



Mr Ken Gainger  
The General Manager  
Byron Shire Council  
PO Box 219  
MULLUMBIMBY NSW 2482

Attention: Ms Chloe Dowsett

Dear Mr Gainger

### **Coastal Zone Management Plan for the Brunswick Estuary and Protection of Aboriginal Sites**

Byron Shire Council (BSC) has requested comments/support from the National Parks and Wildlife Service (NPWS) for Action B2 (Simpsons Creek - Sites SI05 and SI06) in the Brunswick Estuary Coastal Zone Management Plan No. 5 (June 2017) (CZMP). An email from Chloe Dowsett (13 December 2017) states that Council records indicate that both sites are located within Tyagarah Nature Reserve.

I have attached an aerial photograph showing the boundary of Tyagarah Nature Reserve in the vicinity of Sites 105 and 106 on Simpsons Creek. It appears from the aerial photograph that Site 105 and part of Site 106 are likely to be located in the Nature Reserve. However, Council would need to survey to accurately determine the boundaries of the Crown land and Nature Reserve in this area. It is also likely that Council would require accurate tenure boundaries to develop detailed designs (Action 2, p.42). The Crown Holiday Parks Trust (CHPT) may also have a recent survey of the Trust's land which may assist Council. If Council determines that the proposed works will occur on-park the CZMP should be amended accordingly. Up-to-date digital information on National Park Estate boundaries can be obtained here: <http://data.environment.nsw.gov.au/> .

Once the tenure of the land on which works are proposed is established, NPWS will be able to determine if it has an approval role, and if so, the appropriate environmental impact assessment pathway, and the statutory approvals under the *National Parks and Wildlife Act 1974* (NPW Act) or NPW Regulation (e.g. lease, licence or easement) that may be required.

The proposal involves formalising public access, however, the location of the proposed public access is not clear from the CZMP. NPWS is not proposing to formalise public access in this part of the Reserve and this is reflected in the Tyagarah Nature Reserve Draft Plan of Management for which the public consultation phase has been completed.

NPWS supports development of a precinct plan for these sites (Action 1), however, if Council wishes to formalise public access to the creek, consideration should not be restricted to the two sites currently being impacted but should be extended to consider the suitability of land north of these sites (CHPT lands). It may be preferable to protect the natural and cultural heritage values of the sites which are being impacted by rehabilitation.

NPWS supports Action 4 – ‘Undertake revegetation works to increase riparian vegetation buffer’. Plants of local provenance should be used wherever possible.

The CZMP lists potential bank stabilisation options for these sites which include hard engineering works such as rock revetment walls (Option A) and gabion walls (Option C). Softer options should be explored considering the potential impact of hard options on the highly significant natural and cultural heritage values of the riparian corridor and the potential for impacts upstream, downstream and on the opposite creek bank. Council may need to obtain further specialist advice for these sites. The Office of Environment and Heritage (OEH) Water, Floodplains and Coasts Unit would be able to assist Council by providing advice or suggesting practitioners with whom Council can consult.

NPWS notes the following statement in the CZMP in relation to an Aboriginal midden at Site 106 (p. 42) - ‘The erosion at this location is impacting an Aboriginal midden present within the riverbank...’. The NPW Act requires that anyone aware of an Aboriginal object (site) must notify OEH in the prescribed manner within a reasonable time. NPWS requests that Council register the midden as soon as possible which can be done using a free mobile phone app. Information on prescribed ways to register an Aboriginal object (site) is available here:

[http://www.environment.nsw.gov.au/licences/DECCA\\_HIMSSiteRecordingForm.htm](http://www.environment.nsw.gov.au/licences/DECCA_HIMSSiteRecordingForm.htm)

Table B3 (Results of the Audit – On Ground Rehabilitation) lists a range of actions for management of the midden site derived from the previous CZMP (2012) including consultation with the Bundjalung of Byron Bay Aboriginal Corporation (Arakwal) The project status is listed as ‘Not Started’. NPWS encourages Council to formally involve the Corporation in discussions and planning for any works which may affect the midden.

Please be aware in relation to *any* works proposed in the vicinity of the midden (*including bollarding and formalising car parking*), that it is an offence under the NPW Act to do any of the following things without an exemption or defence provided for under the NPW Act (penalties apply):

- A person must not knowingly harm or desecrate an Aboriginal object.
- A person must not harm or desecrate an Aboriginal object or Aboriginal place (strict liability).

Legislation provides that anyone who exercises due diligence in determining that their actions will not harm Aboriginal objects has a defence against prosecution for the strict liability offence. The *Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW* (DECCW 2010) can be used by organisations contemplating undertaking activities which could harm Aboriginal objects. Council will need to make this assessment for the works proposed in the CZMP in the vicinity of the midden. The code provides a process whereby a reasonable determination can be made whether or not Aboriginal objects will be harmed by an activity, whether further investigation is warranted and whether the activity requires an Aboriginal Heritage Impact Permit. More information is available here:

<http://www.environment.nsw.gov.au/licences/achregulation.htm>

NPWS is unable to provide support for preparation of concept designs (Action 1), detailed designs (Action 2) or implementing bank stabilisation (Action 3) at SI05 and SI06 until the matters raised above have been addressed satisfactorily.

Please contact Ranger Norm Graham on phone 66209300 if you require further information.

Yours sincerely



**SUE WALKER**  
**Manager - Tweed Byron Area**  
**National Parks & Wildlife Service**

20 December 2017

cc. Bundjalung of Byron Bay Aboriginal Corporation (Arakwal)  
OEH Regional Operations - Planning  
OEH Regional Operations - Water, Floodplains and Coasts  
OEH Heritage - Repatriation and Conservation  
DPI - Fisheries - Cape Byron Marine Park



Map 1: Tyagarah Nature Reserve boundary at Simpsons Creek in the vicinity of S105 & S106  
Aerial Photography Source: LPI (2012)