

NOTICE OF MEETING



ARAKWAL MEMORANDUM OF UNDERSTANDING ADVISORY COMMITTEE MEETING

An Arakwal Memorandum of Understanding Advisory Committee Meeting of Byron Shire Council will be held as follows:

Venue	Arakwal Room, Byron Bay Library
Date	Thursday, 2 March 2017
Time	9.00am

A handwritten signature in black ink, appearing to read 'Mark Arnold', is located below the meeting details table.

Mark Arnold
Director Corporate and Community Services

CONFLICT OF INTERESTS

What is a “Conflict of Interests” - A conflict of interests can be of two types:

Pecuniary - an interest that a person has in a matter because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person or another person with whom the person is associated.

Non-pecuniary – a private or personal interest that a Council official has that does not amount to a pecuniary interest as defined in the Local Government Act (eg. A friendship, membership of an association, society or trade union or involvement or interest in an activity and may include an interest of a financial nature).

Remoteness – a person does not have a pecuniary interest in a matter if the interest is so remote or insignificant that it could not reasonably be regarded as likely to influence any decision the person might make in relation to a matter or if the interest is of a kind specified in Section 448 of the Local Government Act.

Who has a Pecuniary Interest? - a person has a pecuniary interest in a matter if the pecuniary interest is the interest of the person, or another person with whom the person is associated (see below).

Relatives, Partners - a person is taken to have a pecuniary interest in a matter if:

- The person's spouse or de facto partner or a relative of the person has a pecuniary interest in the matter, or
- The person, or a nominee, partners or employer of the person, is a member of a company or other body that has a pecuniary interest in the matter.

N.B. “Relative”, in relation to a person means any of the following:

- (a) the parent, grandparent, brother, sister, uncle, aunt, nephew, niece, lineal descends or adopted child of the person or of the person's spouse;
- (b) the spouse or de facto partners of the person or of a person referred to in paragraph (a)

No Interest in the Matter - however, a person is not taken to have a pecuniary interest in a matter:

- If the person is unaware of the relevant pecuniary interest of the spouse, de facto partner, relative or company or other body, or
- Just because the person is a member of, or is employed by, the Council.
- Just because the person is a member of, or a delegate of the Council to, a company or other body that has a pecuniary interest in the matter provided that the person has no beneficial interest in any shares of the company or body.

Disclosure and participation in meetings

- A Councillor or a member of a Council Committee who has a pecuniary interest in any matter with which the Council is concerned and who is present at a meeting of the Council or Committee at which the matter is being considered must disclose the nature of the interest to the meeting as soon as practicable.
- The Councillor or member must not be present at, or in sight of, the meeting of the Council or Committee:
 - (a) at any time during which the matter is being considered or discussed by the Council or Committee, or
 - (b) at any time during which the Council or Committee is voting on any question in relation to the matter.

No Knowledge - a person does not breach this Clause if the person did not know and could not reasonably be expected to have known that the matter under consideration at the meeting was a matter in which he or she had a pecuniary interest.

Participation in Meetings Despite Pecuniary Interest (S 452 Act)

A Councillor is not prevented from taking part in the consideration or discussion of, or from voting on, any of the matters/questions detailed in Section 452 of the Local Government Act.

Non-pecuniary Interests - Must be disclosed in meetings.

There are a broad range of options available for managing conflicts & the option chosen will depend on an assessment of the circumstances of the matter, the nature of the interest and the significance of the issue being dealt with. Non-pecuniary conflicts of interests must be dealt with in at least one of the following ways:

- It may be appropriate that no action be taken where the potential for conflict is minimal. However, Councillors should consider providing an explanation of why they consider a conflict does not exist.
- Limit involvement if practical (eg. Participate in discussion but not in decision making or vice-versa). Care needs to be taken when exercising this option.
- Remove the source of the conflict (eg. Relinquishing or divesting the personal interest that creates the conflict)
- Have no involvement by absenting yourself from and not taking part in any debate or voting on the issue as if the provisions in S451 of the Local Government Act apply (particularly if you have a significant non-pecuniary interest)

RECORDING OF VOTING ON PLANNING MATTERS

Clause 375A of the Local Government Act 1993 – Recording of voting on planning matters

- (1) In this section, **planning decision** means a decision made in the exercise of a function of a council under the Environmental Planning and Assessment Act 1979:
 - (a) including a decision relating to a development application, an environmental planning instrument, a development control plan or a development contribution plan under that Act, but
 - (b) not including the making of an order under Division 2A of Part 6 of that Act.
- (2) The general manager is required to keep a register containing, for each planning decision made at a meeting of the council or a council committee, the names of the councillors who supported the decision and the names of any councillors who opposed (or are taken to have opposed) the decision.
- (3) For the purpose of maintaining the register, a division is required to be called whenever a motion for a planning decision is put at a meeting of the council or a council committee.
- (4) Each decision recorded in the register is to be described in the register or identified in a manner that enables the description to be obtained from another publicly available document, and is to include the information required by the regulations.
- (5) This section extends to a meeting that is closed to the public.

BYRON SHIRE COUNCIL

ARAKWAL MEMORANDUM OF UNDERSTANDING ADVISORY COMMITTEE MEETING

BUSINESS OF MEETING

1. APOLOGIES

2. DECLARATIONS OF INTEREST – PECUNIARY AND NON-PECUNIARY

3. ADOPTION OF MINUTES FROM PREVIOUS MEETINGS

- 3.1 Arakwal Memorandum of Understanding Advisory Committee Meeting held on 31 December 2016

4. STAFF REPORTS

Corporate and Community Services

4.1	Arakwal Mou Implementation Plan 2017/18	4
4.2	Arakwal Area at the Byron Bay Cemetery Update	32
4.3	Byron Shire Aboriginal Cultural Heritage Study	35
4.4	Aboriginal Cultural Events in the Byron Shire	65

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 4.1 Arakwal Mou Implementation Plan 2017/18

Directorate: Corporate and Community Services

Report Author: Belle Arnold, Community Project Officer

File No: I2017/218

Theme: Society and Culture
Community Development

Summary:

The report provides a review of actions delivered from the Arakwal Memorandum of Understanding Implementation Plan 2015-16 and additional project outcomes from the Arakwal Memorandum of Understanding.

This report presents the Arakwal Memorandum of Understanding Implementation Plan for 2017-18 and outlines the priority projects for the identified timeframe.

RECOMMENDATION:

1. **That the Arakwal MoU Advisory Committee note the progress on the implementation of the Arakwal Memorandum of Understanding for the reporting period 2015-16.**
2. **That the Arakwal MoU Advisory Committee identify priority projects from the Arakwal MoU for implementation in 2017-18.**

Attachments:

- 1 Arakwal Memorandum of Understanding Implementation Plan 2015-16, E2015/50307 , page 6 [↓](#)
- 2 Arakwal Memorandum of Understanding 2017-18, E2017/10678 , page 13 [↓](#)
- 3 Arakwal Memorandum of Understanding , E2013/45000 , page 17 [↓](#)

Report

Council staff have completed a comprehensive review of the Arakwal Memorandum of Understanding Implementation Plan 2015/16. Some of the projects within this plan have commenced and are long term projects which have not yet been completed and as such have been carried over to the 2017/18 Implementation Plan.

In addition to the projects identified in the Arakwal MoU Implementation Plan 2015/16 the following was also implemented:

1.2.5 Council support of important cultural events

Council staff worked closely with Arakwal and other community members to deliver NAIDOC Week programs throughout the Byron Shire in 2015 and 2016. In 2014 Council commenced the Byron Shire NAIDOC Week award program to acknowledge the achievements and contributions of the Indigenous community and this has continued to develop. Council coordinated a Reconciliation Week program with local schools in 2015 and is hosting an event on 1 June 2015 for National reconciliation Week 2015. Council staff were involved in supporting the cultural events at Survival Day 2015 - 17.

Council staff developed the Arakwal Memorandum of Understanding Implementation Plan 2017/18 (Attachment 2) including the above items and projects currently actioned within other works schedules of Council. This document is in draft form and is subject to the outcomes of discussions from the Arakwal MoU Advisory Committee. Proposed priority projects for 2017/18 include:

- a) 4.2.4 Implement cultural awareness induction
- b) 3.2.1 Develop and Implement an Employment Strategy
- c) 1.2.2 Ti Tree Lake (Taylors Lake)
- d) 2.2.2 Consultation processes for development applications and other matters in regards to public lands
- e) 3.2.2 Arakwal Cultural Centre Council to continue to support the development of the Arakwal Cultural Centre and assist with applications for funding.
- f) 4.2.2 Protecting Wetlands
- g) 5.2.3 Sandhills Estate
- h) 5.2.5 Aboriginal health
- i) 5.1 Arakwal area at the Byron Bay Cemetery
- j) The Arakwal Memorandum of Understanding Advisory Committee will provide a review of the Memorandum of Understanding to the parties five years from the signing of the agreement.

Financial Implications

Nil from this report

Statutory and Policy Compliance Implications

Native Title Act 1993

Local Government Act 1993

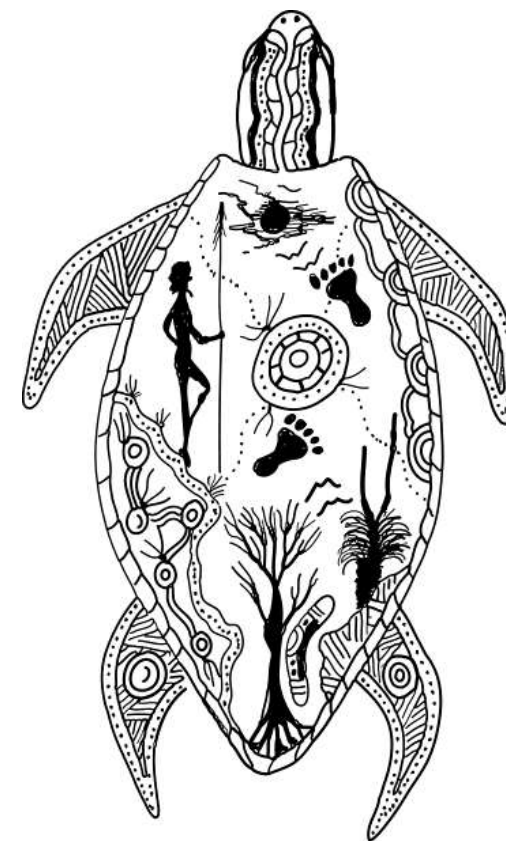
Arakwal Memorandum of Understanding 2013

**Arakwal Memorandum of Understanding Implementation Plan
2015-16**

5

10

*Byron Shire Council and
Bundjalung of Byron Bay Aboriginal Corporation (Arakwal)
Memorandum of Understanding*



BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

4.1 - ATTACHMENT 1

Arakwal Memorandum of Understanding Implementation Plan 2015-16

Item No.	MoU No.	Priority Action	Strategic Actions	Status
1	4.2.4	Implement cultural awareness induction for all staff and Councillors through Arakwal's website, with specifically tailored training packages for relevant staff to include Native Title and other relevant land management issues (4.2.4 in the MoU).	i. Continue to monitor cultural awareness training	Complete/ Ongoing
			ii. Deliver cultural awareness training to Council staff outside the head office.	Incomplete/ Carry Over
2	3.2.1	Develop and Implement an Employment Strategy	i. Refer to the Reconciliation Action Plan	Incomplete / Carry Over
3	1.2.2	<p>Ti Tree Lake (Taylors Lake)</p> <p>This area is one of the most significant sites to the Arakwal people. It is their objective to have this area protected as an Aboriginal site. Arakwal would like to protect this area from all forms of tourism and development. Arakwal have requested that, as a matter of priority, any developments regarding zoning, consultation with other community groups, proposed developments, tourism operators and Council, consider the cultural significance of this area. Further, that Council provide transparent information to Arakwal on any matters relating to the Ti Tree Lake areas, especially in regard to proposed developments on or around the area.</p>	<p>Work with Arakwal, NPWS and Jali Land Council to create and implement a POM for Ti Tree Aboriginal Place Area</p> <p>Council staff to continue the legal processes to protect the Ti Tree Lake from proposed development.</p>	<p>PoM Adopted by Council Projects Commenced</p> <p>Successfully stopped development application for housing development at the Broken Head Quarry</p>

