



## Chapter 14.0 - Aboriginal and Historical Cultural Heritage

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## 14.0 Aboriginal and Historical Cultural Heritage

### 14.1 Overview

This chapter is a summary of three reports commissioned to assess both Indigenous and non-Indigenous heritage values along by the proposed KBP. Desktop studies, searches of relevant databases and a field assessment have been completed as part of this assessment. This chapter was prepared by DMR cultural heritage officers.

### 14.2 Legislative Requirements

#### 14.2.1 Federal

The main piece of Federal legislation dealing with heritage protection and management is the *Environmental Protection and Biodiversity Conservation Act 1999* (EPBC Act). The EPBC Act provides mechanisms for management and protection of Australia's heritage places, including World Heritage properties. It provides for the listing of natural, historical or Indigenous places that are of outstanding heritage value to the Australian nation as well as heritage places on Commonwealth lands and waters or under Australian Government control.

Four heritage registers are maintained under the EPBC Act: the World Heritage list, the National Heritage List, the Commonwealth Heritage List and the Register of the National Estate. Where:

- A declared World Heritage property is an area that has been included in the World Heritage List or declared by the Minister to be a World Heritage property.
- The National Heritage List includes natural, historic and Indigenous places of outstanding heritage value.
- The Commonwealth Heritage List comprises natural, Indigenous and historic heritage places on Commonwealth lands and waters or under Australian Government control.
- The Register of the National Estate is a list of natural, Indigenous and historic heritage places throughout Australia. Following amendments to the *Australian Heritage Commission Act 1975*, the Register of the National Estate (RNE) was frozen on 19 February 2007, which means that no new places can be added or removed.

Once a heritage place is listed under the EPBC Act, special requirements come into force to ensure that the values of the place will be protected and conserved for future generations. The exception to this is the Register of the National Estate, which was frozen in 2007, meaning that places can no longer be added to this register, nor given protection. The EPBC Act provides for the preparation of management plans which set out the significant heritage aspects of the place and how the values of the site will be managed.

#### 14.2.2 State

In regard to Aboriginal cultural heritage, the paramount legislation in Queensland is the *Aboriginal Cultural Heritage Act 2003*, which states that a person who carries out an activity must take all reasonable and practicable measures to ensure the activity does not harm Aboriginal cultural heritage (the "**cultural heritage duty of care**") (Section 23[1]).

The *Aboriginal Cultural Heritage Act 2003* states that a person who carries out an activity must take all reasonable and practicable measures to ensure the activity does not harm Aboriginal cultural heritage (the "**cultural heritage duty of care**") (Section 23[1]). Compliance with the cultural heritage duty of care is an important consideration for all landowners and those who wish to carry out an activity on land.

Aboriginal cultural heritage is defined as:

Anything that is -

- a) a significant Aboriginal area in Queensland; or
- b) a significant Aboriginal object; or

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- c) evidence, of archaeological or historic significance, of Aboriginal occupation of an area of Queensland (Section 8).

The concept of "significance" is defined as being:

Of particular significance to Aboriginal people because of either or both of the following -

- a) Aboriginal tradition;
- b) the history, including contemporary history, of any Aboriginal party for the area (Sections 9-10).

The *Aboriginal Cultural Heritage Act 2003* allows for the preparation of the Duty of Care Guidelines, which have been prepared and were gazetted at the time of the Act coming into effect. The Duty of Care Guidelines provides definitions for assessing the nature of development against the potential sources of damage on Aboriginal cultural heritage. The pertinent definitions to this report are as follows:

- "Cultural Heritage Find" means a significant Aboriginal object or, evidence of archaeological or historic significance of Aboriginal occupation of an area of Queensland, or Aboriginal human remains, found in the course of undertaking an activity covered by these guidelines.
- "Developed Area" means that the area is developed or maintained for a particular purpose such as use as a park, garden, railway, road or other access route, navigation channel, municipal factory or infrastructure facility, such as powerlines, telecommunication lines or electricity infrastructure.
- "No Additional Surface Disturbance" means surface disturbance not inconsistent with previous surface disturbance.
- "Significant Ground Disturbance" means:
  - (i) disturbed by machinery of the topsoil or surface rock layer of the ground, such as by ploughing, drilling or dredging; or
  - (ii) the removal of native vegetation by disturbing root systems and exposing underlying soil.
- "Surface Disturbance" means any disturbance of an area which causes a lasting impact to the land or waters during the activity or after the activity has ceased.

