

COUNCIL POLICY



Aboriginal Consultation Policy

Aboriginal Consultation Policy

Commencement Date	22 March 2020
Relevant Legislative Provisions	National Parks & Wildlife Act 1974 Aboriginal Lands Right Act 1983 Native Title Act 1994
Council Department	Environmental Services
Contact Officer	Director-Environmental Services
Revision Required	Every five years

Policy Review

This policy shall be reviewed at five (5) yearly intervals at least, to ensure it meets all statutory requirements and the needs of council. It may also be reviewed at other times as required

Revision History

Version	Council Meeting Date	Council Resolution	Responsible Officer
1	27 September 2010	277/2010	Manager-Planning Services
2	26 November 2012	279/2012	General Manager
3	25 May 2015	134/2015	Director-Environmental Services
4	23 August 2021	202/21	Director- Environmental Services

Cowra Shire Council
Private Bag 342
Cowra NSW 2794

Phone: 02 6340 2000
Fax: 02 6340 2011
Email: council@cowra.nsw.gov.au
Internet: www.cowraregion.com.au

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Acknowledgement

Cowra Council recognises Australia's First Nations Peoples as the original and continuing custodians of country in Australia at large, the state of NSW and the Wiradjuri peoples as the traditional custodians of country on which Cowra Shire Council boundaries lie.

Council pays respect to Elders past, present and emerging of the Wiradjuri Nation and extends that respect to other First Nations people present.

Cowra Shire Council will incorporate the use of Wiradjuri language in Council signage where possible. Cowra Council will consult with Wiradjuri Elders on the appropriate words and spelling to ensure accuracy.

Flying of Aboriginal Flag

In recognition of Council's relationship with the local Aboriginal Community and following a request, Council agreed at its Ordinary Meeting held on 26 November 2012 to the following:

"That Council recognise the permanent flying of the Aboriginal and Cowra Shire Council flags at the Peace Bell in Darling Street."

The Aboriginal Flag fly's permanently in the Council Chambers, on Darling Street, NAIDOC week and at all official council functions.

The Aboriginal flag is flown as a sign of Cowra Shire Council's recognition and respect to Aboriginal/ First Nations people in Cowra which lies upon Wiradjuri Country. The Aboriginal flag is flown permanently in Council Chambers and at all special events including NAIDOC week.

Acknowledgement to Country

A local Elder of the Wiradjuri Nation will be invited to provide a Welcome to Country at Civic Receptions hosted by Cowra Shire Council.

It is an expected protocol that the Acknowledgements of Country/ Welcome to Country should be performed to a standing crowd as a sign of respect.

The Mayor of Cowra Council may also provide an Acknowledgement to Country prior to giving a speech or chairing an important meeting, such as an Ordinary Meeting of Council. The Mayor may use the following Acknowledgement or something similar:

"Cowra Council recognises Australia's First Nations people as the original and continuing custodians of country in Australia, the State of NSW and the Wiradjuri peoples as the traditional custodians of country on which Cowra Shire Council boundaries lie"

Summary of Steps

This is a snap shot of the details in the body of the document

Council commits to collaboration with Aboriginal people in the Cowra Shire community and will consult on the following:

- Council Policies - development of new, or amendment of existing policies where relevant to the community;
- Development Applications (DA's) involving:
 - Any proposed removal/destruction/interference with an Aboriginal site, Aboriginal heritage (AHIMS) or relic;
 - DAs where there is an identified Aboriginal site or relic either on the subject land or located in close proximity to the land (less than 100 metres from any works associated with the proposed development);
 - DAs involving the proposed disturbance of two hectares or more of land that is within 100 metres of the bank of a river, creek, or from the crest of a ridgeline or established timbered areas assessed to be more than 100 years old.
 - Relevant legislative process will trigger requirements for consideration of Aboriginal Heritage outside of this process.
 - A condition of development consent is placed on all DA consent documents describing the proper protocols which are in place for the discovery of an Aboriginal site or item.
- Council infrastructure projects include:
 - New works where there is an identified Aboriginal site or relic either on the subject land or located in close proximity to the land (less than 100 metres from the subject property boundary);
 - New works involving the proposed disturbance of two hectares or more of land that is within 100 metres of the bank of a river, creek, from the crest of a ridgeline or established timbered areas assessed to be more than 100 years old;
 - New works are defined as those works that involve initial disturbance to land that has not been previously disturbed by mechanical means, or where works have occurred in the past, where the depth or scale of proposed operations varies significantly from that past work.
 - New works involving the proposed removal/destruction of an Aboriginal site or relic;

Who will be consulted?