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

4.1 - ATTACHMENT 1

Item No.	MoU No.	Priority Action	Strategic Actions	Status
4	2.2.2	<p>Consultation processes for development applications and other matters in regards to public lands</p> <ul style="list-style-type: none"> • Development of clear processes in regard to consultation and engagement with Arakwal on development applications and other planning mechanisms in lands within the Byron Shire. • Development of frameworks for ongoing consultation processes. 	<p>4-332 Resolved that in relation to Report 4.1 'Consultation and engagement for Development Applications' and other matters in regards to public land Council, Council adopt:</p> <p><u>Committee Recommendation AMoU 4.1.1</u></p> <ol style="list-style-type: none"> 1 The existing consultation processes for development applications and other matters in regards to public lands be noted. 2. That the proposals contained in this report be considered and that a framework for consultation with the Bundjalung of Byron Bay, Arakwal people and other Aboriginal stakeholders be developed and that Council in the development of the framework: <ol style="list-style-type: none"> a) Identify potential external funding sources for a Shire Wide Aboriginal Heritage Survey b) Include reference to internal Council map titled "Aboriginal heritage conservation areas from draft Shire-wide LEP 2008" prior to notifying Bundjalung of Byron Bay, Arakwal of development applications c) Amend Council's document Guide to lodging a Development to include advice to the proponent on their due diligence responsibilities under the National Parks and Wildlife Act 1974 	<p>Successful funding application from Office of Environment and Heritage for Byron Shire Council to undertake Stage 1 of a shire wide Aboriginal Cultural Heritage Study.</p> <p>Aboriginal Cultural Heritage Study commenced 08/02/2017</p> <p>Continue to work with SEE directorate to streamline consultation processes within Council's development application process</p> <p>Commenced process to formalize Council's working relationship with Tweed Byron Local Aboriginal Land Council.</p>

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

4.1 - ATTACHMENT 1

Item No.	MoU No.	Priority Action	Strategic Actions	Status
			<p>(NPW Act)</p> <p>d) Develop an Aboriginal cultural heritage checklist which could be included with all DA information kits for proponents</p> <p>e) Establish a formal agreement with the LALCs to guide ongoing engagement and consultation processes in regards to DAs, Aboriginal heritage protection and management</p> <p>f) Formalise the process of engagement as a policy or procedure document, or integrate the process into Council's internal Integrated Planning Documents</p> <p>g) Encourage Council staff to continue to refer discussion and consultation on the development and amendment of Council policies to the Arakwal MoU Advisory Committee</p> <p>3. That Council, when reviewing existing Plans of Management (PoM) or developing new PoMs, undertake consultation with Aboriginal Stakeholders to identify areas within the plan that may be recognised by Council as an area of cultural significance under section 36H of the Local Government Act 1993.</p> <p>14-333 Resolved that in relation to Report 4.2</p>	

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

4.1 - ATTACHMENT 1

Item No.	MoU No.	Priority Action	Strategic Actions	Status
			<p><i>'Aboriginal Sites Identification Pamphlet', Council adopt:</i></p> <p><u><i>Committee Recommendation AMoU 4.2.1</i></u></p> <p><i>That consideration of the pamphlet be deferred pending further input from Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) and Council staff.</i></p>	
5	3.2.2	Arakwal Cultural Centre Council to continue to support the development of the Arakwal Cultural Centre and assist with applications for funding. This project has been carried forward from the 1998 Heads of Agreement.	Work with Arakwal to identify sources of funding for the Arakwal Cultural Centre. Support Arakwal in the creation of funding submissions.	Carry Over
2	4.2.2	Protecting Wetlands	Form a working party to develop an action plan to address ongoing storm water issues on Clarkes Beach with priority to protecting the Aboriginal midden (a registered and protected)	Commenced/ Carry Over
7	4.2.3	Byron sewerage treatment plant at Tallow Creek The decommissioning of the Byron sewerage treatment plant (Tallow Creek). The Arakwal are concerned about the potential redevelopment of this land. It is a very important site to Arakwal and the area includes burial sites as well as other areas of significance. Arakwal have	Now referred to as South Byron Sewerage Treatment Plant. Decommissioning Future Development	Ongoing

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

4.1 - ATTACHMENT 1

Item No.	MoU No.	Priority Action	Strategic Actions	Status
		requested to be involved in the planning process for any redevelopment at this site.		
8	5.2.3	Sandhills Estate Arakwal to continue support for the residual land in the Sandhills Estate intended for transfer during negotiations of Indigenous Land Use Agreement 2. This land to be developed in consultation with Arakwal for civic and community uses.	Write to Department of Lands.	Council has both written to Crown Lands and held discussions on the transfer of the residual Land. The discussions held have referred both to the Land Claim lodged by NSW Land Council over the Sandhills Estate and the potential transfer of Crown Lands to Local Councils proposed under the Crown Lands White Paper - Ongoing – Carry over
9	5.2.5	Aboriginal Health Council and Arakwal to work in partnership to develop local networks and work with regional networks to advocate for Aboriginal health service provision in Byron Shire. This may include an outreach service at existing community and neighbourhood centres, health promotion services and brokerage services.	Aboriginal Interagency to meet quarterly. Identify lead agencies and apply for funding/ support funding applications. Work with representatives from different levels of government to advocate for increased funding, improved service delivery.	Aboriginal Services Coalition Formed. Carry over

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

4.1 - ATTACHMENT 1

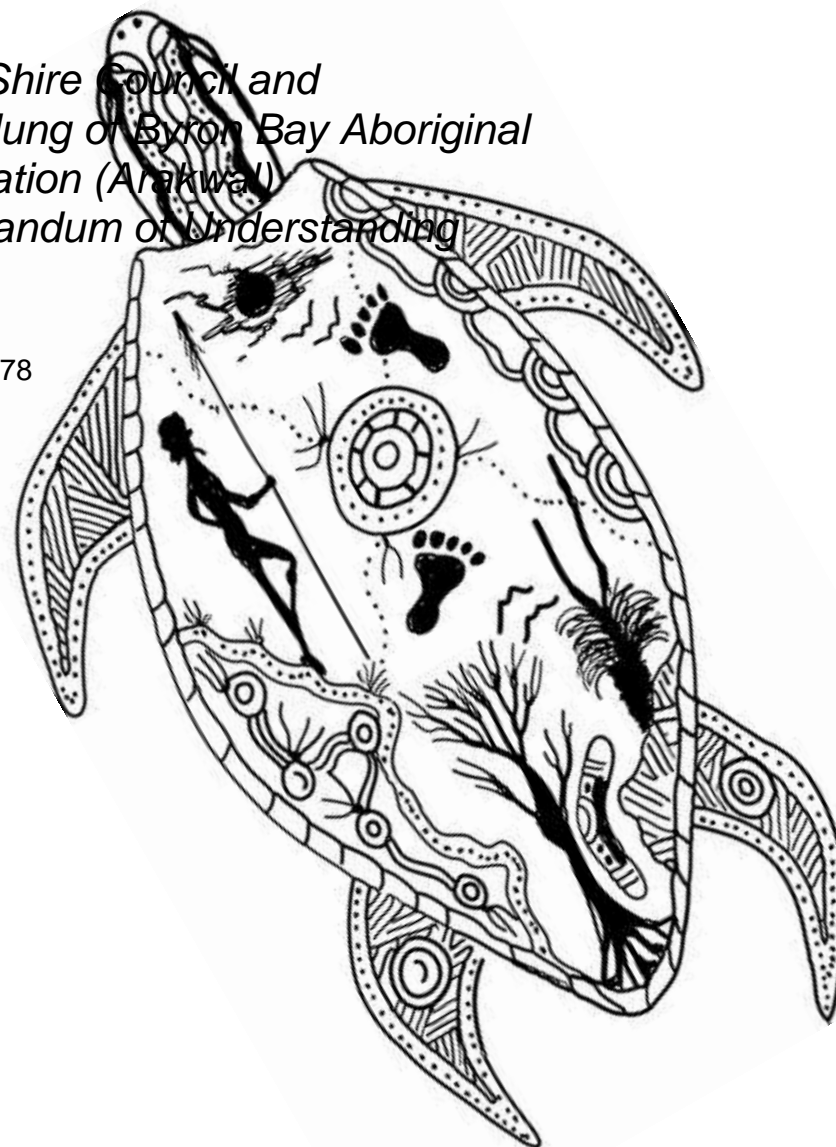
Item No.	MoU No.	Priority Action	Strategic Actions	Status
10	5.2.2	<p>Aboriginal social, economic and community development projects Arakwal and Council to work in partnership on Aboriginal social, economic and community development projects that have positive outcomes for the wider community.</p> <p>Arakwal have identified that community safety and social issues in Byron Bay are having direct and broader impacts on their families and communities, notably drug and alcohol use, law enforcement, housing, employment, education and health.</p>	<ul style="list-style-type: none">i. Artsii. Workshops – employment and grant developmentiii. Interagencyiv. To be considered in the development of Council's Reconciliation Action Plan.v. Schools to deliver a cultural program.	<p>Aboriginal Services Coalition Formed.</p> <p>Cultural Restoration projects through grant funding :</p> <p>I Will Blow the Fire 2015</p> <p>Seasonal Styles 2015/6</p> <p>Signing Up Country 2016</p> <p>Ongoing</p>

Arakwal Memorandum of Understanding Implementation Plan 2017/18

Byron Shire Council and
Bundjalung of Byron Bay Aboriginal
Corporation (Arakwal)

15 Memorandum of Understanding

E2017/10678



BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

4.1 - ATTACHMENT 2

Arakwal Memorandum of Understanding Implementation Plan 2017-18

Item No.	MoU No.	Priority Action	Strategic Actions	Status
1	4.2.4	Implement cultural awareness induction for all staff and Councillors through Arakwal's website, with specifically tailored training packages for relevant staff to include Native Title and other relevant land management issues (4.2.4 in the MoU).	i. Continue to monitor cultural awareness training	
			ii. Deliver cultural awareness training to Council staff outside the head office.	
2	3.2.1	Develop and Implement an Employment Strategy		
3	1.2.2	<p>Ti Tree Lake (Taylors Lake)</p> <p>This area is one of the most significant sites to the Arakwal people. It is their objective to have this area protected as an Aboriginal site. Arakwal would like to protect this area from all forms of tourism and development. Arakwal have requested that, as a matter of priority, any developments regarding zoning, consultation with other community groups, proposed developments, tourism operators and Council, consider the cultural significance of this area. Further, that</p> <p>Council provide transparent information to Arakwal on any matters relating to the Ti Tree Lake areas, especially in regard to proposed developments on or around the area.</p>	<p>Ti Tree Lake Plan of Management</p> <p>i. Signage</p> <p>ii. Road Closure</p> <p>iii. Water quality testing</p>	

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

4.1 - ATTACHMENT 2

Item No.	MoU No.	Priority Action	Strategic Actions	Status
4	2.2.2	<p>Consultation processes for development applications and other matters in regards to public lands</p> <ul style="list-style-type: none"> • Development of clear processes in regard to consultation and engagement with Arakwal on development applications and other planning mechanisms in lands within the Byron Shire. • Development of frameworks for ongoing consultation processes. 	<p>i. Complete Stage 1 of Byron Shire Aboriginal Cultural Heritage Study</p> <p>ii. Integrate Information obtained through Cultural Heritage Study into LEP ,</p> <p>iii. Identify funding and partnerships for further stages of the study</p>	
5	3.2.2	<p>Arakwal Cultural Centre Council to continue to support the development of the Arakwal Cultural Centre and assist with applications for funding. This project has been carried forward from the 1998 Heads of Agreement.</p>		
6	4.2.2	<p>Protecting Wetlands</p>	<p>Form a working party to develop an action plan to address ongoing storm water issues on Clarkes Beach with priority to protecting the Aboriginal midden (a registered and protected)</p>	
7	5.2.3	<p>Sandhills Estate</p> <p>Arakwal to continue support for the residual land in the Sandhills Estate intended for transfer during negotiations of Indigenous Land Use Agreement 2. This land to be developed in consultation with Arakwal for civic and community uses.</p>	<p>Write to Department of Lands.</p>	

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

4.1 - ATTACHMENT 2

Item No.	MoU No.	Priority Action	Strategic Actions	Status
8	5.2.5	Aboriginal Health Council and Arakwal to work in partnership to develop local networks and work with regional networks to advocate for Aboriginal health service provision in Byron Shire. This may include an outreach service at existing community and Neighbourhood centers, health promotion services and brokerage services.	<ul style="list-style-type: none">i. Work with community stakeholders to identify 5 year strategic plan for Aboriginal Services in the Byron Shireii. Continue to advocate and lobby for funding, services and programs for the Aboriginal Community in the Byron Shire	
9	5.1	Arakwal area at the Byron Bay Cemetery		
10		The Arakwal Memorandum of Understanding Advisory Committee will provide a review of the Memorandum of Understanding to the parties five years from the signing of the agreement.	<ul style="list-style-type: none">i. Review the progress of the Arakwal MoU	



**Byron Shire Council and
Bundjalung of Byron Bay
Aboriginal Corporation (Arakwal)**

Memorandum of Understanding

Table of Contents

Bining : Background and Development of the Totem	1
Memorandum of Understanding	2
Background	2
Native Title	2
Map Native Title Determination Application NSD6020/01	3
Statement of Commitment	4
Parties	4
Intent / Purpose	4
Intellectual Property	5
Meetings and Reporting	5
Implementation Plan	5
Dispute Resolution / Mediation	5
Termination	5
Caring for Country	6
Key Priorities of the Memorandum of Understanding	7
1. Culture and Heritage	8
1.1 Culture and Heritage: Guiding Principles	8
1.2 Culture and Heritage: Specific Projects	8
2. Participation in Governance	9
2.1 Participation in Governance: Guiding Principles	9
2.2 Participation in Governance: Specific Projects	9
3. Cultural and Economic Development	9
3.1 Cultural and Economic Development: Guiding Principles	9
3.2 Cultural and Economic Development: Specific Projects	9
4. Caring for Country	10
4.1 Caring for Country: Guiding Principles	10
4.2 Caring for Country: Specific Projects	10
5. Social Justice and Community Development	11
5.1 Social Justice and Community Development: Guiding Principles	11
5.2 Social Justice and Community Development: Specific Projects	11
Officiating Signatures	13

BINING

Background and Development of the Totem

Bining is a Bundjalung word for turtle. The bining (turtle) is an important totem to the Bundjalung people as it is connected to both land and sea.