The Duty of Care Guidelines then divide activities and the effects they may have on Aboriginal cultural heritage into five categories:

**Category 1** - pertains to activities that involve No Surface Disturbance. It is held that activities which pose no threat to Aboriginal cultural heritage, such as walking or driving along an existing road, comply with the Duty of Care Guidelines as set out in the *Aboriginal Cultural Heritage Act 2003* and as such, the activity is able to continue without further cultural heritage assessment.

**Category 2** - encompasses activities that will cause No Further Surface Disturbance to an area. The *Aboriginal Cultural Heritage Act 2003* maintains that if an activity is causing No Further Surface Disturbance then any Aboriginal cultural heritage that remains will not be disturbed or damaged any further than what has previously occurred. As such, the activity is complying with the Duty of Care Guidelines of the Act and so may continue without further cultural heritage assessment.

**Category 3** - provides for activities carried out in a Developed Area. When an activity is carried out under these circumstances, the *Aboriginal Cultural Heritage Act 2003* holds that no further cultural heritage assessment is necessary.

**Category 4** - pertains to areas that have previously been subject to Significant Ground Disturbance. This category holds that any further activity may not damage or disturb Aboriginal cultural heritage, but makes provision for possible residual Aboriginal cultural heritage significance being in the activity area. This category is predicated by the fundamental principle of the *Aboriginal Cultural Heritage Act*

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2003, namely the recognition, protection and conservation of Aboriginal cultural heritage (Section 5); and by the direction of the Duty of Care Guidelines to consultation with Aboriginal Parties.

**Category 5** - encompasses any activity which does not fall into any of the preceding categories. This category makes the assumption that there is a high risk of the activity damaging or disturbing Aboriginal cultural heritage. As such, the *Aboriginal Cultural Heritage Act 2003* requires that cultural heritage be addressed prior to any activity taking place. This is done through a Cultural Heritage Management Plan (CHMP), Cultural Heritage Study or by Agreement.

A person who carries out an activity is considered to have complied with the cultural heritage duty of care if they are acting under:

- Another provision of the *Aboriginal Cultural Heritage Act 2003*;
- An approved CHMP;
- A native title agreement or another agreement with an Aboriginal party, unless Aboriginal cultural heritage is expressly excluded from being subject to the agreement; or
- In compliance with the Cultural Heritage Duty of Care Guidelines to the *Aboriginal Cultural Heritage Act 2003* (Section 23[4a]).

This Act also defines the representative Aboriginal group for an area as the 'aboriginal party'. For this proposed project area the Aboriginal party is the Turrbal people.

A heritage register has been created under the provisions of the *Queensland Heritage Act 1992*. Places are registered and thus entered (listed) in the Queensland Heritage Register according to a set of criteria outlined in the Act.

Under section 35(1) of the *Queensland Heritage Act 1992*, a place may be entered in the register if it satisfies one or more of the following criteria:

- a) if the place is important in demonstrating the evolution or pattern of Queensland's history;
- b) if the place demonstrates rare, uncommon or endangered aspects of Queensland's cultural heritage;
- c) if the place has potential to yield information that will contribute to an understanding of Queensland's history;
- d) if the place is important in demonstrating the principal characteristics of a particular class of cultural place;
- e) if the place is important because of its aesthetic significance;
- f) if the place is important in demonstrating a high degree of creative or technical achievement at a particular period;
- g) if the place has a strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;
- h) if the place has a special association with the life or work of a particular person, group or organisation of importance in Queensland's history.

Any person or organisation intending to develop within the boundaries of a listed site must seek the approval of either the Environmental Protection Agency or the Queensland Heritage Council depending on the size or scope of the project.

For development by the State, the relevant Minister must submit a report on the proposed development to the Heritage Council. The Council is then required to publish details about the proposal and invite public comment. The Council must then consider the public submissions and recommend to the Minister whether the development should or should not proceed, or if the development should be modified. The Minister then considers whether to accept or reject the Council's recommendation.

Under s89 of the *Queensland Heritage Act 1992*, accidental finds and discoveries of archaeological artefacts and places that are potentially important sources of information about Queensland's history

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must be reported to the Environmental Protection Agency. Penalties apply for failure to report such finds, and for interfering with discoveries.

