


Name	Noel Webster
Business (if applicable)	Traditional Owner Yuin Walbunja
Email address or preferred method of contact	[REDACTED]
Postcode	2540
Do you want your submission marked as confidential? *	No
Do you want to receive future notifications and updates on the PNF Review? *	Yes
Which of the following best describes you? *	Custodian Steward
Which draft PNF Code are you providing a submission on? *	Southern NSW
Attach your submission	 review private native forestry code of practice for southern nsw.pdf 204.52 KB · PDF

Private Native Forestry Code of Practice for Southern NSW review submission

The NPW Act, administered by Department of Planning, Industry and Environment (DPIE), is the primary legislation for the protection of 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))

DPIE recognises and acknowledges Aboriginal people as the primary determinants of the cultural significance of their heritage. In recognising these rights and interests, 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; and
- 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.

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.

Private Native Forestry (PNF, 2008) have developed a standardised code of practice for undertaking Cultural Heritage Surveys on freehold lands within the South Coast Region of NSW. The PNF code of practice has been developed to guide PNF exercise due diligence when carrying out harvesting operations that may harm Aboriginal objects and to either ensure the protection of Aboriginal cultural heritage objects or sites and to determine whether it should apply for consent to harm in the form of an Aboriginal Heritage Impact Permit (AHIP).

PNF requirements for protecting landscape features:

Aboriginal object or place as defined in the National Parks and Wildlife Act 1974

Forestry operations must not occur within:

- 50 metres of a known burial site
- 20 metres of an Aboriginal scarred or carved tree
- 10 metres of a known Aboriginal object or place (this requirement does not apply to Aboriginal objects or places that may lawfully be destroyed).

Areas containing items identified as heritage items in an environmental planning instrument

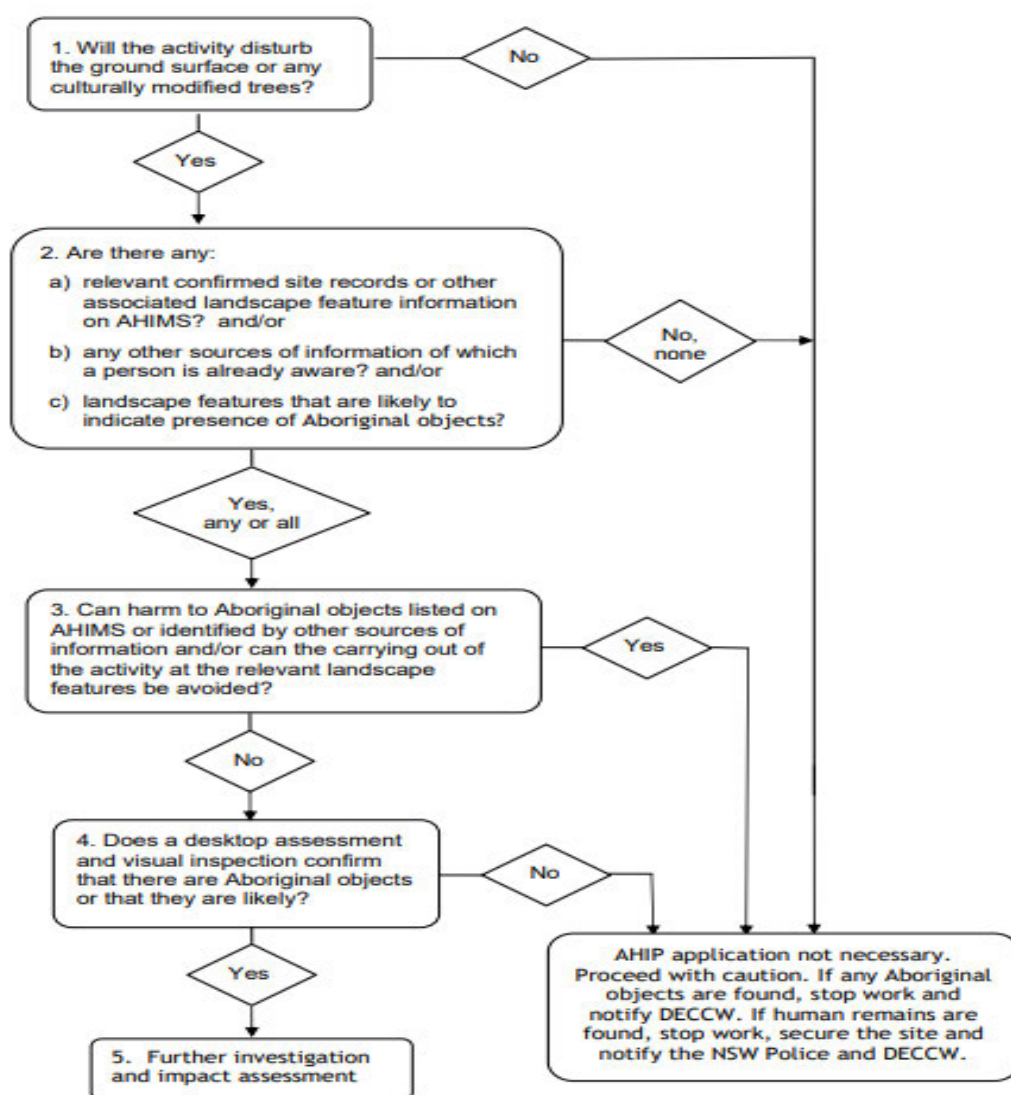
- Forestry operations must not occur within 10 metres of a listed heritage item.

