or bones suspected of being human are found during your activity, you must:</p> <ol style="list-style-type: none"><li>1. Not further disturb or move these remains.</li><li>2. Immediately cease all work at the particular location.</li><li>3. In the case of suspected human remains only, notify NSW Police.</li><li>4. Notify The Office of Environment &amp; Heritage Environment Line on 131 555 as soon as practicable and provide available details of the objects or remains and their location.</li></ol> <p>Work cannot recommence in the vicinity of the find until appropriate management advice has been obtained. This may require authorisation in writing by the Office of Environment &amp; Heritage or the seeking of an Aboriginal Heritage Impact Permit.</p>
<b>Proceeding according to Heritage Advice</b>	<p>If impacts to a known or potential Aboriginal heritage site can be avoided by following certain procedures (e.g. defined vehicle access paths, cordoning off certain areas during site works), it is essential that these procedures be followed completely.</p>
<b>Permits or further Assessment</b>	<p>If your heritage advice indicates that impacts to a known or potential Aboriginal heritage site cannot be avoided, you will need to obtain further specialist Aboriginal heritage advice from an external Aboriginal heritage consultant. This may involve:</p> <ul style="list-style-type: none"><li>• Archaeological test excavation</li><li>• Seeking an Aboriginal Heritage Impact Permit to allow impacts to the site</li></ul> <p>Both of these outcomes will involve a prescribed process of Aboriginal community consultation, and preparation of reports according to government regulation. These processes can take a number of months and have associated costs that must be factored in to project planning.</p> <p>It is also possible that these further investigations will result in a decision that the proposed activity cannot occur, or will need to be modified to avoid impact.</p>



### **Examples for Council Land Managers**

#### EXAMPLE 1: Council proposes to construct a cycle path within a Council reserve

The area is searched on the Council GIS. Part of the activity is within a Potential Investigation Area because it is within the default radius of within 50m of a known Aboriginal site (a stone artefact scatter). It is not a 'low impact activity' under the NPW Regulation so the potential impacts must be documented in the REF for the proposal. The Strategic Planning Branch is consulted to determine whether an Aboriginal Heritage Assessment by an external consultant may be required or if assessment can be undertaken in-house. The site record for the registered Aboriginal site is consulted. This has a written description indicating that the site does not extend into the area of the proposed activity. It is determined that the proposal can proceed with caution and does not need to involve an Aboriginal Heritage Assessment. These steps are documented in the REF.

#### EXAMPLE 2: Council proposes to construct a toilet block within a Council reserve

The area is searched on the Council GIS. It is not within a Potential Investigation Area (because the heritage study determined a high level of historical impact and Aboriginal archaeological remains were unlikely to have survived). No further investigation necessary. Proceed with caution, noting stop work procedures defined in the Explanatory Notes if something is uncovered.

#### EXAMPLE 3: Council proposes to replace an existing fence within a Council reserve

The area is searched on the Council GIS. It is within a Potential Investigation Area because it is in an area of relatively low historical impact within 200m of a creekline. The proposal comes under the NPW Regulation definition of a 'low impact activity'. The area is classified as 'disturbed land' because of the previous construction of a fence. The new fence will not involve impacts below the existing level of impacted ground. Therefore no further investigation is necessary. Proceed with caution, noting stop work procedures defined in the Explanatory Notes if something is uncovered.

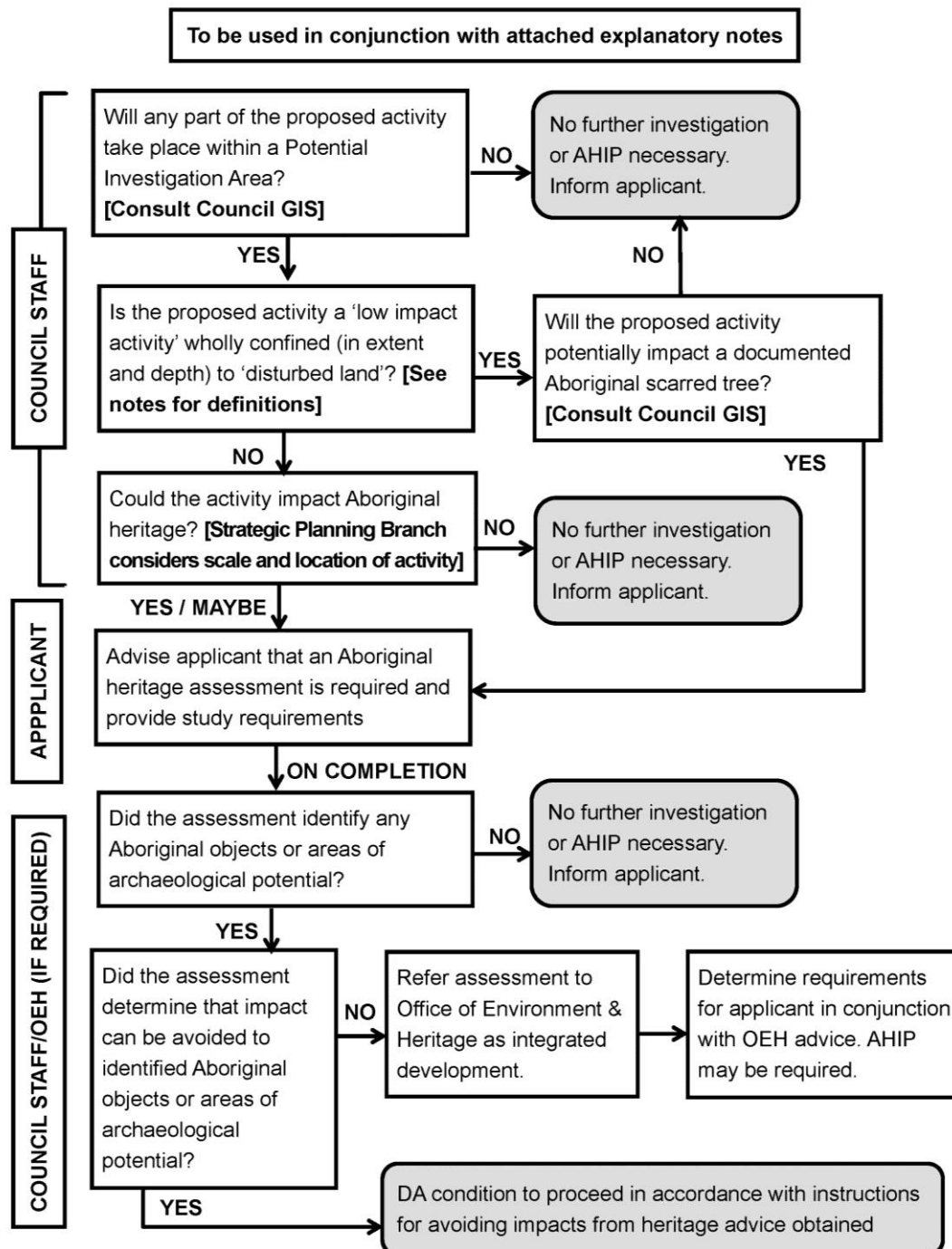
#### EXAMPLE 4: Council proposes to contour creek banks within a Council reserve

The area is searched on the Council GIS. It is within a Potential Investigation Area because it is in an area of relatively low historical impact within 200m of a creekline. It is a 'low impact activity' under the NPW Regulation and it is occurring within an area of creek bank that has been contoured in the past so is classified as 'disturbed land' under the NPW Regulation. However, the new contouring works will involve earthworks to a greater depth than the existing works and are therefore not 'wholly confined' (see flowchart) to the 'disturbed land'. Given the creekbank location, and the potential for buried archaeological deposits, the Strategic Planning Branch is consulted and determines that an Aboriginal Heritage Assessment by an external consultant is required. The Aboriginal Heritage Assessment involves a review of geomorphology, a detailed review of land use history and a field survey. It concludes that there is little likelihood that deep alluvial deposits exist within the area of proposed impact and that it is therefore unlikely that Aboriginal heritage will be impacted by the proposal. The report is appended to the REF and works can proceed with caution, noting stop work procedures defined in the Explanatory Notes if something is uncovered.



#### 6.2.4 Procedures for External Development Applications

The following procedures are designed to be applied to ALL development applications processed by Council and must be used in conjunction with the accompanying explanatory notes.





### Explanatory notes

<b>Using Potential Investigation Areas</b>	<p>When you click on a Potential Investigation Area, the attribute data will tell you</p> <ul style="list-style-type: none"><li>• why it has been assessed as a Potential Investigation Area (ie within 200m of creekline or ridgeline, within 50m of known Aboriginal site, area of historical Aboriginal significance).</li><li>• the extent of the Potential Investigation Area (e.g. it may tell you if it is considered to extend onto private land from creek reserves)</li><li>• the Aboriginal heritage management requirements. In most cases it will refer you to this flowchart and notes.</li></ul> <p>If you are unsure about how to proceed, consult Council's Strategic Planning Branch.</p>
<b>Scope of an Activity</b>	<p>It is important that you consider all aspects of your proposed activity that may impact Aboriginal heritage. This may include things beyond the immediate site of works, such as:</p> <ul style="list-style-type: none"><li>• Where will you stockpile materials?</li><li>• How will you access the worksite? E.g. will heavy vehicles be used which may disturb the ground surface?</li></ul>
<b>Low Impact Activities</b>	<p>The term 'low impact activity' has a specific legal definition according to the <i>National Parks &amp; Wildlife Regulation</i> 2009. This is the only definition that applies. These activities are exempted from some of the legal requirements of the Act but only if carried out on land that is considered 'disturbed' under the Regulation. 'Low impact activities' proposed in lands that are not 'disturbed' are not exempt and may require Aboriginal heritage assessment. See <a href="http://www.legislation.nsw.gov.au/">http://www.legislation.nsw.gov.au/</a> for up to date Regulations. Definitions current at November 2016 are provided in <b>Appendix C1</b>.</p>
<b>Disturbed Land</b>	<p>The term 'disturbed land' has a specific legal definition according to the <i>National Parks &amp; Wildlife Regulation</i> 2009. This is the only definition that applies. See <a href="http://www.legislation.nsw.gov.au/">http://www.legislation.nsw.gov.au/</a> for up to date Regulations. Definitions current at November 2016 are provided in <b>Appendix C1</b>.</p> <p>Land is not classified as disturbed for the purpose of the Act if it contains a known Aboriginal site.</p> <p>The designation 'disturbed land' under the Regulation does not mean that Aboriginal objects may not survive. In the Fairfield LGA, Aboriginal objects are most likely to occur within the top 0.5m of an <b>original soil profile</b> in areas of weathering shale bedrock, and possibly considerably deeper in alluvial deposits along major creeks and rivers. It should be noted however that historical impact can also include the <b>addition</b> of introduced materials as fill, and can therefore have acted to preserve underlying natural soil horizons. Determining whether historical activities have impacted original soil profiles or not often requires expert assessment. For this reason, always act with caution and do not assume that 'disturbed land' will have removed all Aboriginal objects, and seek expert advice if necessary.</p>



<b>Proceeding with Caution</b>	<p>Aboriginal objects are still legally protected even it has been determined that they are unlikely to be present within the area of the activity. If any Aboriginal objects or bones suspected of being human are found during your activity, you must:</p> <ol style="list-style-type: none"><li>5. Not further disturb or move these remains.</li><li>6. Immediately cease all work at the particular location.</li><li>7. In the case of suspected human remains only, notify NSW Police.</li><li>8. Notify The Office of Environment &amp; Heritage Environment Line on 131 555 as soon as practicable and provide available details of the objects or remains and their location.</li></ol> <p>Work cannot recommence in the vicinity of the find until appropriate management advice has been obtained. This may require authorisation in writing by the Office of Environment &amp; Heritage or the seeking of an Aboriginal Heritage Impact Permit.</p>
<b>Proceeding according to Heritage Advice</b>	<p>If impacts to a known or potential Aboriginal heritage site can be avoided by following certain procedures (e.g. defined vehicle access paths, cordoning off certain areas during site works), it is essential that these procedures be followed completely.</p>
<b>Permits or further Assessment</b>	<p>If your heritage advice indicates that impacts to a known or potential Aboriginal heritage site cannot be avoided, you will need to obtain further specialist Aboriginal heritage advice from an external Aboriginal heritage consultant. This may involve:</p> <ul style="list-style-type: none"><li>• Archaeological test excavation</li><li>• Seeking an Aboriginal Heritage Impact Permit to allow impacts to the site</li></ul> <p>Both of these outcomes will involve a prescribed process of Aboriginal community consultation, and preparation of reports according to government regulation. These processes can take a number of months and have associated costs that must be factored in to project planning.</p> <p>It is also possible that these further investigations will result in a decision that the proposed activity cannot occur, or will need to be modified to avoid impact.</p>

### Examples for External Development Applicants

#### EXAMPLE 1: A DA proposes to demolish and rebuild an existing factory complex

The area is searched on the Council GIS. The proposal is not within a Potential Investigation Area. The proposal therefore does not require any further assessment. If approved, the DA should include the Standard Conditions outlined below.

#### EXAMPLE 2: A DA proposes conversion of existing residential property into 3 villas

The area is searched on the Council GIS. Part of the property is within a Potential Investigation Area because it is within the default radius of within 50m of a known Aboriginal site (a stone artefact scatter). The attribute data on the GIS states that the site is wholly confined to the adjacent creek reserve and does not extend into the property. The proposal therefore does not require any further assessment. If approved, the DA should include the Standard Conditions outlined below.





EXAMPLE 3: A DA proposes construction of a new carport within an existing residential property.

The area is searched on the Council GIS. It is within a Potential Investigation Area because it is in an area of relatively low historical impact within 200m of a creekline. It is not a 'low impact activity' under the NPW Regulation, however the Strategic Planning Branch reviews the proposal and notes that the carport will be constructed within an area of existing disturbance associated with an existing driveway. The Strategic Planning Branch determines that impacts to Aboriginal heritage are unlikely. The proposal therefore does not require any further assessment. If approved, the DA should include the Standard Conditions outlined below.

EXAMPLE 4: A DA proposes subdivision of a 5 acre property in the rural lands.

