Tweed Aboriginal Cultural Heritage Management Plan, August 2017
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Funded: Jointly by Tweed Shire Council and the Heritage Branch of the Office of Environment and Heritage
Artwork by: Christine Slabb of Get Creative

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<th>Version</th>
<th>Date of Council resolution</th>
<th>Effective Date</th>
<th>Description</th>
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<td>June 2017</td>
<td>Draft version for consultation with Aboriginal Community and internally</td>
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<td>05.10.2017</td>
<td>September 2017</td>
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Tweed Shire Council in consultation with the local Aboriginal community through the Tweed Aboriginal Advisory Committee and the Tweed Byron Local Aboriginal Land Council and with assistance of the NSW Department of Environment and Heritage has prepared this Aboriginal Cultural Heritage Management Plan (ACHMP) to promote awareness and protection of Aboriginal cultural heritage.

According to Barrett\(^1\) the Bundjalung people of the Tweed Valley have a long and deep association with the land in which their ancestors have lived for many generations. Evidence suggests that these lands have been occupied and settled by Aboriginal people for more than 40,000 years prior to the first European resident population of cedar getters establishing in the early 1840s. This early settlement was fuelled by the plentiful supply and access to the region’s natural resources and by 1902 the municipality of Murwillumbah as the major centre was formed. Population of the Tweed grew steadily to about 19,000 in 1947 and by 1980 evidence of rapid growth emerged as the population swelled from 54,000 to over 81,000 by 2006\(^2\) and is estimated to reach 93,000 by 2018.

The rapid growth and development of the region has often occurred in isolation of Aboriginal cultural heritage considerations and placed significant pressure on the community’s ability to manage and protect some aspects of their cultural heritage and despite there being State legislation in place since 1974\(^3\).

Aboriginal cultural knowledge is not static, but responds to change through absorbing new information and adapting to its implications. Aboriginal cultural knowledge is bequeathed through oral tradition (song, story, art, language and dance) from generation to generation, and embodies and preserves the relationship to the land. Cultural places and landscapes ‘embed’ these stories, and protection of these places and landscapes is key to the long-term survival of these stories in Aboriginal culture.

This Plan builds on the current heritage legislation through a clearer language, practices and rules to assist the wider community with an understanding of the sensitivity and occurrence of Aboriginal cultural heritage. It provides clear pathways for ensuring that individuals have the right tools and information at their disposal to meet their obligations under the law and to enable cultural heritage to be properly managed.

The pathways in this Plan have been tailored to suit the level of assessment that may be required based on whether Aboriginal cultural heritage (ACH) is known or predicted as well as its sensitivity. To assist the user’s navigation the known or predictive occurrence of ACH has been mapped for the whole of Tweed Shire and each pathway is supported with a flow diagram.

Tweed Council acknowledges and respects the Tweed Aboriginal community’s right to speak for Country and to care for traditional country in accordance with Aboriginal laws, customs and traditions and welcomes the Aboriginal people’s contribution to protecting, strengthening and enriching the understanding of cultural heritage of all Australians within the wider community.

Council acknowledges the Nganduwal and Minyungbal people of the Bundjalung nation, in particular the Goodjinburra, Tul-gi-gin and Moorung-moobah clans as being the Traditional Owners and Custodians of the land and water within the Tweed Shire boundaries.

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\(^3\) *National Parks and Wildlife Act 1974*
Statement from the Mayor

Aboriginal Cultural Heritage is of enormous significance both nationally and internationally, not just for the Aboriginal community, but for all of humanity. It is deeply moving to experience cultural heritage past and present, to hear the stories and see the dance, art and artefacts connects us with this Country in a way that is profound. We all have the privilege, and in fact a duty to protect and celebrate this amazing cultural asset.

Being the oldest surviving continuous culture in the world Aboriginal culture can teach us much about how human knowledge evolved, and how to be successful in adapting to a challenging and changing world. One of the great success stories of Aboriginal culture is their ability to maintain their resources and ensure populations did not overwhelm the landscape. So many other old cultures failed in this regard. We all face this challenge right now with Climate Change.

Aboriginal people lived and prospered though vastly changing climates and sea levels that would have dramatically disrupted their lives and displaced their communities surviving for many thousands of years without depleting their limited resources. They are a shining example of how it is possible to live within our means. We have a lot to learn from them about treading lightly on this planet.

So much cultural heritage has been lost either intentionally or through a lack of understanding of the importance of Aboriginal cultural values. Still to this day we struggle to preserve cultural heritage with the pressures of development and profits, and it is still predominately left to the Aboriginal community to fight for their culture.

This Cultural Heritage Management Plan is a small, but momentous step in changing that direction helping ensure cultural heritage is considered more systematically by flagging areas likely to contain heritage early in the planning processes.

My sincerest thanks to the dedicated Aboriginal Advisory Group and all those involved who have worked on this plan for over a decade for the benefit of us all.

Warm regards,

Councillor Katie Milne

Mayor
Statement from the Tweed Byron Local Aboriginal Land Council

Tweed Byron Local Aboriginal Land Council have a cultural responsibility to protect culture and heritage within its boundary. The NSW Aboriginal Land Rights Act 1983, is the legislative framework that supports Tweed Byron LALC in carrying out our cultural obligations and reads;

The Act establishes the NSW Aboriginal Land Council and Local Aboriginal Land Councils with responsibilities and a statutory role to:

(a) Take action to protect the culture and heritage of Aboriginal persons in the council’s area, subject to any other law; and

(b) Promote awareness in the community of the culture and heritage of Aboriginal persons in the council’s area.

With regard to these roles and responsibilities, the TBLALC recognises the importance of the Aboriginal Cultural Heritage Management Plan (ACHMP) as a local government policy and procedural document that assists it in meeting these cultural and statutory obligations. TBLALC undertake to work cooperatively with Tweed Shire Council (TSC) to meet all the ACHMP objectives.

The Tweed Aboriginal community of today includes descendant custodians of the land as well as people from a diverse range of cultural backgrounds. The TBLALC acknowledges Aboriginal cultural diversity in many forms; including people with different language backgrounds, different names or group identities, different systems of belief, and a special cultural attachment to ‘Country’. The TBLALC is committed to represent the interests of the Aboriginal community where those interests are in accord with local Aboriginal knowledge and practices, and are within established local cultural protocols.

Cultural knowledge included in the ACHMP has been freely contributed for the benefit of the whole Tweed community. TBLALC will undertake to ensure that this information is used in a respectful and appropriate way. Within the broader framework of NSW cultural heritage legislation, the TBLALC will continue to work alongside TSC and the Office of Environment and Heritage, to obtain improved awareness and management outcomes for Aboriginal cultural heritage. Furthermore, TBLALC will support those initiatives that better protect and conserve Aboriginal heritage sites and places.

The TBLALC supports the implementation and use of this ACHMP as an appropriate means to recognise and respond to issues of cultural heritage within the Tweed Local Government Area.
Statement from the Tweed/Byron Aboriginal Advisory Committee

Aboriginal people of this country have a deep spiritual and cultural connection with this land and have an inherent responsibility to ensure that those connections are maintained for future generations. For many years Councils Aboriginal Advisory Committee (AAC) have advocated for the protection of our cultural sites and expressed a desire for better management practices of these important sites.

Our sites are a very important part of our cultural heritage, and many have been destroyed or disturbed as a result of past practice. Even more important is the significance these sites have for our community. To Aboriginal people, these sites provide a direct link with our traditional culture and allow the community to maintain our cultural obligations into the future. The Aboriginal community through the AAC have in good faith actively participated in this project to ensure that the standards of cultural heritage management continually improves and gives Council the knowledge to make informed decisions when assessing development applications or scheduling works programs.

We encourage council to contribute to the protection of Aboriginal cultural heritage by always respecting its presence in the landscape, and considering carefully how to minimise impact on the land where it is situated.

The AAC is pleased to support this project and work with council to ensure our cultural heritage will be protected and valued always.
Acknowledgements

Tweed Shire Council wish to pay respect to, and acknowledge, Elders both past and present of the Bundjalung People, the Traditional Custodians for the land over which this study has been undertaken.

We specifically thank and acknowledge the following participants of this project: Tweed Aboriginal community groups and representatives which largely make up the Tweed Shire Council Aboriginal Advisory Committee (AAC), without whom the outcomes of this significant project would not be possible, including:

- The Tweed/Byron Local Aboriginal Land Council.
- The Tweed/Wollumbin Aboriginal Education Consultative Group.
- Minjungbal Museum and Study Resource Centre.
- Tweed Co-operative Society.
- Canowindra Aged Care Facility.
- Tweed Corporation for Sport (Stingrays).
- Other Tweed Aboriginal community representatives who provided advice and input throughout the duration of the project, particularly during cultural mapping workshops and the preparation of the Tweed Aboriginal Thematic History.

This management plan was informed by Converge Heritage + Community (Converge) and has been developed by Tweed Shire Council.

Project personnel:

- Iain Lonsdale (TSC Coordinator, Strategic Planning and Urban Design)
- Robyn Eisermann (TSC Project Manager & Senior Strategic Planner)
- Rob Appo (Initially Converge Cultural Heritage Advisor and from 2013 TSC Community Development Officer - Aboriginal)
- Ian Fox (Initially Converge Senior Cultural Heritage Consultant until June 2013 and from Sept 2015, Ian Fox and Associates)
- Simon Gall (Converge Senior Archaeologist and Company Director)
- Tim Gall (Converge Project Manager & Group General Manager)
- Dr Craig Barrett (Converge Senior Cultural Heritage Advisor)
- Dr Philip Habgood (Converge Senior Archaeologist)

Information, methodologies and lessons learnt from others in addressing Aboriginal cultural values within the development assessment process learnt through other Agencies and Councils is recognised and gratefully acknowledged, including:


The assistance of the Office of Environment and Heritage, Coffs Harbour Office in assisting with the development of the plan and the registration of ACH sites identified through the mapping process is gratefully acknowledged.

Artwork

Christine Slabb of Get Creative is gratefully acknowledged for the Indigenous artwork and photographs incorporated into this Plan.
This Aboriginal Cultural Heritage Management Plan:

a) Recognises Aboriginal people as the First Nations’ People of Australia and traditional custodians of the land.

b) Provides Council’s acknowledgment of the importance of Aboriginal cultural heritage for the proper understanding of the historical occupation and use of the land within the Tweed Shire.

c) Acknowledges the importance of Aboriginal culture and heritage to all people of the Tweed.

d) Acknowledges that the Aboriginal people are the primary determinants of the cultural significance of their heritage.

e) Supports the Council’s Aboriginal Reconciliation Plan and Statement.

In respect of the sharing of Aboriginal cultural knowledge and information the Tweed Shire Council:

1. Respects, appreciates and acknowledges the contributions of the Aboriginal community, specifically the Aboriginal traditional custodians, and the importance of ongoing engagement with the Aboriginal community.

2. Acknowledges the cultural intelligence and knowledge of the Aboriginal people.

3. Acknowledges the Aboriginal traditional custodians are the owners of their cultural knowledge and information and that some of this knowledge will remain confidential.

4. Will do its upmost to protect and make sure sensitive information provided to the TSC by the Aboriginal community will be respected and managed by effective systems and delegated responsibilities.

5. Will continue to work with the Aboriginal community to increase Aboriginal cultural awareness both within Council and the wider community.

6. Will engage with the Aboriginal community at the commencement of works or development proposals to ensure cultural sensitivities are understood at the planning and design phase.

7. Will work collaboratively with the Aboriginal community to ensure cultural heritage information is kept up to date, is available to the Aboriginal community and the wider Tweed community as appropriate.

8. Will develop a service agreement with the Aboriginal Community, through the Tweed Byron Local Aboriginal Land Council, outlining the processes and procedures of the management of Aboriginal cultural heritage.

9. Will use the Tweed Aboriginal Cultural Heritage Management Plan to guide development or review of significant policies, programs and development.

10. Will give effect to the local Aboriginal community’s expression; ‘nothing about us without us’, by giving preference to their participation in wider public engagement addressing Aboriginal cultural heritage matters.

Note: Confidential cultural information will not be disclosed or distributed without the express agreement in writing of the people authorised to hold that knowledge.

This Statement of Commitment is also supported by the Tweed Shire Council Innovate Reconciliation Action Plan March 2018 - March 2020.
Tweed Byron Local Aboriginal Land Council

Statement of Commitment

Tweed Byron Local Aboriginal Land Council:

1. Acknowledges the Tweed Aboriginal communities long standing campaign and dedication to ensuring a solid framework and procedures are put in place within Council, regarding Aboriginal culture and heritage within the Tweed Shire.

2. Acknowledges the commitment, time, knowledge and expertise provided by the Tweed Shire Council Aboriginal Advisory Committee, members of the Aboriginal community, Tweed Shire Council staff and Councillors who have contributed to the ACHMP.

3. Acknowledges that cultural information included in the ACHMP has been willingly contributed by the local Tweed Aboriginal community, for the benefit of the whole Tweed community and the TBLALC seek to ensure that this information is used in a respectful and appropriate way.

4. Will recognise the importance of the ACHMP as a local government policy and procedural document that assists us in meeting our cultural and statutory obligations and we make a strong commitment to work cooperatively with TSC to meet all the ACHMP objectives.

5. Will commit to represent the interests of the broader Aboriginal community where those interests are in accord with our local knowledge and practices, and are accepted as established local cultural protocols.

6. Will support the implementation and use of this ACHMP as an appropriate means to recognise and respond to issues of Aboriginal cultural heritage within the Tweed Shire.
Table of contents

Document history 2  
Preface 3  
Statement from the Mayor 4  
Statement from the Tweed Byron Local Aboriginal Land Council 5  
Statement from the Tweed/Byron Aboriginal Advisory Committee 6  
Acknowledgements 7  
Tweed Shire Council Statement of Commitment 8  
Tweed Byron Local Aboriginal Land Council Statement of Commitment 9  
Glossary of Definitions and abbreviations 13  

Part A  
**Aboriginal cultural heritage - an introduction** 19  
A1 What is Aboriginal Cultural Heritage 20  
A2 Our Aboriginal history 21  
A3 Background - Why has the Aboriginal Cultural Heritage Plan (ACHMP) been prepared? 22  
A4 Aboriginal Cultural Heritage Management Aims 24  
A5 Aboriginal Cultural Heritage Management Objectives 24  
A6 How to use this plan and relationship to legislation 25  

Part B  
**Aboriginal cultural heritage mapping** 27  
B1 Mapping Methodology 28  
B2 Mapping criteria explained 30  
B3 Mapping outcomes 34  
B3.1 Mapping layers 34  
B3.2 Precautionary principle for unmapped land 34  
B3.3 Mapping endorsement by the Aboriginal Advisory Committee 35  
B3.4 Referral role of Tweed/Byron Local Aboriginal Land Council 35  
B4 Application of the ACHMP and mapping and policy recommendations 36  
B4.1 The applicable LEP 36  
B4.2 Applicable State Environmental Planning Instruments (SEPPs) 37  
B4.3 Identification on planning certificates 41  
B5 Understanding the landscape context 42  
B5.1 Riparian landscapes 43  
B5.2 Estuarine landscapes 44  
B5.3 Coastal landscapes (dunes and headlands) 45  
B5.4 Upper catchment and undulating landscapes 46
B5.5 Elevated and mountains landscapes

B5.6 Natural threats to Aboriginal cultural heritage

B6 Recommendations and actions arising from the ACH assessment, mapping and Thematic History

Part C Consultation, assessment and approvals

C1 Aboriginal community consultation

C1.1 Sensitivity protocol

C1.2 Aboriginal community consultation / contact details

C1.3 Consultation requirements

C2 Key actions used within this plan

C2.1 AHIMS search

C2.2 Exercise due diligence

C2.3 Avoiding or justifying harm to Aboriginal cultural heritage

C2.4 Aboriginal cultural heritage impact permit (AHIP)

C2.5 Stop work procedures

C3 Is the proposed development ‘permitted without consent’?

C3.1 Development permitted without consent under Part 4 of the EP&A Act 1979

C3.2 Development permitted without consent under Part 5 of the EP&A Act and/or a State Environmental Planning Policy (SEPP)

C4 Is the proposal ‘exempt’ or ‘complying’ development under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Code SEPP) or Local Environmental Plan?

C4.1 Is the proposal Exempt Development?

C4.2 Is the proposal Complying Development?

C5 Is the land mapped as Aboriginal Place of Heritage Significance?

C5.1 Strategic land use planning (under Part 3 of the EP&A Act)

C5.2 Development applications and assessment (under Part 4 of the EP&A Act)

C5.3 Environmental assessment (under Part 5 of the EP&A Act)

C5.4 Greenfield Development and New Land Release Areas: reliance on existing Aboriginal Cultural Heritage Assessment for use with a later development approval or works

C5.5 Routine works, maintenance by Council

C6 Is the site mapped as Predictive Aboriginal cultural heritage?

C6.1 Strategic land use planning (under Part 3 of the EP&A Act)

C6.2 Development applications and assessment (under Part 4 of the EP&A Act)

C6.3 Environmental assessment under Part 5 of the EP&A Act

C7 Is the site unmapped land?
Part D  Understanding the legislative context 115

D1  The current legislative framework 116

D1.1  National Parks and Wildlife Act (NPW) 1974 116
D1.2  Aboriginal Land Rights Act, 1983 118
D1.3  Heritage Act, 1977 118
D1.4  Environmental Planning and Assessment Act (EP&A Act) 1979 118
D1.5  Local Environmental Plans 119
D1.6  State Environmental Planning and Assessment Policy (Exempt and Complying Development Codes) 2008 120
D1.7  North Coast Regional Plan 2036 120
D1.8  Other legislation 121
D1.9  Related Policy 122
D1.10  Related documentation and further information 122

D2  Understanding land use and definitions 123

Part E  Appendices 129

Appendix 1 - Aboriginal Thematic History 130
Appendix 2 - Project methodology and consultation 147
Appendix 3 - Memorandum of Understanding (Project) 152
Appendix 4 - Aboriginal Groups and Contacts in the Tweed Shire 165
Appendix 5 - Checklists for development 168
Appendix 6 - Standard Conditions of Consent 174
Appendix 7 - ACH Standard Working Mitigation Procedure - Internal 176
Appendix 8 - Mapping and Monitoring Procedures 189
## Glossary of Definitions and abbreviations

<table>
<thead>
<tr>
<th>Term</th>
<th>Interpretation</th>
<th>Source</th>
<th>Abbreviation</th>
</tr>
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<tbody>
<tr>
<td>Aboriginal</td>
<td>An Aboriginal person is a person of Aboriginal descent, and may or may not be a Traditional Custodian or an Aboriginal Party.</td>
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<tr>
<td>(Tweed Shire) Aboriginal Advisory Committee</td>
<td>Tweed Shire Aboriginal Advisory Committee – which (at the time of writing) includes representation from a range of Aboriginal community groups including; the Tweed/Byron Local Aboriginal Land Council; Wollumbin Aboriginal Education Consultative Group; Minjungbal Museum and Study Resource Centre; Tweed Cooperative Society; Canowindra Aged Care Facility; and other community representatives who may provide advice and input on an “as needed” basis.</td>
<td></td>
<td>AAC</td>
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<td>Aboriginal area</td>
<td>means lands dedicated as an Aboriginal area under the NPW Act</td>
<td>National Parks and Wildlife Act, 1974</td>
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<td>Aboriginal Cultural Heritage</td>
<td>For Aboriginal people, cultural heritage is about much more than the physical remains of the past. It also includes intangible knowledge (stories) which is passed from one generation to another, as well as landscape features and other natural attributes of their traditional lands and cultural landscapes.</td>
<td></td>
<td>ACH</td>
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<td>(Tweed Shire) Aboriginal Cultural Heritage Management Plan</td>
<td>This Management Plan, which guides the Aboriginal community and the wider Tweed community on the considerations and actions required to protect and manage Aboriginal cultural heritage.</td>
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<td>ACHMP</td>
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<td>Aboriginal Heritage Information Management System</td>
<td>Database of registered Aboriginal objects and places managed by the NSW Office of Environment and Heritage.</td>
<td></td>
<td>AHIMS</td>
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<td>Aboriginal cultural landscape</td>
<td>Aboriginal Cultural landscape is a place or area valued by an Aboriginal group (or groups) because of their long and complex relationship with that land. It expresses their unity with the natural and spiritual environment. It embodies their traditional knowledge of spirits, places, land uses, and ecology. Material remains of the association may be prominent, but will often be minimal or absent.</td>
<td>Fact Sheet 2 What is an Aboriginal Cultural Landscape (NSW Office of Environment and Heritage: 2010)</td>
<td>ACL</td>
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<tr>
<td>Aboriginal Heritage Impact Permit</td>
<td>A permit issued under Division 2 of Part 6 of the NPW Act by the Chief Executive of the Office of Environment and Heritage (OEH) where harm to an Aboriginal object or Aboriginal place cannot be avoided.</td>
<td>National Parks and Wildlife Act, 1974</td>
<td>AHIP</td>
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<td>Aboriginal Land Rights Act</td>
<td>Is the principle legislation in NSW providing land rights for Aboriginal people. The Act sets out the constitution, membership and functions of the Local Aboriginal Land Councils</td>
<td>Aboriginal Land Rights Act, 1983</td>
<td>ALR Act</td>
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<td>Aboriginal object</td>
<td>means any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.</td>
<td>National Parks and Wildlife Act, 1974</td>
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<td>Aboriginal party</td>
<td>responds to an invitation to participate in the Aboriginal cultural heritage assessment process.</td>
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<td>Aboriginal place</td>
<td>means any place declared to be an Aboriginal place under section 84 by the Minister administering the NPW Act, by order published in the NSW Government Gazette.</td>
<td>National Parks and Wildlife Act, 1974</td>
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<td>Aboriginal place of heritage significance</td>
<td>means an area of land, the general location of which is identified in an Aboriginal heritage study adopted by the Council after public exhibition and that may be shown on the Heritage Map, that is: a) the site of one or more Aboriginal objects or a place that has the physical remains of pre-European occupation by, or is of contemporary significance to, the Aboriginal people. It may (but need not) include items and remnants of the occupation of the land by Aboriginal people, such as burial places, engraving sites, rock art, midden deposits, scarred and sacred trees and sharpening grooves, or b) a natural Aboriginal sacred site or other sacred feature. It includes natural features such as creeks or mountains of long-standing cultural significance, as well as initiation, ceremonial or story places or areas of more contemporary cultural significance. Note. The term may include (but is not limited to) places that are declared under section 84 of the National Parks and Wildlife Act 1974 to be Aboriginal places for the purposes of that Act.</td>
<td>Tweed Local Environment Plan 2014, Tweed City Centre Plan Local Environment Plan 2012.</td>
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<td>Aboriginal remains</td>
<td>means the body or the remains of the body of a deceased Aboriginal person, but does not include: a) a body or the remains of a body buried in a cemetery in which non-Aboriginal persons are also buried, or b) a body or the remains of a body dealt with or to be dealt with in accordance with a law of the State relating to medical treatment or the examination, for forensic or other purpose, of the bodies of deceased persons.</td>
<td>National Parks and Wildlife Act, 1974</td>
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<td>Aboriginal traditional custodian</td>
<td>A member of the Aboriginal community who has ancestral connection to a defined geographical area and is often acknowledged by their community as a holder of cultural information and has cultural responsibility for that location.</td>
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<td>Activity</td>
<td>The meaning of activity is defined by cl.110 of the EP&amp;A Act 1979 and includes such matters as: (a) the use of land, and (b) the subdivision of land, and (c) the erection of a building, and (d) the carrying out of a work, and (e) the demolition of a building or work, but Does not, for example, include matters for which development consent under Part 4 is required or has been obtained.</td>
<td>Environmental Planning and Assessment Act, 1979</td>
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<td>Archaeological survey</td>
<td>A method of data collection for Aboriginal heritage assessment. It involves a survey team walking over the land in a systematic way, recording information about how and where the survey is conducted, recording information about the landscape and recording any archaeological sites or materials that are visible on the land surface. The activities undertaken by a survey team may not involve invasive or destructive procedures, and are usually limited to note taking, photography and making other records of the landscape and archaeological sites (e.g. sketching maps or archaeological features)</td>
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<td>Term</td>
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<td>Artefact</td>
<td>for the purpose of this plan means an Aboriginal object.</td>
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<td>Community Based Heritage Study</td>
<td>Heritage study focused on the European heritage of Tweed Shire and adopted by Council in August 2012 (or as subsequently updated).</td>
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<td>CBHS</td>
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<td>Contemporary Aboriginal heritage site</td>
<td>An Aboriginal site dating from post-European settlement (1788) and onwards. Contemporary sites can be, but are less likely to be, archaeological in nature than pre-European heritage sites. Contemporary sites often encompass historical and social heritage values. An example of a contemporary site is an Aboriginal reserve or station/mission or a place of protest or celebration.</td>
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<td>Country</td>
<td>For Aboriginal people means cultural lands.</td>
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<td>Development</td>
<td>means:</td>
<td>Environmental Planning and Assessment Act, 1979</td>
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<td></td>
<td>(a) the use of land, and</td>
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<td>(b) the subdivision of land, and</td>
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<td>(c) the erection of a building, and</td>
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<td></td>
<td>(d) the carrying out of a work, and</td>
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<td>(e) the demolition of a building or work, and</td>
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<td>Cl.4(2) further describes what is meant by such other matters as the ‘use of land’, ‘erection of a building’, ‘work’ and the like.</td>
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<td>Environmental Planning and Assessment Act, 1979</td>
<td>The <em>Environmental Planning and Assessment Act, 1979 (EP&amp;A Act)</em> establishes the planning and development system for NSW. It enables the creation of environmental planning instruments, primarily State Environmental Planning Policies (SEPP) and Local Environmental Plans (LEP)</td>
<td>EP&amp;A Act</td>
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<td>Environmentally sensitive area</td>
<td>means any of the following [in part].....</td>
<td>State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</td>
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<td>(g) land identified in this or any other environmental planning instrument as being of high Aboriginal cultural significance or high biodiversity significance,.....</td>
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<td>Geographic Information System</td>
<td>A system for storing and managing geographic spatial data on a computer.</td>
<td>GIS</td>
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<td>Harm</td>
<td>an object or place includes any act or omission that:</td>
<td>National Parks and Wildlife Act, 1974</td>
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<td>(a) destroys, defaces or damages the object or place, or</td>
<td></td>
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<td></td>
<td>(b) in relation to an object - moves the object from the land on which it had been situated, or</td>
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</tr>
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<td></td>
<td>(c) is specified by the regulations, or</td>
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<tr>
<td></td>
<td>(d) causes or permits the object or place to be harmed in a manner referred to in paragraph (a), (b) or (c), but does not include any act or omission that:</td>
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<td></td>
<td>(e) desecrates the object or place, or</td>
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<td></td>
<td>(f) is trivial or negligible, or</td>
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<td>(g) is excluded from this definition by the regulations.</td>
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<tr>
<td>Term</td>
<td>Interpretation</td>
<td>Source</td>
<td>Abbreviation</td>
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</tr>
<tr>
<td>Heritage Act, 1977</td>
<td>Establishes amongst other things the State heritage register, which includes historic places of significance to the people of NSW, and regulates development to state heritage-listed places.</td>
<td>Tweed Local Environment Plan 2014, Tweed City Centre Plan Local Environment Plan 2012.</td>
<td>HAct</td>
</tr>
<tr>
<td>Heritage conservation area</td>
<td>means an area of land of heritage significance: a) shown of the Heritage Map as a heritage conservation area, and b) the location and nature of which is described in Schedule 5, and includes any heritage items situated on or within that area.</td>
<td>Victorian Aboriginal Heritage Act 2006</td>
<td>HCA</td>
</tr>
<tr>
<td>Heritage item</td>
<td>means a building, work, place, relic, tree, object or archaeological site the location and nature of which is described in Schedule 5.</td>
<td>Tweed Local Environment Plan 2014, Tweed City Centre Plan Local Environment Plan 2012.</td>
<td></td>
</tr>
<tr>
<td>Intangible cultural heritage</td>
<td>means Aboriginal traditional knowledge and cultural expressions, held collectively by Aboriginal people and passed down across generations with or without adaptations and evolutions in nature or practice, and may include oral traditions, performing arts, stories, rituals, social practices, environmental and ecological knowledge.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Known Aboriginal cultural heritage</td>
<td>for the purpose of this Plan means land mapped as “Aboriginal place of heritage significance”. Known cultural heritage may include archaeology, objects, places, contemporary sites, damaged and destroyed sites, tangible and intangible sites such as those associated with story telling and spiritual customs and beliefs. For the purpose of this plan and the application of relevant State Environmental Planning Policies (SEPPs), known Aboriginal cultural heritage and Aboriginal place of heritage significance is also interpreted as high Aboriginal cultural significance, Aboriginal significance and Aboriginal heritage significance as referred to within those SEPPs.</td>
<td></td>
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</tr>
<tr>
<td>Local Environmental Plan</td>
<td>The LEP is an instrument developed by Council under the EP&amp;A Act which enables a local council to regulate development in the local government area.</td>
<td></td>
<td>LEP</td>
</tr>
<tr>
<td>Memorandum of Understanding</td>
<td>In relation to this project is a three-way statement of collaboration negotiated with AAC, Tweed Shire Council and Converge Heritage + Community (the Consultant) regarding the management of information during the term of the development of this Plan.</td>
<td></td>
<td>MOU</td>
</tr>
<tr>
<td>National Parks and Wildlife Act 1974</td>
<td>The NPW Act is the principal legislation in NSW that provides protection for Aboriginal cultural heritage.</td>
<td></td>
<td>NPW Act</td>
</tr>
<tr>
<td>Native Title</td>
<td>Native title is a property right to land, the tenure of which has not been extinguished by other forms of tenure, which reflects a relationship to land that is the foundation of a Traditional Custodian’s religion, culture and wellbeing.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Office of Environment and Heritage</td>
<td>New South Wales government department responsible, amongst other functions, for the management of Indigenous and non-Indigenous cultural heritage.</td>
<td></td>
<td>OEH</td>
</tr>
<tr>
<td>Term</td>
<td>Interpretation</td>
<td>Source</td>
<td>Abbreviation</td>
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</tr>
<tr>
<td>NSW Office of Local Government</td>
<td>Previously known as the Department of Local Government</td>
<td></td>
<td>OLG</td>
</tr>
<tr>
<td>Potential site</td>
<td>A potential site refers to the likelihood of Aboriginal sites being present in a locality based on the other knowledge and research undertaken as part of this Aboriginal cultural heritage management plan and the methodology of the mapping criteria.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Precautionary Principle</td>
<td>means to take a cautionary approach to the assessment of risk or harm to Aboriginal cultural heritage ensuring all aspects of potential risk are considered and appropriate steps are applied to avoid or minimise harm to Aboriginal cultural heritage.</td>
<td></td>
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</tr>
<tr>
<td>Predictive Aboriginal cultural heritage</td>
<td>For the purpose of this plan means land mapped as predictive which has a higher probability of Aboriginal cultural heritage presence based on meeting a minimum of three of the ten mapping assessment criteria.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Registered Aboriginal Party</td>
<td>Those individuals who become an Aboriginal Party under the legislation.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>State Environmental Planning Policy</td>
<td>Policy developed by NSW State Planning under the EPA Act which enables management and standardisation of development cross the State.</td>
<td></td>
<td>SEPP</td>
</tr>
<tr>
<td>Tweed/Byron Local Aboriginal Land Council</td>
<td>The TBLALC was established under the Aboriginal Land Rights Act 1983 as the elected representatives for Aboriginal people in the Tweed/Byron area. TBLALC works for the members and the wider Aboriginal community living in the TBLALC area and assists in matters relating to the areas of housing, legal, employment, land management and other day-to-day matters involving Aboriginal people in accordance with functions detailed under the Act.</td>
<td></td>
<td>TBLALC</td>
</tr>
<tr>
<td>Tweed Shire Council</td>
<td>The local council responsible for the Tweed Shire.</td>
<td></td>
<td>TSC</td>
</tr>
<tr>
<td>Unknown site</td>
<td>An unknown site refers to an Aboriginal heritage site that has the potential to exist though this is not confirmed through any current assessment.</td>
<td></td>
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</tr>
</tbody>
</table>

*Note: The current Aboriginal cultural heritage legislation within the National Parks and Wildlife Act is under review. New standalone Aboriginal Cultural Heritage legislation has been exhibited (late 2017 and early 2018) with a view to coming into force progressively over 2019-2024. Definitions in the proposed state Aboriginal Cultural Heritage Act may change and replace the definitions identified herein derived from the NPW Act.*
Kunghur open campsite

Source: Ian Fox
What is Aboriginal Cultural Heritage

“Aboriginal cultural heritage consists of places and items that are of significance to Aboriginal people because of their traditions, observances, lore, customs, beliefs and history. It provides evidence of the lives and existence of Aboriginal people before European settlement through to the present.

Aboriginal cultural heritage is dynamic and may comprise physical (tangible) or non-physical (intangible) elements. It includes things made and used in traditional societies, such as stone tools, art sites and ceremonial or burial grounds. It also includes more contemporary and/or historical elements such as old mission buildings, massacre sites and cemeteries. Tangible heritage is situated in a broad cultural landscape and needs to be considered in that context and in a holistic manner.

Aboriginal cultural heritage also relates to the connections and sense of belonging that people have with the landscape and with each other. For Aboriginal people, cultural heritage and cultural practices are part of both the past and the present and that cultural heritage is kept alive and strong by being part of everyday life.

Cultural heritage is not confined to sites. It also includes peoples’ memories, story-lines, ceremonies, language and “ways of doing things” that continue to enrich local knowledge about the cultural landscape. It involves teaching and educating younger generations. It is also about learning and looking after cultural traditions and places, and passing on knowledge. It is enduring but also changing. It is ancient but also new.

Aboriginal cultural heritage provides crucial links between the past and the present and therefore represents an essential part of the identities of Aboriginal people and all Australians.”

Source: OEH, Aboriginal Cultural Heritage Consultation Requirements for Proponents, 2010

A key message from the Aboriginal community during the preparation of the ACHMP is that:

Aboriginal culture is a living thing, comprising both the past and present.
Our Aboriginal history

The following Aboriginal statement was developed in consultation with the Aboriginal community:

Aboriginal sites and places are recognised by traditional custodian descendants as tangible evidence of our ancestors’ cultural practice and traditions; as such, they retain a very real and meaningful value through to the present day. Scientific assessment of cultural evidence from some selected sites supports the fact that Aboriginal people were living in the Tweed from at least 10,000 years ago, and a Carbon-14 dated midden and occupation site on Stradbroke Island (in South East Queensland) is recorded as more than 20,000 years old. Our Aboriginal oral tradition tells a story of ‘Three Brothers’ who came to this land and its people in the ‘Dreaming’, gave the lore, and formed the nucleus of tribes with whom today’s traditional custodian descendants identify. Despite development impacts there are many sites and places of significance to Aboriginal people. Among the most well known is Wollumbin (Mt Warning) which is a place of great spiritual significance and a focus for many stories and beliefs.

A common feature of our Aboriginal identity is language, which is known in the Tweed and further south as Bundjalung; in south east Queensland people prefer Yugambeh; and further west, in Kyogle Shire, people use Githabul as both a language and name for group identification. The language dialect for the Tweed is known as Ngandowal, a name referring to the people who say ‘Ngando’ for the word ‘who’ or ‘somebody’. However, part of the Tweed Coast and south to the Byron area is Minyungbal, where the word ‘Minung’ means ‘what’ or ‘something’ and can be used as identification for people of this area.

There is general acceptance among our Tweed Aboriginal community of the presence of three main groups in the Tweed River Valley. These were the Goodjinburra people for the Tweed Coastal area, the Tul-gi-gin people for the North Arm, and the Moorang-Moobar people for the Southern and Central Arms around Wollumbin (Mt Warning). However, European settlers used other names and described them as Chubboburri, Gandowal, Duthurinbar, Wirangiroh, Wollumbin, Murwillumbah, Ngarrumbul, Kitabul, and Ngarartbul. These names largely reflected a lack of understanding of our culture, our language and our connection to each other.

Population numbers of these three groups are known to have fallen dramatically, before and after permanent European settlement, mainly through the unchecked spread of European sourced illness and disease. Research suggests that prior to any European contact each of the three groups may have contained from 500 to 700 members, distributed in smaller family groups across what was then their area of ‘country’. With a loss of access to food resources, death from illness and disease, and intolerance shown by some European settlers, population numbers plummeted and were only about 10% of original numbers within 60 years of settlement.

The Tweed Valley around Wollumbin (Mt Warning) was rich in natural resources and supported many plants and animals which were collected and hunted for food by Aboriginal people. Traditional people managed the landscape and avoided overexploiting these resources in a way that is poorly understood and little recognised in today’s wider community. Although camp locations were moved regularly to allow resource recovery some natural resources, such as rock outcrops suitable for the manufacture of stone tools, were used extensively for vast periods of time.

High altitude topographical features were often the focus of social and spiritual custom and the location of many of our Aboriginal sites directly reflects the connection and significance value of these places. Wollumbin retains a high cultural and spiritual status beyond the Tweed Valley and this is reinforced by our knowledge of different stories with regional group gatherings for ceremony and cultural expression at certain sites across the Valley. Descendants of traditional custodians maintain that connection and support initiatives to protect and preserve our heritage sites and places.

Source: Tweed Regional Museum
A3  Background - Why has the Aboriginal Cultural Heritage Plan (ACHMP) been prepared?

Tweed Shire Council has an important role, as a land use manager and a consent authority in identifying, assessing and managing heritage objects and places in the local government area. Council fulfils this role through the preparation of local environmental plans, development control plans, strategic planning, heritage management plans, development assessment and ongoing education.

It is important to understand that the legislative protection of Aboriginal Cultural heritage as supported by this plan is not new. The National Parks and Wildlife Act 1974 provides specific protection for Aboriginal objects and places by making it an offense to ‘harm’ them. Harm includes ‘destroy, deface or damage of an Aboriginal object or Aboriginal Place, and in relation to an object, move the object from the land on which it has been situated’. This legislation is supported by Guidelines and processes to manage any potential impact or harm.

This is reinforced and guided through many levels of state and local legislation, as discussed in Part D following.

The Department of Local Government has prepared a guideline for all Councils in NSW about the scope of their responsibilities for engagement with Aboriginal people in their communities, and strategies for the positive and effective engagement, called Engaging with Local Aboriginal Communities (2007). The guideline identifies four responsibilities, as follows, which apply across all Council functions and have been used, in part, to inform the development of this Plan:

• consult and negotiate comprehensively with Aboriginal communities about their needs and aspirations;
• ensure that Council services are adequate and equitable in meeting the needs of Aboriginal people and their communities;
• ensure that services are developed in a way that is culturally appropriate and develops the potential of Aboriginal people; and
• promote a partnership approach with local Aboriginal communities.

The North Coast Regional Plan 2036 supports the protection of Aboriginal cultural heritage values and engagement with Aboriginal communities and list a number of actions under Directions 16: Collaborate and partner with Aboriginal communities; 17: Increase the economic self-determination of Aboriginal communities; and 18: Respect and protect the North Coast’s Aboriginal heritage, as follows:

18.1 Ensure Aboriginal objects and places are protected, managed and respected in accordance with legislative requirements and the wishes of local Aboriginal communities;

18.2 Undertake Aboriginal cultural heritage assessments to inform the design of planning and development proposals so that impacts to Aboriginal cultural heritage are minimised and appropriate heritage management mechanisms are identified;

18.3 Develop local heritage studies in consultation with the local Aboriginal community, and adopt appropriate measures in planning strategies and local plans to protect Aboriginal heritage;

18.4 Prepare maps to identify sites of Aboriginal heritage in ‘investigation’ areas, where culturally appropriate, to inform planning strategies and local plans to protect Aboriginal heritage.

At a local level the commitment to the protection for Aboriginal cultural heritage is guided by:

The Tweed Community Strategic Plan 2017-2027 (CSP) which documents the community’s priorities and objectives and provides the long term vision and directions for Council’s Delivery and Operational plans and programs. The CSP was extensively consulted with the Tweed Community and is premised on four core themes, being: Leaving a Legacy; Making Decisions With You; People, Places and Moving Around; and Behind the Scenes. Objectives specific to the protection of Aboriginal cultural heritage include:

Leaving a Legacy 1.4 Managing Community Growth
Sustainable management and protection of Aboriginal and European Heritage

The Tweed Local Environmental Plan 2014 core Aims of Clause 1.2, being:

To promote the responsible sustainable management and conservation of Tweed’s natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, built environmental, and cultural heritage.
The Tweed City Centre Local Environmental Plan 2012

Core Aims of Clause 1.2, being:

To encourage the responsible sustainable management and conservation of Tweed City Centre’s natural and environmentally sensitive areas, the built environment and cultural heritage.

The TSC completed a Community Based Heritage Study (CBHS) in 2012, which focused on the European heritage of the Shire. It was within this study that Council acknowledged the need for a separate, culturally appropriate process to undertake an Aboriginal Cultural Heritage Management Plan (ACHMP) to better understand the Aboriginal cultural heritage of the Tweed Shire and to effectively manage potential impacts (harm) on Aboriginal cultural heritage.

This was made possible by the procurement of a NSW Heritage Branch grant and jointly funded by Council.

Aboriginal cultural heritage management will complement the European heritage management of the CBHS and the applicable Local Environmental Plan (LEP) to provide a comprehensive framework for assessment and management of both European and Aboriginal heritage to protect and conserve the heritage of the Tweed Shire.

The management plan involves a number of key aspects. The first aspect relates to an understanding of the Aboriginal history of the Tweed. This has been undertaken through the Aboriginal Cultural Heritage Thematic History. This is not a chronological history of the Tweed, rather it is a thematic based history that looks at important themes identified by the Aboriginal community. The Thematic History is broken into two key parts, the first being Contact with European settlers, the second being Continuity of Culture. The Thematic History does not seek to produce a holistic single historic reference, rather pulls other references together within these themes. The Thematic History is provided in Appendix 1.