This bining was designed by Sean Kay of the Bundjalung of Byron Bay, Arakwal people in 2011. Sean Kay was commissioned by Byron Shire Council to create a logo that could represent the historic partnership between his people, the Arakwal people and the Byron Shire Council.

The first official document this bining appeared on was the 'Aboriginal Statement of Commitment to Bundjalung of Byron Bay - Arakwal People' signed by Byron Shire Council's Mayor Jan Barham and General Manager Graeme Faulkner during Reconciliation Week 2012.

The Statement of Commitment states "Byron Shire Council recognises the Bundjalung of Byron Bay Aboriginal - Arakwal People as traditional owners and custodians within this local government area. Byron Shire Council and the Aboriginal community are committed to working together in the process of reconciliation".

The commitment for partnership is the inspiration for the commissioning of this beautiful artwork.



Byron Shire Council and
the Bundjalung of Byron Bay Arakwal People

MEMORANDUM OF UNDERSTANDING (MOU)

This Memorandum of Understanding (MoU) records a voluntary, co-operative agreement entered into on 8 July 2013 between Byron Shire Council (Council) and Bundjalung of Byron Bay Arakwal People (Arakwal). This MOU follows from the 1998 Heads of Agreement between Byron Shire Council and the Arakwal People.

BACKGROUND

History - 1998 Aboriginal Heads of Agreement and Indigenous Land Use Agreements 1, 2 and 3

Lorna Kelly, Linda Vidler and Yvonne Graham on behalf of the Arakwal people (the Applicants) lodged a Native Title determination application in the National Native Title Tribunal by which application they claim Native Title in and over land in and around Byron Shire.

The Applicants asserted their desire to live and work in the Byron Shire community in a way that promotes mutual respect between Aboriginal and non-Aboriginal people and harmonious community relations among those who live and work in the Byron Shire community.

The Aboriginal Heads of Agreement signed in 1998 between the Bundjalung of Byron Bay Arakwal People and Byron Shire Council sets out a framework for ongoing consultation. The development of the Aboriginal Heads of Agreement ensured the Bundjalung of Byron Bay Arakwal People were involved in the management and protection of culturally significant places within the Byron Shire. This agreement is the first of its type between a local council and native title applicants in New South Wales.

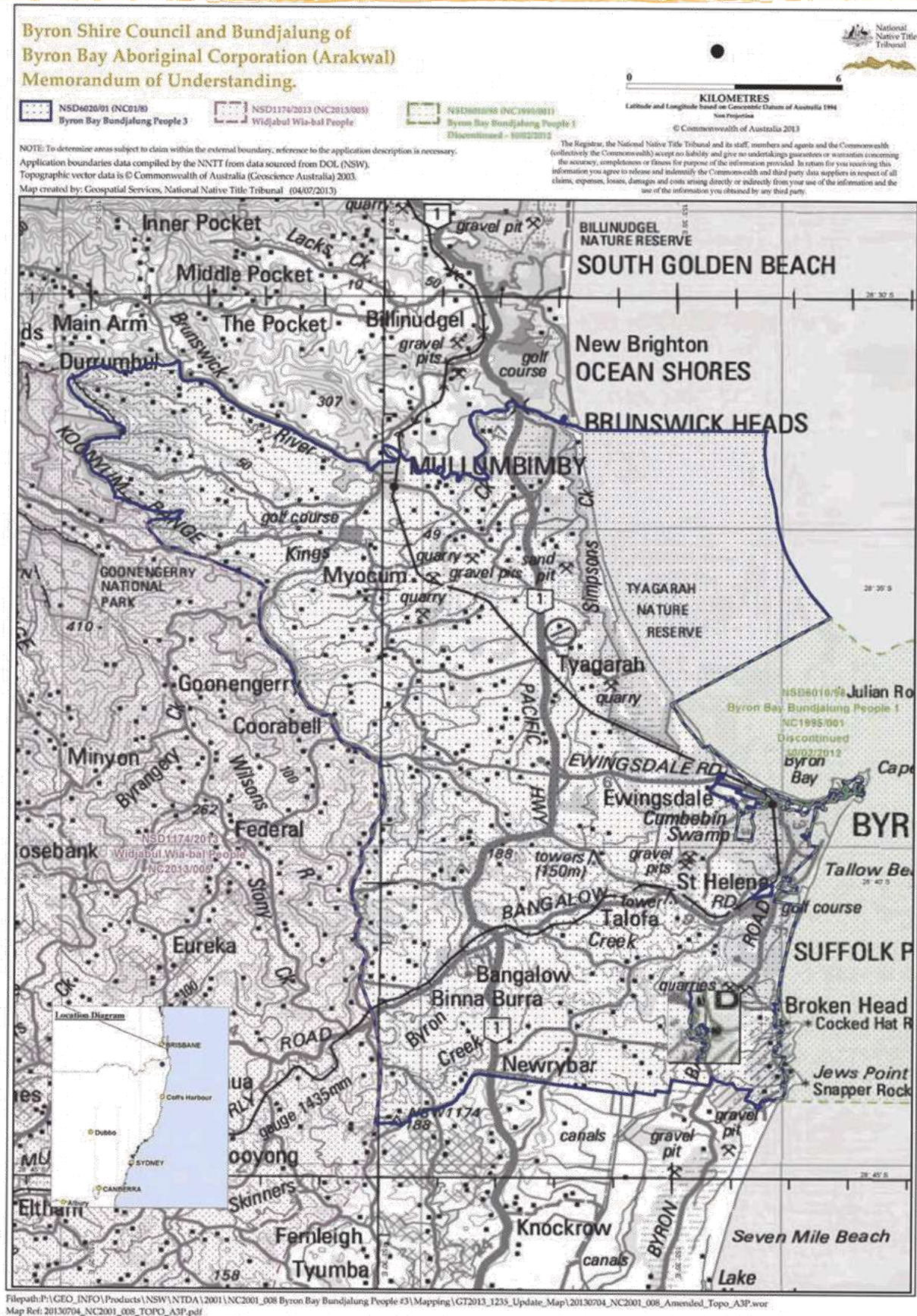
The Bundjalung of Byron Bay Arakwal People's Indigenous Land Use Agreements 1, 2 and 3 provided for the protection and management of Aboriginal cultural and heritage areas by the Bundjalung of Byron Bay, eg Arakwal National Park. Indigenous Land Use Agreements are instruments of the Native Title Act. The Arakwal people, as traditional owners conduct cultural, eco-tourism and educational programs thus providing an important cross-cultural exchange between Aboriginal people and non-Aboriginal people.

NATIVE TITLE

In 1995 the Bundjalung of Byron Bay Arakwal People lodged a Native Title Claim over areas of Crown land, beaches and coastal waters between Belongil Creek at Byron Bay and Jews Point on the north coast of NSW. The Arakwal people lodged a further claim in 1997 over additional land in the Byron Shire. In August 2001 an Indigenous Land Use Agreement (ILUA) between the Federal Government and the Bundjalung of Byron Bay Arakwal People was developed to implement part of the first and second Native Title Claims.

In 2001 a third Native Title Claim was lodged when it became apparent that evidence provided during the negotiations over the first two claims was applicable to additional areas outside the existing claims. This included lands up to Brunswick Heads to the north, Broken Head to the south, Mullumbimby and Bangalow to the west and approximately three nautical miles east of the mean high water mark. Negotiations over the third claim and outstanding portions of the first claim led to the development of two further ILUAs (Byron Bay ILUA 2 and Ti Tree Lake ILUA 3) which were signed in December 2006.

BYRON SHIRE COUNCIL



STATEMENT OF COMMITMENT

In May 2012 Byron Shire Council's then Mayor and General Manager signed the 'Aboriginal Statement of Commitment to the Bundjalung of Byron Bay – Arakwal People'. This document establishes the principles of the partnership between Byron Shire Council and the Bundjalung of Byron Bay Arakwal People. It states:

"Byron Shire Council supports and advocates the cultural and economic advancement of the Bundjalung of Byron Bay Aboriginal - Arakwal People and will cooperate to ensure the preservation of cultural practices, traditional sites and significant places. Council supports expressions of cultural identity.

Byron Shire Council and the Bundjalung of Byron Bay Aboriginal - Arakwal People believe in a future characterised by social justice and community. Together, we seek to build a society free of racism and prejudice where Aboriginal people feel a strong sense of belonging and are able to participate fully in the life of the community.

Byron Shire Council recognises the significant commitment by the Bundjalung of Byron Bay Aboriginal - Arakwal People to caring for country and maintains a partnership to consult and cooperate in achieving ecologically sustainable conservation.

Byron Shire Council will engage in an active partnership with the Bundjalung of Byron Bay Aboriginal - Arakwal People to develop programs and services which meet the needs of our community."

On 3 November 2011 Byron Shire Council resolved (11-891) to conduct the ongoing relationship with the Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) as an Advisory Committee, not a Project Reference Group (PRG), with terms of reference to oversee the implementation of a new Memorandum of Understanding (MoU).

PARTIES

"Council" refers to Byron Shire Council.

"Arakwal" refers to the Bundjalung of Byron Bay Arakwal People.

"The Corporation" has the same meaning as "Bundjalung of Byron Bay Aboriginal Corporation (Arakwal)".

"The Parties" means the Corporation and the Council.

"Traditional owners" means the Applicants, members of the Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) and others recognised as belonging to the Arakwal People.

"The Committee" means Arakwal Memorandum of Understanding Advisory Committee.

INTENT / PURPOSE

This MOU recognises the status of the Bundjalung of Byron Bay Arakwal people as traditional owners as established through the Native Title Act and processes. The purpose of this agreement is to establish a clear process and timetable for the delivery of priority projects identified in this MOU.

The discussions during the development of the Arakwal MOU have considered Council's business, Bundjalung of Byron Bay Arakwal People business, and how we do business together. Through this process we aim to identify the best way for the two organisations to work together for mutual benefit and the benefit of the wider community.

The intention of this MOU is to ensure a successful strategic partnership between the Byron Shire Council and the Bundjalung of Byron Bay Arakwal People.

INTELLECTUAL PROPERTY

At all times any culturally sensitive or significant information will remain the intellectual property of the Bundjalung of Byron Bay Arakwal People.

Any language, imagery or cultural material can only be used for the purposes agreed by the parties and will not become the property of Council to utilise on other Council projects, without the additional consent of the Bundjalung of Byron Bay Arakwal People.

Intellectual property issues will be negotiated and agreed upon for each project to address specific intellectual property issues.

MEETINGS AND REPORTING

Council will provide the administrative resource and support to facilitate the Arakwal Memorandum of Understanding Advisory Committee.

The Arakwal Memorandum of Understanding Advisory Committee will continue to meet bi monthly or four times per year.

The Arakwal Memorandum of Understanding Advisory Committee will provide an annual progress report on the achievements of the Memorandum of Understanding and the associated Action Plan.

The Arakwal Memorandum of Understanding Advisory Committee will provide a review of the Memorandum of Understanding to the parties five years from the signing of the agreement.

IMPLEMENTATION PLAN (measurable outcomes with timeframe)

The Arakwal Memorandum of Understanding Advisory Committee will develop an Implementation Plan to deliver the priority projects from the Memorandum of Understanding. This process will ensure that the projects are planned in a timely, relevant method and ensure outcomes are achieved.

DISPUTE RESOLUTION / MEDIATION

The parties agree that they will use their best endeavours to resolve any dispute arising out of, or in relation to, this agreement amicably and in good faith, in the best interests of the parties and as quickly as possible:

- (a) firstly by discussion at the committee;
- (b) if not resolved, by appropriate levels of management;
- (c) if not resolved, seek an external mediator to resolve the matter;
- (d) not proceed to arbitration or litigation to resolve any dispute until the procedures set out in this clause are exhausted.

TERMINATION

Either party may, by giving six months notice in writing to the other, terminate this agreement and the Committee shall thereupon be disbanded.

CARING FOR COUNTRY

The notion of Caring for Country is integral to lives of the Bundjalung of Byron Bay Arakwal people. Understanding this will assist Byron Shire Council staff in developing a successful partnership with the traditional owners of the land, the Bundjalung of Byron Bay Arakwal People.