Any group, organisation or individual on the attached list.

This is an ever-changing list and any person or group who is interested in being included on the consultation list is to contact the Environmental Services Department at Council.

How will Council consult?

Council will write to all groups, organisations or individuals who are on the attached list. If there are concerns or comments they must be received within 21 days. This can be in writing, telephone, email or via a face to face meeting. If an extension of time is required the relevant person or group is required to contact Council before the end of the 21 days.

Aboriginal Consultation Policy

I. How will consultation occur?

I.1 Liaison with the Aboriginal Community

The primary responsibility for liaison with the Aboriginal community will rest at the General Manager/Director level of Council, or their delegate.

Council will write/email to all stakeholders on the consultation list. Council will detail the nature of the matter that requires consultation under this policy and include any plans or reports that might assist the community to have a thorough understanding of the issue, development proposal for council or infrastructure project.

Council's letter will request a response from a stakeholder within 21 days from the date of the letter.

It is preferable that the response be received by Council in writing, however, a response may be received by email, telephone or via a face to face meeting held with the General Manager and/or relevant Director of Council. The detail of any emailed, telephoned or meeting response will be recorded on the relevant Council file as a record that consultation took place.

Council may also organise a meeting(s) to be held with the stakeholders identified in section 7, to deal with large scale or complicated matters requiring consultation under this policy. The decision to hold a meeting is at the discretion of the General Manager and/or the relevant Director of Council. The detail of any meeting responses will be recorded on the relevant Council file as a record that consultation took place.

Where no responses are received within the prescribed 21-day consultation period, and no meetings are intended to be held, the relevant Council file will record that consultation took place with no responses received and the consultation process is concluded.

Each stakeholder will be notified of the outcome of the consultation process.

Additionally, Council will place a notice in the local newspaper detailing the matter that requires consultation and the closing date for submissions.

I.2 Resolution of Disagreement

Where consultation has occurred in accordance with this policy and parties are unable to reach an agreement, Council reserves the right to make a decision in the best interest of the Cowra community. Council will take into account the position of all stakeholders and comply with all statutory requirements.

2. Preliminary

2.1 Purpose

The purpose of the Cowra Shire Council Aboriginal Consultation Policy is to provide clarity regarding the consultation process for any development activities and policies with the potential to impact on Aboriginal cultural heritage values in the Cowra Shire Local Government Area (Cowra LGA).

2.2 Objectives

The objectives of this policy are:

- To create an environment of mutual respect whereby Cowra Council and the Aboriginal community can work together to preserve cultural and heritage values into the future;
- To increase the understanding and appreciation of Aboriginal culture and heritage with Council and the community;
- To ensure the preservation and continued respect of and for all items of Aboriginal heritage in the Cowra LGA.
- To assist the Aboriginal community in registering items and places of Aboriginal heritage on the AHIMS register to ensure the preservation of important sites and places, whilst acknowledging that not all locations of special cultural significance to Aboriginal people are registered with AHIMS;
- To identify the appropriate Aboriginal people to consult with regarding Aboriginal cultural and historic values in Cowra LGA;
- To develop an overall consultative and decision-making framework to allow timely completion of Council projects with the best possible outcomes for the community;
- To assist Cowra Shire Council and the Cowra Local Aboriginal Land Council in meeting their legislative requirements pertaining to Aboriginal cultural heritage;
- To ensure that local Aboriginal traditional custodian's needs pertaining to the preservation of Aboriginal cultural heritage within Cowra LGA are met;
- To assist the local Aboriginal community of Cowra to proactively manage Aboriginal cultural heritage values in Cowra LGA;
- To promote a collaborative approach to managing Aboriginal cultural heritage values between Cowra Shire Council and the local Aboriginal community of Cowra.