Secondly, the management plan process has investigated the historical and contemporary Aboriginal context of the Tweed and, through research and consultation with the Aboriginal community, identifies, assesses and records items or places of Aboriginal cultural significance in a mapped format.

The mapping in association with this Plan has been prepared using a rigorous methodology to assess the known and potential ACH. This methodology is within the context of an understanding of the Aboriginal history, land use and sophisticated resource knowledge, cultural and spiritual practices, patterns of movement and Aboriginal complex affinity with their “country” (cultural lands).

“Whilst European heritage is largely focused on historic buildings or places, Aboriginal cultural heritage may be both tangible and intangible and is integrally related to the Aboriginal unity with cultural landscapes, which embodies traditional knowledge of spirits, places, land uses and ecology. Material remains of this association may be prominent, but will often be minimal or absent.

A cultural landscape approach [as taken by this management plan] affirms that Aboriginal cultural heritage values are not just attached to artefacts, but to an understanding and attachment to Country. Cultural landscapes incorporate not only individual structures or sites but the links between sites, places and their broad local and regional context. For Aboriginal people, the significance of individual landscape features is derived from the inter-relatedness within the cultural landscape.

This means objects or sites cannot be assessed in isolation and any assessment must consider the landscape associations in a holistic manner. This may require a range of assessment methods and will require close involvement and participation of Aboriginal people.”

Source: Fact Sheet 2 What is an Aboriginal Landscape, NSW Environment, Climate Change and Water

This cultural landscape understanding, and the wishes of the Aboriginal community, provide the rationale for the landscape based mapping approach undertaken within this Plan and, together with the Thematic History, provides an understanding of the history and culture of the Aboriginal people of the Tweed Shire.
A4 Aboriginal Cultural Heritage Management Aims

What we want to achieve:

1. Greater awareness, understanding and respect of the cultural heritage significance of the Tweed Shire, including:
   - Aboriginal history, culture and heritage;
   - the types of both tangible and intangible heritage that are significant to the Aboriginal people;
   - Aboriginal heritage is of the past and the contemporary; and
   - Aboriginal people are the “keepers” of their cultural heritage.

2. Stronger relationships with the Tweed Aboriginal community and broader Tweed community on matters of Aboriginal cultural heritage.

3. Effective systems and policy framework for the protection, conservation and management of Aboriginal cultural heritage.

A5 Aboriginal Cultural Heritage Management Objectives

We will achieve these aims by:

1. Actively engaging the Tweed community on matters of Aboriginal cultural heritage.

2. Establishing a framework for a participatory working with the Aboriginal community.

3. Preparing and maintaining policy, rules, and regulation that will facilitate best practice Aboriginal cultural heritage management in all aspects of Council’s service delivery.
The development and use of the mapping and management plan is not intended to replace any legislative requirement for the assessment of Aboriginal cultural heritage values.

Instead the mapping and this management plan seeks to provide a framework to understand what legislative requirements may apply. These include requirements under the [current] NPW Act to avoid harm and requirements under the EP&A Act to consider and assess any potential impacts of development.

The mapping developed as part of this management plan identifies those areas where it is known there is ACH or there is a high likelihood, based on characteristic landscapes and knowledge, of the presence of ACH.

Locations of known ACH may be historic, contemporary, tangible, intangible, damaged or destroyed. These locations are, for the purpose of interpretation of this Plan, an "Aboriginal Place of heritage significance" (as defined in the applicable LEP) or of "high Aboriginal cultural significance" (as used in a number of State Environmental Planning Policies).

Locations of predictive ACH are assessed through the mapping criteria in Part B as highly likely to contain ACH.

Land not identified on the mapping does not categorically mean there is no ACH. The legislative requirements of the NPW Act with respect of harm, as discussed in Part C, continue to apply.

Tweed Shire Council is responsible for a range of decisions and on ground activities which have the potential to influence and impact on the Aboriginal cultural heritage of the shire. Similarly the local Aboriginal Land Council (Tweed/Byron Local Aboriginal Land Council) has the responsibility under the Aboriginal Land Rights Act 1983 to take action to protect Aboriginal cultural heritage and promote the awareness within the Land Council’s area.

This strategy establishes a framework which seeks to show respect for the Aboriginal cultural heritage values in all aspects of Council’s planning and development responsibilities.

The mapping and this Plan provides information to support:

- The Aboriginal community’s sense of identity: its beginnings, present and potential in the future.
- Education programs which assist the Elders to educate and pass on knowledge.
- A sense of ownership and cultural awareness within the Aboriginal community.
- A greater understanding and recognition of the significance of Aboriginal cultural heritage throughout the wider community.
- Informing Aboriginal heritage tourism strategies.
- Management strategies, processes and procedures for the Aboriginal community, Council staff and the wider community.

The Management Plan comprises a number of Parts, integrally informed by legislation and in turn informing processes and procedures.

- Part A provides the introductory information.
- Part B provides the framework for the mapping component of the plan.
- Part C provides the consultation, assessment and approvals pathways.
- Part D provides the legislative framework for Aboriginal cultural heritage.

Navigation of the document is outlined in the following flowchart:

Note: The legislative triggers for the actions and requirements of this Management Plan are within the National Parks and Wildlife Act and the applicable Tweed Local Environmental Plan and should be read in conjunction with this Management Plan.
Figure A.1 Illustrates the structure of this Management Plan and how to use the plan.

Part A: Aboriginal Cultural Heritage - An introduction
Provides the contextual understanding of ACH in the Tweed and why the Management Plan has been prepared.

TSC ACH Commitment Statement
A Tweed Shire Council Statement of Commitment to the management of ACH.

Part B: Aboriginal Cultural Heritage Mapping
Explains the process and outcomes of the mapping project informed by Appendix 3 Project Methodology and Consultation and Appendix 4 Memorandum of Understanding.

Part C: Consultation, assessment and approvals within the development and assessment process

Part D: Understanding the current legislative context
Explains the current legislation, land use definitions and the implications of these on ACH identification and management.

Appendix 1: Thematic History
A brief thematic based history which also informs the mapping knowledge.

Appendix 2: Project Methodology and Consultation
Outlines the process used to prepare the Aboriginal cultural heritage management plan and mapping.

Appendix 3: Memorandum of Understanding
Guides the protocols and sensitivity of assessing the Aboriginal cultural heritage throughout the project.

Appendix 4: Aboriginal community contact details

Appendix 5: Checklists for development

Appendix 6: Recommended Standard Conditions of Consent

Appendix 7: TSC Standard Procedure for ACH Mitigation: Maintenance and Emergency Works

Appendix 8: Mapping and Monitoring Procedures

Supporting Documents, Guidelines and Processes
Assist the understanding and support the management actions of this Plan.

Context and commitment

Review, analysis, identification, legislation and acknowledgment of Aboriginal cultural heritage

Management Processes and requirements

Support information
B Aboriginal cultural heritage mapping

A Aboriginal cultural heritage - an introduction
B Aboriginal cultural heritage mapping
C Consultation, assessment and approvals
D Understanding the current legislative context
E Appendices
The first major component of the ACHMP is the identification and recognition of Aboriginal cultural heritage through landscape based mapping. It is important to recognise that Aboriginal people are responsible, under traditional law and culture, for a defined area of country. Members of an Aboriginal community should be consulted regarding who is the most appropriate person(s) to speak on behalf of those connected to a defined area of country.

The mapping was developed with extensive Aboriginal community consultation and involvement and based on the following process and methodology:

1. Development of a Memorandum of Understanding (MOU) with the relevant parties to provide a clear framework for:
   i. The timeframe, which covers the period of the ACHMP project;
   ii. Responsibilities and protocols;
   iii. Nomination of Traditional Owners or Custodial representatives;
   iv. Training;
   v. Restrictions on knowledge;
   vi. Access parameters for culturally sensitive information;
   vii. Keeping place for data;
   viii. Publications and promotion; and
   ix. Application of law and lore.

The MOU was developed by Converge Heritage + Community (Consultants) in consultation with Tweed Shire Council (TSC) and the Tweed Aboriginal Advisory Committee (AAC) and signed in August 2012 by the [then] TSC Mayor Mr Barry Longland; [then] TSC General Manager, David Keenan; representatives of the Aboriginal Community through the AAC and Converge General Manager, Mr Tim Gall. The MOU is included in Appendix 3.

2. Conduct research of historic documents and seek advice from community knowledge holders.

Consultation with the AAC and the wider Aboriginal community continued as an integral part of the process throughout the development of the ACHMP, as detailed in Appendix 3 Methodology and Aboriginal Community Consultation.

Background research included reviews of current literary works, the AHIMS database, the Bundjalung Mapping Project and archaeological assessments. This was supplemented with extensive consultation with the Aboriginal Community, Elders and knowledge custodial representatives and site visits in company with nominated community representatives.

3. Visit the location to record information and utilise digital mapping data.

Site visits were undertaken with Aboriginal nominated representatives to verify locations and data.

4. Create the 10 landscape mapping criteria as layers within a GIS suite.

A common approach to the identification of ACH has traditionally been identification of ‘point data’, usually the specific location of an Aboriginal object. Whilst this may provide protection of the object, it does not provide any recognition or understanding of the wider cultural landscape and how that object may have been used or what it may mean to the Aboriginal community. Important to the understanding of ACH is that the significance does not lie in individual objects or places, rather the significance to the Aboriginal people and the history of Australia is also the context of these objects and places within the landscape.

The Tweed Aboriginal community have strongly advocated for a landscape based approach which does not identify objects in isolation of their relationship with how the community lived. This approach is also supported by the OEH fact sheets and guidelines, current best practice Aboriginal cultural heritage management, and the proposed Aboriginal cultural heritage state legislative reforms.

To meet this expectation a ten criteria methodology for identifying and assessing known and predictive ACH was used and the data refined through extensive Aboriginal community consultation.
This methodology incorporates both tangible and intangible ACH to provide a greater understanding of Aboriginal culture and history and a more complete picture of the cultural heritage and significance. To be mapped as predictive ACH a minimum of three of the ten criteria need to be met. The ten criteria are outlined in the following pages.

5. Combine the digitised layers as a composite map identifying both Aboriginal place of heritage significance (known) and predictive Aboriginal cultural heritage.

The layers have then been further refined to remove developed urban areas, importantly, where this does not impact on the significance of the Aboriginal cultural heritage.

6. Link the locations on a composite map with a data table.

The data table includes additional site information such as the level of confidentiality, knowledge holder or site custodian. Much of this information is considered sensitive data and is held by the Aboriginal community in accordance with cultural tradition and belief.

7. Finalisation of the identified mapping endorsed by the Aboriginal community.

8. Integrate the mapping with the management plan and the planning and policy requirements to ensure site protection.

Illustrative example of the draft landscaped based mapping with Aboriginal Place of heritage significance (known) and predictive layers
B2 Mapping criteria explained

Mapping assessment ten point criteria, include:

1. **Indigenous oral sources / community knowledge** - Information provided by Elders and knowledge holders that identifies sites and places.

2. **Documented sources** - Includes historic records and references of a cultural place and/or practice at an identified location.

3. **Resource hotspot** - The presence of biological and/or geological resource, including stone resources for artefacts or grinding; areas where particular plants grow, or were present in paleo periods; within 200m of waters, including any river, stream, spring, lagoon, lake, swamp, wetland, natural watercourse, or tidal waters.

- Lyle Roberts 1977 Bundjalung knowledge
  Source: Ian Fox

- Les Davidson (1973)
  Source: Ian Fox

- 1964 letter written by F.J. Lever identifying the locations of several traditional campsites occupied by Aboriginal people in the Tweed, prior to 1900
  Source: Ian Fox

- Part of a collection of files containing historic records for the NSW North Coast Region, known as the BMP library
  Source: Ian Fox

- Example of a resource hotspot: Ochre grinding dishes in sandstone – Mebbin
  Source: Ian Fox

- Example of a ochre quarry - Springbrook
  Source: Ian Fox
4. **Elevated point for observation** - Identify high points in the landscape that are suitable for observation of surrounding land and may provide a point of alignment between known cultural sites and places, such locations are situated on a ridge top, ridge line or headland.

5. **Suitability for open campsite** - Important considerations for open campsites include aspect, level terrain, ridgeline plateaus or saddles, proximity to a source of fresh water (especially springs), and proximity to a particular food resource including in paleo periods.

6. **Nomination of traditional preferred access route** - Identification of a preferred pathway for movement, often along a ridge top, ridge line, or adjacent to watercourses.
7. Location for specific cultural practice - Locations with a higher probability for a specific cultural practice (e.g., ceremony, djurbihl, etc.) due to relationships with topographic or landscape features.

8. Proximity to a cultural known site - Strategic proximity to known cultural sites, for example, the nearby presence of recorded sites from AHIMS.

9. Presence of unique landform - Features such as an escarpment, cave, rock shelter, waterhole, waterfall, water source, or geologic outcrop; for a distance of up to 200m, above, below, or around the feature.
10. **Cultural exploitation of ancient landscapes** - Different climatic conditions in the past formed paleo-landscapes which can be identified as old stream channels, oxbow lakes, lagoons, swamps, or ancient sand dune systems resulting from sea level changes and coastal realignment.

![Ancient dune crest Cobaki Lake](Image1)

Source: Ian Fox

![Byron Bay c 1960 showing ancient paleo shorelines](Image2)

Source: Ian Fox
B3 Mapping outcomes

B3.1 Mapping layers

In consultation with the Aboriginal community mapping was further refined into two layers: Aboriginal place of heritage significance (known) and predictive.

Aboriginal place of heritage significance

The Aboriginal place of heritage significance (known) landscape layer incorporates:

- Sites registered on the AHIMS database;
- Sites that have been identified by the Community through knowledge and tradition;
- Damaged or destroyed sites in recognition of the continued significance to the Aboriginal people.

Locations of known ACH may be historic, contemporary, tangible, intangible, damaged or destroyed.

Of the approximately 340 mapped sites, almost one quarter (22%) have been destroyed. They are included as a record and to ensure their continued recognition in the cultural landscape. The destroyed sites have also been included in the known layer. As they were once part of a wider landscape there is a high probability they may be associated with cultural heritage in the vicinity. The character and landscape context of places and resources of significance to the Aboriginal culture and people has been seriously impacted and continues to be threatened by lack of understanding and by decisions which favour other competing values. As with all heritage, once the physical evidence of continuity of the traditional past to the present is lost it cannot be replaced.

Predictive

The predictive layer is developed on the high probability of Aboriginal cultural heritage presence based on meeting a minimum of three of the ten landscape mapping criteria.

The recommendations and actions of the management plan are premised on the management of Aboriginal cultural heritage based on the understanding and assessment requirements of the known and predictive landscape layers.

B3.2 Precautionary principle for unmapped land

Land which is not mapped as Aboriginal place of heritage significance (known) or predictive Aboriginal cultural heritage does not automatically mean there is no presence of Aboriginal cultural heritage and potential for Aboriginal cultural heritage remains. The legislative requirements for “harm” as discussed in Part D continue to apply to all land.

Similarly the mapping and guidelines of this management plan do not replace the legislative requirements and obligations, rather this management plan seeks to outline and highlight the legislative requirements, whilst providing a rigorous framework to assess and understand where higher risk of “harm” may occur.

As such, a precautionary principle applies in circumstances where doubt may exist about:

- the potential to impact to Aboriginal cultural heritage, and
- the nature and level of potential impact of a proposed activity or development.
B3.3 Mapping endorsement by the Aboriginal Advisory Committee

Following Aboriginal community consultation, the draft Mapping and associated database was presented to the Aboriginal Advisory Committee (AAC) as the representative committee of the wider Aboriginal community on 16 July 2013 for their endorsement. At this meeting it was recommended:

Resolution for the next AAC meeting to adopt the thematic history, mapping project and spreadsheet tabled on 16 July 2013.

The minutes of this meeting were endorsed by Tweed Shire Council at their meeting of 5 August 2013.

Given the significant time lapse between the endorsement of the first draft mapping and the finalisation of this management plan, the mapping was further reviewed and information updated during 2016/2017. Ian Fox & Associates were engaged to review the mapping.

B3.4 Referral role of Tweed/Byron Local Aboriginal Land Council

A key action arising from the mapping process and the within this Management Plan is the point of referral for any Aboriginal consultation.

This Management Plan uses the TBLALC is the first point referral body for all Aboriginal cultural heritage consultation. The TBLALC has a legislatively defined role to manage Aboriginal cultural heritage through the Aboriginal Land Rights Act, 1983. With this comes the management structure to respond to the legislative referral requirements arising from this Management Plan and the responsibility of consulting with the wider Aboriginal community.
Council’s over-arching aim is to build the level of understanding of Aboriginal cultural heritage values within the wider community and to minimise the impact on Aboriginal cultural heritage through the planning and development process through ensuring assessment appropriate to the level of significance and the proposed land use or development.

The application of the ACHMP and mapping requires further clarification and amendment to other planning policy, as follows:

**B4.1 The applicable LEP**

The known locations identified through this management plan and mapping meet the requirements of the applicable LEP definition of Aboriginal Place of Heritage Significance. An identified Aboriginal Place of Heritage Significance then triggers investigation, assessment and a 28 day notification period for Aboriginal community consultation under the requirements of LEP Clause 5.10(8), unless written authorisation of Council is provided under Clause 5.10(3) that development is minor in nature or maintenance. This is the appropriate assessment process for the known areas.

The premise of protection and management of ACH is to avoid harm (see discussion in Section D - Legislative framework). This clause of the applicable LEP provides the consultation, investigation and assessment trigger to consider if harm can be avoided. The assessment under Clause 5.10 (8) is the process for identifying ACH and assessing if harm can be avoided. Part C outlines the processes.

It is noted that a cultural assessment may reveal the need for an Aboriginal cultural heritage assessment compliant with the OEH guideline Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW (2011) and Aboriginal Cultural Heritage Consultation Requirements for Proponents, 2010 and an Aboriginal Heritage Impact Permit (AHIP) where harm cannot be avoided. It is further noted that this assessment has statutory consultation requirements and timeframes under the OEH Guidelines supporting the NPW Act.

This management plan also sets out the assessment and consultation recommendations and requirements for land mapped as predictive Aboriginal cultural heritage based on a risk matrix approach.

Under State policy and guidelines, it is optional to include the ACH mapping as an LEP layer in the applicable standard instrument LEP. Inclusion has the benefit of a clear trigger of Clause 5.10(8), however, also has the disadvantage of requiring a planning proposal process to amend the mapping within the LEP when required, (ie, when new sites are identified) thereby working against maintaining the currency of the mapping.

Alternatively the mapping may sit outside of the applicable LEP, within the Management Plan, and be triggered by clause 5.10(8) to the LEP where identified as Aboriginal Place of Heritage Significance. Clarity would then be required to address the predictive areas.

In order to support the application of the assessment and management framework of this management plan, an amendment will be required to the applicable local environmental plan to:

1. Clarify the mapped known ACH is, for the purpose of the LEP and the application of Clause 5.10(8) is an Aboriginal Place of Heritage Significance; and

2. Clarify the assessment and management requirements for the predictive ACH mapping layer.

A number of other clauses within the LEP make reference the need to consider Aboriginal cultural heritage; including the Exempt and complying provisions of Clauses 3.1, 3.2 and 3.3. Clause 3.3, however, uses the same undefined terminology of “high Aboriginal cultural significance” as used by the State Environmental Planning Policy (Exempt and Complying Development), the Code SEPP, as discussed following. Given this term is not defined or captured by the mapping, it is recommended this also be clarified to refer to Aboriginal Place of Heritage Significance, as the defined term.

Similarly Clause 7.2 Earthworks makes reference to the requirements of the NPW Act within the note. With the introduction of the mapping of Aboriginal place of heritage significance greater clarity should be provided by the mapping. It is recommended that sub-clause (3)(i) be amended to include, as a consideration before granting consent, Aboriginal Place of heritage significance.
Therefore the following actions are recommended:

**Recommendation 1:** The mapped “known” locations be identified as ‘Aboriginal Place of Heritage Significance’.

**Recommendation 2:** The mapped ‘predictive’ locations be identified as ‘Predictive Aboriginal cultural heritage’.

**Recommendation 3:** The ACH mapping layers not be included as a mapping layer of the LEP to enable the Aboriginal cultural heritage mapping to be kept current.

**Recommendation 4:** The LEP be amended to refer to the Council’s Aboriginal Cultural Heritage Management Plan (once adopted) and ‘Aboriginal Place of Heritage Significance’ mapping for the purpose of Clause 5.10(3) and refer to the Aboriginal Cultural Heritage Management Plan (once adopted) for assessment and management of the ‘Predictive Aboriginal cultural heritage’ areas.

**Recommendation 5:** The LEP Clause 3.3 Environmentally sensitive areas excluded, sub-clause (2)(g) be amended to refer to “Aboriginal Place of Heritage Significance” rather than “high Aboriginal cultural significance to provide consistency between the definitions of Clause 5.10 and the available definitions of the LEP and thus make the clause effective.

**Recommendation 6:** The LEP be amended to include Aboriginal cultural heritage as a consideration in Clause 7.2 Earthworks sub-clause (3)(i).

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**B4.2 Applicable State Environmental Planning Instruments (SEPPs)**

State Environmental Planning Policies (SEPPs) are developed by the state government to support and provide guidance to NSW Acts on a range of development and environmental matters. Each of the SEPPs addresses ACH in a slightly different manner. A number of SEPPs make reference to ACH “as identified in an environmental planning instrument”, via a range of definitions.

Key to the protection and management of Aboriginal cultural heritage is refining the types of development which may be undertaken without consent, as exempt development or as complying development. The following Table B1 provides discussion and recommendations for the purpose of clarifying the application of the mapping as it relates to the SEPP definitions and their appropriate application.

Many relevant SEPPs (other than those listed in the following Table B1) make either no reference to an environmental planning instrument (ie State Environmental Planning Policy No 52 - Farm Dams and Other Works in Land and Water Management Plan Areas, which excludes where there is an Aboriginal Object) or do not specifically address the consideration of Aboriginal cultural heritage (ie State Environmental Planning Policy No 36 - Manufactured Home Estates, State Environmental Planning Policy No 21 - Caravan Parks and State Environmental Planning Policy (Affordable Rental Housing) 2009).

In addition, the Schedules included within the Code SEPP outline the stop work requirements should archaeology or Aboriginal objects be found during the course of the works, aligning with the requirements of the NPW Act, however this does not extend to the requirements to avoid harm.

There is scope to collaborate within the DPE to establish suitable clarity and consistency to the definitions and requirements for consideration and assessment of ACH in the above SEPPs.

Notwithstanding, this Plan identifies known and predictive Aboriginal cultural heritage of the Tweed and will result in the registration to the AHIMS database of additional known sites. The legislative requirements to minimise “harm” to Aboriginal cultural heritage prevails and development subject to the above SEPPs will need to consider and assess potential harm under the Provisions of the National Parks and Wildlife Act.

In accordance with the discussion in the following Table B1 the following is recommended:

**Recommendation 7:** The LEP be amended to provide clarity that for the purpose of interpreting a number of SEPPs the definition of ‘Aboriginal Place of heritage significance’ is also taken to mean ‘high Aboriginal cultural significance’, ‘area or place of Aboriginal significance (or by similar description)’ and/or ‘a place of Aboriginal heritage significance’ or other similar term used to describe Aboriginal cultural heritage, including “environmentally sensitive area”
<table>
<thead>
<tr>
<th>State Environmental Planning Policy (SEPP)</th>
<th>Definition as related to ACH</th>
<th>Comments</th>
<th>Recommended application within this Management Plan and the applicable LEP</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Environmental Policy Exempt and Complying Development Code 2008 (Code SEPP)</td>
<td>Aboriginal cultural heritage is triggered by the definition of:</td>
<td>In order to exclude land subject to Aboriginal cultural heritage from the application of complying development and to require the appropriate assessment, the definition used within the SEPP should have a clear linkage to the definition within the LEP.</td>
<td>The applicable LEP to be amended to clarify that for the application of high Aboriginal cultural significance in the Code SEPP, this has the same meaning as Aboriginal Place of Heritage Significance (the known mapping layer).</td>
</tr>
<tr>
<td></td>
<td>Draft heritage conservation area means an area of land identified as a heritage conservation area or place of Aboriginal heritage significance in a local environmental plan that has been subject to community consultation, other than an area that was consulted on before 1 March 2006, but has not been included in a plan before 27 February 2009.</td>
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<td></td>
<td>Draft heritage item means a building, work, archeological site, tree, place or aboriginal object identified as a heritage item in a local environmental plan that has been subject to community consultation, other than an item that was consulted on before 1 March 2006, but has not been included in a plan before 27 February 2009.</td>
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<td>Heritage conservation area means an area of land identified as a heritage conservation area or a place of Aboriginal heritage significance, including any heritage items situated on or within that area, in an environmental planning instrument.</td>
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<tr>
<td></td>
<td>Heritage item means a building, work, archaeological site, tree, place or Aboriginal object identified as a heritage item in an environmental planning instrument.</td>
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<td></td>
<td>Environmentally sensitive area means any of the following:</td>
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<td>(g) land identified in this or any other environmental planning instrument (emphasis added) as being of high Aboriginal cultural significance or high biodiversity significance;</td>
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<tr>
<td>State Environmental Planning Policy (SEPP)</td>
<td>Definition as related to ACH</td>
<td>Comments</td>
<td>Recommended application within this Management Plan and the applicable LEP</td>
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<tr>
<td>State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007</td>
<td>Aboriginal cultural heritage is triggered by the definition of: Environmentally sensitive area of State significance which means: (e) land identified in an environmental planning instrument (emphasis added) as being of high Aboriginal cultural significance or high biodiversity significance,</td>
<td>As above</td>
<td>The applicable LEP to be amended to clarify that for the application of high Aboriginal cultural significance this has the same meaning as Aboriginal Place of Heritage Significance (the known mapping layer).</td>
</tr>
<tr>
<td>State Environmental Planning Policy State and Regional Development 2011</td>
<td>Aboriginal cultural heritage is triggered by the definition of: Environmentally sensitive area of State significance which means: (f) land identified in an environmental planning instrument (emphasis added) as being of high Aboriginal cultural significance or high biodiversity significance,</td>
<td>As above</td>
<td>The applicable LEP to be amended to clarify that for the application of high Aboriginal cultural significance this has the same meaning as Aboriginal Place of Heritage Significance (the known mapping layer).</td>
</tr>
<tr>
<td>State Environmental Planning Policy Infrastructure 2007</td>
<td>Aboriginal cultural heritage is triggered by the definition of: Heritage conservation area which means land identified as a heritage conservation area or place of Aboriginal significance (or by a similar description) in an environmental planning instrument (emphasis added) and local heritage item which means: (a) a place, building, work, relic, tree, archaeological site or Aboriginal object that is identified as a heritage item (or by a similar description) in a local or regional environmental plan, (emphasis added) or (b) an item of local heritage significance, as defined by the Heritage Act 1977, that is the subject of an interim heritage order in force under that Act or is listed as an item of local heritage significance on the State Heritage Inventory under that Act.</td>
<td>In order to exclude land subject to Aboriginal cultural heritage from the application of complying development and to require the appropriate assessment, the definition used within the SEPP should have a clear linkage to the definition within the LEP.</td>
<td>The SEPP makes provision to exclude exempt and complying development where there is place of Aboriginal significance but only where identified within an environmental planning instrument. The LEP however, uses the definition Aboriginal Place of Heritage Significance.</td>
</tr>
<tr>
<td><strong>State Environmental Planning Policy (SEPP)</strong></td>
<td><strong>Definition as related to ACH</strong></td>
<td><strong>Comments</strong></td>
<td><strong>Recommended application within this Management Plan and the applicable LEP</strong></td>
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</table>
| State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 | Aboriginal cultural heritage is triggered by the definition of: 
- *Aboriginal Object* which means any deposit, object or other material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of an area of New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains; 
- *Heritage conservation area* which means 
  - (a) land identified in another environmental planning instrument as a heritage conservation area and includes buildings, works, trees, archaeological sites, Aboriginal objects or places situated on or within that land, or 
  - (b) a place of architectural significance identified in another environmental planning instrument, or 
  - (c) a place of Aboriginal heritage significance identified in another environmental planning instrument (emphasis added). 
- *heritage item* which means a building, work, tree, archaeological site, Aboriginal object or place (which may or may not be situated on or within land that is a heritage conservation area) described as a heritage item in another environmental planning instrument. | In order to exclude land subject to Aboriginal cultural heritage from the application of complying development and to require the appropriate assessment, the definition used within the SEPP should have a clear linkage to the definition within the LEP. 
The SEPP makes provision to exclude exempt and complying development where there is place of Aboriginal heritage significance but only where identified within an environmental planning instrument. The LEP however, uses the definition Aboriginal Place of Heritage Significance. | The applicable LEP to be amended to clarify that for the application of Aboriginal heritage significance this has the same meaning as Aboriginal Place of Heritage Significance (the known mapping layer). |
B4.3 Identification on planning certificates

The Environmental Planning and Assessment Act, 1979, Section 10.7 (former s149) makes provision for identification of matters which apply to land through a planning certificate, generally sought upon sale or purchase of property. The identification of land which is subject to known Aboriginal cultural heritage is such a matter suitable for inclusion on the s10.7 certificate.

In order to provide the appropriate information for property owners, it is recommended that the Aboriginal Place of Heritage Significance mapping layer of known cultural heritage be included on the s10.79 planning certificate.

**Recommendation 8:** The Section 10.7 (former s149) planning certificate include land mapped as Aboriginal Place of Heritage Significance.
It is important to recognise and understand that Aboriginal objects do not occur in isolation across a landscape; they are tangible connecting evidence of how Aboriginal people settled, lived and used the land’s resources over vast periods of time.

Landscape characteristics greatly influence how Aboriginal people interacted (and continue to interact) with their surroundings. Therefore, understanding the geology, type of terrain and its natural resources is essential to understanding the nature and complexity of a cultural landscape.

Traditional Aboriginal people living and moving within their country maintained a preference for certain types of landforms and resource locations which can still be identified in contemporary landscapes.

The OEH Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW, 2010 identifies the following landscape criteria as important in the assessment of Aboriginal cultural heritage:

- within 200m of waters; or
- located on a sand dune system; or
- located on a ridgetop, ridgeline or headland; or
- located within 200m below or above a cliff face; or
- within 20m of, or in a cave, rock shelter or a cave mouth.

Additionally, the following landscape typologies provide a summary of the relationship between typical landscape characteristics of the Tweed Shire and the potential for Aboriginal archaeological sites. Understanding the landscapes of the Tweed can assist in recognising the potential for Aboriginal cultural heritage values and identifying specific locations which require more thorough and higher levels of assessment.
B5.1 Riparian landscapes

Riparian landscapes which occur along riverine corridors and larger stream watercourses provide rich resource gathering opportunities for selected species of plants and animals confined to such environments. Additionally, watercourses can expose large areas of underlying geology which can provide opportunities for collecting raw material for stone tool construction or suitable rock exposures that were utilised for shaping tools (grinding grooves).

Over time, favoured and chosen areas were visited regularly, resulting in accumulations of artefacts at adjacent campsites and tool construction locations. Stratified cultural deposits can be located on creek terraces, or within sediment accumulations from cumulative flood events where artefacts from an upstream campsite are transported and redeposited downstream.

Elevated edges of lakes, lagoons and swamps have a higher probability for campsites that were especially selected when exploiting available aquatic food sources.

Any natural springs which occur in the landscape are also important because they were the preferred source for fresh drinking water. Traditional cultural practices required that water be taken from the source wherever possible and this would be from springs usually located at the head of gullies or at a point of geological interface (two different rock layers where the lower layer is more impervious to the passage or storage of groundwater). Water for consumption was generally not sourced from large streams and rivers.

*Byrill Creek riparian landscapes (left and right)*

*Source: Ian Fox*
B5.2 Estuarine landscapes

Estuarine landscapes are generally rich resource areas with an abundance of shellfish species that were readily harvested at low tide. They may also contain built structures, such as fish traps, which relied on cycles of tidal inundation to pen selected food resource species.

Regular harvesting of estuarine resources has resulted in vast accumulations of shellfish remains (middens), often positioned in close proximity to the shorelines. Large stratified middens can provide a record over time of resource preference, availability, and can also contain artefacts and human remains. (Many middens were used as burial locations, the consequence of which often resulted in their discontinued use and relocation to an alternative site nearby).

Associated with middens are evidence of numerous campsites which contain fire hearths and artefacts (tools). It is important to recognise that the remaining physical evidence of these sites within the landscape can be significant distances from today’s existing shorelines, as past climate changes and the dynamic nature of estuaries may mask their actual and expected locations.
B5.3 Coastal landscapes (dunes and headlands)

These areas contain extensive cultural resources and are always associated with numerous archaeological sites, including open campsites, middens, burials, ceremonial locations and traditional story places.

The coast is a place of significant environmental variability. Paleo coastline landscapes (fossil beaches) are found far inland of where the coastline is today. They can be direct evidence of an important climatic event, about 5 to 3.5 thousand years ago, known as the mid-Holocene High-stand, when sea levels were about 1 to 1.5 metres higher. Other evidence of earlier paleo coastal landscapes have been found inland as far as Dulguigin, Eviron, Stotts Island, Cobaki Lakes, Chinderah, Duranbah, Cudgen Lake, Pottsville and Wooyung. All of them contain cultural sites associated with the ancient shorelines.

Midden deposits and associated campsites with artefact scatters may occur within more recently formed coastal dune systems (Holocene dune systems) that have not been impacted by mineral sand mining or sand extraction. However, they can also occur at depths down to several metres within far older coastal deposits (Pleistocene dune systems), for example at Cobaki.

Headlands hold additional cultural significance as story places with ceremonial significance, for example Fingal, and as tool making sites with observational opportunities, Hastings Point and Cabarita.
B5.4 Upper catchment and undulating landscapes

Cultural sites are also associated with ridge crests, plateaus and ridge saddles which form a natural watershed with connecting routes between the Tweed River floodplain and upper catchment watercourses. They provide logical and preferred travelling routes between the coast and the inland mountainous areas of the Border Ranges. Ridgeline travel was preferred for not only the regular observational opportunities afforded across the whole landscape, but also because vegetation is generally less dense along a ridgeline allowing greater freedom of movement.

Terminating ridgelines and toe slopes in undulating landscapes were favoured locations for camping, particularly those with a northerly aspect (warmer) and access to nearby natural water sources (springs).

Any geological exposures (escarpment) in these landscapes is likely to be significant, both as a resource for suitable tool making rock types, but also for habitation if rock shelters are present. High energy upper catchment streams are also more likely to expose sandstone geologies in creek beds where tool making grinding grooves are found.

Ceremonial sites are often associated with unique landforms such as waterfalls, which are usually found in upper catchments and physical evidence of regular visitation may be present on level ground adjacent or near to the particular feature.
B5.5 Elevated and mountains landscapes

A significant aspect of traditional Aboriginal belief is the tangible connection and spiritual values attributed to elevated topographic features within a landscape. For Tweed Shire, the most obvious feature is Wollumbin/Mt Warning, but the surrounding lesser peaks and the elevated summits of the adjacent Border Ranges provide a rich cultural identity evidenced with the retention of many original names. Each feature has a cultural story which is interwoven with values and beliefs retained in the Aboriginal community today.

Additionally, upland and mountainous landscapes provided unique plant and animal resources that were (and remain) restricted to a defined geographical area. Geologically, this broad area is known as the Lamington Volcanics, a name which is indicative of the landscapes origins. Volcanic features such as The Pinnacle and Tomewin Rocks retain their significance as ceremonial and story locations. The extensive escarpment areas of the Border Ranges and Mt Jerusalem National Park, for example, also contain dozens of rock shelters and caves that retain evidence of regular seasonal occupation.

B5.6 Natural threats to Aboriginal cultural heritage

Whilst development is a major threat to Aboriginal cultural heritage, natural threats to Aboriginal cultural landscapes include the following:

- mass movement of soil / land surface;
- inundation (flood and SLR);
- uncontrolled wildfire / bushfire;
- introduction of invasive weed and pest species;
- bioturbation (translocation of cultural objects by natural biological means); and
- natural weathering and erosion processes on rock surfaces and beaches / dunes.

To greater and lesser extents, all of the above can have a cumulative impact upon Aboriginal cultural sites which remain within the landscape. Appropriate management initiatives to conserve and protect Aboriginal cultural heritage should include consideration for each of the above identified threats.
Tweed Coastal landscapes - Top to bottom  Fingal Head, Hastings Point and Pottsville
(Source Tweed Shire Council imagery)
B6 Recommendations and actions arising from the ACH assessment, mapping and Thematic History

Arising from the development of the Thematic History and the identification of known and predictive Aboriginal cultural heritage through the mapping methodology, and the legislative framework, the following recommendations inform the required framework for the appropriate assessment and management of Aboriginal cultural heritage values within the Tweed Shire:

**Note:** With regard to timeframes and priorities, Immediate for statutory and/or essential elements are within 1-3 years and indicated a high priority; medium is 3-6 years and a medium priority; and longer term is beyond 6 years indicating a lower priority as resources are available.

**Delivery Partners:** TSC - Tweed Shire Council; OEH - Office of Environment and Heritage; DPE - Department of Planning and Environment; HB - Heritage Branch (OEH); TBLALC - Tweed Byron Local Aboriginal Land Council; AAC - TSC Aboriginal Advisory Committee; HR - TSC Human Resources; CCS - TSC Community and Cultural Services; PR - TSC Planning and Regulation; ENG - TSC Engineering; CNR - TSC Community and Natural Resources; CS - TSC Corporate Services.