The area is searched on the Council GIS. Part of the property is within a Potential Investigation Area because it is in an area of relatively low historical impact within 200m of a ridgeline. It is not a 'low impact activity' under the NPW Regulation, and will involve substantial impacts through bulk earthworks, service installation and road and house construction. Impacts to Aboriginal heritage are possible and the Strategic Planning Branch therefore advises the applicant that an Aboriginal Heritage Assessment is required. The Aboriginal Heritage Assessment involves a detailed review of land use history and a field survey. There are 3 likely outcomes from the Assessment:

1. It concludes that no Aboriginal sites or areas of Aboriginal archaeological potential are present, and therefore no further investigations are required. The report is used in the determination of the DA. If approved, the DA should include the Standard Conditions outlined below.
2. It concludes that an area of Aboriginal archaeological potential is present within the property. Archaeological test excavations are undertaken prior to DA submission under the OEH *Code of Practice for the Archaeological Investigation of Aboriginal Objects in NSW* (DECCW 2010b), which does not require an Aboriginal Heritage Impact Permit. The excavations reveal that Aboriginal objects are not present within the property and therefore no further investigations are required. The report is used in the determination of the DA. If approved, the DA should include the Standard Conditions outlined below.
3. It concludes that an area of Aboriginal archaeological potential is present within the property. Archaeological test excavations are undertaken prior to DA submission under the OEH *Code of Practice for the Archaeological Investigation of Aboriginal Objects in NSW* (DECCW 2010b), which does not require an Aboriginal Heritage Impact Permit. The excavations reveal that a partly impacted Aboriginal site (stone artefact scatter) is present within the property, but concludes that it can be managed through archaeological salvage under an Aboriginal Heritage Impact Permit (AHIP) as a condition of development consent. The development becomes Integrated Development and Aboriginal Heritage report is referred to the OEH for comment as part of the development assessment process. If approved, the DA makes consent conditional on approval of an AHIP by the OEH.



### **Requirements for Aboriginal Heritage Assessment**

Where Council or external development applicants are required to provide an Aboriginal heritage assessment, the following standards should be met. This will ensure that the assessment meets OEH Due Diligence Assessment requirements and the obligations of Council. These requirements should ultimately be enshrined in a DCP, and potentially outlined in an information brochure available to applicants, but in the interim the following should apply. Any Aboriginal heritage assessment report submitted to Council should:

- be undertaken by a suitably qualified Aboriginal heritage consultant;
- also meet the requirements for Due Diligence as per the OEH *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*;
- contain evidence of Aboriginal community consultation with the relevant Local Aboriginal Land Council;
- include evidence of a current (no more than 12 months old) search of the AHIMS Aboriginal Sites Register and consideration of relevant previous Aboriginal heritage investigations;
- involve a field inspection, or justification as to why an inspection was not considered necessary (for example if background research confirmed that the land has been comprehensively disturbed in the past);
- consider ways in which harm to known or potential Aboriginal objects can be avoided in relation to the proposed activity and outline the steps to be followed to ensure this (e.g. an alternative location or method of construction);
- identify further requirements in situations where harm cannot be avoided (e.g. archaeological test excavation, application for an Aboriginal Heritage Impact Permit).

### **Actions Resulting from Aboriginal Heritage Assessments**

All Aboriginal heritage assessments received by Council are to be reviewed by the Council Strategic Planning Branch to determine:

- If the assessment and documentation is sufficient to support a determination in relation to the proposal;
- If the assessment report and proposal will require referral to the Office of Environment & Heritage as Integrated Development under Part 5 of the Environmental Planning & Assessment Act (1979);
- Whether the Potential Investigation Area status of the land in question can be revised where it is found to have no Aboriginal heritage potential [and either undertaking or directing GIS staff to undertake that revision for the applicable area].

It is noted that there are some options under current procedure which allow further investigation without referral to the Office of Environment & Heritage. Under the OEH *Code of Practice for the Archaeological Investigation of Aboriginal Objects in NSW*, in certain circumstances, archaeological test excavation can be undertaken without an Aboriginal Heritage Impact Permit. As part of the



Aboriginal Heritage Assessment, a proponent may decide, on advice from their Aboriginal heritage consultant, that such test excavations will take place prior to obtaining development consent. The resulting report will be described as an Aboriginal Cultural Heritage Assessment report, and will require referral to the Office of Environment & Heritage unless no Aboriginal objects were uncovered during the excavations and it is assessed that no potential harm will arise from the proposed development activity.

## **6.2.5 Other Proposed Aboriginal Heritage Management Actions**

### **Revisions to Fairfield City Wide DCP**

The current Fairfield City Wide DCP contains no specific procedures for Aboriginal heritage. It is proposed that this be updated in line with the final adopted Aboriginal Heritage Management Procedures to ensure that these are fully incorporated into the development assessment process. This could be through additional of an Appendix to the current DCP, which contains a summary version of the procedures outlined in **Sections 6.2.2** and **6.2.4**. The requirements of Council for any Aboriginal heritage assessments that are required should also be outlined clearly in this document.

### **Information Brochure**

If the DCP is amended, this is considered sufficient information to provide to development applicants. It may also be useful however to convey the Aboriginal Heritage Management Procedures to applicants via a downloadable. Examples from other Councils can be referred to with regards to content.

### **Revisions to LEP**

It is not proposed that any amendments to made to the existing LEP. Specifically, it is not proposed to add the Aboriginal heritage places (see attached) to the LEP Heritage Schedule. The reason is that most are already listed on the AHIMS Register or State Heritage Register and dual listing will not increase protections if the Aboriginal Heritage Management Procedures outlined above are adopted. The remaining places are of Aboriginal community significance and will require community consultation in relation to proposed impacts, which will be sufficient if the Aboriginal Heritage Management Procedures outlined above are adopted.

### **Standard Conditions**

It is recommended that a standard condition be inserted on development consents which states the legal obligations relating to the discovery and/or impact of unexpected Aboriginal archaeological finds (including human remains) and the legal requirement for Due Diligence. The following conditions are based on current wording used by the OEH on Aboriginal Heritage Impact Permits:

Under the *National Parks & Wildlife Act* (1974), it is an offence to harm Aboriginal 'objects' (consisting of any material evidence of the Aboriginal occupation of NSW) without a valid and applicable Aboriginal Heritage Impact Permit under Section 90 of the Act. This applies whether the harm occurs either knowingly [s86(1)] or unknowingly [s86(2)]. It is a defence to the strict liability offence of harm to an Aboriginal object under s86(2) if a process of Due Diligence was followed which reasonably determined that the proposed activity would not harm an Aboriginal object. Due



Diligence assessment can take a number of forms, including a generic process developed by the Office of Environment & Heritage. There are also some activities which are exempt from the strict liability offence. It is recommended that anyone proposing to carry out a development activity finds out what provisions or exceptions applies to their activity. For more information see <http://www.environment.nsw.gov.au/licences/achregulation.htm>.

If any Aboriginal objects or bones suspected of being human are found during your activity, you must:

- Not further disturb or move these remains.
- Immediately cease all work at the particular location.
- In the case of suspected human remains only, notify NSW Police.
- Notify The Office of Environment & Heritage Environment Line on 131 555 as soon as practicable and provide available details of the objects or remains and their location.
- Not recommence any work at the particular location unless authorised in writing by the Office of Environment & Heritage.

### **Exempt and Complying Development**

It is acknowledged that the Aboriginal Heritage Management Procedures outlined in this document are unlikely to be able to be applied to exempt and complying developments which fall within Potential Investigation Areas. However, Council can act to ensure that applicants and private assessors are aware of the legal protections surrounding Aboriginal heritage, and the obligation to undertake some form of Due Diligence to ensure that there is unlikely to be any impact to Aboriginal heritage from their proposed activity. This could include one or more of the following actions:

- Indicate Potential Investigation Areas on all applicable s.149 certificates.
- Make certifiers operating in Fairfield LGA aware of the DCP Appendix relating to Aboriginal Heritage and/or provide them with the Information Brochure.
- Provide certifiers operating in Fairfield LGA with the same Standard Conditions wording as proposed above for DA applicants, which summarises the legal protections afforded to Aboriginal heritage and/or provide them with a copy of the OEH 2010 policy document *Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales*.



### 6.2.6 Staffing, Training and Resources

An essential part of the overall Aboriginal heritage management system is to have adequate resources and expertise allocated to ensure that the Council system runs efficiently, competently, accurately and remains up to date. To ensure this, there needs to be an appropriate commitment of staff, training and other resources. Specifically, the following are noted:

- Responsibility for oversight of the Aboriginal heritage management system should reside with the Strategic Planning Branch of Council to ensure that the system is applied consistently and is appropriately updated (e.g. through annual AHIMS Data updates). It is currently proposed that the Strategic Planning Branch provide advice and guidance within the parameters outlined in **Sections 6.2.3** and **6.2.4** above, with further technical advice from the OEH. The Strategic Planning Branch should also have responsibility for updating the Aboriginal heritage management system. Ideally this should be written into the responsibilities of a particular position within the Strategic Planning Branch.
- All Council planning and land management staff who will interact with the Aboriginal heritage management system should be provided with a training session to familiarise themselves with the procedures, and how to obtain further information. The procedures outlined in **Sections 6.2.3** and **6.2.4** could also be written into a procedures manual as appropriate.
- Council's Aboriginal Advisory Committee should be made aware of, and agree to, their proposed role as a referral body for Aboriginal community contacts in the event that impacts are proposed to any of the 5 historical Aboriginal places identified in **Table 5.2** (as opposed to the Aboriginal sites).

### 6.2.7 Researching and Celebrating Aboriginal Heritage and History

The final component of the recommended Aboriginal heritage management strategy is a commitment to further research, and exploring other ways that Aboriginal heritage and history can be protected and celebrated beyond the technical requirements of the planning system. This recognises that there is much yet to be learnt, that heritage and history are constantly being redefined, and that long-term protection of Aboriginal heritage is better achieved through the entire community seeing its value, rather than by trying to actively protect every heritage place (an impossible task). As several study participants stated, Aboriginal heritage and history is about people and recognition of the role Aboriginal people have played in the creating and servicing their own communities, as well as the role Aboriginal people have played more broadly in Fairfield's history.

Council is already active in this area, particularly through the Fairfield City Museum & Gallery, as the recent *Talk The Change/ Change the Talk* exhibition demonstrates. The exhibition featured interviews, images and crafts from local Aboriginal people, woven into a broader Aboriginal history, and provides an excellent illustration of the way that Council can foster awareness and respect for Aboriginal culture and history, and for Aboriginal people.

This study has identified some places of significance to Aboriginal people connected presently or historically to the Fairfield LGA. However it was clear from the limited consultation undertaken for





this study, that more places may be identified through an oral history recording program, and that the stories behind those places already identified could be more fully explored. This could be a study in its own right or could also be undertaken with the view to a future exhibition. The information though, will be of direct relevance to the management of Aboriginal heritage within the LGA.

Another way in which awareness and respect for Aboriginal heritage could be promoted is through culturally sensitive Aboriginal guided visits to Aboriginal sites within the LGA. There are particular sensitivities about revealing the location of Aboriginal sites, due to their vulnerability to malicious damage. It is not considered appropriate for example, to disclose the location of Aboriginal scarred trees. However, within the LGA are several recorded Aboriginal stone artefact scatters that are either now covered over (and therefore protected from further damage) and/or have had artefacts collected from them by the amateur archaeologist who recorded them in the 1980s and 1990s. These sites could be appropriate and safe locations to visit on tours whereby the past activities of Aboriginal people could be discussed at the location where they took place. They could be illustrated either with photos of the artefacts recorded at these locations or potentially, through agreement with the Australian Museum, some of the actual collected artefacts could be used for teaching purposes. Some sites which may be appropriate for such tours include:

- Open campsite #45-5-2811 at Prairiewood, from which over 350 stone artefacts were retrieved from excavations but is now covered with grass (see **Figure 5.5**).
- Open campsite #45-5-0731 at Canley Vale, which is now turfed and protected, but was recorded by the Aboriginal Gandangara Eel Dreaming project in 1988.
- Open campsite #45-5-2911 at St Johns Park, from which artefacts were collected by the original recorder and are currently at the Australian Museum. The site also provides a good example of the survival of Aboriginal sites along a channelised creek

This idea would need to be discussed with local Aboriginal people through the Local Aboriginal Land Council and Council Aboriginal Advisory Committee and should only be developed with their endorsement and active involvement.



## 7.0

## Study Recommendations

Based on the research and Aboriginal community consultation undertaken for the study, and in particular the discussions in **Section 6.0** and with reference to current legislative and policy requirements, the following recommendations are made. They are grouped according to assessed urgency as immediate, medium (1-3 years) and long (3-5 years) term proposed actions. These actions are to be undertaken by Council's Strategic Planning Branch unless otherwise specified.

### 7.1 Immediate Actions

- Adopt the Aboriginal heritage management system described in **Section 6.0**, and specifically, incorporate the procedures detailed in **Sections 6.2.3** and **6.2.4** into Council's operations.
- Incorporate the supplied GIS map layers and attribute data into the Council GIS system with appropriate linkages to other relevant layers (e.g. Local Aboriginal Land Council boundaries).
- Provide Council staff working within the system with a checklist/manual of how to use the Aboriginal heritage management system, and provide them with adequate training in its use.
- Obtain the first AHIMS Site information data under the Aboriginal Heritage Information Licence Agreement with OEH (once submitted and processed).
- Ensure that the Standard Conditions outlined in **Section 6.2.5** are incorporated into all future development consents.

### 7.2 Medium Term Actions (1-3 years)

- Undertake relevant amendments to the Fairfield City Wide DCP.
- Develop a fact sheet for applicants, outlining Council's Aboriginal heritage requirements.
- Develop a procedure to ensure that all relevant future staff are trained in the use of the Aboriginal heritage management strategy.
- Obtain AHIMS Register data updates every 12 months as per the Aboriginal Heritage Information Licensing Agreement and renew the agreement as required.
- Council's Place and Community Development section to develop an Aboriginal oral history recording program specifically focussed on the identification of places of Aboriginal historical and heritage significance as discussed in **Section 6.2.5** as part of future Operational Plans.
- Council's Place and Community Development section to discuss the potential for Aboriginal site tours with the Gandangara and Deerubbin Local Aboriginal Land Councils and Fairfield City Council Aboriginal Advisory Committee as discussed in **Section 6.2.5**. If the idea is supported, consider the role Council may play in funding and/or facilitating the development of these tours.