## 14.2.3 Local Government (BCC)

In considering places of local heritage value, the BCC City Plan adopts a set of criteria that meets a threshold of local significance. This is addressed under the City Plan. Part 2.1 of the City Plan's heritage register Planning Scheme Policy states that:

A place may be entered in Schedule 1 (the Heritage Register) if it meets one of the following cultural heritage values:

- it is important in demonstrating the evolution or pattern of the City's or local area's history;
- it demonstrates rare, uncommon or endangered aspects of the City's or local area's cultural heritage;
- it has potential to yield information that will contribute to an understanding of the City's or local area's history;
- it is important in demonstrating the principal characteristics of a particular class of cultural places;
- it is important because of its aesthetic significance;
- it is important in demonstrating a high degree of creative or technological achievement at a particular period;
- it has a strong or special association with the life or work of a particular community or cultural group for social, cultural or spiritual reasons;
- it has a special association with the life or work of a particular person, group or organisation of importance in the City's or local area's history.

## 14.2.4 Historical Heritage Significance

The Burra Charter (Marquis-Kyle and Walker 1999) continues to guide cultural heritage management in Australia. First adopted in 1979 by Australia ICOMOS (International Council on Monuments and Sites), the charter defines conservation as 'the processes of looking after a place so as to retain its cultural significance' (Article 1.4). A place is considered significant if it possesses aesthetic, historic, scientific or social value for past, present or future generations (Article 1.2).

The themes of the Burra Charter are encapsulated in the *Queensland Heritage Act 1992*, which provides a set of criteria for measuring the significance of a site or place. Under Section 23(1) of this Act, a place may be entered in the register if it is of cultural heritage significance in accordance with Section 4 of the Act and satisfies one or more of the following criteria:

- a) If the place is important in demonstrating the evolution or pattern of Queensland's history;
- b) If the place demonstrates rare, uncommon or endangered aspects of Queensland's cultural heritage;
- c) If the place has potential to yield information that will contribute to an understanding of Queensland's history;
- d) If the place is important in demonstrating the principal characteristics of a particular class of cultural places;
- e) If the place is important because of its aesthetic significance;
- f) If the place is important in demonstrating a high degree of creative or technical achievement at a particular period;
- g) If the place has a strong or special association with a particular community or cultural group for social, cultural or spiritual reasons;
- h) If the place has a special association with the life or work of a particular person, group or organisation of importance in Queensland's history.

## 14.3 Existing Aboriginal Cultural Heritage Information

A search of the Department of Natural Resources and Mines cultural heritage databases indicate there are four registered cultural heritage sites within the project area as detailed in Table 14.1 below.

**Table 14.1: Registered Cultural Heritage Sites**

KB:A34	The Moggill Bora Ring, located approximately 500 metres west of Moggill Road at Bellbowrie and is approximately 5 kilometres west of the project area
KB:A63	An artefact scatter is a residential development at Pullenvale
KB:B53	Axe grinding grooves on the side of the Brisbane River at Westlake
KB:B57	A scarred tree at Indooroopilly

## 14.4 Technical Archaeological Survey

A technical archaeological survey was conducted the University of Queensland Archaeological Services Unit (UQASU) on 15 September, 2008. (UQASU, 2008)

### Results

The project area is a highly disturbed semi-rural/suburban landscape which has been significantly modified over time. These modifications include extensive clearing and alteration of the landscape for agricultural pursuits and development of the urban environment including construction of houses and associated infrastructure such as transport networks, electricity and telecommunication services. As a result, little remains of the historical landscape. It must be remembered, however that within an urban landscape, any ground disturbing activities have potential to reveal sub-surface archaeological material. As such, a currently unknown archaeological record may be revealed during ground disturbance.

Ground surface visibility was zero across the majority of the project area. Two artefacts (silcrete flakes) were located at 56494241E, 6955881N, within five metres of Kenmore Road. The scientific significance of these artefacts was considered to be low given the context of the artefacts and the likelihood that it was in a secondary rather than primary location.

## 14.5 Aboriginal Cultural Heritage

The Turrbal People, the Aboriginal Party for the project area, compiled a report detailing the cultural significance of the project area. It was concluded that despite the impacts of prolonged development, the project area still retained deep cultural heritage significance for the Turrbal People. (Turrbal Association Inc., 2008)

## 14.6 Historical Heritage

A Historical cultural heritage desktop report was completed by DMR. Information was gathered through literature searches, historical heritage register searches and field assessment. (Main Roads, 2008a)

### Results

Searches were conducted of the Australian Heritage Database, Queensland Heritage Register, Brisbane City Council Heritage Register and the National Trust Register to determine if registered historical heritage sites are located within the project area.