### Table B2 Recommendations for the Management Plan

<table>
<thead>
<tr>
<th>No.</th>
<th>Recommendation</th>
<th>Risk of inaction</th>
<th>Likelihood of risk</th>
<th>Priority / timeframe</th>
<th>Delivery partners</th>
<th>Future Budget Impacts</th>
<th>Comments, Actions, Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Development of an Aboriginal cultural heritage Commitment Statement / Policy</td>
<td>Poor Council commitment to, and understanding of the importance and requirements of management of Aboriginal cultural heritage.</td>
<td>High</td>
<td>Immediate</td>
<td>TBLALC, AAC</td>
<td>Nil - part of this project</td>
<td>Aboriginal Statement of commitment drafted as part of this Plan and being incorporated into an updated Aboriginal Policy.</td>
</tr>
<tr>
<td>2</td>
<td>Review of the MOU for ongoing management</td>
<td>Non-compliance with potentially outdated MOU requirements.</td>
<td>High</td>
<td>Immediate</td>
<td>TBLALC, AAC</td>
<td>Nil - part of this project</td>
<td>Originally drafted for the purpose of this project - Appendix 3. Replaced by the Aboriginal Statement of Commitment for ongoing implementation in the introduction of this Plan.</td>
</tr>
<tr>
<td>No.</td>
<td>Recommendation</td>
<td>Risk of inaction</td>
<td>Likelihood of risk</td>
<td>Priority / timeframe</td>
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<tr>
<td>3</td>
<td>Review of current procedures for the consideration and assessment of ACH</td>
<td>Inability to incorporate/update current procedures into the management plan.</td>
<td>Low</td>
<td>Immediate</td>
<td>TSC internal</td>
<td>Nil - part of this project</td>
<td>Revised as part of finalising the draft ACHMP. Proposed procedures have been tested on live examples during the development of the ACHMP.</td>
</tr>
<tr>
<td>4</td>
<td>Review of SI LEP definitions, mapping and provisions for management as identified in Part D</td>
<td>Management plan may not be effective in the legislative context and then may not deliver the required actions.</td>
<td>High</td>
<td>Immediate</td>
<td>OEH, DPE ongoing</td>
<td>Nil - part of this project</td>
<td>Review undertaken and recommendations made as part of finalising the draft ACHMP.</td>
</tr>
<tr>
<td>5</td>
<td>Ensure the ‘known’ mapping is recognised under Clause 5.10(8) of the applicable LEP</td>
<td>Inability to trigger the appropriate level of cultural assessment.</td>
<td>High</td>
<td>Immediate</td>
<td>OEH, DPE ongoing</td>
<td>Nil - part of this project</td>
<td>Proposed actions included as part as part of finalising the draft ACHMP. May also require future amendment to the LEPs.</td>
</tr>
<tr>
<td>6</td>
<td>Review interaction of SI LEP provisions with other planning legislation and policy, ie CODE SEPP, Infrastructure SEPP and others as identified in Parts C and D</td>
<td>Management plan may not be effective in the legislative context and then may not deliver the required actions.</td>
<td>High</td>
<td>Immediate</td>
<td>OEH, DPE ongoing</td>
<td>Nil - part of this project</td>
<td>Review undertaken and recommendations made as part of finalising the draft ACHMP. Advocate with DPE.</td>
</tr>
<tr>
<td>7</td>
<td>Liaise with the State Govt agencies for the standardisation of Aboriginal definitions across the suite of SEPPs and other relevant Planning Policy as identified in Parts C and D</td>
<td>Lack of a clear line of sight for the interpretation and application of the ACH management plan and potential harm of ACH.</td>
<td>High</td>
<td>Immediate</td>
<td>OEH, DPE ongoing</td>
<td>Nil - part of this project</td>
<td>Commenced as part of finalising the draft ACHMP and will be ongoing. Advocate with DPE.</td>
</tr>
<tr>
<td>No.</td>
<td>Recommendation</td>
<td>Risk of inaction</td>
<td>Likelihood of risk</td>
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<td>8</td>
<td>Develop a standardised interpretation of definitions, clauses and mapping standards for proceeding with ‘known’ and ‘predictive’ mapping layers as identified in Parts C and D</td>
<td>Management plan may not be effective in the legislative context and then may not deliver the required actions.</td>
<td>High</td>
<td>Immediate</td>
<td>OEH, DPE</td>
<td>ongoing</td>
<td>Nil - part of this project. Review undertaken and recommendations made as part of finalising the draft ACHMP. Advocate with DPE.</td>
</tr>
<tr>
<td>9</td>
<td>Understand and address the resourcing implications of the ACHMP on TSC</td>
<td>Implementation of the management plan may overload internal resources and slow down development assessment processes.</td>
<td>High</td>
<td>Immediate</td>
<td>OEH, DPE, HR</td>
<td>Moderate - ongoing</td>
<td>Recommendations made to be followed up as part of the ongoing implementation and monitoring.</td>
</tr>
<tr>
<td>10</td>
<td>Understand and facilitate assistance of the resourcing implications of the ACHMP on the TBLALC and AAC</td>
<td>Implementation of the management plan may overload TBLALC / AAC resources and thereby delay the assessment of development applications.</td>
<td>High</td>
<td>Immediate</td>
<td>TSC, TBLALC, AAC, OEH</td>
<td>Low - ongoing</td>
<td>Liaison has been ongoing throughout the development of the ACHMP on the resourcing Implications of the Plan. Facilitation, mentoring and support to the TBLALC will continue through implementation.</td>
</tr>
<tr>
<td>11</td>
<td>Develop a service agreement between TSC and TBLALC for the assessment, management and referral of ACH</td>
<td>Management approach will be adhoc without a defined framework.</td>
<td>High</td>
<td>Immediate</td>
<td>TSC, TBLALC</td>
<td>Low - short term</td>
<td>To be developed as part of the ongoing implementation.</td>
</tr>
</tbody>
</table>

**PART B - MAPPING**
<table>
<thead>
<tr>
<th>No.</th>
<th>Recommendation</th>
<th>Risk of inaction</th>
<th>Likelihood of risk</th>
<th>Priority / timeframe</th>
<th>Delivery partners</th>
<th>Future Budget Impacts</th>
<th>Comments, Actions, Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>12</td>
<td>Amendment to the Tweed LEPs under the SI LEP template (LEP 2014 and Tweed City Centre LEP 2012) to effect the Management plan actions and recommendations</td>
<td>No legal trigger for the consideration of the ACH mapping and Management Plan Actions.</td>
<td>High</td>
<td>Immediate</td>
<td>DPE, OEH</td>
<td>Low - short term</td>
<td>Planning proposal to be prepared to amend the LEP to be commenced subject to the adoption of the ACHMP by Council. Advocate with DPE.</td>
</tr>
<tr>
<td>13</td>
<td>Development of ACH assessment procedures for internal works and development assessment</td>
<td>Poor understanding of the required procedures to ensure appropriate management of ACH which complies with legislative requirements, and thereby risk to ACH management.</td>
<td>High</td>
<td>Immediate</td>
<td>PR, ENG, CNR, DPE, OEH</td>
<td>Nil - part of this project</td>
<td>Undertaken as part of finalising the draft ACHMP flow paths - checklists provided in Appendix 5</td>
</tr>
<tr>
<td>14</td>
<td>Review and update development assessment guidelines, report templates and processes, including Planning Proposal Guideline</td>
<td>Systems and processes will not accurately reflect the required procedures and thereby risk to ACH management.</td>
<td>High</td>
<td>Immediate</td>
<td>PR, ENG, CNR, CS</td>
<td>Low - short term</td>
<td>Preliminary review undertaken as part of finalising the draft ACHMP. All templates and guidelines to be updated following adoption and as part of implementation.</td>
</tr>
<tr>
<td>15</td>
<td>Integration with the E-Planning framework</td>
<td>Systems and processes will not accurately reflect the required procedures nor acknowledge the body of work undertaken and thereby risk to ACH management.</td>
<td>High</td>
<td>Medium</td>
<td>DPE, PR, OEH</td>
<td>Low - ongoing</td>
<td>To be progressed with the E-planning platform and project and ongoing.</td>
</tr>
<tr>
<td>No.</td>
<td>Recommendation</td>
<td>Risk of inaction</td>
<td>Likelihood of risk</td>
<td>Priority / timeframe</td>
<td>Delivery partners</td>
<td>Future Budget Impacts</td>
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<tr>
<td>16</td>
<td>Development of mapping procedures and processes for maintaining currency and sensitivity of mapping data in hard and/or electronic versions</td>
<td>Management plan will not be referencing the current data and thereby risk to ACH management.</td>
<td>High</td>
<td>Immediate</td>
<td>TBLALC, AAC, OEH, PR, CS</td>
<td>Low - ongoing role of ACH Planner</td>
<td>In Appendix 8 - Mapping and Monitoring Procedures</td>
</tr>
<tr>
<td>17</td>
<td>Development of mapping procedures for the sharing of new mapping information (currency of information) between TSC and TBLALC</td>
<td>Management plan will not be referencing the current data and thereby risk to ACH management. Without formalisation of the process, this relies on building networks and relationships only.</td>
<td>Medium</td>
<td>Immediate</td>
<td>TBLALC, AAC, PR, CS</td>
<td>Low - ongoing</td>
<td>In Appendix 8 - Mapping and Monitoring Procedures</td>
</tr>
<tr>
<td>18</td>
<td>Facilitate and assist the TBLALC with resourcing</td>
<td>Implementation of the management plan may overload TBLALC resources and delay assessment times.</td>
<td>High</td>
<td>Immediate</td>
<td>TSC, TBLALC, AAC, OEH</td>
<td>Low - ongoing</td>
<td>Liaison has been ongoing throughout the development of the ACHMP. Facilitation, mentoring and support to the TBLALC will continue through implementation.</td>
</tr>
<tr>
<td>19</td>
<td>Training of key staff on the implementation and use of the ACHMP</td>
<td>Poor understanding of ACH, procedures and legislative requirements thereby risk to ACH management.</td>
<td>High</td>
<td>Immediate-ongoing</td>
<td>HR, PR, CCS, TBLALC, AAC</td>
<td>Moderate - ongoing</td>
<td>Will be an ongoing action.</td>
</tr>
<tr>
<td>20</td>
<td>Development of TSC Aboriginal Cultural Heritage Mitigation Measures - Standard Working Procedures</td>
<td>Potential risk of harm to ACH through routine management and maintenance works. Potential prosecution should there be harm.</td>
<td>High</td>
<td>Immediate</td>
<td>TSC, OEH, ENG, CNR</td>
<td>Low - part of project</td>
<td>Drafted as part of this project - Appendix 7</td>
</tr>
<tr>
<td>No.</td>
<td>Recommendation</td>
<td>Risk of inaction</td>
<td>Likelihood of risk</td>
<td>Priority / timeframe</td>
<td>Delivery partners</td>
<td>Future Budget Impacts</td>
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<tr>
<td>21</td>
<td>Development of standard conditions of consent</td>
<td>Inability, or adhoc approach to placing appropriate requirements on development consents.</td>
<td>High</td>
<td>Immediate</td>
<td>PR, OEH</td>
<td>Low - part of project</td>
<td>Drafted as part of this project - Appendix 6 and to be refined through the DA process</td>
</tr>
<tr>
<td>22</td>
<td>Process for record keeping of ACH assessments as a resource</td>
<td>Loss of potential knowledge and valuable resource</td>
<td>Medium</td>
<td>Medium</td>
<td>PR, TBLALC, OEH</td>
<td>Low - ongoing</td>
<td>To be developed along with review of templates, guidelines and monitoring processes.</td>
</tr>
<tr>
<td>23</td>
<td>Registration of known sites revealed in the ACHMP</td>
<td>Legislative requirement which, if not undertaken, could result in prosecution.</td>
<td>High</td>
<td>Immediate - ongoing</td>
<td>Consultants, OEH, TBLALC, AAC</td>
<td>Moderate - unfunded</td>
<td>Currently being undertaken with the assistance of the OEH and ongoing.</td>
</tr>
<tr>
<td>24</td>
<td>Ongoing registration of sites as ACH is updated in items 15 and 16</td>
<td>Legislative requirement which, if not undertaken, could result in prosecution.</td>
<td>High</td>
<td>Immediate / ongoing</td>
<td>Consultants, OEH, TBLALC, AAC</td>
<td>Moderate - unfunded</td>
<td>Procedures in Appendix 8 - Mapping and Monitoring Procedures.</td>
</tr>
<tr>
<td>25</td>
<td>Incorporate Cultural awareness training into Council wide induction training</td>
<td>Poor understanding of ACH, and cultural awareness generally.</td>
<td>High</td>
<td>Immediate</td>
<td>CS, TBLALC, AAC, OEH</td>
<td>Moderate / ongoing</td>
<td>Has commenced as part of the Reconciliation Action Plan work. To be further progresses as part of the ongoing implementation actions of this Plan.</td>
</tr>
<tr>
<td>26</td>
<td>Incorporate Cultural awareness training into new Councillor training</td>
<td>Poor understanding of ACH, cultural awareness generally, procedures and legislative requirements, thereby risk to ACH management.</td>
<td>High</td>
<td>Immediate</td>
<td>CS, TBLALC, AAC, OEH</td>
<td>Moderate / ongoing</td>
<td></td>
</tr>
<tr>
<td>No.</td>
<td>Recommendation</td>
<td>Risk of inaction</td>
<td>Likelihood of risk</td>
<td>Priority / timeframe</td>
<td>Delivery partners</td>
<td>Future Budget Impacts</td>
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<tr>
<td>27</td>
<td>Develop and run (annually) ACH training at appropriate levels for staff requirements as follows:</td>
<td>Cultural awareness training, management and assessment for Executive and Managers&lt;br&gt;ACH management and assessment requirements for internal works and development assessment&lt;br&gt;ACH awareness, identification and management processes for outdoor and works staff</td>
<td>Poor understanding of ACH, procedures and legislative requirements thereby risk to ACH management. Poor understanding of ACH, procedures and legislative requirements thereby risk to ACH management. Poor understanding of ACH, procedures and legislative requirements thereby risk to ACH management.</td>
<td>High&lt;br&gt;High&lt;br&gt;High</td>
<td>Immediate&lt;br&gt;Immediate&lt;br&gt;Immediate</td>
<td>CS, TBLALC, AAC, OEH&lt;br&gt;CS, TBLALC, AAC, OEH, PR&lt;br&gt;CS, TBLALC, AAC, OEH, ENG, CNR</td>
<td>Moderate - ongoing&lt;br&gt;Moderate - ongoing&lt;br&gt;Moderate - ongoing</td>
</tr>
<tr>
<td>28</td>
<td>Creation of a Aboriginal Cultural Heritage / Planning Officer position(s) to liaise with the community and applicants and manage the ACH management and assessment program</td>
<td>Inability of current staff resources and skills to manage the implementation of the ACHMP and thereby risk to ACH management and risk of prosecution.</td>
<td>High</td>
<td>Immediate</td>
<td>TSC</td>
<td>Moderate - ongoing</td>
<td>Recommendations made to be followed up as part of the ongoing implementation.</td>
</tr>
</tbody>
</table>

**Promotion and engagement**

<table>
<thead>
<tr>
<th>No.</th>
<th>Recommendation</th>
<th>Risk of inaction</th>
<th>Likelihood of risk</th>
<th>Priority / timeframe</th>
<th>Delivery partners</th>
<th>Future Budget Impacts</th>
<th>Comments, Actions, Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>29</td>
<td>Educatve awareness campaign for the Tweed Shire community and the development industry</td>
<td>Lack of appreciation of ACH and poor understanding of legislative requirements.</td>
<td>High</td>
<td>Immediate - ongoing</td>
<td>PR, TBLALC, AAC, ACH, Consultant, OEH</td>
<td>Low - ongoing</td>
<td>Will commence through the exhibition process of this ACHMP via fact sheets and support information and ongoing.</td>
</tr>
<tr>
<td>30</td>
<td>Encourage the ongoing development of the Thematic History with the Aboriginal community</td>
<td>Missed opportunity to expand knowledge and understanding.</td>
<td>Moderate</td>
<td>Medium - ongoing</td>
<td>TSC, OEH, HB</td>
<td>TBLALC</td>
<td>Support TBLALC</td>
</tr>
<tr>
<td>No.</td>
<td>Recommendation</td>
<td>Risk of inaction</td>
<td>Likelihood of risk</td>
<td>Priority / timeframe</td>
<td>Delivery partners</td>
<td>Future Budget Impacts</td>
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</tr>
<tr>
<td>31</td>
<td>Encourage the promotion of oral history with the Aboriginal community</td>
<td>Missed opportunity to expand knowledge and understanding.</td>
<td>Moderate</td>
<td>Medium - ongoing</td>
<td>TSC, OEH, HB</td>
<td>TBLALC</td>
<td>Support TBLALC</td>
</tr>
<tr>
<td>32</td>
<td>Capacity building of the Aboriginal community for the management of ACH</td>
<td>Poor implementation of the management plan and delays to development timeframes.</td>
<td>High</td>
<td>Immediate - ongoing</td>
<td>TSC, OEH, State Land Council</td>
<td>TBLALC</td>
<td>Support TBLALC</td>
</tr>
<tr>
<td>33</td>
<td>Set up an ongoing mapping review process to ensure currency of the information</td>
<td>Data becomes stagnant and is not kept current.</td>
<td>High</td>
<td>Immediate</td>
<td>TSC TBLALC, AAC</td>
<td>Moderate - ongoing</td>
<td>Procedures in Appendix 8 - Mapping and Monitoring Procedures</td>
</tr>
<tr>
<td>34</td>
<td>Set up project monitoring and review process to ensure minimisation of delays and monitor the effectiveness of the ACHMP</td>
<td>No ability to evaluate the implication of the ACHMP requirements in the industry or to monitor the effectiveness of the ACH management plan and actions.</td>
<td>High</td>
<td>Immediate</td>
<td>TSC, TBLALC, AAC, OEH</td>
<td>Moderate - ongoing</td>
<td>Recommendations made to be followed up as part of the ongoing implementation.</td>
</tr>
<tr>
<td>35</td>
<td>Develop a strategy to empower the Aboriginal community as custodians partnering (with TSC as the consent authority) in the management of ACH</td>
<td>Missed opportunity to capacity build knowledge and skills within the Aboriginal community and will continue to burden the statutory role of TSC.</td>
<td>High</td>
<td>Medium</td>
<td>TSC, TBLALC, AAC, OEH, State Land Council</td>
<td>Moderate - initial</td>
<td>Will rely on (and support) the draft stand alone ACH legislation currently being prepared by OEH and ongoing partnerships with the Aboriginal community and the North Coast Regional Plan. Ongoing as part of the implementation of this Plan and the Statement of Commitment.</td>
</tr>
<tr>
<td>C</td>
<td>Consultation, assessment and approvals</td>
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<tr>
<td>A</td>
<td>Aboriginal cultural heritage - an introduction</td>
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</tr>
<tr>
<td>B</td>
<td>Aboriginal cultural heritage mapping</td>
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<tr>
<td>C</td>
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<tr>
<td>D</td>
<td>Understanding the current legislative context</td>
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<tr>
<td>E</td>
<td>Appendices</td>
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</tbody>
</table>
C1  Aboriginal community consultation

C1.1  Sensitivity protocol

Aboriginal sites are often imbued with spiritual significance or are fragile and are sometimes subject to deliberate destruction. Therefore, revealing the location and/or details of some Aboriginal sites can be subject to cultural sensitivity and/or may cause distress to Aboriginal people. Information will only be released subject to the authorisation of the Aboriginal community, through the TBLALC.

Finds of Aboriginal objects and/or places are required to be notified to the OEH as soon as practicable and are generally registered to the Aboriginal Heritage Information Management System (AHIMS) under section 89A of the NPW Act. This project has resulted in the identification of many additional Aboriginal sites which are in the process of being registered, increasing the knowledge and reflecting the significance of the Aboriginal people, past and current, of the Tweed.

Notwithstanding, any documentation illustrating or describing the location(s) of Aboriginal cultural sites, objects or places should not be published where the Aboriginal people request non-disclosure of the site information.

In these instances, and when advised, it is sufficient to acknowledge the presence of an Aboriginal cultural object(s) or place(s) without including further detail of the nature of the object or place.

This sensitivity protocol is to apply to all forms of development and respects traditional Aboriginal beliefs that certain sites and locations remain culturally confidential.

C1.2  Aboriginal community consultation / contact details

Consultation with the Aboriginal community should be open and honest with the aim of two way conversation for both parties to understand the type and scale of development proposed as well as understanding the Aboriginal cultural knowledge relevant to the project area. Effective consultation with the Aboriginal community is respectful and:

- should occur in the early stages of project or development planning;
- involves a shared understanding of how the Aboriginal knowledge may be accurately reflected to inform the project/development design or decision making processes and timeframes;
- should show how the information provided by the Aboriginal people contributed to the final outcome; and
- adherence to strict cultural restrictions (ie men’s business should only be discussed with men, and women’s business with women, avoiding significant cultural calendar events, such as NAIDOC).

This Plan requires consultation with the Aboriginal community when considering and assessing any potential impact of development or works within the mapped Aboriginal place of heritage significance and may require consultation on other matters, information and sourcing of Aboriginal Sites Officers.

The key Aboriginal Community first point of contact for the Bundjalung people is through the Tweed/Byron Local Aboriginal Land Council (TBLALC). The TBLALC has the responsibility under the ALR Act to take action to protect Aboriginal cultural heritage and promote the awareness within the Council’s area and will represent and liaise with the wider Aboriginal community. The TBLALC will provide the appropriate and timely feedback on your course of action and contact details for any relevant community groups or representatives.

Address: 21/25 Ourimbah Road,
          Tweed Heads NSW 2485
Postal Address: PO Box 6967 Tweed Heads South
               NSW 2486
Phone: 07 5536 1763
Fax: 07 5536 9832
Email: admin@tblalc.com
Website: www.tblalc.com (being developed)
**C1.3 Consultation requirements**

The level of consultation required varies proportionally with the level of cultural assessment required to avoid or to justify harm. Where harm cannot be avoided statutory consultation requirements apply and must be met.

The following (Table C1) is provided as a reference summary of the appropriate level of consultation required:

<table>
<thead>
<tr>
<th>Action</th>
<th>Scale of Assessment</th>
<th>Who may undertake the assessment</th>
<th>Aboriginal community consultation requirements currently</th>
<th>Statutory requirement and/or reference material</th>
</tr>
</thead>
<tbody>
<tr>
<td>Due diligence</td>
<td>Desktop review of information</td>
<td>A person with sufficient knowledge and understanding of the legislative requirements</td>
<td><strong>Recommended</strong> to inform any intangible cultural values</td>
<td>May be a considered a defence against prosecution for harm</td>
</tr>
</tbody>
</table>
| Avoiding or justifying harm to Aboriginal cultural heritage | Investigation, assessment and documentation that harm can be avoided | Suitably qualified or experience archaeologist, with expertise in Aboriginal cultural heritage | **Required** to inform any intangible and tangible cultural values and to assist with site survey and knowledge.  
- May include a request for sites officer;  
- May include request for cultural information | May be a considered a defence against prosecution for harm |
| If test excavation is required | Suitably qualified or experienced archaeologist, with expertise in Aboriginal cultural heritage as per the OEH Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW, 2010 | **Statutory** consultation is required for:  
- Sampling strategy (to be included in the final report) - minimum;  
- Notification - minimum 14 days prior to commencement of test excavations; | Section 80C(6) of the NPW Regulation 2009 and as permitted under the OEH Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW, 2010 (Requirement 16) |

**Note:** The Aboriginal community are consulted to provide cultural information. Planning or legislative advice or information should be sought from Council or a Planning or Heritage expert/consultant.

For reference and use, the the wider Aboriginal Groups and their contacts within the Tweed Shire are provided in Appendix 4.
<table>
<thead>
<tr>
<th>Action</th>
<th>Scale of Assessment</th>
<th>Who may undertake the assessment</th>
<th>Aboriginal community consultation requirements currently</th>
<th>Statutory requirement and/or reference material</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Investigation, assessment and documentation where harm cannot be avoided</td>
<td>Suitably qualified or experienced archaeologist, with expertise in Aboriginal cultural heritage as per the OEH Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW, 2010</td>
<td><strong>Statutory</strong> consultation is required for:</td>
<td>Section 80C of the NPW Regulation.</td>
</tr>
<tr>
<td></td>
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<td></td>
<td>• Notification of proposal and call for interested (registered) parties (minimum 14 days);</td>
<td>OEH Aboriginal Cultural Heritage Consultation Requirements for Proponents, 2010</td>
</tr>
<tr>
<td></td>
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<td></td>
<td>• Review of methodology and presentation of information;</td>
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<td></td>
<td>• Gathering information and site visits (minimum 28 days);</td>
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<td></td>
<td>• Review of draft Aboriginal heritage assessment report (minimum 28 days);</td>
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<td></td>
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<td></td>
<td>• Final report and AHIP (minimum 14 days)</td>
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<tr>
<td>AHIP</td>
<td>Permit to harm</td>
<td>Suitably qualified or experienced archaeologist, with expertise in Aboriginal cultural heritage as per the OEH Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW, 2010</td>
<td><strong>Statutory</strong> consultation is required for:</td>
<td>Section 80C of the NPW Regulation 2009.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>• Notification of proposal and call for interested (registered) parties (minimum 14 days);</td>
<td>OEH Aboriginal Cultural Heritage Consultation Requirements for Proponents, 2010</td>
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<td>• Gathering information and site visits (minimum 28 days);</td>
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<td>• Review of draft Aboriginal heritage assessment report (minimum 28 days);</td>
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<td></td>
<td></td>
<td></td>
<td>• Final report and AHIP (minimum 14 days)</td>
<td></td>
</tr>
</tbody>
</table>
C2 Key actions used within this plan

This section provides the guidance on what type and level of assessment pathway is required for a range of development types as they relate to the layers of the ACH mapping. A number of key actions and assessments are required throughout this part and are explained below.

C2.1 AHIMS search

A first key step in any assessment process is a search of the Aboriginal Heritage Information Management System (AHIMS) database. A basic search is free, however does require a login. A more detailed search, which has a cost, may also be undertaken. An AHIMS search is undertaken online through the NSW Office of Environment and Heritage (OEH) website. The applicant receives a written report.

As a minimum a basic search is required. This should be current and no older than 12 months. However, it is recommended a new search be undertaken for any proposal to ensure the currency of the registered sites information.

The search should be undertaken considering the landscape context, that is, it may not be sufficient to search a single property and the search must apply to the entire property. A buffer of 100m minimum is to be applied to the search request to capture the entire property and the surrounding landscape context. Larger proposals should apply a one kilometre buffer.

C2.2 Exercise due diligence

The NPW Act provides that a person who exercises due diligence in determining that their actions will not harm Aboriginal objects has a defence against prosecution for the strict liability offence if they later unknowingly harm an object without an AHIP. It is important to note that the due diligence is not an Aboriginal cultural heritage assessment, rather it is a defence against prosecution of harm.

C2.3 Avoiding or justifying harm to Aboriginal cultural heritage

Aboriginal cultural heritage assessment is a general term used to describe the processes undertaken to assess the potential for harm Aboriginal cultural heritage values and to clearly identify those impacts that are avoidable and those that are not.

The process comprises a sliding scale of investigation and assessment to firstly determine the likelihood of Aboriginal cultural heritage value; the location and extent of any cultural heritage objects or place; potential for harm to those values; whether potential harm can be avoided; and where impacts cannot be avoided, to provide context and justification for why the harm is acceptable.

The process for avoiding or justifying harm to Aboriginal cultural heritage is outlined in Table C2 below:
<table>
<thead>
<tr>
<th>Step</th>
<th>ACH Pathway</th>
<th>Actions and documentation</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Initial consultation</td>
<td>Undertake consultation with the Aboriginal community through the TBLALC to determine the nature of Aboriginal cultural heritage (intangible cultural heritage or Aboriginal objects).</td>
</tr>
<tr>
<td>2</td>
<td>If the consultation and/or mapping identifies the area as containing intangible ACH values</td>
<td>2a) document the intangible ACH values as derived from the consultation and/or other sources 2b) if all harm to intangible ACH can be avoided: i) design the proposal to respond to those values and avoid harm to all intangible ACH values; ii) undertake and document consultation to determine the views of the Aboriginal community about the intangible ACH and the proposal; iii) provide documentation to the planning consent or determining authority outlining the consultation undertaken, its outcomes, and how the proposal has responded to avoid harm to intangible ACH values 2c) if all harm to intangible ACH values cannot be avoided: i) justify why the proposal cannot be designed to completely avoid harm to the intangible ACH values based on planning, design, environmental, social and/or economic grounds; ii) design the proposal to minimise harm to intangible ACH values; iii) demonstrate how, where possible, the proposal has been designed to minimise harm to intangible ACH values; iv) identify the areas where the proposal will harm ACH values; v) provide a literature review / contextual information to understand the ACH values proposed to be harmed and whether, or not, this heritage is protected elsewhere; vi) provide evidence of the consultation with, and the views of, the relevant Aboriginal cultural knowledge holders about the intangible ACH proposed to be harmed and the proposal; vii) characterise the scientific and cultural importance of the intangible ACH proposed to be harmed; viii) provide a case to the planning consent or determining authority for the harm proposed to intangible ACH by documenting 1, 2a) and 2c) i - vii above.</td>
</tr>
<tr>
<td>3</td>
<td>If the consultation and/or mapping identifies the areas as containing Aboriginal objects</td>
<td>3a) undertake a site analysis and field survey to identify the locations of Aboriginal objects and the nature and extent of Aboriginal objects (this may involve test excavation that must be undertaken in accordance with the OEH Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW, 2010)</td>
</tr>
</tbody>
</table>
### Step 3: Applying the Mapping

<table>
<thead>
<tr>
<th>Step</th>
<th>ACH Pathway</th>
<th>Actions and documentation</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>3b) if all harm to ACH objects can be avoided:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>i) design the proposal to avoid harm to ACH objects;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ii) provide documentation to the planning consent or determining authority outlining the consultation undertaken, its outcomes, the fieldwork undertaken, a map showing the locations of Aboriginal objects and their extent and how the proposal has responded to avoid harm to Aboriginal objects.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>3c) if all harm to ACH objects cannot be avoided:</td>
</tr>
<tr>
<td></td>
<td></td>
<td>i) justify why the proposal cannot be designed to completely avoid harm to Aboriginal objects based on planning, design, environmental, social and/or economic grounds;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>ii) design the proposal to minimise harm to Aboriginal objects;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>iii) demonstrate how, where possible, the proposal has been designed to minimise harm to Aboriginal objects;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>iv) identify the areas where the proposal will harm Aboriginal objects;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>v) provide a literature review / contextual information to understand the Aboriginal objects proposed to be harmed and whether, or not, this heritage is protected elsewhere;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>vi) provide evidence of the consultation with, and the views of, the relevant Aboriginal cultural knowledge holders about the Aboriginal objects proposed to be harmed and the proposal;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>vii) characterise the scientific and cultural importance of the Aboriginal objects proposed to be harmed;</td>
</tr>
<tr>
<td></td>
<td></td>
<td>viii) provide a case to the planning consent or determining authority for the harm proposed to Aboriginal objects by documenting 1, 3a) and 3c) i - vii above.</td>
</tr>
</tbody>
</table>

**Note:** The OEH Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW 2010 and the Aboriginal Cultural Heritage Consultation Requirements for Proponents, 2010 provide the assessment and consultation requirements for when harm cannot be avoided and should be followed.
**C2.4 Aboriginal cultural heritage impact permit (AHIP)**

Where an Aboriginal cultural heritage assessment finds that harm to Aboriginal cultural heritage (an object or place) cannot be avoided, either directly or indirectly, an AHIP must be applied for and approval granted prior to commencement of further works.

An AHIP permit is issued by the Office of Environment and Heritage under s90 of the NPW Act.

The OEH *Guide to Aboriginal Heritage Impact Permit Processes and Decision-making (2011)* provides further information on this process.

This will require input from a suitably qualified or experienced archaeologist, with expertise in Aboriginal cultural heritage (as per the OEH *Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW*).

**C2.5 Stop work procedures**

It is an offence to harm an Aboriginal object or place under the NPW Act. Immediate Stop Work procedures are to be implemented when an activity or works reveal any Aboriginal object or remains so as to avoid harm (see definition of harm in Section D2). The following outlines the Stop Work Procedures:

### Inadvertent discovery of an Object

On discovery of any surface or buried sub-surface cultural material (other than human remains, which is addressed following) the following actions should occur as soon as practicable:

1. All work should cease at the location and if necessary, an appropriately qualified Aboriginal sites officer or experienced archaeologist, with expertise in Aboriginal cultural heritage is to be notified, if not already present at the location. The area is to be cordoned off to prevent access and to protect the object. Construction workers and operational personnel will comply with the instructions of the qualified Aboriginal Sites Officer and/or experienced cultural professional (archaeologist). Construction may be able to continue at an agreed distance away from the site.

2. The TBLALC and OEH North East Region Planning Unit are to be notified.

3. An Aboriginal cultural heritage assessment of the object and surrounding locality is to be undertaken. A written report of the archaeologist’s findings and recommendations is to be provided to registered Aboriginal parties and the OEH for their consideration.

4. No further works or development may be undertaken at the location until the required investigations have been completed and AHIP permits or approvals obtained as required by the NPW Act and receipt of written authorisation by the OEH North East Region Planning Unit. Upon further advice, construction may be able to continue at an agreed distance away from the site.

5. AHIMS registration of the object(s) will be required.
Inadvertent discovery of a burial or human remains

Burials or human remains are controlled by the following legislation:

- the Coroners Act 2009 (NSW);
- the Crimes Act 1900 (NSW) and Federal Crimes Act 1914;
- the National Parks and Wildlife Act 1974 (NSW) covers Aboriginal human remains; and
- Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW, 2010 by OEH.

Should human remains be found during the activity or works, the following procedure should be adopted:

On discovery of the material the following actions should occur as soon as practicable:

1. All work should cease at the location. The Police must be notified, and all personnel and contractors on site should be advised that it is an offence under the Coroners Act to interfere with the material/remains.

2. If necessary, an appropriately qualified Aboriginal or experienced archaeologist, with expertise in Aboriginal cultural heritage is to be notified, if not already present at the location. The area is to be cordoned off to access and to protect the remains. Construction workers and operational personnel will comply with the instructions of the qualified Aboriginal sites officer or archaeologist.

3. The TBLALC and the OEH North East Region Planning Unit are to be notified.

4. No further works or development may be undertaken until the required investigations have been completed and permits or approvals obtained where required in accordance with the NPW Act. Upon further advice, construction may be able to continue at an agreed distance away from the site.

5. AHIMS registration of the burial remains will be required if found to be Aboriginal cultural remains.

Note: A Stop Work Order or Interim Protection Order may also be directed by the Chief Executive under s91AA of the NPW Act.
Figure C1 - Illustrates the process of using the Aboriginal place of heritage significance or predictive Aboriginal cultural heritage mapping layers to determine the appropriate assessment and management stream as outlined within this management plan in Section C3 following.
PART C - APPLYING THE MAPPING

Development application and consent required under Tweed LEP and consideration of ACH under Clause 5.10

The subject site is mapped as Aboriginal Place of Heritage Significance (Section C3)

Can harm to Aboriginal objects and/or intangible Aboriginal cultural heritage be avoided?

Document findings, consultation and recommendations and submit with the development application

Development consent may be issued subject to proceeding with caution and relevant conditions.

Note: Avoiding harm may be achieved by redesigning the proposal. Specialist archaeologist advice and an appropriate level of assessment and consultation with the Aboriginal community is likely to be required to answer this question.

ACTION IS REQUIRED UNDER BOTH THE NPW ACT AND THE EPA ACT

Harm to an Aboriginal Object or Declared Place will require assessment, consultation and permits under the NPW Act separately.

Harm to intangible Aboriginal cultural heritage, an object or place will require an Aboriginal Cultural Heritage Assessment (Comprehensive) under LEP Clause 5.10(1) and consistent with the requirements of this Management Plan and to be submitted with the development application.

Development consent may be issued subject to the recommendations of the Aboriginal Cultural Heritage Assessment (Comprehensive) and any relevant conditions. A note on the development consent will indicate that the proponent must comply with Part 6 of the NPW Act for Aboriginal objects and Declared Aboriginal Places.

The subject site is mapped as Predictive Aboriginal Cultural Heritage (Section C6).

Understand the level of Risk to ACH through the Risk Matrix, Section C6.2 and C6.3 and follow the assessment recommendations. Is further assessment required?

The subject site is unmapped within this Management Plan (Section C7).

Undertake the risk assessment recommendations as outline for Medium / High Risk in the Table C3 Matrix of Part C6.

Aboriginal Cultural Heritage (objects and/or intangible Aboriginal cultural heritage) has been identified.

NO

NO

The proponent should consider the OEH Due Diligence Code of Conduct before proceeding with any work requiring ground disturbance or tree pruning / removal.

Note: Check the mapping as part of this management plan and available on the Council's external website.
Figure C2 - The process for investigation and assessment of Aboriginal cultural heritage, source OEH Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW, 2011, is the process to be followed when harm cannot be avoided.
Is the proposed development ‘permitted without consent’?

Not all development requires the consent or approval from Council or other statutory body and these ‘exclusions’ are described in the land use tables or provisions of the Local Environmental Plan (LEP) or State Environmental Planning Policy (SEPP). This includes prescribed low-impact or routine activities, for example: use of a dwelling-house for a home business in a residential zone; or environmental protection works within an environmental conservation zone.

C3.1 Development permitted without consent under Part 4 of the EP&A Act 1979

**Intent**

To clarify the requirements for Aboriginal cultural heritage assessment for development permitted without consent.

**Application**

Applies to development permitted without consent.

**How do I find out?**

The land-use table or specific provisions within the applicable LEP or SEPP will identify development that is ‘permitted without consent’.

As a general rule development permitted without consent takes two forms:

1. ‘Exempt development’ (generally under the Exempt and Complying Development Codes SEPP) and does not require any environmental assessment under the EP&A Act 1979 and
2. Development permitted without consent which is distinct from exempt development and may require environmental assessment under Part 5 of the EP&A Act for example; if a licence, permit or other approval from a public authority is required.

This Plan extends only to guidance surrounding Aboriginal cultural heritage. Environmental assessment under the EP&A Act 1979 is a much broader concept of assessment. For development that falls under Part 5 refer to the following Section C3.2 ‘Development permitted without consent that falls under Part 5 of the EP&A Act 1979’.

**What do I do?**

<table>
<thead>
<tr>
<th>Development that is permitted without consent</th>
<th>Use caution and proceed with care after exercising due diligence. Be aware of the legislative requirements of the NPW Act 1974 relating to ‘harm’ of an Aboriginal object.</th>
</tr>
</thead>
</table>
| Discovery of Human remains or objects | Enact Stop Work procedure.  
| | There is a legal requirement for new objects or places to be registered to the AHIMS database. Information should also be provided to Council to update the mapping. |
| Development that is NOT permitted without consent | See Sections C4, C5, C6, C7, C8, C9 |

**Is any ACH assessment required?**

Development permitted without consent, excluding that falling under Part 5 described above, is deemed to be minor and as such there is no process requirement for an Aboriginal cultural heritage assessment. However, property owners and certifiers would still need to exercise reasonable care and due diligence to meet any statutory obligation, defence, or requirement under the NPW Act 1974.

**If in doubt**

The Tweed/Byron Local Aboriginal Land Council is your contact for advice on Aboriginal cultural heritage and its assessment. Tweed Shire Council or a suitably qualified or skilled Town Planning consultancy is your contact for any queries surrounding the permissibility of development or whether an assessment of development is required.

You should seek professional advice if in doubt about the need for any consent.
C3.2 Development permitted without consent under Part 5 of the EP&A Act and/or a State Environmental Planning Policy (SEPP)

While development falling under Part 5 is generally thought to relate to activities (development) undertaken by public authorities, such as councils, as part of their everyday responsibilities for such matters as; roads or water supply, it may also capture private companies undertaking for example electricity or telecommunications infrastructure, or a private landowner undertaking a new driveway crossing over a public road reserve, where an approval, permission or licence of some kind is required from the determining authority. In these cases the Part 5 environmental assessment is relied upon by the determining authority in reaching its decision about whether to carry out an activity or giving ‘approval’ for an activity. State Environmental Planning Policies such as; the Infrastructure SEPP 2007, Major Development SEPP 2005, Mining, Petroleum Productions and Extractive Industries SEPP 2007 and State and Regional Development SEPP 2011 now permit many of these kind of routine activity to be carried out as exempt development. For everything else that is not strictly declared as ‘exempt’ Part 5 and its assessment regime applies.

Generally, development that is declared in an LEP or SEPP as ‘exempt development’ will meet the description of development ‘without consent’ and for which Part 5 does not apply (EP&A Act 1979, cl.76(3)(b)).

**Intent**

To clarify the requirements for Aboriginal cultural heritage assessment for development permitted without consent that requires assessment under Part 5 of the EP&A Act 1979

**Application**

Applies to development permitted without consent, which is undertaken by, or require the approval of, a determining authority, being a Minister or a public authority, and meets the description of an ‘activity’ as defined by cl.5.1 of the EP&A Act 1979.

**How do I find out?**

The land-use table or specific provisions within the applicable LEP or SEPP will identify development that is ‘permitted without consent’.

The duty to consider environmental impact is called up by cl.5.5 of the EP&A Act.
What do I do?

<table>
<thead>
<tr>
<th>Development permitted without consent and NOT exempt development</th>
<th>Development permitted without consent that meets the description of an ‘activity; under cl.5.1 of the EP&amp;A Act and which is being undertaken by or on behalf of a determining authority or whose approval is required in order to enable the activity to be carried out must undertake a prescribed EP&amp;A Part 5 environmental assessment. This will include an assessment of Aboriginal cultural heritage. See Sections C5.3 and C6.3</th>
</tr>
</thead>
<tbody>
<tr>
<td>Discovery of If Human remains or objects</td>
<td>Enact Stop Work procedure. There is a legal requirement for new objects or places to be registered to the AHIMS database. Information should also be provided to Council to update the mapping.</td>
</tr>
<tr>
<td>Development that requires consent or approval other than Part 5</td>
<td>See Sections C4, C5, C6, C7, C8, C9</td>
</tr>
</tbody>
</table>

Is any ACH assessment required?

These types of development are considered minor and, given no consent is required, no Aboriginal cultural heritage assessment is required, however, it is recommended to exercise due diligence under the requirements of the NPW Act.

If in doubt

The Tweed/Byron Local Aboriginal Land Council is your contact for advice on Aboriginal cultural heritage and its assessment. Tweed Shire Council or a suitably qualified or skilled Town Planning consultancy is your contact for any queries surrounding the permissibility of development or whether an assessment of development is required.
The State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (commonly referred to as the Code SEPP) makes provision for a range of development, covering different classes, that is either ‘exempt’ or ‘complying’ development. Whilst some Local Environmental Plans (LEP) have similar provisions, these are not common, thus this Management Plan speaks to the Code SEPP.

The Code SEPP definition of Environmentally sensitive area includes, amongst other criteria, “land identified in this [the Codes SEPP] or any other environmental planning instrument [ie LEP] as being of high Aboriginal cultural significance”.

There is presently also some misalignment with terminology across these instruments so to avoid any confusion and for the purposes of interpreting and applying this Management Plan high Aboriginal cultural significance has the same meaning as Aboriginal place of heritage significance.

A range of criteria must be met to be either exempt or complying development. There are a wide range of scenarios where development on land either ‘within’ or ‘being’ an environmentally sensitive area cannot be undertaken as either exempt development or complying development. It is therefore necessary to read the Code SEPP carefully to ensure you understand and are interpreting it correctly.

C4.1 Is the proposal Exempt Development?

Intent

To clarify the permissibility and assessment requirements for development that is described as ‘exempt development’ under the Code SEPP and when the land is mapped as Aboriginal place of heritage significance (being ‘high Aboriginal cultural significance’ for the purposes of cl.1.5 of the SEPP).

Application

[Currently] There is no outright exclusion of land identified as ‘environmentally sensitive area’ from the range of exempt development within the Code SEPP. Instead each of the Exempt Development Codes individually specify when development is excluded by virtue of the land being classified as an environmentally sensitive area.

By way of example, the SEPP currently provides that exempt development under Subdivision 14 Driveways and hard stand spaces, is excluded from being exempt development if it is constructed or installed, amongst other criteria, in an environmentally sensitive area. In this situation the development may either require a complying development or development application, both of which require consent.

It is the intent of this Management Plan that exempt development may not be undertaken where land is mapped within this Management Plan as Aboriginal place of heritage significance and where the Exempt Development Codes individually specifies an environmentally sensitive area as excluded.

How do I find out?

Exempt development is managed through the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 which is located on the NSW Government’s legislation website.

This map is available on Council’s online mapping.
What do I do?

| What development is exempt development (Division 2 Codes SEPP) | The proposed development must be identifiable and compliant with the appropriate Exempt Development Code. If development is excluded in an environmentally sensitive area then it cannot be exempt where the land is shown on the ACH mapping as an Aboriginal place of heritage significance. |
| Exempt Development Code is satisfied | Exempt development is a class of development that is low impact and as such it does not require consent or the approval of a determining authority of an Aboriginal cultural heritage assessment. This does not preclude the need for the proponent of the exempt development from exercising caution by undertaking a due diligence. A person who exercises due diligence in determining that their actions will not harm Aboriginal objects has a defence against prosecution for the strict liability offence if they later unknowingly harm an object without the requisite approval. |
| Discovery of Human remains or objects | Enact Stop Work procedures. There is a legal requirement for new objects or places to be registered to the AHIMS database. Information should also be provided to Council to update the mapping. |
| If exempt provisions are not met | See Sections C5, C6, C7, C8, C9 |

If in doubt

The Tweed/Byron Local Aboriginal Land Council is your contact for advice on Aboriginal cultural heritage and its assessment. Tweed Shire Council or a suitably qualified or skilled Town Planning consultancy is your contact for any queries surrounding the permissibility of development or whether an assessment of development is required.

