



Environment,
Climate Change
& Water

LEGAL - MATTERS.
LEP - PULVE INDUSTRIAL AREA.

Our reference: EnviroLine # 117916
DOC10/46342
Contact: Rosalie Neve 6659 8221

UNAPPROVED LAND CLEARING
TREE - PRESERVATION
LP: 42990.

Mr Mike Rayner
General Manager
Tweed Shire Council
PO Box 816
MURWILLUMBAH NSW 2484

TWEED SHIRE COUNCIL	
FILE No:	GTI/LEP/2000/85 Pt 1
DOC. No:
RECD:	22 FEB 2011
ASSIGNED TO:	CONNELL, V.
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Dear Mr Rayner

UPDATE ON THE INVESTIGATION OF THE ALLEGED BREACH OF THE NATIONAL PARKS AND WILDLIFE ACT 1974 AND IMPACT TO AN ABORIGINAL OBJECT AT LOT 12 DP 1015369, KUDGEREE AVENUE, CUDGERA CREEK, NSW

The Department of Environment, Climate Change and Water (DECCW) administers the *National Parks and Wildlife Act 1974* (NPW Act). DECCW notes that an alleged impact to an Aboriginal object occurred prior to 6 July 2009 at Lot 12 DP 1015369, Kudgerree Avenue, Cudgera Creek, Pottsville, NSW. The object was a scarred tree registered (#04-2-0173) on the DECCW Aboriginal Heritage Information Management System (AHIMS) database. This site was identified and recorded on 29 May 2008 by a professional archaeologist in conjunction with the local Aboriginal community.

As you would be aware, Mr Stuart Russell, a Senior Strategic Planner for Tweed Shire Council, reported the alleged incident to the DECCW Environment Hotline on the 21 December 2009. One of our DECCW officers contacted Mr Russell for additional information regarding the reported matter. DECCW acknowledges the assistance Mr Russell provided.

DECCW conducted an investigation into this alleged breach and conducted an onsite visit to the Lot 12 DP 1015369, Kudgerree Avenue, Cudgera Creek, Pottsville, NSW on 18 June 2010. Also attending this onsite meeting were Council representatives and the landowner Ms Rhonda Tagget. DECCW also obtained evidence from other sources for the investigation.

To date, DECCW has issued the property owner with an Official Caution. This action does not prevent DECCW from taking further alternative enforcement action for the alleged offences, if it becomes apparent that an alternative response is more appropriate. In addition to this, DECCW also issued an Official Caution to the arborist who assessed the age of the tree after it was burnt. DECCW has advised both parties of the recent legislative changes to the NPW Act, and their responsibilities under these changes, including a listing of the significantly increased penalties.

As part of the investigation, DECCW noted that Council were aware of the alleged breach six months prior to it being reported to DECCW. At the time of the alleged incident, the NPW Act had a statute of limitations for Aboriginal cultural heritage matters of two years from the date the incident occurred. The delay in being notified inhibited DECCW's ability to investigate and prosecute within the remaining timeframe. As you would be aware, the notification period from the time of the offence is crucial in order to gain fresh evidence for the case. As of 1 October 2010, the NPW Act amended the

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statute of limitations to commence from the date the authority has been notified, not from the date of the impact.

DECCW would welcome opportunities to work with Council to ensure both agencies support efforts to protect the environment and improve investigation processes. As part of this, DECCW request that in future, Council notify DECCW as soon as Council becomes aware of any alleged incident in order for reliable evidence to be compiled.

DECCW has retained on file, a copy of the Official Cautions issued to the two parties associated with this matter. If in the future, offences are committed, DECCW may take into account the Official Cautions issued in determining the most appropriate enforcement action. This may involve the issuing of penalties or the commencement of prosecution action. Please find enclosed a copy of the Aboriginal cultural heritage information that was provided to the property owner and aborist in relation to the new legislative changes to the NPW Act.

If you would like to discuss this matter please contact Ms Rosalie Neve on 6659 8221.

Yours sincerely



16 FEB 2011

RICHARD BATH
Acting Manager, Planning and Aboriginal Heritage Section
Environment Protection and Regulation

Enclosure: Attachment 1

ATTACHMENT 1

Table 1. Offences and penalties for harming or desecrating Aboriginal objects and declared Aboriginal Places.

Offence	Maximum penalty: Individual	Maximum penalty: Corporation
A person must not harm or desecrate an Aboriginal object that the person knows is an Aboriginal object.	2,500 penalty units (\$275,000) or imprisonment for 1 year	10,000 penalty units (\$1,100,000)
	5,000 penalty units (\$550,000) or imprisonment for 2 years or both (in circumstances of aggravation)	
A person must not harm or desecrate an Aboriginal object (strict liability offence).	500 penalty units (\$55,000)	2,000 penalty units (\$220,000)
	1,000 penalty units (\$110,000) (in circumstances of aggravation)	
A person must not harm or desecrate an Aboriginal Place (strict liability offence).	5,000 penalty units (\$550,000) or imprisonment for 2 years or both	10,000 penalty units (\$1,100,000)
Failure to notify DECCW of the location of an Aboriginal object (existing offence and penalty	100 penalty units (\$11,000). For continuing offences a further maximum penalty of 10 penalty units (\$1,100) applies for each day the offence continues.	200 penalty units (\$22,000). For continuing offences a further maximum penalty of 20 penalty units (\$2,200) applies for each day the offence continues
Contravention of any condition of an Aboriginal Heritage Impact Permit	1,000 penalty units (\$110,000) or imprisonment for 6 months, or both, and in the case of a continuing offence a further penalty of 100 penalty units (\$11,000) for each day the offence continues	2,000 penalty units (\$220,000) and in the case of a continuing offence a further penalty of 200 penalty units (\$22,000) for each day the offence continues