3. Consultation Philosophy

For the purposes of this policy, community consultation is defined as a transparent and equitable communication process between Cowra Shire Council and Aboriginal people who have cultural heritage knowledge and or other cultural connections to land and/or water or any other type relevant to a proposed project area.

The ability to liaise with Aboriginal communities is an important part of Council's business. Cowra Shire Council provides appropriate training for staff to enable them to undertake consultation in a way that secures and holds the trust of the Aboriginal community and provides Council with positive outcomes.

This policy acknowledges that Aboriginal people:

- Have the right to maintain culture, language, knowledge and identity;
- Have the right to directly participate in matters that may affect their heritage; and
- Are the primary determinants of the cultural significance of their heritage.

To ensure effective consultation various actions, principles and guidelines need to be recognised.

3.1 Actions

This policy advocates for consultation with Cowra's First Nation communities to be carried out in the early stages of project planning. The Council will 'ask first' and gain input from Aboriginal cultural knowledge holders to inform project design and/or decision-making processes. The local Aboriginal community of Cowra is encouraged to provide timely feedback to Council to ensure their views are taken into account. If further consultation is required by the community Council will accommodate this into the process.

3.2 Principles

The consideration of 'who' is culturally appropriate to provide advice to Council is an important principle of this policy. It is recognised that Cowra is Wiradjuri land and as such the voices of traditional owners and the Cowra Aboriginal Land Council will weight over other groups who wish to be consulted or are on the Consultation List.

Additionally, Cowra Council understands that Aboriginal men's business should only be discussed by men with men, and Aboriginal women's business only by women, between women. It is also important to avoid culturally inappropriate days/times for consultation (e.g. NAIDOC week) and having a contingency plan should the planned consultation unexpectedly fall on the day of a funeral or other 'sorry business' which community members must attend. Consideration of issues such as transport (how Aboriginal people get there) and fitting in with work and family responsibilities should also be considered when planning consultation. Equally, it needs to be recognised by all parties that subject to the above, meeting times and schedules are important for the success of consultations.

It is also understood that for all works, Council employees and contractors will undertake works with compliance to relevant legislative requirements and also undertake their work for Cowra Council with respect, Yindajamarra, for the traditional owners of country.

3.3 Guidelines

When undertaking consultation, Council will use the services of people who are skilled and trained or who have cultural awareness, knowledge and authority. These skills and experience may be available in-house or sourced from specialist service providers. Consultation processes may change depending on the individual circumstances. However, as a minimum the following guidelines will be followed:

- Recognition that Aboriginal organisations may not be able to speak for all people who have information concerning the issue/item of consultation;
- All relevant parties listed in this policy will be notified of the consultations that are planned to occur in their area, with the decision whether to participate being made by the individual or organisation;
- Access to information may be restricted to specific groups/stakeholders therefore gender, age and clan associations need to be respected;
- The appropriateness of the gender and age balance of consultation staff and gender balance and age amongst those consulted;
- For the larger developments/projects personal contact/meetings may be required to discuss issues with relevant groups or individuals.

4. Context

4.1 Traditional Considerations

Aboriginal heritage is a unique and irreplaceable and respected part of Cowra Shire's cultural heritage that requires greater recognition and protection and celebration.

Aboriginal cultural heritage is an essential part of Aboriginal people's cultural identity, connection and sense of belonging to the land. It is commonly known and understood that the lands, waters and the plants and animals played an important part in traditional Aboriginal life. Many landforms, landscapes, waterways and lake systems had creation stories attached to them or were part of larger song-lines. The Cowra area was significant to traditional Aboriginal people due to the abundance of food and resources available from the Lachlan River and surrounding fertile lands. This policy aims to consult widely with a number of First Nations groups/stakeholders to consider all views and actively support Wiradjuri peoples in their continuing connection and cultural obligations to country.

4.2 Wiradjuri Culture and History

Cowra Shire is located within the boundaries of the Wiradjuri nation, as evidenced by the work of a number of authorities on Aboriginal anthropology and archaeology.

Archaeologist Norman Tindale's map of Aboriginal linguistic boundaries (Tindale, 1974) and the accompanying catalogue entitled 'Aboriginal tribes of Australia, their terrain, environmental controls, distribution, limits and proper names' depicts Cowra as being in Wiradjuri country. Dr

David Horton's map of Aboriginal Australia, illustrates Cowra Shire as being well within the boundaries of the Wiradjuri nation (Horton, 1996). Mapping from the NSW Aboriginal Land Council also delineates Cowra Shire to be within the Wiradjuri regional area (NSW Department of Lands, 2007).