### 7.3 Long Term Actions (3-5 years)

- Within five years, review the current study and Aboriginal heritage management system to ensure its continuing usefulness and ensure its compliance with any amended state legislative or policy requirements. Make any amendments as required, and incorporate any further information about Aboriginal heritage places obtained through oral history or other research which has not yet been added into the Aboriginal heritage management system.



## 8.0

## Bibliography

- Anon 1836. 'Lansdowne Bridge', *The Colonist* 28/1/1836:4.
- Anon 1934. 'Lansdowne Bridge Centenary', *The Biz (Fairfield)* 5/1/1934:7-8
- Anon 1985. 'Children's playgroup', *Liverpool-Fairfield Champion* 24/4/1985: 10.
- Anon 1993, 'Second chance for Kay' *Fairfield Advance* 7/12/1993 [Fairfield Local Studies]
- Anon. 1968. 'Condolence', *The Biz (Fairfield)* 25/4/1968:2.
- Anon. 1989. 'Special Multicultural Feature: District Aborigines move on self-help', *Fairfield Advance* 5/10/1989 [np, Fairfield Local Studies Collection]
- Appleton, J. 2002. *The Archaeological Investigation of Lot 2, DP 120673 The Site of a Proposed New Clay and Shale Extraction Area - Old Wallgrove Road Horsley Park, West of Sydney NSW* (Report to R. W Corkery & Co for The Austral Brick Company)
- Attenbrow, V. 2010, *Sydney's Aboriginal Past: Investigating the Archaeological and Historical Records*, UNSW Press, Sydney.
- Australia Museum Business Consulting 2002a. *Liverpool- Parramatta Transitway (LPT) Indigenous Archaeology Management Sub Plan* (Report to Roads and Traffic Authority)
- Australia Museum Business Consulting 2002b *Liverpool- Parramatta Transitway (LPT) Orphan School Creek Archaeological Test Excavations* (Report to Roads and Traffic Authority)
- Australia Museum Business Consulting 2004. *Liverpool- Parramatta Transitway (LPT) Orphan School Creek Archaeological Test Excavations* (Report to Roads and Traffic Authority)
- Australia Museum Consulting 2013. *813-913 Wallgrove Road, Horsley Park: Heritage Impact Assessment* (Report to Gazcorp Pty Ltd)
- Brayshaw, H. and E. Rich 1995. *Western Orbital Prestons to Cecil Park EIS* (Report to Roads and Traffic Authority)
- Brayshaw, H. and E. Rich 1996. *Update: Western Orbital Prestons to Cecil Park EIS* (Report to Roads and Traffic Authority)
- Brook, J. and Kohen, J. 1991, *The Parramatta Native Institution and the Black Town*, UNSW Press, Sydney.
- Byrne, D. and H. Du Cros 1985. *Survey for Aboriginal Archaeological Sites on the Margins of Prospect Creek at Fairfield*.
- Byrne, D. and Nugent, M. 2004, *Mapping Attachment: A Spatial Approach to Aboriginal Post-contact Heritage*, Department of Environment and Conservation (NSW), Hurstville.
- Byrne, D., Brayshaw, H. and Ireland, T. 2001, *Social Significance: A Discussion Paper*. National Parks and Wildlife Service, Sydney.
- Central West Archaeological and Heritage Services 2001. *Western Sydney Orbital EIS: Aboriginal Archaeological Investigations, Hoxton Park - Horsley Park: A Supplementary Report* (Report to Roads and Traffic Authority)



- Central West Archaeological and Heritage Services 2003. *An Aboriginal Archaeological Study of the Proposed Abbotsbury Park Development* (Report to Roads and Traffic Authority)
- Cole, C. Isbel, A. Keys, T. Keys, G. Lomas, L. Marshall, G. Mayrans, R. Whitfield and D. Bell 1988. *Gandangara Eel Dreaming Project: A Survey for Aboriginal Sites Along Orphan School Creek, City of Fairfield* (Report to Fairfield City Council)
- Cook, K. & H. Goodall. 2013. *Making change happen: black & white activists talk to Kevin Cook about Aboriginal, union & liberation politics* (Canberra; Aboriginal History Incorporated).
- Corkill, T. 1999, *Here and There, Links between Stone Sources and Aboriginal Sites in Sydney Australia*, Masters Thesis, Archaeology Department, Univeristy of Sydney.
- Cowlishaw, G. 2009, *The City's Outback*, UNSW Press, Sydney.
- Cunningham, A. 1827, *Two Years in New South Wales*, Angus and Robertson in association with the Royal Australian Historical Society, Sydney.
- Curran, N. 1994. *Survey for Aboriginal Sites Portion 80 Horsley Park NSW*.
- Curran, N. 1997. *Aboriginal Heritage Assessment, Lot 1 of D.P. 106143, Horsley Park, NSW* (Report to CMPS&F Pty Ltd)
- Dallas, M. 1994. *Planning Study for the Disposal of RAAF Villawood* (Report to Royal Australian Air Force)
- Dallas, M. and K. Navin 1991. *Archaeological Survey of Proposed Urban Release Area at Cecil Park* (Report to the Department of Housing)
- Dallas, M. and M. Hanckel 1985. *Archaeological Survey at Cecil Park, Penrith* (Report to Manildra Flour Mills)
- Department of Environment Climate Change and Water, 2010a, *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW*, Department of Environment Climate Change and Water, Sydney.
- Department of Environment Climate Change and Water, 2010b, *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW*, Department of Environment Climate Change and Water, Sydney.
- Department of Environment Climate Change and Water, 2010c, *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010 Part 6 National Parks and Wildlife Act 1974*.
- Donlon, D. and J. Comber 1991. *Archaeological Survey of the Prospect Water Treatment Works Pilot Plant and Prototype Plat* (Unpublished Report to NSW Water Board)
- English, A. 2002, *The Sea and the Rock Gives Us a Feed*, National Parks and Wildlife Services, Sydney.
- Fairfield City Museum & Gallery, 2007. *Storytelling Around the Dining Table. A Workshop with Aboriginal and Filipino Women*



- Flynn, M. 2001, *Genealogical Report on the Gale for the Darug Native Title Claim in Western Sydney*.
- Ford, G. 2010, *Darkiñung Recognition. Identifying the Aborigines to the West and North of Sydney*, Master of Arts (Research), University of Sydney.
- Gapps, S. 2010. *Cabrogal to Fairfield City: A History of a Multicultural Community* (Fairfield City Council).
- George, V. 1991. *Fairfield. A History of the District* (2nd ed.) (Fairfield City Council)
- Godden MacKay Logan 2007. *Southpipe Employment Lands Aboriginal Heritage Assessment and Impact Statement Draft Report* (Report to Macquarie Goodman Property Services Pty Ltd)
- Goodall, H. & A. Cadzow, 2009. *Rivers and Resilience. Aboriginal People on Sydney's Georges River* (Sydney: University of New South Wales Press).
- Goward, T 2011. *Aboriginal Glass Artefacts of the Sydney Region*, Honours Thesis, Archaeology Department, University of Sydney.
- Haglund and Ass. 2007. *Test Excavations for Aboriginal Heritage Carried out Along Proposed Upgrade of the Horsley Drive, Westlink M7 to Cowpasture Road, Horsley Park, NSW* (Report to Roads and Traffic Authority)
- Hanrahan, J. 1981. *Archaeological Survey of Areas in Bonnyrigg, Bossley Park and Green Valley as Part of EIS Requirements* (Report to Liverpool and Fairfield Council)
- Harrison, R. 2003, 'The Archaeology of 'Lost Places': Ruin, Memory and the Heritage of the Aboriginal Diaspora in Australia', *Historic Environment - Islands of Vanishment*, vol. 17 (1), p. 18-23.
- Hassall, J. 1902, *In Old Australia: Records and Reminiscences from 1794*, R.S. Hews and Co, Brisbane.
- Howitt, R. 1845, *Impressions of Australia Felix*, Longman, Brown, Green, and Longmans, London.
- Hyder Consulting 2005. *Aboriginal Heritage Assessment Eastern Creek Sewer Carrier Route Realignment* (Report to Sydney Water)
- Irish, P. & Goward, T. 2012. "Where's the Evidence? The Archaeology of Sydney's Aboriginal History", *Archaeology in Oceania* 47:60-68.
- Irish, P. 2004, 'When is a scar a scar? Evaluating scarred and marked trees at Sydney Olympic Park', *Australian Archaeology*, vol. 59, p. 59-61.
- Irish, P. 2005. *Aboriginal People at Homebush Bay: From the Wann-gal to the present day* (Report to the Sydney Olympic Park Authority).
- Irish, P. 2010, *Aboriginal Connections to Rouse Hill House and Farm and the Rouse Family: Preliminary Research Report*, Report to the Historic Houses Trust of New South Wales.





- Irish, P. 2011, 'Hidden in Plain View: The Sydney Aboriginal Historical Places Project', In Specht, J. and Torrence, R. (eds.), *Changing Perspectives in Australian Archaeology*. Australian Museum Online 23.
- Irish, P. *in press*. *Hidden in Plain View: The Aboriginal People of Coastal Sydney* (Sydney; NewSouth Publishing).
- Jo McDonald Cultural Heritage Management Pty Ltd, 1999, *Survey for Archaeological Sites: Proposed Rouse Hill Stage 2 Infrastructure Works at Rouse Hill, Parklea and Kellyville, NSW*, Report to GHD.
- Karskens, G. 2009, *The Colony: A History of Early Sydney*, Allen and Unwin, Crows Nest.
- Kelleher and Nightingale 2015. *The Horsley Drive Upgrade, Walworth Road to Cowpasture Road* (Report to Roads and Traffic Authority)
- Kohen, J. 1993, *The Darug and Their Neighbours: The Traditional Aboriginal Owners of the Sydney Region*, Darug Link in association with the Blacktown and District Historical Society, Blacktown.
- Kohen, J. 1995, *Aboriginal Environmental Impacts*. University of NSW Press, Sydney.
- Langford Ginibi, R. 1988. *Don't Take your Love to Town* (Ringwood; Penguin Books)
- Larsen, L. 1973, *Race and Spatial Form : With Special Reference to the Assimilation and Dispersal of Aborigines in the Sydney Area*, BA Honours Thesis, Department of Spatial Information Science, Macquarie University.
- Liston, C. 1888, 'The Dharawal and Gandangara in Colonial Campbelltown, New South Wales, 1788-1830', *Aboriginal History*, vol. 12 (1), p. 49-62.
- Macquarie, L. 1814, *Points to Talk to the Natives Upon at the Meeting on 28 Dec 1814, 8/4/1814-1818 and ?/1/1834*. ML MSS DLADD340, Letters, instructions and accounts mainly relating to the Native Institution at Parramatta, and other various material, 8 April 1814-18 January 1834).
- Marquis-Kyle, P. and Walker, M. 2004, *The Illustrated Burra Charter: Good Practice for Heritage Places*, Australia ICOMOS, Victoria.
- Mathews et al 1989. *Eel Dreaming Project: Fairfield City Rural Area Aboriginal Heritage Study* (Report to Fairfield City Council)
- McDonald Jo CHM PTY LTD 2005 Archaeological Salvage Excavation of Site RTA GI 109 – 113 George Street Parramatta NSW (Report to Landcom)
- McDonald, J and C. Rola-Wojciechowski 1985. *Site Re-assessment for Consent to Destroy. Residential Development, Bossley Park* (Report to Mr R. Begovich)
- McDonald, J., Donlon, D., Field, J., Fullagar, R., Coltrain, J., Mitchell, P. and Rawson, M. 2007, 'The First Archaeological Evidence for Death by Spearing in Australia', *Antiquity*, p. 877-885.



- Mills Archaeological & Heritage Services 1999. *Archaeological Survey of Proposed Western Sydney Orbital from West Baulkham Hills to Cecil Park Part B* (Report to Sinclair Knight Merz for RTA)
- Mills, R. 1998. *A Heritage Study for the Proposed RTA Busway from North Liverpool Road to Edensor Road, Bonnyrigg* (Report to Roads and Traffic Authority)
- Mooney, S., Webb, M. and Attenbrow, V. 2007, 'A Comparison of Charcoal and Archaeological Information to Address the Influences on Holocene Fire Activity in the Sydney Basin', *Australian Geographer*, vol. 38(2), p. 177-194.
- Morgan, G. 2006, *Unsettled Places. Aboriginal People and Urbanisation in New South Wales*, Wakefield Press, Kent Town.
- Nanson, G., Young, R., and Stockton, E. 1987, 'Chronology and Palaeoenvironment of the Cranebrook Terrace (near Sydney) Containing Artefacts More Than 40,000 Years Old', *Archaeology in Oceania* (2), p. 72-78.
- Navin Officer 2002. *Upper Georges River Waste Water Strategy, Cecil Park Carrier section 4* (Report to Sydney Water)
- Navin, K. 1993. *Archaeological Investigation of Proposed Development Area Abbotsbury* (Report to Hassell Group)
- Ngara Consulting 2003. *Archaeological Assessment of Aboriginal Heritage: Reservoir Entry lands, Prospect* (Report to Sydney Water)
- Perumal Murphy Wu Pty Ltd. 1993. *Fairfield City Heritage study* (Report to Fairfield City Council).
- Pittard, B. 1990. *Fairfield a Pictorial History* (Fairfield City Council).
- Powell, M. and Hesline, R. 2010, 'Making Tribes? Constructing Aboriginal Tribal Entities in Sydney and Coastal NSW from the Early Colonial Period to the Present', *Journal of the Royal Australian Historical Society*, vol. 96(2), p. 115-134.
- Richards, N. 2014. *Cross Country Course Modification, Sydney international Equestrian Centre, Horsley Park: Aboriginal Cultural Heritage Assessment* (Report to Creative Planning Solutions)
- Sharpe, A. 2000, *A Pictorial History of Blacktown and District*, Kingsclear Books, Sydney.
- Smith, K. 2001, *Bennelong. The Coming in of the Eora, Sydney Cove 1788-1792*, Kangaroo Press, Kenthurst.
- Smith, L. 1989. *Prospect Reservoir Proposed Water Channel 2: Archaeological Survey for Aboriginal Sites* (Unpublished report to NSW Water Board)
- Starr, F. & Wheller, R. 2007. '...vicious and rebellious?': *Life at the Male Orphan School, Sydney & Liverpool, 1819-1850* [exhibition catalogue] (Fairfield City Museum & Gallery).
- Steele, J. 2005, *The Aboriginal Language of Sydney*, Masters Thesis, Department of Indigenous Studies, Macquarie University.
- Stockton, E. and Holland, W. 1974, 'Cultural sites and their Environment in the Blue Mountains', *Archaeology and Physical Anthropology in Oceania* (9), p. 36-65.