The relationship between the National Parks Service of NSW and Bundjalung of Byron Bay Arakwal People in the co-management of Arakwal National Park is a model of how understanding of the fundamental notion of Caring for Country is an essential foundation to a successful partnership. The Arakwal National Park Plan of Management developed a specific definition of Caring for Country and applied this definition to all areas of management of the park.

As the initial development of this MoU has identified projects that include all divisions of Council, it is essential for Council staff to understand the importance and the meaning of Caring for Country. It is essential for this agreement that the Arakwal Memorandum of Understanding Advisory Committee develop a working definition of Caring for Country for Council staff to have as a reference point in their work with any Arakwal people, projects or country.



KEY PRIORITIES OF THE MEMORANDUM OF UNDERSTANDING

The Arakwal Memorandum of Understanding will be based around five key priorities.

1. Culture and Heritage
2. Participation in Governance
3. Cultural and Economic Development
4. Caring for Country
5. Social Justice and Community Development

Within this framework, each of the core priorities will have guiding principles and specific projects to be implemented.

1. CULTURE AND HERITAGE

Council will work in partnership with the Bundjalung of Byron Bay Arakwal People to ensure preservation of cultural practices, traditional sites, significant places and expressions of cultural identity.

1.1 Culture and Heritage: Guiding Principles

- 1.1.1 Cultural Protection and Revitalisation
- 1.1.2 Access to land
- 1.1.3 Sharing Information
- 1.1.4 Environmental Protection and Education

1.2 Culture and Heritage: Guiding Principles

1.2.1 Arakwal Language Revitalisation

Council to advocate for, and support the development of, an Arakwal language revitalisation program under the direction of the Arakwal.

1.2.2 Ti Tree Lake (Taylors Lake)

This area is one of the most significant sites to the Arakwal people. It is their objective to have this area protected as an Aboriginal site. Arakwal would like to protect this area from all forms of tourism and development. Arakwal have requested that, as a matter of priority, any developments regarding zoning, consultation with other community groups, proposed developments, tourism operators and Council, consider the cultural significance of this area. Further, that Council provide transparent information to Arakwal on any matters relating to the Ti Tree Lake areas, especially in regard to proposed developments on or around the area.

1.2.3 Access to monitor important Aboriginal sites on private land

The development of a process that allows the Arakwal some level of access to monitor important sites on private land. Arakwal have identified some legislative changes which make it an offence to knowingly damage or destroy Aboriginal sites.

1.2.4 Ongoing Cultural Heritage Management and Land Management Rights

The development and implementation of a process to ensure ongoing recognition/consultation with Arakwal once Native Title Claims are granted and resolved that ensure ongoing Cultural Heritage Management and Land Management Rights.

1.2.5 Council support of important cultural events

Council to support important Indigenous cultural events including NAIDOC Week, Reconciliation Week and Survival Day. This support is to include provision of events, funding and the waiving of Council related fees.

1.2.6 Tourism

Arakwal to be consulted with on the licensing/tendering for tourism operators and screening in relation to cultural heritage.



2. PARTICIPATION IN GOVERNANCE

Council to involve representatives of the Bundjalung of Byron Bay Arakwal People in Council decision making process on matters concerning Arakwal Country, People and business.

2.1 Participation in Governance: Guiding Principles

- 2.1.1 Representation and Self Determination
- 2.1.2 Consultation
- 2.1.3 Responsiveness
- 2.1.4 Inclusion

2.2 Participation in Governance: Specific Projects

2.2.1 Participation in Committees

Council to ensure representation on Council Advisory Committees, Project Reference Groups and Steering Committees with dedicated Arakwal positions on relevant forums.

2.2.2 Consultation processes for development applications and other matters in regards to public lands

- Development of clear processes in regard to consultation and engagement with Arakwal on development applications and other planning mechanisms in lands within the Byron Shire.
- Development of frameworks for ongoing consultation processes.

3. CULTURAL AND ECONOMIC DEVELOPMENT

Council advocates and supports the opportunities for cultural and economic development for the Bundjalung of Byron Bay Arakwal People.

3.1 Cultural and Economic Development: Guiding Principles

- 3.1.1 Indigenous Employment Strategies
- 3.1.2 Housing
- 3.1.3 Public Art
- 3.1.4 Cultural Centre
- 3.1.5 Cultural Tourism

3.2 Cultural and Economic Development: Specific Projects

3.2.1 Indigenous Employment Strategies

Council to develop and implement an Indigenous Employment Strategy. Council are a key employment provider in the local community and the strategic employment of indigenous staff has huge benefits to the local community.

3.2.2 Arakwal Cultural Centre

Council to continue to support the development of the Arakwal Cultural Centre and assist with applications for funding. This project has been carried forward from the 1998 Heads of Agreement.

3.2.3 Public Art Opportunities

Council to encourage the development of public art opportunities to allow opportunities for Arakwal people to have artistic and cultural expression.

The July 2012 Public Art Policy Guidelines and Criteria state :

“Art is an important expression for Indigenous people and provides an opportunity for them to reflect on their heritage as a way of ensuring Indigenous culture is continued. Indigenous public art provides professional art opportunities to powerfully express this continuation of culture and an opportunity for the Byron Shire community to acknowledge and celebrate its cultural heritage.

Byron Shire Council acknowledges the traditional owners of Byron Shire, the Bundjalung of Byron Bay - Arakwal Bumberlin people. Council also acknowledges the people and the wider Bundjalung Nation and their connection to the land. Opportunities for artists from the Bundjalung of Byron Bay–Arakwal Bumberlin people will be fairly represented in displays of public art throughout the Shire. Council will work closely with the traditional owners and relevant stakeholder groups to ensure Aboriginal stories will be weaved into the fabric of the region.”

3.2.4 Arakwal Room at the Byron Bay Library

The Byron Bay Library site, situated in the Sandhills Estate in Byron Bay, formed part of the Crown Reserves claimed under Native Title by the Bundjalung of Byron Bay Arakwal people. The support of the Arakwal elders enabled the Crown Land to be transferred to Council for the purposes of a library site. The library site and an additional 1.65 hectares of land (comprised in Lot 441 DP 800268) were intended to be transferred to Council through negotiations of Indigenous Land Use Agreement 2.

Council is to continue to provide the Arakwal Room at the Byron Bay Library (as negotiated under Indigenous Land Use Agreement 2).

4. CARING FOR COUNTRY

Council recognises the significant commitment of the Bundjalung of Byron Bay Arakwal People in Caring for Country and maintains a partnership to consult and cooperate in achieving ecologically sustainable conservation.

4.1 Caring for Country: Guiding Principles

- 4.1.1 Caring for Country: Understanding Arakwal Priorities
- 4.1.2 Environmental Protection
- 4.1.3 Planning and Development processes
- 4.1.4 Cultural Awareness and Training
- 4.1.5 Managing the Impacts of Tourism on Arakwal people, land and culture

4.2 Caring for Country: Specific Projects

4.2.1 Caring for Country

The development of a working definition of Caring for Country for application over all divisions of Council. Council to use available policy frameworks and regulatory mechanisms to support Arakwal to protect and care for Country.

4.2.2 Protecting Wetlands

Arakwal have identified ongoing concerns regarding important environmental and cultural wetland sites and have requested that Council rectify existing drainage issues in Byron Bay. This matter is carried over from the original

h.

1998 Aboriginal Heads of Agreement and involves objectives from point 3 of the Agreement, Aranga Development and Paterson Street water runoff into Cibum Margill swamp. The Corporation is also concerned that polluted water currently runs from the Cowper Street drainage system onto Main Beach. A solution that has been identified is the construction of a wetland, filtration system, or artificial wetland at the Cowper Street drainage system onto Main Beach.

Council and Arakwal Corporation to work in partnership to obtain funding to implement solutions to these ongoing issues.

4.2.3 Byron sewerage treatment plant at Tallow Creek

The decommissioning of the Byron sewerage treatment plant (Tallow Creek). The Arakwal are concerned about the potential redevelopment of this land. It is a very important site to Arakwal and the area includes burial sites as well as other areas of significance. Arakwal have requested to be involved in the planning process for any redevelopment at this site.

4.2.4 Cultural Awareness Training

Cultural awareness induction for all staff and Councillors through Arakwal's website, with stage two training for relevant staff to include Native Title and other relevant land management issues and specifically developed training packages for relevant staff.

4.2.5 Tourism

Council and Arakwal to work in partnership to monitor and manage the impact of tourism on Arakwal Country and cultural heritage.

5. SOCIAL JUSTICE AND COMMUNITY DEVELOPMENT

Council and Arakwal to work together to create and support a healthy, vibrant, strong and resilient Aboriginal and Torres Strait Islander community.

5.1 Social Justice and Community Development: Guiding Principles

- 5.1.1 Development of Social and Cultural Capital
- 5.1.2 Housing and homelessness
- 5.1.3 Closing the Gap, improving health of Indigenous Community
- 5.1.4 Eco/Cultural Tourism Opportunities for Arakwal People

5.2 Social Justice and Community Development: Specific Projects

5.2.1 Housing at Ironbark Avenue

Council to continue support for the development through to occupation of the Ironbark Avenue housing project. This project was progressed through the 1998 Heads of Agreement and continues to be a priority for the Arakwal.

5.2.2 Aboriginal social, economic and community development projects

Arakwal and Council to work in partnership on Aboriginal social, economic and community development projects that have positive outcomes for the wider community.

Arakwal have identified that community safety and social issues in Byron Bay are having direct and broader impacts on their families and communities, notably drug and alcohol use, law enforcement, housing, employment, education and health.

5.2.3 Sandhills Estate

Arakwal to continue support for the residual land in the Sandhills Estate intended for transfer during negotiations of Indigenous Land Use Agreement 2. This land to be developed in consultation with Arakwal for civic and community uses.

5.2.4 Aboriginal Housing

Council and Arakwal to work in partnership to develop local networks and work with regional networks to advocate for increased Aboriginal housing options within Byron Shire.

5.2.5 Aboriginal Health

Council and Arakwal to work in partnership to develop local networks and work with regional networks to advocate for Aboriginal health service provision in Byron Shire. This may include an outreach service at existing community and neighbourhood centres, health promotion services and brokerage services.

5.2.6 Tourism

Council to monitor the negative impacts of tourism on Arakwal people, lands and culture while identifying opportunities for Arakwal to benefit from tourism.

The Arakwal have asked Council to consider how Arakwal can provide assistance to Council, for example, in dealing with Crown lands, in partnerships to obtain funding to undertake environmental, tourism, arts, community and social projects, the development of training etc. The Arakwal Memorandum of Understanding Advisory Committee see this process as an avenue for Byron Shire Council to establish itself as a leader in indigenous community development.



The Arakwal Memorandum of Understanding

Executed by the Parties Byron Shire Council and Bundjalung of Byron Bay Arakwal People

Bundjalung of Byron Bay Arakwal People
Yvonne Stewart, CEO

.....

8 July 2013

Bundjalung of Byron Bay Arakwal People
Annette Kelly, Board Member

.....

8 July 2013

Byron Shire Council
Cr Simon Richardson (Mayor)

.....

8 July 2013

Byron Shire Council
Ken Gainger (General Manager)

.....

8 July 2013

Report No. 4.2 Arakwal Area at the Byron Bay Cemetery Update

Directorate: Corporate and Community Services

Report Author: Belle Arnold, Community Project Officer

File No: I2017/219

5 **Theme:** Society and Culture
Community Development

Summary:

10 This report provides an update to the scoping and investigation stage of the Arakwal identified area of the Byron Bay Cemetery.

RECOMMENDATION:

15 That the Arakwal Memorandum of Understanding Advisory Committee note the progress on this project and provide further direction for the next stage of this project.

Report

This report provides an update to the scoping and investigation stage of the Arakwal identified area of the Byron Bay Cemetery. This project is highly sensitive and important to the cultural integrity of the Bundjalung of Byron Bay, Arakwal People and has been given priority due to the frail condition of Arakwal Elders and Community Leaders.

Council at its Ordinary meeting held on 15 December 2017 resolved as follows:-

16-619 Resolved that Council allocate an initial budget of \$2,200 to undertake scoping and investigation for the establishment of an Arakwal Area in the Byron Bay Cemetery and that the funding source is identified in the December 2016 Quarterly Budget Review.

The budget allocation is to complete the following works:

Stage 1 scoping/investigation:

The estimated cost for the scoping and investigation of the site will be approximately \$1,000. This work would involve a number exploratory test holes to be dug and the soils analysed. Surveyor costs would be an additional \$1,200.

Stage one total: \$2,200

This scoping work is required to determine that this area is feasible and to allow for further consultation indicated as required in Stage Two.

Scoping and investigative work has been undertaken by Council's Technical Officer, Open Spaces and Reserves. No impediments to proceeding in the nominated area were identified. The surveyor has been directed to prepare a curved layout that makes best use of the hillside in the allocated space.



Figure 1 shows the identified area and proposed design of bench shape which allows for best use of space.

Stage Two of the Arakwal Area in the Byron Bay Cemetery project is the construction stage and will require further development to include:

- 5 1. Additional consultation with the Bundjalung of Byron Bay in relation to capacity, design, cultural principles and administrative policies,
2. Further scoping of construction costs based on the outcome of consultation
3. Further design work for the area and the columbarium wall
- 10 4. Development of associated policies for the implementation of the project
5. Actual layout/ construction on site.