The oral history of Erambie Aboriginal Reserve, Cowra (Read, 1984:1) states that in 1900 the area was occupied by "the Wiradjuri tribe, whose borders extended beyond Mossgiel in the west, Deniliquin in the south, Bathurst in the east and Wellington in the north", an area which encompasses Cowra.

Dr Gaynor Macdonald describes Wiradjuri country as 'The Country of Three Rivers': to the north is the Macquarie, known to the Wiradjuri as Wambool; the Lachlan flowing to the west and once known to the Wiradjuri as Kalari and the Murrumbidgee in the south, which retains its Wiradjuri name (Macdonald, 2004:22). She provides a map in her book, *Two Steps Forward, Three Steps Back. A Wiradjuri Land Rights Journey*, which depicts Cowra well within the traditional Wiradjuri boundaries (Macdonald, 2004).

Macdonald asserts that maps of Wiradjuri country compiled by Wiradjuri people today are distinctly similar to those compiled by Europeans since the mid-nineteenth century (Macdonald, 2004:23). Further, that the Wiradjuri people today still have a strong spiritual connection to the Cowra area through association with the Lachlan River and the Lachlan Ranges and the wildlife and vegetation native to the region. They also have strong ancestral ties to other members of the local Wiradjuri community.

This policy aims to consult with the local Wiradjuri Elders who speak for Country on issues related to Cowra Shire to ensure that their views are considered.

4.3 Cowra Shire's Contemporary Aboriginal Population

Cowra Shire today has a relatively large population who identify as being of Indigenous and or Torres Strait Islander. The total population of Cowra is 12,767 people, and around 982 people, or 7.9%, identify as Indigenous and or Torres Strait Islander (ABS, 2016).

It is important to recognise that the Aboriginal and Torres Strait Islander people in Cowra Shire are not all from the same tribal group.

Macdonald notes that recently many non-Wiradjuri Aboriginal Australians have migrated to traditional Wiradjuri cities and towns and that in many cases these non-Wiradjuri people can outnumber the Wiradjuri community. She further states that whilst these migrants sometimes share similar contemporary histories (such as living at Erambie) they do not have ancestry in Wiradjuri country (Macdonald, 2004:22).

This policy aims to consult widely with a number of Aboriginal groups/stakeholders, including the Cowra Local Aboriginal Land Council, to ensure that contemporary circumstances are considered and that these are recognised, understood and accepted within the context of the wider community.

5. Legislative Framework

Management of the Aboriginal cultural heritage resources within Cowra Shire is administered in accordance with NSW legislation (the NSW National Parks and Wildlife Act 1974 and the NSW Aboriginal Land Rights Act 1983) as well as the Commonwealth Native Title Act 1993. There are other pieces of legislation which may be applicable to First Nations People which are not mentioned here, this is not an exhaustive list.

Further detail on the operation of the legislative framework is provided below:

5.1 National Parks and Wildlife Act 1974

The National Parks and Wildlife Act 1974 (NPW Act) is the primary legislation for the protection of Aboriginal cultural heritage in NSW. The NPW Act is administered by the NSW Department of Planning Industry and Environment (DPIE). One of the objects of the NPW Act is:

‘the conservation of objects, places or features (including biological diversity) of cultural value within the landscape, including but not limited to: (i) places, objects and features of significance to Aboriginal people ...’ (s. 2A(1)(b))

Division 2 clause 30K relates to Aboriginal Areas and Part 6 of the NPW Act provides specific protection for Aboriginal objects and places by making it an offence if impacts are not authorised. If impacts on Aboriginal objects and places are anticipated, an Aboriginal Heritage Impact Permit should be obtained from Heritage NSW.

The Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales sets out reasonable and practicable steps which individuals and organisations need to take in order to:

- Identify whether or not Aboriginal objects are, or are likely to be, present in an area;
- Determine whether or not their activities are likely to harm Aboriginal object (if present);
- Determine whether an Aboriginal Heritage Impact permit is required.