While no sites were found in the project area, the Brisbane City Council heritage register listed the Rafting Ground, located at 2328 Moggill Road, in close proximity to the project area.

Literature searches revealed that a Chinese market garden existed on the banks of Cubberla Creek in close proximity to the sporting fields.

The field survey located three sites, however it is considered they would only have local significance, at best.

An area of cleared land in an easement has scattered fragments of glass, porcelain, cement and metal, as well as an old fence line. It is likely there was a house which has been removed from this area.

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A relatively modern bottle dump with beer, soft drink and wine bottles, possibly dating to the 1970s was observed adjacent to a concrete walking track.

Adjacent to the Yarawa Pony Club is a late nineteenth century timber and tin house in poor condition.

## 14.7 Potential Impacts and Mitigation Measures

The UQASU recommends that:

- Representatives of the Aboriginal Party collect the two stone artefacts from Kenmore Road prior to commencement of earthmoving activities associated with the KBP; and
- Representatives of the Aboriginal Party monitor the initial earthmoving activities associated with the KBP and collect any stone artefacts exposed by the earthmoving.

The Turrbal People recommends that:

- DMR open discussions and negotiations with the Turrbal representatives regarding native title matters (particularly in relation to that portion of the Yarawa Pony Club which is subject to the Turrbal Native Title claim) and cultural heritage during the life of this project;
- The removal of mangroves and/or vegetation (especially around Moggill Creek) which may be associated with the project be monitored by Turrbal personnel;
- All activities in the precinct of Moggill Creek and the Brisbane River that may impact on marine life be monitored by Turrbal personnel; and
- All ground-breaking activities undertaken by DMR which may impact on the Turrbal cultural heritage values be monitored by Turrbal personnel.

DMR recommends that:

- As part of the environmental site inductions, all site personnel should be made aware of the potential for as yet unknown items of historical heritage remaining with the project area, for example, around the Yarawa Pony Club and the former Chinese market garden near Cubberla Creek.

Additionally, all site personnel should be made aware of their obligation under the *Queensland Heritage Act 1992* to report the discovery of an archaeological artefact to the Chief Executive of the Environmental Protection Agency, stating where it was discovered and including a description and photograph (s.89).

A summary of the potential impacts and mitigation measures is detailed in Table 14.2.



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Table 14.2: Potential Impacts and Mitigation Measures

Reference Code	Project Phase	Potential Impact	Potential Mitigation Measures
CH01	All phases		The Turrbal People recommend that DMR open discussions and negotiations with the Turrbal representatives regarding native title matters (particularly in relation to that portion of the Yarawa Pony Club which is subject to the Turrbal Native Title claim) and cultural heritage during the life of this project.
CH02	Construction	Loss of Aboriginal cultural heritage.	The UQASU recommend that representatives of the Aboriginal Party collect the two stone artefacts from Kenmore Road prior to commencement of earthmoving activities associated with the KBP
CH03	Construction	Loss of as yet unknown Aboriginal or historic cultural heritage.	<ul style="list-style-type: none"> <li>The UQASU recommend that representatives of the Aboriginal Party monitor the initial earthmoving activities associated with the KBP and collect any stone artefacts exposed by the earthmoving;</li> <li>The Turrbal People recommend that all ground-breaking activities undertaken by DMR which may impact on the Turrbal cultural heritage values be monitored by Turrbal personnel.</li> <li>DMR recommends that as part of the environmental site inductions, all site personnel should be made aware of the potential for as yet unknown items of historical heritage remaining with the project area, for example, around the Yarawa Pony Club and the former Chinese market garden near Cubberla Creek.</li> </ul> <p>Additionally, all site personnel should be made aware of their obligation under the <i>Queensland Heritage Act 1992</i> to report the discovery of an archaeological artefact to the Chief Executive of the Environmental Protection Agency, stating where it was discovered and including a description and photograph (s.89).</p>
CH04	Construction	Removal or destruction of flora and fauna.	<p>The Turrbal People recommend that:</p> <ul style="list-style-type: none"> <li>The removal of mangroves and/or vegetation (especially around Moggill Creek) which may be associated with the project be monitored by Turrbal personnel; and</li> <li>All activities in the precinct of Moggill Creek and the Brisbane River that may impact on marine life be monitored by Turrbal personnel.</li> </ul>