

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 **Friday, 22 September 2017**

Time **9.30am**

A handwritten signature in black ink, appearing to read 'Mark Arnold'.

Mark Arnold
Director Corporate and Community Services

I2017/1328
Distributed 14/09/17

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 15 June 2017

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5. VERBAL REPORTS

- 5.1 Native Title Update (Jess Orr)
5.2 Wetlands Update (Peter Rees)

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

Report No. 4.1 Byron Shire Aboriginal Stakeholder Consultation Document

Directorate: Corporate and Community Services

5 **Report Author:** Belle Arnold, Community Project Officer

File No: I2017/1251

Theme: Society and Culture

10 **Community Development**



Summary:

15 This report tables the “*Byron Shire Council and Indigenous Stakeholders*” document for discussion by the committee and seeks feedback in relation to Arakwal matters.

RECOMMENDATION:

That the Arakwal Memorandum of Understanding Advisory Committee reviews the “*Byron Shire Council and Indigenous Stakeholders*” document (E2016/98166) and that Council seek feedback from the Bundjalung of Byron Bay, Arakwal Corporation.

Attachments:

20 1 Byron Shire Council and Indigenous Stakeholders - A guide to statutory relationships, E2016/98166 ,
page 6  

Report

5 On 22 June 2016 Council's Aboriginal Projects Officer requested legal advice to assist with informing consultation processes with Aboriginal Stakeholders under the Native Title Act, Land Rights Act and Local Government Act.

10 The request for legal advice was to clearly understand Council's legal and statutory obligations to our Aboriginal stakeholders both to Native Title Claimants under the Native Title Act and Land Councils under the Land Rights Act, and any other nuances under the Local Government Act as well as other relevant legislation such as the National Parks and Wildlife Services Act.

15 The objective was the preparation of a document that guided and informed the organisation being Council of the process for consultation across the organisation with Aboriginal Stakeholders.
At the July 2017 Arakwal MoU Advisory Committee Meeting, Council's Corporate Governance and Risk Management Officer introduced the document.

20 This report tables the "*Byron Shire Council and Indigenous Stakeholders*" document for consideration by the committee, and with Council seeking feedback in relation the document from the Bundjalung of Byron Bay, Arakwal Corporation.

Financial Implications

25 Nil from this report

Statutory and Policy Compliance Implications

30 Native Title Act 1993
Local Government Act 1993
National Parks and Wildlife Services Act 1974
Arakwal MoU 2013
Land Rights Act 1984

5



Byron Shire Council and Indigenous Stakeholders



A Guide to Statutory Relationships

Brennan, Lisa

v. 1 E2016/98166

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BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

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An Important Note:

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The object of this document is to provide an overview of applicable laws and hopefully facilitate cultural understanding for officers within council who have a need to consider Indigenous stakeholders within their processes and projects.

20

This document is not legal advice and is not an exhaustive indication of legislative requirements and obligations. Much of the information and how it is applied will depend on context, so it provides a general overview only. It also does not take into account traditional beliefs or customary laws of specific Indigenous stakeholders that may apply to individual scenarios or projects. This document is intended for internal use only.

25

Sections of relevant acts are hyperlinked to their corresponding webpage for ease of access. Simply hold the ctrl key whilst clicking on a hyperlink.

Please always seek advice from both:

30

- **Legal Services to confirm the statutory requirements that apply to your specific project; and**
- **The Indigenous Project Officer to confirm any cultural or customary requirements that may apply to your project.**

Guide to abbreviations

In this document, the following abbreviations apply:

ALR Act	Aboriginal Land Rights Act
BSC	Byron Shire Council
Cth.	Commonwealth
ILUA	Indigenous Land Use Agreement
LALC	Local Aboriginal Land Council
LEP	Byron Local Environment Plan 2014
LGA	Local Government Area
LG Act	Local Government Act
MoU	Arakwal/BSC Memorandum of Understanding
NNTT	National Native Title Tribunal
NPW Act	National Parks and Wildlife Act
NSWALC	NSW Aboriginal Land Council
NT Act	Native Title Act
NTSCORP	Native Title Service Corporation (NSW and ACT)

Preamble

5

Several areas of Indigenous engagement are seen to fall within an active responsibility of local government. In particular, land management is a crucial point of intersection. Instruments guiding land use and Indigenous rights (such as the Native Title Act) should be addressed in the strategic, corporate and operational plans of BSC. Through local planning processes and advocacy with state and federal departments, Local Governments are able to proactively work with local Indigenous people to ensure that Indigenous interests are championed from the outset of any decision making process undertaken with respect to land use.

10

15

20

Customs and traditional laws can vary widely from group to group, though there are some common threads, particularly in terms of the importance placed on relationship. It is the complex physical and spiritual relationship between kin, Indigenous peoples and land (Country) that is often misunderstood or discounted by the European based authority structures of post-colonised Australia. For this reason, land management should be sensitively navigated by BSC within the boundaries of legislation to protect and conserve Aboriginal culture, whilst advancing partnerships between local government and Indigenous groups. Understanding and respecting the cultural practices and beliefs of a particular Indigenous stakeholder will be paramount in the successful development and maintenance of the supportive relationships BSC is able to build. Council should consider, at each

opportunity, whether a project/activity or event could provide a community benefit to the local Indigenous people, in particular the opportunity to engage or self determination.

What do I need to consider...?

- 5 If you have a project concerning the use or development of any land in the shire, it is recommended that you identify whether there are any Indigenous interests on that land before you begin.

Identifying Indigenous Interests on Land

- 10 To identify Native Title interests:

1. Visit <http://www.nntt.gov.au/News-and-Publications/Pages/Forms.aspx>.

Under the 'Assistance' tab, select the form 'Search Form Request for Search of Tribunal Registers'

2. Fill out the form and send to enquiries@nntt.gov.au

- 15 3. The Tribunal will respond with information as to any interests identified on the land.

You may also need to identify through the Aboriginal Land Council (NSWALC) as to whether there are any Land claims made. It is important to be aware of the difference between Native Title claims and Land Claims. Native Title claims are provided for under Commonwealth legislation, and Land Claims are provided for under State legislation. See

- 20 "[Relationships Between Indigenous Stakeholders](#)" on page 8.

Another important consideration is whether the project is culturally appropriate for the identified custodians of the land on which is proposed. For example, a cultural event may require the approval of the identified custodian group of that land, to ensure the event does not break any of that groups customary law etc. It is safest in this instance to enquire with

- 25 BSC's Indigenous Project Officer as to whether this needs to be considered.

Notification

- 30 (See [Appendix Two](#) for contact details of stakeholders)

In most instances, whether there is a registered Native Title claim or not, BSC will be required to notify the relevant Indigenous Representative Body (such as NTSCORP) of your intentions with respect to the use of land.

5 For an act that will extinguish or partially extinguish Native Title on a lot (for example in a compulsory acquisition), often referred to in legislation as a Future Act, the period for comment is open for 60 days, per Section [24MD](#) of the Native Title Act (subsection 6B).

10 For a non permanent act, for example a lease or licence granted by BSC as the Reserve Trust Manager of Crown land, the Native Title Act provides that bodies must be notified and allowed time to comment. There is no specific time frame in the Act for this type of notification, but generally speaking 30 days is acceptable.

15 At a minimum, you should notify NTSCORP and NSWALC to request direction on which group, if any, needs to be notified and the process for notification. BSC should develop a 'Notification' template which can be applied. Generally, NTSCORP will be the representative of the relevant Indigenous group which means that Council will correspond through NTSCORP as the authoritative representative body.

PART ONE: A GUIDE TO INDIGENOUS STAKEHOLDER RELATIONSHIPS IN BYRON SHIRE

20 The Arakwal Corporation

25 The Arakwal Corporation is incorporated under the *Aboriginal Councils and Associations Act 1976 (Cth)*. It was established in 1996 and primarily works for the betterment of the Bundjalung of Byron Bay Aboriginal (Arakwal) people, lands and waters. Board members of the Corporation represent the Arakwal people on various committees with other agencies such as the Cape Byron Reserve Trust, Cape Byron Marine Park, the NSW Office of Environment and Heritage, and Byron Shire Council.

30 The Bundjalung of Byron Bay (Arakwal) people

The Bundjalung of Byron Bay (Arakwal Bumberlin people) are recognised as Traditional Owners and custodians of land in the Byron Bay Area under the Native Title Act (Cth). Arakwal Country extends from Seven Mile Beach south of Broken Head, north to the

Brunswick River, out to the escarpment west of Byron Bay, and east out into the Tasman Sea.

5 There is an active Bundjalung (Arakwal) Native Title Claim active in Byron Shire, NSD6020/2001, and along with Arawkal Corporation, the Native Title Claimants are party to three Indigenous Land Use Agreements.

Contact for purposes of notification to the Native Title Claimants should be through NTSCORP.

10 **Local Aboriginal Land Councils (LALC)**

LALCs are autonomous bodies, governed by elected Boards. LALCs were established under the *Aboriginal Land Rights Act 1983* as the elected representatives for Aboriginal people in NSW. The functions of a LALC Board are to:

- 15 • direct and control the affairs of the Land Council in accordance with the *Aboriginal Land Rights Act* and the council's Community Land and Business Plan;
- facilitate communication between the members and the New South Wales Aboriginal Land Council (NSWALC);
- 20 • review the performance of the Land Council in carrying out its functions and achieving its objectives; and
- any other function conferred by the Act.

25 The Act established the Land Council structure in a way that has sought to achieve a high degree of participation and involvement by every Aboriginal person in the affairs of their local community. Under the *Aboriginal Land Rights Act 1983* (see Part 5, Division 6), LALCs are required to prepare and implement Community Land and Business Plans in consultation with:

- LALC members;
- 30 • persons who have a cultural association with land in the land council's area; and
- other stakeholders

The purpose of the Community, Land and Business Plan (CLBPs) is to describe the aims of the Local Aboriginal Land Council and to develop strategies by which these can be achieved.

There are three LALC's with interests that extend within the Byron Shire. They are Tweed/Byron, Jali (Ballina) and Nguligah (Lismore).

5

NSW Aboriginal Land Council (NSWALC)

NSWALC is the state's peak representative body in Aboriginal Affairs. The aim of the NSWALC, per its website www.alc.org.au, is to protect the interests and further the aspirations of its members and the broader Aboriginal community. Under the Aboriginal Land Rights Act (1983), NSWALC is empowered to do the following:

10

- administer the NSWALC Account and Mining Royalties Account;
- grant funds for payment of the administrative costs and expenses of LALCs;

15

- acquire land on its own behalf or on behalf of, or to be vested in, LALCs;
- determine and approve/reject the terms and conditions of agreements proposed by LALCs to allow mining or mineral exploration on Aboriginal land;

20

- make claims on Crown lands, either on its own behalf or at the request of LALCs;
- manage any of the affairs of a particular LALC, with their agreement;

25

- conciliate disputes between LALCs, between LALCs and individuals, or between individual members of those LALCs;

- make grants, lend money or invest money on behalf of Aboriginal people;

30

- hold, dispose of or otherwise deal with land vested in or acquired by NSWALC
- ensure LALCs comply with the Act in respect of the establishment and keeping of accounts and the preparation and submission of budgets and financial reports;

- advise the Minister on matters relating to Aboriginal land rights; and
- exercise such other functions as conferred or imposed on it by or under the *Aboriginal Land Rights Act (1983)* or any other Act.

NSWALC represents 120 LALCs which collectively manage the range of support services delivered at a local level to communities.

NTSCORP

NTSCORP Limited is the Native Title Service Provider for Aboriginal people, Traditional Owners and Indigenous groups in New South Wales and the Australian Capital Territory. NTSCORP offers assistance to Traditional Owners in the following areas:

- Facilitation and assistance of native title claims;
- Dispute resolution;
- Notification of Future Acts activities;
- Agreement making; and
- Research.

BSC will occasionally need to notify NTSCORP of any proposed activities on lands that may be subject to Indigenous interests. Where BSC is unsure how best to engage with the relevant Traditional Owner or Indigenous group, it should contact NTSCORP or NSWALC to seek guidance on the most appropriate approach.

The Widjabul Wia-bal people

The Widjabul Wia-Bul people are a part of the wider Bundjalung nation. They have an active Native Title claim for land within the Shire (NSD174/2013). The claim area encompasses roughly a third of the western part of the Shire and extends into several other local government areas. Contact for purposes of notification to the Native Title Claimants should be through NTS Corp. BSC may consider opportunities to partner with neighbouring local government authorities in working together with the Widjabul Wia-bul people.

Relationships between Indigenous Stakeholders

5 As well as navigating BSC's relationship with Indigenous Stakeholders, it is important to understand the relationships between the Indigenous Stakeholders themselves. BSC should be aware of any right to negotiate that exists between two stakeholders when it comes to land use / management. The reason for this is that BSC should respect and endorse the right to negotiate between two groups, and where this situation arises, communicate at all times with both groups transparently.

10

Native Title Claimants and Aboriginal Land Councils (see Appendix Four)

15 Native Title claims are registered under the Native Title (NT) Act at a Commonwealth level, whilst Land Claims are provided for under the Aboriginal Land Rights (ALR) Act, at a state level. There are key differences to understand between these two Acts. The main difference to be aware of is that in order for a land claim to be granted under the ALR Act, a continuous traditional connection to the land does not need to be established. It is a process more concerned with returning Crown lands to Indigenous people in terms of compensation for the dispossession of Indigenous people collectively. Whilst there are provisions in terms of recognising traditional owners, obviously there may be some friction between those who
20 have a legitimate ancestral connection to the land, and a land council being granted use or ownership of land that the members do not have a specific connection to.

The NT Act, however, is primarily focussed on the recognition of cultural ownership and custodianship over land to which a group has continuous recognisable connection to country. Native Title claims can run for many years, as complex issues of continuous
25 connection to country are required to be 'proven' in terms of a common law judicial system, where the standards of evidence tend to require tangible (e.g. written) records. In this system, it can be difficult for an Indigenous group to prove connection to the land prior to colonisation, because their records dated prior to this time are typically in verbal form, through the generational sharing of stories and customary laws. In establishing a Native
30 Title claim, historians and anthropologists work closely with potential claimants to demonstrate these requirements, as well as delving into the historical record.

Although the relationship between Land Rights and Native Title is legally complex, the following principles generally apply:

- Land rights and native title may co-exist in land;

- The granting of an Aboriginal land claim lodged after 1994 will not affect any native title rights;

- 5 • Where native title has been extinguished in land owned by an Aboriginal land council it may be 'revived', but will not restrict the Aboriginal land council's ability to deal with the land;

- 10 • Land claims made over land that is the subject of a registered Native Title claim or a positive determination of native title must be refused;

- Aboriginal Land Councils cannot deal with land that has been granted subject to native title unless there is a determination of native title over that land;

- 15 • Native Title claimants and holders may be members of Aboriginal Land Councils and vice versa; and

- Aboriginal Land Councils and Native Title claimants/holders may develop agreements about land subject to both native title and land rights.

20

Key agreements that BSC is party to

Heads of Agreement (1998)

Document # DM564718

- 25 Signed in 1998, this document set out a framework for ongoing consultation between BSC and the Arakwal people to ensure that the Arakwal are involved in the management and protection of culturally significant sites which are priorities to the Arakwal. The Heads of Agreement was the first agreement of its kind between a local council and Native Title applicants in New South Wales, and is essentially the pre-cursor to the Memorandum of
- 30 Understanding (below).

Memorandum of Understanding (Arakwal) (2013)

Document #E2013/42493

5 In 2011, BSC resolved (11-891) to create an Advisory Committee with terms of reference to oversee the implementation of a new MoU in keeping with BSC's commitment of an ongoing relationship with the Arakwal people. The MoU between BSC and the Arakwal Corporation was entered into on 8 July 2013. The purpose of the document is to recognise and support the status of the Bundjalung of Byron Bay Arakwal people as the Traditional Owners and custodians of land and rights as established through the NT Act. The MoU provides for the
10 establishment of an advisory committee, to be administratively resourced by BSC. The aim is to achieve an ongoing cooperative and successful strategic working relationship between the Arakwal people and BSC. By extension of this relationship, preserve Aboriginal heritage and culture throughout the shire whilst improving social justice and community development issues for indigenous people living within the shire. The MoU's priorities are
15 reflective of many key pieces of legislation as outlined in this document, and so BSC has significant statutory obligations in the delivery and implementation of projects that are identified within the MoU. The MoU is an enforceable strategic document which should be used by Council as a reference point in communicating and working with the Indigenous community to achieve positive outcomes.

