

Changes to the Plantations Act and Code: Aboriginal heritage protection

January 2011

Recent amendments to the *National Parks and Wildlife Act 1974* (NPW Act) and the National Parks and Wildlife Regulation 2009 (NPW Regulation) have introduced a new approach to the protection and management of Aboriginal cultural heritage in NSW.

This information sheet outlines new and existing requirements that impact on the plantation authorisation process and ongoing plantation operations. Industry & Investment NSW plantation officers can provide more detailed information if required.

What are the existing provisions?

Aboriginal cultural heritage is protected under the NPW Act, which provides that Aboriginal places and objects cannot be harmed without an Aboriginal Heritage Impact Permit issued by the Department of Environment Climate Change and Water (DECCW).

The Plantations Code requires plantation officers to check for the presence of any Aboriginal places or objects that are present on proposed plantation sites. This will be done during the pre-application site inspection.

Any places or objects identified on proposed plantations must be:

- protected in accordance with the Plantations Code provisions by applying appropriate buffers and management prescriptions; or
- a permit to harm them must be obtained under the NPW Act.

The same requirements apply to any Aboriginal places or objects discovered during or after the establishment of a plantation.

Section 89A of the NPW Act requires any person who discovers an Aboriginal object to notify DECCW, unless that person has a good reason to believe that DECCW is already aware of the object. This requirement applies to plantation officers, and to plantation owners/managers in relation to any Aboriginal objects discovered on a plantation.

To notify DECCW of an Aboriginal object and its location, visit:

www.environment.nsw.gov.au/licences/DECCAHI_MSSiteRecordingForm.htm

It is desirable that a plantation owner or manager who discovers an Aboriginal object on their plantation also notifies Industry & Investment NSW.

What are the NPW Act amendments?

There are now two offences for harming or desecrating an Aboriginal object or a declared Aboriginal place.

The first and most serious offence is harming an Aboriginal object when the person knows it is an Aboriginal object. The second offence is harming an Aboriginal object whether or not the person knows it is an Aboriginal object. This is a strict liability or 'unknowing' offence.

It is no longer a defence for a person merely to claim that they unknowingly harmed an object or place. However, a defence is available where a person has exercised 'due diligence' by following an approved industry code of practice before carrying out an activity.

One of the industry codes of practice is the *Aboriginal Objects Due Diligence Code for Plantation Officers Administering the Plantations and Reafforestation (Code) Regulation 2001* (the Plantations Due Diligence Code). This details the requirements for plantation officers and plantation owners and managers in identifying and protecting Aboriginal places and objects.

Other defences against the offence of unknowingly harming an Aboriginal object include:

- Complying with the conditions of a NPW Act permit; and
- Carrying out 'low impact activities' as defined in the NPW Regulation, for which it is not necessary to follow a due diligence process.

What are the new requirements for plantations?

The Plantations Due Diligence Code requires the following steps to be undertaken by plantation officers:

- Search the Aboriginal Heritage Information Management System (AHIMS) database for any recorded places or objects on the site, or within close proximity of the proposed plantation;
- Check the site for landscape features which may indicate the presence of Aboriginal objects;
- Carry out a desktop assessment and visual inspection to check for the presence of Aboriginal objects and confirm their correct location; and
- Map the location of all Aboriginal objects so that they can be protected by buffers in accordance with the Plantations Code.

A plantation owner or manager who is carrying out any plantation operations involving soil disturbance must also undertake a search of the AHIMS database, unless a search has been carried out for the relevant area within the preceding 12 months. This requirement applies to all plantation operations throughout the life of the plantation.

The AHIMS database can be accessed by contacting the AHIMS Registrar at:

ahims@environment.nsw.gov.au

Further Information

A complete review of Aboriginal heritage protection in NSW is planned to take place over the next two years. The new requirements outlined in this information sheet represent a first step in this process.

Further information about the new requirements and Aboriginal heritage protection generally can be obtained from the following sites:

www.environment.nsw.gov.au/legislation/NPWamendmentAct2010.htm

www.environment.nsw.gov.au/licences/achregulation.htm

For further information about the due diligence requirements for plantations, please contact the Plantations Assessment Unit. Staff locations and telephone numbers are:

Nick Myer, Albury: 02 6051 7711

John Naimo, Albury: 02 6051 7710

John Ball, Coffs Harbour: 02 6650 3126

Mark Stanton-Cook, Wollongbar: 02 6626 1108

Wayne Garrard, Wollongbar: 02 6626 1207

© State of New South Wales through Department of Industry and Investment (Industry & Investment NSW) 2011. You may copy, distribute and otherwise freely deal with this publication for any purpose, provided that you attribute Industry & Investment NSW as the owner.

ISSN 1832-6668

Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing (January 2011). However, because of advances in knowledge, users are reminded of the need to ensure that information upon which they rely is up to date and to check currency of the information with the appropriate officer of Industry & Investment NSW or the user's independent adviser.

Ref: PUB11/3