Further information:

Property owners and certifiers are advised to familiarise themselves with:

- The State Environmental Planning Policy (Exempt and Complying Development) 2008
- Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (2010)

Note: Other State Environmental Planning Policies (SEPPs) that make provision for exempt development may be or come into force from time to time. Whilst the general application of this Management Plan will apply a proponent or certifier should consult Council if at any time they are unsure.
C4.2  Is the proposal Complying Development?

Intent

To clarify the permissibility and assessment requirements for development that is described as ‘complying development’ under the Code SEPP and when the land is mapped as Aboriginal place of heritage significance (being ‘high Aboriginal cultural significance’ for the purposes of cl.1.5 of the SEPP)

Application

[Currently] To be complying development under the Code SEPP the development must not, amongst other criteria, be on land that is ‘within’ an environmentally sensitive area except as otherwise provided by the Codes SEPP (Cl.1.17A(1)(e). Cl.1.18 specifies the general requirements relating to the Codes SEPP.

Cl.1.19 of the Codes SEPP specifies that for the purposes of the Housing Code and Rural Housing Code, development must not be carried out amongst other criteria, on land being environmentally sensitive land. This is further qualified by sub-clause (6) which generally states that complying development is not prevented from being carried out on part of a lot that is not affected by the exclusion (e.g., environmentally sensitive area) even if other parts of the lot are so affected.

The essence of the Complying Development Codes is that the permissibility and exclusion requirements are based on a predetermined level of ‘impact’. While more intensive development is might not meet the requirement to be complying development because of specific exceptions, there are other types of lower intensity development that may be complying development and permitted, amongst other criteria, on land either ‘within’ or ‘being’ an environmentally sensitive area, for example; development under the General Development Code (Cl.4A.11).

Proponents and certifiers of complying development should fully understand the Codes SEPP as it applies to the proposed development and the land on which it is proposed to be carried out.

How do I find out?

Complying development is managed through the State Environmental Planning Policy (Exempt and Complying Codes) 2008, the Code SEPP. This may be found on the NSW legislation website and the NSW Department of Planning and Environment website.

Proponents and certifiers should review the Aboriginal Cultural Heritage Map adopted by Council.

This map is available on Council’s online mapping.
### What do I do?

<table>
<thead>
<tr>
<th>What development is complying development (Division 2 Codes SEPP)</th>
<th>The proposed development must be identifiable and compliant with the appropriate Complying Development Code. If development is excluded in an <em>environmentally sensitive area</em>, then development is not complying development if the land is shown on the ACH mapping as an <em>Aboriginal place of heritage significance</em>.</th>
</tr>
</thead>
<tbody>
<tr>
<td>If complying provisions are satisfied</td>
<td>Complying development is considered of limited impact, and complying development consent is subject to the stated Complying Development Code standards and conditions. No Aboriginal cultural heritage assessment is required where development meets the complying requirements. Applicants and private certifiers are to be aware of the conditions applying to complying development, particularly with regard to archaeology or objects discovered during excavation included within the Schedules. Proceed with caution after exercising due diligence and be aware of the legislative requirements of the NPW Act that relate to harm of any Aboriginal object.</td>
</tr>
<tr>
<td>If Human remains or objects are revealed</td>
<td>Enact Stop Work procedures. There is a legal requirement for new objects or places be registered to the AHIMS database. Information should also be provided to Council to update the mapping.</td>
</tr>
<tr>
<td>If complying provisions are not met</td>
<td>See Sections C5, C6, C7, C8, C9</td>
</tr>
</tbody>
</table>

### Further information:

Applicants and certifiers are advised to familiarise themselves with:

- The State Environmental Planning Policy (Exempt and Complying Development) 2008
- Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (2010)

**Note:** A range of other State Environmental Planning Policies (SEPPs) make provision for Complying development. Whilst many of the other SEPPs relate to development by or on behalf of a public authority, applicants are advised to familiarise themselves with these provisions where relevant.

### If in doubt

The Tweed/Byron Local Aboriginal Land Council is your contact for advice on Aboriginal cultural heritage and its assessment. Tweed Shire Council or a suitably qualified or skilled Town Planning consultancy is your contact for any queries surrounding complying development criteria.
Land mapped as *Aboriginal Place of Heritage Significance* identifies and acknowledges areas of known ACH. The NPW Act requires development avoids harm to ACH.

This section provides the management framework and required actions for a range of development types within the *Aboriginal Place of Heritage Significance* mapping layer, based on avoiding harm through a two step process.

An appropriate level of assessment is required, in consultation with the Aboriginal community through the TBLALC, to determine if harm can be avoided. This includes harm to objects, places and intangible ACH. This level of assessment must meet the requirements of *Avoiding or Justifying Harm to Aboriginal Cultural Heritage* outline in Part C2.3. This level of assessment is best undertaken by an Archaeologist or Aboriginal cultural heritage expert as outline in Part C1.3 Consultation Requirements. If harm cannot be determined or avoided you are advised to follow the OEH guideline requirements of the *Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW* (2011) and undertake consultation consistent with the OEH Guideline *Aboriginal Cultural Heritage Consultation Requirements for Proponents*, 2010.

Applications which do not include the *Avoiding or Justifying Harm to Aboriginal Cultural Heritage Assessment* generally will not be accepted as complete.

Applications accompanied by an *Avoiding or Justifying Harm to Aboriginal Cultural Heritage Assessment* not considered to be adequately prepared or where found to provide inadequate assessment, will run the risk of the application being refused on grounds there is insufficient information to support the development with respect to the risk of harm of ACH.

There are instances where Aboriginal cultural heritage assessment has been undertaken as part of a rezoning or initial development approval, such as subdivision, and that assessment may be suitable for use without further adaptation or modification with a subsequent approval, such as a dwelling-house. Section C5.4 describes when further ACH assessment is or is not required.
C5.1 Strategic land use planning (under Part 3 of the EP&A Act)

Part 3 of the EP&A Act provides the legislative framework for the making, amendment and repeal of Environmental Planning Instruments (EPIs), which includes Local Environmental Plans (LEPs) and State Environmental Planning Policies (SEPPs), but does not include Development Controls Plans (DCPs) despite Part 3 prescribing a framework for their making, amendment or repeal. Both LEPs and DCPs are principally the planning policies of councils and this Section applies to Council’s preparation and oversight of both as well as guiding any consideration of and reply on draft SEPPs or other strategic planning policy of State government agencies or departments.

**Intent**

To ensure that Aboriginal cultural heritage is considered at all levels of strategic policy planning.

**Application**

Aboriginal cultural heritage for land mapped and identified as Aboriginal Place of Heritage Significance should be considered at all levels of strategic policy planning at both the policy design phase as well as ensuring that an appropriate level of assessment is undertaken on planning proposals (rezoning or similar) for identifiable development proposals on land where the strategic planning change would allow for an intensification of the use or occupation of that land.

As there are two overarching types of strategic policy decision; being that which is a form of project control and which responds specifically (is discriminate) to a development proposal on identifiable land(s) versus those that operate strategically (and are indiscriminate) on an issue or matter to a wider land area or region, there is a corresponding need to apply different rules of application. For example, a planning proposal seeking a specific planning outcome may necessitate a level of detailed assessment that a wider policy, such as sub-regional locality plan, will not. The latter would consider broader Aboriginal cultural heritage for the identified catchment area and may necessitate policy actions to ensure that detailed assessment is undertaken at the localised level, for example with a ‘rezoning’ or development application.

To avoid any confusion in terminology between this Management Plan and for the purposes of interpreting and applying this Management Plan ‘high Aboriginal cultural significance’ (as used in many SEPPs and Clause 3.3 of the applicable LEP) has the same meaning as Aboriginal place of heritage significance.

Ministerial S117(2) Planning Direction 2.3 Heritage Conservation requires a LEP facilitate the conservation of Aboriginal places, objects and landscapes.

The recently released North Coast Regional Plan 2036 requires:

- **Direction 16:** Collaborate and partner with Aboriginal communities to ensure they are engaged throughout the development of strategies and local environmental plans.
- **Direction 18:** Respect and protect the North Coast’s Aboriginal Heritage: A range of actions are required to ensure that Aboriginal objects and places are protected, managed and respected in accordance with legislative requirements and the wishes of local Aboriginal communities.

Strategic planning in all its forms presents the greatest opportunity for the long-term management and protection of Aboriginal cultural heritage through a combination of early engagement with the Aboriginal community and ACH identification, appropriately tailored policy response and in some cases the avoidance of policy that has the potential to lead land use into conflict with ACH.

It also provides the opportunity to consider ‘intangible’ ACH through the early consultation with the local Aboriginal community. This is important because it is not explicitly provided for [currently] under the NPW Act and its presence is typically not as well documented as other forms of ACH. Early consultation at the policy level with the local Aboriginal community will assist policy developers and proponents to understand the presence of and approaches for its assessment and consideration.

**Note:** Land mapped as Aboriginal Place of Heritage Significance may also include Declared Places and AHIMS sites.

**Note:** Intangible cultural heritage is provide for in the [current] draft OEH Aboriginal cultural heritage legislation reforms.
### How do I find out?

Aboriginal Places of Heritage Significance are mapped on the Aboriginal Cultural Heritage Map adopted by Council as part of this Management Plan.

### What do I do?

<table>
<thead>
<tr>
<th>If mapped as Aboriginal Place of Heritage Significance</th>
<th>When preparing a localised site specific LEP Amendment or Planning Proposal or masterplan</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Undertake an AHIMS Search to determine the presence and location of any registered objects or places.</td>
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</tbody>
</table>

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<tr>
<th>Assessment required</th>
<th>Follow the Avoiding or Justifying Harm to Aboriginal Cultural Heritage requirements of Section C2.3 and Consultation requirements of Section C1.3.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>It is desirable at this early planning stage that potential harm will be avoided through redesign of the proposal.</td>
</tr>
</tbody>
</table>

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<tr>
<th>If harm cannot be avoided</th>
<th>If harm cannot be determined or avoided follow the OEH guideline requirements of the Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW (2011) and undertake consultation consistent with the OEH Guideline Aboriginal Cultural Heritage Consultation Requirements for Proponents, 2010.</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If harm cannot be avoided an AHIP will be required at the development application stage. This may be undertaken as Integrated Development.</td>
</tr>
</tbody>
</table>

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<tr>
<th>If Human remains or objects are revealed</th>
<th>Enact Stop Work procedures.</th>
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<td>Note: Objects and places are to be registered to the AHIMS database and information provided to Council to update the mapping.</td>
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<td>See Sections C6, C7, C8, C9</td>
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</table>

<table>
<thead>
<tr>
<th>If mapped as Aboriginal Place of Heritage Significance</th>
<th>When preparing a shire wide LEP amendment, or other strategic land use plan or policy</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Undertake an AHIMS Search to determine the presence and location of any registered objects or places.</td>
</tr>
<tr>
<td></td>
<td>Undertake consultation with the TBLALC to understand any intangible cultural heritage and to document and identify any areas requiring further assessment and consideration as part of the planning process.</td>
</tr>
<tr>
<td></td>
<td>Use the Avoiding or Justifying Harm to Aboriginal Cultural Heritage requirements of Section C2.3 and the Consultation requirements of Section C1.3 to guide an appropriate level of assessment.</td>
</tr>
<tr>
<td></td>
<td>It is desirable at this early planning stage that potential harm will be avoided through early consultation with the Aboriginal community on the strategic plan.</td>
</tr>
</tbody>
</table>

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<tr>
<th>If not mapped as Aboriginal Place of heritage significance</th>
<th>Applicants are advised to be aware of the NPW Act requirements relating to harm.</th>
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<tr>
<td></td>
<td>See Sections C6, C7, C8, C9</td>
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</table>
When does the ACH assessment need to be done?

The assessment is to be undertaken and consultation completed with the Aboriginal community prior to the commencement of a site specific planning proposal or masterplan and prior to the lodgment of a planning proposal. Aboriginal community consultation shall be undertaken at the commencement of a shire wide LEP amendment or other strategic land use plan or policy.

Note: To meet the OEH consultation requirements for an Aboriginal Cultural Heritage Assessment compliant with the OEH guideline requirements of the Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW (2011) and Aboriginal Cultural Heritage Consultation Requirements for Proponents, 2010 results in a process of approximately 4 months.

What needs to be submitted with a planning proposal?

The identification of an Aboriginal Place of Heritage Significance acknowledges the known presence of Aboriginal cultural heritage in the locality. Avoiding or Justifying Harm to Aboriginal Cultural Heritage (outlined in Section C2.3) is to be undertaken prior to the site planning, is to inform the site planning and is to be submitted with the localised Planning Proposal Request.

Who may undertake the ACH assessment?

The Aboriginal Cultural Heritage Assessment requires a range of relevant disciplines and components and it cannot be assumed that any one practitioner will have the full range of skills needed. A suitably qualified Aboriginal cultural heritage expert/archaeologist is required to document Avoiding or Justifying Harm to Aboriginal Cultural Heritage. Where harm cannot be avoided or an AHIP is required, the OEH Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (2010) stipulates the minimum qualifications required.

If in doubt

The Tweed/Byron Local Aboriginal Land Council is your contact for advice on Aboriginal cultural heritage and its assessment. Tweed Shire Council or a suitably qualified or skilled Town Planning consultancy is your contact for any queries surrounding the planning, land use and assessment aspects.

Further information:


OEH Guidelines:

- Aboriginal Cultural Heritage Consultation Requirements for Proponents (2010)
- Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (2010)
- Applying for an Aboriginal Heritage Impact Permit: Guide for Applicants (2011)

Note: Aboriginal cultural assessment of a development proposal is focused on the whole site and not isolated to a smaller footprint where the proposed physical work might occur. The focus may need to take into consideration a wider landscape beyond the physical property boundary. Consultation with the Aboriginal community and ensuring consistency with the OEH guidelines will enable a determination about whether further ACH assessment is or is not required. See Part C5.4 for further guidance.
C5.2 Development applications and assessment (under Part 4 of the EP&A Act)

Part 4 of the EP&A Act applies to development assessment, including the procedures and considerations for the evaluation of development.

This part will apply for all development applications requiring the consent of Council.

**Intent**

To ensure that potential harm to Aboriginal cultural heritage on land identified as *Aboriginal Place of Heritage Significance* is investigated and assessed as an initial consideration of any proposed development and appropriately evaluated as part of the development assessment consideration and that harm is avoided where possible.

**Application**

This section applies to development requiring consent under Part 4 of the EP&A Act and to land mapped and identified as an *Aboriginal Place of Heritage Significance*. To avoid any confusion and for the purpose, use and interpretation of a number of State Environmental Planning Policies and Clause 3.3 of the applicable LEP *Aboriginal Place of Heritage Significance* also means high Aboriginal cultural significance and Aboriginal heritage significance.

Assessment of any likely environmental, social or economic impacts is required under cl.4.15 of the EP&A Act - Evaluation. Assessment is required under Clause 5.10(8) *Aboriginal Place of Heritage Significance* of the applicable LEP. This clause requires that before granting consent to development in an *Aboriginal place of heritage significance*, the consent authority must:

(a) consider the effect of the proposed development on the heritage significance of the place and any Aboriginal object known or reasonably likely to be located at the place by means of an adequate investigation and assessment (which may involve consideration of a heritage impact statement), and

(b) notify the Aboriginal communities, in writing or in such other manner as may be appropriate, about the application and take into consideration any response received within 28 days after the notice is sent.

The key objective of investigation and assessment is to ensure development avoids ‘harm’ to any ACH (see discussion in Section D - Legislative Framework). An appropriate level of assessment will be required, including consultation with the Aboriginal community through the TBLALC to determine if ‘harm’ can be avoided. Should harm be identified the proponent may consider a redesign of the proposal and/or may require further ACH assessment and an AHIP.

Intangible ACH may also be present. Whilst this is not explicitly provided for under [currently] the NPW Act, the Aboriginal community will be able to assist proponents understand any potential consideration with regard to intangible ACH values.

Consultation with the Aboriginal community will be in the applicant’s interest to facilitate the most efficient processing of applications. Documentation of this consultation is to be included with the DA. If this is not included the DA will either not be accepted or will be referred to the TBLALC in accordance with the LEP Clause 5.10(8).

**Note:** Land mapped as *Aboriginal Place of Heritage Significance* may also include Declared Places and AHIMS sites.

**Note:** Intangible cultural heritage is provided for in the [current] draft OEH Aboriginal cultural heritage legislation reforms.

**How do I find out?**

*Aboriginal Places of Heritage Significance* are mapped on the Aboriginal Cultural Heritage Map adopted by Council as part of this Management Plan.

This map is available on Council’s online mapping.
### What do I do?

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<thead>
<tr>
<th>If mapped as Aboriginal Place of Heritage Significance</th>
<th>Undertake an AHIMS search to determine the presence and location of any registered objects or places.</th>
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<tr>
<td>Assessment required</td>
<td>Follow the Avoiding or Justifying Harm to Aboriginal Cultural Heritage requirements of Section C2.3 and Consultation requirements of Section C1.3. It is desirable at this early planning stage that potential harm will be avoided through redesign of the proposal. If harm cannot be determined or avoided follow the OEH guideline requirements of the Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW (2011) and undertake consultation consistent with the OEH Guideline Aboriginal Cultural Heritage Consultation Requirements for Proponents, 2010. Where required, an AHIP under the NPW Act must be applied for and approved prior to commencement of any works.</td>
</tr>
<tr>
<td>If Human remains or objects are revealed</td>
<td>Enact Stop Work procedures. There is a legal requirement for new objects or places be registered to the AHIMS database. Information should also be provided to Council to update the mapping.</td>
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<tr>
<td>If not mapped as Aboriginal Place of heritage significance</td>
<td>Be aware of the legislative requirements of the NPW Act 1974 relating to ‘harm’ of an Aboriginal object. See Sections C6, C7, C8, C9</td>
</tr>
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</table>

### When does the assessment need to be done?

The required level of Aboriginal cultural heritage assessment is to be undertaken and consultation completed with the Aboriginal community prior to the lodgement of any development application (DA) and in conjunction with, or prior to, the development of the design plans.

### What needs to be submitted with a DA?

Documentation of the Avoiding or Justifying Harm to Aboriginal Cultural Heritage requirements (outlined in Section C2.3) must also be submitted with the DA.

Designated development under Part 4 (cl.4.10) of the EP&A Act requires an Environmental Impact Assessment (EIS) under cl.4.12(8). The EIS must be prepared in accordance with the requirements specified in Schedule 2 of the EP&A Regulation 2000. This may include any requirements that the Director General may impose. If harm cannot be determined or avoided you are advised to follow the OEH guideline requirements of the Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW (2011) and undertake consultation consistent with the OEH Guideline Aboriginal Cultural Heritage Consultation Requirements for Proponents, 2010.

Where an AHIP is required, this may be undertaken concurrently as Integrated Development, or as a separate process. Whilst development consent may be issued consistent with any General Terms of Approval issued by the OEH, any development which may cause harm cannot be commenced prior to the issue of AHIP.
Who may undertake the ACH assessment?

The Aboriginal Cultural Heritage Assessment requires a range of relevant disciplines and components and it cannot be assumed that any one practitioner will have the full range of skills needed. A suitably qualified Aboriginal cultural heritage expert/archaeologist is required to document the Avoiding or Justifying Harm to Aboriginal Cultural Heritage requirements. Where harm cannot be avoided or an AHIP is required, the OEH Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (2010) stipulates the minimum qualifications required.

Exceptions:

- Development that is permitted without consent, as discussed in section C3; or
- Exempt or complying development, as discussed in Section C4; or
- Development under Clause 5.10(3) of the applicable LEP (or equivalent)

The applicable LEP Clause 5.10 (3) makes provision for works of minor nature or maintenance without development consent, subject to the written authorisation of Council prior to commencement of works. The application of the minor works and maintenance provisions of Clause 5.10(3) will be guided by and may be considered for those types and locations of development identified within Section C6: Tables C3 and C4 Part 4 and Part 5 Development Risk Matrix as “low risk” which, other than for the potential for Aboriginal cultural heritage, may not ordinarily require a development application.

Note: Legislation is amended frequently and applicants and private certifiers are advised to familiarise themselves with the current exemptions.

If in doubt

The Tweed/Byron Local Aboriginal Land Council is your contact for advice on Aboriginal cultural heritage and its assessment. Tweed Shire Council or a suitably qualified or skilled Town Planning consultancy is your contact for any queries surrounding the planning aspects.

Further information:


OEH Guidelines:

- Aboriginal Cultural Heritage Consultation Requirements for Proponents (2010)
- Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (2010)
- Applying for an Aboriginal Heritage Impact Permit: Guide for Applicants (2011)
- Guide to Aboriginal Heritage Impact Permit Processes and Decision-making (2011)

Environmental Planning and Assessment Act, 1979 and Environmental Planning and Assessment Regulation 2000

The applicable Tweed Local Environmental Plan

The following figures C3, C4 and C5 provide examples of three potential levels of assessment required, depending on whether harm can be avoided. These examples illustrate the required level of engagement with other parties where the impact on ACH cannot be avoided. The following process represents best practice consultation with the Aboriginal community up-front in the development process to ensure the most efficient processing of development applications, noting this consultation occurs prior to the lodgement of any DA and the TBLALC advice is submitted with the DA.

Applicants may consult directly with the TBLALC or may engage a consultant to undertake this on their behalf, though this is not required and may result in extra costs.

Note: When a satisfactory Aboriginal cultural heritage assessment of harm using the ‘avoid or justify’ approach has been prepared in consultation with the Aboriginal community (as part of a rezoning or initial development approval such as subdivision) further ACH assessment may not be required. Section C5.4 describes when further ACH assessment is or is not required.
Figure C3 - Example A Development application process which demonstrates harm can be avoided

1. **Application**
   - Review Aboriginal Cultural Heritage Mapping
     - Land is identified within the Aboriginal Place of Heritage Significance Mapping layer

2. **Consultation**
   - Develop draft proposal information (not for construction level)
     - Should include scope of works, extent and depth of any ground disturbance and completed
   - Consult with the TBLALC
     - TBLALC review the proposal for potential impact on significance and risk of harm
     - Provide written advice within 10 working days
     - Should there be ground disturbance as well as potential ACH objects or places it is most likely an Archaeologist will be required to undertake further assessment.
     - Should there be potential to impact on intangible ACH the TBLALC will provide advice

3. **Planning**
   - In this example there would likely be minimal or no impact on objects or places due to no ground disturbance.
   - Plans are finalised and DA prepared consistent with those referred to the TBLALC and advice provided
   - TBLALC advice submitted with the DA

4. **Council**
   - Plans lodged with Council
   - TBLALC review the proposal and provide written advice to Council
     - 28 day notification provided
   - Council processing of application and referral of plans to the TBLALC under Section 5.10(8) of the applicable LEP

5. **Decision**
   - Council may determine the application and apply conditions as required/appropriate

- Development consent issued to applicant
In this example the applicant undertakes the same process of consulting with the TBLALC, who recommend engaging an Archaeologist / expert Heritage Consultant, due to the application being unable to justify that harm can be avoided or the Consultation Request Form information is either incomplete or insufficient to demonstrate harm can be avoided.

The Archaeologist / expert Heritage Consultant undertakes the Avoiding or Justifying Harm to Aboriginal Cultural Heritage requirements and this assessment has been able to demonstrate harm can be avoided.

Figure C4 - Example B - Development application process which requires further assessment, which then finds harm can be avoided.
In this example the applicant undertakes the same process of consulting with the TBLALC, who recommend engaging an Archaeologist / expert Heritage Consultant. The Archaeologist / expert Heritage Consultant then undertakes the Avoiding or Justifying Harm to Aboriginal Cultural Heritage requirements and this assessment has found harm cannot be avoided. This then requires an AHIP under the NPW Act.

Figure C5 - Example C - Development application process has undertaken an Aboriginal Cultural Heritage Assessment which finds harm cannot be avoided, requiring an AHIP.
C5.3 Environmental assessment (under Part 5 of the EP&A Act)

Part 5 of the EP&A Act relates to the requirements for environmental assessment for local Council works, state significant development and/or infrastructure and predominantly guide a local council’s (public authority’s) activities and their required environmental assessments.

While development falling under Part 5 is generally thought to relate to activities (development) undertaken by public authorities, such as councils, as part of their everyday responsibilities for such matters as roads or water supply, it may also capture private companies undertaking for example electricity or telecommunications infrastructure, or a private landowner undertaking a new driveway crossing over a public road reserve where an approval, permission or licence of some kind is required from the determining authority.

Intent

To ensure that potential harm to Aboriginal cultural heritage on land identified as Aboriginal Place of Heritage Significance is investigated and assessed as an initial consideration of any proposed development and appropriately evaluated as part of the environmental assessment considerations so that harm is avoided where possible.

Application

Applies to any activity under Part 5 of the Environmental Planning and Assessment Act 1979, generally undertaken by or on behalf of a public authority on land mapped and identified as Aboriginal Place of Heritage Significance. To avoid any confusion and for the purpose, use and interpretation of a number of State Environmental Planning Policies and Clause 3.3 of the applicable LEP Aboriginal Place of Heritage Significance also means high Aboriginal cultural significance and Aboriginal heritage significance.

cl.5.5 of the EP&A Act requires:

(1) For the purpose of attaining the objects of this Act relating to the protection and enhancement of the environment, a determining authority in its consideration of an activity shall, notwithstanding any other provisions of this Act or the provisions of any other Act or of any instrument made under this or any other Act, examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity.

All Aboriginal objects in NSW are protected under the NP&W Act and cannot be harmed without the necessary defences, exemptions or permits in place.

Intangible ACH may also be present. Whilst this is [currently] not explicitly provided for under the NPW Act, the Aboriginal community will be able to assist proponents understand any potential impacts to intangible ACH.

Note: Land mapped as Aboriginal Place of Heritage Significance may also include Declared Places and AHIMS sites.

Note: Intangible cultural heritage is provide for in the [current] draft OEH Aboriginal cultural heritage legislation reforms.

How do I find out?

Aboriginal Places of Heritage Significance are mapped on the Aboriginal Cultural Heritage Map adopted by Council as part of this Management Plan.

This map is available on Council’s online mapping.
What do I do?

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<td>If Human remains or objects are revealed</td>
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<td>If not mapped as Aboriginal Place of heritage significance</td>
<td>Be aware of the legislative requirements of the NPW Act 1974 relating to ‘harm’ of an Aboriginal object. See Sections C6, C7, C8, C9</td>
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</tbody>
</table>

When does the environmental assessment need to be done?

The assessment is to be undertaken and consultation completed with the Aboriginal community prior to the lodgment of a development application (DA) or Review of Environmental Factors (REF) and in conjunction with an activity, or prior to the development of the design plans.

What needs to be submitted with an environmental assessment under Part 5?

A Review of Environmental Factors (REF) prepared for activities under Part 5 of the EP&A Act, environmental impact assessment, or environmental impact statement as appropriate is required. The EP&A Act requires environmental impacts to be considered under cl.5.5 (1) to the fullest extent possible. The Avoiding or Justifying Harm to Aboriginal Cultural Heritage requirements are to be undertaken and documentation submitted with the REF and DA, where required.

Who may undertake the ACH assessment?

The Aboriginal Cultural Heritage Assessment requires a range of relevant disciplines and components and it cannot be assumed that any one practitioner will have the full range of skills needed. A suitably qualified Aboriginal cultural heritage expert/archaeologist is required to document the Avoiding or Justifying Harm to Aboriginal Cultural Heritage requirements. Where harm cannot be avoided or an AHIP is required, the OEH Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (2010) stipulates the minimum qualifications required.
Exceptions

Any development [currently] excluded under Part 5 cl.5.4 which includes:

(a) a modification of an activity, whose environmental impact has already been considered, that will reduce its overall environmental impact,

(b) a routine activity (such as the maintenance of infrastructure) that the Minister determines has a low environmental impact and that is carried out in accordance with a code approved by the Minister,

(c) an activity (or part of an activity) that has been approved, or is to be carried out, by another determining authority after environmental assessment in accordance with this Part.

An activity, works or development identified as “low risk” in the Section C6: Tables C3 and C4 Part 4 and Part 5 Development Risk Matrix will be used in to inform what may be considered as low environmental impact.

Any Exempt Development which may be provided by another Environmental Planning Instrument, such as the Mining State Environmental Planning Policy (SEPP) or Infrastructure SEPP.

If in doubt

The Tweed/Byron Local Aboriginal Land Council is your contact for advice on Aboriginal cultural heritage and its assessment. Tweed Shire Council or a suitably qualified or skilled Town Planning consultancy is your contact for any queries surrounding the planning aspects.

Further information:

Environmental Planning and Assessment Act, 1979 and Environmental Planning and Assessment Regulation 2000.


OEH Guidelines:

- Aboriginal Cultural Heritage Consultation Requirements for Proponents (2010)
- Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (2010)
- Applying for an Aboriginal Heritage Impact Permit: Guide for Applicants (2011)
- Guide to Aboriginal Heritage Impact Permit Processes and Decision-making (2011)

Legislation is amended frequently and applicants are advised to familiarise themselves with the current exemptions.
C5.4 Greenfield Development and New Land Release Areas: reliance on existing Aboriginal Cultural Heritage Assessment for use with a later development approval or works

It is widely recognised that the most effective way of addressing Aboriginal cultural heritage is at the earliest time in the development cycle, which typically arises at the land rezoning stage or subdivision approval stage where zoning has already occurred. In contemporary practice it is unusual to approve earthworks separate from subdivision and where that does occur the same principal applies. It follows that when a comprehensive assessment has been prepared in consultation with the Aboriginal community that it should be capable of being relied upon when two key aspects exist; firstly the works proposed are within the scope of works previously assessed and; secondly, the assessment being relied upon remains consistent with current legislative requirements.

Part C5.1 Strategic landuse planning outlines the requirements for Aboriginal cultural heritage assessment at the rezoning stage and Part C5.2 relates to development applications occurring at the subdivision stage.

It is important to recognise that the significance of an Aboriginal cultural heritage place remains for the Aboriginal community irrespective of whether cultural artefacts have been removed, damaged or destroyed. This phenomenon is similarly not unheard of in respect of European heritage. Naturally, because the significance remains with the land so too must the associated mapping within this Management Plan as to do otherwise would undermine one of its key aims which is to acknowledge areas of Aboriginal cultural significance within the Tweed region.

It is equally important to acknowledge that existing Aboriginal cultural assessments (ACA) undertaken are not of equal value and therefore cannot be relied upon in the same way. Typically, ACA is undertaken in response to a specific development scenario and is not anticipatory or responsive to other possible eventualities, whether it does depends on what was commissioned in the first instance. For example, an ACA that looked at a proposal to fill land most likely would not have assessed the impact of later excavating below the imported fill to allow for development. This might arise in association with swimming pools, basement carparks, pylons, essential infrastructure or the like.

There is therefore a need to understand the relationship between the scale and extent of the development and the Aboriginal cultural heritage assessment that was undertaken. Typically, where there is no clear and unambiguous discussion and related recommendation to a kind of works it may be assumed those works were not anticipated and therefore not assessed at an appropriate level of detail.

Where this relationship is clearly understood and the later development proposed can be shown to be consistent with the existing Aboriginal cultural heritage assessment it should be sufficient to be relied upon and the proponent of the later development will need to demonstrate this where development approval is required from Council.

It is essential that any future Aboriginal cultural heritage assessment that is intended to be relied upon at a later stage is fit for that intended purpose and comprises a depth of assessment and suite of recommendations that would enable reliance upon it. It is incumbent on land and property developers to tailor the management and access of information to suit their and others’ future needs.

**Intent**

To ensure existing Aboriginal cultural heritage assessment is fit for purpose when used and relied upon for a later development proposal or approval.

The intent is to ensure that potential harm to Aboriginal cultural heritage on land identified as Aboriginal Place of Heritage Significance is appropriately assessed while at the same time ensuring that work already completed is not unnecessarily replicated and that harm is avoided wherever possible.

**Application**

This section applies to land mapped Aboriginal place of heritage significance and for which an Aboriginal cultural heritage assessment has been completed.
How do I find out?

Aboriginal Places of Heritage Significance are mapped on the Aboriginal Cultural Heritage Map adopted by Council as part of this Management Plan.

This map is available on Council’s online mapping.

A land developer is encouraged to make any Aboriginal cultural heritage assessment and recommendations available to future land owners to inform future development.

Responsibility for the information

The OEH Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW (2011) outlines the actions required to assess the landscape and determine the potential for harm to Aboriginal cultural heritage. A key part of this process is identifying and documenting the findings and providing recommendations to avoid harm or for further assessment if required.

Given the landscape based nature of this Plan land developers are encouraged to prepare an Aboriginal cultural heritage assessment for an entire site, rather than a project area. In undertaking the assessment in this manner the Assessment Report can outline in detail using appropriate mapping:

- The areas which have been assessed; and
- Which areas do, and do not require further assessment as part of future development applications and evidence of consultation with the Aboriginal community and/or Registered Parties.

Where reliance upon an existing Aboriginal cultural heritage assessment (ACHA) is shown to be appropriate the following matters will need to be sufficiently addressed for the approval or regulatory body to accept that finding:

i. Set out a clear and unambiguous relationship between the existing Aboriginal cultural heritage assessment and the development proposed;

ii. Where there is an inconsistency of any kind, an addendum assessment report prepared in consultation with the Aboriginal community;

iii. A statement indemnifying the Council from any claim against the use or publication of the consultant’s Aboriginal cultural heritage assessment for the purposes of the development approval being sought.
## What do I do?

<table>
<thead>
<tr>
<th>If mapped as Aboriginal Place of Heritage Significance</th>
<th>Undertake an AHIMS search to determine the presence and location of any registered objects or places. Determine if there is an Aboriginal cultural heritage assessment, based on the requirements of the Avoiding or Justifying Harm to Aboriginal Cultural Heritage requirements of Section C2.3 and Consultation requirements of Section C1.3. Determine if the mapping and recommendations of this assessment allow development on the site without the requirement for further Aboriginal cultural heritage assessment, and if so if the nature of the development proposed is consistent with the recommendations.</th>
</tr>
</thead>
<tbody>
<tr>
<td>If an assessment is still required</td>
<td>Follow the Avoiding or Justifying Harm to Aboriginal Cultural Heritage requirements of Section C2.3 and Consultation requirements of Section C1.3. Follow the requirements of section C5.2 for Development Applications or C5.3 for Part V assessments.</td>
</tr>
<tr>
<td>If Human remains or objects are revealed</td>
<td>Enact Stop Work procedures. There is a legal requirement for new objects or places be registered to the AHIMS database. Information should also be provided to Council to update the mapping.</td>
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<tr>
<td>If not mapped as Aboriginal Place of heritage significance</td>
<td>Be aware of the legislative requirements of the NPW Act 1974 relating to ‘harm’ of an Aboriginal object. See Sections C6, C7, C8, C9</td>
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</tbody>
</table>

## What needs to be submitted with a DA?

Documentation of the Aboriginal cultural heritage assessment which confirms the location, type and scale of development and shows a clear and unambiguous relationship to the recommendations. While the context for the assessment is informative, e.g; rezoning or subdivision, it is not of itself determinative of its suitability for a later and different development proposal or approval.

## Further information

- Environmental Planning and Assessment Act, 1979 and Environmental Planning and Assessment Regulation 2000.

## OEH Guidelines:

- Aboriginal Cultural Heritage Consultation Requirements for Proponents (2010)

## If in doubt

The Tweed/Byron Local Aboriginal Land Council is your contact for advice on Aboriginal cultural heritage and its assessment. Tweed Shire Council or a suitably qualified or skilled Town Planning consultancy is your contact for any queries surrounding the planning aspects.
Ukerebagh Island and Fingal Head from Razorback

Source: Tweed Shire Council
C5.5  Routine works, maintenance by Council

This form of work does not constitute development and therefore does not require consent. However, caution is required to ensure routine work and maintenance does not cause harm to Aboriginal cultural heritage as defined by the NPW Act.

Intent

Ensure that the type of works undertaken on a routine basis and maintenance by Council do not cause harm to any Aboriginal cultural heritage values.

Application

This section applies to routine works and maintenance undertaken by, or on behalf of, Council where land is mapped and identified as an Aboriginal Place of Heritage Significance.

The NPW Act requires a person must not harm or desecrate an Aboriginal object (Section 86(2)). Council has a responsibility to prepare and follow appropriate work management procedures with respect to Aboriginal cultural heritage which seek to minimise impacts, avoid harm and to alert workers or contractors to any situation which may require a stop work procedure.

How do I find out?

Aboriginal Places of Heritage Significance are mapped on the Aboriginal Cultural Heritage Map adopted by Council as part of this Management Plan.

This map is available on Council’s online mapping.

What do I do?

<table>
<thead>
<tr>
<th>Scenario</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>If mapped as Aboriginal Place of Heritage Significance</td>
<td>Follow the TSC Standard Procedure for ACH Mitigation: Maintenance and Emergency Works. Ensure all workers are made aware of these procedures as part of standard induction processes.</td>
</tr>
<tr>
<td>If Human remains or objects are revealed</td>
<td>Enact Stop Work procedures and contact Supervisor.</td>
</tr>
<tr>
<td></td>
<td>There is a legal requirement for new objects or places be registered to the AHIMS database. Information should also be provided to Council to update the mapping.</td>
</tr>
<tr>
<td>If not mapped as Aboriginal Place of heritage significance</td>
<td>Exercise caution and proceed with care. Be aware of the legislative requirements of the NPW Act 1974 relating to ‘harm’ of an Aboriginal object.</td>
</tr>
</tbody>
</table>

Note: Aboriginal Cultural Heritage Mitigation Measures - Standard Working Procedures are provided in Attachment 8.

If in doubt

In all instances if there is doubt regarding the need for an Aboriginal Cultural Heritage Assessment seek the advice of the Tweed/Byron Local Aboriginal Land Council first.
The Predictive mapping layer provides a guide to the high probability for the presence of Aboriginal cultural heritage due to a number of the criteria as outlined in Section B2 - Mapping Explained.

The development of the predictive mapping has essentially undertaken the first key steps of assessment as outlined in the OEH Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (The Code). These include:

- Requirement 1 - Review of previous archaeological work;
- Requirement 2 - Review of the landscape context;
- Requirement 3 - Summarise and discuss the local and regional character of Aboriginal land use and its material traces; and
- Requirement 4 - Predict the nature and distribution of evidence.

On this basis the potential for ACH to be found within the predictive layer is well evidenced.

This section provides the management framework and recommended actions for a range of development types within the Predictive Aboriginal cultural heritage mapping layer.

All proposals should strive to identify and avoid harm to Aboriginal cultural heritage.

The process for assessing the potential for harm is essentially the same as where mapped as Aboriginal place of heritage significance, being Avoiding or Justifying Harm to Aboriginal Cultural Heritage (outlined in Section C2.3). However, whilst generally development within the predictive mapped area will not require any mandatory level of assessment to accompany the application the assessment is strongly recommended.

Applicants and certifiers are advised that the predictive mapping layer identifies landscapes with a higher probability of the presence of Aboriginal cultural heritage. It is also noted that the NPW Act requirements to avoid harm to any Aboriginal cultural heritage continue to apply. Accordingly applicants and certifiers are strongly advised to take a precautionary approach, to follow the risk assessment recommendations within this section and to discuss the scope of their proposals early with the TBLALC to understand if there may be any potential risk of harm.

Applicants who have not undertaken the recommended level of assessment and cause harm may have a reduced defence against prosecution and their development may result in lengthy delays to undertake the required assessment and seek the required permits.

Council may, during the assessment of any application, refer the application to the TBLALC for their comments should they consider this is required. Subsequent advice by the TBLALC will be considered in the assessment and could result in the need for further ACH assessment.
C6.1 Strategic land use planning (under Part 3 of the EP&A Act)

Part 3 of the EP&A Act provides the legislative framework for the making, amendment and repeal of Environmental Planning Instruments (EPIs), which includes Local Environmental Plans (LEPs) and State Environmental Planning Policies (SEPPs), but does not include Development Controls Plans (DCPs) despite Part 3 prescribing a framework for their making, amendment or repeal. Both LEPs and DCPs are principally the planning policies of councils and this Section applies to Council’s preparation and oversight of both as well as guiding any consideration of and reply on draft SEPPs or other strategic planning policy of State government agencies or departments.

Intent

To ensure that Aboriginal cultural heritage is considered at all levels of strategic policy planning.

Application

Applies when preparing a Planning Proposal under the EP&A Act on land mapped and identified as Predictive Aboriginal cultural heritage. This section may also apply to a strategic land use plan or locality plans on land mapped and identified as Predictive Aboriginal cultural heritage.

Ministerial S117(2) Planning Direction 2.3 Heritage Conservation requires an LEP to facilitate the conservation of Aboriginal places, objects and landscapes.

The North Coast Regional Plan 2036 requires:

Direction 16: Collaborate and partner with Aboriginal communities to ensure they are engaged throughout the development of strategies and local environmental plans.

Direction 18: Respect and protect the North Coast’s Aboriginal Heritage: A range of actions are required to ensure that Aboriginal objects and places are protected, managed and respected in accordance with legislative requirements and the wishes of local Aboriginal communities.

Strategic planning in all its forms presents the greatest opportunity for the long-term management and protection of Aboriginal cultural heritage through a combination of early engagement with the Aboriginal community and ACH identification, appropriately tailored policy response and in some cases the avoidance of policy that has the potential to lead land use into conflict with ACH.

It also provides the opportunity to consider ‘intangible’ ACH through the early consultation with the local Aboriginal community. This is important because it is not currently and explicitly provided for under the NPW Act and its presence is typically not as well documented as other forms of ACH. Early consultation at the policy level with the local Aboriginal community will assist policy developers and proponents to understand the presence of and approaches for its assessment and consideration.

Note: Intangible cultural heritage is provide for in the [current] draft OEH Aboriginal cultural heritage legislation reforms.

How do I find out?

