

1. Policy Statement

The main purpose of the *Aboriginal Cultural Heritage Act 2003* ("the ACH Act") is to provide effective recognition, protection and conservation of Aboriginal cultural heritage. The Queensland Department of Aboriginal and Torres Strait Islander Partnerships is responsible for administering this Act.

In summary, the ACH Act:

1. provides blanket protection of areas and objects of traditional, customary, and archaeological significance,
2. recognises the key role of Traditional Owners (called the 'Aboriginal party' in the ACH Act) in cultural heritage matters including the ownership of heritage, and
3. establishes processes for dealing with cultural heritage in a timely manner including the establishment of a database and a register for recording Aboriginal cultural heritage

The ACH Act requires that anyone who carries out an activity take all reasonable and practicable measures to ensure the activity does not harm Aboriginal cultural heritage (the cultural heritage duty of care).

There are substantial penalties for breaching this duty of care which could apply to both Council and also individual Council employees. The maximum penalty for a corporation is 10,000 penalty units and for an individual 1,000 penalty units (at 01/07/2017 1 penalty unit = \$126.15). In addition the costs of rehabilitation may also need to be paid.

Hinchinbrook Shire Council is committed to meeting its statutory cultural heritage duty of care and to working in partnership with Traditional Owners/Aboriginal parties to maintain and protect Aboriginal cultural heritage.

2. Scope

This Policy provides a strategic framework for work procedures that ensure Council and Council officers meet the statutory cultural heritage duty of care and that Council also develops relationships with local Traditional Owners/Aboriginal parties to achieve this.

The statutory cultural heritage duty of care applies to many local government activities including roadworks, fencing, quarries, pipelines, boardwalks, dredging, playgrounds, tree clearing, grading, and infrastructure maintenance. The cultural heritage duty of care could apply to any activity that involves surface disturbance or significant ground disturbance.

This Policy also supports Council's broader commitment to Reconciliation by working in partnership with the Aboriginal party identified in accordance with the ACH Act.

3. Responsibility

The CEO is responsible for implementation of this Policy.

4. Definitions

This policy adopts the definitions in the ACH Act and the Duty of Care Guidelines (gazetted 16/04/2004), including:

Meaning of Aboriginal cultural heritage: Aboriginal cultural heritage is anything that is:

- a significant Aboriginal area in Queensland;
- a significant Aboriginal object; or
- evidence, of archaeological or historical significance, of earlier Aboriginal occupation of an area of Queensland.

Meaning of significant Aboriginal area: A significant Aboriginal area is an area 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.

* Under the Acts Interpretation Act 1954, section 36 (Meaning of commonly used words and expressions), Aboriginal tradition means the body of traditions, observances, customs and beliefs of Aboriginal people generally or of a particular community or group of Aboriginal people, and includes any such traditions, observances, customs and beliefs relating to particular persons, areas, objects or relationships.

Meaning of significant Aboriginal object: A significant Aboriginal object is an object of particular significance to Aboriginal people because of either or both of the following—

(a) Aboriginal tradition;

(b) the history, including contemporary history, of an Aboriginal party for an area.

Meaning of Aboriginal party: Read Part 4 of the ACH Act

“No Additional Surface Disturbance” means surface disturbance not inconsistent with previous surface disturbance.

“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.

“Significant Ground Disturbance” means:

- (a) disturbance by machinery of the topsoil or surface rock layer of the ground, such as by ploughing, drilling or dredging;
- (b) the removal of native vegetation by disturbing root systems and exposing underlying soil.

5. Policy

The purpose of this policy is to assist Council staff understand and comply with the cultural heritage duty of care.

During native title claim proceedings, Council will join in local government negotiations with the applicant of each registered native title claim group towards settling an Indigenous land use agreement (ILUA) that details clear and simple Aboriginal cultural heritage compliance procedures (and also native title “future act” processes) for local government projects and activities.