20 PART TWO : A GUIDE TO LEGISLATION

Aboriginal Land Rights Act (NSW) 1983

25 The aim of the Act is to redress past injustices when Aboriginal people were dispossessed of their land by colonisation. This Act governs the creation of and function of the NSWALC, as well as LALCs.

NSWALC is an independent self-funded non-government organisation with an elected governing council. They have functions to acquire and manage land to protect Aboriginal culture and heritage.

30 LALCs have similar functions within their boundary areas. LALCs are **key stakeholders** within a local government context, as they are directly involved in negotiation for land use agreements and claims over Crown land within Local Government Area (LGA) boundaries. That land may be required by BSC for an event, public space, acquisition or so forth; and **so it is vital that the LGA is aware of and involved in potential negotiations, and their**
35 **obligations to notify the relevant LALC of any proposed activities on that land.**

The relationship with LALCs may become even more important should BSC become involved in any future Aboriginal Land Agreements, potentially commencing from around 2018 (see Aboriginal Land Agreements below).

5 *Aboriginal Land Claims*

Through the ALR Act, Crown land not lawfully used or occupied, or required for an essential public purpose, or for residential land, is returned to Aboriginal people. The Department of Industry - Lands investigates and assesses Aboriginal Land Claims across the State.

10 [S36](#) outlines the definition of 'claimable Crown Lands' and the process by which a LALC or NSWALC can proceed to make a claim:

In this section, (except in so far as the context or subject-matter otherwise indicates or requires):

"claimable Crown lands" means lands vested in Her Majesty that, when a claim is made for the lands under this Division:

- 15 (a) are able to be lawfully sold or leased, or are reserved or dedicated for any purpose, under the Crown Lands Consolidation Act 1913 or the Western Lands Act 1901;
- (b) are not lawfully used or occupied;
- 20 (b1) do not comprise lands which, in the opinion of a Crown Lands Minister, are needed or are likely to be needed as residential lands;
- (c) are not needed, nor likely to be needed, for an essential public purpose;
- 25 (d) do not comprise lands that are the subject of an application for a determination of **native title** (other than a non-claimant application that is an unopposed application) that has been registered in accordance with the Commonwealth *Native Title Act*; and
- (e) do not comprise lands that are the subject of an approved determination of **native title (within the meaning of the Commonwealth Native Title Act)** (other than an approved determination that no native title exists in the lands).

30 *Aboriginal Land Agreements*

On 1 July 2015, the Government enacted [section 36AA](#) of the Act, which provides for Aboriginal Land Agreements (ALAs). As per the [Department of Industry- Lands](#) website:

“ALAs allow for the strategic settlement of multiple land claims and for flexibility in providing the social, cultural and economic outcomes intended by the ALRA.

The ALA negotiation framework aims to ensure ALA negotiations are fair and likely to succeed in the shared objectives of:

- 5
- Speeding up the processing of land claims;
 - Providing more sustainable social, cultural and economic outcomes for LALCs and Aboriginal communities from the return of land; and
 - Providing greater certainty to all parties over Crown land.

10 The framework defines the scope of ALA negotiations, provides principles that will guide how negotiations are conducted, and prescribes procedural elements to ensure negotiations are fair and likely to succeed.”

For the time being, BSC may not be affected by any ALAs, as negotiations began in 2016 and will continue through 2017, though only in the four LGAs which were involved in the Government’s Local Land Pilot in 2015 (Tweed, Tamworth, Corowa and Warringah).

15 ALA negotiations may then proceed in 2018 and 2019 in additional areas (based on LGA boundaries or LALC boundaries), subject to Government approval.

S36AA lists the provisions for an Aboriginal Land Agreement and provides the definition as

20 ‘an agreement, in writing, between the Crown Lands Minister and one or more Aboriginal Land Councils (whether or not the agreement also includes other parties) that, in addition to any other matter that may be included in the agreement, makes provision for:

- 25
- (a) the exchange, transfer or lease of land to an Aboriginal Land Council; or
 - (b) an undertaking by an Aboriginal Land Council not to lodge a claim, or to withdraw a claim, in relation to specified land.’

S42 deals with restrictions on dealing with land subject to Native Title. Specifically:

30 (1) An Aboriginal Land Council must not deal with land vested in it subject to native title rights and interests under section 36 (9) or (9A) unless the land is the subject of an approved determination of native title (within the meaning of the Commonwealth Native Title Act).

(2) This section does not apply to or in respect of:

5 (a) the lease of land by the New South Wales Aboriginal Land Council or one or more Local Aboriginal Land Councils to the Minister administering the NPW Act under Part 4A of that Act in accordance with a condition imposed under section 36A (2), or

(b) a transfer of land to another Aboriginal Land Council, or

10 (c) a lease of land referred to in section 37 (3) (b).

Aboriginal Land Councils

s43-44A Concerns the payment of **rates and exemptions for rates** being charged to land that is vested in an Aboriginal Land Council. This intersects with **s555** of the *Local Government Act*.

15

S52 outlines the functions of LALCs including acquisition of land, management or disposal of land, submission of proposals for culturally significant land (under **sch.14** of NPW Act) and negotiate leases in respect of land, whilst maintaining the best interests of the identified Aboriginal owners of the land concerned. LALCs also have functions relating to protection of the heritage and culture of Aboriginal persons within their area, and to promote business and enterprise. Under **s50** of the *Interpretation Act 1987*, a Local Aboriginal Land Council has certain functions as a statutory corporation, including the power to purchase, exchange, take on lease, hold, dispose of and otherwise deal with property.

20

NB: See intersection with *Crown Lands Management Act 2016* and the vesting of land in local councils on page 14-15.

25

S113 outlines matters in which the NSWALC may prepare and implement policies for, including those relating to land dealings and the financial management of LALCs.

30 **Part 10, s176-s215A** outlines conduct, disclosure and disciplinary matters applying to Aboriginal Land Councils. Much of this correlates with sections of the Local Government Act. This means that Aboriginal Land Councils are typically required to adhere to similar standards as local government councils in meetings and in how they conduct business.

Part 13 (s238-241) makes provision for mediation, conciliation or arbitration of disputes by NSWALC.

5 **s248** provides that both NSWALC and LALCs are taken to be a public authority for the purposes of the *Ombudsman Act 1974*, the *Independent Commission Against Corruption Act 1988* and the *Government Information (Public Access) Act 2009*. However, a **Local** Aboriginal Land Council is not taken to be an agency for the purposes of [section 6](#) of the *Government Information (Public Access) Act 2009*.

10 **[Byron Local Environment Plan \(NSW\) 2014 \(LEP\)](#)**

The Byron LEP is a regulation enabled under the *Environmental Planning and Assessment Act 1979*. One of the guiding aims of the Byron LEP is a commitment to the protection of Aboriginal culture and heritage through development controls and practices. For example:

15

Clause 3.3 defines the term 'Environmentally sensitive area for exempt or complying development' as including land identified in this or any other environmental planning instrument as being of high Aboriginal cultural significance or high biodiversity significance.

20 **Clause 5.5** is in relation to development within the coastal zone, with one of its objectives being identified as protection of Aboriginal cultural places, values and customs.

Clause 5.9 provides for the conservation and protection of trees and vegetation that are identified as part a culturally significant Aboriginal place or object.

25

Clause 5.10 provides for the conservation of Aboriginal heritage sites or objects through the requirement of development consent for development that may impact on (or be within an area of) Aboriginal cultural significance. For example, disturbing or excavating a site, erecting a building on a site, subdividing culturally significant land and so on.

30

[Schedule 1](#) provides that certain land at Lighthouse Road in Byron Bay may only be developed according to ILUA 1 and that the dominant use is to be 'Aboriginal Cultural Center'.

5 [Crown Lands Act 1989](#)

The Crown lands Act is still in force, however, the Crown Lands Management Act 2016 (see below) is anticipated to fully repeal the Crown Lands Act 1989 by early 2018 (specifically, the Act is to be repealed on the commencement of Sch 8 (a) to the Crown Land Management Act 2016 No 58).

This Act affects BSC in that it is required to manage reserves and obtain licences for use of Crown reserves. Generally speaking, Native Title claimants and other relevant Indigenous representative bodies will require notification before a lease or licence is granted (see [Notification](#) pg. 4)

15

[Crown Lands Management Act 2016](#)

The Crown Lands Management Act 2016 was assented to on 14 November 2016 and will eventually repeal the Crown Lands Act 1989. The majority of the provisions are expected to commence in early January 2018, though provisions relating to vesting of land in local councils were in force from the date of assent.

One of the objects of the Act is:

[Division 1.1. \(1.3\)\(e\)](#) to facilitate the use of Crown land by the Aboriginal people of New South Wales because of the spiritual, social, cultural and economic importance of land to Aboriginal people and, where appropriate, to enable the co-management of dedicated or reserved Crown land.

Vesting of Land

Lindsay Taylor Lawyers provides a helpful summary of this provision and how it relates to Local Government and Native Title interests in their [article](#) of December 2016:

"The CLM Act provides for a process whereby 'transferable Crown land' can be vested in local councils by way of a notice in the gazette (Vesting Notice). 'Transferable Crown land' is Crown land which has not been dedicated or reserved, nor declared to be a wildlife refuge under the National Parks and Wildlife Act 1974, or which is not land required to be used in a particular way

under other legislation. However, nothing in the Local Government Act 1993 (LG Act) can prevent land from being transferable Crown land.

There are a number of pre-requisites to the vesting of land in a council, as follows:

- the council must agree to the vesting;
 - 5 • the land must be wholly within the local government area of the council in whom it is being vested;
 - the vesting must have the consent of local and NSW aboriginal land councils if the land is subject to a claim under the Aboriginal Land Rights Act 1983; and
 - the Minister must be satisfied that the land is suitable for 'local use'.
- 10 Any vesting is subject to any native title interests, and there are constraints on dealing with the land unless native title has been satisfactorily dealt with under the Native Title Act 1993 (Cth) in order to avoid any breach of that Act. However councils will be able to adopt and implement plans of management under the LG Act for the land." *Megan Hawley, December 2016.*

15 **Part 8** Native title rights and interests Introductory note. This Part provides for:

- (a) the issuing of native title certificates by the Minister;
- (b) the obligations of certain Crown land managers for dedicated or reserved Crown land and local councils vested with Crown land in connection with the management of native title issues in relation to the land (including using native title managers to provide advice on certain dealings with the land); and
- 20 (c) compensation responsibilities concerning native title rights and interests for the conduct of these Crown land managers and local councils.

Local Government Act (NSW) 1993

25 The LGA provides the statutory requirements for local government authorities within NSW. The whole of the Act applies to Indigenous people within the shire, as it outlines Local Government roles and responsibilities for all individuals (for example, the civic process, BSC's social responsibilities, financial management and so on). However, there are some certain sections of the Act that specifically relate to BSC's statutory obligations as a local authority regarding Aboriginal culture, land use, protection of heritage and so on.

30

The summary below is a general overview of some of the sections of the LG Act which are applicable.

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[S10A](#) provides that parts of BSC meetings dealing with culturally significant sites identified under s36DA can be closed to the public.

5 [S36D](#) BSC has statutory responsibility to ensure that community land (that is BSC owned land for community use) that is identified as culturally significant must adopt a plan of management for the land. (see also: clauses 2.2, 4 of the [MoU](#) - that the Arakwal be involved in identification and management of such land).

10 [S36DA](#) provides that the location of places and items of Aboriginal significance may be kept confidential by a resolution of council at the request of any Aboriginal person, and that parts of an adopted or draft plan of management subject to a resolution of confidentiality are not to be disclosed by councillors or BSC employees except with consent of BSC. Councils are to consult with appropriate Aboriginal communities when proposing a draft plan of management that involves disclosure of confidential items or places.

15

[S36H](#) provides the core objectives for the management of community land that is categorised as an area of cultural significance, specifically active conservation methods to be undertaken to preserve the cultural significance of the site.

20 [S47AA](#) Provides additional requirements around the issuing of a lease or licence for filming projects on community land that has been identified as Culturally Significant under s36D, including notifying or advertising the proposal in the manner prescribed by the regulations.

Compulsory Acquisition of Land

25 [S188](#) deals with the compulsory acquisition of land for re-sale and the requirement for BSC to perform a 'diligent inquiry' to identify the landowner. S188(3) defines the term 'diligent inquiry' as including giving notice of the proposed acquisition to the NSWALC and the relevant LALC, along with any Native Title claimants in the area (see '[Identifying Indigenous Interests](#)' page 3).

30

Rates and Levies

5 **S496A** Subsection (1) does not permit BSC to make and levy annual charges for stormwater management services on rateable land held under a lease for private purposes granted under the [Aboriginal Housing Act 1998](#).

10 **S496B** Subsection (1) does not authorise or permit a council to make or levy an annual charge for the provision of coastal protection services for rateable land that is held under a lease for private purposes granted under the [Aboriginal Housing Act 1998](#).

15 **S555** outlines lands which are exempt from ALL rates. Land exempt includes (but is not limited to) land that is vested in the New South Wales Aboriginal Land Council or a Local Aboriginal Land Council and is declared exempt from rates under [Division 5, part 2 of the Aboriginal Land Rights Act 1983](#). See also *National Parks and Wildlife Act 1974*.

15 **S556** provides that land that is vested in an Aboriginal Land Council **and** that is reserved under Part 4A of the *National Parks and Wildlife Act 1974* is exempt from rates other than water supply special rates and sewerage special rates.

20 **S560** provides that the Crown is liable to pay the rate for land owned by the Crown which is subject to the [Aboriginal Housing Act 1998](#).

[National Parks and Wildlife Act \(NSW\) 1974](#)

25 This Act provides for the identification, management, conservation and preservation of Aboriginal cultural sites, items, heritage and lands at a State level. There is a good portion of this Act which deals explicitly with the reservation and management of Aboriginal lands.

Below is a summary of some relevant sections of the NPW Act.

30 **Part 3** provides for the creation and the functions of an Aboriginal Cultural Heritage Advisory Committee. The Committee is to advise the Minister and the Chief Executive on any matter relating to the identification, assessment and management of Aboriginal cultural heritage, including providing strategic advice on the plan of management and the heritage impact

permit process, whether or not the matter has been referred to the Committee by the Minister or the Chief Executive.

[Section 30k](#) outlines the purpose of reserving land to protect Aboriginal places of cultural significance, and to provide principles under which that land is to be managed.

5

[Part 6, Division 1](#) focusses on the protection of Aboriginal cultural sites and objects, as well as outlines the provisions for penalties in relation to the destruction of Aboriginal objects and/or cultural sites; or failure to notify the Chief Executive of the Department about the known location of a culturally significant site or object. [S86](#) provides that harming of
10 Aboriginal objects or sites is prohibited, though [S87A](#) and [S87B](#) provide conditions of exemption from s86 in some culturally related circumstances. (see also **Local Government Act sections 36D,36DA and 36H**).

Whilst BSC currently does not have the authority to enforce offences committed under this
15 Act, it may be applicable to BSC's obligations to Aboriginal stakeholders in that:

- it identifies certain offences and exemptions pertaining to the destruction or damage of culturally significant items and sites, which is important for BSC to consider during planning and development proposals, events, licences for use of land and so on (**also intersects with the Byron LEP 2014 Clause 5.10**);
20
- sections of this Act that focus on the identification and preservation of such culturally significant sites or objects can be seen to overlap with sections 36D,36DA and 36H of the Local Government Act; and
- BSC, through various compliance or development processes, may become aware of
25 an offence being committed under this Act, and therefore be required to notify the National Parks and Wildlife Authority.

Native Title Act (Cth) 1993

5 The Native Title Act 1993 (Cth) (NT Act) provides the framework for the legal recognition of the rights and interests of Indigenous people or groups. Activities undertaken by BSC in relation to land or waters may affect native title rights and interests (whether Native Title has been formally recognised in a particular area or not).

A native title assessment should be carried out at the beginning of any work plan or project assessment process.

