

BACKGROUND

This case is the **first Land and Environment Court decision** to directly interpret the Recognise Country Guidelines and section 4.28B of the *State Environmental Planning Policy (Precincts – Western Parkland City) 2021* (SEPP). The Court considered whether a Concept DA and Stage 1 DA complied with statutory requirements relating to Aboriginal cultural heritage assessment in the Western Sydney Aerotropolis.

KEY FINDINGS

Recognise Country Guidelines are not aspirational

- They form a mandatory framework that must be addressed at DA stage.
- The Guidelines must inform subdivision layouts, road alignments, building envelopes and landscaping.

Deferral is not permissible

- Cultural values and heritage considerations cannot be left for later conditions of consent.
- The Court relied on *Cameron v Nambucca Shire Council* and *Weal v Bathurst City Council* to confirm that conditions cannot cure the absence of an assessment.

Substantive influence on design required

- Applications must demonstrate, through the Recognise Country Response Template and cultural values research, how Aboriginal consultation shaped the design.
- A draft or incomplete Aboriginal Cultural Heritage Assessment (ACHAR) was found insufficient.

Lodgment vs determination

- Council cannot reject a DA at lodgment under s 39 of the EPA Regulation because Recognise Country or ACHAR materials are missing.
- However, without completed work, the DA will almost certainly be found “incomplete” at determination, as the consent authority cannot lawfully approve it.

Broader than archaeological due diligence

- A due diligence report identifying “low archaeological potential” does not satisfy RC2 of the Precinct Plan or the Recognise Country Guidelines.
- The Court required assessment of both tangible and intangible cultural values, with meaningful consultation with Traditional Custodians.

IMPACTS AND TAKEAWAYS

- **Prepare early:** Cultural heritage and Recognise Country work must be undertaken before the application is to be approvable.
- **Expect consultation:** Engagement with Traditional Custodians (including Walk on Country) is expected.
- **Design response:** Show how cultural values shaped the actual design - not just appended reports.
- **Risk if not done:** Applications may be accepted for lodgment but are vulnerable to refusal at determination.