Figure 2. Example of modern columbarium design

- 15 Council's Technical Officer, Open Spaces and Reserves, Andy Erskine will attend the 2 March 2017 meeting to provide additional information regarding the project.

Financial Implications

- 20 Nil from this report

Statutory and Policy Compliance Implications

- 25 Native Title Act 1993
- Local Government Act 1993
- Land Rights Act 1984
- Arakwal MoU 2013

30

Report No. 4.3 **Byron Shire Aboriginal Cultural Heritage Study**
Directorate: Corporate and Community Services
Report Author: Belle Arnold, Community Project Officer
File No: I2017/220
5 **Theme:** Society and Culture
 Community Development

Summary:

10 This report provides an update to the Byron Shire Aboriginal Cultural Heritage Study including the minutes from the Byron Shire Aboriginal Cultural Heritage Study Steering Group Meeting 1.

RECOMMENDATION:

15 **That the Arakwal MoU Advisory Committee note the progress of the Aboriginal Cultural Heritage Study 2017.**

Attachments:

- 20 1 Aboriginal Cultural Heritage Study Steering Committee Meeting 1 Minutes, E2017/10308 , page 38 [↓](#)
 2 Aboriginal Cultural Heritage Study Group Terms of Reference, E2017/7583 , page 44 [↓](#)
 3 Byron Shire Aboriginal CH Study, E2017/11110 , page 52 [↓](#)

Background

The Arakwal Memorandum of Understanding states:

5 1. Culture and Heritage

Council will work in partnership with the Bundjalung of Byron Bay Arakwal People to ensure preservation of cultural practices, traditional sites, significant places and expressions of cultural identity.

10 1.2.4 Ongoing Cultural Heritage Management and Land Management Rights

The development and implementation of a process to ensure ongoing recognition/consultation with Arakwal once Native Title Claims are granted and resolved that ensure ongoing Cultural Heritage Management and Land Management Rights.

15 Council staff applied for the Aboriginal Cultural Heritage Application through the Office of Environment and Heritage on 16 December 2015. This is the second application Community Development staff have made to the Office of Environment and Heritage for this project. The scope of works was revised in consultation with key stakeholders including the Bundjalung of Byron Bay Arakwal People and Tweed Byron Local Aboriginal Land Council.

20 On 20 June 2016 Council received notification that it was successful in receiving \$25,000 (ex GST) for the Byron Shire Council Aboriginal Heritage Planning Study – Stage One”. Council had applied for \$50,000 to complete Stage One of the Aboriginal Cultural Heritage Study. Stage One of the Aboriginal Cultural Heritage Study focusses on recording known and registered sites and utilising regulatory planning frameworks to integrate these sites into Council’s Local Environment Plan (LEP).

Overview of Stage One of the Aboriginal Cultural Heritage Study

30 Stage One focuses on collating what is currently known on Aboriginal Heritage Sites in the Byron Shire and taking immediate action to protect Aboriginal Heritage through the instruments of Planning Legislation, the Local Environment Plan and Development Control Plans.

1. Literature Review including:

- 35 - Archival material
- Review of AHIMS register
- Interviews with steering committee members – qualitative research

2. Aboriginal Sites Survey of known sites

40 Working with project partners Bundjalung of Byron Bay, Arakwal People and the Tweed Byron Local Aboriginal Land Council to survey known sites and places documenting objects within these places.

3. Council’s Information Management Systems

45 Development of Council’s internal mapping layers to identify a hierarchy of criteria for Aboriginal Heritage Impact Studies and Aboriginal Heritage Impact Permits required in the Development Application process.

4. Amend the Development Application Process

50 Integrate cultural mapping into Development Control Plans and Local Environment Plan. Amend the development application process to notify applicants of the need to obtain Aboriginal Heritage Impact Permits and Aboriginal Heritage Studies from appropriate Aboriginal organisation.

5. Community Education

Develop a Byron Shire LGA specific suite of publications educating community on Aboriginal Cultural Heritage Protection and due diligence requirements.

On 19 July Council's Aboriginal Project Officer met with the General Manager (Gavin Brown) of the Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) to discuss the potential of the project with reduced funding. Mr Brown was supportive of accepting the reduced funding and proceeding with the project and requested that the consultants be appointed through a selective rather than open process, as he was aware of anthropologists who had been working in the Byron Shire for decades who would have cultural heritage knowledge to assist with this project.

Mr Brown also requested that a recommendation come from this committee to request additional funding from Council to provide Aboriginal Cultural Heritage Training for Council's Planning staff and other relevant staff to assist with the implementation of the project. Mr Brown requested that this training be delivered by Ashley Moran from the Office of Culture and Heritage as a recognised expert in this field.

The prioritisation of the Aboriginal Cultural Heritage Study will have implications on the delivery of other projects under the Arakwal MoU Implementation Plan for 2017/18 as staff and resources will be directed to this project.

Report

On 27 January 2017 the selective tender process which prioritised heritage consultants with experience in Aboriginal Cultural Heritage in the Byron Shire closed.

On 8 February 2017 the Aboriginal Steering Group for this project met to consider the submissions. The Byron Shire Aboriginal Cultural Heritage Study Steering Committee is comprised of members from the Bundjalung of Byron Bay Arakwal People, Tweed Byron Local Area Land Council, Office of Environment and Heritage Staff and Byron Shire Council Staff. Minutes from this meeting are attached (Attachment 1).

At this meeting Everick Heritage Consultants were awarded the tender to undertake the Byron Shire Aboriginal Cultural Heritage Study (Attachment 3). This project is to be completed by 17 May 2017.

Financial Implications

It is anticipated that additional Cultural Heritage Training for Council's Planning and other relevant staff will cost in the vicinity of \$5,000. Council currently has no available funding for additional training in the 2016/17 Community Development budget.

A budget allocation would need to be allocated by the Council as part of the quarterly budget review process and a funding source for the budget allocation identified. This may include the reallocation of funds from an existing Training and Development Budget for this specific training program.

Statutory and Policy Compliance Implications

Native Title Act 1993
Local Government Act 1993
Arakwal MoU 2013
National Parks and Heritage Act 1974

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

4.3 - ATTACHMENT 1

Aboriginal Cultural Heritage Survey Aboriginal Steering Group Meeting 1 Minutes - 08/02/2017

Present: Gavin Brown, Lee King (Bundjalung on Byron Bay Arakwal People) Delta Kay (OEH) Fiona Sinclair, Sarah Ford, Belle Arnold (BSC)
Via Phone Link Up – Leween Williams, Des Williams (TBLALC)

Apologies: Annette Kelly (Bundjalung on Byron Bay Arakwal People), Chris Larkin, Mark Arnold (BSC)

	Agenda Item	Discussion	Outcomes	Follow Up Actions
1	Project Objectives for Aboriginal Stakeholders	<p>Clarification of Scope of Project – Stage 1 of Byron Shire Aboriginal Cultural Heritage Study</p> <p>Stage One:</p> <p>Stage One focuses on collating what is currently known on Aboriginal Heritage Sites in the Byron Shire and taking immediate action to protect Aboriginal Heritage through the instruments of Planning Legislation - Local Environment Plan and Development Control Plans.</p> <p>1. Literature Review including:</p> <ul style="list-style-type: none"> • Archival material • Review of AHIMS register • Interviews with steering committee members – qualitative research <p>2. Aboriginal Sites Survey of known sites</p> <p>Working with project partners Bundjalung of Byron Bay, Arakwal People and the Tweed Byron Local Aboriginal Land Council to survey known sites and places documenting objects within these places.</p>	<p>Important to note that some sights are more sensitive than others</p> <p>Protect the culturally sensitive information, not all the information is for public access.</p> <p>Discussion on the need for a rigorous management system for culturally sensitive information.</p> <p>It was identified that the role of this committee is to ensure this project adheres to Aboriginal Cultural Principles in relation to how the information is collected and collated as well as how the information is stored and accesses.</p> <p>Intellectual property of the information remains with the Aboriginal Community.</p>	<p>Develop MoU on Intellectual Property Rights with Aboriginal partners</p> <p>Investigate Tweed Shire Council's alert system and restricted access system</p>
	Agenda	2 March 2017	page 38	

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

4.3 - ATTACHMENT 1

		<p>3. Council's Information Management Systems Develop of Council's internal mapping layers to identify a hierarchy of criteria for Aboriginal Heritage Impact Studies and Aboriginal Heritage Impact Permits required in the Development Application process.</p> <p>4. Amend the Development Application Process Integrate cultural mapping in to Development Control Plans and Local Environment Plan. Amend the development application process to notify applicants of the need to obtain Aboriginal Heritage Impact Permits and Aboriginal Heritage Studies from appropriate Aboriginal organisation</p> <p>5. Community Education Develop a Byron Shire LGA specific suite of publications educating community on Aboriginal Cultural Heritage Protection and Due Diligence requirements.</p>		
2	Review and confirm TOR	The Byron Shire Council Aboriginal Cultural Heritage Study Steering Committee Terms Of Reference E2017/7583 document was presented for consideration.	<p>Minor amendments were made to this document specifically in relation to quorum and decision making processes.</p> <p>It was reiterated that the input from the Aboriginal Community was to be paramount throughout</p>	Amendments to the Study Steering Committee Terms Of Reference were made and the document was adopted.

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

4.3 - ATTACHMENT 1

			this process as they are the experts in Aboriginal Cultural Heritage.	
3	Assessment of RFPs	<p>Request for Quotation from Everick Consultants was tabled as the only one submitted.</p> <p>Jackie Collins was also approached as an experienced anthropologist in the region but was unable to commit to the specified time frame.</p> <p>TBLALC raised concerns regarding their experiences with Everick. Concerns were around pro development, bringing people from outside community to discredit Aboriginal evidence and questioned their ethics.</p> <p>Discussed consultation with formal and informal stakeholders and how to prioritise and credit information provided by individuals or informal stakeholders through an approval process managed by this committee.</p>	Adrian Piper from Everick was identified as the preferred project lead	<p>Everick appointed the contract for the Byron Shire Aboriginal Cultural Heritage Study on conditions:</p> <ul style="list-style-type: none"> • Adrian Piper is the project lead from Everick • Ethics document for the project to be developed for consultants inception meeting • Everick project team to be briefed regarding concerns at inception meeting. • Clarification of intellectual property rights of the information and the restricted use of this information.
4	Time frame for project	<p>Short Project time frames identified as shown in figure 1 below.</p> <p>Conce4rns that the short time frame will have negative impacts on the project.</p>		Final report to stress that this study is not the complete version of the existence of sites in the area and that excavation could unearth unrecorded sites or objects.

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

4.3 - ATTACHMENT 1

5	Meeting schedule for group			To be finalised after the inception meeting with Everick.
6	Cultural principles for project	Ensure cultural principles outlined in the Terms of Reference are adhered to and in addition: <ul style="list-style-type: none">- Gender ownership of sites- How information is made available to custodians on completion of project- Aboriginal Stakeholders to work together for the benefit of the wider community and protection of Aboriginal Cultural Heritage.		Cultural principles of sites must be adhered to in the process of this survey. Ongoing discussion
	Other			Request to see additional council's existing mapping layers to get an idea of what the Aboriginal Cultural Heritage Mapping Layer will look like.