- 10 There are currently two active Native Title Claims that encompass land within Byron Shire:
- Bundjalung of Byron bay (Arakwal) – NSD6020/01; and
 - Widjabul Wia-bal People - NSD174/13

15 Native Title is a complex area of law. Given its complexity, no particular section is outlined in this document, and it is recommended that you obtain specific advice from Legal Services when considering the impact that Native Title rights and interests may have on a proposed activity, event or project.

Where it is unclear, or there is no established process, the most appropriate way to determine existing Native Title interests is to contact the NNTT or NTSCORP.

BSC may intersect with the NT Act in the following ways:

- 20 - As a **Crown Land Reserve Trust Manager**, BSC must notify the relevant stakeholders of any **proposed lease or licence** to be granted on that parcel;
- In the case of compulsory **acquisition of land**, BSC is required to notify relevant Indigenous Stakeholders, as acquisition of land will likely extinguish Native Title;
- 25 - Future Acts: Where BSC proposes to construct a **public work** on land that has not had Native Title extinguished, BSC is required under the NT Act to notify any relevant stakeholders. The building of a public work may extinguish Native Title on that land (meaning it will no longer be claimable land). There is a Future Act process which
- 30 Council is required to undertake. Where a Council staff member considers it may have an activity, event or project where a Future Act may be concerned, it should seek advice from Legal Services as a first step in the process.

A 'public work' is defined in [section 253](#) as:

- (a) any of the following that is constructed or established by or on behalf of the Crown, or a local government body or other statutory authority of the Crown, in any of its capacities:
- 5 (i) a building, or other structure (including a memorial), that is a fixture; or
- (ii) a road, railway or bridge; or
- (iia) where the expression is used in or for the purposes of Division 2 or 2A of Part 2—a stock-route; or
- (iii) a well, or bore, for obtaining water; or
- 10 (iv) any major earthworks; or
- (b) a building that is constructed with the authority of the Crown, other than on a lease.

In addition, section [251D](#) provides that a reference to land or waters on which a public work is constructed, established or situated includes a reference to any adjacent land or waters the use of which is or was necessary for, or incidental to, the construction, establishment or operation of the work.

15

Native Title (Indigenous Land Use Agreements) Regulations 1999

20 Indigenous Land Use Agreements are enabled under the NT Act.

As per the [Office of Environment and Heritage](#) website:

25 "An indigenous land use agreement (ILUA) is a voluntary agreement between a native title group and others about the use and management of land and waters. ILUAs can be made separately to the formal determination of a native title claim or they can be a stepping stone towards or part of a formal native title determination by the Federal Court. The NSW Government can negotiate an ILUA with native title claimants regarding the management of public land in their claim area.

30 If the ILUA is registered on the Register of Indigenous Land Use Agreements it binds all parties and all native title holders to the terms of the agreement. **The native title rights established by an ILUA have the same force under Federal law as if they were part of a native title determination.**" (emphasis added)

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There are three ILUAs in force within Byron Shire.

ILUA 1 (doc. # E2013/62799) 28 December 2001.

An agreement between the Minister for Land and Water Conservation; the Director General of National Parks and Wildlife; Cape Byron State Recreation Area Trust; the Arakwal Aboriginal Corporation; Lorna Kelly and Linda Vidler on behalf of the Arakwal people; the Tweed Byron LALC; and the NSW ALC; The main objects of this agreement related to the creation of the Arakwal National Park, a proposal for the land at Taylor's Lake to be dedicated as a nature reserve and for some identified land parcels to be transferred to the Arakwal Corporation. The creation of a National Park through an ILUA was the first of its kind.

ILUA 2 (doc. #E2013/62429) 20 December 2006

ILUA 2 is a deed of agreement made between the Minister for Lands, the Minister for the Environment, the Director General of the Department of Environment and Conservation, Native Title Applicants for Bundjalung of Byron Bay Native Title Claims and the Arakwal Corporation. This agreement achieved a partial settlement of Native Title Claim NSD6010/98 (the first application) and a final settlement of native Title Claim NSD6088/98 (the second application). ILUA 2 provides the means for the State to establish and manage the Arakwal National Park in accordance with the Native Title Act (along with certain benefits for the native title claimants such as transfer of some land, lease of a cottage within the national park, employment and training opportunities in the National Park). In exchange for benefits provided by the State, the native title claimants have agreed to withdraw the First Application over certain land, amend the third application (NSD6020/01 discussed below) by removing parcels that fall within the National Park area and surrender Native Title claim over other land claimed in NSW. ILUA 2 represents the full and final settlement of the First Application and provides that no further application for a determination of native title shall be made in respect of the area encompassed by ILUA 2 except in the limited circumstances provided for within the agreement. Under this agreement, Arakwal elders enabled Crown land to be transferred to BSC for the purposes of the Byron Bay Library site. Under the [MoU](#), **clause 3.2.4** stipulates the requirement of this ILUA that an 'Arakwal Room' be perpetually provided at the library for cultural activities.

ILUA 3 (doc. # E2013/62432) 20 December 2006, Ti Tree Lake (Taylors Lake)

A deed of agreement made between the Minister for Lands, the Minister for the Environment, the Director General of the Department of Environment and Conservation, Native Title Applicants for Bundjalung of Byron Bay Native Title Claim NSD6020/2001 (the

third application), and the Arakwal Corporation. The premise of the Agreement is the protection and conservation of the sacred and culturally significant site at Ti Tree Lake (aka Taylor's Lake), which is of particular significance to Bundjalung women. Jali LALC lodged a land claim over the area in 1985 in an attempt to protect it. ILUA 3 protects the area covered by the Agreement under the reserve system of the National Parks and Wildlife Act 1974. The agreement stipulates that the Department of Environment and Conservation is to create a special advisory committee made up of female members of the Jali LALC, the Bundjalung people of Byron Bay and other indigenous women with an interest to advise and give input into the protection and management of the agreement area. The Agreement also stipulates that the department should consider declaring the area as an Aboriginal Area under the National Parks and Wildlife Act 1974. Land in the north of the agreement area and owned in freehold by BSC is to be included in the Reserve. See also clause 1.2.2 of the [MoU](#).

Native Title (New South Wales) Act 1994

15

This Act applies Native Title to the State. The objects are set out as follows:

[Section 3](#) The main objects of this Act are:

- (a) in accordance with the Commonwealth Native Title Act, to validate any past acts, and intermediate period acts, invalidated because of the existence of native title and to confirm certain rights, and
- (b) to ensure that New South Wales law is consistent with standards set by the Commonwealth Native Title Act for future dealings affecting native title.

This Act validates past and intermediate period acts that were undertaken by the State, and provides that they do not become invalid due to the existence of the Commonwealth Native Title Act. If there are any irregularities between the State Act and the Commonwealth Act, the Commonwealth takes precedence.

The relevance of this Act to staff projects would be determined on a case by case basis.

APPENDIX ONE : KEY DOCUMENTS

Document	Contents	Location / Doc. Number
<u>Case Study: A Local Government / Aboriginal Service Agreement</u>	A case study done by Coorong District Council on their service agreement with Raukkan Community Council Alliance. Features stories, partnership and protocol tips.	<i>E2017/11413</i>
BSC owned/managed land under Native Title/Aboriginal Land Claim	Spreadsheet identifies parcels of BSC land that fall within a native title area or have an Aboriginal Land Claim on them. This document is a guide, for official confirmation as to whether a parcel has any interests over it, contact National Native title Tribunal, Or NSWALC.	<i>E2016/107733</i>
Heads of Agreement (1998)	Framework for ongoing consultation between BSC and the Arakwal people.	<i>DM564718</i>
ILUA 1 (Dec 2001)	Indigenous Land Use Agreement 1 (initial process in creation of Arakwal National Park et al.)	<i>E2013/62799</i>
ILUA 2 (Dec 2006)	Indigenous Land Use Agreement 2 (established mechanism for State to manage Arakwal National Park, settlement of first native Title application)	<i>E2013/62429</i>
ILUA 3 (Dec 2006)	Indigenous Land Use Agreement 3 (conservation of Taylors Lake / Ti Tree Lake)	<i>E2013/62432</i>
Memorandum of Understanding (Arakwal) (2013)	Signed agreement between BSC and Arakwal. Outlines BSC's commitment to ongoing relationship with Arakwal. Key areas of importance to the Arakwal people identified.	<i>E2013/42493</i>
Plan of Management – Arakwal National Park	Document outlines the Plan of Management for the Arakwal National Park, such as prohibited activities, ecology of the area, cultural significance etc.	<i>E2017/11330</i>
<u>Working with Native Title: Linking native Title and Council Processes (3rd edn. 2009)</u>	Document developed by Native Title Tribunal and Local Government Association. Outlines how Local government processes are affected by Native Title.	<i>E2017/11408</i>

F1610 = Bundjalung Native Title Claim (NSD 6020/01)

F1804 = Widjabul-Wiabal Native Title Claim (NSD 1174/13)

BYRON SHIRE COUNCIL

STAFF REPORTS - CORPORATE AND COMMUNITY SERVICES

4.1 - ATTACHMENT 1

APPENDIX TWO : KEY CONTACTS

STAKEHOLDER	EMAIL	PHONE	ADDRESS
Arakwal Corporation		02 6685 8746	
Crown Lands- Aboriginal Land Claims Unit	ALC@crowland.nsw.gov.au	02 6883 3396	
Crown Lands	enquiries@crowland.nsw.gov.au	1300 886 235	
LALC: Jali (Ballina)	jalilalc@bigpond.com	02 6686 7055	PO Box 1677, BALLINA NSW 2478
LALC: Nguligah (Lismore)	jean.boussard@ngulingah.org.au	02 6621 5541	PO Box 981, LISMORE NSW 2480
LALC: Tweed / Byron	admin@tblalc.com	07 55361763	PO Box 1410, KINGSCLIFF NSW 2487
Native Title Tribunal	enquiries@nntt.gov.au	02 9227 4000	GPO Box 9973 Sydney NSW 2001
NSWALC	media@alc.org.au	02 9689 4444	PO Box 1125 Parramatta NSW 2124
NTSCORP	information@ntscorp.com.au	02 9310 3188	PO Box 2105, Strawberry Hills NSW 2012

APPENDIX THREE : PROJECT EXAMPLES

PROJECT	STAKEHOLDERS INVOLVED	LEGISLATION/ DOCUMENT	PROCESS
Acquisition of Land	Native Title Claimants; NSWALC, NTSCORP	Native Title Act (Cth) 1993; Native Title (Notices) Determination 2011	Before any land is acquired, BSC is required to check whether there are any Native Title claims on that parcel. If there are registered Native Title claimants, they must be notified as owners, per section 12 of the Land Acquisition (Just Terms Compensation) Act 1991 . If there are no claimants found in this search, then at minimum the NSWALC, and NTSCORP need to be notified with 60 days provided to comment.
Event on BSC Managed Reserve	Arakwal Corporation; Native Title Claimants	Arakwal MoU; Native Title Act (Cth) 1993;	When an event is proposed to take place, it should be part of the assessment of the event application that Indigenous interests are identified prior to any approval. This is very important for events that are cultural or spiritual. This may include: <ul style="list-style-type: none"> • Determining whether the event is cultural. If it is, does it align with the cultural values of the identified custodians of the land it is being held on? • Does the custodian of the land give their permission for the event?
Development		Native Title Act (Cth) 1993; ILUAs; Aboriginal Land Rights Act (NSW) 1983; Byron LEP 2014	Is the land under a claim or land use agreement? Is it culturally significant and possibly protected from some types of development? Planning and Development projects will often need to take into consideration Native Title Act processes, as well as Land Claims under the Aboriginal Land Rights Act. In particular, the Byron LEP 2014 and other legislation determine parameters of development permitted on land of cultural significance.
Report to Council	Arakwal Corporation; Native Title Claimants; National Parks and Wildlife Service	Arakwal MoU; Local Government Act (NSW) 1993;	If a council report contains information about culturally significant sites, staff should be aware that the report may need to be kept confidential. As such, the council meeting would need to move in to a confidential session for discussion. Staff should enquire with the appropriate Indigenous Stakeholder as to whether it is to be kept confidential.
Cultural Heritage Projects in Community Development			
Tourism activities and events			

APPENDIX FOUR : ABORIGINAL LAND RIGHTS ACT and NATIVE TITLE ACT

Excerpt from NSW Aboriginal Land Council document:

5 [LAND RIGHTS AND NATIVE TITLE IN NSW, A GUIDE FOR THE COMMUNITY](#)

	LAND RIGHTS	NATIVE TITLE
What is it?	The return of certain Crown lands to Aboriginal peoples as compensation for dispossession and the resulting ongoing disadvantage suffered by Aboriginal peoples.	The recognition of the traditional and customary rights and interests Aboriginal peoples have in lands.
How long has it been around?	A non-statutory NSW Aboriginal Land Council was established in 1977 as an Aboriginal lobby on land rights. The <i>Aboriginal Land Rights Act (ALRA)</i> ¹ was passed by the NSW Parliament in 1983.	Native title was first recognised by the courts in the 1992 Mabo decision. Legislation then followed with the Commonwealth passing the <i>Native Title Act (NTA)</i> in 1993 and the NSW Parliament passing the <i>Native Title (New South Wales) Act</i> in 1994.
Is traditional connection required?	Traditional connection does <u>not</u> need to be established for a land claim to be granted. The ALRA also contains provisions for culturally significant lands to be returned to people with a connection to the place.	Native title will <u>only</u> be determined to exist where Aboriginal people have established to the Federal Court that they have maintained a continuing connection with an area through an acknowledgement of traditional laws and customs.
Who can make a claim?	Aboriginal Land Councils constituted under the ALRA.	A native title claim group's nominated representatives, known as 'the Applicant'. The word Applicant is used even though this will usually be a group of people, not an individual.
What land can successfully be claimed?	Crown lands that are not lawfully being used or occupied, not needed or likely to be needed for residential or essential public purposes and not the subject of a registered native title claim or determination.	Vacant Crown land, National Parks, State Forests, Crown Reserves, some types of non-exclusive leases, land covered by permissive occupancies and licenses, inland waters and the sea.
Does it mean ownership?	Yes, generally full or freehold title to land is granted, though sometimes land may be held in leasehold.	In some cases it can mean rights akin to full ownership. More often, native title is recognised to co-exist alongside other rights and interests in the same area. This can mean access and usage rights are legally recognised, including for camping, hunting, fishing and other cultural activities.
Who holds the rights?	Aboriginal Land Councils constituted under the ALRA.	Either the native title holders or a Prescribed Body Corporate (PBC) holds the title in trust or as an agent
How many claims in NSW?	Since 1983, there have been approximately 36,000 land claims lodged, with 2,473 of these successfully granted. However, there are still approximately 26,000 to be determined.	There have been four determinations that native title exists in NSW and nine Indigenous Land Use Agreements (ILUAs) registered. A number of other section 31 deeds have been reached. There are currently 24 claimant applications and 6 non-claimant applications in NSW yet to be determined. There are 232 determinations nationally that native title exists.

APPENDIX FIVE: RECOMMENDATIONS

Several recommendations have arisen from the development of this document.

1. REVIEW OF MoU

- 5 The MoU may benefit from being updated to include any relevant legislation that sits behind a clause or priority project. This would really flesh out the MoU and its enforceability. For example, clause 1.2.3 mentions legislative changes making it an offence to knowingly damage or destroy Aboriginal sites. This could be further supported by actually listing the specific sections of the NPW Act that outlines the offence.
- 10 An update of the MoU to include legislative requirements would make it clearer to the parties involved where there are statutory obligations. It will allow for a clearer defining of relational boundaries when it comes to creating service agreements with other stakeholders, such as LALCs.

15 2. FUTURE ACTS

A clear process needs to be developed for identifying Future Acts. Depending on the proposed activity, this can be very simple or it can require negotiations and community benefits to the relevant Indigenous group. BSC may be a party to such an agreement, which would need to be resolved prior to the activity occurring.

