

Aboriginal Cultural Heritage Policy & Guidelines

Policy Details

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Policy Owner	Director Corporate Services
Contact Officer	Justin Hancock
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Supporting documentation

Legislation	<ul style="list-style-type: none"> • <i>Aboriginal Cultural Heritage Act 2003</i> • <i>Local Government Act 2009</i> • <i>Local Government Regulation 2012</i>
Policies	<ul style="list-style-type: none"> • Nil
Delegations	<ul style="list-style-type: none"> • Nil
Forms	<ul style="list-style-type: none"> • Cultural Heritage Consultation Notice
Supporting Documents	<ul style="list-style-type: none"> • <i>Aboriginal Cultural Heritage Act 2003 Duty of Care Guidelines</i>

Version History:

Version	Adopted	Comment	eDRMS #
1	27/02/2013	Council Resolution 0213/009	
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Intent

The purpose of this policy is to define procedures and protocols to ensure that Aboriginal Cultural Heritage is protected within Carpentaria Shire and to ensure Council discharges its duty of care under the *Aboriginal Cultural Heritage Act 2003*.

Scope

This policy applies to all work activities undertaken by Council regardless whether this work is undertaken by staff or contractors.

Policy Statement

Council recognises the potential impact that some Council activities may cause to Aboriginal Cultural Heritage. Aboriginal Cultural Heritage is protected under Commonwealth and State legislation. The *Aboriginal Cultural Heritage Act 2003* (Qld) (“ACHA”) imposes a cultural heritage duty of care on all persons who carry out an activity. The person must take all reasonable and practical measures to ensure the activity does not harm Aboriginal Cultural Heritage.

Fundamental to the main purpose of the ACHA, which is to provide effective recognition, protection and conservation of Aboriginal Cultural Heritage are the following principles —

- Recognition, protection and conservation of Aboriginal Cultural Heritage should be based on respect for Aboriginal knowledge, culture and traditional practices;
- Aboriginal people should be recognised as the primary guardians, keepers and knowledge holders of Aboriginal Cultural Heritage;
- It is important to respect, preserve and maintain knowledge, innovation and practices of Aboriginal communities and to promote understanding of Aboriginal Cultural Heritage.

Activities involved in recognition, protection and conservation of Aboriginal Cultural Heritage should be assessed for compliance with the ACHA and the Cultural Heritage Duty of Care Guidelines (“Duty of Care Guidelines”)¹ because they allow Aboriginal people to reaffirm their obligation to ‘law and country’.

Consultation Notice

Depending on the nature of the activity, the likelihood of its causing harm to Aboriginal Cultural Heritage and the nature of the Aboriginal Cultural Heritage likely to be harmed by the activity, Council may publish a consultation notice prior commencing work on the activity, inviting comments on any cultural heritage which may exist.

Council will aim to publish consultation notices at least 30 business days prior to commencing an activity to which the Duty of Care Guidelines apply.

Procedure Prior To The Commencement of Council Projects

Prior to the commencement of works, it is expected that the following checks and assessments have occurred—

¹ Section 23 of the *Aboriginal Cultural Heritage Act 2003*

- A search of the Cultural Heritage database and Cultural Heritage Register has been undertaken and considered. It may be sufficient that previous recent searches over the same area have been undertaken and no changes, to the best of officers' knowledge, have occurred;
- An assessment of the works against the Cultural Heritage Duty of Care guidelines has been undertaken by Council officers.

In some cases, additional measures may be put in place depending on the nature of the works and the degree of previous disturbance which may have occurred on a site. These measures may be set out in a Cultural Heritage Agreement or Cultural Heritage Management Plan between Council and Aboriginal Parties. If such an Agreement or Plan has been entered into, the additional measures that may be included are—

- A surface inspection by Aboriginal Parties and Council officers to confirm that there is no obvious Aboriginal Cultural Heritage within the area to be disturbed by the works;
- Agreed monitoring arrangements for the initial surface disturbance and excavation work associated with the project. Council will have the sole discretion when determining whether monitors are required in order to discharge its duty of care in relation to a particular project;
- Specific agreed and documented cultural heritage finds procedures with the relevant Aboriginal parties.

The Director of the relevant area of Council that is undertaking the works is responsible for the development of a Cultural Heritage Management Plan, if applicable, in conjunction with the Chief Executive Officer. Council approval is required for any final plan.

Monitoring Arrangements

Where Council determines that monitors need to be engaged in relation to particular works, the rates set out in the table below will apply.

Item	Rate
Administration Fee	15% of the total value of the component of any invoice relating to the rates of the Field Officers, Monitors and Technical Advisers (incl. GST)
Monitor	\$418.00 (gross) per 9 hour day and an equivalent hourly rate of \$46.44 (gross) for each hour or part thereof over 9 hours.
	\$209.00 (gross) for any period under 5 hours
Cultural Heritage Coordinator	\$48.88 (gross) per hour.
Vehicle Allowance	\$200.00 per full day (more than 5 hours) (maximum 1 vehicle, inclusive of fuel)
	\$100.00 per half day (less than 5 hours) (maximum 1 vehicle, inclusive of fuel)
Meal Allowance Lunch	\$22.00 + GST per full day (more than 5 hours)

For clarity purposes, the rates detailed in the above table are the gross amounts payable to monitors, regardless of the hours or days engaged, and there is no provision for penalty rates to apply.

No variation of rates detailed in the above table and/or additional fees are payable unless a Council resolution is obtained in advance.