Predictive Aboriginal cultural heritage is mapped on the Aboriginal Cultural Heritage Map adopted by Council as part of this Management Plan.

This map is available on Council’s online mapping.
When does the ACH assessment need to be done?

The identification of Predictive Aboriginal cultural heritage acknowledges the high likelihood of finding Aboriginal cultural heritage and recommends an appropriate level of assessment be undertaken and consultation completed with the Aboriginal community at the commencement of a site specific planning proposal or masterplan and prior to the lodgment of a planning proposal.

Aboriginal community consultation shall be undertaken at the commencement of a shire wide LEP amendment or other strategic and uses plan or policy.

What needs to be submitted with a planning proposal?

Where the location and type of development is considered Medium / High Risk an assessment following the Risk Matrix (Table C3) Risk Assessment Recommendations is required to be submitted with a planning proposal, documenting the assessment findings and the Aboriginal consultation undertaken.

What do I do?

| If mapped as Predictive Aboriginal cultural heritage | Undertake an AHIMS Search to determine the presence and location of any registered objects or places. |
| Assessment recommended | Review the risk of disturbance and existing land use category, using the Risk Matrix (Table C3) and associated Tables C4 - Part 4 and Part 5 Development Risk Matrix and understand the level of risk and follow the recommended actions. Consultation with the TBLALC is strongly recommended to understand the potential for Intangible cultural heritage and the potential risk of harm to ACH. It is desirable at this early planning stage that potential harm will be avoided through redesign of the proposal. |
| If harm cannot be avoided | If consultation and assessment finds that harm cannot be determined or avoided follow the OEH guideline requirements of the Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW (2011) and undertake consultation consistent with the OEH Guideline Aboriginal Cultural Heritage Consultation Requirements for Proponents, 2010. If potential harm cannot be avoided an AHIP will be required at the development application stage. Where required, an AHIP under the NPW Act must be applied for and approved prior to commencement of any works. |
| If Human remains or objects are revealed | Enact Stop Work procedures. There is a legal requirement for new objects or places be registered to the AHIMS database. Information should also be provided to Council to update the mapping. |
| If not mapped as Predictive Aboriginal cultural heritage | Exercise caution and proceed with care. Be aware of the legislative requirements of the NPW Act 1974 relating to ‘harm’ of an Aboriginal object. See Sections C7, C8, C9 |
Who may undertake the ACH assessment?
The Aboriginal Cultural Heritage Assessment requires a range of relevant disciplines and components and it cannot be assumed that any one practitioner will have the full range of skills needed. A suitably qualified Aboriginal cultural heritage expert/archaeologist is required to undertake and document the Avoiding or Justifying Harm to Aboriginal Cultural Heritage requirements. Where harm cannot be avoided or an AHIP is required, the OEH Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (2010) stipulates the minimum qualifications required.

If in doubt
The Tweed/Byron Local Aboriginal Land Council is your contact for advice on Aboriginal cultural heritage and its assessment. Tweed Shire Council or a suitably qualified or skilled Town Planning consultancy is your contact for any queries surrounding the planning aspects.

Further information:
OEH Guidelines:
- Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (2010)
- Aboriginal Cultural Heritage Consultation Requirements for Proponents (2010)
- Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (2010)
C6.2 Development applications and assessment (under Part 4 of the EP&A Act)

Part 4 of the EP&A Act applies to development assessment, including the procedures and considerations for the evaluation of development.

This part will apply for all development applications requiring the consent of Council.

Intent

To ensure that potential harm to Aboriginal cultural heritage on land identified as Predictive Aboriginal cultural heritage is investigated and assessed as an initial consideration of any proposed development and appropriately evaluated as part of the development assessment consideration so that harm is avoided where possible.

Application

This section applies to development requiring development consent under Part 4 of the EP&A Act on land mapped and identified as an Predictive Aboriginal cultural heritage.

All Aboriginal objects in NSW are protected under the NP&W Act and cannot be harmed without the necessary defences, exemptions or permits in place. The NP&W Act provides a defence against harm where due diligence has been exercised to determine whether ACH may be harmed.

The Predictive Aboriginal cultural heritage mapping layer has, through a rigorous methodology, identified those areas where there is a higher likelihood of Aboriginal cultural heritage, and therefore a need for a greater level of scrutiny. The key objective of any investigation and assessment is to ensure development avoids ‘harm’ to any ACH (see discussion in Section D - Legislative Framework).

Assessment of any likely environmental, social or economic impacts is required under cl.4.15 - Evaluation of the EP&A Act.

It is strongly recommended to take a precautionary approach, to follow the risk assessment recommendations in this section and to discuss the scope of their proposals early with the TBLALC to understand if there may be any potential risk of harm.

How do I find out?

Predictive Aboriginal Cultural Heritage is mapped on the Aboriginal Cultural Heritage Map adopted by Council.

This map is available on Council’s online mapping.
### What do I do?

<table>
<thead>
<tr>
<th>If mapped as Predictive Aboriginal cultural heritage</th>
<th>Undertake an AHIMS Search to determine the presence and location of any registered objects or places.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessment recommended</td>
<td>Review the risk of disturbance and existing land use category, using the Risk Matrix (Table C3) and associated Tables C4 - Part 4 and Part 5 Development Risk Matrix and understand the level of risk and follow the recommended actions. Consultation with the TBLALC is strongly recommended to understand the potential for Intangible cultural heritage and the potential risk of harm to ACH. It is desirable at this early planning stage that potential harm will be avoided through redesign of the proposal.</td>
</tr>
<tr>
<td>If harm cannot be avoided</td>
<td>If harm cannot be determined or avoided follow the OEH guideline requirements of the Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW (2011) and undertake consultation consistent with the OEH Guideline Aboriginal Cultural Heritage Consultation Requirements for Proponents, 2010. If harm cannot be avoided an AHIP will be required at the development application stage. An AHIP under the NPW Act must be applied for and approved prior to commencement of any works.</td>
</tr>
<tr>
<td>If Human remains or objects are revealed</td>
<td>Enact Stop Work procedures. There is a legal requirement for new objects or places be registered to the AHIMS database. Information should also be provided to Council to update the mapping.</td>
</tr>
<tr>
<td>If not mapped as Predictive Aboriginal cultural heritage</td>
<td>Exercise caution and proceed with care. Be aware of the legislative requirements of the NPW Act 1974 relating to ‘harm’ of an Aboriginal object. See Sections C7, C8, C9</td>
</tr>
</tbody>
</table>

### When does the assessment need to be done?

The recommended level of Aboriginal cultural heritage assessment is to be undertaken and consultation completed with the Aboriginal community prior to the lodgement of any development application (DA) and in conjunction with, or prior to, the development of the design plans.

**What needs to be submitted with a DA?**

Where the location and type of development is considered Medium / High Risk an assessment following the Risk Matrix (Table C3) Risk Assessment Recommendations is recommended to be submitted with a DA.

Designated development under Part 4 (cl.4.10) of the EP&A Act requires an Environmental Impact Assessment (EIS) under cl.4.12(8). The EIS must be prepared in accordance with the requirements specified in Schedule 2 of the EP&A Regulation 2000. This may include any requirements that the Director General may impose. If harm cannot be determined or avoided you are advised to follow the OEH guideline requirements of the Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW (2011) and undertake consultation consistent with the OEH Guideline Aboriginal Cultural Heritage Consultation Requirements for Proponents, 2010.

Where an AHIP is required, this may be undertaken concurrently as Integrated Development, or as a separate process. Whilst development consent may be issued consistent with any General Terms of Approval issued by the OEH, any development which may cause harm cannot be commenced prior to the issue of AHIP.

**Note:** Applicants who have not undertaken the recommended level of assessment and cause harm may have a reduced defence against prosecution and their development may result in lengthy delays to undertake the required assessment and seek the required permits.
Who may undertake the ACH assessment?

The Aboriginal Cultural Heritage Assessment requires a range of relevant disciplines and components and it cannot be assumed that any one practitioner will have the full range of skills needed. A suitably qualified Aboriginal cultural heritage expert/archaeologist is required to document Avoiding or Justifying Harm to Aboriginal Cultural Heritage. Where harm cannot be avoided or an AHIP is required, the OEH Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (2010) stipulates the minimum qualifications required.

Exceptions:
- Development that is permitted without consent, as discussed in section C3; or
- Exempt or complying development, as discussed in Section C4; or
- Development under Clause 5.10(3) of the applicable LEP (or equivalent)

The applicable LEP Clause 5.10 (3) makes provision for works of minor nature or maintenance without development consent, subject to the written authorisation of Council prior to commencement of works. The application of the minor works and maintenance provisions of Clause 5.10(3) will be guided by and may be considered for those types and locations of development identified within Section C6: Tables C3 and C4 Part 4 and Part 5 Development Risk Matrix as “low risk” which, other than for the potential for Aboriginal cultural heritage, may not ordinarily require a development application.

Note: Legislation is amended frequently and applicants and private certifiers are advised to familiarise themselves with the current exemptions.

If in doubt

The Tweed/Byron Local Aboriginal Land Council is your contact for advice on Aboriginal cultural heritage and its assessment. Tweed Shire Council or a suitably qualified or skilled Town Planning consultancy is your contact for any queries surrounding the planning aspects.

Further information:


OEH Guidelines:
- Aboriginal Cultural Heritage Consultation Requirements for Proponents (2010)
- Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (2010)
- Applying for an Aboriginal Heritage Impact Permit: Guide for Applicants (2011)
- Guide to Aboriginal Heritage Impact Permit Processes and Decision-making (2011)

Environmental Planning and Assessment Act, 1979 and Environmental Planning and Assessment Regulation 2000.

The applicable Tweed Local Environmental Plan.
C6.3 Environmental assessment under Part 5 of the EP&A Act

Part 5 of the EP&A Act relates to the requirements for environmental assessment for local Council works, state significant development and/or infrastructure and predominantly guides a local council’s (public authority’s) activities and their required environmental assessments.

While development falling under Part 5 is generally thought to relate to activities (development) undertaken by public authorities, such as councils, as part of their everyday responsibilities for such matters as; roads or water supply, it may also capture private companies undertaking for example electricity or telecommunications infrastructure, or a private landowner undertaking a new driveway crossing over a public road reserve, where an approval, permission or licence of some kind is required from the determining authority.

**Intent**

To ensure potential harm to Aboriginal cultural heritage on land identified as an having Predictive Aboriginal cultural heritage is considered and managed through undertaking an appropriate level of assessment for the type of works, development or activity proposed as an initial consideration of any proposed development and appropriately evaluated as part of the environmental assessment considerations so that harm is avoided where possible.

**Application**

Applies to any activity under Part 5 of the Environmental Planning and Assessment Act 1979, generally undertaken by or on behalf of a public authority. Applies to land mapped and identified as Predictive Aboriginal cultural heritage.

cl.5.5 of the EP&A Act requires:

1. For the purpose of attaining the objects of this Act relating to the protection and enhancement of the environment, a determining authority in its consideration of an activity shall, notwithstanding any other provisions of this Act or the provisions of any other Act or of any instrument made under this or any other Act, examine and take into account to the fullest extent possible all matters affecting or likely to affect the environment by reason of that activity.

All Aboriginal objects in NSW are protected under the NP&W Act and cannot be harmed without the necessary defences, exemptions or permits in place. The NP&W Act provides a defence against harm where due diligence has been exercised to determine whether ACH may be harmed.

The Predictive Aboriginal cultural heritage mapping has, through a rigorous methodology, identified those areas where there is a higher likelihood of Aboriginal cultural heritage.

It is strongly recommended to take a precautionary approach, to follow the risk assessment recommendations in this section and to discuss the scope of their proposals early with the TBLALC to understand if there may be any potential risk of harm.

**How do I find out?**

Predictive Aboriginal Cultural Heritage is mapped on the Aboriginal Cultural Heritage Map adopted by Council.

This map is available on Council’s online mapping.
What do I do?

<table>
<thead>
<tr>
<th>If mapped as Predictive Aboriginal cultural heritage</th>
<th>Undertake an AHIMS Search to determine the presence and location of any registered objects or places.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assessment recommended</td>
<td>Review the risk of disturbance and existing land use category, using the Risk Matrix (Table C3) and associated Tables C4 - Part 4 and Part 5 Development Risk Matrix and understand the level of risk and follow the recommended actions. Consultation with the TBLALC is strongly recommended to understand the potential for Intangible cultural heritage and the potential risk of harm to ACH. It is desirable at this early planning stage that potential harm will be avoided through redesign of the proposal.</td>
</tr>
<tr>
<td>If harm cannot be avoided</td>
<td>If harm cannot be determined or avoided follow the OEH guideline requirements of the Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW (2011) and undertake consultation consistent with the OEH Guideline Aboriginal Cultural Heritage Consultation Requirements for Proponents, 2010. If harm cannot be avoided an AHIP will be required at the development application stage. An AHIP under the NPW Act must be applied for and approved prior to commencement of any works.</td>
</tr>
<tr>
<td>If Human remains or objects are revealed</td>
<td>Enact Stop Work procedures. There is a legal requirement for new objects or places be registered to the AHIMS database. Information should also be provided to Council to update the mapping.</td>
</tr>
<tr>
<td>If not mapped as Predictive Aboriginal cultural heritage</td>
<td>Exercise caution and proceed with care. Be aware of the legislative requirements of the NPW Act 1974 relating to ‘harm’ of an Aboriginal object. See Sections C7, C8, C9</td>
</tr>
</tbody>
</table>

When does the assessment need to be done?

The recommended level of Aboriginal cultural heritage assessment is to be undertaken and consultation completed with the Aboriginal community prior to the lodgement of any development application (DA) and in conjunction with, or prior to, the development of the design plans for an activity or works.

What needs to be submitted with a DA?

A Review of Environmental Factors (REF) prepared for activities under Part 5 of the EP&A Act, environmental impact assessment, or environmental impact statement as appropriate is required. The EP&A Act requires environmental impacts to be considered under cl.5.5(1) to the fullest extent possible. Where the location and type of development is considered Medium / High Risk an assessment following the Risk Matrix (Table C3) Risk Assessment Recommendations is to be submitted with a DA.

Who may undertake the ACH assessment?

The Aboriginal Cultural Heritage Assessment requires a range of relevant disciplines and components and it cannot be assumed that any one practitioner will have the full range of skills needed. A suitably qualified Aboriginal cultural heritage expert/archaeologist is required to document Avoiding or Justifying Harm to Aboriginal Cultural Heritage. Where harm cannot be avoided or an AHIP is required, the OEH Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (2010) stipulates the minimum qualifications required.
Exceptions

Any development [currently] excluded under Part 5 cl.5.4 which includes:

(a) a modification of an activity, whose environmental impact has already been considered, that will reduce its overall environmental impact,

(b) a routine activity (such as the maintenance of infrastructure) that the Minister determines has a low environmental impact and that is carried out in accordance with a code approved by the Minister,

c) an activity (or part of an activity) that has been approved, or is to be carried out, by another determining authority after environmental assessment in accordance with this Part.

An activity, works or development identified as “low risk” in the Section C6: Tables C3 and C4 Part 4 and Part 5 Development Risk Matrix will be used in to inform what may be considered as low environmental impact.

Any Exempt Development which may be provided by another Environmental Planning Instrument, such as the Mining State Environmental Planning Policy (SEPP) or Infrastructure SEPP.

Note: Legislation is amended frequently and applicants are advised to familiarise themselves with the current exemptions.

If in doubt

The Tweed/Byron Local Aboriginal Land Council is your contact for advice on Aboriginal cultural heritage and its assessment. Tweed Shire Council or a suitably qualified or skilled Town Planning consultancy is your contact for any queries surrounding the planning aspects.

Further information:

Environmental Planning and Assessment Act, 1979 and Environmental Planning and Assessment Regulation 2000.


OEH Guidelines:

- Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (2010)
- Aboriginal Cultural Heritage Consultation Requirements for Proponents (2010)
- Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (2010)
<table>
<thead>
<tr>
<th>Existing land use categories</th>
<th>Negligible disturbance</th>
<th>Minimal disturbance</th>
<th>Moderate disturbance</th>
<th>Significant disturbance</th>
<th>Major disturbance</th>
</tr>
</thead>
</table>
| **Built Environment** 
  ie existing urban and developed environments, towns, villages | Low | Low | Low | Medium / High | Medium / High |
| **Significantly altered environment** 
  ie Agricultural, cultivated and cleared farmland | Low | Low | Medium / High | Medium / High | Medium / High |
| **Moderately altered environments** 
  ie partially cleared land, revegetated landscapes | Low | Low | Medium / High | Medium / High | Medium / High |
| **Minimally altered environments** 
  ie urban bushland, greenfield sites, regrowth areas | Low | Medium / High | Medium / High | Medium / High | Medium / High |
| **Unaltered environments** 
  ie protected areas, environmental areas, pristine environments | Low | Medium / High | Medium / High | Medium / High | Medium / High |

**Low risk assessment recommendations**

Review the proposed activity, works or development impact to ensure harm can be avoided. Clause 5.10(3) of the LEP **may** be applied. Any conditions applied within the formal written authorisation under Clause 5.10(3) must be complied with and proceed using the precautionary principle.

There is no requirement for an Aboriginal cultural heritage assessment. However, property owners are advised to exercise due diligence as the requirements under the NPW Act to avoid “harm” continue to apply.

It is noted that any discovery of objects or human remains requires immediate stop work procedures.

**Medium / High risk assessment recommendations**

Clause 5.10(3) of the LEP will not be applied.

Applicants are advised to consult with the Tweed Aboriginal community through the TBLALC and engage a suitably qualified person experience in Aboriginal cultural heritage to undertake the following investigation:

1. Undertake a site analysis to identify whether the rezoning, development or activity footprint is in an area likely to contain Aboriginal objects;

2. Undertake a site analysis and field survey of the site of the proposal, including any areas identified under point 1 above, to survey for Aboriginal objects (this may involve test excavation that must be undertaken in accordance with the OEH *Code of Practice for Archaeological Investigation of Aboriginal Object in NSW*);

3. If Aboriginal objects are found in the proposal areas, then identify the locations of Aboriginal objects and the nature and extent of Aboriginal objects;

4. Follow the process at outlined in Section C2.3 *Avoiding or Justifying Harm to Aboriginal Cultural Heritage Steps 3) b) and c).*

It is noted that any discovery of objects or human remains requires immediate stop work procedures.
The list following provides indicative examples of typical Part 4 and Part 5 development, activities or works to be read in conjunction with the potential ACH risk of disturbance categories of the following Table C3 - Part 4 and Part 5 Development Risk Matrix.

**Interpretation for table C4:**

**Excavation or ground disturbance** in this table means excavation, filling of land, changes to hydrological regime, and/or clearing of native vegetation in a manner which disturbs the ground surface. Excavation or ground disturbance may have varying potential for risk depending on the locality, proximity to known Aboriginal cultural heritage, soil structure and type, landscape category etc (as discussed in Section B). In sandy coastal areas and dune systems Aboriginal cultural heritage may be found on the surface and up to a depth of 2 metres and disturbance of the soil has a higher potential risk. These factors must also be considered within the following level of excavation or ground disturbance and may be used as a guide:

**Minimal Excavation or ground disturbance** may include cut and fill of less than 200mm; however may be deeper over a small area, such as small holes for fencing, signage etc and is generally associated with fencing, minor work, maintenance or repairs or internal work.

**Moderate excavation or ground disturbance** may include cut and fill of greater than 200mm and is generally associated with new development, structures or infrastructure.

**Major excavation or ground disturbance** may include cut and fill of greater than 200mm and is generally associated with development of significant impact either environmentally or the level of ground disturbance, such as pools, service stations, dams and the like.

<table>
<thead>
<tr>
<th>Risk of disturbance</th>
<th>Part 4 Development</th>
<th>Part 5 Development</th>
</tr>
</thead>
<tbody>
<tr>
<td>Negligible disturbance</td>
<td>Activities or works which are non-invasive or cause negligible disturbance to the ground surface and may include for example:</td>
<td>Activities or works which are non-invasive or cause negligible disturbance to the ground surface and may include for example:</td>
</tr>
<tr>
<td></td>
<td>• Installing a letterbox, clothesline, aerials, skylights or similar</td>
<td>• Ground surveys which do not alter the ground surface, such as geo-technical investigations</td>
</tr>
<tr>
<td></td>
<td>• garden beds and vegetable gardens which do not involve ground excavation</td>
<td>• Water and soil sampling</td>
</tr>
<tr>
<td></td>
<td>• Small scale landscaping, gardens or paving without the need for any excavation work, retaining walls, footing or other ground disturbance</td>
<td>• Mowing, maintenance of established parks, gardens, road reserves and the like</td>
</tr>
<tr>
<td></td>
<td>• Internal renovations to a dwelling or building or second storey additions which do not involve extension of the site coverage or any excavation work or ground disturbance</td>
<td>• Environmental monitoring</td>
</tr>
<tr>
<td></td>
<td>• Change of use of premises which does not involve extension of the site coverage or any excavation work or ground disturbance</td>
<td>• Maintenance and repair of existing roads and bridges without alteration to alignment or requiring any excavation</td>
</tr>
<tr>
<td></td>
<td>• Home industries which do not involve extension of the site coverage or any excavation work or ground disturbance</td>
<td>• repairs to revetment walls without increasing their size or depth</td>
</tr>
<tr>
<td></td>
<td>• Signage installed on a building</td>
<td>• Above ground infrastructure with minimal ground disturbance such as installing BBQ, play equipment etc</td>
</tr>
<tr>
<td>Risk of disturbance</td>
<td>Part 4 Development</td>
<td>Part 5 Development</td>
</tr>
<tr>
<td>---------------------</td>
<td>-------------------</td>
<td>--------------------</td>
</tr>
</tbody>
</table>
| Minimal disturbance | Development or works which may cause minimal disturbance to the land and may include:  
  - Cultivating or grazing of land currently or previously (within 5 years) used for cultivating or grazing  
  - Maintenance, repair or replacement of existing landscape gardens, retaining walls, pathways, footings, garden sheds, pools etc  
  - Renovations to a dwelling or building which do not involve extension of the site coverage or any excavation work or ground disturbance, such as internal renovations  
  - Pet compounds, aviaries etc which do not involve ground disturbance or excavation  
  - Bushfire hazard reduction, flood mitigation works  
  - New residential fencing in existing residential areas  
  - Repairs to existing fencing in rural areas  
  - Demolition | Development or works which may cause minimal disturbance to the land and may include:  
  - Forestry in accordance with a Forest Agreement under the Forestry Act 2012  
  - Feral animal eradication, weed, vermin or pest control  
  - Maintenance and minor repair of existing water, sewer and road infrastructure not involving expansion or realignment  
  - Maintenance, repair or replacement of existing landscape gardens, retaining walls, pathways, footings, sheds, pools etc not involving expansion or realignment  
  - Renovations or repairs to a building which do not involve extension of the site coverage or any excavation work or ground disturbance  
  - Bushfire hazard reduction, flood mitigation works (emergency or maintenance and repairs)  
  - Demolition |
| Moderate disturbance | Development or works which may cause moderate disturbance to the land and may include:  
  - Farm buildings  
  - Agriculture  
  - Animal boarding or training activities  
  - New retaining walls, driveways,  
  - New single dwellings or secondary dwellings, alterations or additions to dwellings in established urban areas which increase the site coverage and/or involve moderate excavation or ground disturbance.  
  - New dual occupancy, multi dwelling housing, bed and breakfast or buildings in established residential areas which involve moderate excavation or ground disturbance  
  - New commercial or industrial forms of development within established urban areas which involve moderate excavation or ground disturbance  
  - Camping grounds  
  - New fencing in rural areas  
  - Filming activities which involve moderate excavation or ground disturbance and no clearing of vegetation | Development or works which may cause moderate disturbance to the land and may include:  
  - New fire breaks  
  - New retaining walls, driveways, fencing  
  - Operations of camping grounds and caravan / tourist parks infrastructure involving moderate excavation or ground disturbance  
  - Animal boarding or training  
  - Temporary gravel stockpile  
  - Erosion management  
  - New subsurface infrastructure involving moderate excavation or ground disturbance |
### Risk of disturbance

#### Significant disturbance

<table>
<thead>
<tr>
<th>Part 4 Development</th>
<th>Part 5 Development</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development or works which may cause significant disturbance to the land and may include:</td>
<td>Development or works which may cause significant disturbance to the land and may include:</td>
</tr>
<tr>
<td>• Earthworks and major excavation or ground disturbance</td>
<td>• Earthworks and major excavation or ground disturbance</td>
</tr>
<tr>
<td>• Clearing of native vegetation (excluding regrowth)</td>
<td>• Clearing of native vegetation</td>
</tr>
<tr>
<td>• New swimming pools</td>
<td>• New swimming pools</td>
</tr>
<tr>
<td>• Underground water tanks</td>
<td>• Underground water tanks</td>
</tr>
<tr>
<td>• Sewerage systems</td>
<td>• Development which includes excavation and/or basements or below ground works within established urban areas</td>
</tr>
<tr>
<td>• Development which includes excavation and/or basements or below ground works within established urban areas</td>
<td>• Boat ramps, jetties, boat sheds involving earthworks and major excavation or ground disturbance</td>
</tr>
<tr>
<td>• Hospitals, educational establishments</td>
<td>• New road, water, sewer, bridge infrastructure including extensions or alterations to alignment</td>
</tr>
<tr>
<td>• New single dwellings or secondary dwellings in rural areas</td>
<td>• New flood management, flood gates</td>
</tr>
<tr>
<td>• New dual occupancy, multi dwelling housing or buildings in rural areas</td>
<td>• Major landscaping or land contouring</td>
</tr>
<tr>
<td>• New bed and breakfast in rural areas</td>
<td>• Intensive soil core sampling</td>
</tr>
<tr>
<td>• Filming activities which involve major excavation or ground disturbance, involve clearing and construction or installation of structures</td>
<td>• Land reclamation works</td>
</tr>
<tr>
<td>• Boat ramps, jetties, boat sheds involving earthworks and major excavation or ground disturbance</td>
<td>• New waterway revetment walls and major changes to waterways</td>
</tr>
<tr>
<td>• Intensive agriculture</td>
<td>• New sporting fields and facilities</td>
</tr>
<tr>
<td>• Service stations</td>
<td>• New footpaths</td>
</tr>
</tbody>
</table>

#### Major disturbance

<table>
<thead>
<tr>
<th>Part 4 Development</th>
<th>Part 5 Development</th>
</tr>
</thead>
<tbody>
<tr>
<td>Development or works which may cause major disturbance to the land and may include:</td>
<td>Development or works which may cause major disturbance to the land and may include:</td>
</tr>
<tr>
<td>• Extractive industries</td>
<td>• Extractive industries</td>
</tr>
<tr>
<td>• Any impact on culturally modified trees and/or land disturbance or removal of native vegetation in a way that disturbs the land</td>
<td>• Major construction works ie new parks, car parks, community facilities and the like</td>
</tr>
<tr>
<td>• Port facilities, airports, service stations and the like</td>
<td>• New construction or works within camping grounds and caravan / tourist parks</td>
</tr>
<tr>
<td>• Development which includes major excavation or ground disturbance, basements or below ground works within new or greenfield areas</td>
<td>• Port facilities, airports, service stations, depots and the like</td>
</tr>
<tr>
<td>• Development which includes major excavation or ground disturbance, basements or below ground works within new or greenfield areas</td>
<td>• Sewerage treatment plants, new or expanded water or sewer infrastructure</td>
</tr>
<tr>
<td>• Any change to hydrological regimes</td>
<td>• Dams or water storage facility</td>
</tr>
<tr>
<td>• Mining</td>
<td>• Any change to hydrological regimes</td>
</tr>
<tr>
<td></td>
<td>• Development which includes major excavation or ground disturbance, basements or below ground works within new or greenfield areas</td>
</tr>
</tbody>
</table>
**C7 Is the site unmapped land?**

### Intent
To clarify any assessment requirements for land which is unmapped on the ACH mapping layer.

### Application
It is important to understand that land which is unmapped on the ACH mapping layer may still contain cultural archaeology, although through this mapping process the likelihood is considered lower. Notwithstanding, the provisions of the NPW Act to exercise due diligence and avoid harm of Aboriginal places and objects prevails, as do the penalties.

### How do I find out?
Review the Aboriginal Cultural Heritage Map adopted by Council.
This map is available on Council’s online mapping.

### What do I do?

<table>
<thead>
<tr>
<th>Condition</th>
<th>Action</th>
</tr>
</thead>
<tbody>
<tr>
<td>If land is unmapped</td>
<td>Applicants and certifiers are advised to undertake an AHIMS Search to determine the presence and location of any registered objects or places before proceeding. Exercise caution and proceed with care after exercising due diligence. Be aware of the legislative requirements of the NPW Act 1974 relating to ‘harm’ of an Aboriginal object. Should objects or places any be found follow sections C5, C6, C8 and C9.</td>
</tr>
<tr>
<td>If Human remains or objects are revealed</td>
<td>Enact Stop Work procedures. There is a legal requirement for new objects or places be registered to the AHIMS database. Information should also be provided to Council to update the mapping.</td>
</tr>
</tbody>
</table>
Is any ACH assessment required?

No additional Aboriginal cultural heritage assessment is required unless an AHIMS search identifies a registered site.

Is anything extra required to be submitted with a DA under (Part 4 of the EP&A Act)?

If exercising due diligence identifies no harm or impact then no additional Aboriginal cultural heritage assessment or report is required above the standard Statement of Environmental Effects.

Is anything extra required to be submitted (under Part 5 of the EP&A Act)?

No additional Aboriginal cultural heritage assessment or report is required above the standard Review of Environmental Factors prepared for activities under Part 5 of the EP&A Act, environmental impact assessment, or environmental impact statement as appropriate.

If in doubt

The Tweed/Byron Local Aboriginal Land Council is your contact for advice on Aboriginal cultural heritage and its assessment. Tweed Shire Council or a suitably qualified or skilled Town Planning consultancy is your contact for any queries surrounding the planning aspects.

Further information:

Applicants and certifiers are advised to familiarise themselves with:

- Section B5 of this Plan - Understanding Landscapes.
- Section D of this Plan - The Legislative Context
- Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (2010)

including:

- Fact Sheet 2: Providing certainty for the protection of Aboriginal heritage through due diligence
- Fact Sheet 3: Better law enforcement for the protection of Aboriginal heritage, national parks and threatened species in NSW
- OEH Fact sheet What should you do if you are intending to do something that may harm an Aboriginal object or place?
- OEH Fact Sheet Information on Aboriginal Heritage Impact Permits
Is the land a declared place under the National Parks and Wildlife Act or in the vicinity of a declared place?

Intent
To ensure that land identified as a Declared Aboriginal Place is protected and managed appropriately.

Application
Places of special significance with respect to Aboriginal culture may [currently] be declared under the NPW Act Section 84. Any Aboriginal object or Aboriginal place on any land reserved under the NPW Act is protected from harm or desecration without the prior approval of an OEH issued Aboriginal Heritage impact Permit (s 90) and is required to have proper care, preservation and protection; and/or proper restoration of land which may have been disturbed or excavated in accordance with Aboriginal heritage impact permit.

A curtilage of 100m may be applied around the declared place and is considered to be “in the Vicinity of a declared place”.

(Source and rationale: The OEH recommends a curtilage for within the vicinity of a declared place. A 100 metre curtilage is recommended in the Aboriginal Cultural Heritage Management Development Assessment Toolkit.)

Land which is a Declared place under the NPW Act will in most instances be captured within the mapped Aboriginal place of heritage significance mapping layer. A Declared Place may not be found within the mapped Aboriginal place of heritage significance mapping layer if the Place has recently been declared and the mapping not as yet updated.

Generally a Declared Place is within the ownership of, and managed by, an Aboriginal community.

How do I find out?
To find out if a land is a Declared Place refer to the Office of Environment and Heritage on-line Aboriginal Places and State Heritage Register. Currently there are two Declared Places within Tweed Shire, being: Ukerebagh Island and Wollumbin / Mt Warning.

What do I do?

<table>
<thead>
<tr>
<th>If a Declared Place</th>
<th>Document the requirements of <em>Avoiding or Justifying Harm to Aboriginal Cultural Heritage</em> required where development consent is required. Follow the OEH guideline requirements for consultation and assessment.</th>
</tr>
</thead>
<tbody>
<tr>
<td>If the site is within the Vicinity of a Declared Place</td>
<td>Follow the OEH guideline requirements for consultation and assessment.</td>
</tr>
<tr>
<td>If Neither a Declared Place or within the Vicinity of a Declared Place</td>
<td>Proceed through steps in C4 to C9</td>
</tr>
<tr>
<td>If Human remains or objects are revealed</td>
<td>Enact Stop Work procedures. There is a legal requirement for new objects or places be registered to the AHIMS database. Information should also be provided to Council to update the mapping.</td>
</tr>
</tbody>
</table>
Exemptions

Exemptions for certain activities are [currently] provided under section 87A of the National Parks and Wildlife Act:

(a) work for the conservation or protection of an Aboriginal object or place that is carried out by an officer of the Service or a person under the direction of such an officer,

(b) any emergency fire fighting act or bush fire hazard reduction work within the meaning of the Rural Fires Act 1997 that is authorised or required to be carried out under that Act,

(c) any thing authorised by or under the State Emergency and Rescue Management Act 1989 in relation to an emergency (within the meaning of that Act) and that was reasonably necessary in order to avoid an actual or imminent threat to life or property,

(d) any thing specifically required or permitted under the express terms of a conservation agreement entered into under Division 12 of Part 4 of this Act (being an agreement that was entered into or modified after the commencement of this section).

Exemptions under section 87B of the NPW Act for Aboriginal cultural activities include:

(1) The object of this section is to exempt Aboriginal people from the provisions of section 86 that prohibit the harming of an Aboriginal object or place.

(2) Aboriginal people are exempt from the provisions of section 86 (1), (2) and (4) to the extent to which those provisions would, but for this section, prohibit Aboriginal people from carrying out traditional cultural activities (except commercial activities).

(3) This section applies to and in respect of any dependants (whether Aboriginal or not) of Aboriginal people in the same way as it applies to and in respect of Aboriginal people.

Note: Legislation is amended frequently and applicants are advised to familiarise themselves with the current exemptions.

If in doubt

The Tweed/Byron Local Aboriginal Land Council is your contact for advice on Aboriginal cultural heritage and its assessment. Tweed Shire Council or a suitably qualified or skilled Town Planning consultancy is your contact for any queries surrounding the planning aspects.

Further information:


OEH Guidelines:

- Aboriginal Cultural Heritage Consultation Requirements for Proponents (2010)
- Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (2010)
- Applying for an Aboriginal Heritage Impact Permit: Guide for Applicants (2011)
- Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (2010)
Does the land contain an AHIMS registered site?

Intent

To ensure that land identified as a registered site on the AHIMS is protected and managed appropriately.

Application

AHIMS sites are confirmed Aboriginal sites (objects, places and in some instances landscapes) which are registered on the Aboriginal Heritage Information Management System (AHIMS), under section 90Q of the NPW Act.

Assessment of any potential impact or harm is required under Part 6 of the NPW Act. Aboriginal cultural assessment is required under Clause 5.10(8) Aboriginal Place of Heritage Significance of the applicable LEP.

Some management plans apply a curtilage to the AHIMS site. Tweed Shire Council has reviewed all [current] AHIMS sites and incorporated them, where part of a landscape, into the Aboriginal Place of Heritage Significance layer on the ACH map. For this reason an additional buffer to the AHIMS sites is not applied or required.

An Aboriginal place of heritage significance on the ACH map will generally include one or more registered sites. Any development or works within an Aboriginal place of heritage significance on the ACH map should first undertake an AHIMS search.

Land which is a registered site on the AHIMS will in most instances be captured within the mapped Aboriginal place of heritage significance mapping layer. However, there may be instances where a registered site is mapped within the Predictive mapping layer or on unmapped land. This may occur where an object or place has been located and recently registered and the mapping not as yet updated.

How do I find out?

An application to the OEH may be made to access the online AHIMS sites information. Further information is available on the OEH AHIMS web service. Users are required to log on and register and a basic search is free of charge, however, more detailed searches that provide further physical site and cultural information (as appropriate) may attract a fee.

An AHIMS search is required to be current with the development and no older than 12 months; and is required to include an area larger than and wholly containing the land on which the development is proposed to allow an adequate ‘whole of landscape’ interpretation of the site and its relationship to immediate surroundings or surrounding sites. By way of example minor development may consider an area of 1km radius and a major development may need to consider an area of 5 km radius.

Note: Certifiers are strongly advised to check the AHIMS register for any site listings in the vicinity of the development. Requesting a 1km radius is recommended.
What do I do?

<table>
<thead>
<tr>
<th>If there is a registered AHIMS site</th>
<th>Follow the Avoiding or Justifying Harm to Aboriginal Cultural Heritage requirements of Section C2.3 and Consultation requirements of Section C1.3. It is desirable at this early planning stage that potential harm will be avoided through redesign of the proposal.</th>
</tr>
</thead>
<tbody>
<tr>
<td>If harm cannot be avoided</td>
<td>If harm cannot be determined or avoided follow the OEH guideline requirements of the Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW (2011) and undertake consultation consistent with the OEH Guideline Aboriginal Cultural Heritage Consultation Requirements for Proponents, 2010. If harm cannot be avoided an AHIP will be required at the development application stage. This may be undertaken as Integrated Development.</td>
</tr>
<tr>
<td>If there is no registered AHIMS site</td>
<td>Proceed through steps in C3 to C8</td>
</tr>
<tr>
<td>If Human remains or objects are revealed</td>
<td>Enact your Stop Work procedures. There is a legal requirement for new objects or places be registered to the AHIMS database. Information should also be provided to Council to update the mapping.</td>
</tr>
</tbody>
</table>

Exemptions:

Exemptions under section 87A of the NPW Act for certain activities [currently] include:

(a) work for the conservation or protection of an Aboriginal object or place that is carried out by an officer of the Service or a person under the direction of such an officer,

(b) any emergency fire fighting act or bush fire hazard reduction work within the meaning of the Rural Fires Act 1997 that is authorised or required to be carried out under that Act,

(c) any thing authorised by or under the State Emergency and Rescue Management Act 1989 in relation to an emergency (within the meaning of that Act) and that was reasonably necessary in order to avoid an actual or imminent threat to life or property,

(d) any thing specifically required or permitted under the express terms of a conservation agreement entered into under Division 12 of Part 4 of this Act (being an agreement that was entered into or modified after the commencement of this section).

Exemptions under section 87B of the NPW Act for Aboriginal cultural activities include:

(1) The object of this section is to exempt Aboriginal people from the provisions of section 86 that prohibit the harming of an Aboriginal object or place.

(2) Aboriginal people are exempt from the provisions of section 86 (1), (2) and (4) to the extent to which those provisions would, but for this section, prohibit Aboriginal people from carrying out traditional cultural activities (except commercial activities).

(3) This section applies to and in respect of any dependants (whether Aboriginal or not) of Aboriginal people in the same way as it applies to and in respect of Aboriginal people.

Note: Legislation is amended frequently and applicants are advised to familiarise themselves with the current exemptions.
If in doubt

The Tweed/Byron Local Aboriginal Land Council is your contact for advice on Aboriginal cultural heritage and its assessment. Tweed Shire Council or a suitably qualified or skilled Town Planning consultancy is your contact for any queries surrounding the planning aspects.

Further information:


OEH Guidelines:

- Aboriginal Cultural Heritage Consultation Requirements for Proponents (2010)
- Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (2010)
- Applying for an Aboriginal Heritage Impact Permit: Guide for Applicants (2011)
D Understanding the current legislative context

A Aboriginal cultural heritage - an introduction
B Aboriginal cultural heritage mapping
C Consultation, assessment and approvals
D Understanding the current legislative context
E Appendices
The current legislative framework

Aboriginal cultural heritage is recognised in most jurisdictions in Australia and is protected by federal and state legislation. This management plan does not provide information intended to be substituted for an understanding the current ACH legislative requirements and proponents are required to familiarise themselves with these requirements. The management plan does provide a summary and key references to the current legislative framework and supporting information and guidelines in order to guide applicants or owners as to their legislative obligations.

Legislation that is directly relevant to the management and regulation of Aboriginal cultural heritage includes:

- National Parks and Wildlife Act 1974 (NPW Act)
- Aboriginal Land Rights Act, 1983 (ALR Act)
- Heritage Act 1977 (Heritage Act)
- Environmental Planning and Assessment Act 1979 (EP&A Act)

The NPW Act and Heritage Act are currently administered by the NSW Office of Environment and Heritage (OEH). The EP&A Act is managed by the Department of Planning, although local councils are responsible for managing local environmental plans (LEPs) which are enabled under the EP&A Act.

D1.1 National Parks and Wildlife Act (NPW) 1974

The NPW Act is the principal legislation in NSW that provides protection for Aboriginal cultural heritage. The NPW Act defines Aboriginal cultural heritage as an ‘object’, ‘place’ or ‘area’, definitions for which are provided in the following Part D2 - Understanding land use and definitions.

The NPW Act, Part 6, provides specific protection for Aboriginal objects and places by making it an offense to ‘harm’ them. Harm includes ‘destroy, deface or damage of an Aboriginal object or Aboriginal Place, and in relation to an object, move the object from the land on which it has been situated’. It is an offence to harm an Aboriginal object or place under s86 of the NPW Act.

Individuals and organisations are required to practice due diligence to determine whether an action may cause harm to an Aboriginal object or place.

Whilst to ‘desecrate’ is excluded from the definition of harm, it implies an intent of irreverent disrespect and subject also to prosecution. The definition of harm is intended to capture the act of harm, be that through ignorance or action however, without wilful intent. The act of desecration fall outside of these actions and the NPW Act makes it an more significant offence to “desecrate” Aboriginal cultural heritage.

The OEH provides a due diligence code that, if followed, provides a defence against “strict liability” prosecution if an object is harmed (strict liability means that an object is harmed and the person who harmed was unaware of the object prior to the action that caused the harm) (s87(2)). However, a higher penalty exists for individuals or organisations that knowingly harm an object.