20

3. PROGRESS OF ILUA IMPLEMENTATION

- If it has not already been done, or hasn't been updated recently, it would be beneficial for an audit report to be undertaken on each ILUA in terms of the progress of the implementation of projects identified in the ILUAs, whether community benefits have been delivered and whether BSC has any outstanding responsibilities. This may potentially dealt with by the MoU committee, or BSC could undertake an audit report on this as a way of measuring its liability.
- 25

Report No. 4.2 **Ti Tree Lake PoM**
Directorate: Corporate and Community Services
Report Author: Belle Arnold, Community Project Officer
File No: I2017/1233
5 **Theme:** Society and Culture
 Community Development







Summary:

10 This report provides an update on Council’s responsibilities from the National Parks and Wildlife Service Ti Tree Lake’s Plan of Management, including the progress of the request to close the Taylors Lake Road, installation of regulatory and educational signage and water quality monitoring program.
15

RECOMMENDATION:

1. **That the Arakwal Memorandum of Understanding Advisory Committee note the progress of this project.**
2. **That the Arakwal Memorandum of Understanding Advisory Committee recommend that Taylors Lake Road be transferred to an easement to protect the Aboriginal Cultural Principles of the Aboriginal Area and Aboriginal Place of the lake precinct.**
3. **That the Arakwal Memorandum of Understanding Advisory Committee provide feedback regarding priority times for water quality testing at the Ti Tree Lake.**

Attachments:

- 20 1 Ti Tree Lake Plan of Management, E2017/89715 , page 40  
2 Draft Signage, E2016/11509 , page 66  
3 Ti Tree Lake signage map, E2017/85459 , page 68  

Background

At the Ordinary meeting on 11 June 2015 Council resolved (15-265):

5 *That Council adopt the following Committee Recommendation:*

*Report No. 5.3 Ti Tree Lake Aboriginal Place Project Report – 14 May 2015
File No: I2015/372*

10 *Committee Recommendation 5.3.1*

1. *That the Arakwal Memorandum of Understanding Committee (MoU) note the report on the Ti Tree (Taylor's) Lake Aboriginal Place Plan of Management.*
- 15 2. *That the Arakwal Memorandum of Understanding Committee (MoU) endorse the Council's participation in the Ti Tree (Taylor's) Lake Aboriginal Place Plan of Management project.*

At a meeting on 27 April 2015, Diane Mackey (Office of Environment and Heritage) and Delta Kay (National Parks and Wildlife Service) met with Senior Planner Land and Natural Environment, and
20 Aboriginal Projects Officer to discuss the draft Ti Tree Lake Plan of Management (Attachment 1).

At this meeting the following key issues were identified:

- 25 1. Acceptable activities within the Aboriginal Principles and values for the area, for licensing on the Council owned and managed areas surrounding the Ti Tree Lake
2. Trapping pest animals on Council owned areas
- 30 3. Signage on Council road reserves
4. Restricting access to Taylors Lake Road, a Council road reserve
5. Information sharing regarding water and sewer infrastructure and maintenance schedules
- 35 6. Ensuring Council's future plans for the area adhere to the cultural values of the Aboriginal Place protection principles
7. Water quality testing

40 On 15 June 2015 the Manager Utilities, Senior Planner Land and Natural Environment, and the Aboriginal Projects Officer met to discuss the identified key areas of the Plan of Management (PoM). Additional relevant staff were consulted on the draft PoM and provided feedback on key issues identified above.

45 On 24 November 2016 the Aboriginal Projects Officer met Diane Mackey (Office of Environment and Heritage) and Delta Kay (National Parks and Wildlife Service) to discuss Council's progress on the draft Ti Tree Lake Plan of Management at the Arakwal Depot. The Ti Tree Lake Plan of Management Initial Progress Report (Attachment 1) was discussed.

50 Following this meeting a site inspection of the Ti Tree Lake was held to identify additional matters of stormwater run off and the installation of trash gates, potential locations for signage and to discuss concerns on future uses of the public road Taylors Lake Road.

Signage

5 Signage was identified in the Ti Tree Lake Plan of Management as a key factor in educating the public on the Aboriginal principles of the area. Signage has been drafted and provided by National Parks and Wildlife Services for Council's consideration.

Taylor's Lake Road

10 Office of Environment and Heritage and National Parks and Wildlife Service staff expressed concerns over the potential future development and use of Taylor's Lake Road and requested that Council consider avenues for legally restricting access.

15 The negotiations in Indigenous Land Use Agreement 3 requested that Council consider closing Taylor's Lake Road as a public road. This matter has been reopened for review and currently consideration is being made to the creation of an easement so that Council can access the water infrastructure for maintenance and upgrading. Issues around stormwater management are also being considered before Council can any surrender of a part of Taylor's Lake Road as a public road.

20 **Report**

On 29 August 2017 Manager Utilities and the Aboriginal Project Officer met to discuss the progress of Council's projects from the National Parks and Wildlife Service's Ti Tree Lake Plan of Management (Attachment 1).

25 Priority projects for this meeting were identified as:

1. The transfer of Taylor's Lake Road to an easement
2. Water quality monitoring
- 30 3. Installation of the signage around the lake.

Transfer of Taylor's Lake Road to an Easement

35 Council's Manager Utilities will report the request to the Executive Team in the preparation of a report to Council requesting this action be taken. The easement needs to allow Infrastructure Services to access water, stormwater and sewerage assets.

Water quality monitoring

40 Council staff are developing a project plan for the monitoring of water quality in a number of important waterways in the Byron Bay area including the Ti Tree Lake. A position description for a trainee is in development for the implementation of water quality monitoring in these locations. A schedule of monitoring and sampling is also being prepared. Staff seek input from the committee in regard to key time frames for water testing to be prioritised.

45 **Installation of the Signage**

Draft designs with required wording have been prepared (Attachment 2). Artwork has been commissioned from Arakwal woman Nickolla Clark in the theme of the Three Sisters story from Broken Head. Council staff have requested quotes for the fabrication of ten signs with the three different designs. Five locations have been identified for the installation of these signs all on Council owned or managed land (Attachment 3).

Financial Implications

Costs involved in the transfer of the road reserve to an easement are under investigation.

- 5 \$10,000 for signage fabrication and installation from existing budget allocations.

Statutory and Policy Compliance Implications

NPWS Act 1974

Native Title Act 1993

- 10 Local Government Act 1993

Arakwal MoU 2013



**Office of
Environment & Heritage**
NSW National Parks & Wildlife Service



TI TREE (TAYLOR'S) LAKE ABORIGINAL PLACE

PRELIMINARY DRAFT MANAGEMENT PLAN



**NSW National Parks and Wildlife Service
Office of Environment & Heritage
April 2015**

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This document is for discussion and comment only. The proposals are under consideration and are open for discussion. Provisions in the draft management plan may not be the same as those in this preliminary draft plan.

Front cover image: Ti Tree Lake Aboriginal Place. (Photo: OEH/D. Mackey)

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Acknowledgments

The NPWS acknowledges that this Aboriginal Place is in the country of the Bundjalung Nation and is located within the areas of the Bundjalung of Byron Bay (Arakwal) People and the Jali Local Aboriginal Land Council, and it has special significance to women of the Bundjalung Nation.

This preliminary draft plan of management was prepared by staff of the Northern Rivers Region of the NSW National Parks and Wildlife Service (NPWS), part of the Office of Environment and Heritage.

For additional information or any inquiries about the Ti Tree Lake Aboriginal Place or this preliminary draft management plan, contact the NPWS Byron Coast Area Office, Tallow Beach Road, Byron Bay, NSW 2481 or by telephone on (02) 66209300.

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1. Ti Tree (Taylor's) Lake Aboriginal Place

Introduction

Ti Tree (Taylor's) Lake Aboriginal Place was declared under the *National Parks and Wildlife Act 1974* (section 84) (NPW Act) in 2000 in recognition of its special significance to Aboriginal culture. The lake is also a registered mythological site on the NPWS Aboriginal Heritage Information Management System. The Jali Local Aboriginal Land Council and Bundjalung of Byron Bay Arakwal Elders campaigned for nearly two decades to get protection for the lake and its natural and cultural values.

The Aboriginal Place (AP) is approximately 70 hectares and is located 4km south of Byron Bay, on the far north coast of New South Wales, between Suffolk Park and Broken Head (see Map 1). The AP is centred on the Ti Tree Lake, also known locally as Taylors Lake, a highly significant Aboriginal women's site. The lake consists of a northern lobe (1.3 hectares) and a southern lobe (4 hectares) linked by a narrow channel that opens intermittently to the ocean.

Landowners and land managers

The AP (see Map 2) consists of:

- freehold land owned by Jali Local Aboriginal Land Council, including most of the lake
- freehold land owned by Byron Shire Council
- Crown land, some of which is managed by Byron Shire Council and some by Crown Lands
- part of the Cape Byron Marine Park which is managed by Fisheries NSW and is located on Crown land between low and high water mark, and
- the Ti Tree Lake Aboriginal Area which is managed by the National Parks and Wildlife Service (NPWS).

The eastern boundary of the AP includes a 635 metre long section of Broken Head Beach down to the mean low water mark. A small part of the lake at its southern end (approximately 1700 square meters) occurs on freehold land outside the AP.

Land use zoning and surrounding land use

Suffolk Park adjoins part of the north and east boundaries of the AP, a sand and gravel quarry occurs on land adjoining the western boundary, and tourism and residential development at Broken Head village adjoins the southern boundary. Broken Head Nature Reserve, managed by the NPWS adjoins the south-east boundary of the AP.

Most of the AP is zoned for environmental protection under Byron Shire's 1988 Local Environmental Plan (LEP), either as Wetlands, Coastal Habitat or Coastal Lands. However, most of Byron Shire Council's freehold land in the north of the Aboriginal Place is zoned for Investigation and a small area in the north west is zoned Residential under the 1988 LEP. A mainly cleared firebreak, south of houses in Suffolk Park, is zoned Rural Landscape under Byron Shire's 2014 LEP.

MAP 1



Ti Tree (Taylors) Lake Aboriginal Place – Preliminary Draft Management Plan

MAP 2



Ti Tree (Taylors) Lake Aboriginal Place – Preliminary Draft Management Plan

Management planning

The Office of Environment and Heritage (OEH), of which NPWS is a part, encourages the preparation of a formal management plan by the landowners/ land managers or occupiers of APs with the agreement of the Aboriginal community. This plan has been prepared in accordance with OEH guidelines (OEH 2012).

Management plans aim to identify:

- a) the area's Aboriginal cultural heritage values
- b) the Aboriginal community's management goals,
- c) actions that need to be taken to protect its important cultural heritage values
- d) actions that may require an Aboriginal Heritage Impact Permit (AHIP) under the NPW Act
- e) funding and resources that may be available to implement the actions required.

Protecting the Aboriginal Place

It is an offence under the NPW Act (section 86[4]), to harm or desecrate an AP. Harm includes destroying, defacing or damaging an AP. If development will take place in the vicinity of an AP, the potential impacts of the development must be assessed.

An AHIP should be applied for if harm is proposed to an AP. An applicant for an AHIP can refer to a management plan for an AP, where a plan exists, when assessing impacts. A management plan identifies values and usually sets out what actions would or would not be considered harmful to values.

Where a management plan is in place this provides a clear record agreed by the Aboriginal community of:

- actions that will not harm the values of the place and that will not require an AHIP
- actions that would harm the values of the place and would need an AHIP, but may be acceptable in certain situation and with certain controls
- any harming actions for which OEH would generally refuse to issue an AHIP.

Ti Tree Lake Aboriginal Area

The Ti Tree Lake Aboriginal Area was reserved under the NPW Act in 2010 and is managed by the NPWS. It protects 10.5 hectares of land in the north of the AP (see Map 2). Aboriginal areas are reserved to protect and conserve areas associated with:

- a person, event or historical theme or
- containing a building, place, feature or landscape of natural or cultural significance to Aboriginal people or
- their importance in improving public understanding of Aboriginal culture and its development and transitions.

The land was formerly owned by Byron Shire Council and was transferred to NPWS in recognition of its Aboriginal cultural heritage significance and in accordance with an Indigenous Land Use Agreement (ILUA) between the Bundjalung People of Byron

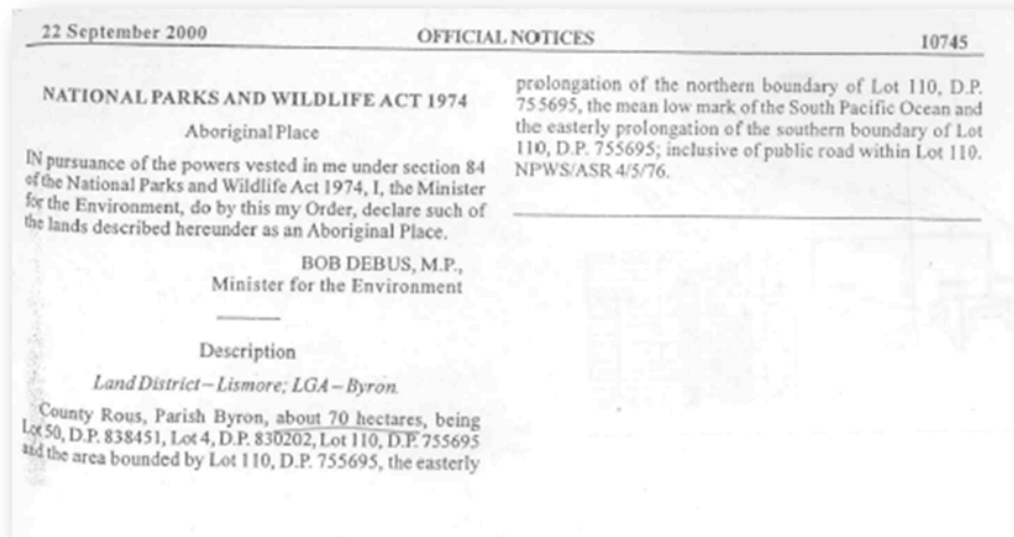
Bay and the State Government. The ILUA was registered under the Commonwealth *Native Title Act* in 2008.

Protecting the wetlands

The lake and its surrounding swamp forests and sedgelands are mapped as wetlands under the State Coastal Wetlands Policy, known as State Environmental Planning Policy No. 14 (SEPP 14) – Coastal Wetlands (see Map 3). SEPP 14 aims to preserve and protect wetlands for their environmental and economic values at a State level by restricting certain development.

2. Official notice declaring the Aboriginal Place

The following notice declaring the Aboriginal Place appeared in the *Government Gazette* on 22 September 2000.



3. Stakeholders

The following organisations have interests in the AP:

Organisation	Role / Interest
Byron Shire Council	Landowner, Crown land trustee, owns sewer, water and drainage infrastructure.
Jali Local Aboriginal Land Council	Landowner
Crown Lands	Land manager
NPWS	Land manager
Marine Parks	Land manager
Bundjalung of Byron Bay Aboriginal Corporation (Arakwal)	Native title claimants
Bundjalung Elders	Traditional knowledge holders
Telstra	Owner of telecommunications infrastructure
Neighbours of the Aboriginal place	Neighbouring property

MAP 3



Ti Tree (Taylors) Lake Aboriginal Place – Preliminary Draft Management Plan

4. General statement of management

The following statements outline the Aboriginal community's vision for management of the AP:

- a) Encourage local Aboriginal communities to visit the place to continue cultural and spiritual practices, through informal or legal agreements with landowners/land holders/occupiers.
- b) Encourage action designed to ensure continuation of cultural practices, such as maintaining or improving water quality of the catchment and retaining and improving vegetation of high cultural value.
- c) No action should be taken if it would have any adverse impact on the significance of the place.
- d) Minimise the risk of harming Aboriginal objects and sites and the Aboriginal place wherever possible.
- e) Refer to this management plan for all day-to-day and longer term management decision-making and to implement works and undertake other activities
- f) Give Aboriginal cultural values priority in resolving any conflicts about management and change to the place.
- g) Aboriginal sites and objects in the Aboriginal Place will be conserved, recorded and managed in accordance with their significance.
- h) Increase public awareness of the existence of the Aboriginal place and its high level of significance.
- i) Aboriginal knowledge gathered by OEH will be respected and protected.
- j) OEH will support the Aboriginal communities to determine what information on the Aboriginal place will be made available, such as location, stories and significance, and whether signs are erected on the Aboriginal place.

5. Cultural values

In 2000, NPWS commissioned anthropologist Inge Riebe to prepare a report to assess the Aboriginal cultural significance of the lake and surrounding area to support the process of protecting the area by declaring it an Aboriginal place under the NPW Act.

The assessment involved interviews with Elders and other Aboriginal people with knowledge of the Place to document the area's history and cultural values, including its archaeological context, and the history of protection efforts. The report makes valuable recommendations for respectful management of this special women's area.