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

4.3 - ATTACHMENT 1

Time Frame for Project (fig 1) Milestones	Completion
1. Pre-Commencement	
<ul style="list-style-type: none"> Steering committee established <ul style="list-style-type: none"> RFQ terms agreed and preferred consultants identified Acceptance of Brief / Inception meeting 	23 December 2016 30 January 2017
2. Draft Study	
<ul style="list-style-type: none"> Literature Review as per scope Site survey report Identification of appropriate sites for internal GIS mapping layer for reference in Development Application process Make recommendations for amendments to the DCP and LEP as appropriate Review OEH and other local government community education publications for adaptation and use in the Byron Shire 	31 March 2017
3. Completion of Study	
<ul style="list-style-type: none"> Submission of 1st Draft / Review by Steering Committee 	21 April 2017
<ul style="list-style-type: none"> Presentation of revised Draft to Steering Committee 	28 April 2017
<ul style="list-style-type: none"> Submission of final report to OEH 	15 May 2017

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

4.3 - ATTACHMENT 1

Time Frame for Project (fig 1) Milestones	Completion
1. Pre-Commencement	
<ul style="list-style-type: none"> Steering committee established <ul style="list-style-type: none"> RFQ terms agreed and preferred consultants identified Acceptance of Brief / Inception meeting 	23 December 2016 30 January 2017
2. Draft Study	
<ul style="list-style-type: none"> Literature Review as per scope Site survey report Identification of appropriate sites for internal GIS mapping layer for reference in Development Application process Make recommendations for amendments to the DCP and LEP as appropriate Review OEH and other local government community education publications for adaptation and use in the Byron Shire 	31 March 2017
3. Completion of Study	
<ul style="list-style-type: none"> Submission of 1st Draft / Review by Steering Committee 	21 April 2017
<ul style="list-style-type: none"> Presentation of revised Draft to Steering Committee 	28 April 2017
<ul style="list-style-type: none"> Submission of final report to OEH 	15 May 2017



BYRON SHIRE COUNCIL

Aboriginal Cultural Heritage Study Steering Committee

TERMS OF REFERENCE

INFORMATION ABOUT THIS DOCUMENT

(INTERNAL USE ONLY)

Date Adopted by Council		Resolution No.	
Responsibility	Director Corporate and Community Services		
Review Timeframe			
Last Review Date:		Next Scheduled Review Date	

5

Document History

Doc No.	Date Amended	Details Comments eg Resolution No.
E2017/7583	This document	

Further Document Information and Relationships

Related Legislation	Section 355, Local Government Act (1993)
Related Policies	Code of Conduct 2016 Work Health Safety Policy Code of Meeting Practice
Related Procedures/ Protocols, Statements, documents	Arakwal (MoU)

10

Table of Contents

5	1. Preamble	1
	2. Purpose	1
	3. Timeframe for Committee	1
	4. Responsible Directorate	1
	5. Membership	2
10	6. Confidentiality	2
	7. Chairperson	2
	8. Majority Decision	2
	9. Convening Meetings	2
	10. Agenda Preparation	3
15	11. Records of meetings	3
	12. Meeting Practice	3
	13. Miscellaneous	3

1. Preamble

The Aboriginal Cultural Heritage Study Steering Committee is a steering committee for a specific project (the Byron Shire Aboriginal Cultural Heritage Study) and does not have executive power or authority to implement actions.

The role of the committee is to report to the Project Team and provide appropriate advice and recommendations on matters relevant to this Terms of Reference.

2. Purpose

The purpose of the Aboriginal Cultural Heritage Study Steering Committee is:

1. To ensure Aboriginal stakeholders are represented in the Aboriginal Cultural Heritage Study
2. To ensure Aboriginal Cultural principles are respected through the process of the study
3. To achieve the objectives of the Aboriginal Cultural Heritage Planning Study - to research and identify Aboriginal cultural heritage sites occurring within the Byron Shire local government area for inclusion in the Byron Shire Local Environment Plan.

Council acknowledges that Aboriginal people are the original inhabitants of the Byron Shire and that according to their continuing law, traditions and customs it remains their traditional country. Council also acknowledges and respects the Arakwal Corporation's right to speak for its country in accordance with its laws, traditions and customs.

The parties commit themselves to together seek ways in which Aboriginal interests can be advanced where decisions are to be made about their traditional country.

The parties commit themselves to work together to ensure that this is done in a way that advances the interests of the whole community, and promotes harmonious community interests.

This committee meets to fulfil Council's obligations under:

- a) The Native Title Act, and facilitate an avenue for the traditional owners as recognised under the Native Title Act (1993) the Bundjalung of Byron Bay, Arakwal People, to protect cultural heritage on their ancestral homelands
- b) The Land Rights Act (1983), and facilitate an avenue for the Tweed Byron Local Area Land Council to fulfil their charter to protect Aboriginal cultural heritage in their identified boundaries.

3. Timeframe for Committee

The lifespan of the Aboriginal Cultural Heritage Study Steering Committee is for the term of the Byron Shire Aboriginal Cultural Heritage Study development.

4. Responsible Directorate

This committee is administered by the Corporate and Community Services Directorate. The Director or their delegate will attend these meetings and minutes will be taken by a member of their staff.

5. Membership

The Aboriginal Cultural Heritage Study Steering Committee is to be made up of representatives from the key Aboriginal stakeholder groups within the Byron Shire and appropriate staff members.

Membership is to include:

- 2 invited representatives from the Bundjalung of Byron Bay Aboriginal Corporation (Arakwal)
Annette Kelly
Lee Harding
- 2 invited representatives from the Tweed Byron Local Aboriginal Land Council
Des Williams
Leweena Williams
- 1 invited representative from the National Parks and Wildlife Service
Delta Kay
- Director Corporate and Community Services
- Manager Community Development
- Representative from Sustainable Environment and Economy Directorate
- Community Projects Officer (Aboriginal and CALD),

Note: Staff members participating on the committee do not have any voting entitlements.

6. Confidentiality

Members of the committee will, in those circumstances where confidential matters are subject to deliberation, maintain confidentiality.

7. Chairperson

The position of Chairperson is to held by the Director Corporate and Community Services.

8. Majority Decision

Decision making for this committee will require fair and open process with representation and contribution from each stakeholder group.

A majority decision of the committee requires a majority of members to be present and voting on any item subject to the requirements of a quorum being met at the meeting.

9. Convening Meetings

Meetings of the Steering Committee will be scheduled at the first meeting of the Committee. Extraordinary Meetings may be called when required.

10. Agenda Preparation

It is the responsibility of the chairperson to prepare the agenda in consultation with the relevant Director, setting out the terms of business to be considered.

The agenda is an organised list of the business, in order, that will be transacted at the meeting. An agenda for each meeting, containing a brief report on each item, is to be provided to committee members 5 days prior to the meeting being held.

Each item of business to discuss at the meeting is required to be listed on the agenda and in written form.

For some matters, it will be necessary to attach other relevant information to the agenda to inform and direct discussion. Such information is to be circulated with the agenda.

Committee members may request items for inclusion in future agendas, through the Chair.

11. Records of meetings

- a) The minutes of meetings are to be circulated to members of the group within 7 days of the meeting so that members can provide feedback through the Chair on the draft unconfirmed minutes.

12. Meeting Practice

Meetings are to be conducted in accordance with this Terms of Reference and, where required, reference to Council's Code of Meeting Practice.

13. Miscellaneous

- a) **Insurance:** All group members are covered by the public liability policy of Council. This insurance does not preclude the Advisory Committee from due diligence and all Council policies must be adhered to.
- b) **Code of Conduct:** All group members to abide by Council's adopted Code of Conduct at all times.
- c) **Pecuniary Interest:** Pecuniary Interest may be defined as an interest that a person has in a matter, as a group member or employee of a company or other body, because of a reasonable likelihood or expectation of appreciable financial gain or loss to the person, or another person with whom the person is associated. Such other person includes the spouse or de-facto partner or relative of the group member.

Section 446 of the Local Government Act states that "a member of a council committee, other than a committee that is wholly advisory, must disclose pecuniary interests..."

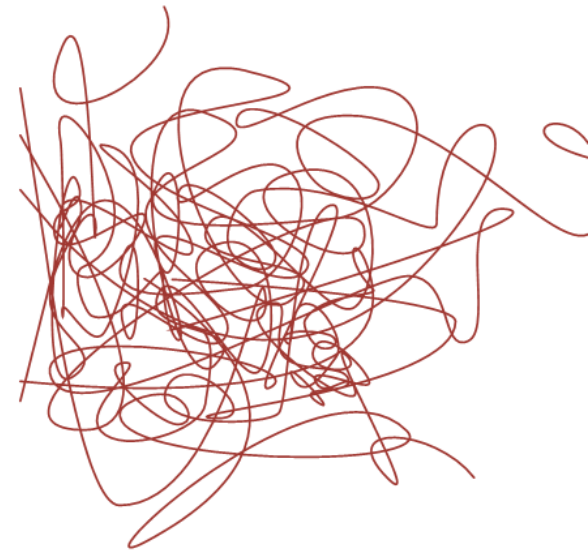
Even though the Local Government Act provides an exemption to disclose pecuniary interests Council's preference is for all members to declare pecuniary interests where applicable.

- d) **Work Health Safety:** All group members are required to comply with the “Worker Responsibilities” as prescribed in the Work Health Safety Policy.



Table Of Contents

1.	Introduction	3
2.	Cultural Heritage Assessment Methodology	4
2.1	Our Approach to Engaging with Traditional Owners	4
2.2	Part 1: Inception Meeting	4
2.3	Part 2: Literature Review	4
2.4	Part 3: Site Surveys and Site Survey Workshop	5
2.5	Part 4: Mapping Workshop	5
2.6	Part 5: Planning Considerations Workshop	5
2.7	Part 6: Review of Education Documents	6
2.8	Part 7: Presentation to Steering Committee and Final Report	6
3.	Project Time Frame & Deliverables	7
4.	Variations To This Fee Proposal	7
5.	Everick Heritage Consultants' Qualifications	8
5.1	Staff Working On This Project	8
	Adrian Piper – Senior Archaeologist	8
	Tim Robins – Director / Archaeologist	8
	Tim Hill- Director/Archaeologist	8
5.2	Everick's Similar Project Experience	9
6.	Everick Heritage Consultants' Fee Proposal	12
7.	Company Details	13
8.	Conclusion	13



1. Introduction

This fee proposal is submitted by Everick Heritage Consultants Pty Ltd ('Everick') for undertaking a Aboriginal Heritage Study of the Byron Shire, NSW (the 'Project'). The assessment is to be of a standard that will meet the requirements of the NSW Heritage Grants Program as outlined in the Consultant Brief (E2016/102078).

It is noted that the Aboriginal Heritage Study forms part of a broader 4 Stage 'Byron Shire Heritage Study Project' and primarily aims to '...research and identify Aboriginal cultural heritage sites within the Byron Shire Local Government Area and identify an appropriate management and protection regime for these'.

Our fee proposal addressing the deliverables specified in the consultants brief is attached. We note that the scale of the Project and limited budget allowed will make careful identification of goals and outcomes of critical importance if the Project is to achieve its stated aims. We are of the opinion that the most value will come from identifying Traditional Owner knowledge from the region, and using this as the foundation of the assessment works. As such we have structured the methodology around a series of workshops to create opportunities for networking and discussion.

Whilst it is noted that the brief primarily aims to identify site information and undertake site inspections, it is Everick's view that the outcomes of the Study will be best achieved via:

- (a) using existing resources wherever possible and avoiding duplication of works (most notably the AHIMS database);
- (b) focusing on addressing the primary flaw in NSW's heritage management regime, intangible (non-physical) heritage values;
- (c) focusing on relationship development between Aboriginal stakeholders and key Council staff.
- (d) identification and mapping of areas of increased cultural sensitivity, based on Aboriginal Traditional knowledge and Evericks archaeological knowledge of the region (eg. mapping traditional pathways, ceremonial areas, Pleistocene sand sheets of archaeological significance etc.)
- (e) undertaking threat analysis of areas and archaeological sites identified during the Aboriginal Knowledge Holder consultation, and completing targeted site inspections of these areas.
- (f) preparing a brief report in support of the works undertaken, including detailed GIS mapping where required.

We believe our project team is particularly well suited to undertaking the requirements of this brief. Since our inception in 2003, we have undertaken hundreds of cultural heritage assessments along the north coast of NSW. Our team has particular expertise in coastal archaeology, community engagement, GIS mapping, cultural heritage management plans and heritage legislation. We currently manage large site datasets for Aboriginal communities and on some of Australia's largest resource projects. We are passionate about the protection of Australia's indigenous heritage, and look forward to the opportunity to contribute to the management of such heritage in the Byron Shire.

Our fees for this assessment are contained in Section 6 below.

2. Aboriginal Cultural Heritage Study Methodology**2.1 Our Approach to Engaging with Traditional Owners**

Everick recognises that members of the Aboriginal community are the primary determinants of the cultural significance of their heritage. We value and encourage involvement from the Aboriginal community as an essential part of identifying Aboriginal places and assessing the significance of any Aboriginal objects likely to be impacted by development. Everick is proud to work with the Aboriginal community in devising ways to ensure their heritage is documented or preserved as appropriate. Everick's staff have strong working relationships with many local knowledge holders in the Byron Shire and surrounds.

We also have a policy of ensuring that the consultation process is open, transparent and fully documented, thereby protecting both the interests of the Aboriginal community and Council.

2.2 Part One: Inception Meeting

The initial inception meeting provides an opportunity to meet the project partners and develop a shared understanding of the project objectives. It is envisaged that the inception meeting will be chaired by senior staff from Byron Shire Council (or Everick if required) and provide an opportunity to Everick to outline the proposed methodology. It will also allow the Aboriginal stakeholders to identify key expectations and assumptions with respect to their participation within the project, particularly around the management of cultural and intellectual property and attendance at site inspections.

The inception meeting will be attended by Senior Archaeological Adrian Piper with attendance via conference call by Everick Director Tim Robins (Brisbane) and Senior Archaeologist Tim Hill (Coffs Harbour). Any amendments to the proposed methodology will be finalised and agreed to via email following the inception meeting.

2.3 Part Two: Literature Review

Everick has access to an extensive body of research and consultant reports from the Byron Shire as a result of our experience working in the region. This information will be collated and presented as both a summary document based on the following themes;

- Archaeological site types;
- Historical (physical) sites; and
- 'Intangible' sites and Places.

The literature review will include an analysis of site data held by Byron Shire Council which will be summarised and presented in a spreadsheet format and through GIS mapping to broadly understand the distribution of sites across land tenures within the Shire.