A due diligence assessment or an Aboriginal cultural heritage assessment may determine if an Aboriginal Heritage Impact Permit (AHIP) is required. An AHIP under s87 and s90 of the NPW Act is applied for if harm cannot be avoided, although there are specific exemptions which may apply. An AHIP application is lodged with, and assessed by, the OEH.

The OEH manages the recording of objects and places through the Aboriginal Heritage Information Management System (AHIMS) database. The AHIMS assists in determining whether
there are objects or places in a particular location. However, it is important to understand this register is not a comprehensive database and objects may exist, but not yet be recorded in the AHIMS.

The NPW Act manages Declared Aboriginal Places under s84. These areas are declared by the Minister as being of special significance with respect to Aboriginal culture.

Within the Tweed Shire there are currently two declared Aboriginal Places: Ukerebagh Island and Wollumbin (Mount Warning).

Further Information: Further information on Declared Places is available on the OEH website.

The NPW Act also makes provision for:

Stop work orders and emergency site protection

Under s91AA of the NPW Act the Director-General of the OEH can issue a stop work order if an action is being, or is about to be, carried out which is likely to significantly affect an Aboriginal object / site or declared Aboriginal Place. This may operate for 40 days and may be extended.

Interim protections orders

Under s91A of the NPW Act the Director-General of the OEH can make an interim protection order (IPO) for a specific area of land which “has, in the Director-General’s opinion, natural, scientific or cultural significance.” The IPO can operate for up to 2 years.

Supporting Guidelines

In addition, the OEH also maintains a series of guidelines to assist investigating and assessing impact to Aboriginal cultural heritage. These include:

- Aboriginal Cultural Heritage Consultation Requirements for Proponents (2010)
- Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (2010)
- Applying for an Aboriginal Heritage Impact Permit: Guide for Applicants (2011)

It is noted that the NPW Act does not define or make provision for intangible Aboriginal cultural heritage, which includes cultural knowledge: stories, ceremonies, language and “ways of doing things”. The knowledge of intangible cultural heritage is held by the Aboriginal community and is equally significant to Aboriginal people. Intangible cultural heritage has been included as a consideration within the mapping undertaken in association with this Plan.

Note: The OEH has commenced preparation of stand-alone Aboriginal Cultural Heritage legislation and amendment to the NPW Act. Public consultation on a draft Bill and Act was exhibited from late 2017 to early 2018, to which Council made a submission.

Of note the draft legislation seeks a landscape based approach to the identification and management of ACH, introduces a definition for intangible cultural heritage and follows a broadly similar process to this management plan.

Should the new legislation proceed it is envisaged that there will be a 5-7 year transition period. Amendment to the ACH legislation may require subsequent updating of this management plan over a transition period.

Further information: All enquiries relating to the regulation of impact to Aboriginal cultural heritage on a State level should be directed to the OEH.
D1.2 Aboriginal Land Rights Act, 1983

On the State level, the Aboriginal Land Rights Act 1983 is also important. In particular, it enabled the creation of the NSW Aboriginal Land Council (NSW LALC) and the network of local Aboriginal Councils throughout NSW. The relevant Land Council in the Tweed Shire is the Tweed/Byron Local Aboriginal Land Council (TBLALC).

The Act provides a mandate to the NSW LALC to develop land acquired through a claim or by purchase, set up businesses and community benefit schemes for Aboriginal communities and to maintain and promote Aboriginal culture, including the management of significant places and objects.

Relevant to this Plan is Part 5 Division 1A Functions of Aboriginal Land Councils, which states:

s52(4) Aboriginal culture and heritage

A Local Aboriginal Land Council has the following functions in relation to Aboriginal culture and heritage:

(a) to take action to protect the culture and heritage of Aboriginal persons in the Council’s area, subject to any other law;

(b) to promote awareness in the community of the culture and heritage of Aboriginal persons in the Council’s area.

These requirements recognise and acknowledge the statutory role and responsibilities of NSW Aboriginal land councils.

This legislative context supports the nomination of the TBLALC as the key point of contact for Aboriginal cultural heritage information and referrals under this plan.

D1.3 Heritage Act, 1977

Significant Aboriginal heritage can be entered on the State Heritage Register if it is recognised by the community as important to the cultural and heritage values of Aboriginal people in NSW. There are just over twenty places currently entered on the State Heritage Register that are significant to Aboriginal people in NSW, including missions, reserves and massacre sites.

Any work to one of these places requires the approval of the OEH.

The Heritage Act requires a different application and assessment process to the NPW Act.

D1.4 Environmental Planning and Assessment Act (EP&A Act) 1979

The EP&A Act establishes the planning and development system for NSW. It enables the creation of environmental planning instruments, primarily State Environmental Planning Policies (SEPPs) and Local Environmental Plans (LEPs).

The objects of the Act in cl.1.3 include:

f) to promote the sustainable management of built and cultural heritage (including Aboriginal cultural heritage)

Section 4.15 specifies the matters that must be considered in the determination of development applications. Matters of relevance to Aboriginal cultural heritage assessment arise as a consequence of the need to give consideration to:

a) i) Provisions contained in environmental planning instruments,

ii) Any proposed instrument that has been the subject of public consultation,

iii) Any development control plans,

iiia) Any planning agreements,

iv) The regulations

b) the likely impacts of that development, including environmental impacts on both the natural and built environment, and social and economic impacts on the locality,

c) the suitability of the site for development,
d) any submissions made in accordance with the Act and Regulations,

e) The public interest.

c.4.46 relates to integrated development. Integrated development is development that requires development consent and an approval under one or more of the Acts specified in this section. The NPW Act is specified and references s90, grant of an Aboriginal heritage impact permit (AHIP) as integrated development.

**Further information: Refer to the OEH Fact Sheet 5 - Land Use Planning for further information related to integrated development.**

### D1.5 Local Environmental Plans

Tweed Shire Council currently has three Local Environmental Plans (LEP) applying across the shire. The Tweed City Centre LEP 2012 and the Tweed LEP 2014, which applies outside of the city centre, are both prepared under the Standard Instrument Local Environmental Plan requirements and contain standardised and mandatory heritage provisions within Clause 5.10 of Part 5.

In addition, some areas deferred from the LEP 2014 or LEP 2012 are still regulated by the LEP 2000 and the heritage provisions of Part 8 of this instrument.

The LEPs prepared under the provisions of the Standard Instrument Local Environmental Plans include requirements for development in association with Aboriginal cultural heritage, including:

**Clause 1.2 Aims of the Plan**

(2) (c) to promote the responsible sustainable management and conservation of Tweed’s natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, built environmental, and cultural heritage.

**Clause 5.10 Heritage Conservation**

(1) the objectives of this clause are as follows:

(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

Relevant to Aboriginal cultural heritage, Clause 5.10 provides requirements for:

- when development consent is required (Clause 5.10(2));
- when consent may not be required (Clause 5.10(3));
- requirements for the consideration of archaeological sites (Clause 5.10(7));
- consideration of the impact/effect of proposed development on an Aboriginal place or object either known or reasonably likely to be located at the place by means of adequate investigation and assessment and consultation with the local Aboriginal communities (Clause 5.108); and
- Conservation incentives (Clause 5.10(9)).

**Note: The definition of “Aboriginal place of heritage significance” in the LEP differs to the definition of “place” in the NPW Act.**

**This is discussed further in Part D2 Understanding land use and definitions.**
D1.6 State Environmental Planning and Assessment Policy (Exempt and Complying Development Codes) 2008

The State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, otherwise known as the Code SEPP, facilitates a range of minor development as “exempt” from development consent and a range of low impact development as “complying”, under a Code based consent process.

Aboriginal cultural heritage is not separately defined within the Code SEPP, however, is encompassed under the umbrella term of “Environmentally sensitive area” as being of “high Aboriginal cultural significance” (section 1.5 (g)). High Aboriginal cultural significance is not defined within the SEPP.

Therefore, unless land is determined or identified to be of “high Aboriginal cultural significance” within an environmental planning instrument (Clause 1.19(1)(e) for general and rural housing and Clause 1.19(5)(f) for industrial and commercial development of the Code SEPP), identified on the State Heritage Register or an interim heritage order (IHO) most complying development under the Code SEPP could be undertaken.

Known Aboriginal cultural heritage under this plan is to be identified as “Aboriginal place of heritage significance” in the applicable Local Environmental Plan. For the purpose of interpretation within this Plan “Aboriginal place of heritage significance” is also to be interpreted as “high Aboriginal Cultural significance” for the purpose of the Code SEPP and other State Environmental Planning Policies.

ACH is not a restrictive factor for most exempt development under the Code SEPP as these types of development are considered to be minor in nature. However, some specified development, for example a driveway, carport, garage, retaining wall, cabana, farm building, cubby house, fernery, garden shed, gazebo or greenhouse is not exempt where identified as within an environmentally sensitive area. Applicants are advised to check the provisions of the Code SEPP carefully before proceeding.

The implications of the Code SEPP and other SEPPs are discussed further in Parts B4.2 and D2.

D1.7 North Coast Regional Plan 2036

The North Coast Regional Plan 2036 provides the State Government’s strategic planning framework for the North Coast, encompassing 12 local government areas from Port Macquarie to the Tweed and is enacted by the Ministerial Section 117 Directions.

The plan provides significant guidance for the protection of Aboriginal cultural heritage and engagement with the Aboriginal community, particularly in planning and development.

**Direction 16: Collaborate and partner with Aboriginal Communities**

- Develop partnerships with Aboriginal communities to facilitate engagement during the planning process, including the development of engagement protocols.
- Ensure Aboriginal communities are engaged throughout the preparation of local growth management strategies and local environmental plans.

**Direction 17: Increase the economic self-determination of Aboriginal Communities**

- Deliver opportunities to increase the economic independence of Aboriginal communities through training, employment and tourism.
- Foster closer cooperation with Local Aboriginal Land Councils to identify the unique potential and assets of the North Coast communities.
- Identify priority sites with economic development potential that Local Aboriginal Land Councils may wish to consider for further investigation.

**Direction 18: Respect and Protect the North Coast’s Aboriginal heritage**

- Ensure Aboriginal objects and places are protected, managed and respected in accordance with legislative requirements and the wishes of local Aboriginal communities.
- Undertake Aboriginal cultural heritage assessments to inform the design of planning and development proposals so that impacts to Aboriginal cultural heritage are minimised and appropriate heritage management mechanisms are identified.
• Develop local heritage studies in consultation with the local Aboriginal community, and adopt appropriate measures in planning strategies and local plans to protect Aboriginal heritage.

• Prepare maps to identify sites of Aboriginal heritage in ‘investigation’ areas, where culturally appropriate, to inform planning strategies and local plans to protect Aboriginal heritage.

D1.8 Other legislation

There is a range of other legislation at a State and Federal level that relates to Aboriginal heritage and land management. On a national level, there are two pieces of legislation that directly relate to Aboriginal cultural heritage:

The Environment Protection and Biodiversity Conservation Act 1999, which protects places entered on the National and Commonwealth Heritage Lists, and places entered on the World Heritage List within the jurisdiction of Australia.

The Aboriginal and Torres Strait Islander Heritage Protection Act 1984, which enables the federal government to extend protection to Aboriginal areas or objects that are under threat and not adequately protected by state laws.

The Native Title (New South Wales) Act 1994 and Commonwealth Native Title Act 1993 confer on an Aboriginal people a grant of title to land. Native title is an important aspect of legislation for Aboriginal people in Australia and NSW.

The Aboriginal Languages Act 2017, which seeks to foster the protection of Aboriginal languages at a local, regional and state level.

Native Title is different to the management of cultural heritage. This management plan has been developed to assist in the recognition and protection of Aboriginal cultural heritage in the Tweed Shire. It does not relate to Native Title nor do its outcomes and recommendations affect ownership or title of land.
D1.9 Related Policy

Section 117(2) Directions

When a Council prepares an amendment to a local environmental plan, such as a planning proposal to rezone land, a suite of directions and policy apply.

The Section 117(2) Direction 2.3 Heritage Conservation requires that:

A planning proposal must contain provisions that facilitate the conservation of:

(a) items, places, buildings, works, relics, moveable objects or precincts of environmental heritage significance to an area, in relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item, area, object or place, identified in a study of the environmental heritage of the area,

(b) Aboriginal objects or Aboriginal places that are protected under the National Parks and Wildlife Act 1974, and

(c) Aboriginal areas, Aboriginal objects, Aboriginal places or landscapes identified by an Aboriginal heritage survey prepared by or on behalf of an Aboriginal Land Council, Aboriginal body or public authority and provided to the relevant planning authority, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.

D1.10 Related documentation and further information

The following guidelines provide further information on Aboriginal cultural heritage requirements:

How the Aboriginal heritage system works (NSW Office of Environment and heritage, 2012)


Aboriginal Cultural Heritage Consultation Requirements for Proponents 2010 (NSW Office of Environment and Heritage, 2010).

Code of Practice for Archaeological Investigation of Aboriginal Objects in NSW (NSW Office of Environment and Heritage, 2010).

Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales (NSW Office of Environment and Heritage).


NSW OEH Fact Sheets 1 to 5 Aboriginal Cultural Heritage Consultation Requirements for Proponents, Part 6 National Parks and Wildlife Act 1974’, (NSW Office of Environment and Heritage)

It is important to understand the range of terminology and definitions used in respect of Aboriginal cultural heritage and how they impact and have guided the management of Aboriginal cultural heritage within this plan. The key definitions of the NP&W Act are harm, Aboriginal Place or Aboriginal Object. Notwithstanding, it is the definitions contained within the Local Environmental Plan and State Planning Policy that largely provide the planning framework for Aboriginal cultural heritage assessment at the local level.

Terminology and definitions within this Plan are current as at its development and should be verified as part of any development or works. The following table D2.1 outlines the relevant current definitions and their source.

*Note: A number of new and/or amendment definitions of the NPW Act are proposed under the stand-alone Aboriginal cultural heritage legislation draft Bill and Act which was exhibited from late 2017 to early 2018.*

### Table D2.1 - Statutory definitions current as at June 2017 (should always be checked to confirm currency)

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<tr>
<td>Aboriginal area</td>
<td>means lands dedicated as an Aboriginal area under this Act.</td>
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<tr>
<td>Aboriginal heritage impact permit (AHIP)</td>
<td>means a permit issued under Division 2 of Part 6.</td>
<td>Any activity that may cause harm to an Aboriginal place or object requires firstly an assessment of the harm and measures to avoid harm in consultation with the Aboriginal people. If, after exhausting all strategies to minimise harm, this cannot be avoided, an application for an AHIP must be made to the relevant agency (currently OEH). This legislative requirement applies regardless of the Aboriginal place or object being identified, mapped, known or unknown.</td>
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<tr>
<td>Aboriginal Object</td>
<td>means any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.</td>
<td>means any deposit, object or other material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of an area of New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.</td>
<td>These definitions are largely similar, with the LEP including “other” material evidence. This makes the LEP definition more expansive. Objects are often identified with point data, such as is used on the AHIMS. The Tweed Aboriginal community has acknowledged a preference for a landscape based identification of ACH as this a better reflection of an object within its cultural context and poses less risk to the object. An object generally does not exist on its own but is part of a cultural landscape and or practices. Revealing Aboriginal objects is one of the key considerations that trigger “stop work” procedures.</td>
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<tr>
<td>Aboriginal Place</td>
<td>means any place declared to be an Aboriginal place under section 84 by the Minister administering the NPW Act, by order published in the NSW Government Gazette.</td>
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<td>An Aboriginal Place may be declared when, in the opinion of the Minister, it is or was of special significance with respect to Aboriginal culture. It may or may not contain Aboriginal objects.</td>
<td>Within the Tweed Shire, Ukerebagh Island and Wollumbin (Mount Warning) are [currently] declared Aboriginal Places. Being a declared place provides greater protection for the Aboriginal cultural heritage of such land as well as a management framework for the proper care and preservation.</td>
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<td>Aboriginal place of heritage significance</td>
<td>means an area of land, the general location of which is identified in an Aboriginal heritage study adopted by the Council after public exhibition and that may be shown on the Heritage Map, that is: a) the site of one or more Aboriginal objects or a place that has the physical remains of pre-European occupation by, or is of contemporary significance to, the Aboriginal people. It may (but need not) include items and remnants of the occupation of the land by Aboriginal people, such as burial places, engraving sites, rock art, midden deposits, scarred and sacred trees and sharpening grooves, or b) a natural Aboriginal sacred site or other sacred feature. It includes natural features such as creeks or mountains of long-standing cultural significance, as well as initiation, ceremonial or story places or areas of more contemporary cultural significance. Note. The term may include (but is not limited to) places that are declared under section 84 of the National Parks and Wildlife Act 1974 to be Aboriginal places for the purposes of that Act.</td>
<td>This definition is introduced by the standard LEP instrument. The Code SEPP instead makes reference to “high Aboriginal Cultural significance”, however, does not define this term. This is a more descriptive and also more expansive definition of place than the NPW Act in that declaration is not required. However, the places do need to be identified in an Aboriginal heritage study adopted by the Council.</td>
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<td>Aboriginal remains</td>
<td>means the body or the remains of the body of a deceased Aboriginal person, but does not include:</td>
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<td>(a) a body or the remains of a body buried in a cemetery in which non-Aboriginal persons are also buried, or</td>
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<td>(b) a body or the remains of a body dealt with or to be dealt with in accordance with a law of the State relating to medical treatment or the examination, for forensic or other purposes, of the bodies of deceased persons.</td>
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<td>Revealing Aboriginal remains is one of the key considerations that trigger “stop work” procedures.</td>
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<td>Draft heritage conservation area</td>
<td>means an area of land identified as a heritage conservation area or place of Aboriginal heritage significance in a local environmental plan that has been subject to community consultation, other than an area that was consulted on before 1 March 2006, but has not been included in a plan before 27 February 2009.</td>
<td>The Code SEPP in this definition uses a similar SI LEP terminology to “Aboriginal place of heritage significance” and, should the interpretation of “place of Aboriginal heritage significance” and “Aboriginal place of heritage significance” be considered interchangeable, then restricts exempt or complying development in association with Aboriginal cultural heritage where such “place of Aboriginal heritage significance”/“Aboriginal place of heritage significance” has been identified within an applicable draft Tweed LEP Heritage Schedule and Heritage mapping. Should the mapping be included in the LEP, greater distinction may be needed in the criteria/identification to allow “known” and “predictive” to be separately mapped and managed through relevant clauses in order to continue appropriate application of the Code SEPP and turn off application of the Code SEPP where appropriate, rather than a blanket approach to all ACH and ACH categorised with all other HCAs. The dates within the definition have no impact on a draft heritage conservation area within Tweed Shire.</td>
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<tr>
<td>Draft heritage item</td>
<td>means a building, work, archeological (sic) site, tree, place or aboriginal object identified as a heritage item in a local environmental plan that has been subject to community consultation, other than an item that was consulted on before 1 March 2006, but has not been included in a plan before 27 February 2009.</td>
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<td>Term</td>
<td>The Codes SEPP in this definition also uses the terminology of “place” and “object” as occur in the NPW Act. Exempt or complying development is restricted where ACH has been identified within the applicable Tweed LEP Heritage Schedule and Heritage mapping. Should the mapping be included in the LEP, greater distinction may be needed in the criteria/identification to allow “known” and “predictive” to be separately mapped and managed through relevant clauses in order to continue appropriate application of the Code SEPP and turn off application of the Code SEPP where appropriate, rather than a blanket approach to all ACH. The dates within the definition have no impact on a draft heritage item within Tweed Shire.</td>
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<td>Environmentally sensitive area</td>
<td>means any of the following:...... (g) land identified in this or any other environmental planning instrument as being of high Aboriginal cultural significance or high biodiversity significance,</td>
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<tr>
<td>Environmentally sensitive area</td>
<td>This definition introduces a new term of “high Aboriginal cultural significance”, though this is not defined in the Code SEPP or other legislation. Under the Code SEPP (clause 1.17A) complying development cannot be undertaken on land within an environmentally sensitive area, thereby ruling out complying development where so identified. Similarly, some exempt development in association with residential development is excluded on land within an environmentally sensitive area. Similar restrictions also apply to the housing alterations code and the commercial and industrial code. The SI LEP mapping requirements do not include a categorisation of “high Aboriginal cultural significance” instead uses the SI LEP definition for categorisation of “Aboriginal place of heritage significance” thus the two instruments do not “talk” to each other.</td>
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<td>Harm</td>
<td>an object or place includes any act or omission that: (a) destroys, defaces or damages the object or place, or (b) in relation to an object - moves the object from the land on which it had been situated, or (c) is specified by the regulations, or (d) causes or permits the object or place to be harmed in a manner referred to in paragraph (a), (b) or (c), but does not include any act or omission that: (e) desecrates the object or place, or (f) is trivial or negligible, or (g) is excluded from this definition by the regulations.</td>
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<td>Harm</td>
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<td>Harm</td>
<td>Harm may be direct: occurring as the result of an activity; or indirect: where the sites immediately beyond or within the area of proposed activity may also be affected. It is an offence to knowingly “harm” an Aboriginal object or place. The NPW Act provides that a person who exercises due diligence in determining that their actions will not harm Aboriginal objects has a defence against prosecution for the strict liability offence if they later unknowingly harm an object without an AHIP.</td>
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<td>Heritage conservation area</td>
<td>means an area of land of heritage significance: a) shown of the Heritage Map as a heritage conservation area, and b) the location and nature of which is described in Schedule 5, and includes any heritage items situated on or within that area.</td>
<td>means an area of land identified as a heritage conservation area or a place of Aboriginal heritage significance, including any heritage items situated on or within that area, in an environmental planning instrument.</td>
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<tr>
<td>Heritage item</td>
<td>means a building, work, place, relic, tree, object or archaeological site the location and nature of which is described in Schedule 5.</td>
<td>means a building, work, archaeological site, tree, place or Aboriginal object identified as a heritage item in an environmental planning instrument.</td>
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</table>

The Codes SEPP in this definition also uses the terminology of “place” as occurs in the NPW Act. The Code SEPP in this definition uses a similar SI LEP terminology to “Aboriginal place of heritage significance” and, should the interpretation of “place of Aboriginal heritage significance” and “Aboriginal place of heritage significance” be considered interchangeable, then restricts exempt or complying development in association with Aboriginal cultural heritage where such “place of Aboriginal heritage significance”/ “Aboriginal place of heritage significance” has been identified within the applicable Tweed LEP Heritage Schedule and Heritage mapping.

Should the mapping be included in the LEP, greater distinction may be needed in the criteria/identification to allow “known” and “predictive” to be separately mapped and managed through relevant clauses in order to continue appropriate application of the Code SEPP and turn off application of the Code SEPP where appropriate, rather than a blanket approach to all ACH and ACH categorised with all other HCAs.

The Codes SEPP in this definition also uses the terminology of “place” and “object” as occur in the NPW Act. Exempt or complying development is restricted where the ACH has been identified within the applicable Tweed LEP Heritage Schedule and Heritage mapping.

Should the mapping be included in the LEP, greater distinction may be needed in the criteria/identification to allow “known” and “predictive” to be separately mapped and managed through relevant clauses in order to continue appropriate application of the Code SEPP and turn off application of the Code SEPP where appropriate, rather than a blanket approach to all ACH.
Appendices

A. Aboriginal cultural heritage - an introduction
B. Aboriginal cultural heritage mapping
C. Consultation, assessment and approvals
D. Understanding the current legislative context
E. Appendices
Appendix 1 - Aboriginal Thematic History

1. Appendix 1 - Aboriginal Thematic History
2. Appendix 2 - Project methodology and consultation
3. Appendix 3 - Memorandum of understanding (project)
4. Appendix 4 - Aboriginal groups and contacts in the Tweed Shire
5. Appendix 5 - Checklists for development
6. Appendix 6 - Standard conditions of consent
7. Appendix 7 - TSC Standard procedure for ACH Impact Mitigation: Maintenance and emergency works
8. Appendix 8 - Mapping and monitoring procedures
# Table of Contents

1.0 Introduction 4

2.0 Thematic History 6
  2.1 A Point in Time 6
  2.2 Contact 8
    2.2.1 Mapping the Future 8
    2.2.3 Dispossession 13
    2.2.5 On the Fringe 19
  2.3 Continuity 21
    2.3.1 Community 21
    2.3.3 Fighting Spirit 26
    2.3.4 Celebrating Culture 32

3.0 References Cited 35

The Thematic History has been prepared by Dr Craig Barrett of Converge Heritage + Community
1.0 Introduction

The following history has been prepared for the purposes of the draft project report and submission to the Aboriginal Advisory Committee for review. The draft history was prepared by Dr Craig Barrett. Ian Fox and Rob Appo provided assistance and reviewed the draft history. This work is not intended to be a comprehensive history of the Bundjalung People, but has been prepared as part of the Tweed Shire Council Aboriginal Cultural Heritage Management Plan.

The history was prepared using a range of sources. The project was primarily focused on the mapping of Aboriginal cultural heritage in the Tweed Valley, and therefore the history, while important, was a much smaller component of the project. Consequently, research was largely restricted to existing secondary sources, selected primary sources and material provided by the Bundjalung community. In particular, the history relied on newspaper articles collected from the Northern Star that were copied for a display at the Minjungbal Museum several years ago. The date of the articles was recorded, but not the page number (an issue that affected several other copied newspaper articles examined for the history). A number of other sources are also lacking the usual bibliographic details, but were otherwise determined to be an appropriate reference under the circumstances.

A history of this nature should ideally be substantially informed by oral history. However, given the constraints of the project it was not feasible to undertake an oral history program, although some conversations with community members were held and general observations assisted the history. It is noted in the recommendations that an oral history program, in addition to further documentary research, should be undertaken prior to publishing the history.

Recommendations

- Approval of the draft history and any corrections and other requirements addressed prior to release of the history as part of the final report.
- Consultation with the Aboriginal community to determine the appropriate use of the history, including publication, storage and access.
- Further work should be undertaken (outside of the scope of this project) prior to publication of the history:
  - A dedicated and substantial oral history project.
  - Further research and review of documentary sources.
  - A revised history incorporating the results of the oral history project and further documentary research.

2.0 Thematic History

2.1 A Point in Time

The Bundjalung people of the Tweed Valley have a long and deep association with the land in which their ancestors have lived for many generations. Knowledge of the Bundjalung people is contained in Bundjalung Oral Tradition, Lore and archaeological material. Collectively, this information provides evidence that Aboriginal people in the Tweed Valley developed a rich cultural tradition over a long period of time.

However, our knowledge of the history of the Bundjalung People begins much later, with the contact between European explorers and colonists. ‘History’ in this sense is defined by a narrative reconstruction of the past that is prepared using documentary sources such as books, archives, manuscripts, newspaper articles and oral history. This approach presents a dilemma, one which the historian Raymond Evans summed up succinctly:

A litany of ‘possibles’, ‘probables’ and ‘maybes’ punctuate the narrative of how the … landmass took shape; how its climate, vegetation and fauna were transformed; how it was first peopled and how those people adapted, endured and prospered before encountering inexplicable others whose coming soon challenged everything … A truly proportional telling of even the human story of this place would grant [the colonising Europeans] only a small concluding paragraph (Evans 2007: 1).

Unfortunately the nature of a work of history means the work must focus on that ‘small concluding paragraph’ — but at least in this history the focus is on Aboriginal people, rather than the Europeans.

The absence of sources does not remove the fact that the Bundjalung People prospered prior to European settlement, and continue to do so today. Nonetheless, the history of the Bundjalung People since contact with European explorers and
colonists reveals a story of determination and resilience in a period of cultural dislocation. Typically, histories of a local area begin with a brief section or paragraph about the ‘original inhabitants’ and the sad impact of European settlement, and then proceed to construct a narrative filled with tales of the ‘pioneers’. This approach renders Aboriginal people passive, defenceless and silent in the face of great change. This was never the case; a history focused on the Bundjalung People illustrates the continued existence and dynamism of Aboriginal culture in the Tweed since colonisation.

3.0 Contact

3.1 Mapping the Future

The first act of colonisation of Bundjalung land in the Tweed Valley (beyond the grandiose raising of the British flag, claiming the east coast of the continent for the British Crown) was the naming and mapping of landmarks by the British explorer, Lieutenant James Cook, HMS Endeavour. Cook sailed past the Tweed coastline in 1770 and named the mountain called Wollumbin ‘Mount Warning’, as well as ‘Point Danger’. The ‘Point Danger’ Cook referred to may actually be Fingal Head (Keats 1988: 65; Boileau 2006: 42). The mapping of the coastline and the identification of Wollumbin by Cook provided later explorers with a geographical point of reference, enabling closer examination of the valley and its watercourses.

Cook did not linger and he did not make any contact with anyone. Nor, indeed, did the next explorer, Lt. Philip Parker King, who sailed north from Sydney in 1819 to survey the northern coast of Australia. King was nonetheless impressed by the country surrounding Wollumbin. He wrote: “it appears to be productive and wooded; for although the hills are rather steep and precipitous yet their verdant and agreeable appearance augurs favourably for the fertility of the valleys between them” (quoted in Boileau 2006: 42). King’s description of the landscape was typical of European explorers, who generally were interested in the commercial value of land they discovered as much as its natural features and the people that lived there. Matthew Flinders and Captain Edwardson (of the Snapper) also passed by the Tweed coast in the early 1800s, but these explorers did not provide any direct observations of the Tweed.

The first recorded contact between the Bundjalung People and Europeans occurred in 1823. John Oxley and John Uniacke rowed up the Tweed River and they saw people on the river bank (along with other ship crew, who are typically silent in these accounts). Oxley had been ordered by the New South Wales government to explore several locations to the north and to determine whether one or more would be suitable for the establishment of a convict settlement. Uniacke wrote an account of their meeting with Bundjalung People:

> On the right bank of the river were standing one man and several women and children, all perfectly naked. They did not appear so timid as Indians usually are, but remained quietly while we landed to search for fresh water, the river still being brackish. The man was curiously scarified all over the body, the flesh being raised as thick as my finger all over his breasts (Uniacke 1825: 39).

Uniacke used the term ‘Indian’ simply as a word to describe an Indigenous person, a common practice at the time. Uniacke wrote that the man “talked very loudly” and gesticulated, pointing in particular to a number of shelters on the other side of the river. Uniacke and Oxley attempted to talk to him; however, neither party could understand the other. Uniacke or Oxley gave the man a “biscuit”; the man accepted it, but “instantly spat [it] out again” (Uniacke 1825: 39). ‘Biscuit’ was usually made from flour, water and salt and while it was very durable and could survive long sea journeys without spoiling, it was not very palatable. The historian Raymond Evans eloquently described the significance of these encounters: just as the Europeans ‘discovered’ Aboriginal people, so too did Aboriginal people discover Europe (Evans 2007: 22).

Uniacke, like King before him, also described the landscape as he and Oxley travelled up the river. He wrote:

> The country on either side was very hilly, and richly wooded, and the view altogether beautiful beyond description … the soil seemed rich, and the timber evidently improved in size and quality. The scenery here exceeded anything I had previously seen in Australia – extending for miles along a deep rich valley, clothed with magnificent trees, the beautiful uniformity of which was only interrupted by the turns and windings of the river, which here and there appeared like small lakes, while in the back ground, Mount Warning (the highest land in New South Wales) reared its barren and singularly shaped peak, forming a striking contrast with the richness of the intermediate country (Uniacke 1825: 38-9).
Uniacke was in awe of the landscape, but also remarked on the economic potential of the land: an indication of the future. Oxley named the river the Tweed.

Oxley had determined to explore the river further the next day, but a change in the direction of the wind prompted him to leave the river and continue sailing north. As the ship carrying Oxley and his crew sailed away from the river, approximately 200 men (probably from the Goodjinburra Clan) appeared on the shore across from the ship. The men were carrying spears and when they saw the square sail hoisted on the ship, “they set up a loud shout, and continued dancing and shouting while we were within hearing” (Uniacke 1825: 40).

It is not certain that this encounter was the first contact between Europeans and the Bundjalung People. When Oxley and his crew first anchored off Fingal Head, Uniacke and a fellow crew member, Mr Stirling, landed on Cook’s Island (located off Fingal Head). After exploring the island – and reducing its bird and turtle population – Uniacke and Stirling returned to the ship. On the way back, they saw part of a shipwreck: “It appeared to be the larboard quarter, with part of the stern and quarter-deck of the vessel of a least three hundred tons. The plank, which was of oak, was not yet totally destroyed” (Uniacke 1825: 36). Uniacke reported that there was no evidence of the name or origin of the vessel, and none has been found since. However, the wreck indicates that Europeans may have encountered Bundjalung People before Oxley and his crew appeared. The reaction of the men on the shore when the square sail on Oxley’s ship was hoisted suggests they may have observed this phenomenon previously. The presence of so many men armed with spears may also indicate previous contact (Cane 1989: 7). Moreover, it is possible that whalers were active in the region prior to Oxley, as the whaling industry began in the colony of New South Wales from as early as the 1790s.

The Tweed coastline and the Tweed River were subsequently explored by Captain Henry John Rous in 1828. Rous, aboard the Rainbow, anchored off the current location of Coolangatta and then entered the Tweed River. Like King and Uniacke, Rous described the country from his vantage on the river, but he did not record any contact with the Bundjalung People, although he did stumble across eight escaped prisoners from the Moreton Bay penal colony, which was established in 1824 (Stubbs 2006: 6). The next – and final explorer – was Robert Dixon.

Dixon had recently surveyed the settlement of Brisbane, as the penal colony had been closed and was soon to be opened for free settlement. Dixon then surveyed the coast line south. Assisted by Warner, Dixon led a land party along the coast, while Warner following by sea. Dixon does not appear to have made any contact with Bundjalung People in the Tweed Valley, although he did unsuccessfully attempt to reach Wollumbin via the Tweed River (see Keats 1988: 78).

The various explorers had, physically at least, a minimal impact on the Bundjalung people. There was no formal record of violence and the Bundjalung People are largely silent in the historical record at this time, simply because of the lack of contact with explorers. However, the explorers mapped the landscape, literally and figuratively, by naming landmarks and describing the landscape, thereby offering inducement to make a profit from the land.

The first evidence of the effect of explorer’s observations occurred relatively soon after Oxley’s explorations. A military outpost, formed from the Moreton Bay penal colony, was established on the Tweed River at Point Danger, probably in 1829. The primary purpose of the outpost was to capture escaped convicts from the Moreton Bay penal colony; as the example of Rouse demonstrates, a large number of prisoners managed their escape from the colony and many of these turned south. Indeed, the population of the colony “reached its zenith” in the period from 1829-1832, leading to a “series of crises in accommodation and feeding, in sickness and death, in discipline and absconding, and in general relations with the surrounding inhabitants” (Evans 2007: 42). There were numbers of convicts in the Valley after 1824 and it appears that at least two escapees lived among the people of the Valley (Cane 1989: 8). The caves at Fingal Head in particular provided an excellent hiding place.

The outpost, however, was not merely established simply to recapture escaped convicts. The soldiers sent to garrison the outpost were also responsible for convict timber gangs, which were despatched into the forests around the Tweed River to cut pine and cedar. The presence of the convict gangs led to conflict with the Bundjalung People, members of who allegedly retaliated against the military and convict incursion because of sexual transgressions. The situation was summarised by Alan Cunningham in a report to the Select Committee on Secondary Punishment in February 1832:
There has been a rupture with the natives and since that period I believe they have been particularly hostile … The original cause of the dispute was owing to liberties having been taken with the Aboriginal women by the convicts. Pine and cedar gangs employed near the spot were attacked, which obliged them to leave that part of the country and make the best of their ways back to the settlement [Moreton Bay] (Quoted in Boileau 2006: 43).

Cunningham’s use of the term ‘liberties’ is inherently euphemistic; it may refer to casual encounters, or even rape. There is no indication of violence perpetrated by the soldiers in retaliation for the attacks, although this was common in the other Moreton Bay outposts in this period (see, for example, Evans 2007: 45-6). There is also no suggestion that the soldiers took the same liberties as the convicts.

It is impossible to reconstruct the details of the contact between the soldiers and convicts and the Bundjalung people of the Tweed Valley in this period. The impact can only be inferred; however, Cunningham’s euphemistic observation not only obscures the nature of contact, but also the wider significance of a European outpost in the region and the impact of logging and convict escapes in Bundjalung land. Unfortunately, Cunningham’s testimony is the only available documentary evidence that provides any insight into the source of conflict in the Tweed Valley.

The impact of disease is also unclear. N. C. Keats claimed in his book Wollumbin that fugitive convicts “brought disease and infections to the Aborigines who had no immunity to them” (Keats 1988: 74). Keats could potentially have added the convict timber getters, and possibly garrison soldiers. European observers noted that venereal disease affected Aboriginal populations around the Moreton Bay settlement by at least the mid-1830s (Evans 2007: 47). The level of contact in the Tweed Valley was not on the same scale as further north, but the evidence of sexual activity suggests a similar problem may have occurred. The effects of venereal disease were serious, often leading to infertility and even death (see Flood 2006: 128-9). However, it was likely the deadly scourge of smallpox that exacted the greatest toll. It has been demonstrated that smallpox was introduced to Aboriginal people by Macassan fishermen operating out of Sulawesi in the late eighteenth century, before British settlement (see Campbell 2002). The epidemic spread from the point of contact in northern Australia. Thus, the ‘pre-contact’ Aboriginal population of the Tweed Valley, estimated to have been approximately 2000 people, was probably affected (see Fox, unpublished manuscript: 118). Campbell (2002) notes that two convicts who had escaped from the Moreton Bay penal settlement in the 1830s observed the disease among the Bundjalung People (Fox, unpublished manuscript: 119). Other diseases, such as typhoid, influenza and tuberculosis also may have taken a toll.

The military outpost was closed in 1832. Cunningham’s account suggests that the outpost was withdrawn because of the hostility shown by the Bundjalung People. This may well be the case (and clearly, as Cunningham demonstrates, for good reason); however, the date of closure also closely mirrors the end of the peak of the penal colony’s population and other various crises: indeed, the number of convicts in the colony fell by 75 per cent between 1831 and 1837 (Evans 2007: 46). The convict population thus became more “manageable” and there was probably little need for the outpost at Point Danger by 1832 (Evans 2007: 46)

3.2 Dispossession

The early period of contact was defined by sporadic, ephemeral encounters between the Bundjalung People and the European interlopers. Convict escapees always appeared in small numbers and the garrison at Point Danger was likewise relatively small. Moreover, the outpost only operated for a brief period of time, from 1829 to 1832.

This situation changed permanently in the early 1840s, as the first gangs of cedar getters arrived in the Tweed Valley. In hindsight, this development was only a matter of time. The observations of the early explorers provided ample evidence of the commercial potential of the Valley. Convicts had been employed to harvest the timber and logging was already a major industry to the south of the Valley, occurring on the Macleay and Clarence Rivers from the 1830s and then the Richmond River by the early 1840s (Boileau 2006: 46).

The first cedar getters camp in the Tweed Valley, located at Taranora, was established in 1844. The camp was not ‘permanent’ in the sense of a settled town; it was comprised of “a haphazard collection of tents … bark huts and humpies” (Boileau 2006: 47). The cedar getters also roamed through the forests of the Valley and established temporary camps. Edward Harper, one of the first cedar getters in the Tweed Valley, recounted that the cedar getters would form “little
bands of from four to eight” and locate their huts “close to the sawpits” (Harper 1894: 410). The camps may have been small and ramshackle, but nonetheless from this time the European presence in the Valley became permanent.

The cedar getters relied on the co-operation of Bundjalung people to maintain their trade. Initially, the cedar getters stuck to the river banks and logged the accessible timber; however, this supply soon expired and the teams struck inland. According to Boileau, the loggers relied on Bundjalung people “who guided them through the rainforest and spotted the cedar from ridges and hill tops” (Boileau 2006: 47). The source of this contention is not provided, but if correct it is nonetheless illuminating. The loggers also relied on the forbearance of the Bundjalung People in another crucial respect. The loggers’ diet was based on flour, but was supplemented by corn grown in the district (presumably at their base camp) and “shooting birds, catching fish and shooting or snaring pademelons [a small marsupial], wallabies and other game” (Boileau 2006: 50). The loggers moved through traditional land and took sustenance from it.

Bundjalung people appear to have accepted the presence of the cutters in return for European tools and food. According to Boileau, Bundjalung people “came to value European axes and knives and foodstuffs such as flour, tobacco, tea, sugar and rum” (Boileau 2006: 32). Boileau does not provide any direct evidence to support this claim. Nonetheless, the loggers were outnumbered (despite the likely impact of disease) and in no position to dictate terms. Indeed, in 1845 it is claimed that there were only twenty-five cedar getters, and three women, working on the Tweed River (Harper 1894: 410). Thus, Bundjalung tolerance of the cedar getters was critical.

Despite the apparent détente, the accommodation on the Tweed between the cedar getters and the Bundjalung people was quickly marred by violence. Two cedar getters, Hugh Pheeny and John Collins, were allegedly murdered by local people just before Christmas in 1845 (Keats 1988: 75). The narrative of the murder was provided by Harper and printed in the Queenslander in 1894 (Harper 1894: 410). Harper claimed that the two men were attacked by members of the Tul-gi-gin Clan, which consisted of approximately 200 people. He alleged that he learnt about the attack after overhearing two Tul-gi-gin boys who worked for him in his camp telling Aboriginal people from outside of the valley the tale of the murder. Harper wrote:

I am firmly convinced that I heard a true account of it. From what they [the boys] said certain members of the tribe had a grudge against these two men on the ground that they would not give them work to do, and would not let them have their boat to go about … so they decided to kill them, take their boat, gun and any rations they might find in the white men’s humpy (Harper 1894: 410).