An Aboriginal object is any deposit, object or material evidence (that is not a handicraft made for sale) relating to Aboriginal habitation of New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains. It is an offence to harm Aboriginal objects under the NPW Act.

Aboriginal Object:

‘any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises NSW, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains’

Due Diligence Code of Practice

Aboriginal places:

A place declared under s.84 of the NPW Act that, in the opinion of the Minister, is or was of special significance to Aboriginal culture. Information about the location of Aboriginal Places in NSW can be found on the Heritage NSW website at <https://www.heritage.nsw.gov.au/protecting-our-heritage/nominating-an-aboriginal-place/>

Due Diligence Code of Practice

Disturbed land or land already disturbed by previous activity

Land is disturbed if it has been the subject of a human activity that has changed the land's surface, being changes that remain clear and observable.

Due Diligence Code of Practice

5.2 Aboriginal Land Rights Act 1983

The NSW Aboriginal Land Rights Act 1983 establishes the NSW Aboriginal Land Council (NSWALC) and Local Aboriginal Land Councils (LALCs). The Act requires these bodies to:

- (a) Take action to protect the culture and heritage of Aboriginal persons in the Council's area, subject to any other law; and
- (b) Promote awareness in the community of the culture and heritage of Aboriginal persons in the Council's area.

5.3 Native Title Acts

The Commonwealth Native Title Act 1993 and NSW Native Title Act 1994 provide the legislative framework to:

- (a) Recognise and protect native title;
- (b) Establish ways in which future dealings affecting native title may proceed, and to set standards for those dealings;
- (c) Establish a mechanism for determining claims to native title; and
- (d) Provide for, or permit, the validation of past acts invalidated because of the existence of native title.

The Native Title Act provides native title holders and registered native title claimants with certain procedural rights in relation to Acts which affect native title communities in accordance with the relevant Acts, Regulations and standards.

5.4 Environmental Planning & Assessment Act 1979

Consideration of the potential impacts of any development of Aboriginal heritage is a key part of the assessment of any Development Application under consideration by Council. Under 4.15 of the EP&A Act involves an assessment of the environmental impacts of any application and this will involve an assessment of whether any potential impact is likely. Council will follow this Aboriginal Consultation Policy and the Due Diligence Code in the assessment of all Development Applications under consideration.

6. What requires consultation?

Cowra Shire Council will consult the local Aboriginal community of Cowra:

- About the development of new, or the amendment of existing Council policies as detailed in section 6;
- When assessing development applications as detailed in section 6.2;
- When Council proposes infrastructure work as detailed in section 6.3.

Further detail on the policies, developments and projects that require consultation is provided below:

6.1 Council Policies

There are a number of Council plans and policies that may have interest and importance to the First Nations community.

Some of these plans may already exist or are intended to be drafted by Council in the future. The following Council plans and policies will be referred to the Aboriginal community for input when they are either being prepared or reviewed:

Plan	Existing	Proposed
Strategic Plans	✓	
Delivery Program and Operational Plan	✓	
Cultural Plans	✓	
Social Plans	✓	
Local Heritage Studies		✓
Land-use Strategies	✓	
Local Environmental Plans	✓	
Development Control Plans	✓	
Developer Services Plans	✓	
Development Contribution Plans	✓	
Community Land – Plans of Management		✓
Roads Assets Management Plans	✓	
Strategic Business Plans – Water, Sewer	✓	
Stormwater Management Plans	✓	
Roadside Vegetation Plans	✓	
138 permits under the Roads Act		✓
Other		

6.2 Development Proposals

Development Applications (DAs), irrespective of the proponent, that will be referred to the Aboriginal community for input include:

- DAs involving the proposed removal/destruction of an Aboriginal site or relic;
- DAs where there is an identified Aboriginal site or relic either on the subject land or located in close proximity to the land (less than 100 metres from any works associated with the proposed development);

- DAs involving the proposed disturbance of two hectares or more of land that is within 100 metres of the bank of a river, creek, or from the crest of a ridgeline or established timbered areas assessed to be more than 100 years old.