Due to the sensitive nature of the information in the report and the strong view of the Elders that the information not be made public, it is not repeated here. A summary of the cultural values of the Place that can be spoken of publicly are:

- the Aboriginal Place is a sacred place for Aboriginal women
- the Ti Tree Lake is sacred and is a registered mythological site on the OEH Aboriginal Heritage Information Management System (AHIMS)

- traditional knowledge of the Aboriginal Place is sacred for Aboriginal women and is safeguarded. Traditional beliefs mean that the stories and secrets associated with Aboriginal Place cannot be talked about publicly.
- the Aboriginal Place is one of the few sacred women's sites in the state which remain intact and for which custodians and knowledge holders remain.
- local Aboriginal women continue to deliver traditional teachings about the Aboriginal Place to Aboriginal girls and women
- Aboriginal women continue to visit the place to maintain their connection with it and to pass on knowledge of its significance to others
- Elders have previously indicated strong concerns for maintaining catchment health to support their ongoing spiritual connections to Country

Due to the sacred significance of the lake and the surrounding 150-metre core area it is appropriate that this area has the greatest restrictions on use. However, the surrounding bushland within the Aboriginal Place is also integral to protecting the lake as it provides a buffer to adjoining land use and supports important cultural resources.

The Aboriginal Place occurs within a broader context of places of significance to the Aboriginal community. Other publicly known places include Cocked Hat Rocks (Three Sisters) Aboriginal Place, off Broken Head headland, in Broken Head Nature Reserve, Julian Rocks Nguthungulli Nature Reserve, a mythological site in Byron Bay and Walgun (Cape Byron) in Cape Byron State Conservation Area, east of Byron Bay.

6. Aboriginal community management goals

Management Goal	Timeframe
The lake and surrounding core area (lakeshore and 150 metre buffer), in particular, is used in accordance with Aboriginal cultural beliefs and traditions.	Short term
The lake is healthy and unpolluted.	Short term
Knowledge is passed down within the Aboriginal community in accordance with Aboriginal custom	Long term
The broader community understands and respects the significance of the lake and surrounding area.	Short term
Stakeholders (Council, NPWS, Crown lands, neighbours) understand and respect the significance of the lake and surrounding area.	Medium term
Cultural resources are healthy and sustainable.	Long term

7. Activities that could harm the Aboriginal Place

In the Assessment of Significance prepared by Inge Riebe (2000) the following statement is made about management of the AP, reflecting the wishes of the traditional owners and the parts of an earlier plan of management (Murphy 1993) of which they approved:

- a) Ensure as little disturbance to the lake as possible
- b) No swimming in the lake
- c) No access to the lake as far as possible (i.e. walkways)
- d) No pollutants enter the lake. Sewerage, stormwater and rubbish from houses and runoff from the quarry are of particular concern.
- e) Any inappropriate human interference causes harm to the lake and can be harmful to those interfering. Custodial Elders need to have full control over any access to the Lake.
- f) Men particularly should avoid the lake.

The following table details the type of activities that may occur in the AP including those that may harm the AP and its special cultural significance. Conditions are included, if appropriate, to reduce the harm caused by the activity. The inclusion or exclusion of certain activities in the AP is intended to reflect the wishes expressed by the traditional owners.

BYRON SHIRE COUNCIL

Table 1 Activities in the Aboriginal Place

Activity	Is the activity consistent with cultural values?	Under what conditions could the activity be consistent, if any?
Commercial tourism and activities	No	None.
Education activities	Yes -conditionally	Educational activities provided by local custodian Elders.
Poor quality stormwater or groundwater entering the lake.	No	None.
Other pollutants entering the lake (sunscreens, insect repellent).	No	None.
Recreational or other use of the lake.	No	None.
Men coming within 150-metres of the lake (the core area)	No	None.
Buildings or structures	No	Small-scale, temporary structures for cultural purposes only.
Camping	No	None.
Riding bicycles	No	<ul style="list-style-type: none"> • Restricted to Taylors Lake Road, the fire break south of houses in Suffolk Park (on Council land and NPWS). • No promotion of bike riding. • No official bikeway.
Use of motorised vehicles	No	<ul style="list-style-type: none"> • Driving a mobility-impaired person within the AP for cultural purposes. • Use of official vehicles for fire-fighting purposes and on the fire break south of houses on Macgregor Street.
Bushwalking	No	<ul style="list-style-type: none"> • Restricted to Ti Tree Lake Aboriginal Area, in accordance with an approved plan of management, Taylors Lake Road and Council land in the north west of the AP. • No promotion of bushwalking. • No walking tracks.

BYRON SHIRE COUNCIL

Activities that could cause harm	Is the activity consistent with the cultural values?	Under what conditions could it be consistent if any?
Horse riding	No	<ul style="list-style-type: none"> Restricted to Taylors Lake Road and not promoted. No official bridle path.
Parties or dance parties	No	None.
Weddings	No	None.
Exercising domestic animals (dogs and cats) or allowing them to roam free.	No	None.
Use of drones	No	Only if in conjunction with works proposed in this management plan. Apply for permission on a case-by-case-basis from the landowner/manager.
Other recreational uses of the Aboriginal Place (e.g. events, photography, picnicking, etc)	No	Passive (low-key) activities in the Ti Tree Lake Aboriginal Area, in accordance with an approved management plan, on the beach or on Council land in the north west of the AP.
Developing new pathways	No	None.
Construction of new infrastructure	No	None.
Maintaining existing pathways	No	<ul style="list-style-type: none"> Low-key maintenance of the pathway providing access for cultural purposes to the western side of the lake from Taylors Lake Road. Maintenance of the fire trail south of the houses on Macgregor Street.
Maintenance of Taylors Lake Road (a designated fire trail)	No	<ul style="list-style-type: none"> No upgrading of road surface (sealing etc). Maintain as a gravel surface. Maintenance to the minimum standard required to provide access for fire fighting vehicles incorporating best practice erosion and sediment control and weed control.
Maintenance of utilities (water, sewer, telecommunications) under Taylors Lake Road.	No	<ul style="list-style-type: none"> Maintenance of utilities under the road must incorporate best practice erosion and sedimentation control and weed control. No upgrading of road surface (sealing, concreting etc). Maintain the road's gravel surface.
Cultural fire use	Yes - conditionally	<ul style="list-style-type: none"> Small fires for cultural purposes (e.g. cooking, warming, ash/charcoal).
Cultural activities	Yes - conditionally	<ul style="list-style-type: none"> Small groups only. Cultural activities to be conducted by local custodian women Elders.

BYRON SHIRE COUNCIL

Activities that could cause harm	Is the activity consistent with the cultural values of the Aboriginal Place?	Under what conditions could it be consistent if any?
Clearing	No	Low-key (minimal) clearing of disturbed areas for cultural purposes.
Mining, quarrying or mineral exploration	No	None.
Pump from the lake or waterways	No	None.
Fire	No	<ul style="list-style-type: none"> Only small-scale controlled burns to maintain cultural resources (i.e. culturally valuable plants and animals) if required.
Controlling weeds	Yes - conditionally	<ul style="list-style-type: none"> No weed control to occur on the dunes until a general pattern of avoidance of the lake is established. Any herbicides usage around the lake must be consistent with permits and labels and an approved weed control/bush regeneration plan. No herbicides to be used over the lake or its tributaries, even if permitted on labels etc. It is preferred that women undertake this activity.
Controlling pest animals	Yes - conditionally	<ul style="list-style-type: none"> No poisons to be used within a 150-metre buffer area around the lake Poison usage must be consistent with permits and labels and an approved pest control plan. It is preferred that women undertake this activity.
Managing vegetation to reduce bush fire risk to adjacent development	No	<ul style="list-style-type: none"> Management bush fire risk in accordance with the approved Far North Coast Bush Fire Risk Management Plan. Ensure the Aboriginal Place is recognised as an asset in the Far North Coast Bush Fire Risk Management Plan.
Signs	Yes – conditionally	<ul style="list-style-type: none"> Signs to educate people about significance of the place and appropriate behaviour. Signs to be unobtrusive and placed so as not to attract visitors to the AP.
Moving, relocating or collecting objects	No.	If an object is in danger of being destroyed or damaged.

8. General management protocols

The following general protocols form an agreed basis for landowners, land managers and the Bundjalung of Byron Bay Arakwal People to work together to manage the AP:

- a) assess the health of the lake through a water sampling program
- b) an agreed approach to risk management
- c) meet twice a year to review the operation of the management plan and consider whether to recommend changes to OEH
- d) works carried out in the Aboriginal place will be in accordance with this plan of management
- e) keep each other informed of works being undertaken in the AP by email or in writing (see Contacts section)
- f) commit to working together to address strategic management issues in the AP, for example, access or controlling pest plants.

9. Risk management measures

The following risk management measures are intended to prevent or mitigate potential harm to the AP:

- a) Before carrying out works undertake cultural and heritage assessments through the Aboriginal Heritage Impact Permit (AHIP) process, as required.
- b) Establish an exclusion or buffer zone for activities that could harm the place.
- c) Consult and involve the local Aboriginal community, relevant Elders, individuals and Local Aboriginal Land Councils.
- d) Manage fire to prevent large fires.
- e) Educate people about the significance of the place and safe practices.
- f) Erect signage to educate the people about the place's significance and appropriate behaviour.
- g) Close pathways from the beach to the lake and along the lakeshore or allow them to revegetate naturally..
- h) Close pathways, other than the pathway to the western side of the lake
- i) Manage weeds and pest animals to prevent loss or damage to cultural resources.
- j) Ensure runoff from the quarry site and stormwater from all outlets into the AP is managed to prevent harm to the place.
- k) Investigate formally closing Taylors Lake Road (or at least that part of the road within the Aboriginal Place).
- l) Exclude development from the Aboriginal place.
- m) Ensure adequate sediment and erosion control on Taylors Lake Road.
- n) Ensure all sewage is properly treated on surrounding lands and that the sewerage system on the Aboriginal place and on surrounding lands is properly maintained.
- o) Routinely monitor or inspect the Aboriginal place to identify potential harm.

10. Cultural value management statements

The following statements outline an agreed approach to managing the cultural values of the AP:

- a) Stakeholders and landowners will handle culturally sensitive information with respect and according to the wishes of the Aboriginal community regarding the AP which is a sacred women's place.
- b) Landowners, land managers and will work to conserve the environmental and cultural values of the place.
- c) Continuing access for Aboriginal people to the AP will be encouraged to conserve its special significance.
- d) Continued access to traditional/contemporary resources which are important for cultural purposes or simply in their own right, will be permitted.
- e) Landowners and land managers will be encouraged to respect the connection of Aboriginal people to the place and the need for connection to Country to allow for the passing on of traditional knowledge.
- f) The ongoing role of the AP as a teaching site will be recognised and respected.
- g) Landowners and land managers will work to prevent large scale landscape changes to the AP, to conserve its spiritual and cultural values.

11. Works and activities

Works are required in the AP to protect cultural values and to manage risks. The following table lists proposed works, specifies how the works should be undertaken, identifies who is responsible and sets timeframes. Map 4 shows the location of works proposed to address tracks and signage.

Table 2 Proposed works and activities in the Aboriginal Place

Type of work or activity	Specification	Timeframe	Responsible authority
Design and install signage	<ul style="list-style-type: none"> • Signs are to educate the public about the significance of the place and appropriate behaviour. • Signs are to be unobtrusive and positioned so as not to attract visitors to the Aboriginal Place. <p><u>Sign locations (see Map 4):</u></p> <ul style="list-style-type: none"> - near the lake entrance on the edge of vegetation - on the informal track running from the lake entrance south along the lakeshore - on the southern path that leads to the southern lake - at the intersection of Taylors Lake Road and the pathway to the western side of the lake, - on Taylors Lake Road at the southern boundary of the Aboriginal Place - on Taylors Lake Road where it intersects with the western boundary of the Aboriginal Place - at the entrance to the fire break on the AP that starts at the southern end of Glasgow Street. 	Short term	Council Jali LALC
Managing vegetation to reduce bush fire risk	<ul style="list-style-type: none"> • Manage bush fire risk in accordance with the approved Far North Coast Bush Fire Risk Management Plan. • Manage bush fire risk in the Ti Tree Lake Aboriginal Area in accordance with the NPWS Fire Management Strategy. • Ensure the Aboriginal Place is recognised as an asset in the Far North Coast Bush Fire Risk Management Plan. 	Short - medium term	Council NPWS Far North Coast Bush Fire Management Ctee
Pests animals	<ul style="list-style-type: none"> • Develop pest animal control plan/s (possibly linked to survey). • No poisons (baits) to be used within a 150-metre buffer area around the lake • Poison usage must be consistent with permits and labels and an approved pest animal control plan. • It is preferred that women undertake this activity. • It is preferred that women undertake this activity. 	Medium term	Jali LALC Council NPWS

BYRON SHIRE COUNCIL

Type of work or activity	Specification	Timeframe	Responsible authority
Pests plants	<ul style="list-style-type: none"> • Develop bush regeneration plans. • No weed control to occur on the dunes until a general pattern of avoidance of the lake is established. • Any herbicides usage around the lake must be consistent with permits and labels and an approved weed control plan. • No herbicides to be used over the lake or its tributaries, even if permitted on labels etc. • No poisons to be used within a 150-metre buffer area around the lake • Poison usage must be consistent with permits and labels and an approved pest animal control plan. • It is preferred that women undertake this activity. • It is preferred that women undertake this activity. 	<p>Plan - short term <u>Works on dunes</u> – medium term <u>Works elsewhere</u> – short to medium term</p>	<p>Jali LALC Council NPWS</p>
Close pathways (see Map 4)	<ul style="list-style-type: none"> • Pathways from the beach to the lake and along the lakeshore will be closed or allowed to revegetate naturally. Investigate closure options. • Close (bollard) the pathway that starts at the western end of the fire break behind the houses on Macgregor St and runs south into the Aboriginal Place to stop vehicles. • Close (bollard) the pathway that starts at the firebreak south of Glasgow Street and runs west to Taylors Lake Road • Close the pathway that runs to the western side of the lake at the intersection with Taylors Lake Road to stop motorbikes. Investigate closure options. • Check for pathways from the beach to the northern lake – close. 	<p>Short term</p>	<p>Council Jali LALC</p>
Investigate closing Taylors Lake Road	<ul style="list-style-type: none"> • Investigate the process and the implications for landowners/managers prior to taking any further action. 	<p>Long term</p>	<p>Council NPWS Jali LALC</p>
Maintenance and adequacy of Council's sewerage system	<ul style="list-style-type: none"> • Obtain copy of maintenance program from Council • Ensure maintenance program is adequate. • Ensure no pollution of the AP. 	<p>Short term</p>	<p>Council</p>

BYRON SHIRE COUNCIL

Type of work or activity	Specification	Timeframe	Responsible authority
Ensure any septic systems on adjacent properties are operating safely and are not polluting the AP.	<ul style="list-style-type: none"> Obtain advice from Council 	Short to medium term	Council
Water quality of the lake – stormwater management	<ul style="list-style-type: none"> Identify the places where stormwater enters the AP Obtain advice about an effective stormwater sampling program, including the lake Test stormwater and obtain a report about its likely impacts on the health of the lake. Identify any remediation action required and implement. 	<u>Plan</u> – short term <u>Sample and remediate</u> – medium to long term	Council NPWS Jali LALC Proprietors of Broken Head Quarry
Soil erosion and sediment control (Taylors Lake Rd and pathway to western side of lake)	<ul style="list-style-type: none"> Determine what works are required (if any) to meet best practice erosion and sediment control standards for the road and pathway, taking into account the culturally sensitive environment. Prepare a report including works and priorities. 	Medium term	Council Jali LALC
Remove rubbish	<ul style="list-style-type: none"> Remove rubbish in the clearing on the western side of the lake. Remove rubbish from other areas of the AP as identified or reported. NPWS to remove rubbish from the Ti Tree lake Aboriginal Area as identified or reported. Council to remove rubbish from their property as identified or reported. 	Short term	Jali LALC NPWS Council
Survey plants and animals	<ul style="list-style-type: none"> Undertaken survey in accordance with OEH guidelines Target culturally important animals/plants and threatened animals. 	Medium - long term	Jali LALC Council NPWS

MAP 4



12. Other matters for negotiation

- Signage design.
- Other matters to be added after further consultation.