The proposed ILUA compliance procedures will be tailored to local government activities, reflect local circumstance and be consistent across all local governments with which the native title claim group has to deal. Council will meet its duty of care by complying with the procedures recorded in an authorised ILUA for the area.

Until such an ILUA is settled for an area where Council activities are planned, before commencing any activities Council staff should assess on a project/activity by project/activity basis what reasonable and practicable measures need to be taken to meet the cultural heritage duty of care.

Such an assessment should always include undertaking a search of the Queensland Aboriginal Cultural Heritage Register and Database for both the Aboriginal party for the area in question and also any cultural heritage sites registered.

This search can be conducted on-line at: <https://culturalheritage.datsip.qld.gov.au/achris/public/home> after registering as a user.

Regardless of the search results, consideration must also always be given to the Duty of Care Guidelines (14/04/2004) after an assessment is made about:

- nature of the proposed activity,
- the likelihood of damage to Cultural Heritage, and
- the nature and extent of past land use.

The guidelines recognise that:

- some activities are unlikely to harm Aboriginal or Torres Strait Islander cultural heritage
- the nature and extent of past land uses in an area may mean that any further activity in the area is unlikely to harm Aboriginal or Torres Strait Islander cultural heritage.
- when there is a risk of harm to Aboriginal cultural heritage reasonable measure must be taken to avoid such harm. Such measures would include contacting the Aboriginal party about management of the site and possibly recording the agreed management measures in an agreement signed by the parties or in another written form acceptable to the parties (for example, a letter).

The Council's Native Title Officer is responsible for co-ordinating the Aboriginal cultural heritage and also the native title compliance measures taken by Council. This officer must be kept informed of all proposed notices to Aboriginal parties and the progress of any subsequent negotiations.

6. Disclosure

This Policy will be available on Council's website.

7. Related Procedures

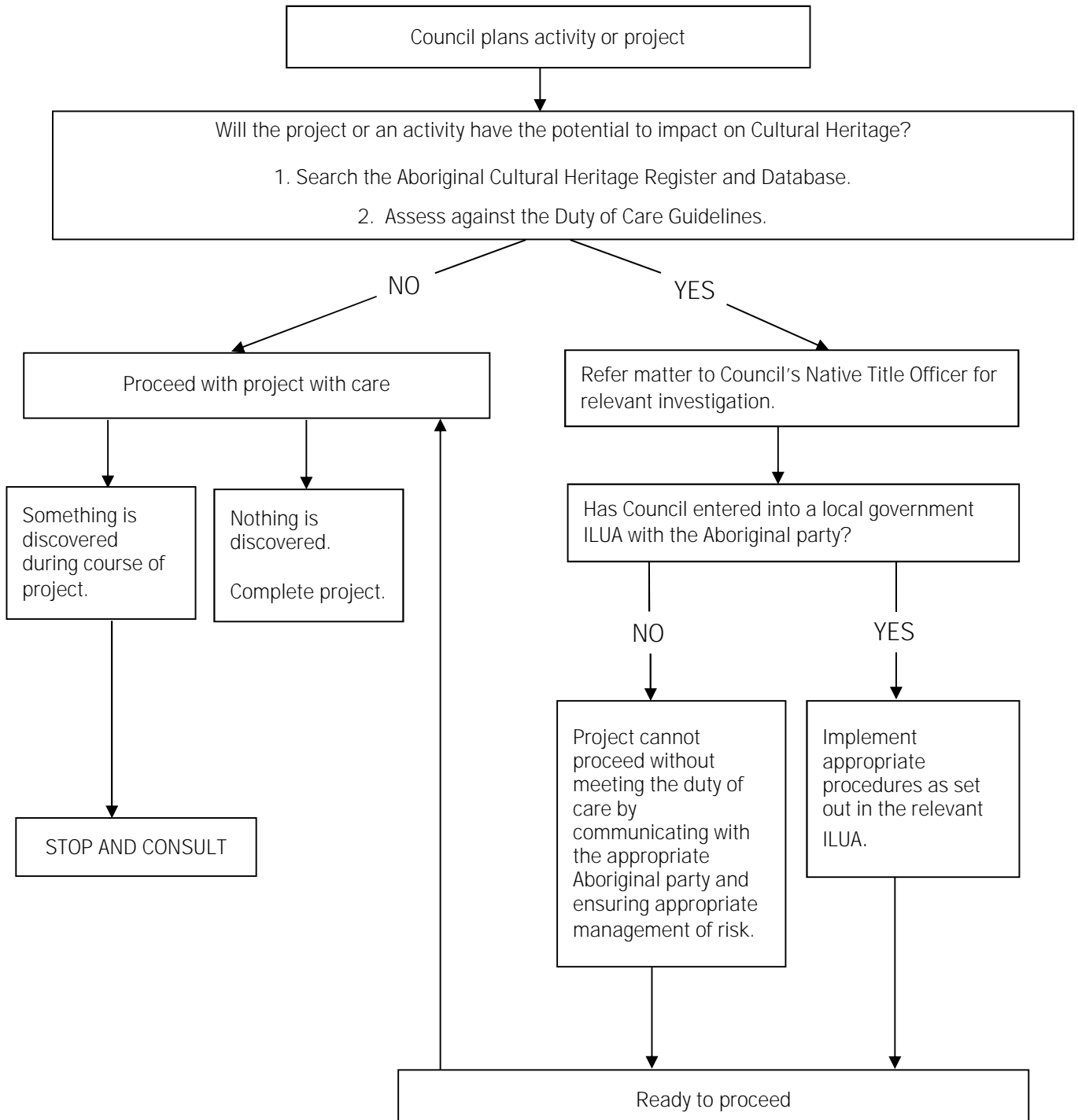
The Chief Executive Officer can approve any Procedures that may be directly associated with this Policy.