(Table B in PNF Code of Practice).

The PNF Code of Practice sets out a procedure which, when followed, **DOES NOT** satisfy the due diligence requirement from perspective and dialog of local Aboriginal communities. The Code of Practice for PNF is not considered a due diligence process to satisfactorily assess the Cultural Heritage values within the harvest activity zone providing a process whereby a reasonable determination can be made as to whether Aboriginal objects will be harmed by an activity, whether further investigation is warranted and whether the activity requires an AHIP application.

Aboriginal cultural heritage assessment exercised through PNF Code of Practice does not meet DPIE Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales to establish due diligence you must proceed through the generic due diligence process outlined in the flowchart in section 8.

8 The generic due diligence process



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.

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, or
- located within a sand dune system, 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

The risk assessment filters are a standardised tool that is adapted and applied across industries and government sector. The application of this assessment process is absent within the PNF code of practice. It is the belief of Aboriginal communities on the south coast that the generic code filters (section 8) be applied within the PNF code of practice and a separate assessment that specifically follows the steps in this code be undertaken to identify Aboriginal objects in an area subject to a proposed activity.

The former OEH (2010) now DPIE have authored the Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales to assist individuals and organisations to exercise due diligence when carrying out activities that may harm Aboriginal objects, a standard approach. Yet the same organisation the former OEH has endorsed a weaker PNF code of practice that does not measure against the generic process. This process is conflicting where you have agencies working under the same organisational cluster.

One functional team applying a more robust approach and the sustainable land management unit that administer PNF operations employing a frailer approach to the assessment of cultural heritage values and engagement with local Aboriginal community groups. What requires definition is what the approach is for PNF operations by NSW government agency, an approach applying the same standard process, complying with the requirements set out in the generic code of practice. How can a organisation deflect from the standard requirement set by an agency that are affiliated as NSW Department of Planning, Industry and Environment?

What practice takes a precedent as an over riding framework for the protection of Cultural Heritage values in NSW.

Recommendation

Establish the requirements for undertaking Cultural Heritage Surveys as a part of the Operational Guidelines for Aboriginal Cultural Heritage Management and to ensure that PNF exercises due diligence in determining that their actions would not harm Aboriginal objects.

When undertaking Cultural Heritage assessments PNF must use the services of people who are skilled and experienced in assessing Cultural Heritage values. The skills and experience may be offered by Aboriginal people within the organisation or sourced from Aboriginal community groups with a strong cultural association to the study area.

Reviewing existing knowledge, analyse and synthesise previous archaeological information and relevant contextual information. This process should indicate the nature and range of material traces of Aboriginal land use to be expected within the specific landscape contexts in the subject area. This knowledge provides a framework for interpreting the material traces within the subject area, and for understanding the cumulative impacts to Aboriginal heritage in the subject area.

Extended AHIMS searches beyond the proposed activity zone to include an area large enough to allow adequate landscape interpretation and provide sufficient understanding of the distribution of the sites within the landscape.

Review the landscape context to assist in the determination or prediction of the potential of the landscape, over time, to have accumulated and preserved objects. the ways Aboriginal people have used the landscape in the past and the likely distribution of the material traces of Aboriginal land use.

Cultural Heritage assessment report acknowledged, reviewed and endorsed by Aboriginal representation to be considered to meet the steps in the generic due diligence process.



Yuin Walbanja Country Custodian Steward

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