13. Culturally sensitive information

Only publicly available cultural information is included in this plan. Cultural knowledge of the AP remains the property of the knowledge holders.

14. Funding and resources for works proposed in the plan

- To be completed following further consultation.

15. Contacts

Sue Walker
Area Manager, Byron Coast
National Parks & Wildlife Service
Tallow Beach Road, Byron Bay NSW 2481
npws.byroncoast@environment.nsw.gov.au
Phone: 0266209300

Jali Local Aboriginal Land Council

Byron Shire Council

Crown Lands

Cape Byron Marine Park

GLOSSARY

AHIP	Aboriginal Heritage Impact Permit
AHIMS	Aboriginal Heritage Information Management System
AP	Aboriginal Place
Bundjalung of Byron Bay Aboriginal Corporation (Arakwal):	The Corporation is established under the <i>Aboriginal Councils and Association Act 1976</i> (Commonwealth), as a prescribed body to represent the Bundjalung People Byron Bay (Arakwal) as native titleholders and their rights, interests and benefits in trust.
Cultural activities:	Refers to activities such as, but not limited to, wild resource use, gatherings, ceremonies and other cultural practices and customs.
Country:	Refers to the 'landscape' of origin of a particular group/clan of Aboriginal people. This landscape is all encompassing, and the natural, cultural and historical features are inseparable.
Endangered Ecological Community:	A community listed on Schedule 1 Part 3 of the <i>Threatened Species Conservation Act 1997</i> (NSW).
ILUA	Indigenous Land Use Agreement
LEP	Local Environmental Plan
OEH	Office of Environment & Heritage
NPW Act	National Parks and Wildlife Act 1974
NPWS	National Parks & Wildlife Service
SEPP 14	State Environmental Planning Policy No. 14 – Coastal Wetlands
Threatened species:	A species listed under the <i>Threatened Species Conservation Act 1997</i> (NSW) as either endangered, critically endangered or vulnerable.

REFERENCES

Murphy D 1993, *Investigation Report of Proposal for an Aboriginal Place at Taylors Lake*, via Suffolk Park NSW, report to the National Parks & Wildlife Service.

OEH 2012, *Guidelines for developing management plans for declared Aboriginal Places*, Office of Environment & Heritage, Sydney South.

Riebe, I 2000, *Assessment of Significance for Aboriginal Place Declaration, Ti Tree (Taylors) Lake*, unpublished report to the National Parks & Wildlife Service.

APPENDIX 1

BACKGROUND RESOURCE PAPER

**TI TREE (TAYLOR'S) LAKE
ABORIGINAL PLACE**



To be completed.....

Ti Tree Lake Aboriginal Place – A Sacred Bundjalung Women’s Place

Our Elders say...

Ninginah Binungal– Stop & Listen

Ngali na jugun – We belong this Country

Ngali garima mala jugun – We look after this Country

Wana janjma mala gunu gala jugun – Don’t do wrong around here this Country

Ngali na mala jugun – We belong to this Country.

PLEASE RESPECT OUR SACRED PLACE



*Ti Tree Lake Aboriginal Place -
Help to keep this place healthy and strong*



No dogs



No motorbikes



No picking plants



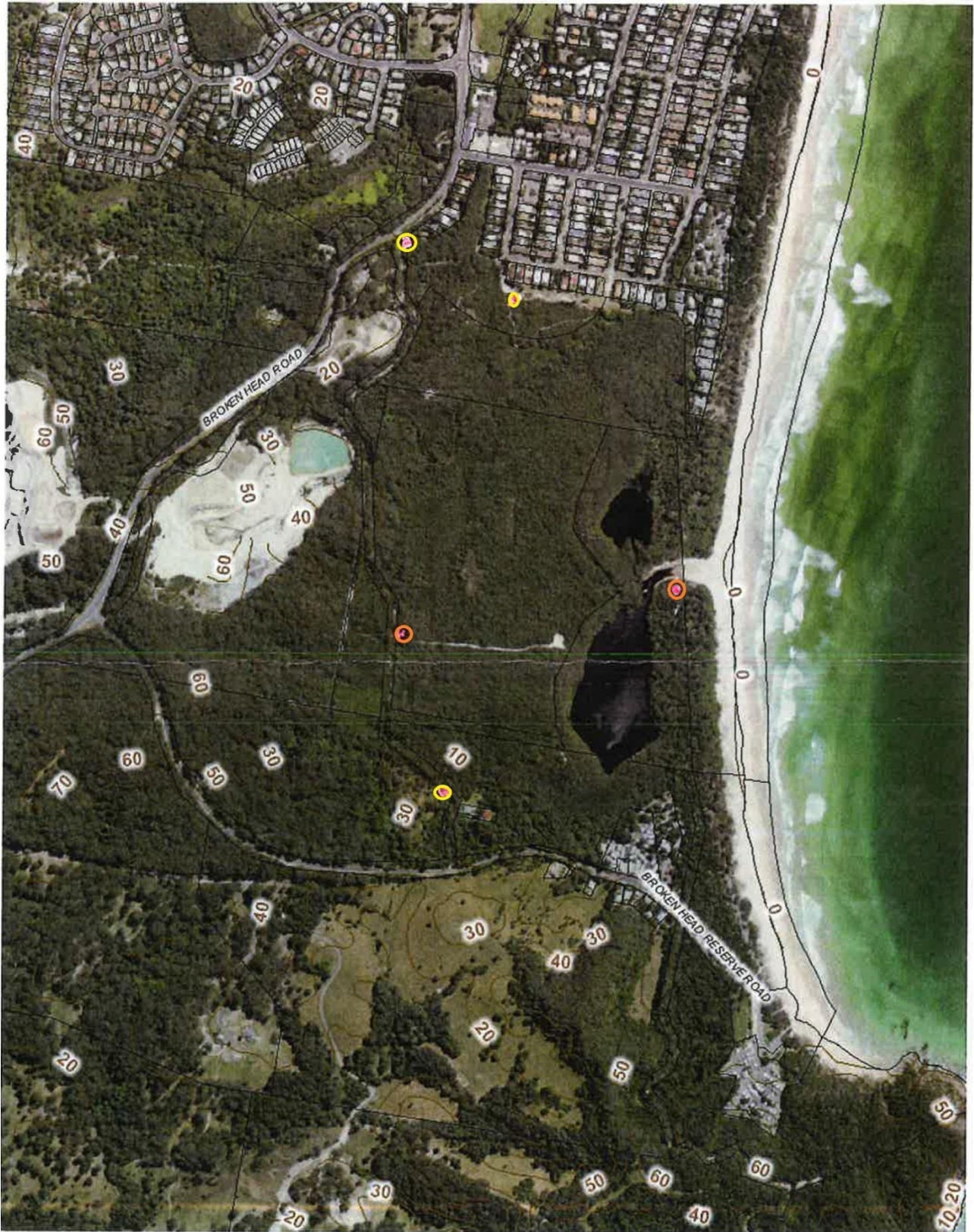
No camping



No fires



For further information contact: NPWS (02) 6620 9300, Arakwal Corporation (02) 6685 8746,
Byron Shire Council (02) 6626 7000.



Report No. 4.3 **Broken Head Beach Caravan Park signage**
Directorate: Corporate and Community Services
Report Author: Belle Arnold, Community Project Officer
File No: I2017/1256
5 **Theme:** Society and Culture
 Community Development

Summary:

10 This report has been prepared to consult on the replacement of the Broken Head Beach Caravan Park Signage.

RECOMMENDATION:

15 **That the Bundjalung of Byron Bay, Arakwal Corporation provide advice on their preferred option for the replacement of the Broken Head Beach Caravan Park signage.**

Report

5 Council’s Director Infrastructure Services has requested that the Broken Head Beach Caravan Park sign be replaced as it is faded and degraded. Figure 1 shows a current photograph of the sign for discussion.



Figure 1: Broken Head Beach Caravan Park Sign

10 Council’s Infrastructure Services team have provided a quote from their preferred supplier for the sign types:

- 15 (a) Blue OR (b) green C11 reflective laminated

The quotations for each are as detailed below:

- 20 a) ‘Like for like’ replacement of the signs, which measure 3.0m wide by 1.8m, and 3m x 1800 sign ally rad cnrs rails in 2 pieces - **Cost \$2,150 EACH incl gst PLUS delivery \$150**
- b) Basic “Standard Blue and White” signs to suit 1220 x 2440 sign rad cnrs rails in one piece - **Cost \$1,380 EACH incl gst PLUS delivery \$150**

25 The current Caravan Park Sign is a non standard sign and it is usual practice that signs that are non standard for Tourism and/or Community facilities are the responsibility of the owners. Council would however replace the sign with a standard sign at its cost if that is the recommendation from the committee.

Financial Implications

This report has financial implications for the Bundalung of Byron Bay, Arakwal Corporation of up to \$3,000 for replacement signage [option (a)] and Council up to \$2,000 for Council [option (b)].

5

Statutory and Policy Compliance Implications

Local Government Act 1993
Arakwal MoU 2013

10

Report No. 4.4 **Ironbark Housing Revegetation**
Directorate: Corporate and Community Services
Report Author: Belle Arnold, Community Project Officer
File No: I2017/1241
5 **Theme:** Society and Culture
 Community Development

Summary:

10 This report is to request revegetation of Council land at the Ironbark Avenue housing site to protect and rehabilitate the precinct.

RECOMMENDATION:

1. **That the Arakwal Memorandum of Understanding Advisory Committee consider the request from the Bundjalung of Byron Bay, Arakwal Corporation regarding revegetation and works to restrict public access at the Ironbark Avenue Housing Development.**

2. **That Council's Infrastructure Planning Staff and Manager Open Space and Resource Recovery liaise with relevant Arakwal members to investigate and cost options for consideration.**

15

Report

5.2.1 Housing at Ironbark Avenue

5 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.

10 Bundjalung of Byron Bay, Arakwal Corporation requested discussion of a revegetation project on Council land at the Ironbark Housing site. The area is currently utilised as car parking and camping with access through the housing site to the beach. Arakwal have raised concerns that this practice will continue after houses are occupied and have requested that Council install bollards or large rocks to deter cars and revegetate with bush tucker in partnership with the
15 Arakwal.

The proposal of the revegetation and bollard or rocks installation would increase safety of the residents and protect the Aboriginal Cultural values and environmental integrity to the wider area. It also shows Council's continuing support for the development through to occupation of the
20 Ironbark housing project as per the Arakwal MoU.

Figure one shows a satellite map of the Ironbark Housing development.

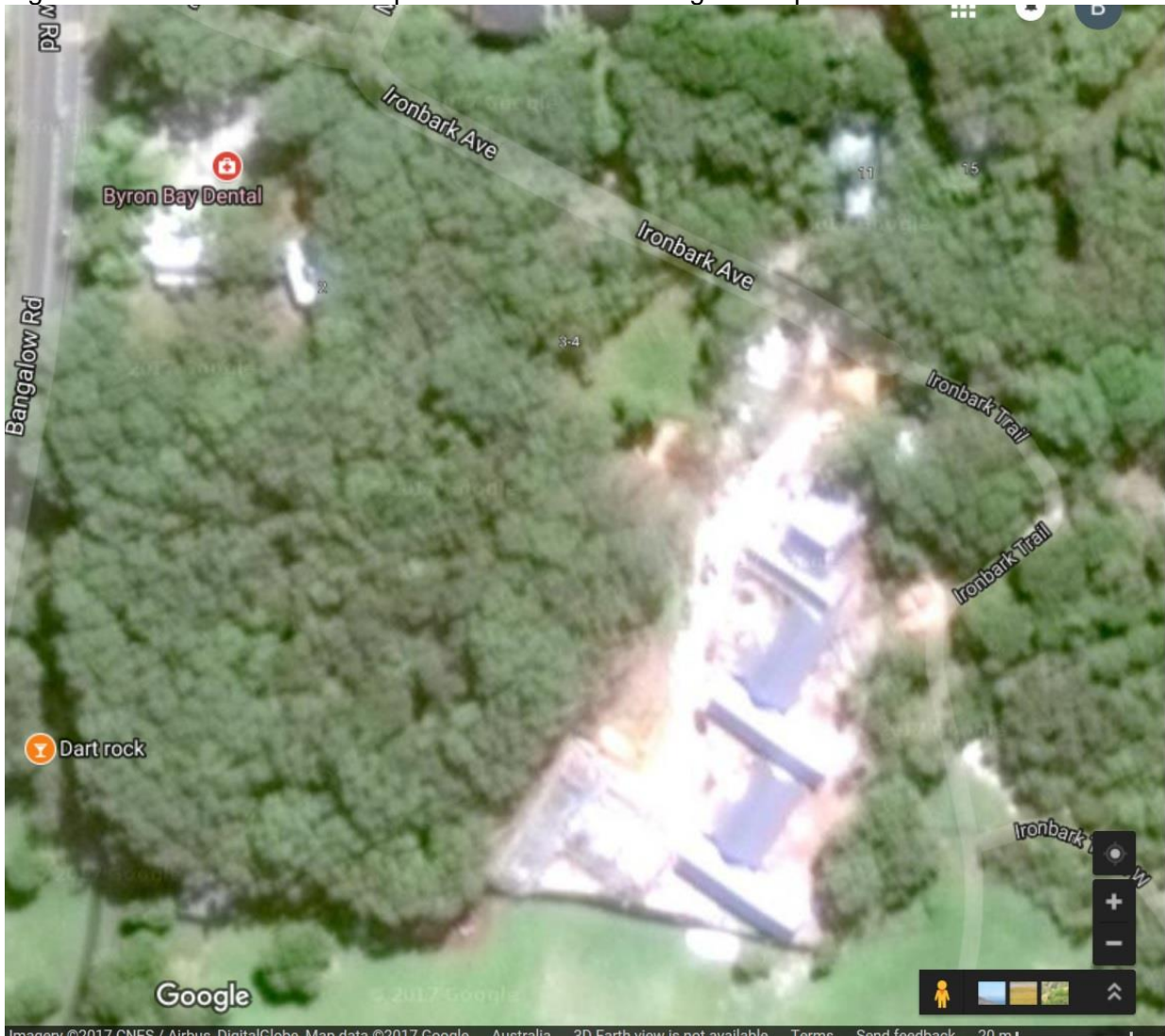


Figure 1: Ironbark Avenue Housing Development

Financial Implications

- 5 Further scoping required of costs is required along with the development of funding sources and options.

Statutory and Policy Compliance Implications

- 10 Arakwal MoU 2013
Native Title Act 1993
NPWS Act 1974
Local Government Act 1993

Report No. 4.5 **Australia Day Report**
Directorate: Corporate and Community Services
Report Author: Belle Arnold, Community Project Officer
File No: I2017/1223
5 **Theme:** Society and Culture
 Community Development



Summary:

10 This report contains a proposal to change the date of Australia Day celebrations in the Byron Shire.

RECOMMENDATION:

That the Arakwal Memorandum of Understanding Advisory Committee consider the proposal to change the date of the official Australia Day event for Byron Shire and provide recommendations to Council on the proposal.

Attachments:

15 1 Mayor Simon Richardson's Australia Day proposal, E2017/84571 , page 77  

Report

5 Australians are being urged to consider changing the national holiday because it commemorates the arrival of British settlers, a day of pain and suffering for Aboriginal people. 26 January is a day that marks the beginning of Indigenous dispossession and many feel it is an inappropriate day to celebrate nationhood. This is not a date that unifies Australians.

10 Many local Councils around Australia, have moved to change the date of the official celebration for Australia Day in their local government area, including:

- Melbourne's City of Yarra and Darebin
- City of Hobart
- Freemantle City Council
- Lismore City Council.

15 Councillor Simon Richardson has made a proposal to change the date, timing and structure of Australia Day celebrations in the Byron Shire (Attachment 1).

20 Currently the Australia Day celebrations for the Byron Shire are coordinated by the Australia Day Committee which is a Project Reference Group of Council. The group is made up of community leaders and volunteers from across the Byron Shire.

25 For many Aboriginal people 26 January is referred to as Invasion Day, the date that marks the start of decades of genocidal practices from successive governments. It is a day of mourning and pain for many. However, many Indigenous communities have worked with Reconciliation groups to turn this day into a positive celebration of Aboriginal and Torres Strait Islander cultural survival and 26 January has also become Survival Day.