The literature review will also undertake a basic analysis of the accuracy of the Byron Shire sites database by analysing the number of sites entered prior to the introduction of the GDA 94 datum and the number of sites recorded via hand-held GPS. It is Everick's experience that many of the older NPWS 'Minarch' and 'Aboriginal Site Register' system site records are inaccurate by up to 1000m.

While specific considerations of cultural sensitivity and access will be discussed at the inception meeting, this stage will primarily focus on publicly accessible information. Specific consideration will be given to the management of images of Aboriginal people collected during the literature review in the inception meeting.

Access to key reports and GIS files from Council will be required for this stage.

2. Cultural Heritage Assessment Methodology

Continued

2.5 Part Three Mapping Workshop

The development of useable mapping files is considered a key outcome of the study. However, Evericks experience is that the potential of mapping will remain unrealised if the data and format is not optimised to meet the needs of end users- in this case Council staff and Aboriginal stakeholders. Another key consideration is the accessibility of culturally sensitive information - which needs to be openly discussed with Aboriginal stakeholders.

The mapping workshop will aim to develop a working understanding of the strengths and limitations of the AHIMS database, the NSW Heritage Register (for historic non-Aboriginal sites) and any data sets held by Council with a view to developing appropriate data management systems within subsequent stages of the overall Heritage Study.

Everick recommends that a workshop is held to present the available datasets and to openly discuss some of the issues around mapping. It is recommended that this workshop is facilitated, or chaired, by a staff member of Byron Shire Council who is familiar with the practical application and limitations of mapping data when used by Council. It is envisaged that this workshop would be held at Byron Shire Council offices in Mullumbimby.

2.4 Part Four: Site Surveys and Site Survey Review Workshop

Sites surveys will be informed in part by the literature review; the priorities and cultural knowledge of Aboriginal stakeholders and priorities of Byron Shire Council (for example areas of known future release areas). The site surveys will aim to balance documentation of the location and identifiable features of cultural sites and places whilst adequately documenting and exploring the values of the sites and places to the Aboriginal community. As such it is not envisaged that extensive archaeological investigation and recording will be undertaken.

Having consideration for the nature of site distribution in the Shire and the time available to complete the study Everick proposes to undertake site inspections of a sample of site types and locations within the Shire. Information collected during the site inspections will be provided as concise summaries in a report format which will include photos, maps and supportive spatial data files. The site inspection summary report will also identify management and planning considerations for each site. The report will also include a summary of the broad types of management issues which may be extrapolated across the Shire or used to inform planning decisions in other areas of the Shire.

Evericks proposed methodology includes a facilitated half day workshop to discuss the results of the site inspections with Aboriginal stakeholders and key Council staff. This workshop will be facilitated by Tim Hill and will aim to provide an opportunity for input by stakeholders who are not able to participate in the site inspections and who may wish to consider others views and knowledge when developing their own views as the study develops. It is envisaged that this workshop would be hosted by one of the Aboriginal stakeholders.

2.6 Part Five: Planning Considerations Workshop

A planning workshop will be facilitated by Tim Hill to develop a shared understanding of the opportunities afforded by planning systems- particularly the LEP and DCPs- to manage Aboriginal heritage values. The workshop will specifically aim to develop a shared understanding of the broad planning systems that affect heritage decision making and the roles of various stakeholders in local government planning processes. The workshop will include examples of best practice heritage management and examples of planning instruments which have led to successful heritage management outcomes. The workshop will provide an opportunity for Everick staff to share our experience working with heritage and planning legislation across most of the LGAs in northern New South Wales and experiences in Queensland.

For example the workshop might explore the 'triggers' for assessment and consideration of heritage values; opportunities for identification of Aboriginal heritage values for native vegetation and waterways; and relationships between Aboriginal stakeholders, Council and OEH. An agenda and facilitation plan for this workshop will be developed during the inception meeting.

The workshop will be facilitated by Tim Hill and will be followed by a workshop summary report.

2. Cultural Heritage Assessment Methodology

Continued

2.7 Part Seven: Review of Education Documents

A review of existing Council materials will be undertaken with key Council staff. The review will include written recommendations on appropriate media formats for educative material- including examples that Everick believes are exemplary in terms of the content and presentation.

It is anticipated that information collected and collated during the Study would be provided to Council for consideration as educational material, however it is noted that Cultural and Intellectual Property considerations will need to be in place before this material is available for use by Council. Everick will facilitate this process as much as possible, however it is likely these matters would need to be dealt within in subsequent stages of the overall Study.

2.8 Part Eight: Presentation to Steering Committee and Final Report

We will then produce a draft report that is suitable to be submitted as a stand alone Aboriginal Cultural Heritage Study. This draft report will include the outcomes of all sections of the project and be expanded to take into account the interests and views of the Aboriginal stakeholders, as expressed to us during the study. The report will be structured around the six core components of the Study (Aboriginal Stakeholder Consultation; Literature Review; Site Inspections; GIS Mapping Workshop; Planning Workshop and Education Material Review).and be presented as a .pdf document including supplementary appendices of data, maps and some photos. Spatial files and photos will be provided in electronic format (via Dropbox). The recommendations section of the report will include advice on a Aboriginal Cultural Heritage Management Strategy for consideration in future stages of the overall project.

Following the initial review of the draft report we will then participate in a Steering Committee meeting, chaired by Council, to present and discuss the findings of the Study and to receive any additional feedback or recommendations for amendment. This meeting will be attended by Adrian Piper and Tim Hill with conference attendance by Tim Robins (Brisbane).

Following the steering committee meeting a final draft Aboriginal Cultural Heritage Planning Report will be developed and presented to Council and the Steering Committee.

3. Project Time Frame & Deliverables

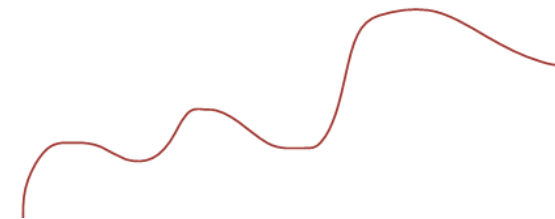
Conditional upon the availability of Council Staff and Aboriginal Stakeholders to attend workshops, we anticipate having a draft report completed by 21 April 2017 with subsequent steering committee meetings and submission of Final Draft by 28 April 2017 and presentation to Council and OEH by 15 May 2017.

Everick is actively engaged in cultural heritage assessment projects across the Far North Coast of NSW and will be completing studies with many of the Aboriginal Stakeholder groups. Where possible we will aim to schedule other work around the workshop program to ensure that Aboriginal stakeholders can participate in workshops.

4. Variations To This Fee Proposal

The fee estimate we have provided is for undertaking the project works outlined in this document only. Any variations to this methodology will be charged in accordance with our / the Aboriginal stakeholders appropriate hourly rate. This includes, but is not limited to any:

- (a) information requests from local or State Agencies following submission of our final report;
- (b) responses or alterations to the report following departmental reviews (excluding minor amendments);
- (c) additional site meetings due to previous non-attendance by interested parties;
- (d) cultural heritage management plans;
- (e) fees charged by Aboriginal groups for attendance at meetings, excavations and surveys;
- (e) AHIP processing fees;
- (f) archaeological excavations; and
- (g) survey of additional locations (if required).



5. Everick Heritage Consultants' Qualifications

Everick Heritage Consultants has offices in Brisbane, Tweed Heads, Coffs Harbour, Canberra and Alice Springs, affiliating some of the region's most experienced heritage and management practitioners. Everick prides itself in finding innovative solutions to heritage and archaeological problems.

5.1 Staff Working on this Project

Adrian Piper- Senior Archaeologist

Adrian Piper has worked in the field of heritage management in Northern New South Wales and Queensland for over thirty years. He has extensive and detailed knowledge of Aboriginal and historic cultural heritage issues throughout the region. This experience ensures that indigenous heritage issues are dealt with in a practical and sensitive manner.

A resident of Tweed Heads, Adrian has had extensive experience working with local historic societies, landowners, Councils and Aboriginal Land Councils of the region, both in the field and in the joint formulation of management recommendations to conserve and protect cultural places. He is therefore particularly well equipped to provide heritage assessments to local governments, Aboriginal organisations and business, which will meet the interests of clients and legislative requirements.

Adrian is well qualified to provide archaeological services. In addition to his demonstrable experience he has a graduate and post graduate degree (Bachelor of Letters- Prehistory. Archaeology) from the University of New England. He has provided numerous archaeological assessments to companies and local government authorities.

Tim Robins – Director/ Archaeologist

Tim Robins brings to Everick a legal background and provides clients with professional and hands-on project management. Tim has been admitted to practise as a solicitor in Queensland. He also holds a degree in archaeology from the University of Queensland.

Tim has overseen hundreds of heritage projects throughout Queensland and New South Wales, ranging from large mining and infrastructure projects to small scale residential developments. His experience extends to working on places of World, National, State and local heritage significance. Tim's role is to provide a clear communication channel between our clients and the Aboriginal stakeholders and consent authorities.

Today's cultural heritage requirements include a range of statutory obligations. The potential serious adverse consequences of failure to meet these requirements make a sound knowledge of heritage law essential for all archaeological consultants. Tim understands the legislative requirements and the time frame necessary to complete a job. Tim's knowledge ensures Everick undertakes the correct process from the start to gain departmental approval for whatever course of action that is required.

Tim Hill – Senior Archaeologist

Tim Hill brings to Everick Heritage extensive skills in site survey, stone artefact analysis, excavation, mapping and cultural heritage management. He has undertaken heritage projects across northern New South Wales, central Australia, the Kimberley Region of Western Australia and southeast Queensland.

Tim has worked on a diverse range of projects for clients and has successfully completed projects for Aboriginal representative bodies; resource exploration companies and State Government agencies. He has also worked on projects which include community and enterprise development; governance; mentoring; training and workshop facilitation. Tim has a special interest in National Park and protected area planning and a personal interest in the participation of Aboriginal communities in regional economies.

Tim's 20 years of practical experience have given him a national perspective of cultural heritage management and the capacity to draw on a wide range of technical skills, which make him a valuable member of the Everick team.

5.2 Everick's Similar Project Experience

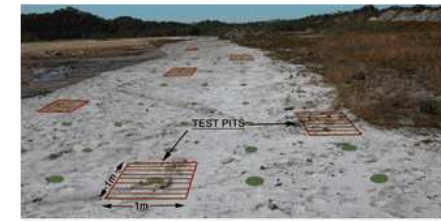
Below is just a selection of the jobs that Everick has undertaken that had similar requirements to this project. Everick are particularly experienced in working in and interpreting sand environments.

Should you have any further queries please contact Tim Robins.

Past Aboriginal Heritage Projects



Project Harvest Estate
Location Byron Bay NSW
Date Completed Ongoing
Project Requirements Assessment of a proposed residential subdivision in West Byron Bay. Project tasks included a Due Diligence assessment, negotiations with OEH and the Arakwal LALC and preparation of an Aboriginal Heritage Impact Permit to undertake archaeological excavation of a Pleistocene sand dune deposit.



Project Cobaki Lakes
Location Tweed Heads NSW
Date Completed Ongoing
Project Requirements Aboriginal Cultural Heritage Assessment as part of a Part 3A Major Project: Aboriginal and European Cultural Heritage Assessment of 500 ha development. Extensive, ongoing Traditional Owner consultation in accordance with OEH guidelines. Excavations identifying State significant archaeological deposits.



Project Newrybar Sand Quarries
Location Newrybar, NSW
Date Completed October 2016
Project Requirements Aboriginal Cultural Heritage Assessment for the proposed AMA sand quarry project at Newrybar Swamp. Project tasks included a cultural heritage Due Diligence assessment, and consultation with the Jali LALC.



Project The Summit
Location Coffs Harbour NSW
Date Completed Ongoing
Project Requirements Assessment of a proposed residential subdivision north of Coffs Harbour. Project tasks included a Due Diligence assessment, negotiations with OEH and the Coffs Harbour LALC and preparation of an Aboriginal Heritage Impact Permit.

Past Aboriginal Heritage Projects Continued



Project South Ballina Sand Quarry
Location Ballina NSW
Date completed June 2007
Project Requirements Archaeological investigation and preparation of an archaeological assessment report, in consultation with the Traditional Owners and the Jali Local Aboriginal Land Council.



Project Burrell Bulai Aboriginal Place
Location New England National Park NSW
Date completed June 2015
Project Requirements Facilitation of a series of Aboriginal community meetings and site inspections to review the Burrell Bulai Aboriginal Place Plan of Management. This project was funded under the National Parks and Wildlife Service Parks Partnership Program.



Project Cumbalum Urban Release Areas A and B
Location Ballina NSW
Date Completed January 2010
Project Requirements Aboriginal and European Cultural Heritage Assessment. Report on Aboriginal cultural heritage as part of a study to inform a rezoning application, including implementing the OEH guidelines on consultation. Extensive consultation with Jali LALC and Traditional Owners.



