



4. COMMUNITY LIAISON

Policy 4.8

Consultation with Indigenous People

Version
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4.8 CONSULTATION WITH ABORIGINAL PEOPLE

OBJECTIVES:

To establish a policy for Council's consultation process in relation to matters that affect the Indigenous communities and groups, Indigenous heritage values and places of Indigenous significance.

To have documented policies and procedures for managing strategic planning and development assessment processes and other community engagement processes in relation to Indigenous cultural heritage values.

To improve the protection and management of identified Indigenous sites and cultural values within Lithgow LGA so that the relationship between the Indigenous people and those values is maintained.

To improve the recording of Indigenous cultural heritage values within Lithgow LGA.

To engage Indigenous people in relation to Council planning processes that have an impact on Indigenous cultural heritage values.

To ensure communication and coordination between the Indigenous community, Council and others involved in matters that affect the Indigenous community and Indigenous cultural values.

To improve awareness within Council of the Indigenous community and their cultural heritage and to improve awareness within the Indigenous community of Council processes and the planning process in general.

High standards of Indigenous cultural heritage assessment are established within Council.

2. Background

Lithgow City Council recognises that the Indigenous people and communities have a special connection with the land in ways that are often not fully appreciated nor fully understood by the wider community.

Lithgow City Council will use consultative and participatory processes that are appropriate and relevant to Indigenous people in order that the views of Indigenous people are heard in relation to matters that may have an impact on their culture and heritage.

Lithgow City Council recognises the contribution that Indigenous people may make and of the damage that may be caused to Indigenous culture and heritage from planning decisions and resultant actions.

3. Use of the Policy

This policy will be used in relation to Council planning and decision-making around matters that have the potential to impact on Indigenous people, [in accordance with](#)

the requirements of ~~as defined by Part 6 of the~~ *National Parks and Wildlife Act 1974* (NPW Act), the *Environmental Planning and Assessment Act 1979* (EP&A Act), the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation) and *Lithgow Local Environmental Plan 2014* (LEP 2014). ~~which is the primary legislation regulating the protection of Indigenous heritage.~~

This policy will apply to relevant strategic land use planning and development applications being determined by Council and the development of Plans of Management for relevant Community ~~and Crown~~ Lands (of which Council has care and management).

The policy will also be applied in relation to Council's corporate planning processes including the development of Community/Social and Cultural Plans, and decision-making where Council considers that the matter may have significance or relevance to the Indigenous community.

Consultation with Aboriginal people in relation to Crown Lands, including native title considerations, will be undertaken in accordance with a separate policy to be developed by Council.

4. Legislation

The NSW Department Office of Environment and Heritage's (OEH) document *Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010* states the following:

The NPW Act, administered by DECCW [Department of Environment, Climate Change and Water NSW], is the primary legislation for the protection of some aspects of Aboriginal cultural heritage in NSW. One of the objectives of the NPW Act is:
'the conservation of objects, places or features (including biological diversity) of cultural value within the landscape, including but not limited to: (i) places, objects and features of significance to Aboriginal people ...'
(s.2A(1)(b))

Part 6 of the NPW Act provides specific protection for Aboriginal objects and places by making it an offence to harm them. If harm to Aboriginal objects and places is anticipated, apply for an AHIP. AHIPs can be issued under ss.87 and 90 of the NPW Act.

The following definitions are provided under Section 5 of the NPW Act:

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

Aboriginal remains means the body or the remains of the body of a deceased Aboriginal person, but does not include:

- (a) a body or the remains of a body buried in a cemetery in which non-Aboriginal persons are also buried, or
- (b) a body or the remains of a body dealt with or to be dealt with in accordance with a law of the State relating to medical treatment or the examination, for forensic or other purposes, of the bodies of deceased persons.

Aboriginal place means any place declared to be an Aboriginal place under section 84.

84 Aboriginal places

The Minister may, by order published in the Gazette, declare any place specified or described in the order, being a place that, in the opinion of the Minister, is or was of special significance with respect to Aboriginal culture, to be an Aboriginal place for the purposes of this Act.

5. Consultation Process

In undertaking consultation in accordance with this Policy, Council will refer to ~~the NSW OEH's Department of Environment and Heritage NSW Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010~~ which states the following:

In recognising the rights and interests of Aboriginal people in their cultural heritage, all parties concerned with identifying, conserving and managing cultural heritage should acknowledge, accept and act on the principles that Aboriginal people:

- are the primary source of information about the value of their heritage and how this is best protected and conserved.
- must have an active role in any Aboriginal cultural heritage planning process.
- must have early input into the assessment of the cultural significance of their heritage and its management so they can continue to fulfil their obligations towards their heritage.
- must control the way in which cultural knowledge and other information relating specifically to their heritage is used, as this may be an integral aspect of its heritage value.