30 Currently in the Byron Shire there is an annual event coordinated by the Cavanbah Reconciliation Group, Sisters for Reconciliation, the Bundjalung of Byron Bay Arakwal People and Byron Shire Council. Council contributes funding to this event. Regardless of what happens to the Australia Day celebrations it is important to acknowledge the historic and cultural importance of 26 January and ensure Indigenous communities are consulted on how they want to acknowledge this date.

35 Financial Implications

Nil from this report

40 Statutory and Policy Compliance Implications

Arakwal MoU 2013

An Australia Day for All

5 Currently, Australia day symbolises great sorrow and pain amongst indigenous mobs whilst many non-aboriginal Australians feel uneasy celebrating our nation on this day.

10 The debate around this is occurring rapidly and potentially divisively- I believe Byron has an opportunity to help the nation make the transition away from the historical stain of this date, whilst still honouring the needs and values of those who enthusiastically wish to celebrate our successes as a nation and our communities within Australia.

15 Many other countries have grappled with this and so learning from others may point us in a good direction. I would love the way we celebrate and the day we celebrate who we are as a nation to be different.

The Date

20 I believe we as a nation have a lot to celebrate and a lot for which to be thankful. On the 26th, we are not just celebrating the arrival of 'whites'- as it would then be more appropriate to call the day- 'Colonising day', or 'English Arrival day' etc.

25 For most Australians, this day is not much more than a holiday and the mark of the end of the Summers holiday. For the remaining Australians, it is probably split evenly between those who think it is the correct day and correct way to celebrate our country's achievements and both past and present and those like me who feel it is an inappropriate way and day to celebrate when it is also the day the decimation and denigration of the first Australians began. Decimation and denigration that we still have not rectified, learnt from, apologised for or paid penance-our national wound remains.

35 We could change the date to one that marks the concept or reality of 'Australia'. It will never be the day of Federation- January 1st, because Australians being Australians-that is already a holiday and we can't overlap-we need great bang for our public holiday buck. We could explore dates when Henry Parkes made a famous speech about establishing 'Australia' or some other date of significance, though, this would mean a fair load of change, debate, angst and difficulty.

40 On Australia day, we are celebrating Australia and what it means to be Australian and celebrating our diversity and different cultural backgrounds. So, let's start with the first cultural community that has become part of our mix-the indigenous community- rather than the second group-the Anglo Saxons. Thus, symbolically, it would be more appropriate to acknowledge a time before white man arrived, when the first nations were indeed, the First Australians. So, why not the night before? The evening of the 25th.

45 An evening tradition of celebrating Australia day on the 25th could symbolise the richness and importance of the first Australians, it would directly and clearly symbolise that, across our towns and cities, the Australia we are celebrating began with our local mobs- we would focus on a positive time for our indigenous history-rather than a day that pinpoints the start of their collective sorrow.

This has a few benefits:

1. It is close to the current date and doesn't need a massive debate over a more appropriate date that could perhaps never reach a consensus. Maybe when we are a republic-this would be an appropriate date.
2. It utilises the current social acceptance and convenience of this date. The 26th has always marked the end of summer holidays and especially the end of school holidays. This would still be the case. The 26th will still be a public holiday, but like Christmas, we can celebrate it the night before and leave the day for people to do what they wish individually-from having a bbq, acknowledging the survival aspect, listening to the hottest 100 etc. It requires very little formal adjustment, but is symbolically different enough to serve its purpose to celebrate away from the 26th. It would also allow those who enthusiastically wish to support the 'traditional' Australia day date to do so.

I'd love my kids to also continue to acknowledge their British roots and origins and it's cultural significance of Australia's past, and for them to respect those who feel strongly and nationalistically that this day is one to pay respect for those who fought and died in the name of 'Australia' and who wish to honour our achievements of the last two hundred years. It is close enough to the 26th to fit within our social and business calendars and our lifestyles built around summer- it would be easy to do if we had the will.

The Style

Byron Bay is 'Cavvanbah'- let's once more meet and gather and celebrate and corroboree. Imagine a few hundred people sitting in circle in the grassed space within the Sandhills area. The night will still have the great local awards component-though this time with more attendees enjoying and watching it. The council funded lunch can be changed to a council funded dinner- a relaxed open feast and one that the Arakwal could have a say in what is offered, allowing for bush tucker etc.

As locals sit and chat, cultural groups can bring their music and colour to the circle, one after another-after the local mob have started the stomp.

Mary Flick chronicled in 1906 how on most Saturday nights, the local Byron Bay community would often pay sixpence to attend the local Arakwal painting up and dancing corroboree style in the Sandhills area- most probably where the library currently sits. There is local historical significance for this area to hold a space for white fellas and black fellas to come together.

Proposal Details:

1. An Australia Day event, to be held on the evening of the 25th January.
2. The event to be funded by BSC
3. The event to be organised where needed by BSC
4. The event to be curated, and developed by the Arakwal Corp.

N.B: It is crucial that the onus doesn't go onto the Arakwal to do everything- council could simply have the Arakwal be 'project managers'. The Arakwal could decide on the food-perhaps bush tucker and decide how the event should unfold. Like the thousands of years prior, the local custodians could again open and hold a gathering space- inviting others to come and celebrate, whilst Council pays for the event and puts the infrastructure in place.

BYRON SHIRE COUNCIL

When my family joins me at the various events on Australia day, I'd love them to be part of events and ceremonies co-created by our local mob-instead of them only invited to welcome us to their country and then have them sit to the side for the formalities or leaving to celebrate Survival day.

5

I imagine celebrating an Australia Day with my kids starting at dusk on the 25th, consisting of an indigenous feast, music and celebration from many ethnicities, awards as per usual acknowledging great actions by our locals and circles of everyone- momentarily together- for one beautiful moment a year- acknowledging our collective past, present and future.

10

I'd love to a part of that. I'd love my kids to be a part of that. I'd love the diverse country I love to be a part of that.

15

20

25

Report No. 4.6 **Brunswick River Foreshore Midden System Protection**
Directorate: Corporate and Community Services
Report Author: Belle Arnold, Community Project Officer
File No: I2017/1255
5 **Theme:** Society and Culture
 Community Development



Summary:

10 This report is in response to the request from an Arakwal representative to take measures to restrict access to the Brunswick River Foreshore to protect Aboriginal Cultural Heritage sites in the precinct.

RECOMMENDATION:

15 **That the Arakwal Memorandum of Understanding Advisory Committee consider and provide recommendations to Council on the management and protection of the Midden System within the area identified in Attachment 1 (#E2017/86254).**

Attachments:

- 1 Brunswick Foreshore Midden map, E2017/86254 , page 82  

Report

5 Previous Arakwal Advisory Committee member Delta Kay expressed concern about the increasing number of cars driving and parking along the Brunswick River Foreshore and the potential risk of damage to a midden system in the precinct.

It was requested that the matter be brought to the Arakwal MoU Advisory Committee for consideration.

10 The land is subject to the Future Act of the Native Title Act.

15 The land for consideration is Parcel Number 5490, Lot PT416, Section DP 728666, Lot Section DP PT416/728666, the owners are Crown Land / NSW Crown Holiday Parks Trust, address is 1 The Terrace, Brunswick Heads.

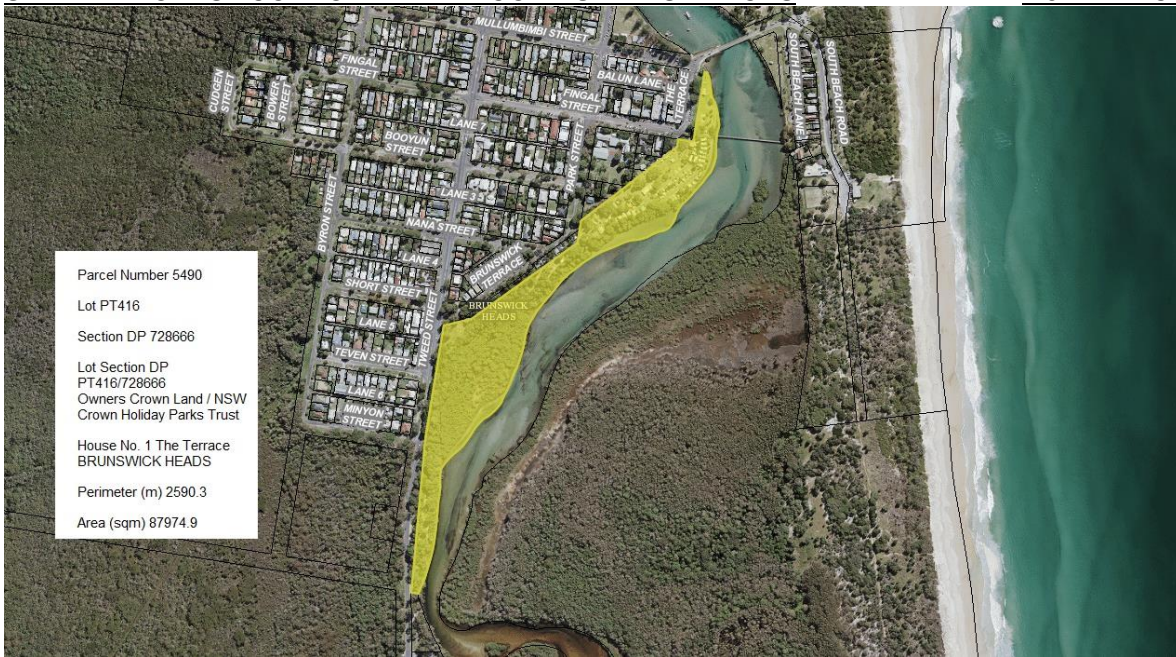
Financial Implications

Nil from this report

20 **Statutory and Policy Compliance Implications**

25 Arakwal MoU 2013
Native Title Act 1993
Local Government Act 1993

BYRON SHIRE COUNCIL



Report No. 4.7 **Bangalow and Mullumbimby Master Plan Guidance Group Cultural Heritage**

Directorate: Corporate and Community Services

Report Author: Belle Arnold, Community Project Officer

5 **File No:** I2017/1224

Theme: Society and Culture

Community Development

10 **Summary:**

This report advises the Arakwal Memorandum of Understanding Advisory Committee on the Aboriginal Cultural Heritage component of the consultation on the Bangalow and Mullumbimby Master Plan Guidance Workshops to date and seeks further consultation on the processes to date.

15

RECOMMENDATION:

That the Arakwal Memorandum of Understanding Advisory Committee note the Bangalow and Mullumbimby Master Plan guidance presentation and provide feedback on the consultation process to Council.

Attachments:

1 Bangalow/Mullumbimby Guidance Workshop Aboriginal Cultural Heritage, E2017/84659 , page 85 [↓](#)

20



Report

Council is currently in the initial stages of preparing masterplans for both Bangalow and Mullumbimby.

5 Council is preparing a 10-15 year forward "place plan" for the Bangalow village. The Bangalow Village Plan aims to create action oriented strategies that provide a vision and way forward for Bangalow, aligned to the current and future needs of the community. The plan is intended to be an evolving, 'living' document that will be reviewed and updated at regular intervals to reflect the community's changing needs and priorities. A Bangalow Village Plan Guidance Group has now been formed, including community representatives, staff and Councillors, and this group will take responsibility for guiding the preparation and content of the plan.

15 The Mullumbimby Masterplan will be a visionary local plan for Mullumbimby with a focus on its town centre, and aims to be a plan which is flexible and responsive to the inevitably changing wants and needs of the community. **In December 2016 Council appointed 15 community representatives to be part of a 'Guidance Group' responsible for guiding the preparation of Our Mullumbimby Masterplan. The guidance group is made up of community representatives, Council staff and Councillors working together.**

20 Workshops were held on Built Form and Heritage on 13 and 14 July 2017, and invitations were forwarded to the Bundjalung of Byron Bay Arakwal People and to Belle Arnold, Aboriginal Projects Officer at Byron Shire Council to give presentations. There was 7 days notice for these meetings which were scheduled for the week after NAIDOC Week and, given the short notice, neither was able to attend.

25 On 3 August Council's Aboriginal Projects Officer received an email requesting that an email be forwarded to the Byron Bay of Arakwal people to give a presentation at the 10 and 11 August Workshops. As this was a non work day for the staff member the request was forwarded to the Arakwal Office Manager on 7 August and the following feedback was provided to the workshop coordinators: *"The time frame for this invitation is unrealistic, even if they received them on the day they were sent it – seven days is not enough notice for the Arakwal board to discuss and send the appropriate representative. Please endeavour to provide appropriate notice to our Aboriginal Stakeholder groups. You may also need to invite Local Area land Council representatives who also have land claims in these areas"*.

30 After discussion with the Director Corporate and Community Services it was decided that Council's Aboriginal Projects Officer would prepare a generic presentation around Aboriginal Cultural Values and Consultation Processes to ensure that some level of representation took place in these forums. The presentation is attached for the Committees consideration (Attachment 1).

Financial Implications

45 Nil from this report

Statutory and Policy Compliance Implications

Local Government Act 1993

Native Title Act 1993

50 Arakwal Memorandum of Understanding 2013



Aboriginal Cultural Heritage in the Byron Shire

Belle Arnold
Byron Shire Council



BYRON SHIRE COUNCIL



Acknowledgment to Country

I would like to acknowledge the Arakwal people whose land we gather on here today as the traditional owners of this country and pay my respects to the elders past and present.

I would also like to acknowledge the mobs that share borders to this country; the Widjibal, Ngandwal and Mindjungbal people and the people of the wider Bundjalung Nation as the traditional owners of this country we gather on today and pay my respects to the elders past and present.

Jingi Wallah

Aboriginal Cultural Heritage in the Byron Shire

- Byron Shire has at least four Aboriginal clan groups from the Bundjalung Nation; Arakwal, Widjibal, Ngandwal and Mindjungbal.
- Byron Shire has 3 Aboriginal Local Area Land Councils – Tweed Byron LALC, Jali LALC and Ngulingah LALC.
- Byron Shire is rich in Bundjalung places, sites, stories, artefacts, songs and dances.
- The traditional owners and the land councils have rights to protect their cultural heritage and continue the expression of their culture and heritage.



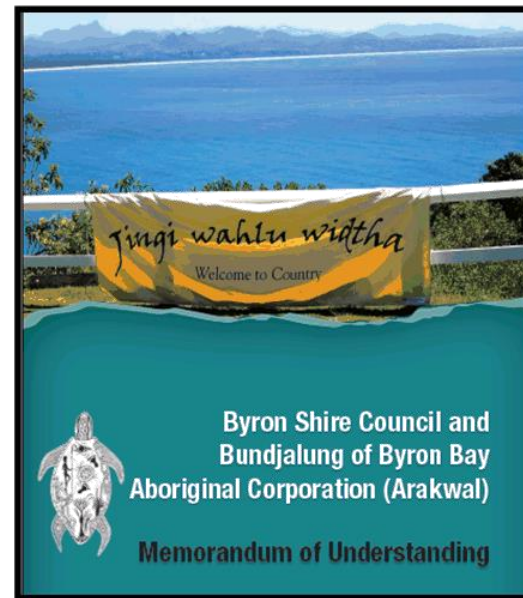
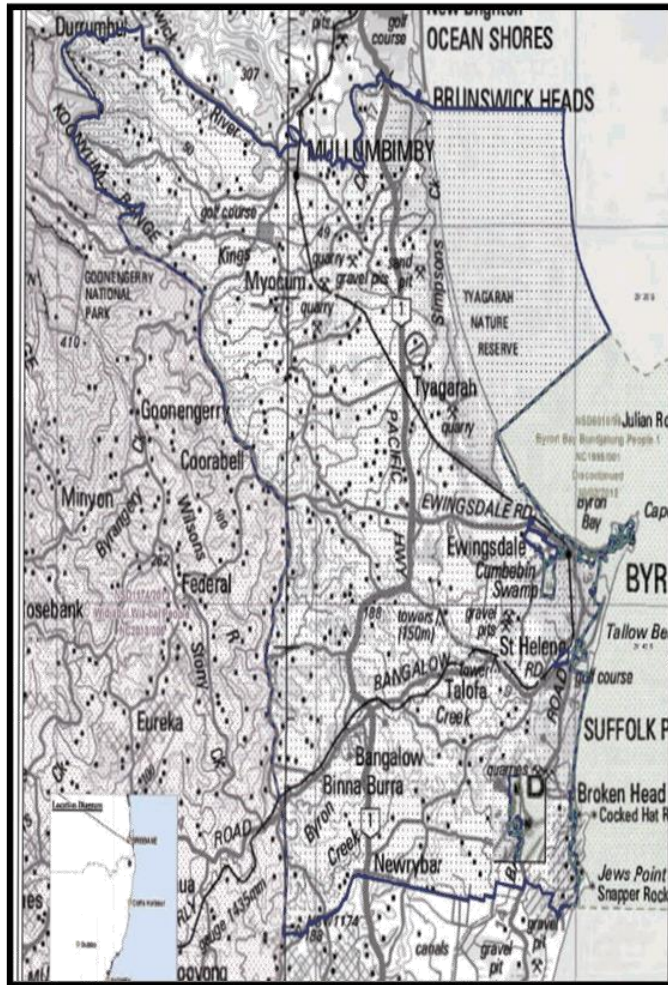
Bundjalung Country



In pre-colonial times, Bundjalung Nation encompassed some of the richest hunting and fishing grounds anywhere on the Australian continent. The Bundjalung People trace their stories to the Three Brothers.