Project Lismore Floodplain Extractive Industry
Location Lismore NSW
Date completed April 2006
Project Requirements Archaeological investigation and preparation of an archaeological assessment report, in preparation for a sand quarry at south Lismore. Consultation with the Traditional Owners and the Ngulingah Local Aboriginal Land Council.



Project Rise
Location Bilambil Heights NSW
Date Completed June 2009
Project Requirements Part 3A Major Project: Aboriginal and European Cultural Heritage Assessment, including a significance assessment on dry stone terracing. Implementing the OEH consultation guidelines.



Project Chilcotts Grass Urban Release Area
Location Goonellabah NSW
Date Completed Ongoing
Project Requirements Completion of Aboriginal Cultural Heritage Assessment Report including archaeological test excavations and consultation with Registered Aboriginal Parties. This project included evaluation of previous heritage assessments and extensive consultation with OEH.



Project Pacific Pines Estate
Location Lennox Head NSW
Date completed May 2008
Project Requirements Part 3A Major Project: Aboriginal and European Cultural Heritage Assessment. Desktop study and survey of 80 ha in preparation for the master plan of a staged residential precinct incorporating medium density housing, community centre and sports fields.



Project Trinity Drive Rezoning
Location Goonellabah NSW
Date completed November 2016
Project Requirements Completion of a Cultural Heritage Assessment in support of a planning proposal to amend the Lismore City LEP 2013 Gateway Determination to allow rezoning for residential and environmental management including changes to minimum Lot size.

Past Aboriginal Heritage Projects Continued



Project Woombah Subdivision
Location Woombah, Maclean Region, NSW
Date completed January 2006
Project Requirements Archaeological investigation and preparation of an archaeological assessment report, in consultation with the Traditional Owners and the Yaegl Local Aboriginal Land Council.



Project Pottsville Industrial Estate
Location Pottsville NSW
Date Completed August 2008
Project Requirements Aboriginal Cultural Heritage Assessment in conjunction with the Traditional Owners. Developing site management procedures in conjunction with the local Aboriginal community.



Project Hearn's Lake residential subdivision
Location Woolgoolga NSW
Date Completed ongoing
Project Requirements Aboriginal cultural heritage assessment including initial Due Diligence assessment, engagement of Registered Aboriginal Parties and design and completion of test-pit excavations to determine the extent and significance of sites within the proposed residential development.



Project Limeburners Creek Cultural Camp
Location Limeburners Creek National Park, NSW
Date Completed June 2015
Project Requirements Provide governance and administrative support for the Limeburners Creek Cultural Camp Consultative Committee to review and revise the Memorandum of Understanding for community use of the Campground and facilitation of an onsite meeting to discuss future infrastructure and management.



Project Tyagarah Airfield
Location Tyagarah, NSW
Date completed October 2016
Project Requirements Archaeological investigation and preparation of an archaeological assessment report, in consultation with the Arakwal Local Aboriginal Land Council for proposed rezoning and subsequent development of Lots within the Tyagarah Airfield.



Project Terrace Reserve Holiday Park
Location Brunswick Heads, NSW
Date completed July 2016
Project Requirements Archaeological investigation and preparation of an archaeological assessment report to consider potential impacts to cultural heritage from proposed future development of the Holiday Park.



Project North Creek Foreshore
Location Ballina, NSW
Date completed July 2015
Project Requirements Archaeological Due Diligence Assessment for proposed coastal protection works including retaining walls, channels and fill/ infill earthworks in an area of known Aboriginal middens.



Project North Byron Parklands
Location Byron Bay, NSW
Date completed October 2015
Project Requirements Completion of a peer review of previous archaeological assessment with respect to compliance with best practice and legislative standards for a permanent event site at North Byron Parklands.

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

4.3 - ATTACHMENT 3

6. Everick Heritage Consultants' Fee Structure

6.1 General Fees

Everick's General Fees are charged on a time basis

Position	Approximate Fees
Expert Testimony	\$220 per hour
Director	\$180 per hour
Senior Archaeologist	\$160 per hour
Archaeologist	\$140 per hour
Graduate Archaeologist	\$120 per hour
Office Administrator	\$60 per hour

TERMS OF PAYMENT:

Everick invoices on a monthly basis.

All Disbursements are charged at Cost + GST + 10%

6.2 Fee Proposal

PROFESSIONAL FEES		Staff Hours		
		Tim Hill	Tim Robins	Adrian Piper
Inception Meeting	\$ 1,120.00	2	2	3
Literature Review	\$ 2,400.00	3	2	10
Site Surveys and Survey Reporting	\$ 7,040.00	10		34
Archaeological Field Survey Workshop	\$ 2,400.00	2		10
GIS Mapping	\$ 2,080.00	8		5
Planning Considerations Workshop & report	\$ 4,320.00	10	2	
Review of Education Documentation	\$ 2,400.00	5		10
Presentation to Steering Committee	\$ 1,760.00	4		7
Finalisation of Report	\$ 2,560.00	5	2	9
TOTAL PROFESSIONAL FEES	\$ 24,200.00			
DISBURSEMENTS	\$ 600.00			
SUBTOTAL	\$ 24,800.00			
GST	\$ 2,480.00			
TOTAL	\$ 27,280.00			

PLEASE NOTE - Undertaking a Cultural Heritage Assessment is an involved process and subject to variables. It is not possible to give a guarantee of the final cost of this project. This is the best estimate made on the information currently available, using the skill, knowledge and experience of Everick Heritage Consultants Pty Ltd. If requested before commencement of the contract, the final price for this work will be calculated by reference to a Client Agreement, as agreed upon by all parties, which can be provided shortly. Everick Heritage Consultants Pty Ltd is not liable for the fees and costs incurred by other individuals or organisations, including interested Aboriginal groups, in conducting site inspections and archaeological investigations.

7. Company Details

8. Conclusion

Our primary contact for this project will be our Director, Tim Robins.

Tim's Contact Details are:

PO Box 146

Red Hill Qld 4059

Ph: (07) 3368 2660

Mob: 0432 816 460

E-mail: t.robins@everick.com.au

Thank you for providing us with the opportunity to quote for this project. We believe we have the expertise and experience to provide an excellent level of service for this project. If there is any more information we can provide, please contact our Director, Tim Robins.

Our company billing details are:

Company Name: Everick Heritage Consultants Pty Ltd

ABN: 78 102 206 682

Bank: Westpac Banking Corporation

BSB: 034 002

A/C: 678 195

Report No. 4.4 **Aboriginal Cultural Events in the Byron Shire**
Directorate: Corporate and Community Services
Report Author: Belle Arnold, Community Project Officer
File No: I2017/221
5 **Theme:** Society and Culture
 Community Development

Summary:

10 This report provides an overview of current cultural activities and events and seeks feedback from the Arakwal MoU Advisory Committee.

RECOMMENDATION:

That the Arakwal Memorandum of Understanding Advisory Committee note Council's development and delivery of cultural activities and events for this reporting period.

15 **Attachments:**

1 World Water Day Colouring, E2017/11163 , page 68 [↓](#)

Report

The Arakwal Memorandum of Understanding states:

5 1.2.5 Council support of important cultural events

Council to support important Indigenous cultural events including NAIDOC Week, Reconciliation Week and Survival Day. This support is to include provision of events, funding and the waiving of Council related fees.

10 1.2.6 Tourism

Arakwal to be consulted with on the licensing/tendering for tourism operators and screening in relation to cultural heritage.

This report provides an outline of upcoming and recent cultural events in the Byron Shire.

15

Close the Gap Day

Since 2015, Council's Aboriginal Project Officer has worked with Tweed Byron Land Council, Mullumbimby District Neighbourhood Centre and community to deliver a Community Services Expo for Close the Gap Day. This event provides an opportunity for the Aboriginal community to link with service providers. The Close the Gap Day 2017 event will be determined and delivered by the Aboriginal Services Coalition. Close the Gap Day is 16 March 2017.

World Water Day

25

On 25 March 2017 Council's Water Infrastructure team are hosting a community event for World Water Day 2017. The event will be held at the Wetlands in West Byron Sewage Treatment Plant (WBSTP). The event will promote the environmental and Aboriginal Cultural Heritage values of the site. On 15 February, NPWS ranger Nigel Stewart provided advice that the meaning of Belongil is "where the she-oaks meet the sea" in Bundjalung language. The event team seek to promote this as a central theme for the event. Council's Aboriginal Projects Officer is working closely with the event team to provide a range of cultural heritage related activities at the event. Council staff will continue to liaise with Arakwal and NPWS to ensure content is culturally appropriate.

30

35 NAIDOC Week

The General Manager of the Bundjalung of Byron Bay, Arakwal People requested that Council grant Parking Permits for Arakwal family that live outside Byron Shire for the week only of NAIDOC Week 2017.

40

Blue Flame Dreaming

On 4 January 2017 Council's legal and events teams were requested to issue a license for a sacred smoking ceremony at the peace pole in Denning Park, Byron Bay for the Blue Flame Dreaming event. Council staff informed the applicants that a license would not be issued without express consent from the Bundjalung of Byron Bay Arakwal People.

45

Event organisers were hostile towards Council staff and indicated that they would go ahead with the sacred smoking ceremony and sacred walk up to the lighthouse as a part of their event.

50

Council staff repeatedly referenced the Arakwal Memorandum of Understanding and the agreement that consultation with Arakwal must be undertaken for Council to issue licenses for cultural activities in Byron Shire.

Council's compliance team were concerned with the event organiser's response and apparent disregard for the Arakwal MoU agreement and met with officers from Tweed Byron Local Area

55

Command. Council staff informed police that there were issues around cultural sensitivity and if the activity was to go ahead without correct licensing then Council would be prosecuting the event organisers. Police informed the event organisers and the smoking ceremony and walk did not go ahead.

- 5 This matter demonstrates the commitment of Council staff from across the organisation to uphold the cultural values and principles set out in the Arakwal MoU.

Financial Implications

- 10 Nil from this report

Statutory and Policy Compliance Implications

- 15 Native Title Act 1993
Local Government Act 1993
Arakwal MoU 2013



Byron Shire Council is holding a School Colouring In Competition to celebrate the release of the Bundjalung Language Colouring Book and the upcoming World Water Day.

Your school is invited to participate in a Colouring In competition

Byron Shire Council has recently produced the Bundjalung Language Colouring Book as part of the *Yarrabil-a Jagun Singing Up Country* project. The *Yarrabil-a Jagun Singing Up Country* project is a collaboration of culture to revive language. To celebrate the development of the Bundjalung Language Colouring Book, Byron Shire Council is holding a Colouring In Competition.

The theme of 'Water' is integrated into the competition as part of Councils efforts to raise awareness for World Water Day 2017. The United Nations 'World Water Day' is held annually on 22 March as a means of focusing attention on the sustainable management of freshwater resources. The theme for World Water Day 2017 is 'Wastewater'. The message is "***Wetlands are Precious – they filter the water before it meets the sea***".

All wastewater from Byron Bay is highly treated at the Byron Bay Sewage Treatment Plant before the water is 'polished' through wetland cells prior to release into local waterways and eventually into the sea. The Byron Wetlands are now well established and provides important habitat for many animals, including over 200 species of birds, with several species being rare and endangered.

Byron Shire Council will be holding an open day on Saturday 25 March 2017 at the award winning Byron Bay Integrated Water Management Reserve (Byron Wetlands) to celebrate over 10 years since the wetlands were constructed as part of the Byron Bay Wastewater Management Scheme.

The winners of the competition will be announced as part of the World Water Day celebrations at the Byron Wetlands open day on Saturday 25 March 2017. Art work received will be displayed at the event which will feature speakers, artwork and photography, activities and tours of the Byron Wetlands.

If your school is interested to be involved in the Colouring In competition you need to:

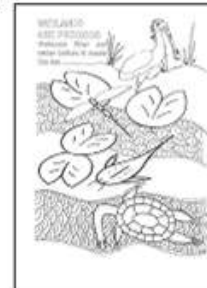
- Contact Councils Aboriginal Projects Officer Belle Arnold on 6626 7226 to obtain the artwork. Belle has a variety of resources to support children and young people to engage with local Aboriginal Culture and Belle will visit your school to help develop these opportunities for cultural exchange
- Submit all artwork entries to Council by 5 pm Friday 17 March 2017

There are four entry levels on which the artwork will be assessed:

1. 5 years and under age group
2. 6 – 9 years age group
3. 10 – 12 years age group
4. 12 years and greater age group

Prizes include:

- One major prize to the school that submits the most entries into the competition - \$200.00 Art Pack
- One individual prize for each age group - \$50.00 Art Pack
- All individual entries will receive the Bundjalung Language Colouring Book



If your school is interested to learn more about wastewater management in the Byron Shire please contact:

Byron Shire Council Environmental Systems Officer Bryan Green on 66859322

Tours of the Byron Wetlands are available for school groups which include the Byron Bay Sewerage Treatment Plant and the award winning wetlands. The Byron Wetlands has an interpretative centre and bird hide for educational purposes. Activities such as the 'Catchment Model' and 'Water Bug identification' are integrated into the educational tours.