For the purposes of these requirements:

- effective consultation requires a commitment by all parties to work in the spirit of cooperation, mutual understanding and respect.
- the richness, ancient and ongoing significance of Aboriginal culture and heritage to Aboriginal people and the broader community should be appreciated, valued, protected and conserved for the benefit of current and future generations.
- consultation with Aboriginal people is important and needs to be sustained throughout the heritage assessment process to ensure cultural perspectives, views and concerns are taken into account.

It is Council's intention that proponents (including where Council is the proponent) of development strategies, studies, re-zoning or development proposals that impact on Indigenous people, will consult early in the process, prior to the proposal or study etc. being developed or lodged with Council, where achievable.

Council will also notify relevant Indigenous groups in accordance with this ~~policy~~ Policy once Council receives a development proposal where that proposal has the potential to impact on Indigenous people.

Council will require written correspondence from the relevant Indigenous organisations as evidence of the consultation process or where no such correspondence has been received, evidence of the consultation process that was

attempted.

6. When Council will Use the Policy

6.1 Strategic Planning

Consultation will occur in accordance with this [Policy](#) whenever:

- Council undertakes, initiates or reviews land use and development strategies and/or studies with the intent to identify areas for future development.
- A draft Local Environment Plan (LEP) proposal is lodged with or generated by Council under Part 3 of the EP&A Act.

and where that study, plan, review or proposal has the potential to impact on Indigenous people as defined by Part 6 of the [National Parks and Wildlife Act 1974](#) (NPW Act).

6.2 Plans of Management

Consultation will occur in accordance with this [Policy](#) whenever Council develops Plans of Management for Community ~~and Crown~~ Lands ~~(of which Council has care and management)~~ where that proposal has the potential to impact on Indigenous people as defined by Part 6 of the [National Parks and Wildlife Act 1974](#) (NPW Act).

6.3 Development Assessment

Consultation will occur in accordance with this ~~policy~~ [Policy](#) whenever a Development Application is lodged with or generated by Council under Part 4 of the [Environmental Planning and Assessment EP&A Act 1979](#) ~~for Designated Development as defined in Schedule 3 of the Environmental Planning and Assessment Regulation 2000~~ where that proposal has the potential to impact on Indigenous people, ~~as defined by in accordance with~~ Part 6 of the [National Parks and Wildlife Act 1974](#) (NPW Act). Council also reserves the right to consult in accordance with this ~~policy~~ [Policy](#) for ~~other types of developments that may, in the opinion of Council, if it is of the opinion that the proposal is be~~ of a type or location that may give rise to the operation of Part 6 of the [National Parks and Wildlife Act NPW Act](#).

[Under Clause 5.10\(8\) of LEP 2014 \(as below\), Council is required to provide written notification of a Development Application to the local Aboriginal communities, when the Development proposed is to be carried out in an Aboriginal place of heritage significance.](#)

[5.10 Heritage conservation](#)

[\(8\) Aboriginal places of heritage significance](#)

[The consent authority must, before granting consent under this clause to the carrying out of development in an Aboriginal place of heritage significance:](#)

- [\(a\) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment \(which may involve consideration of a heritage impact statement\), and](#)
- [\(b\) notify the local Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.](#)

[An Aboriginal place of heritage significance may be identified on the Heritage Map under LEP 2014 and/or through a search of the Aboriginal Heritage Information](#)

7. Identifying Organisations and People that Council will Consult With

In accordance with DECCW Consultation Requirements, the Indigenous people who can provide the information required to inform an assessment of cultural significance, are those Indigenous people who are the traditional owners or custodians of the land. Council and other proponents using this Policy must compile a list of Indigenous people who may have an interest in the area being assessed and who hold knowledge relevant to determining the cultural significance of Indigenous objects and/or places. The list ~~must will~~ be compiled by Lithgow City Council writing to and provided to proponents on request:

- ~~• Department of Environment and Heritage Environment Protection and Regulation Group.~~
- ~~• Bathurst Local Aboriginal Land Council~~
- ~~• National Native Title Tribunal~~
- ~~• Native Title Services Corporation~~
- ~~• The relevant Catchment Management Authorities for details of any Aboriginal Reference Groups~~
- ~~• Gundungurra Tribal Council Aboriginal Corporation~~
- ~~• Gundungurra Aboriginal Heritage Association~~
- ~~• Mingaan Aboriginal Corporation~~
- ~~• Native Title Services Corporation~~
- ~~• Wiradjuri Council of Elders~~

Council and other proponents must then write to the people identified as having an interest in the area as well as any other individual or organisation that registers its interest with Council to notify them of the details of the proposed project.

Proponents will also place an advertisement in the Lithgow Mercury advising of the proposed project.

8. Skills

Consultation with Indigenous people requires an understanding of Indigenous history and culture as well as certain skills, principles and ethics. Council will provide training to staff undertaking consultation in understanding and working with Indigenous communities.

9. Reimbursement of Costs

Council may consider requests from Indigenous people for the reimbursement of reasonable costs incurred in relation to Council consultation processes undertaken in accordance with this policy including travel, overnight accommodation and out of pocket expenses. The terms of any reimbursement will be negotiated prior to the costs being incurred.

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