The number of monitors engaged for works will be determined by Council. Council will generally only pay for monitors to undertake initial site assessments. There may also be a need to engage monitors under the Cultural Heritage Finds Procedures set out below.

No monitoring work will be paid for by Council unless approved in advance by the relevant director and unless a purchase order has been issued for such works.

Council reserves the right to commence or proceed with works, subject to the Duty of Care Guidelines, should monitors not arrive at the nominated time for the monitoring works.

Cultural Heritage Finds

The following procedure is the process which Council will ordinarily follow when a Cultural Heritage Find (CHF) is located—

1. In the event that a CHF is made that is not of human remains, the employee or contractor will cease all work in the vicinity of the CHF and notify the Project Supervisor. The Project Supervisor will immediately ensure that a buffer zone, (being no less that a radius of 10 metres from the CHF) is established to prevent any harm or any further harm to the CHF.
2. The Supervisor will contact the Chief Executive Officer or relevant Director to obtain further direction in relation to the CHF.
3. The Chief Executive Officer or the relevant Director will contact the relevant Aboriginal Party to discuss the CHF, including a request to meet and discuss possible avoidance, relocation or other appropriate agreed options.
4. In the absence of identifying an Aboriginal Party, the Aboriginal representative body for the area, Carpentaria Land Council Aboriginal Corporation (“CLCAC”), may be contacted to obtain details of relevant Aboriginal persons for the area.
5. If a CHF which comprises human remains is found, all work in the vicinity of the CHF will cease and an appropriate buffer established. The buffer area will usually be all land within a 10 metre radius of the CHF;
6. If a CHF which comprises human remains is found, in addition to the steps set out above, the Queensland Police Service must be contacted immediately. All care should be taken to ensure that any evidence or forensic information is not further destroyed or contaminated.

Cultural Heritage Find Other Than Human Remains		
Step	Action	Responsibility
1	Council will immediately cease work in the immediate vicinity of the Cultural Heritage Find (including establishing a buffer zone).	Carpentaria Shire Council
2	Council will contact, as soon as practicable,— a) The relevant Aboriginal Party; or b) Carpentaria Land Council Aboriginal Corporation; or c) Cultural Heritage Co-ordination Unit.	Carpentaria Shire Council
3	Council is to give notice of CHF to Aboriginal Party or Carpentaria Land Council Aboriginal Corporation.	Carpentaria Shire Council
4	The Council and the Aboriginal Party will conduct a meeting after notice of the CHF is given, to discuss appropriate management arrangements.	Carpentaria Shire Council
5	Written confirmation of agreed arrangement to be exchanged.	Carpentaria Shire Council

Cultural Heritage Find <u>Comprising of Human Remains</u>		
Step	Action	Responsibility
1	Council will immediately cease work in the immediate vicinity of the CHF (including establishing a buffer zone) and will preserve the site and any potential evidence.	Carpentaria Shire Council
2	The Queensland Police Service (QPS) must be notified of the CHF.	Carpentaria Shire Council
3	Council will contact, as soon as practicable,— a) The relevant Aboriginal Party; or b) Carpentaria Land Council Aboriginal Corporation; or c) Cultural Heritage Co-ordination Unit.	Carpentaria Shire Council
4	Council to give notice of CHF to Aboriginal Party or Carpentaria Land Council Aboriginal Corporation.	Carpentaria Shire Council
5	Police initiate a crime scene response, preservation and forensic pathology.	Queensland Police Service
6	Cultural Heritage Coordination Unit called to attend scene.	Carpentaria Shire Council
7	Material inspection by police in conjunction with Aboriginal Party where appropriate.	Queensland Police Service and Aboriginal Party
8	If applicable, second opinion may be obtained from Police or their nominated expert.	Queensland Police Service or Nominated Expert

Determination of Human Remains		
Step	Action	Responsibility
1	Formally determined as Aboriginal remains.	Queensland Police Service
2	Likely Aboriginal remains and no suspected criminality— a) Cultural Heritage Coordination Unit contacts all relevant Aboriginal persons for immediate involvement. b) Second opinion obtained from Police or their nominated expert.	Queensland Police Service or Nominated Expert
3	Non-Aboriginal remains or suspected criminality or other doubt exists — Police to coordinate	Queensland Police Service

Definitions

TERM	DEFINITION
Aboriginal Cultural Heritage	As defined in section 8 of the <i>Aboriginal Cultural Heritage Act 2003</i> : Aboriginal cultural heritage is anything that is— <ul style="list-style-type: none"> a) a significant Aboriginal area in Queensland; or b) a significant Aboriginal object; or c) evidence, of archaeological or historic significance, of Aboriginal occupation of an area of Queensland.
Aboriginal Party	Is the relevant traditional owner group or their representatives.
ACHA	Refers to the <i>Aboriginal Cultural Heritage Act 2003</i> .
Council	Is the Carpentaria Shire Council including all employees, agents and contractors of Council.
Cultural Heritage Find	Includes, but is not limited to, significant Aboriginal objects, or evidence of archaeological or historic significance of Aboriginal occupation or Aboriginal human remains, found during Council works.
Harm	As defined in the <i>Aboriginal Cultural Heritage Act 2003</i> , means damage or injury to, or desecration or destruction of, the cultural heritage.
Works	Is any activity undertaken by or on behalf of Council that has the potential to harm Aboriginal Cultural Heritage.

Adopted by Council 26 February 2020 by Resolution 0220/014.

Mark Crawley
Chief Executive Officer