- Tench, W. 1961, *Sydneys First Four Years*, Angus and Robertson and the Royal Australian Historical Society, Sydney.
- Therin, M. 2007. *Section 87 Preliminary Research Permit Excavation of PADs PC1 and CC1 located along the Route of the Liverpool to Ashfield Pipeline at Warwick Farm and Fairfield*.
- Wafer, J. and Lissarrague, A. 2008, *A Handbook of Aboriginal Languages of New South Wales and the Australian Capital Territory*, Muurrbay Aboriginal Language and Culture Co-operative, nambucca Heads.
- Ward, A. 2001, 'Gale for Darug' Native Title Claim in Western Sydney: A Historical Report, No. NG 6004 of 1998.
- Waters, K. 2002, *Historical Report. Re: In the Federal Court of Australia NSW District Registry, No. NG 6004 of 1998 Between Dennis Charles Gale on behalf of the Darug People (Applicant) and (various respondents)*, Confidential Report to the Deerubbin Local Aboriginal Land Council.
- White, E. and McDonald, J. 2010, 'Lithic Artefact Distribution in the Rouse Hill Development Area, Cumberland Plain, New South Wales', *Australian Archaeology*, vol. 70, p. 29-38.
- Wilkins, D. and Nash, D. 2008, 'The European 'Discovery' of a Multilingual Australia: The Linguistic and Ethnographic Successes of a Failed Expedition', In McGregor, W. (ed.), *Encountering Aboriginal Languages: Studies in the History of Australian Linguistics*, Pacific Linguistics, Canberra, p. 485-507.
- Wood, R. and Williams, N. 2001, *Anthropological Assessment of Experts' Evidence Filed on Behalf The Applicants in Federal Court Proceedings, NG6004/98*, Confidential Report to the Deerubbin Local Aboriginal Land Council.



# APPENDICES

**Appendix A:** Aboriginal Community Consultation Records

**Appendix B:** Aboriginal Site and Museum Records

**Appendix C:** Policy and Procedure Documents



## APPENDIX A: Aboriginal Community Consultation Records

### Appendix A1: Aboriginal community consultation summary

Person/Organisation	Date	Notes
Brad Maybury (Gandangara LALC Aboriginal Heritage Officer)	18/01/2016	Meeting and discussion
Fairfield Council Aboriginal Heritage Study working group	11/02/2016	Meeting and discussion
Guntawang Aboriginal Womens' Group	23/02/2016	Presentation and discussion
Barry Gunther (RMS – formerly Gandangara LALC)	25/02/2016	Meeting
Brad Maybury (Heritage Officer), Len Malone (Chairperson), Dan Rose (CEO) - Gandangara LALC	9/03/2016	Meeting
Fairfield Council Aboriginal Advisory Committee	14/03/2016	Presentation and discussion
Gandangara LALC members meeting	16/03/2016	Promotion of study and upcoming meeting
Gandangara LALC heritage study meeting	21/03/2016	Workshop/discussion
Lil Possums playgroup, Bonnyrigg Public School	30/03/2016	Presentation and discussion
Miller Elders Group	2/05/2016	Presentation and discussion
Brad Maybury (Gandangara LALC Aboriginal Heritage Officer)	23/11/16	Discussion of draft report
Steve Randall (Deerubbin LALC Aboriginal Heritage Officer)	24/11/16	Discussion of draft report
Fairfield Council Aboriginal Advisory Committee	November 2016 to 31/1/2017	Provided with draft report and request for comments, discussions with Committee members by Des Smith (Committee Coordinator)
Lil Possums playgroup, Bonnyrigg Public School	30/11/16	Discussion of draft report
Miller Elders Group	5/12/2016	Discussion of draft report
Fairfield Council Aboriginal Advisory Committee	12/12/16	Scheduled to address regular meeting but meeting cancelled
Guntawang Aboriginal Womens' Group	13/12/16	Discussion of draft report





## **Appendix A2: Aboriginal Community responses to Draft Study Report**

See Section 2.3 for other comments provided during study consultation



**GANDANGARA**

Local Aboriginal Land Council

20/1/ 2017

Mary Dallas Consulting Archaeologists  
PO Box A281 Arncliffe, NSW 2205  
PH: (02) 44652546 FAX: (02) 85202006  
Email: [mdca.archaeologists@gmail.com](mailto:mdca.archaeologists@gmail.com)

Dear Mr Irish,

**Re: Fairfield City Council Aboriginal Heritage Study**

I am writing on behalf of the Gandangara Local Aboriginal Land Council (GLALC) Board to endorse the findings of the Fairfield Heritage Study report.

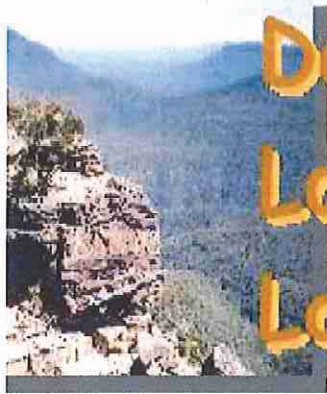
GLALC supports the request for the Aboriginal Heritage Information Licence Agreement. (Data Licencing Agreement) which allows Fairfield City Council to access and maintain a copy of records for Aboriginal sites within the Fairfield Local Government Area on the Office of Environment and Heritage (OEH) Aboriginal Heritage Information Management System.

GLALC would like to thank Fairfield City Council and Mr Paul Irish from Mary Dallas Consulting Archaeologists for compiling an Aboriginal heritage study for the Fairfield Local Government area.

If you have any questions please do not hesitate to contact GLALC on (02)9602 5280.

Yours sincerely,

Lennie Malone  
Chairperson  
Gandangara Local Aboriginal Land Council



# Deerubbin Local Aboriginal Land Council

Level 1, Suite3  
291-295 High Street  
PENRITH NSW 2750

PO Box 40  
Penrith BC  
NSW 2751 AUSTRALIA

ABN: 41 303 129 586  
T: (02) 4724 5600  
F: (02) 4722 9713  
E: [reception@deerubbin.org.au](mailto:reception@deerubbin.org.au)  
W: <http://www.deerubbin.org.au>

Fairfield City Council

C/- Mary Dallas Consulting Archaeologists

P O Box A281

ARNCLIFFE NSW 2205

18 January 2017

## PROTECTION OF ABORIGINAL CULTURAL HERITAGE

Fairfield City Council Aboriginal Heritage Study

Attention: Paul Irish, Principle Consultant & Historian

Deerubbin Local Aboriginal Land supports the recommendations on page 96 of the revised draft report of the Aboriginal Heritage Study for the Local Government Area of Fairfield City Council.

Yours Faithfully,

(Steven Randall

Aboriginal Cultural Heritage Officer)

**APPENDIX B: Current Register Records****Appendix B1: AHIMS Search Records**

The following list is an abridged version of the site records from AHIMS obtained in the course of the study. Full records of most sites have been provided separately to Council, along with coordinates and location descriptions. For reasons of site protection, site coordinates are not provided in this table.

AHIMS #	Site Names	Site Type	# Stone Artefacts	Permit #	Site Recorder/s	AHIMS Report #
45-5-0740	Carawood Park Caramar	Isolated Find	1	None	R Lampert	102196
45-5-2523	OSC-IF-1	Isolated Find	1	None	Mrs.Robynne Mills	98743,102196
45-5-2524	OSC-IF-2	Isolated Find	1	None	Mrs.Robynne Mills	98743,102196
45-5-2046	PGH2;Monier PHG;	Isolated Find	1	None	Noeleen Curran	98435,103366
45-5-2057	PGH1;Monier PGH;	Isolated Find	1	None	Noeleen Curran	98435,103366
45-5-3381	Oakdale IF 1	Isolated Find	1	2836	Dominic Steele Archaeological Consulting	
45-5-4327	Oakdale Central 1	Isolated Find	1	None	GML Heritage Pty Ltd, Miss.Diana Cowie	
45-5-4328	Oakdale Central 2	Isolated Find	1	None	GML Heritage Pty Ltd, Miss.Diana Cowie	
45-5-4329	Oakdale Central 3	Isolated Find	1	None	GML Heritage Pty Ltd, Miss.Diana Cowie	
45-5-4330	Oakdale Central 4	Isolated Find	1	None	GML Heritage Pty Ltd, Miss.Diana Cowie	
45-5-0274	Bosley Park	Open Campsite	13	None	Jenny Hanrahan	260,1018,98435,103366
45-5-0273	Cowpasture Road	Open Campsite	11	None	Jenny Hanrahan	260,1018,103366
45-5-0730	Orphan School Creek 5	Open Campsite	3	None	Gandangara Eel Dreamers	1506,102196
45-5-0731	Orphan School Creek 4	Open Campsite	10	None	Gandangara Eel Dreamers	1506,102196
45-5-0733	Orphan School Creek 2	Open Campsite	10	None	Gandangara Eel Dreamers	
45-5-2021	SCR Abbotsbury	Open Campsite	?	None	Michael Guider	98435,103366
45-5-2022	Cowpasture Road;Bossley Park;	Open Campsite	?	None	Michael Guider	103366
45-5-2536	CPC-OCS-1	Open Campsite	4	None	Mrs.Robynne Mills	
45-5-2811	OSC-OS-1	Open Campsite	358	None	Megan Mebberson	98743,102196
45-5-2819	Glen Elgin	Open Campsite	3	None	Michael Guider	103366
45-5-2820	Fairfield GC	Open Campsite	?	None	Michael Guider	98743,102196
45-5-2911	Clear Paddock Creek	Open Campsite	6	None	Michael Guider	102196
45-5-3697	JP 1 (Canley Vale)	Open Campsite	>27	None	Michael Guider	
45-5-1099	Hume Highway;	Open Campsite	>8	None	Michael Guider	102196
45-5-2535	CPC-OCS-1	Open Campsite	?	None	ASRSYS	
45-5-2721	PAD-OS-7	Open Campsite	34	1396,1872	Mrs.Robynne Mills	103366
45-5-2857	HP1	Open Campsite	?	None	Mr.John Appleton	
45-5-2859	DTAC 1	Open Campsite	?	1683	Colin Gale	
45-5-2860	DTAC 2	Open Campsite	?	1683	Colin Gale	



## Fairfield City Council Aboriginal Heritage Study

AHIMS #	Site Names	Site Type	# Stone Artefacts	Permit #	Site Recorder/s	AHIMS Report #
45-5-2861	DTAC 3	Open Campsite	?	1683,2836	Colin Gale	
45-5-2862	HP 2	Open Campsite	?	1683,2133,2836	Mr.John Appleton	
45-5-3095	PGH3	Open Campsite	2	None	Noeleen Curran	103366
45-5-3269	OSC 1	Open Campsite	?	2571	Therin Archaeological Consulting	102196
45-5-3383	Oakdale Campsite 2	Open Campsite	6	None	Dominic Steele Archaeological Consulting	
45-5-3387	Oakdale Campsite 6	Open Campsite	3	None	Dominic Steele Archaeological Consulting	
45-5-3684	WR1 (Prospect)	Open Campsite	4	None	Australian Building Certification	103004
45-5-4680	The Horsley Drive AFT 8	Open Campsite	10	None	Kelleher Nightingale Consulting Pty Ltd,Mr.Tyler Beebe	
45-5-3272	PC1	Open Campsite, PAD	?	2582,2594,2696	Australian Museum Consulting (AM Consulting)	102196
45-5-0729	Orphan School Creek 6	Open Campsite, Scarred Tree	2	None	Gandangara Eel Dreamers	1506,98743,102196
45-5-3082	Horsley Dr PAD	PAD		2328	Ms.Laila Haglund	100557,103366
45-5-2650	OSC-OS-1/PAD 3	PAD	?	1320,1405	Mrs.Robynne Mills	98743,102196
45-5-0732	Orphan School Creek 3	Scarred Tree	0	None	Gandangara Eel Dreamers	1506,102196
45-5-0734	Orphan School Creek 1	Scarred Tree	0	None	Gandangara Eel Dreamers	102196
45-5-4301	Carramar ST/ Marsden Park Artefact Scatter	Scarred Tree	2	None	Sydney Water-Parramatta,Ms.Yvonne Kaiser	
45-5-2476	IF10	Isolated Find	1	None	Helen Brayshaw	103366
45-5-2477	IF11	Isolated Find	1	1398	Helen Brayshaw	103366
45-5-2563	DLC2	Isolated Find	1	None	Annie Nicholson	103366
45-5-2582	EC8,	Isolated Find	1	1444	Mr.Kelvin Officer	98435
45-5-2886	A-OS-1	Isolated Find	1	None	Jim Kelton	
45-5-2795	WSO-IF-1	Open Campsite	1	1398	Mrs.Robynne Mills	103366
45-5-2796	WSO-IF-2	Open Campsite	1	None	Mrs.Robynne Mills	
45-5-0920	Abbotsbury 1;	Open Campsite	5	461	Kerry Navin	103366
45-5-0921	Abbotsbury 2;	Open Campsite	3	None	Kerry Navin	98435,103366
45-5-0922	Abbotsbury 3;	Open Campsite	3	None	Kerry Navin	98435,103366
45-5-0948	Abbotsbury 4;	Open Campsite	2	None	Elizabeth Rich	2620,98435,103366
45-5-0980	Abbotsbury 4 - duplicate of 45-5-0948	Open Campsite	2	None	Kerry Navin,Doctor.Susan McIntyre-Tamwoy	2950,98435,103366
45-5-3952	Prospect Pipehead (PP) 3	Open Campsite	?	3474	Ms.Jillian Comber,Comber Consultants Pty Limited	102085
45-5-0805	PA1;Prospect Reservoir;	Open Campsite	?	None	Ms.Jillian Comber	1919,98743
45-5-0806	PA2;Prospect Reservoir;	Open Campsite	?	None	Ms.Jillian Comber	1919,98743
45-5-0836	Prospect Tunnel;PT 1;	Open Campsite	?	None	Ms.Jillian Comber	2074,98743
45-5-0866	TPP 1;Prospect Reservoir;	Open Campsite	?	None	Denise Donlon	2246,98435
45-5-0868	PP1;Prospect Reservoir;	Open Campsite	?	340	Ms.Jillian Comber,L Grey	2225,98283,98743,102196