Apparently the plan was discussed amongst the Clan and some objected to it. Nonetheless, the decision was made to attack. According to Harper, a young man from the Clan called Womp was friendly with the loggers and he rushed to warn them of the danger they faced. Pheeny and Collins dismissed the warning and did not realise the value of Womp’s assistance until it was too late.

The killing of the cedar getters was quickly avenged by the remaining loggers. According to Harper, thirteen men “volunteered to go after the murderers, and avenge the two whites” (Harper 1894: 410). The party pursued “the Aboriginals” to the Richmond River, apparently where the entire Clan had fled after the murder. Along the way, the cedar getters captured a Tul-gi-gin man who had been absent during the attack. According to Harper, the man, named ‘Commandant’ in the article, agreed to lead the Europeans to his people. He was promised no harm, but was nonetheless handcuffed to the largest of the pursuers, suggesting that the cedar getters had reason to doubt his motives. The man allegedly brought the Europeans to where his people were camped, but upon hearing his family cry a lament for him (believing him to have been killed by the cedar getters), he gave the alarm and his people fled. The cedar getters shot an old woman, but the remainder escaped. ‘Commandant’ was not so lucky, and he “received thirteen bullets for his treachery” (Harper 1894: 410). The Tul-gi-gin people were met by white loggers on the Richmond who had learned of the attack and who drove them back into the mountains, wounding many. Harper claims the Clan was “not allowed” amongst the cedar getters for two years, and two other groups of people – one from Cudgen and the other from Murwillumbah – were also kept away for “nine to ten months after the murder” (Harper 1894: 410).

This was the first recorded instance of violence occurring between local people and the European colonists. It is important to note that the primary source of information about the violence is from a European observer, and given the means
by which he came across the information, the explanation of
the attack and the motives of the protagonists must remain
open to speculation. The account is also one-sided and it is
necessary to consider other ways of interpreting the incident.
For example, Harper claimed that Pheeny and Collins “were the
two quietest and best disposed men towards the blacks upon
the river”, but it is interesting to note that Pheeny and Collins
had only recently fallen out with a work mate who had “ill-
treated” local people (Harper 1894: 410). ‘Ill treated’ is another
euphemism, similar to Cunningham’s use of the term ‘liberties’.
‘Ill-treated’ could mean a range of acts, including some form of
violence and a violation of sacred places. Pheeny and Collins
may have been treated guilty by association, were wrongly
targeted (but in response to a legitimate grievance) or perhaps
were not so ‘well disposed’ as Harper may have imagined (or
was told).

Harper also only learned the details of the attack after
overhearing the story as it was told by two boys to people who
were not from the Tweed Valley. Thus, there was no independent
verification of the claims and Harper, who had only recently
arrived on the Tweed River, had no other source of information
about the attack (but presumably plenty about the retaliation).

Early contact between Europeans and Aboriginal people was
“complex and multi-dimensional” (Evans 2007: 46). It was not
unusual for European settlers to simplify complex events so that
they appeared the victim. This reasoning can also be applied to
the revenge attack. According to Harper’s account, the Tul-gi-gin
man, ‘Commandant’, agreed to assist the cedar getters to find
his people, with full knowledge of what their intent was, but he
only reneged on his promise when he heard his family lament
his supposed death. It was a common cultural assumption
held by Europeans that Aboriginal people were ‘treacherous’;
but how could ‘Commandant’s’ final act have been treacherous
to the cedar getters? There is no reason to believe (at least
from Harper’s account) that he was bound to them in any
way. Instead, ‘Commandant’s’ act, from this distance, appears
supremely heroic. He died saving his people.

Despite this violent episode, it appears that relations between
the local people and the cedar getters cooled, if not entirely
thawed. According to Harper, the next attack on a European
did not occur until 1852, and the next after that in 1856
(Harper 1894: 410). Thus, for a period of eleven years, there
were only two alleged attacks – and neither of these resulted
in any deaths. However, Harper recalled that a man from the
Tul-gi-gin clan and his family were killed by a cedar getter
who poisoned his flour in supposed retaliation for its theft over
time (Harper 1894: 410). So, on this basis, more Bundjalung
people died during this period from contact with the Europeans,
than the other way round. It was not only physical violence
that threatened Aboriginal communities. Disease continued to
affect the population: the Lismore Northern Star claimed that in
the mid-1850s measles had ravaged the people of the Tweed
Valley, killing up to a third of the population (Northern Star, 21
March 1891: n.p.). The focus, too, on the Tul-gi-gin Clan is
informative; it may be that Harper was unaware of events and
circumstances elsewhere in the valley, but it does suggest that
the brunt of the impact by the cedar getters affected that Clan.

The cedar getters continued to expand their search for timber
out from the rivers and scrub clearing was already beginning
to transform the landscape (Boileau 2006: 49). By the mid-
1850s, Terranora was a permanent settlement rather than a
collection of tents and huts, and two more settlements had
been established: one at Chindera (although at the time it was
called Cudgen), and another at Kynnumboom, near the present
town of Murwillumbah (Boileau 2006: 51). The settlements
were still clustered along the banks of the Tweed River, but the
reach of the cedar getters extended well into the Valley.

The cedar getters formed the nucleus of European settlement
in the Tweed Valley for just over twenty years. However, two
pastoral runs were taken up in the valley just as the loggers
were establishing their camp at Terranora. The colony of New
South Wales was divided into pastoral districts; the Tweed
Valley was originally included in the Port Macquarie Pastoral
District in 1839, and then in the smaller Clarence River
Pastoral District in 1842. Two pastoral leases were selected
in the Tweed Valley: Upper and Lower Walumbun Runs. It is
believed that the runs were selected in 1845 (Boileau 2006:
54). The runs changed hands several times over the next two
decades, until they were taken up by Samuel Gray in the early
1860s. Gray then formed a partnership with his brother-in-law,
Joshua Bray, in 1864 (although Bray was probably already in
the Tweed by 1863). Gray, apparently ‘pioneered’ an overland
route from Casino to the Wolumbun runs and the upper reaches
of the Tweed River, “presumably using the ancient Aboriginal
pathways that ran through the west of the Tweed Valley”
(Boileau 2006: 54).
Pastoral runs were stocked with sheep or cattle. However, there is no evidence that the runs in the Tweed were stocked, or that any improvements were made, until Gray and Bray assumed ownership. Indeed, Boileau notes that Gray and Bray “harvested cedar from the Tyalgum area” and “cleared and drained the lower lying areas of their lease and planted maize, arrowroot and some of the first sugar cane to be grown on the Tweed” (Boileau 2006: 54). It is also unclear how much of the runs were cleared prior to Gray and Bray. Gray established his homestead on the North Arm River in 1864 and called it ‘Coolamon’; Bray located his house approximately one kilometre from Gray’s, and named it ‘Kynnumboon’.

The presence of only two pastoral leases in the entire valley, and possibly only a small amount of stock, was relatively unique in this period. In contrast, by 1845 there were already twenty pastoral leases on the Richmond River (Keats 1988: 71-2). The principal reason for the lack of runs was the geography of the Valley; the extensive hills and dense rainforest did not support large pastoral leases. Consequently, the history of European land settlement in the Tweed Valley differed in certain respects to the surrounding districts throughout much of the colony of New South Wales. The relative absence of large pastoral holdings and the lack of stock meant that clearing of land did not occur on the same scale as elsewhere in New South Wales (and Queensland) until closer settlement in the late 1860s and 1870s – a deferral of final dispossession though, rather than signalling a potential escape from it. Nonetheless, the lack of stock was significant. Aboriginal raids on sheep and cattle and the killing of shepherds, in response to the loss of traditional lands, typically prompted swift and deadly retaliation from squatters and the Native Police (for evidence of this in the region surrounding the Tweed Valley, see Keats 1988: 72-4). The people of the Tweed Valley were clearly impacted by European colonisation and were subject to limited violence, but they were spared the more extensive violence of the pastoral frontier, at least that perpetrated by the Native Police and squatters.

Gray and Bray apparently developed a good relationship with the Bundjalung People in the Tweed Valley (see Keats 1988: 74; Boileau 2006: 54). Bray became a prominent figure in the newly formed community and he assumed a variety of roles, including postmaster, “Justice of the Peace, Clerk of Petty Sessions, the first Police Magistrate presiding at Murwillumbah and Cudgen” and even coroner (Boileau 2006: 55). He was also the designated Protector of Aborigines in the Valley (probably through his role as Police Magistrate), reporting to the New South Wales Protector of Aborigines. Bray’s relationship with the Bundjalung People is a defining moment in the relations between the original people and the European settlers.

3.3 On the Fringe

Closer settlement of the Tweed Valley from the 1860s onward was the final act of colonisation that dispossessed the Bundjalung People of their ancestral lands. The division and ownership of land was an important consideration for European settlers. The Crown Lands Act 1861, colloquially known as the Robertson Land Act (after its creator, New South Wales Premier John Robertson), was introduced to break up large pastoral runs and encourage closer settlement and agricultural development in the colony of New South Wales. Land in the Tweed Valley was subsequently available for selection from 1866. Initially, land was taken up along the Tweed River, following the established pattern of settlement, but by 1900 most of this land had been settled, and land in the Chillingham, Tyalgum and South Arm valleys was selected between 1904 and 1914 (Boileau 2006: 56).

Closer settlement had a profound impact on the Bundjalung occupation of the Tweed Valley, even more so than the timber getters and early pastoralists. Aboriginal people were, predictably, excluded from white society (despite the benevolence of the few, including Bray). The impact on the landscape was significant, especially for a people with such an intimate and ancient connection with the land. One of the key conditions of land selection was that improvements had to be made to a property, including clearing and fencing. Land clearing dramatically altered the landscape of the Valley, particularly from the 1890s. Charles Sydney Bell recalled in 1945:

As far as the eye could reach, both on the flats and the hillsides, one could then note the march of progress and civilisation. Crown land settlers were opening up everywhere, burning off and grass seed plantings of paspalum. Clover and trefoil; young grass springing up amidst blackened logs, stumps and rocks, changing the landscape into green; and fencing and building ready for future dairying (quoted in Boileau 2006: 57).
The newly-cleared land was cultivated with a range of crops and dairying, but particularly sugar cane. The sugar industry emerged as the key economic activity in the Tweed Valley in the late nineteenth century, particularly as the stands of available timber steadily declined.

Closer settlement sealed the process of dispossession and the population of Bundjalung communities declined further. The population of the Valley had been affected by disease for a number of decades, but even by the 1860s and 1870s it remained strong. Bray claimed that in 1866 he had seen “six hundred camped on this plain” and his daughter, Florence, recalled “hundreds” of people seeking blankets from the Bray property at Kynnumboon in the 1870s (Boileau 2006: 33). This figure had dropped significantly by the early 1880s: a report to the New South Wales Protector of Aborigines, published in 1883, listed a total of 109 Aboriginal people, twelve of which were counted as ‘half-castes’ (Thornton 1883: 16-17). An article published in the Northern Star in 1890, titled “The Remnant of the Aborigines”, drew attention to the plight of the Bundjalung people:

That nothing has ever been done by our Government, that one may point to with any degree of satisfaction as, a sustained effort to reclaim and save a remnant, lends greater force to the claim that something should still be done, if even only to ameliorate the condition of those that are left, doomed though they may be to extinction (Northern Star, 4 June 1890: 2).

Joshua Bray felt similarly over ten years later; in 1901 he wrote that the people of the Valley

seldom use their native names, and since white people have come they give their children white people’s names, but black children are scarce now, I have not seen one for a year or more. In fact the blacks have almost died out (quoted in Nayutah and Finlay 1988: 54).

Disease, alcohol and unhealthy diets (as a traditional lifestyle was no longer possible) undoubtedly affected the resilience of the population. Nonetheless, the connection between closer settlement, the clearing of land and the declining population is stark. According to Nayutah and Finlay (1988), the surviving Bundjalung people became destitute due to the loss of land and “failing cultural ties” (Nayutah and Finlay 1988: 55). It appeared that the future of the Bundjalung People in the Tweed Valley was grim.

4.0 Continuity

4.1 Community

The situation for the Aboriginal people of the Tweed Valley in the second half of the nineteenth century was disastrous. Hundreds of people died from disease and European industry and settlement gradually dispossessed the remaining people of their traditional lands. The extent of this impact cannot be underestimated, nor indeed properly conceived except by those who lived through it and continue to live with its effects. It is impossible to understand this aspect of the Tweed’s history as anything other than a tragedy. Nonetheless, the Bundjalung People and their culture did not disappear; indeed, the community grew stronger and people found ways to express their identity in a radically transformed land. This argument contrasts with that of Nayutah and Finlay, who claimed that the people “without their traditional land, their culture and spirit were broken” (Nayutah and Finlay 1988: 56). If this was so, it was at most a temporary situation.

The people were pushed to the margins of European society, but they nonetheless did not become ‘extinct’ as observers thought might happen. Instead, they simply found new locations to settle and continue to celebrate their community. The settlement that formed at Fingal Head is particularly well-recorded. A camp was established at Wommin Bay, near Fingal Head, probably in the 1880s (Cane 1989: 12). The camp shifted to Fingal Head by the early 1890s (Cane 1989: 20). The village was derogatorily referred to as ‘The Blacks’ Camp’ by European settlers. Another substantial settlement was located at South Tweed, specifically ‘Parry’s Estate’. Settlement here began in the early twentieth century, although in contrast to Fingal Head community members purchased blocks of land (pers. comm.). Other communities formed at Chinderah and Cudgen.

Work was an important source of income to support the community, but also pride. According to Cane, by the 1860s the Bundjalung People in the Valley were “itinerant workers” (Cane 1989: 10). However, a response to a New South Wales government survey initiated by the newly-established office of Protector of Aborigines — probably sent by Joshua Bray — claimed that the majority of Aboriginal people in the Valley were employed on either farms or for timber getters. Indeed, it was claimed that no one required government aid, except for the supply of blankets (Thornton 1883: 16-17). The industries
Aboriginal people worked in and developed themselves continued to expand in the late nineteenth and early twentieth century. Fishing and oystering were prominent economic activities. According to Boileau, the Fingal Head community “played a key role in the fishing industry” (Boileau 2006: 131). A former resident of the village said that his father “was in the marine business in building wharfs and things like that . . . He used to fish in the spare time, but mostly he’d be employed by the harbour” (quoted in Cane 1989: 22). The men also continued to work on the staple industries of the Tweed: sugar cane, banana farms and clearing scrubland, while the women took on domestic work (Fingal Head Public School 1995: 35).

Members of the community, from Fingal or South Tweed, Cudgen or Chinderah, engaged in other farming work, including harvesting peas, beans and potatoes at Cudgen, Terranora and Carool. People from the village also took on seasonal work along the east coast. For example: “People travelled to Young for cherry picking; Robinvale for grapes; Boadalla for beans and potatoe [sic] picking” (Cane 1989: 35). The domestic economy was also strong. According to Cane, life at Fingal:

consisted of schooling for children, seasonal work (cane cutting, timber work, roads, rail) and shell fish gathering and fishing. Key resources (oysters, pipis, mud crabs and fish) became important subsistence foods, supplementing those earnt [sic] through part time and seasonal work. People also kapt goats, cows and chickens (Cane 1989: 32).

The people who lived in the village displayed a high degree of “internal coherence” and consequently developed “a rather independent community spirit” (Cane 1989: 35). The sense of shared communities was also important; people from South Tweed regularly visited the Fingal village, and vice versa, using the traditional waterways as the primary means of transport.

The Bundjalung community also comprised South Sea Islanders and Sinhalese people from Sri Lanka. The Islanders and Sinhalese people were originally brought to the colony of Queensland in the nineteenth century as indentured labourers to work on cane plantations. For example, 348 Islanders, predominantly from the Solomon and Vanuatu groups of islands, migrated to the Tweed Valley between 1874 and 1918. Of these, the majority were employed by William Julius on his plantation mill at Cudgen (later sold to John Robb & Co). Both Julius and Robb were renowned for their fair treatment of Islanders; indeed, “The Robb Estate was so well thought of that became known as a major place of refuge for Islanders escaping from the harsh regimen and discriminatory labour laws of Queensland” (Boileau 2006: 113). The Australian parliament enacted the Pacific Island Labourers Act 1901 to deport Islanders resident in Australia (part of the infamous ‘White Australia Policy’, which was also defined by the Immigration Restriction Act 1901). Many of the Islanders stayed in the Tweed Valley and settled amongst the Bundjalung People. The relations between the groups created a close connection for many people, particularly through marriage.

The Aboriginal community of the Tweed Valley was enlarged through the establishment of a New South Wales government reserve on Ukerebagh Island in 1927. According to Burger (1979), the island had been the location of a “blacks’ camp” since the 1800s (Burger 1979: 1). The island was not a particularly nice place; Burger described it as “an inhospitable little island” and mosquitoes and sandflies in particular made life miserable (Burger 1979: 1). Up to 70 Aboriginal people lived on the island, and residents were drawn from a large geographic area, most of which were not from the Tweed Valley. Approximately twenty families lived on the island until the early 1950s. Neville Bonner, Australia’s first Aboriginal federal parliamentarian was born on the island. Some of the residents of the island moved to the Fingal Head community when the reserve was closed (Boileau 2006: 35). Nonetheless, former residents formed a strong connection with Ukerebagh. The island was eventually zoned as a nature reserve.

The Bundjalung People retained their culture despite a diverse community and European influences. Christianity became an important part of the community at Fingal Head. Baptism ceremonies became common in the early twentieth century, and the first Christian church service was held in 1919 (Boileau 2006: 34). Nonetheless, Bundjalung people retained crucial aspects of their culture. According to Steele, ceremonies were held at the ceremonial ring near the Minjungbal Cultural Centre until 1910 (Steele 1983: 50). The ring still exists today. Culture was also retained in other ways. According to a former resident of the village:

I came to live at ‘The Caves’ or as the whites called it then ‘The Blacks’ Camp’ now Fingal Head, in 1910 at the age of one. Yes, there were many Aboriginals there, some of their Tribal names were; Iuiberie, Bai, Nungen, Sissley, Noon, Mondula and then there was Jacky Lynch, Frank
Bray, Billy Bleucher. These people would always converse in their native tongue calling each other by their tribal name, not by everyday ones such as Ida, Alice, Mary, Eva etc (quoted in Cane 1989: 24).

This is in contrast to Bray’s observation in 1901 and Nayutah and Finlay’s claim that Aboriginal people in the Valley “were given their masters’ surnames and forbidden to speak their own language” (Nayutah and Finlay 1988: 56). Moreover, throughout the life of the community, there is evidence of people, particularly younger generations, keeping their traditions alive, including “their common ancestry [sic], mythology, knowledge of the sea and its resources and productivity of the bush. This … spirit is strong in its attempt to salvage the past and reconstruct broken links with past traditions and life styles” (Cane 1989: 36).

Nonetheless, a European education became a necessary part of community life. The 1883 survey by the New South Wales Protector of Aborigines noted that Bundjalung children did not receive an education (Thornton 1883: 16-17). A school was opened on Fingal Head in 1895, primarily for the children of Works Department staff involved with the construction of harbour facilities at Tweed Heads, including the quarrying of rock at Fingal Head (Fingal Head Public School 1995: 16). The school, known as the Cave Point School, closed in 1899. However, children from the Fingal Head community also attended, especially as some of their parents worked in the quarry (Fingal Head Public School 1995: 26). A petition was prepared by quarry workers calling on the government to re-open the school, but it did not prove successful (Fingal Head Public School 1995: 21). The closest school was located at Tweed Heads, and the only way to reach the school was to walk a substantial distance and cross the Tweed River.

A new school was opened at Fingal Head in 1913 and this time the school was primarily for the children of the Fingal Head community (Fingal Head Public School 1995: 28). However, eleven European residents immediately protested against the location of the school, claiming that it was too close to the “Black’s Camp” (Fingal Head Public School 1995: 26). The State government did not heed the protest, although its response was not necessarily enlightened: “The desire for a school for the white children alone is quite understandable but the number of these residents is not sufficient to warrant the erection of a school” (Fingal Head Public School 1995: 28). The population demographic changed over time, probably due to the decline in quarrying on Letitia Spit; school records in 1927 indicated that the students were entirely “coloured children” according to the language of the time (Cane 1989: 33). Indeed, this remained the case through the 1930s and 1940s.

The issue of racism in schools appeared elsewhere. The Tweed Chamber of Commerce raised the possibility of segregation at the Tweed Heads Public School in 1929 (Sydney Morning Herald, 18 September 1929 n.p.). The headmaster of the school responded in a more generous fashion than the State government did regarding the issue of segregation at the Fingal School: “Mr Hobden [the principal] said … The coloured children had the same right to an education as any other children” (Sydney Morning Herald, 18 September 1929 n.p.). The Chamber of Commerce retracted its proposal, but segregation remained an issue for Bundjalung people, as it did for Aboriginal people across Australia. Indeed, the newspaper article about the segregation proposal also noted that “At Tweed Heads recently people objected to mixing with the coloured people at the picture show” (Sydney Morning Herald, 18 September 1929 n.p.). Segregation was a social reality, despite the moral fortitude of the Tweed headmaster and the Bundjalung children and their families who continued to seek an equal education.

The Fingal Head school is interesting because for the first half of the twentieth century it provided an education for a predominantly (and often completely) Aboriginal and Islander community. This is in direct contrast to much of New South Wales before 1949, where it was common for Aboriginal children to be removed from state schools simply because of their race or health and sent to reserve schools (Broome 2001: 153). Compare this situation with a description of the school in 1948:

This school consists almost entirely of coloured children. They are well-cared for, and constitute one of the best schools in the district … The coloured parents take a keen interest in their children’s welfare and the P & C Association is an active body. Music is outstanding. These children can sing beautifully, and are in many cases natural harmonists. At the Combined Schools’ Carnival they won the cup for the best athletic school in all divisions, a most meritorious performance (Fingal Head Public School 1995: 58).
The school inspector recorded the following year an attendance of 39 out of 39 children (Fingal Head Public School 1995: 58). This example illustrates the dignity and pride developed by the community at Fingal Head.

4.2 Fighting Spirit

The resilience of the Aboriginal community in the Tweed following the disruption of European colonisation was represented strongly in continuance of community spirit. The community demonstrated that the Bundjalung People were not destined to ‘die out’ and nor was Aboriginal identity predicated on anachronistic racial concepts such as ‘full blood Aborigines’ (as indicated by the recording in newspapers of the death of ‘full blood’ Aboriginal people). Indeed, the spirit of the people found its expression in the formation of an All Blacks rugby league team that played in the Tweed competition and, later, the protection of land rights.

The All Blacks was a team comprised of Aboriginal and Islander men and it was formed in 1930 (Moore 2008: 71). The team was primarily known as the Tweed All Blacks, but in some cases was also called the ‘Fingal All Blacks’ (Brisbane Courier in 1932) and the ‘Chinderah All Blacks’ (see http://www.tweedheadsseagulls.com.au/establishment.html). The Tweed All Blacks were at the forefront of the establishment of All Blacks teams in Australia; in the same year, the Redfern All Blacks and Casino All Blacks were also formed, the first All Black rugby league teams in Australia. It appears that the Cabbage Tree Island community, an Aboriginal Reserve in Ballina, formed an all-Aboriginal league team in the 1920s, although this team did not play in a formal league competition (Moore 2008: 71-2). The team and its place in the history of the Tweed coast are critical to understanding the determination and strength of the Tweed Aboriginal and Islander community.

The formation of the team did not guarantee immediate entry to the local competition. According to Moore, the team applied in 1931, but the application was unsuccessful (Moore 2008: 72). Despite this, the team played exhibition matches in 1932 and 1933 in Brisbane against Queensland teams, and against local teams in the Northern Rivers district. The Sunday Mail wrote in 1934 that the ‘Fingal All Blacks defeated Seagulls in an A grade competition fixture’, suggesting that the team was successful in their application to the competition by this time (Sunday Mail, 17 June 1934: 13). The All Blacks went on to win the grand final in the following year. The Courier Mail reported:

In one of the most stirring tussles in the Tweed Rugby League competition this season, Fingal All Blacks defeated Murwillumbah Old Boys by 11 points to 6 in the final of the A grade premiership. The premiership carries with it the James Senior Cup. The scoring was opened when Booker kicked a penalty goal for All Blacks, and at half-time the scores were two points to nil. At the resumption Dodds scored three spectacular tries in quick succession for All Blacks, giving them the lead by 11 to nil. Towards the end Old Boys rallied, and Toy and Burke each scored, making the final 11 to 6 in favour of the All Blacks (Courier Mail, 30 September 1935: 6).

The team also went on to win the 1938 and 1958 grand finals (see Winter March 20 1986: 15 and May 23 1977, n.p. respectively). The team produced a number of famous players over time, both locally and nationally. For example, Lionel Morgan, originally a Tweed All Blacks player, became the first Aboriginal person to play for Australia in a Rugby League Test. Morgan debuted in the second test against France during the French tour of Australia in 1960.

The All Blacks continued to play throughout much of the twentieth century. The local competition was suspended during World War II (although the All Blacks fielded a team against a locally-based army team). The competition resumed after the war and the All Blacks continued to play A grade rugby (Winter, January 31 1985: 51). The All Blacks team appears to have folded after the 1958 season (for reasons unknown), and did not resume playing in the local competition until 1973 (see Northern Star, December 28 1973: n.p.). A ladies All Black team was also formed, possibly in 1957 (see Northern Star, February 4 1977: n.p.).

The formation of an All Blacks team in the Tweed Valley – indeed Australia – in 1930 was a significant feat. The Tweed rugby competition was established in 1909. It was initially a rugby union competition, but it switched to league in 1914 (the New South Wales rugby league was formed in 1907 and the first competition held the following year). A select few Aboriginal and Islander men played in the Tweed competition in the 1920s, which was remarkable given that Aboriginal and Islander league players encountered substantial resistance to their participation in high-level sport in Australia before the 1960s (Cottle & Keys 2010: 3). This fact makes the formation of an All Blacks team in 1930 even more remarkable. On one level, the formation of the team is entirely understandable; the
inherent racism in the period limited opportunities to play at a competition level and the creation of an All Black team helped resolve this problem. Nonetheless, the acceptance of the All Blacks into the A Grade competition (despite initial setbacks) is significant.

The formation of the team and participation in the competition was a decisive statement of Aboriginal and Islander identity, particularly in a formative period of Aboriginal politics and identity in Australia. This was especially important given the tendency in national (white) politics to support a policy of assimilation (Broome 2001: 165). By this measure, the All Blacks rugby league teams were “an example through sport of cultural resistance” (Cottle & Keys 2010: 4). The team and the community it represented were therefore trailblazers for Aboriginal and Islander culture not only locally, but nationally. This observation directly rebuts Cane’s claim that in the 1930s and 1940s the people at Fingal Head “were yet to develop any political profile. They were a quiet, defenceless component of the local community” (Cane 1989: 32). The Tweed All Blacks team members came from further afield than just Fingal; regardless, the idea that the community was ‘quiet’ and ‘defenceless’ is ridiculous given the awe and esteem All Black players were held in this period. The formation and name of the team, and the willingness to pursue entry into the A Grade competition, were all powerful political statements.

The Aboriginal and Islander community in the Tweed may not have been ‘quiet’ and ‘defenceless’ and they may have been accepted into the local competition, but this did not mean that the community was no longer subject to racism. Structurally, nothing had changed for Aboriginal people in the Tweed, or across Australia; participation in sport was an anomaly in this respect, rather than a marker of racial acceptance. Moreover, even though the All Blacks could play in the A Grade competition (and represent the state and nation) the players were still treated differently. The treatment, at least in documentary sources, is relatively subtle; players might be referred to as “coloured”, immediately establishing a racial interpretation of a game and its participants (see, for example, Brisbane Courier, 30 August 1932: 14). According to Moore:

White players could rest assured that the Aboriginal players did not have more ability than them, they simply had better genes. When the performances of Aboriginal athletes did not match their theoretical goals, they were marked as lazy. The evidence was reconstructed to fit the hypothesis, and Indigenous athletes were placed in an invidious position: if they succeeded in their chosen sport, it was the result of genetics; if they failed to succeed, they lacked the requisite drive and purpose. In either instance they were denied their own agency (Moore 2008: 73).

Racism could also take a more conventional, if violent turn. Lionel Morgan recalled two incidents he believed were motivated by racism, both of which occurred while playing in Ipswich, Queensland: “I got tackled over the sideline, and apparently the whole Ipswich team jumped on top of me ... I woke up in hospital. The other time I scored a try at Ipswich, and I was walking back – in them days the sideline was there and the spectators were only a metre away. I was punched by a spectator and woke up in Ipswich Hospital” (quoted in Sydney Morning Herald, February 13 2010, http://www.smh.com.au/rugby-league/league-news/pioneers-pride-lives-on-despite-all-the-bruises-20100212-nxg9.html, accessed 24 May 2013).

A more nuanced treatment of this critical period of Tweed history (and indeed rugby league history in Australia) remains to be completed. Moore emphasises the need for oral history to empower Aboriginal people with their own agency, but his work only begins to touch on the possibility of oral history to reveal more about the conditions and circumstances of race relations in rugby league in the 1920s and 30s (for example, exploring how players from opposing teams dealt with an All Black team in the competition). Regardless, there is sufficient information to demonstrate the significance of the Tweed All Blacks not only in the local community, but in the history of the game in Australia.

The ‘fighting spirit’ of the people in the Tweed Valley did not begin and end with a rugby league team. The political expression of Aboriginal identity continued to develop, this time in response to growing development pressure in shire. The next phase of development – following on of course from the original non-Indigenous colonisation – was tourism. The first hint of ‘renewed’ development pressure appeared in the 1960s. Fingal Head was described “as having potential for large scale development for commercial, residential and recreational activity” in 1963 (quoted in Cane 1989: 39). At this time, the majority of residents living in the Fingal community only held “permissive occupancy” of their respective blocks, not freehold title (Sydney Morning Herald, 8 April 1969: 3). The residents regarded their residences were “permanent homes” and they were concerned that their homes would be resumed to make

...
way for development. In the late 1960s, the residents applied to have their occupancy acknowledged as freehold title, but the New South Wales Land Board advised the community to withdraw their application. Community members feared they would be evicted so that the New South Wales government could “resume their land ... for disposal to developers” (Sydney Morning Herald, 8 April 1969: 3). One of the residents, Veronica Bjorland, said: “The people are horrified. They will not leave. They have said they will sit down and the police will have to come. It is like taking fish out of water” (Sydney Morning Herald, 8 April 1969: 3).

The residents quickly assessed their options. They formed a committee to contest eviction, sent a petition to the State parliament and sent delegates to the Federal Council for the Advancement of Aborigines and Torres Strait Islanders in Canberra to present their case. In a unique twist to the land claim, the federal member for Oxley, W. G. Hayden, who supported the claim, said:

The coloured people at Fingal regard their present residences as their permanent homes ... Their sense of community is largely dependent on this belief and additionally they are descendants of people who pioneered the area about 80 years ago (Sydney Morning Herald, 6 April 1969: 50).

Hayden’s use of ‘coloured’ was consistent with the patronising language typical of the period; however, the reference to the community members as descendants of ‘pioneers’ was an unusual twist on the usual story of European occupation of the land!

The community eventually received freehold title to two blocks of land, totalling over six hectares, in 1986 – nearly two decades following the application to the Land Board. The Tweed-Byron Land Council became responsible for the land; the claim was one of nine separate claims for vacant Crown land in the Tweed Shire in the 1980s (including Letitia Spit, Chinderah and Terranora). Nonetheless, reactions in the press to the decision reflected the very real concerns the community held about their right to live at Fingal Head. The first sentence of an article describing the land claim in the Northern Star read: “An Aboriginal land claim for Letitia Spit, one of the prime pieces of NSW beachfront real estate adjacent to Tweed Heads, has been granted by the NSW Government” (Northern Star, July 4 1986: n.p.). The wording of the sentence is revealing – ‘one of the prime pieces of NSW beachfront real estate’ – but the third paragraph is even more direct: “Property developers have valued the land at up to $2 million if it was zoned for development” (Northern Star, July 4 1986: n.p.).

Developers continued to seek opportunities to take advantage of Fingal Head’s location to the water and Tweed Heads. Ocean Blue resort developers sought to construct a resort on Fingal Head in the late 1980s, which at the time was valued at $200 million. The resort was to be located on the old quarry, and it also intersected with a land claim for the Letitia Spit initiated by the Tweed-Byron Land Council. Ocean Blue required some of the land that the Aboriginal community had only just won (in 1986) and the company offered to spend $1 million on housing and community facilities to “compensate residents for surrendering their land” (Daily News, 3 November 1988: n.p.). Ocean Blue’s offer led to claims the community at Fingal Head were going to be “bought off” (Northern Star, 29 October 1988: n.p.). The community ultimately rejected the offer and continued to fight the proposed development. A protest tent was established on land next to the proposed resort and was “manned 24 hours a day” (Sydney Morning Herald, 4 November 1988: 2). The community’s resistance to the proposed development received a wide range of support, including the federal senator Neville Bonner, who was born on Ukerebegah Island, and the singer Kev Carmody, who wrote a song titled “Fingal Land Rights” (Northern Star, April 15 1989: n.p.).

The resort proposal also generated substantial public debate about the extent and nature of development in the Tweed in this period.

The Ocean Blue development did not proceed. The 180ha land claim to Letitia Spit was unsuccessful, but the Tweed Byron Land Council was successful in securing the site of the former quarry, a particularly symbolic victory given the issue of the proposed Ocean Blue development (Northern Star, 11 December 1990, n.p.). The Tweed Byron Land Council appealed the wider decision, however, and in 1996 eventually won the land claim first initiated in 1987.

4.3 Celebrating Culture

Development pressures impacted places of cultural heritage significance and members of the Bundjalung People sought to protect these places. The protection of cultural heritage
also provided an opportunity for recognition of the cultural and spiritual connection people shared with the Tweed valley and their ancestors.

The pressure on cultural heritage was substantial. Significant places were destroyed from the time of European settlement, but the remaining heritage came increasingly under threat as settlement and development of the Tweed Valley gathered pace. For example, quarrying in the late nineteenth century had a dramatic impact on Fingal Head. Quarryed stone was used in the construction of training walls along the Tweed River, as part of the development of harbour facilities. The quarrying resulted in the destruction of a number of caves, which were significant to Bundjalung people (see Cane 1989: 13-20). Sand mining on Letitia Spit occurred from the 1950s, destroying evidence of Aboriginal occupation prior to European settlement at Fingal Head (Cane 1989: 34). Human skeletal remains were also uncovered in during sandmining. People believe the remains are those massacred by Europeans in the early nineteenth century. Although there is no direct evidence of a massacre, events such as these may have been unreported and therefore it remains possible (see Cane 1989: 30).

A prominent advocate for the protection of Bundjalung cultural heritage was Margaret Kay. Kay was born in Byron Bay in 1904 and as a child was taken to a ceremonial ring located near Ukerebagh Island (Nayutah and Finlay 1988: 70). Kay left the region as a young woman, but returned later in life — one of her achievements was the restoration of the ceremonial ring used up until 1910. Margaret Kay was an early pioneer of Bundjalung culture in the Tweed Valley. Kay also created a museum at her house: “a bewildering mixture of the old and the new, the authentic and the replica, the commercial and the pragmatic” (Nayutah and Finlay 1988: 73). According to Cane, Kay “was described as a ‘one woman museum’” in 1962 (Cane 1989: 37).

Kay’s contribution to the celebration of Bundjalung culture was critical. The ceremonial ring was declared a Historic Site in 1980. Material collected by Kay was integrated into the Minjungbal Aboriginal Cultural Centre when it opened in 1984. The centre was developed in conjunction with the New South Wales National Parks and Wildlife Service. The Centre expanded in 1988 with the construction of a new building adjacent to the museum, which included a library, workshop, kiosk and administration. The site incorporates the ceremonial ring that Kay took care of.

The Aboriginal cultural heritage of the Tweed Valley remains a prominent part of Bundjalung culture. Culture itself continues to be celebrated, particularly during NAIDOC Week, which is held every year. Thus, the grim situation for the Bundjalung People at the turn of the twentieth century has, to the extent that it is possible, been overcome. Perhaps most importantly, this has been known for some time. A newspaper article from the late 1980s extolling the contribution of the Aboriginal and Islander community to the Tweed concluded:

> What is most outstanding about the people is that they have always been fiercely proud of their identity and heritage … Understandably, many of the Aboriginal-Islander people speak of the past with bitterness and regret. However, they continue to look to the future in hopeful expectation. When their own enormous contributions, and that of their children, grandchildren and further generations will be recognised fully by the community at large (Northern Star, 26 July 1987: n.p.).

The strength of community spirit has remained unbroken since colonisation and continues to flourish today.

### 3.0 References Cited

#### Books and Articles


Cane, S 1989, *Welcome to Fingal: Aboriginal associations with Fingal Head, NSW*, Report to Ocean Blue Pty Ltd.


Fingal Head Public School 1995, *Fingal Head Public School: Celebrating 100 years of education on the Fingal Peninsula*, Fingal Head.


Winter, P [date unknown], *Look Back with Peter Winter: Tales of Yesteryear*, [volume unknown], Tweed Heads Historical Society (ed), Tweed Heads.

**Newspapers**

*Brisbane Courier*, 1930-55.


*Sunday Mail*, 1930-1955.


**Websites**


Appendix 2 - Project methodology and consultation

1. Appendix 1 - Aboriginal Thematic History
2. Appendix 2 - Project methodology and consultation
3. Appendix 3 - Memorandum of understanding (project)
4. Appendix 4 - Aboriginal groups and contacts in the Tweed Shire
5. Appendix 5 - Checklists for development
6. Appendix 6 - Standard conditions of consent
7. Appendix 7 - TSC Standard procedure for ACH Impact Mitigation: Maintenance and emergency works
8. Appendix 8 - Mapping and monitoring procedures
The management plan has been developed through the following five stages.

**Stage 1 – MOU and Consultation**

Stage 1 involved the identification of, and inception with, key stakeholders and the development of a formal engagement and confidentiality protocol. The following requirements were considered within this phase:

- Establishment of an effective working relationship with the represented Aboriginal Communities and individuals.
- Agreement on a process for the project and how the information gathered will be reported back to the Aboriginal leaders, Council and the general community.
- Agreement on key contacts for the preparation of the management plan and a report detailing the input of individuals and communities.
- Establishment of a working protocol or Memorandum of Understanding (MOU) in conjunction with TSC.
- Initial consultation session outlining the process and outcomes with the AAC.
- Establishment of a consultation plan linked to key stages.

The phase was successfully completed and resulted in the following key outcomes:

- The Tweed Shire Aboriginal Advisory Committee was identified as the key Aboriginal stakeholder group and updates provided to all AAC meetings from inception.
- A rolling agenda item was tabled at each AAC monthly meeting and each meeting was attended by Converge in order to ask advice on any relevant issues and update the committee of progress.
- An MOU guiding the development of the Plan was collaboratively developed and endorsed by the three parties (TSC, AAC and Converge) and was signed in August 2012 by the TSC Mayor, TSC General Manager, representatives of the Aboriginal Community through the Aboriginal Advisory Committee and Converge General Manager.
- A communication plan was developed which notified and considered key stages of the project, and included specific stakeholder identification. This plan was successfully enacted throughout the project by attendance at all scheduled AAC meetings, media releases and information in Tweed Link, resulting in radio and newspaper coverage at identified milestones.

**Stage 2 – Research and Cultural Mapping**

Stage 2 involved the development and agreement of a specific methodology for Aboriginal cultural heritage mapping and the commencement of detailed oral and documentary research from a wide range of sources. Tasks included the development of:

- A database and mapping of currently identified heritage objects and places in an agreed format.
- A list of places and pathways likely to exist in the region (but presently unrecorded) as determined by a comprehensive review of records, reports, works of history and archival records.
- A list of places and pathways that the Aboriginal communities and individuals wanted to be considered as part of the cultural mapping component.
- A background description of the environment and history (pre-contact and post-contact) of the Tweed.

It is important to recognise that Aboriginal people are responsible, under traditional law and culture, for a defined area of country. As such, the methodology developed for the management plan to assess and record known and predictive sites and places was developed with Tweed Aboriginal community members’ participation, with specific criteria applied to ensure appropriate consideration of the individual features of the Tweed Shire.

The phase was successfully completed and resulted in the following key outcomes:

- Following consultation with Aboriginal stakeholders, AAC, NSW Heritage, OEH and TSC, the cultural mapping methodology and the process for data to be held by the parties was determined and agreed to.
- Privacy and intellectual property ownership was determined and is reflected in the MOU.
- An updated extract from the OEH Aboriginal Heritage Information Management System (AHIMS) was provided, with the assistance of the TBLALC.
- Research was successfully completed, including detailed analysis of traditional, oral, geological and written sources.
A background description of the environment and history (pre-contact and post-contact) of the Tweed was considered and incorporated into the cultural mapping methodology. This ensures appropriate recording and consideration of both pre-contact and post-contact sites and places in the finalised mapping outcomes.

Stage 3 – Thematic History

Stage 3 of the Project involved the development of a Thematic History. The task included the following key tasks:

- Development of a Thematic History of Aboriginal Heritage in the Tweed.
- Progress Reporting: including midpoint consultation and final briefing with Aboriginal groups.
- Thematic history to integrate with the TSC CBHS Thematic History (2004) to provide a complete thematic history of the Tweed.