8. Other: Related Legislation and Other Governing Material

This Policy is supported by legislation that sets out more specific detail on aspects of Indigenous and Historical Cultural Heritage protection.

- The *Aboriginal Cultural Heritage Act 2003*
- The *Torres Strait Islander Cultural Heritage Act 2003*
- S28 'Duty of Care' guidelines gazetted on 16 April 2004. (The Queensland government commenced a review of these guidelines in 2017)
- Additional material can also be accessed from the Queensland government website: <https://www.datsip.qld.gov.au/people-communities/aboriginal-torres-strait-islander-cultural-heritage>

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The finding or unearthing of an object or evidence of archaeological or historical significance of the occupation of an area including but not limited to human remains or a suspicion that the object or human remains may be evidence of archaeological or historical significance.

1. STOP WORK IMMEDIATELY at the location of the finds and cease work at the location until the following procedure is followed.
 - AVOID DISTURBANCE of the area at and adjacent to the finds.
 - PROTECT the finds by erecting temporary barrier fencing around them (include an adequate buffer area).
 - ADVISE your Supervisor, who in turn must advise the Director of Engineering Services immediately of the find, who in turn must advise Council's Native Title Officer.
 - Council will contact the Cultural Heritage Coordination Unit of the Department of Natural Resources and Water to report the cultural finds and to seek further advice.

[Likely advice from NRW is that Traditional Owner representatives and an archaeologist visit the location to record, assess and determine whether the finds are of Cultural Heritage significance].

2. ASSIST in facilitating the site visit and the inspection of the finds by the Traditional Owners ASAP.
3. Traditional Owners to provide a significance assessment of the finds to Council.
4. If finds are of cultural significance, these will be documented in conjunction with Traditional Owners.
5. Appropriate Cultural Heritage management strategies and options are considered and discussed by Traditional Owners and Council.
6. IMPLEMENTATION of appropriate Cultural Heritage management strategies will be discussed between Council representatives and employees prior to recommencement of works.
7. When all parties are satisfied that appropriate management action has been implemented development work can recommence at the find site.