BYRON SHIRE COUNCIL



Arakwal

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

The Bundjalung of Byron Bay – Arakwal Bumberlin people, have lived in the coastal landscape around the Byron Bay area for at least 22,000 years. Arakwal are the recognised Aboriginal Traditional Custodians of the Byron Bay district. Arakwal Country extends from Seven Mile Beach south of Broken Head to the Brunswick River up north, out to the escarpment west of Byron Bay, and east out into the Tasman Sea.



Aboriginal Land Councils



The Aboriginal Land Councils that have land claims under the Land Rights Act in the Byron Shire are:

- Tweed Byron Local Area Land Council
- Jali Local Area Land Council
- Ngulingah Local Area Land Council



Aboriginal Cultural Heritage Consultation

- Aboriginal people have rights to protect and represent their own cultural heritage.
- Consultation with Aboriginal stakeholder groups must be given adequate time and culturally safe forums to participate in decision making about planning for country and expressing heritage.
- Multiple stakeholder groups involved.



Bundjalung Voices

- Dual Naming
- Aboriginal Community Spaces
- Endemic species included in landscape
- Public art – murals/ mosaics
- Historic / Cultural Walks
- Signage
- Sculpture





Report No. 4.8 Byron Shire Aboriginal Cultural Heritage Study - Stage 1 Progress Report

Directorate: Corporate and Community Services
Report Author: Belle Arnold, Community Project Officer
File No: I2017/1239
Theme: Society and Culture
Community Development

5

10 **Summary:**

This report provides an update on the review process of the Draft Byron Shire Aboriginal Cultural Heritage Study (Stage 1).

RECOMMENDATION:

That the representatives of the Bundajung of Byron Bay Aboriginal Corporation (Arakwal) note that the Draft Study is being reviewed in consultation with Aboriginal Stakeholders.

15

Background

This project addresses three priority projects of the Arakwal MoU. The Arakwal MoU states:

- 5 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.
- 10 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.
- 15 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.

20 **Report**

A meeting of the Aboriginal Steering Committee for the Byron Shire Aboriginal Cultural Heritage Study (stage 1) to review the Draft Study is scheduled for 21 September. The September meeting date was requested by a number of steering committee members to allow time for boards of the organisations to meet and discuss, and to have meaningful input in the document.

30 National Parks and Wildlife Service (NPWS) representatives Sue Walker and Norman Graham met with Council's Director Corporate and Community Services and Manager Community Development to discuss the Draft Byron Shire Aboriginal Cultural Heritage Study (stage 1) prepared by Everick Consultants. NPWS submitted comprehensive feedback to Council on the document and have requested ongoing participation in the Byron Shire Aboriginal Cultural Heritage Study project.

35 Council staff have reviewed the document and will provide feedback from NPWS and Council to Everick Consulting. It is acknowledged that the scope of the Draft Byron Shire Aboriginal Cultural Heritage Study (stage 1) was limited by budget constraints and that further stages of the Byron Shire Aboriginal Cultural Heritage Study project will be undertaken in order to develop a robust Byron Shire Aboriginal Cultural Heritage study, and agreed Aboriginal Cultural Heritage management system. A recommendation from the Draft Byron Shire Aboriginal Cultural Heritage

40 Study (stage 1) is the formation of an Aboriginal Cultural Heritage Study Committee, which will guide the development and implementation of further stages of the study project.

45 Council staff will attend the Arakwal Corporation Board meeting on 23 September 2017 to discuss the document, answer questions and receive feedback.

Financial Implications

Nil from this report

50 **Statutory and Policy Compliance Implications**

- Local Government Act 1993
Native Title Act 1993
NPWS Act 1974
55 Arakwal MoU 2013

Report No. 4.9 **Aboriginal Services in the Byron Shire**
Directorate: Corporate and Community Services
Report Author: Belle Arnold, Community Project Officer
File No: I2017/1240
5 **Theme:** Society and Culture
 Community Development

Summary:

10 This report provides an update on the development of Aboriginal health and community services in the Byron Shire.

RECOMMENDATION:

That the Arakwal Memorandum of Understanding Advisory Committee note the development of this project and employment of a worker to continue to develop this project.

15 **Attachments:**

1 Recruitment Package Aboriginal Project Worker, E2017/85480 , page 98  

20

Report

The Arakwal MoU states:

- 5 *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.

10 The Aboriginal Services Coalition has continued to meet at the Mullumbimby Neighbourhood Centre.

15 On 26 July Aboriginal Services Coalition representatives met with Department of Family and Community Services (FACS) Representative, Megan Lewis, to request information on who is receiving FACS funding to deliver Indigenous services in the Byron Shire. FACS has provided that information and the Aboriginal Services Coalition will follow up. The Aboriginal Services Coalition will continue to work with FACS to provide direct funding for an Aboriginal Service in Mullumbimby.

Aboriginal Project Worker Position

20 Funded by NSW Health, a position description was developed by the Aboriginal Services Coalition with assistance from Gavin Brown. The position was advertised in the Byron Shire Echo and the Koori Mail and emailed to stakeholders and community organisations. Applications closed 18 August. Applicants were interviewed on 30 August.

25 The position will focus on improving service delivery in the Byron Shire through bringing organisations funded to deliver to the Aboriginal Community to undertake outreach and promotion at the Mullumbimby Neighbourhood Centre, expand culturally based activity and further develop Aboriginal Services in the Byron Shire. The worker will commence by 1 October 2017.

30 Council staff will continue to play a lead role in this project with the Mullumbimby Neighbourhood Centre, Tweed Byron Local Aboriginal Land Council, Community Transport, Community Health and Arakwal.

Financial Implications

35 Nil from this report

Statutory and Policy Compliance Implications

40 Local Government Act 1993
Arakwal MoU 2013



Mullumbimby & District Neighbourhood Centre

Connecting the Byron Shire Community

APPLICATION FOR EMPLOYMENT FORM
 (Please attach this sheet to the front of your application)

POSITION YOU ARE APPLYING FOR: Byron Shire Aboriginal Project Worker

NAME:

ADDRESS:

CONTACT:

EMAIL:

MOBILE:

CURRENT DRIVERS LICENCE

ACCESS TO A RELIABLE VEHICLE YES/NO There will be access to a MDNC vehicle but from time to time the successful applicant MAY have to use his or her own vehicle.

REFEREE DETAILS

(Name of supervisor or name of person responsible for overseeing your work)

1. NAME OF REFEREE:

POSITION:

CONTACT NUMBERS

WORK

MOBILE

2. NAME OF REFEREE:

POSITION:

CONTACT NUMBERS

WORK

MOBILE

Thank you for your interest in the position of Aboriginal Project Officer. The Byron Shire Aboriginal Community Services Coalition is seeking a dynamic Project Worker.

5

ORGANISATION: The Byron Shire Aboriginal Community Services Coalition (The Coalition).

The Coalition came together to address the lack of accessible Aboriginal community services in the Byron Shire. Since the inaugural meeting the Coalition has conducted a number of surveys, consultation, and community events.

10

In recognition of the need to build an accessible community service system in the Byron Shire, the Northern NSW Local Health District and North Coast Primary Health Network have agreed to fund the Mullumbimby & District Neighbourhood Centre Inc. for a 12-month position to support the work of the Coalition with the goal of building capacity in the Byron Shire.

15

EMPLOYER: Mullumbimby & District Neighbourhood Centre Inc. Management Committee

POSITION: Aboriginal Project Officer

20

HOURS: 16 per week

SALARY: Level 5 SCHADS Award

25

CONDITIONS: The Mullumbimby & District Neighbourhood Centre Inc. applies all Award conditions, is a flexible workplace and also provides cultural leave.

30

In your application please address the essential criteria below.

Selection Criteria

Essential Criteria

Qualifications:

Relevant Social Science or Community Development tertiary, or certificate qualifications **and/or** demonstrated experience in community development or community organizations are essential.

35

The Aboriginal Project Officer will be able to demonstrate:

1. Knowledge and understanding of community services both Aboriginal and mainstream
2. An understanding of the needs of the Aboriginal community.
3. An ability to work in, and build relevant networks to increase access to services
4. Time management skills
5. An ability to work independently and as part of a team, and be self-motivated.
6. Sound organization and planning skills
7. Experience and competence in the use of computers and computer software programs, including data collection.
8. An understanding of community based organizations.
9. High levels of interpersonal, oral, and written communication skills, and negotiation, consultation
10. An ability to maintain high levels of confidentiality, privacy and the ability to deal with client-sensitive issues.
11. An ability to comply with relevant legislation and industry standards including Workplace Health and Safety and Child Protection Legislation.
12. Current unrestricted NSW Driver's license

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10 **Application Checklist**

- Have you attached your CV or Resume?
- Have you addressed all the Selection Criteria?
- Have you attached your Application Form with your contact details and referee details?

15 Please send your application to:-

POST: - The Manager
PO BOX 149
MULLUMBIMBY, NSW, 2482

20 EMAIL: manager@mdnc.org.au

APPLICATIONS CLOSE: Close of business Friday 18th August 2017.

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INTERVIEWS WILL BE CONDUCTED: 30th August at 55 Dalley St Mullumbimby

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For more information – Julie 0414841816

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**Mullumbimby & District
Neighbourhood Centre**

Connecting the Byron Shire Community

PO Box 149
55 Dalley St
Mullumbimby NSW 2482
Ph: 02 66 841 816
Mobile: 0414841816
Email: manager@mnci.com.au

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Position: Aboriginal Project Officer - Identified

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Employment Status	Permanent Part-time 16 hours per week Location: MDNC 55 Dalley St, Mullumbimby
Terms and Conditions: Social, Community, Home Care and Disability Services Industry Award (SCHCADS) 2010	One year contract Level 5
Reports to:	Manager, Mullumbimby and District Neighbourhood Centre, (Mullumbimby and District Neighbourhood Centre Management Committee)
Directly Supervising	NA
Takes direction from	Aboriginal Community Services Coalition
Key Relationships	Aboriginal Community Services Coalition.
Date Prepared	2 nd May 2017

Background

The Byron Shire Aboriginal Community Services Coalition (Coalition) came together to address the lack of accessible Aboriginal community services in the Byron Shire. Since the inaugural meeting the Coalition has conducted a number of surveys, consultation, and community events.

In recognition of the need to build an accessible community service system in the Byron Shire, the Northern NSW Local Health District and North Coast Primary Health Network have agreed to fund a 12-month position to support the work of the Coalition with the goal of building capacity in the Byron Shire.

Position Purpose:

The position will support the work of the Coalition to provide a resource foundation for building the capacity for the delivery of quality and accessible community services to the Aboriginal community in the Byron Shire.

Key activities and Duties include:-

- Administration support for the Aboriginal Services Coalition including agendas and minutes and other actions as directed.
- Assist with the development of the Byron Shire Aboriginal Services Coalition as a lead representative and consultative group for the purpose of building and supporting an integrated community service network in the Byron Shire.
- Increase the access of the Byron Shire Aboriginal community to appropriate and inclusive locally based community services providers in the Byron Shire
- Engage with State and Federal agencies to provide culturally appropriate services to the Aboriginal Community in the Byron Shire.
- Develop services activity program for the Aboriginal Services space in the Byron Shire.
- Assist with advocacy to State and Federal Government agencies for increased program funding, Coordinate and promote the program to the local Aboriginal Community,
- Act as the contact person at the Mullumbimby and District Neighbourhood Centre for the Aboriginal Services Coalition and other relevant stakeholders.
- Contribute to and support the development of a five-year strategic plan for Aboriginal Services in Byron Shire in concert with the NNSWLHD and NCPHN.
- Consult to find solutions to respond to the identified needs (needs assessment).
- In working with community and service providers' identify approaches to reduce hospital admissions and improve after hours primary health care.

Knowledge Requirements:

Research and analysis

Computer skills especially with Microsoft Word, Excel and PowerPoint

Knowledge of local community networks

Knowledge of community services networks

Essential Criteria:**Qualification**

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Relevant Social Science or Community Development tertiary, or certificate qualifications **and/or** demonstrated experience in community development or community organizations are essential.

Essential Criteria**The Aboriginal Project Officer will be able to demonstrate:**

1. Knowledge and understanding of community services both Aboriginal and mainstream
2. An understanding of the needs of the Aboriginal community.
3. An ability to work in, and build relevant networks to increase access to services
4. Time management skills

5. An ability to work independently and as part of a team, and be self-motivated.
6. Sound organization and planning skills
7. Experience and competence in the use of computers and computer software programs, including data collection.
8. An understanding of community based organisations.
9. High levels of interpersonal, oral, and written communication skills, and negotiation, consultation, cultural sensitivity and an understanding of cultural protocols.
10. An ability to maintain high levels of confidentiality, privacy and the ability to deal with client-sensitive issues.
11. An ability to comply with relevant legislation and industry standards including Workplace Health and Safety and Child Protection Legislation.
12. Current unrestricted NSW Driver's license

General

- Adherence to legislative requirements including child protection.
- When requested attend and participate in relevant interagency meetings and forums to raise awareness of women's rights to stay home and have the violent person removed.
- Attend staff meetings and work collaboratively with team members to enable an integrated partnership approach in working with families across the Centre. Participate in training when required.

Expectations

- To display informed affinity with the ideas, aspirations and ethics of the Mullumbimby & District Neighbourhood Centre Inc., and to identify with its purpose.
- To attend appropriate development and training courses.

Communication

- Communicate openly, honestly and effectively with clients, co-staff and management
- Act with sensitivity and understanding towards others and acknowledge and respect differences in personal beliefs and values
- Participate and contribute to group supervision

Professional

- Display a commitment to professional development, and set and fulfill development goals on an annual basis through performance management
- Keep up to date with developments with 'best practice'.
- Report directly to MDNC Manager

Additional Information

- The MDNC is a smoke free environment.
- Workplace Health and Safety (WHS): all employees are required to participate in, and abide by workplace health and safety policy and procedures. All incidents are to be reported in accordance with procedure. CONC does not tolerate harassment or bullying in the workplace.
- Equal employment opportunity: The MDNC is an equal opportunity employer. MDNC staff has a responsibility to be familiar with the MDNC Equal Employment Opportunity Policy.

Decision Making Authority

The Aboriginal Project Worker is responsible for fulfilling their duties within the framework of legislative requirements and Mullumbimby & District Neighbourhood Centre's policies and procedures. Issues are usually resolved without reference to your immediate supervisor but matters that arise which are outside

the policy framework or matters which may potentially escalate to the detriment of Mullumbimby & District Neighbourhood Centre, and the Byron Shire Aboriginal Community Services Coalition should be reported to your immediate supervisor.

- 5 The Aboriginal Project Worker is expected to utilise a range of methods and techniques to inform and assist in the decision- making processes.

- 10 Program and operational issues are generally resolved utilising documented instructions and precedents, for example the policies and procedures manual. Matters outside the policy framework, project brief, or matters that may potentially escalate to the detriment the Aboriginal Community Services Coalition or the MDNC should be reported to the MDNC Manager.