## Fairfield City Council Aboriginal Heritage Study

AHIMS #	Site Names	Site Type	# Stone Artefacts	Permit #	Site Recorder/s	AHIMS Report #
45-5-2354	FCF1;	Open Campsite	?	None	Tony Kondek	
45-5-2567	DLC1	Open Campsite		None	Annie Nicholson	98435,103366
45-5-2884	A-IF-1	Open Campsite	1	None	Jim Kelton	
45-5-2885	A-IF-2	Open Campsite	1	None	Jim Kelton	
45-5-3631	A-OS-2 (Liverpool)	Open Campsite	4	None	Jim Kelton	
45-5-4488	Site within Steeplechase Track	Open Campsite	?	3776	Ms.Ngaire Richards	103366
45-5-4677	The Horsley Drive IF 1	Open Campsite	1	None	Kelleher Nightingale Consulting Pty Ltd,Mr.Tyler Beebe	
45-5-4678	The Horsley Drive IF 2	Open Campsite	1	None	Kelleher Nightingale Consulting Pty Ltd,Mr.Tyler Beebe	
45-5-4679	The Horsely Drive AFT 7	Open Campsite	?	None	Kelleher Nightingale Consulting Pty Ltd,Mr.Tyler Beebe	
45-5-4681	The Horsley Drive AFT 1	Open Campsite	?	None	Kelleher Nightingale Consulting Pty Ltd,Mr.Benjamin Anderson	
45-5-4682	The Horsley Drive AFT 2	Open Campsite	?	None	Kelleher Nightingale Consulting Pty Ltd,Mr.Benjamin Anderson	
45-5-4683	The Horsley Drive AFT 3	Open Campsite	?	None	Kelleher Nightingale Consulting Pty Ltd,Mr.Benjamin Anderson	
45-5-4684	The Horsley Drive AFT 4	Open Campsite	?	None	Kelleher Nightingale Consulting Pty Ltd,Mr.Benjamin Anderson	
45-5-4685	The Horsley Drive AFT 6	Open Campsite	?	None	Kelleher Nightingale Consulting Pty Ltd,Mr.Benjamin Anderson	
45-5-4686	The Horsley Drive AFT 5	Open Campsite	?	None	Kelleher Nightingale Consulting Pty Ltd,Mr.Benjamin Anderson	
45-5-0765	GPR 1 (Prospect Reservoir)	Open Campsite	3	None	Elizabeth Rich,Laura-Jane Smith,Miss.Lisa Smith	1723,1857,103366
45-5-0768	PR 4 (Prospect Reservoir)	Open Campsite	17	None	Elizabeth Rich	1723,1857,103366
45-5-0801	PB1 (Prospect Reservoir)	Open Campsite	9	None	Ms.Jillian Comber,Elizabeth Rich	1857,1919,2295,103366
45-5-0802	PB2 (Prospect Reservoir)	Open Campsite	4	None	Ms.Jillian Comber,Elizabeth Rich	1857,98743
45-5-0803	PB3 (Prospect Reservoir)	Open Campsite	8	None	Ms.Jillian Comber,Elizabeth Rich	1857,98743
45-5-0804	PB4 (Prospect Reservoir)	Open Campsite	?	None	Ms.Jillian Comber,Elizabeth Rich	1857,1919,98283,98743,102196
45-5-0766	PR 2 (Prospect Reservoir)	Open Campsite (glass artefacts)	>1000	None	Elizabeth Rich	1723,1857,98283,103366
45-5-0767	PR 3 (Prospect Reservoir)	Open Campsite (glass artefacts)	<2000	None	Elizabeth Rich	1723,1857,98283,103366
45-5-0867	TPP2;Prospect Reservoir;	Scarred Tree	1	None	Denise Donlon	2246,103366
45-5-0800	Scarred Tree Prospect Reservoir	Scarred Tree	1	None	Ms.Jillian Comber,Elizabeth Rich	1857,103366



## Appendix B2: Summary of Aboriginal Objects Held in Museum Collections

The Australian Museum is the only museum known to contain Aboriginal artefacts from within the Fairfield LGA in its collections. Some of the ground edge hatchets (stone axes) have been loaned to the Fairfield Museum & Gallery in the past, but all are from the Australian Museum collections. The Fairfield Museum & Gallery holds no local (Fairfield LGA) items in its own collections, with the possible exception of an unmarked stone axe which has no accompanying information.

Object/s	Item Number/s	Acquired
Stone axe from Fairfield	E028966 (currently on loan to Fairfield Museum & Gallery)	1924
Stone axe from Fairfield	E031055	1927
Stone axe from Fairfield	E034160	1931
Stone axe from Fairfield	E059293	1958
4 stone artefacts found at Canley Heights (described as Duke & Adolphus Street)	MG Coll No. 550	1990s
3 stone and 3 shell artefacts found at Canley Heights (described as Orphan School Creek, Near Sappho Street)	MG Coll No. 547 AHIMS #45-5-0729 to 0	1990s
2 stone artefacts found at Canley Vale (described as Avenel Park 1, Canley Vale)	MG Coll No. 549	1990s
2 stone artefacts found at Canley Vale (described as Avenel Park 2, Canley Vale)	MG Coll No. 596	1990s
20 stone artefacts and 1 key found at Canley Vale (described as Canley Vale main)	MG Coll No. 867	1990s
3 stone artefacts found at Canley Vale (described as Canley Vale other side)	MG Coll No. 709	1990s
1 stone and 1 shell artefact found at Canley Vale (described as Canley Vale other side Big Gum)	MG Coll No. 866	1990s
2 stone artefacts found at Canley Vale (described as Canley Vale other side Wattle)	MG Coll No. 708	1990s
11 stone artefacts and a pottery fragment found at Canley Vale (described as Hume Highway Median Strip, Canley Vale)	MG Coll No.389	1990s
1 stone artefact found at Canley Vale (described as Lansdown Bridge)	MG Coll No. 548	1990s
21 stone artefacts found at Canley Vale (described as Orphan School Creek, Fourth Ave)	MG Coll No. 546 AHIMS #45-5-0729 to 0	1990s



## Fairfield City Council Aboriginal Heritage Study

Object/s	Item Number/s	Acquired
Unknown number of stone artefacts found at Lansvale (described as Lansdowne Bridge vicinity)	MG Coll No. 46	1990s
Unknown number of stone artefacts found at Lansvale (described as Lansvale)	MG Coll No. 54	1990s
Unknown number of stone artefacts and European material found at Lansvale (described as Lansvale)	MG Coll No. 55	1990s
5 stone artefacts found at Lansvale (described as Lansvale Big Tree)	MG Coll No. 47	1990s
2 stone artefacts found at Lansvale (described as Lansvale Big Tree)	MG Coll No. 580	1990s
1 stone artefact found at Lansvale (described as Lansvale Hume Highway? Main highway site)	MG Coll No. 579 AHIMS # 45-5-1088?	1990s
4 stone artefacts found at Lansvale (described as Lansvale Hume Highway (Sizzlers))	MG Coll No. 404 AHIMS #45-5-1088?	1990s
1 stone artefact found at Lansvale (described as Lansvale ISO)	MG Coll No. 31	1990s
Unknown number of stone and shell artefacts found at Lansvale (described as Lansvale ISO)	MG Coll No. 34	1990s
Unknown number of stone artefacts and European material found at Lansvale (described as Lansvale opposite highway)	MG Coll No. 33	1990s
43 stone, 1 shell, 1 bone and 1 European artefact found at Lansvale (described as Prospect Creek, Lansvale)	MG Coll No. 437	1990s
Unknown number of stone artefacts and European material found at Lansvale/ Warwick Farm (described as Remembrance Drive, Lansdale/Warwick Farm)	MG Coll No. 81	1990s
4 stone artefacts found at Canley Vale (described as Sizzlers (?=Sizzlers at Lansvale ID 404?))	MG Coll No. 605	1990s
13 stone artefacts found at Lansvale (described as Fourth Avenue Canley Vale)	MG Coll No. 1182	1990s
2 stone artefacts and 1 European item found at Lansvale (described as Remembrance Drive)	MG Coll No. 1183	1990s



## APPENDIX C: Policy and Procedure Documents

### Appendix C1: OEH 2010 Due Diligence Code of Practice

See Section 7.5 for definitions of 'low impact activities' and 'disturbed land' as per the National Parks and Wildlife Regulations 2009, Reg 80B.

***Important Note: These definitions are current as of November 2016 but may be subject to change. Please check before use.***



**Environment,  
Climate Change  
& Water**

## **Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales**





**Disclaimer:** With the exception of photographs, the Department of Environment, Climate Change and Water NSW and State of NSW are pleased to allow this material to be reproduced in whole or in part for educational and non-commercial use, provided the meaning is unchanged and its source, publisher and authorship are acknowledged. Specific permission is required for the reproduction of photographs.

DECCW shall not be liable for any damage which may occur to any person or organisation taking action or not on the basis of this publication.

Readers should seek appropriate advice when applying the information to their specific needs.

13 September 2010

© State of New South Wales and the Department of Environment, Climate Change and Water NSW

Published by:

Department of Environment, Climate Change and Water  
59–61 Goulburn Street  
Sydney  
PO Box A290  
Sydney South 1232

Phone: 131555 (NSW only – publications and information requests)  
(02) 9995 5000 (switchboard)  
1300 361 967 (national parks, climate change and energy efficiency  
information  
and publications requests)  
Fax: (02) 9995 5999  
TTY: (02) 9211 4723  
Email: [info@environment.nsw.gov.au](mailto:info@environment.nsw.gov.au)  
Website: [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

**Report pollution and environmental incidents:**

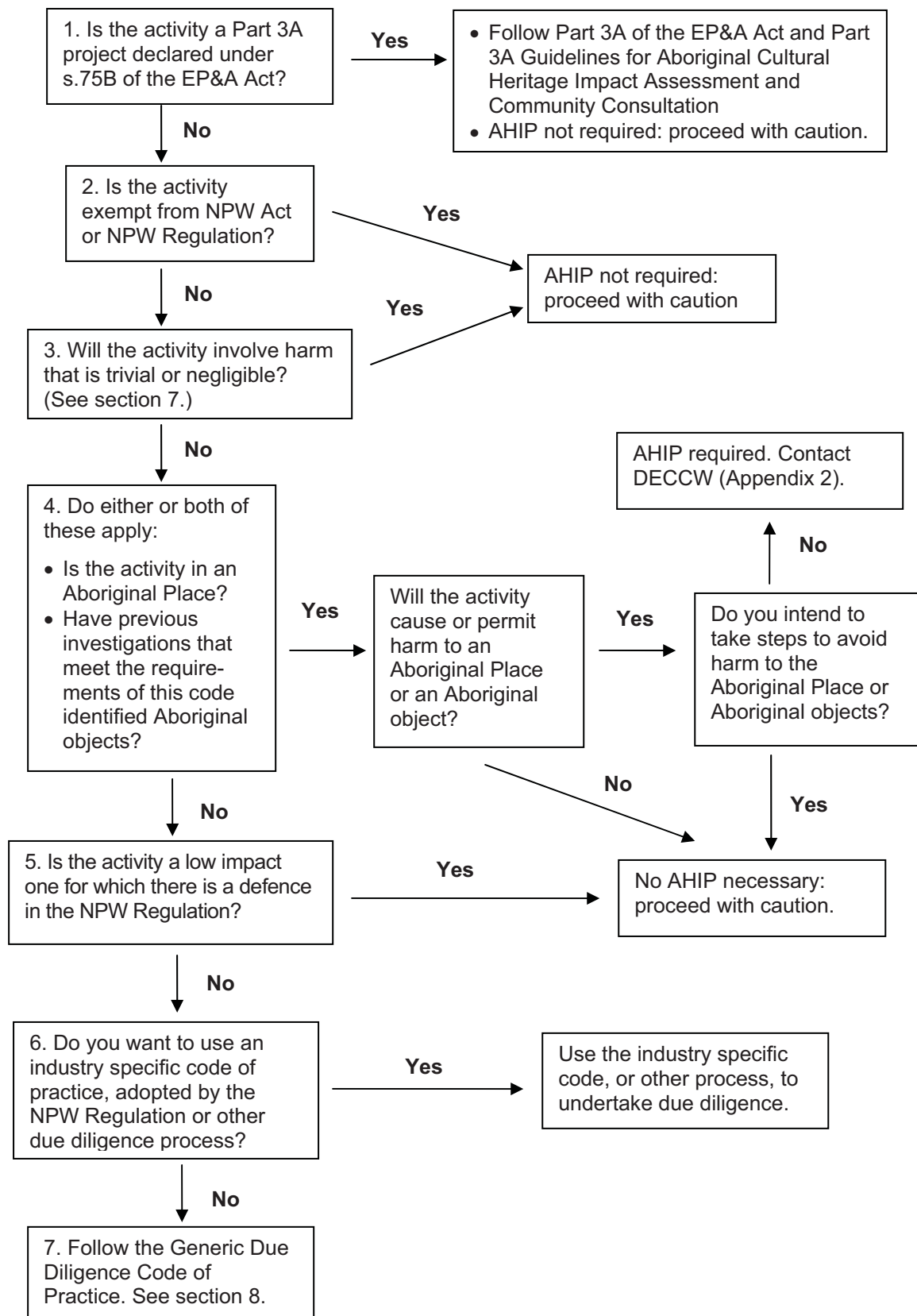
**Environment Line:** 131 555 (NSW only) or [info@environment.nsw.gov.au](mailto:info@environment.nsw.gov.au)  
See also [www.environment.nsw.gov.au/pollution](http://www.environment.nsw.gov.au/pollution)