6.3 Council Infrastructure Projects

Council infrastructure projects that will be referred to the First Nations community for input include:

- New works where there is an identified Aboriginal site or relic either on the subject land or located in close proximity to the land (less than 100 metres from the subject property boundary);
- New works involving the proposed disturbance of two hectares or more of land that is within 100 metres of the bank of a river, creek, from the crest of a ridgeline or established timbered areas assessed to be more than 100 years old;

Note: New works are defined as those works that involve initial disturbance to land that has not been previously disturbed by mechanical means, or where works have occurred in the past, where the depth or scale of proposed operations varies significantly from that past work.

- New works involving the proposed removal/destruction of an Aboriginal site or relic (other State Government approval pathways are also required);

The following council infrastructure projects/works cannot be postponed and will not be referred to the Aboriginal community for input:

- Maintenance Works - defined as the continuing up-keep of council managed facilities and infrastructure. These types of works involve routine/regular work on previously disturbed land and will not allow for prior consultation.
- Emergency Works - defined as unscheduled and unplanned works that are required urgently in order to restore essential services. These types of works will require immediate attention and will not allow for prior consultation.

Should items of Aboriginal cultural heritage be uncovered during maintenance and/or emergency works, they will be dealt with in accordance with the requirements of the National Parks and Wildlife Act 1974.

7. Who will be consulted?

It is legislated for Council to consult with the Cowra Local Aboriginal Land Council as the membership of this statutory body is comprised of organisations and representatives which provided a voice for the Wiradjuri people, the First Nations people of the Cowra Shire.

Representatives from the following groups/stakeholders will be consulted on issues or projects. Contact details for the various organisations involved in the Cowra LGA consultation are kept at Cowra Shire Council and will be updated as and when required according to changes in contact details of personnel within each organisation.

Please contact Council to amend any details on this list.

7.1 Cowra Local Aboriginal Land Council (LALC)

Land Councils have the legislative responsibility “to protect the culture and heritage of Aboriginal persons in the Council’s area” and the Cowra LALC is an important stakeholder in the consultation process.

7.2 Mooka Bulla Traditional Owners

Mooka Bulla Traditional Owners are made up of a number of local Wiradjuri Elders. Members of the Mooka Bulla Traditional Owners have the right to speak for Country in relation to issues in Cowra LGA and should be informed and engaged and participate actively in the consultation process, if they deem it appropriate.

7.3 Urimbirra Culture and Heritage Group

Urimbirra has historically been used as a consultative body within Cowra LGA and represents the interests of many of Cowra’s Aboriginal community. It has the right to be informed, engaged in and participate actively in the consultation process, if they deem it appropriate.

7.4 Yarrawarra Hillford Aboriginal Corporation

Yarrawarra Hillford Aboriginal Corporation represents the interests of many of Cowra’s Aboriginal community and has the right to be informed, engaged in and participate actively in the consultation process, if they deem it appropriate.

7.5 Wiradjuri Men’s Group

The Wiradjuri Men’s Group represents the interests of many of Cowra’s Aboriginal community and has the right to be informed, engaged in and participate actively in the consultation process, if they deem it appropriate.

7.6 The Kallari Ngunnawal Descendants

The Kallari Ngunnawal Descendants represent the interests of a section of Cowra’s Aboriginal community and has the right to be informed, engaged in and participate actively in the consultation process, if they deem it appropriate.

7.7 Department of Premier and Cabinet

The Department of Premier and Cabinet has primary legislative responsibility for the protection of cultural heritage in NSW and has the right to be kept informed and engaged in the consultation process.

7.8 Local Land Services (Central Tablelands LLS)

The Central Tablelands LLS has expertise in natural resource management in Cowra LGA, including cultural heritage considerations relating to natural resource management. There are benefits for the Central Tablelands LLS to be informed, engaged in and participate actively in the consultation process, if they deem it appropriate.

7.9 Other interested parties

If other groups/stakeholders express an interest in being included in the consultation process, the interest party should contact Council and they will be included in the list of stakeholders.

7.10 Integrity of the list

The list of stakeholders will be kept by the Director–Environmental Services within Council.

8. References

Australian Bureau of Statistics (ABS), 2006. Census of Population and Housing, Commonwealth of Australia, Canberra, ACT

Australian Heritage Commission, 2002. Ask First: A guide to respecting Indigenous heritage places and values, National Capital Printing, Canberra, ACT

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