DECCW 2010/798  
ISBN 978 1 74232 941 3  
September 2010

## Contents

1	Do you need to use this due diligence code? .....	1
2	Purpose of this code of practice .....	2
3	Who should use this code? .....	2
4	How does the code link to other planning processes? .....	3
	4.1 Development under Part 4 EP&A Act and activities under Part 5 EP&A Act .....	3
	4.2 Major projects under Part 3A EP&A Act .....	3
	4.3 Exempt and complying development under the EP&A Act .....	3
5	Do I need to consult? .....	3
6	What are the advantages of due diligence? .....	4
7	Do you need to use this due diligence code? .....	4
	7.1 Is the activity a declared project under Part 3A of the EP&A Act? .....	4
	7.2 Is the activity an exempt activity listed in the National Parks and Wildlife Act or other legislation? .....	5
	7.3 Will the activity involve harm that is trivial or negligible? .....	5
	7.4 Is the activity in an Aboriginal Place or are you already aware of Aboriginal objects on the land? .....	5
	7.5 Is the activity a low impact activity for which there is a defence in the Regulation? .....	6
	7.6 Do you want to use an industry specific code of practice? .....	8
	7.7 Do you wish to follow your own procedure? .....	8
	7.8 Follow the due diligence code of practice .....	9
8	The generic due diligence process .....	10
9	What do I do with the results of due diligence? .....	15
10	Record keeping .....	15
11	Some background and contextual information .....	15
	11.1 Aboriginal people and their cultural heritage .....	15
	11.2 DECCW's responsibilities for protecting Aboriginal cultural heritage .....	15
	11.3 What is an Aboriginal object? .....	16
12	Offences for harming Aboriginal objects .....	16
	12.1 Defences or exemptions for harming Aboriginal objects .....	17
13	Authorship and Certification of Code .....	17
	Definitions .....	18
	Acronyms and abbreviations .....	18
	Appendix 1: Examples of Aboriginal objects .....	19
	Appendix 2: Contact details for DECCW EPRG Regional Offices .....	28

# 1 Do you need to use this due diligence code?



## 2 Purpose of this code of practice

This code of practice is to assist individuals and organisations to exercise due diligence when carrying out activities that may harm Aboriginal objects and to determine whether they should apply for consent in the form of an Aboriginal Heritage Impact Permit (AHIP).

The *National Parks and Wildlife Act 1974* (NPW 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 if they later unknowingly harm an object without an AHIP.

The NPW Act allows for a generic code of practice to explain what due diligence means. Carefully following this code of practice, which is adopted by the National Parks and Wildlife Regulation 2009 (NPW Regulation) made under the NPW Act, would be regarded as 'due diligence'. This code of practice can be used for all activities across all environments.

This code sets out the reasonable and practicable steps which individuals and organisations need to take in order to:

- 1 identify whether or not Aboriginal objects are, or are likely to be, present in an area
- 2 determine whether or not their activities are likely to harm Aboriginal objects (if present)
- 3 determine whether an AHIP application is required.

If Aboriginal objects are present or likely to be present **and** an activity will harm those objects, then an AHIP application will be required. Information about the permits and how to apply for them can be obtained through the Department of Environment, Climate Change and Water (DECCW) website at [www.environment.nsw.gov.au/licences/index.htm](http://www.environment.nsw.gov.au/licences/index.htm).

## 3 Who should use this code?

Section 1 explains if you need to follow the due diligence process described in this code. This code can be used by individuals or organisations who are contemplating undertaking activities which could harm Aboriginal objects. This code will provide a process whereby a reasonable determination can be made as to whether or not Aboriginal objects will be harmed by an activity, whether further investigation is warranted and whether the activity requires an AHIP application.

If through this or any other process that meets the standards of this code, such as an environmental impact assessment, you have already taken reasonable steps to identify Aboriginal objects in an area subject to a proposed activity and it is already known that Aboriginal objects will be harmed or are likely to be harmed by an activity, then an application should be made for an AHIP.

## 4 How does the code link to other planning processes?

### 4.1 Development under Part 4 EP&A Act and activities under Part 5 EP&A Act

Consideration of the potential impacts of development on Aboriginal heritage is a key part of the environmental impact assessment process under the *Environmental Planning and Assessment Act 1979* (EP&A Act). The standards in this code can be used or adapted by proponents to inform the initial assessment of the environmental impacts of an activity on Aboriginal heritage. An environmental impact assessment which meets all of the requirements of this code will satisfy the due diligence test. Alternatively, you could adapt the requirements of this code, provided it still meets the ordinary meaning of exercising due diligence (see section 7.7).

If it is found through this initial assessment process that Aboriginal objects will or are likely to be harmed, then further investigation and impact assessment will be required to prepare information about the types of objects and the nature of the harm. This is further explained at step 5 in section 8. If you are going to harm a known Aboriginal object you will need to apply for an AHIP. In this situation, the need to obtain the AHIP is in addition to any approval under the EP&A Act (unless the project is subject to Part 3A EP&A Act).

### 4.2 Major projects under Part 3A EP&A Act

If your activity is a declared Part 3A project under s.75B of the EP&A Act you should refer to the 2005 (draft) *Part 3A EP&A Act Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation* (as amended from time to time). These guidelines are available from the Department of Planning (see section 7).

### 4.3 Exempt and complying development under the EP&A Act

The due diligence process can still apply to an activity that is exempt or complying development within the meaning of the EP&A Act. However, if the exempt or complying development is a low impact activity as defined by the NPW Regulation then you may have a defence under the NPW Act and do not need to follow due diligence in carrying out the activity. Refer to section 7.

## 5 Do I need to consult?

Consultation with the Aboriginal community is not a formal requirement of the due diligence process. However, proponents may wish to consider undertaking consultation if it will assist in informing decision-making.

The following organisations can assist with identifying Aboriginal people who may hold cultural knowledge relevant to determining the significance of Aboriginal objects and or places:

- the relevant DECCW EPRG regional office (see Appendix 2)
- the relevant Local Aboriginal Land Council(s)<sup>1</sup>
- the Registrar, *Aboriginal Land Rights Act 1983*, for a list of Aboriginal owners<sup>2</sup>
- the National Native Title Tribunal for a list of registered native title claimants, native title holders and registered Indigenous Land Use Agreements<sup>3</sup>

---

<sup>1</sup> [www.alc.org.au](http://www.alc.org.au)

<sup>2</sup> [www.oralra.nsw.gov.au](http://www.oralra.nsw.gov.au)



- NTSCorp Limited<sup>4</sup>
- the relevant local council(s)
- the relevant catchment management authorities for contact details of any established Aboriginal reference group.

If at any point an application is made for an AHIP then the consultation must be undertaken in accordance with the requirements in cl.80C of the NPW Regulation.

These requirements may also be followed where there is uncertainty about potential harm to Aboriginal objects and Aboriginal Places and you are undertaking an investigation and assessment of Aboriginal cultural heritage.

## 6 What are the advantages of due diligence?

In the context of protecting Aboriginal cultural heritage, due diligence involves taking *reasonable and practicable measures* to determine whether your actions will harm an Aboriginal object and, if so, what measures can be taken to avoid that harm.

There are several advantages to having a due diligence process for assessing potential harm to Aboriginal objects in that it:

- assists in avoiding unintended harm to Aboriginal objects
- provides certainty to land managers and developers about appropriate measures for them to take
- encourages a precautionary approach
- provides a defence against prosecution if the process is followed
- results in more effective conservation outcomes for Aboriginal cultural heritage.

## 7 Do you need to use this due diligence code?

Section 1 provides guidance on questions to ask to determine whether you need to follow this due diligence process.

### 7.1 Is the activity a declared project under Part 3A of the EP&A Act?

Where a project is seeking approval under Part 3A you need to identify, in the project application or concept plan application and any accompanying Preliminary Environmental Assessment, if the project will harm Aboriginal objects. If your project is a declared Part 3A project under s.75B of the EP&A Act, and you have been issued the Director General's requirements in relation to Aboriginal objects, you do not need to apply for an AHIP to harm Aboriginal objects under the NPW Act provided you follow these Director General's requirements and any conditions of approval.

You should refer to the 2005 (draft) *Part 3A EP&A Act Guidelines for Aboriginal Cultural Heritage Impact Assessment and Community Consultation* (as amended from time to time). These guidelines are available from the Department of Planning.

The above does not apply:

---

<sup>3</sup> [www.nntt.gov.au](http://www.nntt.gov.au)

<sup>4</sup> [www.ntscorp.com.au](http://www.ntscorp.com.au)

- where a project was approved under Division 4 of Part 5 (now repealed) of the EP&A Act – in this situation an AHIP will be required if the activity proposes to harm Aboriginal objects
- where a project is approved under Part 3A of the EP&A Act but subsequent applications are sent back to the consent authority (usually a local council) to determine under Part 4 of the EP&A Act (for example, some staged development or concept plan approvals) – in this situation any Aboriginal heritage matters not already covered by the Part 3A approval may still require an AHIP.

In these situations you should follow the steps in section 8 or some other due diligence process.

## **7.2 Is the activity an exempt activity listed in the National Parks and Wildlife Act or other legislation?**

The NPW Act provides exemptions to the offences of harming Aboriginal objects and Aboriginal Places in certain circumstances. These are for:

- Aboriginal people and their dependants when carrying out non-commercial traditional cultural activities
- any emergency fire fighting or bush fire hazard reduction work within the meaning of the *Rural Fires Act 1997* that is authorised or required to be carried out under that Act
- emergency activities carried out under the *State Emergency and Rescue Management Act 1989* that are reasonably necessary in order to avoid an actual or imminent threat to life or property
- works by, or directed by, authorised DECCW officers to protect or conserve Aboriginal objects
- anything specifically required or permitted under the express terms of a conservation agreement entered into under Division 12 of Part 4 of the NPW Act.

## **7.3 Will the activity involve harm that is trivial or negligible?**

Section 86 of the NPW Act sets out a number of offences about ‘harm’ to an Aboriginal object. Harm means any act or omission that:

- destroys, defaces, or damages the object
- moves the object from the land on which it had been situated
- causes or permits the object to be harmed.

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 or off a track, picnicking, camping or other similar recreational activities.

## **7.4 Is the activity in an Aboriginal Place or are you already aware of Aboriginal objects on the land?**

### **Aboriginal places**

Aboriginal Places are declared by the Minister under s.84 of the NPW Act. The location of Aboriginal Places is made available to the public via the government gazette (available through the NSW Department of Services, Technology and

Administration). The places are also listed on the DECCW website. The due diligence defence is not available for activities which harm Aboriginal places. If you wish to undertake an activity which may harm an Aboriginal place, you must apply for an AHIP.

### **Known Aboriginal objects**

If as a result of previous investigations that meet the requirements of this code you already know that Aboriginal objects are in the area and that harm to these objects cannot be avoided, then you need to apply for an AHIP. If the previous investigation includes a search on the Aboriginal Heritage and Information Management System (AHIMS) database (maintained by DECCW's Country, Culture and Heritage Division) which is over 12 months old you must search AHIMS again to ensure that the information is still current.

## **7.5 Is the activity a low impact activity for which there is a defence in the Regulation?**

The NPW Regulation removes the need to follow the due diligence process if you are 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 is 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 NPW 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 or sewerage pipelines), or*
  - (b) *was farming and land management work of the following kind on land that has been disturbed :*
    - (i) *cropping and leaving paddocks fallow,*
    - (ii) *the construction of water storage works (such as farm dams or water tanks),*
    - (iii) *the construction of fences,*
    - (v) *the construction of irrigation infrastructure, ground water bores or flood mitigation works,*
    - (vi) *the construction of erosion control or soil conservation works (such as contour banks), or*
  - (c) *was farming and land management work that involved the maintenance of the following existing infrastructure:*
    - (i) *grain, fibre or fertiliser storage areas,*
    - (ii) *water storage works (such as farm dams or water tanks),*
    - (iii) *irrigation infrastructure, ground water bores or flood mitigation works,*
    - (iv) *fences,*
    - (v) *erosion control or soil conservation works (such as contour banks), or*

- (d) *was the grazing of animals, or*
  - (e) *was an activity on land that has been disturbed that comprises exempt development or was the subject of a complying development certificate issued under the Environmental Planning and Assessment Act 1979, or*
  - (f) *was mining exploration work of the following kind on land that has been disturbed:*
    - (i) *costeaning,*
    - (ii) *bulk sampling,*
    - (iii) *drilling, or*
  - (g) *was work of the following kind:*
    - (i) *geological mapping,*
    - (ii) *surface geophysical surveys (including gravity surveys, radiometric surveys, magnetic surveys and electrical surveys), but not including seismic surveys,*
    - (iii) *sub-surface geophysical surveys that involve downhole logging,*
    - (iv) *sampling and coring using hand-held equipment, except where carried out as part of an archaeological investigation, or*
- Note.** *Clause 3A of this Regulation provides that an act carried out in accordance with the Code of Practice for Archaeological Investigation in NSW is excluded from meaning of harm an objects or place for the purposes of the Act.*
- (h) *was the removal of isolated, dead or dying vegetation, but only if there is minimal disturbance to the surrounding ground surface, or*
  - (i) *was work of the following kind on land that has been disturbed:*
    - (i) *seismic surveying,*
    - (ii) *the construction and maintenance of ground water monitoring bores, or*
  - (j) *was environmental rehabilitation work including temporary silt fencing, tree planting, bush regeneration and weed removal, but not including erosion control or soil conservation works (such as contour banks).*
- (2) *Subclause (1) does not apply in relation to harm to an Aboriginal culturally modified tree.*
  - (3) *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.*
  - (4) *For the purposes of this clause, land is disturbed if it has been the subject of 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).*

If your activity is included in this list you are not required to go through the due diligence process. Proceed with caution, and if Aboriginal objects are later found when you are carrying out your activity, you must stop work, notify DECCW and apply for an AHIP if you intend to harm those known objects.

If your activity is not on this list go to 7.6.

## **7.6 Do you want to use an industry specific code of practice?**

The NPW Act also provides that due diligence may be exercised by complying with a code of practice which is adopted under the NPW Regulation. These codes provide due diligence guidance tailored for specific types of activities or industries. Codes which have been adopted are the:

- Plantation and Reafforestation Code (being the Appendix to the Plantations and Reafforestation (Code) Regulation 2001) as in force on 15 June 2010
- Private Native Forestry Code of Practice approved by the Minister for Climate Change and the Environment and published in the Gazette on 8 February 2008<sup>5</sup>
- NSW Minerals Industry Due Diligence Code of Practice for the Protection of Aboriginal Objects published by the NSW Minerals Council Ltd and dated 13 September 2010
- Aboriginal Objects Due Diligence Code for Plantation Officers Administering the Plantations and Reafforestation (Code) Regulation 2001 published by the Department of Industry and Investment and dated 13 September 2010
- Operational Guidelines for Aboriginal Cultural Heritage Management published by Forests NSW and dated 13 September 2010.

If your activity is subject to an industry specific code that has been adopted by the NPW Regulation, you can follow that code instead of the requirements of this generic code.

Other industry associations may wish to develop codes of practice and DECCW will consider their adoption on a case by case basis.

If your activity is not subject to an industry specific code, go to section 8.

## **7.7 Do you wish to follow your own procedure?**

You can follow your own due diligence process and manage your own risk.

Due diligence amounts to taking reasonable and practicable steps to protect Aboriginal objects. This generic code provides one process for satisfying the due diligence requirements of the NPW Act.

It is not mandatory to follow this code. An individual or corporation can take other measures, provided that such measures are objectively reasonable and practicable and meet the ordinary meaning of exercising due diligence.

---

<sup>5</sup> [www.environment.nsw.gov.au/pnf/index.htm](http://www.environment.nsw.gov.au/pnf/index.htm)



For example, if your proposed activity requires environmental impact assessment under the EP&A Act which includes appropriate Aboriginal cultural heritage assessment, then due diligence could be exercised through that assessment rather than through a separate assessment that specifically follows the steps in this code. A Statement of Environmental Effects (SEE), a Review of Environmental Factors (REF) or an Environmental Impact Statement (EIS) under Part 4 or Part 5 of the EP&A Act can be used to satisfy the due diligence process if it adequately addresses Aboriginal cultural heritage issues.

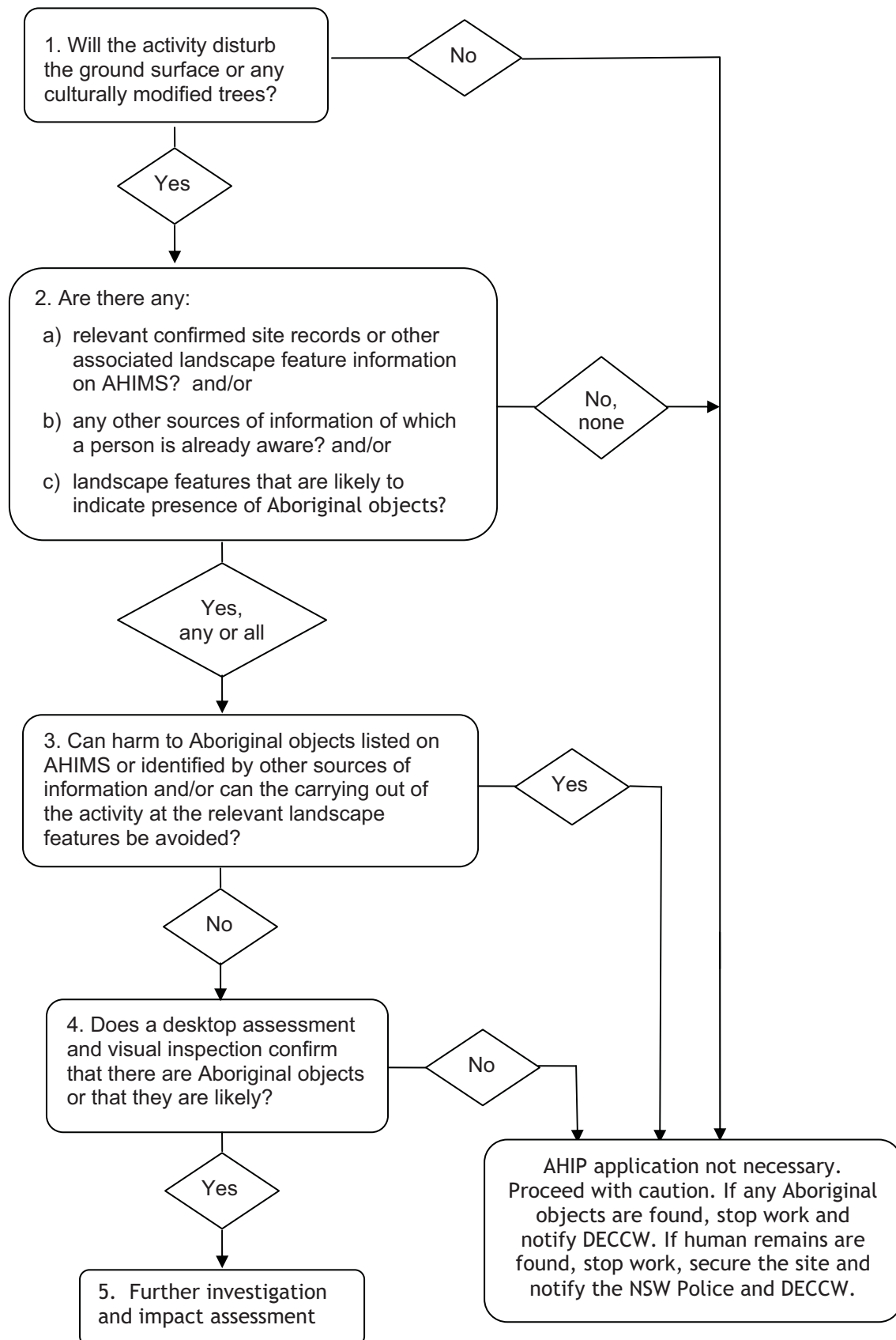
It is important that your due diligence measures are documented clearly and that these records are kept.

DECCW will not approve or certify a person's compliance with their due diligence requirements carried out under this or any other code. This is the responsibility of the company or individual doing the activity.

### **7.8 Follow the due diligence code of practice**

If none of the above steps apply to your activity, to establish due diligence you must proceed through the generic due diligence process outlined in the flowchart in section 8 and explained further in that section.

## 8 The generic due diligence process



### **Step 1. Will the activity disturb the ground surface?**

The first question to ask in the due diligence process is, Will the activity disturb the ground surface or any culturally modified trees? If an activity will disturb the ground surface there is a higher likelihood that Aboriginal objects will be harmed.

Disturbance of the ground surface is often significant when machinery is used to dig, grade, bulldoze, scrap, plough, or drill the ground surface for the purpose of, for example, building a structure or removing vegetation.

If your activity will not disturb the ground surface or any culturally modified trees then you can proceed with caution without applying for an AHIP.

If the activity will disturb the ground surface or any culturally modified trees then check the AHIMS database – step 2a.

### **Step 2a. Search the AHIMS database and use any other sources of information of which you are already aware**

You should search the AHIMS database and check whether any Aboriginal sites have been recorded in the area where you are proposing to carry out your activity. There may also be additional landscape or other contextual information, relevant to the area of your proposed activity on AHIMS.

Information on AHIMS searches is available on DECCW's website.<sup>6</sup>

The initial web-based search of AHIMS is free and you will be able to print the results of your search for record keeping purposes. For the purposes of due diligence you may rely on the search results for 12 months. (See section 10 for record keeping recommendations for the due diligence process.)

If the results of the initial AHIMS search indicate that AHIMS contains information about recorded Aboriginal objects in the area of your proposed activity you must obtain copies of those records. Contact the AHIMS registrar by faxing the request form or submitting the request form over the internet. Costs may apply depending on the type of information you are asking for. There may also be restrictions in providing culturally sensitive information.

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

If you are aware of any other sources of information, you need to use these to identify whether or not Aboriginal objects are likely to be present in the area. Other sources of information can include previous studies, reports or surveys which you have commissioned or are otherwise aware of.

Go to step 2b.

### **Step 2b. Activities in areas where landscape features indicate the presence of Aboriginal objects**

Regardless of whether your AHIMS search indicates known Aboriginal objects, you still need to consider whether Aboriginal objects are likely to be in the area of the proposed activity having regard to the following landscape features.

---

<sup>6</sup> [www.environment.nsw.gov.au/licences/AboriginalHeritageInformationManagementSystem.htm](http://www.environment.nsw.gov.au/licences/AboriginalHeritageInformationManagementSystem.htm)

Aboriginal objects are often associated with particular landscape features as a result of Aboriginal people's use of those features in their everyday lives and for traditional cultural activities. Examples of such landscape features are rock shelters, sand dunes, waterways, waterholes and wetlands. Therefore it is essential to determine whether the site contains landscape features that indicate the likely existence of Aboriginal objects.

Consequently, if your proposed activity is:

- within 200m of waters<sup>7</sup>, or
- located within a sand dune system<sup>8</sup>, or
- located on a ridge top, ridge line or headland, or
- located within 200m below or above a cliff face, or
- within 20m of or in a cave, rock shelter, or a cave mouth

and is on land that is not disturbed land (see Definitions) then you must go to step 3.

If after completing steps 2a and 2b it is reasonable to conclude that there are no known Aboriginal objects or a low probability of objects occurring in the area of the proposed activity, you can proceed with caution without applying for an AHIP.

### **Step 3. Can you avoid harm to the object or disturbance of the landscape feature?**

This step only applies if your activity is on land that is not disturbed land or contains known Aboriginal objects.

Where as a result of step 2a you think it is likely that there are Aboriginal objects present in the area of the proposed activity, you need to decide whether you can avoid the harm to those objects.

Where as a result of step 2b you have concluded that the landscape features listed are present, you need to decide whether you can move your activity away from the area with the landscape feature(s) so as to avoid disturbing any Aboriginal objects which may be present.

Possible solutions may include reducing the area of a building footprint, changing its orientation, re-positioning built elements, re-routing infrastructure trenching or incorporating a no-development area into the site design.

If you can't avoid harm to the object or disturbance of the landscape feature(s) you must go to step 4.

If you can avoid harm to the object and disturbance of the landscape feature(s) you can proceed with caution without applying for an AHIP.

### **Step 4: Desktop assessment and visual inspection**

This step only applies if your activity is on land that is not disturbed land or contains known Aboriginal objects.

---

<sup>7</sup> 'Waters' means the whole or any part of: any river, stream, lake, lagoon, swamp, wetlands, natural watercourse, tidal waters (including the sea). Note: the boundary of tidal waters is defined as the high water mark.

<sup>8</sup> Refers to sand ridges and sand hills formed by the wind, usually found in desert regions, near a lake or in coastal areas. In areas of western NSW, windblown dunes can occur along the eastern edges of ephemeral lakes (called lunettes dunes). They can also occur along the banks of rivers.

The assessment process is primarily a desktop exercise that involves examination and collation of the readily available information. The assessment must consider the area of the proposed activity as a whole, not just particular areas where any Aboriginal objects have been recorded on AHIMS or areas where landscape features are located.

At a minimum the information reviewed as part of the desktop assessment should include existing knowledge of Aboriginal cultural heritage gleaned from previous heritage studies or reports for the area, including any archaeological studies on AHIMS. There may be some restrictions in providing culturally sensitive information to you. Where this is the case DECCW will provide advice on how to proceed.

You must undertake a visual inspection of the area to see if Aboriginal objects can be identified or are likely to be present below the surface. This visual inspection must be done by a person with expertise in locating and identifying Aboriginal objects. This person with expertise could be 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.

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. This will need to be done by a person with expertise in Aboriginal cultural heritage management. Go to step 5.

Where the desktop assessment or visual inspection does not indicate that there are (or are likely to be) Aboriginal objects, you can proceed with caution without an AHIP application.

### **Step 5. Further investigations and impact assessment**

DECCW's website has further information about how to do a detailed investigation and impact assessment and the procedures for applying for an AHIP.

If after this detailed investigation and impact assessment you decide that harm will occur to Aboriginal objects then an AHIP application must be made.

For information that is required to support an application for an AHIP (including impact assessment and community consultation) and other relevant information see [www.environment.nsw.gov.au/conservation/aboriginalculture.htm#whattodo](http://www.environment.nsw.gov.au/conservation/aboriginalculture.htm#whattodo).

All AHIP applicants must undertake consultation in accordance with clause 80C of the NPW Regulation. These requirements may also be followed where there is uncertainty about potential harm and you are undertaking a cultural heritage assessment.

### **If you decide an AHIP application is not necessary**

If you have followed this code and at any point have reasonably decided that an AHIP application is not necessary either because Aboriginal objects are not present or, if they are present, harm to those objects can be avoided, you can proceed with caution.

If, however, while undertaking your activity you find an Aboriginal object you must stop work and notify DECCW and you may need to apply for an AHIP. Some works may not be able to resume until you have been granted an AHIP and you follow the



conditions of the AHIP. Further investigation may be required depending on the type of Aboriginal object that is found.

If human skeletal remains are found during the activity, you must stop work immediately, secure the area to prevent unauthorised access and contact NSW Police and DECCW.

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 s.89A of the NPW Act to notify DECCW as soon as possible of the object's location. This requirement applies to all people and to all situations, including when you are following this code.

If a person finds an Aboriginal object which is not recorded on AHIMS, they should contact DECCW as soon as practicable. Notification procedures can be found at: [www.environment.nsw.gov.au/licences/AboriginalHeritageInformationManagementSystem.htm](http://www.environment.nsw.gov.au/licences/AboriginalHeritageInformationManagementSystem.htm)

The due diligence process is shown diagrammatically at the beginning of this section.

## 9 What do I do with the results of due diligence?

Once you have gone through the due diligence process and you want to go ahead with your activity, you have several options including:

- 1 proceeding with the activity without an AHIP if you have found no evidence of Aboriginal objects using this due diligence code
- 2 amending the proposed activity to avoid harming Aboriginal objects then proceed without applying for an AHIP
- 3 applying for an AHIP, and if an AHIP is granted, following the AHIP conditions as you proceed with the activity.

The decision about which option to choose is the responsibility of the proponent using the information obtained through exercising due diligence.

## 10 Record keeping

Under the NPW 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.

Consequently it is strongly recommended that a person keep a record of the actions they took and the decisions they made in following the due diligence process.

## 11 Some background and contextual information

### 11.1 Aboriginal people and their cultural heritage

Aboriginal people have occupied the NSW landscape for at least 40,000 years. The evidence and important cultural meanings relating to this occupation are present throughout the landscape, as well as in documents and in the memories, stories and associations of Aboriginal people. Therefore, activities that disturb the landscape may impact on Aboriginal cultural heritage.

Aboriginal cultural heritage consists of places and items that are of significance to Aboriginal people because of their traditions, observances, customs, beliefs and history. It is evidence of the lives of Aboriginal people right up to the present. Aboriginal cultural heritage is dynamic and may comprise tangible or intangible elements. As such, it includes things made and used in earlier times, such as stone tools, art sites and ceremonial or burial grounds, as well as more recent evidence such as old mission buildings, massacre sites and cemeteries. Aboriginal cultural heritage is also represented in documents and in the memories, stories and associations of Aboriginal people.

### 11.2 DECCW's responsibilities for protecting Aboriginal cultural heritage

Under the NPW Act DECCW is responsible for protecting Aboriginal objects and Aboriginal Places throughout NSW. The objects of the NPW Act must be given effect whenever the Minister, the Director General or any member of staff of DECCW carries out their functions under the NPW Act. The objects of the NPW Act include:

*... the conservation of objects, places or features (including biological diversity) of cultural value within the landscape, including, but not limited to: places, objects and features of significance to Aboriginal people...2A(1)(b)(i)*

The NPW Act also states that the objects of the Act are to be achieved by applying the principles of ecologically sustainable development 2A(2).

DECCW is responsible for protecting Aboriginal objects and Aboriginal Places by assessing the impacts of proposed activities on Aboriginal objects and Aboriginal Places and only allowing acceptable impacts to occur. DECCW assesses applications for AHIPs to harm Aboriginal objects and Places, and includes conditions in AHIPs to minimise damage to or disturbance of those objects and Places. DECCW is also responsible for assessing proposals for Aboriginal Places and making recommendations to the Minister to declare Aboriginal Places to protect both their tangible and intangible values.

DECCW works closely with Aboriginal communities on conservation works for Aboriginal cultural heritage, such as the protection and restoration of Aboriginal objects such as rock art, middens, burials and culturally modified trees, and is also involved in the repatriation of Aboriginal human remains.

### **11.3 What is an Aboriginal object?**

This code applies only to Aboriginal objects as defined in the NPW Act (see Definitions). Appendix 1 provides some examples and guidance on objects. Examples of Aboriginal objects include, but are not limited to:

- human skeletal remains
- Aboriginal culturally modified trees
- middens
- rock art (paintings and engravings)
- stone artefacts
- raised earth rings
- grinding grooves
- rock shelters
- earth mounds
- hearths
- stone arrangements.

## **12 Offences for harming Aboriginal objects**

Section 86 of the NPW Act sets out a number of offences about ‘harm’ or desecration to an Aboriginal object. Harm means any act or omission that:

- destroys, defaces or damages the object
- moves the object from the land on which it had been situated, or
- causes or permits the object to be harmed.

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, or crushing a small Aboriginal object when you walk on a track.

There are now two types of offences for harming an Aboriginal object:

- 1 an offence of harming or desecrating an object which a person knows is an Aboriginal object (a ‘knowing offence’)
- 2 an offence of harming an object whether or not a person knows it is an Aboriginal object (a ‘strict liability offence’).

The maximum penalty for the knowing offence is \$550,000 or \$275,000 (depending on whether there are aggravating circumstances) and 1 or 2 years' goal for an individual. For a corporation the maximum penalty for the knowing offence is \$1.1 million. The maximum penalty for the strict liability offence is \$110,000 or \$55,000 (depending whether there are aggravating circumstances) for an individual or \$220,000 for a corporation.

### **12.1 Defences or exemptions for harming Aboriginal objects**

The NPW Act and NPW Regulation provide several defences and exemptions for both types of offence relating to harm to an Aboriginal object. Some of these defences and exemptions are explained in the diagram in section 1. The due diligence defence for the strict liability offence is explained in section 8. It is also a defence if a person holds a current AHIP and complies with the conditions of the AHIP.

In addition to the defences in the NPW Act and NPW Regulation the general defence of 'honest and reasonable mistake' would also apply to the strict liability offence.

## **13 Authorship and Certification of Code**

The Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW has been prepared by the Department of Environment, Climate Change and Water NSW.

This code complies with all the requirements of the Minimum Standards for Codes of Practice for the Protection of Aboriginal Objects in NSW gazetted on 10 September 2010.



Lisa Corbyn  
Director General  
DECCW  
13 September 2010

## Definitions

Aboriginal Heritage Impact Permit	a permit issued by the Director General of DECCW (or their delegate) allowing a person to desecrate or harm an Aboriginal Place or Aboriginal objects.
Aboriginal object (as defined in the NPW Act)	any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises NSW, 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 (as defined in the NPW Act)	a place declared under s.84 of the NPW Act that, in the opinion of the Minister, is or was of special significance to Aboriginal culture.  Information about the location of Aboriginal Places in NSW can be found on the DECCW website at <a href="http://www.environment.nsw.gov.au/nswcultureheritage/PlacesOfSignificance.htm">www.environment.nsw.gov.au/nswcultureheritage/PlacesOfSignificance.htm</a> .
Aboriginal culturally modified tree (as defined in the NPW Regulation)	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: <ul style="list-style-type: none"> <li>• the deliberate removal, by traditional methods, of bark or wood from the tree, or</li> <li>• the deliberate modification, by traditional methods, of the wood of the tree.</li> </ul>
activity	a project, development, activity or work (this term is used in its ordinary meaning, and does not just refer to an activity as defined by Part 5 EP&A Act).
disturbed land or land already disturbed by previous activity	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.  Examples include ploughing, construction of rural infrastructure (such as dams and fences), construction of roads, trails and tracks (including fire trails and tracks and walking tracks), clearing vegetation, construction of buildings and the erection of other structures, 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) and construction of earthworks.
due diligence	taking reasonable and practical steps to determine whether a person's actions will harm an Aboriginal object and, if so, what measures can be taken to avoid that harm .
harm an Aboriginal object (as defined in the NPW Act)	<ul style="list-style-type: none"> <li>• destroy, deface, damage an object</li> <li>• move an object from the land on which it is situated</li> <li>• cause or permit an object to be harmed.</li> </ul>
Minister	Minister administering the NPW Act

## Acronyms and abbreviations

AHIMS	Aboriginal Heritage Information Management System
AHIP	Aboriginal Heritage Impact Permit
DECCW	Department of Environment, Climate Change and Water NSW
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
NPW Act	<i>National Parks and Wildlife Act 1974</i>
NPW Regulation	National Parks and Wildlife Regulation 2009



## Appendix 1: Examples of Aboriginal objects

**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 are 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 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 caused by 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. Mark Flanders/DECCW

**Surface artefact scatters** are the material remains of Aboriginal people's activities. Scatter sites usually contain stone artefacts, but other material such as charcoal, animal bone, shell and ochre may also be present. The size of scatters may vary from one square metre to larger areas, and may contain from a few to thousands of artefacts.

Stone artefacts can be found almost anywhere Aboriginal people camped or lived, particularly around occupation sites, in sand dunes, rock shelters, caves, on ridges and near watercourses. Ground-axe edges may also be found near axe-grinding grooves or quarries.

**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 site. Stephen Meredith



**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 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 are found on 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 links to the past for Aboriginal people today. They 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. 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 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 by encouraging vegetation cover, or by restricting access to the site by erecting fencing.



Shell midden. 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. Hilton Naden/DECCW



**Aboriginal culturally modified (scarred and carved) trees** are trees that show the scars caused by the removal of 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. They are becoming rarer in NSW as the trees decay, are burnt or are destroyed.

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



Carrington scarred tree. 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 was 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. Bruce Cohen/DECCW



**Stone arrangements** are found at 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. M Sharp/DECCW

**Burials** include one of a variety of customs that Aboriginal people had for honouring the dead and laying them to rest; they 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. Activities such as sand mining, stock grazing, ripping rabbit warrens, ploughing, trail bike riding and four-wheel car driving can devastate burial sites. Aboriginal ancestral remains are very sensitive and significant to Aboriginal people.

**Landscape features and natural sacred sites** are regarded as highly sacred sites to Aboriginal people. Such features include mountains, waterholes, caves, and rock formations. In addition, the flora and fauna 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.

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

*Aboriginal scarred trees in New South Wales, a field manual* (DEC and Andrew Long 2005), [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, [www.environment.nsw.gov.au/nswcultureheritage/LostButNotForgotten.htm](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), [www.environment.nsw.gov.au/resources/cultureheritage/07137cultlandresearch.pdf](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, [www.hcr.cma.nsw.gov.au/uploads/res/Publications/acsl.pdf](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, [www.aboriginalaffairs.vic.gov.au/web7/aavmain.nsf/headingpagesdisplay/publications+forms+and+resourcesaav+mini-poster+series](http://www.aboriginalaffairs.vic.gov.au/web7/aavmain.nsf/headingpagesdisplay/publications+forms+and+resourcesaav+mini-poster+series)

## **Appendix 2: Contact details for DECCW EPRG Regional Offices**

### **Metropolitan**

Department of Environment, Climate Change and Water  
Planning and Aboriginal Heritage Section  
PO Box 668  
Parramatta NSW 2124

Phone: (02) 9995 5000

Fax: (02) 9995 6900

### **North East**

Department of Environment, Climate Change and Water  
Planning and Aboriginal Heritage Section  
Locked Bag 914  
Coffs Harbour NSW 2450

Phone: (02) 6651 5946

Fax: (02) 6651 6187

### **North West**

Department of Environment, Climate Change and Water  
Environment and Conservation Programs  
PO Box 2111  
Dubbo NSW 2830

Phone: (02) 6883 5330

Fax: (02) 6884 9382

### **South**

Department of Environment, Climate Change and Water  
Landscape and Aboriginal Heritage Protection Section  
PO Box 733  
Queanbeyan NSW 2620

Phone: (02) 6229 7000

Fax: (02) 6229 7001

A map of DECCW EPRG branch boundaries is provided on the next page.







---

## Appendix C2: Excerpts of the National Parks & Wildlife Regulation 2009 providing definitions of 'low impact activities' and 'disturbed land'.

### ***National Parks and Wildlife Regulation 2009, Reg 80B***

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

**Note :** This clause creates a defence to the strict liability offence in section 86 (2) of the Act (being the offence of harming an Aboriginal object whether or not the person knows it is an Aboriginal object). The defence does not apply to the separate offence under section 86 (1) of the Act of harming or desecrating an object that a person knows is an Aboriginal object. If a person discovers an Aboriginal object in the course of undertaking any of the activities listed below, the person should not harm the object-as the person may be committing an offence under section 86 (1) of the Act (the offence of knowingly harming an Aboriginal object)-and should obtain an Aboriginal heritage impact permit, if needed.

*(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 or sewerage pipelines), or*

*(b) was farming and land management work of the following kind on land that has been disturbed :*

- (i) cropping and leaving paddocks fallow,*
- (ii) the construction of water storage works (such as farm dams or water tanks),*
- (iii) the construction of fences,*
- (v) the construction of irrigation infrastructure, ground water bores or flood mitigation works,*
- (vi) the construction of erosion control or soil conservation works (such as contour banks), or*

*(c) was farming and land management work that involved the maintenance of the following existing infrastructure:*

- (i) grain, fibre or fertiliser storage areas,*
- (ii) water storage works (such as farm dams or water tanks),*
- (iii) irrigation infrastructure, ground water bores or flood mitigation works,*
- (iv) fences,*
- (v) erosion control or soil conservation works (such as contour banks), or*

*(d) was the grazing of animals, or*

*(e) was an activity on land that has been disturbed that comprises exempt development or was the subject of a complying development certificate issued under the Environmental Planning and Assessment Act 1979, or*

*(f) was mining exploration work of the following kind on land that has been disturbed:*

- (i) costeaning,*
- (ii) bulk sampling,*
- (iii) drilling, or*

*(g) was work of the following kind:*

- (i) geological mapping,*



- 
- (ii) surface geophysical surveys (including gravity surveys, radiometric surveys, magnetic surveys and electrical surveys), but not including seismic surveys,
  - (iii) sub-surface geophysical surveys that involve downhole logging,
  - (iv) sampling and coring using hand-held equipment, except where carried out as part of an archaeological investigation, or

**Note.** Clause 3A of this Regulation provides that an act carried out in accordance with the Code of Practice for Archaeological Investigation in NSW is excluded from meaning of harm an objects or place for the purposes of the Act.

- (h) was the removal of isolated, dead or dying vegetation, but only if there is minimal disturbance to the surrounding ground surface, or
  - (i) was work of the following kind on land that has been disturbed:
    - (i) seismic surveying,
    - (ii) the construction and maintenance of ground water monitoring bores, or
  - (j) was environmental rehabilitation work including temporary silt fencing, tree planting, bush regeneration and weed removal, but not including erosion control or soil conservation works (such as contour banks).
- (2) Subclause (1) does not apply in relation to harm to an Aboriginal culturally modified tree.
- (3) 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.
- (4) For the purposes of this clause, land is disturbed if it has been the subject of 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).