The phase was successfully completed and resulted in the following key outcomes:

- Rather than attempt to directly integrate the Thematic History, the approach focussed on the development of a standalone publication, avoiding wherever possible the replication of existing publications and works that are well known and regarded. This directly supports the Aboriginal community’s sense of identity.
- The research direction for the thematic history was initially formulated in consultation with the AAC at a meeting held on the 3rd of August 2012. The focus is on more contemporary historic themes that illustrate a dynamic Aboriginal culture with a strong presence and connection to the land incorporated by the Tweed Shire.
- The themes were finalised following direct participation by the Aboriginal community via consultation and workshops, interviews and collaboration across resources such as the Bundjalung Mapping Project and other community archives (including those held at the Minjungbal Aboriginal Museum). The themes were presented to the AAC meetings and individually with AAC stakeholders for discussion and approval during February - April 2013.
- Consultation for the history occurred with the wider Aboriginal community through a community open day held at Minjungbal Museum on 13 March 2013.
- The AAC recommended relevant community figures that may be able to assist in elaborating on the selected historical themes. The thematic history was completed subject to community approval of the themes, including any further research and/or interviews required to satisfactorily complete the task. An example of this was attendance at Canowindra to meet with Elders and to discuss the management plan with those in residence during April 2013.
- The final briefing was provided to the AAC on 6 June 2013 and the draft Thematic History was presented to the AAC and endorsed on 16 July 2013.

Stage 4 – Landform Mapping and Predictive Modelling

Stage 4 involved the compilation of data and research from work undertaken in Stage 2 and 3, along with further consultation, ‘ground-truthing’ and the development of Geographic Information System (GIS) layers for inclusion into TSC GIS system. The tasks for this stage included:

- Spatial mapping of the distribution and density of objects and places known to exist in the Tweed Shire.
- Predictive modelling and mapping that illustrates where objects and places that were unrecorded are likely to exist in the Tweed Shire.
- An explanation of how the patterns revealed in these maps relate to the environment, prehistory, history and changing patterns of land use / land tenure in the Tweed Shire.
- Development of a thematic model to describe and map the spatial character and distribution of historical, social, spiritual places and wild resource places and themes with the TSC.
- Use of this model to inform any required field surveys following consultation with Aboriginal groups.

The phase was successfully completed and resulted in the following key outcomes:

- Mapping of the Tweed Shire resulted in the identification of 303 predictive and 340 known objects and places to be recorded on the spatial GIS layers and in the associated register. Approximately 207 of the known objects and places are not currently recorded on the
AHIMS database (or the location is inadequately recorded due to fix point recording and/or issues in the recorded location).

- Two meetings attended with community members who offered site information in the Tweed/Fingal area: Aunty Seppi Close on July 17 2012 and John Formosa on 18 October 2012 (also present were Scott and Dean Rotumah).

- Due to a lack of scheduled AAC meetings between August and December 2012, Converge provided updates and progress reports via additional personal meetings on 23 October 2012, with Leweena Williams (TBLALC), Jackie McDonald, Desrae Rotumah, and Marvette Logan.

- Information was received from David Holsten on 15 October 2012 regarding the location of Aboriginal places around the Upper Tweed catchment. Grant Appo attended the Converge office on 26 September 2012, to discuss the mapping and provide information for the Upper Dungay Creek area.

- Des Williams (TBLALC) validated the objects and places recorded for this management plan located along the Tweed Coast. This involved selected visits to nominated sites on 23 October 2012, and confirmation that the recorded information reflects cultural values. Des Williams attended the Converge office on 8 November 2012, to further discuss research and mapping progress.

- TBLALC Chief Executive Officer, Leweena Williams, requested Converge attendance at a General Meeting of members held at Brunswick Heads 13 November 2012, to provide an update on the progress of the mapping. Approximately 30 members attended and endorsed their support for the plan. This acknowledgment was immensely beneficial and confirmed the community’s support for the plan methodology and approach.

- Consultation occurred with the wider Aboriginal community through a community open day held at Minjungbal Museum on 13 March 2013.

- The final draft Mapping and associated database was presented to the AAC on 16 July 2013 for their endorsement.

- As the mapping project has progressed, TSC and Converge have liaised with the OEH, the Department of Planning, the Heritage Branch (Aboriginal Heritage) and the Northern Rivers Catchment Management Authority seeking acceptance of the methodology and mapping approach, direction for future management and assistance with registration of objects and places. Combined agency meetings were held on 23 July 2012 and 26 March 2013.

### Stage 5 – LEP Provisions and Implementation Strategy

The project stalled at this stage given the complexities of integrating the findings within the NSW planning framework and competing work plan priorities.

In December 2015 Council recommenced the project. Given the time which had lapsed, Council engaged Ian Fox and Associates to review and update the mapping.

The mapping review was undertaken in early 2016/2017 and has resulted in updates to the mapping, revision of the boundaries and inclusion of a number of new sites.

This stage has involved extensive liaison with the OEH, DPE regarding the processes and the legislative framework.

The development of the Management Plan has involved extensive community consultation with the Aboriginal community and with the Office of Environment and Heritage (OEH).

This has included:

- 27 July 2016 Meeting with Tweed Byron Local Aboriginal Land Council
- 28 July 2016 Meeting with OEH and Ian Fox regarding mapping and the Management Plan and site registration
- 11 August 2016 Meeting with TBLALC re the draft Management Plan on implications and resourcing
- 13 December 2016 Meeting with Ian Fox and GIS regarding updating the mapping and registration of sites
- 27 April 2017 Full day workshop on the draft ACHMP processes and matrix with the AAC and OEH
- 24 May 2017 Meeting with OEH re processes/flow charts ACHMP
- 25 May 2017 meeting with TBLALC re the Management Plan and processes
• 28 June 2017 meeting with Jackie McDonald re Management Plan and processes and matrix
• 27 July 2017 meeting with the Regional Office of the Department of Planning and Environment

Out of Scope
The following was outside the scope of the management plan:

• Duplicate information held by the Aboriginal Heritage Information Management System (AHIMS), managed by the Office of Environment and Heritage (OEH). It instead aims to record places of significance, not previously recorded.
• Provide information for a Land Claim submission.

Project Constraints
A number of constraints were encountered during the stages of work, which affected the outcome of the management plan. These include:

Fragmentary nature of heritage legislation
Similarly to the point above, there is a large range of heritage legislation and regulatory frameworks operating in NSW that can make the regulation of impact to Aboriginal cultural heritage complicated, particularly at a local level. The land use management advice provided in this report represents an opportunity to clarify this process to the extent that this is achievable under the current frameworks.

Uncertainty of the immediate future of the planning system in NSW
The current planning system has been under review during the period in which the management plan was prepared. The recommended planning system proposes a major shift in approach and will directly affect most existing planning processes, including Aboriginal cultural heritage. The recommendations of this plan are to review the plan and the land use management advice following any changes to the planning system adopted by the NSW government.

Regularity of AAC Meetings
Although the plan has received considerable support and input from all AAC members, and their subsequently represented community groups, the endorsement of key deliverables by AAC members has been sometimes been delayed due to the lack of a quorum at many of the regularly scheduled AAC meetings (for a range of reasons). This placed considerable pressure on the project team in terms of timelines, instructions and budget.

To mitigate any potential issues, Converge implemented a number of secondary consultation processes to ensure appropriate input, feedback and endorsement was successfully undertaken with all AAC stakeholders. This included numerous 1:1 sessions with AAC members and Community Elders outside of scheduled meetings to ensure the deliverables are acceptable and in line with individual and representative expectations. Regardless of a quorum being in operation at the meetings, the project team was present at each AAC meeting since the plan’s inception to provide an update to the AAC, regardless of numbers present or if a quorum was present.

Recording of discovered sites onto the NSW AHIMS Register

During the inception for the management plan it was noted that it was likely that anywhere from 100-200 new cultural heritage places would be identified. Under the National Parks and Wildlife Act 1974 (NPW Act) there is an obligation to ensure that these are recorded and updated in an efficient manner for addition to the AHIMS.

Following the completion of the mapping review in 2016/17 and extensive liaison with the OEH as part of the development of the plan, the OEH is now assisting TSC with the registration of the sites identified through the mapping process. This assistance is gratefully acknowledged.
MEMORANDUM OF UNDERSTANDING

Between

Tweed Shire Council Aboriginal Advisory Committee

and

Tweed Shire Council

and

Converge Heritage + Community

(Herein referred to as 'Participants')

1. Preamble

Tweed Shire Council has engaged the services of Converge Heritage + Community in a project to develop a Tweed Shire Aboriginal Cultural Heritage Management Plan (The Project).

Tweed Shire Council (TSC) and Converge Heritage + Community (Converge) recognises the Tweed Shire Council Aboriginal Advisory Committee (AAC) as a key stakeholder in The Project and will consult, engage and seek direction from the Committee throughout the duration of The Project.

TSC and Converge recognise that the AAC includes representation from a range of Aboriginal community groups including: the Tweed/Byron Local Aboriginal Land Council; Tweed/Wollumbin Aboriginal Education Consultative Group; Minjungbal Museum and Study Resource Centre; Tweed Cooperative Society; Canowindra Aged Care Facility; Tweed Corporation for Sport (Stingrays) and other community representatives who may provide advice and input on an "as needed" basis. The AAC wishes to work with TSC and Converge on The Project.

The Participants to this Memorandum of Understanding acknowledge that there is a Registered Native Title Claim across a small area in the north east portion of the Shire. As such, Participants acknowledge the Gold Coast Native Title Group (GCNTG) as stakeholders who may also be consulted for that portion of claim area which overlaps the Tweed LGA.

The Participants to this Memorandum of Understanding acknowledge the common cultural and language connection of Bundjalung people who make up the greater portions of the Aboriginal community of the Tweed Local Government Area (LGA).

The Participants to this Memorandum of Understanding acknowledge that cultural identity can be a personal decision for Aboriginal people and agree...
to respect the identity choices made by all members of the Tweed LGA Aboriginal community.

2. Aboriginal Heritage Study Representation

The Participants to this Memorandum of Understanding are the Tweed Shire Council Aboriginal Advisory Committee, Tweed Shire Council, and Converge Heritage + Community. Unless otherwise advised, representative contact should be via the following:

Tweed Shire Council Aboriginal Advisory Committee (AAC); Care of Tweed Shire Council AAC Coordinator,
Address: PO Box 816 Murwillumbah NSW 2484
Phone: (02) 6670 2262
Email: amclean@tweed.nsw.gov.au

Tweed Shire Council: Robyn Eismann,
Address: PO Box 816 Murwillumbah NSW 2484
Phone: (02) 6670 2562
Email: reisemann@tweed.nsw.gov.au

Converge Heritage + Community; Tim Gall,
Address: 369 Waterworks Road, Ashgrove, 4060.
Phone: 07 3366 8488
Email: tgall@convergehc.com.au

3. Purpose

This Memorandum of Understanding clarifies the roles and responsibilities of the Participants in The Project, ensuring a respectful, beneficial, harmonious and effective working relationship.

This Memorandum of Understanding outlines the expected outcomes and deliverables of the Tweed Shire Aboriginal Cultural Heritage Management Plan (The Project). Further detail is included in Appendix A.

This Memorandum of Understanding constitutes the entire Memorandum of Understanding between both Participants, and may be amended at any time in accordance with clause 14.

The purpose of this Memorandum of Understanding acknowledges fully, augments, and does not replace any aspect of existing protocols in place between Tweed Shire Council and TSC Aboriginal Advisory Committee.

4. Memorandum of Understanding Timeframe

This Memorandum of Understanding shall commence when all signatures have executed it, and will remain in force for the period of The Project, unless otherwise changed (see clause 14).
5. Agreement (Responsibilities, Protocols, Resources, and Access)

5.1 The Participants agree:

- To be fully involved in the planning and decision making of The Project.
- To contribute appropriate and relevant knowledge and advice concerning The Project.
- To recognise and acknowledge that The Project is being undertaken by The Participants.
- To respect and protect all cultural information provided by the TSC Aboriginal Advisory Committee during The Project.
- Tweed Shire Council and Converge will seek specific feedback and appropriate permissions from the TSC Aboriginal Advisory Committee prior to using, or releasing any project related outcomes or information to the broader community.
- Tweed Shire Council and Converge will have effective processes and procedures to ensure restricted use of the collected data to planning and operational outcomes that ensure improved protection and management of Aboriginal cultural heritage sites and places within the Tweed LGA.
- Any technical resources and equipment supplied by Converge for The Project remaining the property of Converge.

5.2 Converge Heritage + Community agrees to:

- Provide professional advice to best practice scientific standards, approaches and methods.
- Respect the confidentiality of identified cultural information.
- Respect and acknowledge the authority of the TSC Aboriginal Advisory Committee for cultural information pertaining to land within the Tweed LGA.
- Respect that the TSC Aboriginal Advisory Committee is under no obligation to accept professional advice from Converge, and that cultural considerations may prevail in its final decisions.
- Work with the Aboriginal community nominee of the TSC Aboriginal Advisory Committee whose duties and roles are outlined in Clauses 7 and 8.

5.3 Tweed Shire Council agrees to:

- TSC respects, appreciates and acknowledges the contributions of the AAC and the importance to continue to consult and engage in relation to Aboriginal Cultural Heritage matters in the TSC LGA.
- TSC will do its utmost to protect and make sure sensitive information provided to TSC by the AAC will be respected and managed by effective systems and delegated responsibilities.
- TSC is committed to working with the Aboriginal community to increase Aboriginal cultural heritage awareness both within Council, and the broader TSC LGA community. TSC will work proactively with the AAC to ensure that relevant and appropriate use of endorsed project
outcomes that could effectively facilitate Aboriginal cultural heritage education and awareness opportunities are considered.

5.4 The Aboriginal Advisory Committee agrees to:
- Work collaboratively with the participants towards to project outcomes.
- Where it is deemed appropriate, liaise with the wider Aboriginal Community to seek their input into the project.

6. Communication Protocol

All communications for the purposes of the Project will be through the representatives acknowledged in Sections 2 above.

In addition, Ian Fox of Converge Heritage + Community will take a lead role and has overall responsibility to ensure all Participants are equally informed of project matters.

7. Aboriginal Community Nominee

The TSC Aboriginal Advisory Committee agrees to nominate a Traditional Owner or Custodial representative of the Tweed Shire district for the purpose of assisting with the Cultural Heritage Study. In consultation with Converge and TSC, the TSC AAC will nominate appropriate representative/s based on the agreed work program as required from time to time (the nominee/s).

The nominee/s has agreed to assist both Converge and TSC staff in the collection and interpretation of cultural information as may be considered appropriate. The Aboriginal community Nominee/s may be required to accompany Converge staff during field work to visit or identify unrecorded Aboriginal sites and places of significance. Converge will liaise directly with the appointed Nominee/s prior to such field work and advise both the TSC AAC and TBLAIC of results.

Converge and Tweed Shire Council agrees to ensure that any Nominee is to be fairly compensated for time and knowledge and paid a negotiated hourly rate for all Project work undertaken. The rate of payment is to be in accordance with a separate agreement between the TSC Aboriginal Advisory Committee, Tweed Shire Council and Converge.

Cultural protocols may require that different representatives are required for different areas within the Tweed Shire district. If this is necessary the advice of the TSC Aboriginal Advisory Committee will be sought in identifying the most appropriate Traditional Owner or Custodial nominee for each area.

8. Training

Converge undertakes to conduct any site visits and investigations in company with the Nominee of the TSC Aboriginal Advisory Committee. For the purpose of the Project all site visits and investigations are to be regarded as a mutual opportunity for training and information sharing between Aboriginal participants, Tweed Shire Council and Converge staff. The Nominee will:
• Work with Converge to facilitate engagement of the broader Aboriginal community to identify sites of Aboriginal heritage significance in the Tweed LGA and make recommendations, or provide appropriate cultural advice, for recording the existence of such sites;
• Assist in searching primary and secondary source material in local and other repositories and using electronic heritage databases;
• Work with the Elders/other Aboriginal participants to undertake oral history interviews of knowledge holders, if appropriate;
• Meet as required with Converge staff and provide update reports to the TSC Aboriginal Advisory Committee on a regular basis;
• In conjunction with Converge staff work with and report to both the TSC Aboriginal Advisory Committee and Tweed Shire Council to achieve outcomes and maintain a record of the Project’s progress.

In addition, Converge will develop recording templates for cultural heritage sites and places, and will train the Nominee in recording and collating data where appropriate.

9. Restrictions on knowledge of Aboriginal cultural sites and places

Tweed Shire Council and Converge acknowledge the confidentiality of Aboriginal cultural sites and places. Converge will seek and respect advice from the Nominee regarding culturally confidential knowledge. Such knowledge will be identified as “Confidential”, and may require restricted access, as determined by the Nominee.

All Participants will respect the confidentiality of cultural information, and will observe protocols of the Aboriginal community as identified by the Nominee and the TSC Aboriginal Advisory Committee. No Participant will disclose or distribute any information that is identified as “Confidential”, except by agreement in writing by signatory Participants to this Memorandum of Understanding. This clause applies both throughout the life of the Project, and forever thereafter.

All Participants acknowledge that protocols will be developed as a key part of the information management system to ensure appropriate confidentiality. Access will be determined by the TSC Aboriginal Advisory Committee in consultation with appropriate knowledge holders. If required, Protocols for appropriate confidentiality and access will be stated in site specific agreements between relevant parties. A pro forma for site specific agreements will be developed by Converge and the TSC Aboriginal Advisory Committee, if required.

10. Access Arrangements

All Project Participants will seek advice from the TSC Aboriginal Advisory Committee prior to accessing any Aboriginal cultural sites or places. Any site recording will only take place with the knowledge and approval of the Nominee. Any protocols about accessing a site or place, as provided by the TSC AAC and Nominee, will be followed by all Project Participants.
11. Keeping place (Data storage)

The Participants recognise that:

1. The Project will gather sensitive information which shall always remain the property of the Aboriginal community, and may exist in the keeping place.
2. The Project will gather non-sensitive information that is intended to be made accessible to the public and will be the property of Council at the end of the Project.

In the interim, access to any information in the keeping place will only be made available to Project Participants authorised by the TSC Aboriginal Advisory Committee and TSC project sponsor.

For the duration of the Project, Converge agrees to provide and maintain secure data storage facilities. Geographic Information System (GIS) mapping data will be secured by Tweed Shire Council to restrict access for mapped cultural data to approved staff only.

Prior to the completion of the project, the development of a protocol for the long-term conservation and maintenance of data, in hard copy and electronic data storage, will be undertaken by the TSC Aboriginal Advisory Committee with Tweed Shire Council. This protocol will aim to ensure that any culturally confidential data or information, collated for the Project, will be managed in accordance with the wishes of the TSC Aboriginal Advisory Committee and Tweed Shire Council's obligations, and will clearly identify all information to be accessible by the public.

On completion of the Project, approved copies of Project related data and copies of Project maps will be given to the TSC Aboriginal Advisory Committee for distribution to appropriate participant organisations, eg TBLALC.

The final Aboriginal Heritage Study report and maps will be distributed to all Participants plus the Heritage Branch of the Department of Planning and will be made available to the wider public, including the development industry and related consultants.

12. Publication and promotion

All Participants to this Memorandum of Understanding will be identified in any reports and/or promotion along with the Heritage Branch of the Department of Planning. Copies of all reports regarding the Project will be supplied in a timely manner to all Participants to this Memorandum of Understanding.

The Draft and Final Aboriginal Heritage Study report will also acknowledge the Heritage Branch, NSW Department of Planning, being a key funding body for the Project.
13. Additional funding

A Party to this Memorandum of Understanding may seek additional funding at any time, provided the funding is used to facilitate or enhance The Project.

14. Amendment and Termination of Memorandum of Understanding

This Memorandum of Understanding may be changed or terminated by written agreement of the TSC Aboriginal Advisory Committee, Tweed Shire Council, and Converge Heritage + Community. Written notice of change or termination must be given to all Participants at least 21 days before the suggested date of change or termination.

15. Application of Law (State, Federal, and Aboriginal traditional and customary lore)

The laws of New South Wales and Australia apply to this Memorandum of Understanding. State and Federal law should be interpreted to work in conjunction with or reflect Aboriginal traditional and customary lore (law) when dealing with Aboriginal cultural issues, wherever possible and reasonable. Aboriginal traditional and customary lore may be applied to matters of Aboriginal culture that are not subject to any statute or common law.

16. Dispute resolution

The Participants agree that any dispute arising during the course of this Memorandum of Understanding will be dealt with as follows:

(a) The Participant claiming that there is a dispute will send a notice to the other Participant(s) in accordance with Clause 4 and 5. That notice will explain the nature of the dispute.

(b) The Participant will try to resolve the dispute by direct negotiation at an extraordinary meeting of all Participants.

(c) If the dispute is about an Aboriginal cultural heritage or a personnel matter, and the Participants are unable to resolve the dispute by direct negotiation at a meeting of all Participants, then the matter will be resolved on the advice of the TSC Aboriginal Advisory Committee. The TSC Aboriginal Advisory Committee may refer the matter to a person or people, e.g., their nominated Elders, who have the ability and/or authority to intervene and facilitate some form of resolution. In the event that they are unable to facilitate some form of resolution, the decision of the person or people to whom the matter is referred is final.

17. Broad Project Objectives

The Project has 5 specific stages and an anticipated end date of 15 May 2013. These are further identified in Appendix A of this document.

The Project aims to identify and appropriately document both actual and potential regions and places of Aboriginal heritage significance, and determine appropriate heritage management strategies that will support the
ongoing conservation and promotion of Aboriginal cultural heritage in the Tweed LGA.

Specifically, The Project will focus on these main areas:

1. Documentation and mapping of items and places of both traditional and contemporary significance to the Aboriginal community of the Tweed LGA;
2. Documentation and mapping of cultural sites and places known (or believed) to have been physically destroyed or removed, within the Tweed LGA;
3. Documentation and mapping of landscape features known to have a high probability for the presence of cultural objects or places of particular cultural significance;
4. Collection of ethnographic (historical) records and data, copies of which, where appropriate, will be provided to Participants participating in The Project;
5. Identification of potential for interpretation and promotion of Aboriginal cultural heritage; and
6. Emphasis on skill sharing for research and documentation of sites.
7. Inform land use and development planning (or words to this effect)

In addition to these key outcomes, the Project aims to include:

1. Strengthening of the relationship between Tweed Shire Council, the TSC Aboriginal Advisory Committee and its members, and the broader Aboriginal community of the Tweed LGA;
2. Development of the TSC Aboriginal Advisory Committee's, and members of the border Aboriginal communities', understanding of ways to record their own sites and places of significance, and their cultural knowledge; and
3. Promotion of certain cultural sites in a respectful, culturally appropriate way, if this is acceptable to the Aboriginal community,
4. Improving the understanding and respect of the wider community of Aboriginal Culture (or words to that effect)
<table>
<thead>
<tr>
<th>Name</th>
<th>Organisation</th>
<th>Position</th>
<th>Signature</th>
<th>Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>Barry Longland</td>
<td>Tweed Shire Council</td>
<td>Mayor</td>
<td></td>
<td>20/8/12</td>
</tr>
<tr>
<td>Jazz Summer</td>
<td>Canowindla</td>
<td>Chairman</td>
<td></td>
<td>20/8/12</td>
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<tr>
<td>Jackie McDonald</td>
<td>Tweed Wollumbin Local A.E.C.G.</td>
<td>Secretary</td>
<td></td>
<td>20/8/12</td>
</tr>
<tr>
<td>Paul Keenan</td>
<td>Tweed Shire Council</td>
<td>General Manager</td>
<td></td>
<td>20/8/12</td>
</tr>
<tr>
<td>Nicole Rotumiah</td>
<td>Tweed Aboriginal Co-operative Society</td>
<td>Chairperson</td>
<td></td>
<td>20/8/12</td>
</tr>
<tr>
<td>Tim Gall</td>
<td>Converge H4C</td>
<td>General Manager</td>
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<td>20/8/12</td>
</tr>
<tr>
<td>Name</td>
<td>Signature</td>
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<tr>
<td><strong>LEWISNA WILLIAMS</strong></td>
<td>[Signature]</td>
<td>20/12/12</td>
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<tr>
<td><strong>Des Williams</strong></td>
<td>[Signature]</td>
<td>20/12/12</td>
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<tr>
<td><strong>CHAIRMAN</strong></td>
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<tr>
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</table>
Appendix A - Project Milestones and Timelines

The initial project plan has identified the following milestones and timelines for the project:

<table>
<thead>
<tr>
<th>Deliverable/Milestone</th>
<th>Due Date</th>
<th>Responsible</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project start up meeting</td>
<td>30th January 2012</td>
<td>TSC/Converge</td>
</tr>
<tr>
<td>Project Management Plan</td>
<td>15th March 2012</td>
<td>Consultant</td>
</tr>
<tr>
<td>Communication Plan</td>
<td>15th May 2012 (finalised with Stage1)</td>
<td>Consultant</td>
</tr>
</tbody>
</table>

**Stage 1 Outcomes:**
1. Establishment of an effective working relationship with the represented Aboriginal Communities and individuals
2. Agreement on a process for the project and how the information gathered will be reported back to the Aboriginal leaders, Council and the general community
3. Agreement on key contacts for the project and a report detailing the input of individuals and communities
4. Establishment of a project working protocol or memorandum of Understanding in conjunction with TSC
5. Initial consultation session outlining the process and outcomes with the AAC
6. Establishment of a consultation plan linked to key stages

**Stage 5 (Initial) Outcomes:**
1. Initial agreement upon the method of nominating or triggering ACH in the Tweed LEP consistent with the requirements of the Standard Template (local environmental plans) Order and practice notes and directions.
2. A report outlining specific planning and management recommendations at the LGA level. This includes a report on how the maps and models generated in the later stages might be included in land planning and management, including listing within the Heritage Schedule of the Tweed LEP and on the SHR.
<table>
<thead>
<tr>
<th>Deliverable/Milestone</th>
<th>Due Date</th>
<th>Responsible</th>
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</thead>
<tbody>
<tr>
<td><strong>Stage 2 Outcomes:</strong></td>
<td>30th August 2012</td>
<td>Consultant</td>
</tr>
</tbody>
</table>
| 1. Database and mapping of currently identified heritage items and areas in an agreed format  
2. A list of places and pathways likely to exist in the region (but are presently unrecorded) as determined by a comprehensive review of records, reports, history books and archival records;  
3. A list of places and pathways that the Aboriginal communities and individuals want to be considered in the cultural mapping project.  
4. A background description of the environment and history (pre-contact and post-contact) of the Tweed. |               |             |
| **Stage 3 Outcomes:**  | 31st December 2012 | Consultant  |
| 1. Development of a Thematic History of Aboriginal Heritage in the Tweed  
2. Progress Reporting – midpoint consultation with Aboriginal groups  
3. Thematic history to integrate with the TSC Community Based Heritage Study Thematic History (2004) to provide a complete thematic history of the Tweed. |               |             |
| **Stage 4 Outcomes:**  | 28th February 2013 | Consultant  |
| 1. Spatial mapping of the distribution and density of places and pathways known to exist on the ground within the Tweed LGA  
2. Predictive modelling / mapping showing where places and pathways (presently unrecorded) are likely to exist on the ground within the Tweed LGA  
3. An explanation of how the patterns revealed in these maps relate to the environment, prehistory, history and changing patterns of land use / land tenure in the Tweed LGA  
4. Development of a thematic model to describe and map the spatial character and distribution of historical, social, spiritual places and wild resource places and themes with the TSC.  
5. Use of this model to inform any required field surveys following consultation with the Aboriginal groups. |               |             |
<table>
<thead>
<tr>
<th>Deliverable/Milestone</th>
<th>Due Date</th>
<th>Responsible</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Stage 5 (final) Outcomes:</strong></td>
<td>1st May 2013</td>
<td>Consultant</td>
</tr>
<tr>
<td>1. A community report, which discusses the outcomes and recommendations of the project suitable for the broader community. This report would not contain any culturally sensitive information.</td>
<td></td>
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</tr>
<tr>
<td>2. Aboriginal cultural heritage mapping designed in a culturally appropriate manner in accordance with the protocols of Stage 1, for example, to show land parcels with significance and not actual sites, thereby providing a measure of protection and restriction to sensitive cultural information.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Final consultation with the Aboriginal groups to update the Aboriginal groups of the progress and results to ensure that the project is continuing with agreed shared goals.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Appendix 4 - Aboriginal groups and contacts in the Tweed Shire

1. Appendix 1 - Aboriginal Thematic History
2. Appendix 2 - Project methodology and consultation
3. Appendix 3 - Memorandum of understanding (project)
4. Appendix 4 - Aboriginal groups and contacts in the Tweed Shire
5. Appendix 5 - Checklists for development
6. Appendix 6 - Standard conditions of consent
7. Appendix 7 - TSC Standard procedure for ACH Impact Mitigation: Maintenance and emergency works
8. Appendix 8 - Mapping and monitoring procedures
**Bugalwena Aboriginal Health Service**
Address: 24 Minjungbal Drive Tweed Heads South NSW 2486
Phone: 07 5513 1322
Email: info@bnmac.com.au

**Canowindra Aged Care**
Address: 65 Ducat Street Tweed Heads NSW 2485
Phone: 07 5536 2105
Email: ablagecare@bigpond.com

**Federal Native Title Claims**
Details of Native Title claims can be found on the Federal Native Title website, as following:
http://www.nntt.gov.au/searchRegApps/NativeTitleRegisters/Pages/Search-National-Native-Title-Register.aspx

**Tweed Aboriginal Co-operative Society**
Address: Cnr Kirkwood Rd and Duffy St, Tweed Heads South NSW 2486
Phone: (07) 5524 2275
Email: tweedco-op@shopsafe.com.au

**Tweed Byron Local Aboriginal Land Council**
Address: 21/25 Ourimbah Road, Tweed Heads, NSW 2485
Phone: 07 5536 1763
Email: sites@tblalc.com
www.tblalc.com (being developed)

**Tweed Wollumbin Aboriginal Education Consultative Group**
C/O Ms Jackie McDonald
Address: 5 Tringa Street, Tweed Heads West
Phone: 0408 369 629
Email: mctogo2@gmail.com
Appendix 5 - Checklists for development
Applicant Assessment Checklist for development applications where land is mapped as Aboriginal Place of Heritage Significance

<table>
<thead>
<tr>
<th>Note: This checklist steps through levels of significance and not all steps may be relevant to your application.</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Is the site within the mapped Aboriginal Place of Heritage Significance?</th>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Has an AHIMS search been undertaken?</th>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>If Yes, are there any registered AHIMS sites within the subject land or within 50 metres of the site?</td>
<td>YES</td>
<td>NO</td>
<td>N/A</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Does the proposal include ground disturbance?</th>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Has the proposal been referred to the Tweed Byron Local Aboriginal Land Council (TBLALC) for advice?</th>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Has an Avoiding or Justifying Harm to Aboriginal Cultural Heritage report been submitted with the application which concludes harm can be avoided?</th>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Has this assessment been prepared by an Archaeologist or cultural heritage professional?</th>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Does this assessment suitably document details of consultation undertaken with the Tweed Byron Local Aboriginal Land Council (TBLALC) and recommendations for action?</th>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Has the proposal been redesigned to avoid harm?</th>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>If harm cannot be determined, or avoided, has an Avoiding or Justifying Harm to Aboriginal Cultural Heritage Step 3 report been submitted with the application?</th>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Has consultation preparation and consultation been in accordance with the Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW (2011)?</th>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Has the proposal been redesigned to avoid harm?</th>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>If harm cannot be avoided has an AHIP been prepared and submitted to OEH?</th>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Has the Aboriginal object or place been registered to the AHIMS?</th>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
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</table>

<table>
<thead>
<tr>
<th>Is this application submitted as Integrated Development?</th>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
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</table>

**Office use**

<table>
<thead>
<tr>
<th>Application has been referred to the TBLALC under Clause 5.10(8)</th>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Has the advice been considered in the determination?</th>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Have the General Terms of approval been issued and included within the determination?</th>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Have the appropriate Conditions of Consent been applied?</th>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>If ACH objects or places are identified has the mapping been updated accordingly?</th>
<th>YES</th>
<th>NO</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Applicant Assessment Checklist for development applications where land is mapped as Predictive Aboriginal Cultural Heritage</td>
<td></td>
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<tr>
<td><strong>Applicant Checklist</strong></td>
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<tr>
<td><strong>Officer Assessment</strong></td>
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</tr>
<tr>
<td>YES</td>
<td>NO</td>
<td>N/A</td>
<td>YES</td>
</tr>
<tr>
<td><strong>Note:</strong> This checklist steps through levels of significance and not all steps may be relevant to your application</td>
<td></td>
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</tbody>
</table>

Is the site within the mapped Predictive Aboriginal Cultural Heritage?

Has an AHIMS search been undertaken?

If Yes, are there any registered AHIMS sites within the subject land or within 50 metres of the site?

Does the proposal include ground disturbance?

Understanding and using the Matrix guidelines, the proposal is considered as low risk?

Has due diligence been exercised?

Have details of the due diligence been submitted with the application?

Understanding and using the Matrix guidelines, the proposal is considered as medium risk?

Has an *Avoiding or Justifying Harm to Aboriginal Cultural Heritage* report been submitted with the application which concludes harm can be avoided?

Has this assessment been prepared by an Archaeologist or cultural heritage professional?

Does this assessment suitably document details of consultation undertaken with the Tweed Byron Local Aboriginal Land Council (TBLALC) and recommendations for action?

Understanding and using the Matrix guidelines, the proposal is considered as high risk?

Has an *Avoiding or Justifying Harm to Aboriginal Cultural Heritage* report been submitted with the application which concludes harm can be avoided?

Has this assessment been prepared by an Archaeologist or cultural heritage professional?

Does this assessment suitably document details of consultation undertaken with the Tweed Byron Local Aboriginal Land Council (TBLALC) and recommendations for action?

If through any assessment it is found harm cannot be determined, or avoided, has an *Avoiding or Justifying Harm to Aboriginal Cultural Heritage Step 3* report been submitted with the application?
<table>
<thead>
<tr>
<th>Question</th>
<th>Answer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Has consultation preparation and consultation been in accordance with</td>
<td></td>
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<tr>
<td>the <em>Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW (2011)</em>?</td>
<td></td>
</tr>
<tr>
<td>Has the proposal been redesigned to avoid harm?</td>
<td></td>
</tr>
<tr>
<td>If harm cannot be avoided has an AHIP been prepared and submitted to</td>
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<tr>
<td>OEH?</td>
<td></td>
</tr>
<tr>
<td>Has the Aboriginal object or place been registered to the AHIMS?</td>
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</tr>
<tr>
<td>Is this application submitted as Integrated Development?</td>
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</tbody>
</table>

**Office use**

Where an *Avoiding or Justifying Harm to Aboriginal Cultural Heritage* report has been submitted has the application been referred to the TBLALC under Clause 5.10(8)

Has the advice been considered in the determination?

Have the General Terms of approval been issued and included within the determination?

Have the appropriate Conditions of Consent been applied?

If ACH objects or places are identified has the mapping been updated accordingly?
### Applicant Assessment Checklist for planning proposals (Part 3) where land is mapped as Aboriginal Place of Heritage Significance or Predictive Aboriginal cultural heritage

<table>
<thead>
<tr>
<th>Question</th>
<th>Applicant Checklist</th>
<th>Officer Assessment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Note: This checklist steps through levels of significance and not all steps may be relevant to your application.</td>
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<td></td>
</tr>
<tr>
<td>Is the site within the mapped Aboriginal Place of Heritage Significance?</td>
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<tr>
<td>Is the site within the mapped predictive Aboriginal Cultural Heritage?</td>
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</tr>
<tr>
<td>Has an AHIMS search been undertaken?</td>
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</tr>
<tr>
<td>If Yes, are there any registered AHIMS sites within the subject land or within 50 metres of the site?</td>
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<tr>
<td>Does the proposal include ground disturbance?</td>
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<tr>
<td>Has the proposal been referred to the Tweed Byron Local Aboriginal Land Council (TBLALC) for advice?</td>
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<tr>
<td>Has an Avoiding or Justifying Harm to Aboriginal Cultural Heritage report been submitted with the proposal which concludes harm can be avoided?</td>
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<tr>
<td>Has this assessment been undertaken over the whole site area (not limited to the project area)?</td>
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<tr>
<td>Has this assessment been prepared by an Archaeologist or cultural heritage professional?</td>
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<tr>
<td>Does this assessment suitably document details of consultation undertaken with the Tweed Byron Local Aboriginal Land Council (TBLALC) and recommendations for action?</td>
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<tr>
<td>Has the proposal been redesigned to avoid harm?</td>
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<tr>
<td>Does the assessment recommend any zone changes or areas of protection?</td>
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<tr>
<td>If harm cannot be determined, or avoided, has an Avoiding or Justifying Harm to Aboriginal Cultural Heritage Step 3 report been submitted with the proposal?</td>
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<tr>
<td>Has this assessment been undertaken over the whole site area (not limited to the project area)?</td>
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<tr>
<td>Has consultation preparation and consultation been in accordance with the Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW (2011)?</td>
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<tr>
<td>Has the proposal been redesigned to avoid harm?</td>
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<tr>
<td>Does the assessment recommend any zone changes or areas of protection?</td>
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<tr>
<td>If harm cannot be avoided through site planning has an AHIP been prepared and submitted to OEH?</td>
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<tr>
<td>Has the Aboriginal object or place been registered to the AHIMS?</td>
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<tr>
<td><strong>Office use</strong></td>
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<tr>
<td>Have the final reports been referred to the TBLALC?</td>
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<tr>
<td>Has the zoning or structure plan been revised to avoid harm?</td>
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<tr>
<td>Have any ACH sites or places found been registered to AHIMS?</td>
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<tr>
<td>Has the ACH mapping been updated accordingly?</td>
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</tbody>
</table>
Appendix 6 - Standard conditions of consent
The following Standard Condition of Consent are recommended to address the requirements to consider Aboriginal cultural heritage.

**Precautionary**

A Standard precautionary condition related to harm is recommended for all DA consents, as follows:

# Should any Aboriginal object or cultural heritage (including human remains) be discovered all site works must cease immediately and the Tweed Byron Local Aboriginal Land Council (TBLALC) Aboriginal Sites Officer are to be notified (on 07 5536 1763). The find is to be reported to the Office of Environment and Heritage. No works or development may be undertaken until the required investigations have been completed and any permits or approvals obtained, where required, in accordance with the National Parks and Wildlife Act, 1974.

**Supporting an Aboriginal cultural heritage assessment**

Should a suitably prepared and completed Aboriginal cultural heritage assessment accompanying a development application make recommendations for actions in relation to the protection of Aboriginal cultural heritage, the following condition is recommended:

# Any actions or recommendations of the Aboriginal cultural heritage assessment undertaken in support of the application are to be followed and implemented.
Appendix 7 - TSC Standard procedure for ACH Impact Mitigation: Maintenance and emergency works
Following is the content of the Draft TSC Standard Procedure for Aboriginal Cultural Heritage Impact Mitigation: Maintenance and Emergency Works.

1 Introduction

This procedure has been prepared in recognition of the potential risk Tweed Shire Council (Council) routine and essential maintenance and emergency works on existing infrastructure within an Aboriginal Place of Heritage Significance could harm Aboriginal cultural heritage (ACH).

This Procedure has been designed to capture Council routine and essential maintenance and emergency works which do not trigger development assessment or consent. It aims to assist Council staff and contractors understand the legislative requirements and processes to avoid overlooking the potential impacts and risk for harm to ACH.

The Procedure does not replace the requirements for exercising Due Diligence, or undertaking an appropriate level of Avoiding or Justifying Harm to Aboriginal Cultural Heritage or other assessment as required or determined through the planning assessment and approval process for other types of maintenance and construction work (e.g. upgrades or new works).

This Procedure supports the implementation of the Tweed Shire Aboriginal Cultural Heritage Management Plan 2017, which should be read and understood in conjunction with this Procedure.

2 Objectives

1. Inform staff and contractors working for Tweed Shire Council of the standard working requirements in relation to working on land with known or potential Aboriginal cultural heritage.
2. Routine and essential maintenance and/or emergency works are undertaken using a precautionary approach aiming to reduce the risk of harm to Aboriginal cultural heritage.
3. Reduce the risk to Council arising from possible harm.

3 Background

Australian Aboriginal culture is one of the oldest and longest surviving cultures that dates back at least 65,000 years. With this cultural depth Aboriginal communities have a great deal to contribute to modern Australia.

The purpose of the Aboriginal Cultural Heritage Management Plan is not to unduly stop or delay development or works; rather it is to ensure that the significant cultural heritage of the Aboriginal community within the Tweed is acknowledged, respected and that the Aboriginal community are consulted when development may impact on this significance.

Council has prepared the Aboriginal Cultural Heritage Management Plan (ACHMP) to identify, through a rigorous shire wide process, those areas that have known Aboriginal cultural heritage, defined as Aboriginal Place of Heritage Significance, as well as those areas of Predictive Aboriginal Cultural Heritage.

Land mapped as Aboriginal Place of Heritage Significance highlights the presence of known and registered Aboriginal cultural heritage. Predictive Cultural Heritage indicates the high likelihood of the presence of Aboriginal cultural heritage.

4 Land to which this Procedure applies

This Procedure applies to all land mapped as Aboriginal Place of Heritage Significance and Predictive Aboriginal Cultural Heritage.

Note: The mapped Aboriginal Place of Heritage Significance and Predictive Aboriginal Cultural Heritage mapping layers can be found on Council’s mapping program [currently Weave] under Planning Constraints.

5 Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>ACH</td>
<td>Aboriginal cultural heritage</td>
</tr>
<tr>
<td>ACHA</td>
<td>Aboriginal cultural heritage assessment</td>
</tr>
<tr>
<td>ACHMP</td>
<td>Tweed Shire Aboriginal Cultural Heritage Management Plan 2017</td>
</tr>
<tr>
<td>AHIMS</td>
<td>Aboriginal Heritage Impact Permit issued under Division 2 of Part 6 of the National Parks and Wildlife Act, 1974</td>
</tr>
</tbody>
</table>
6 Council’s responsibilities

Council has a responsibility to ensure that objects and places of Aboriginal significance are acknowledged and respected and that potential impacts on their significance is appropriately considered and managed through its development and work processes.

This is supported through the legislative framework following:

7 Legislative Context

NSW National Parks and Wildlife Act, 1974 (NPW Act)

The NPW Act is the primary legislation for the protection of aspects of Aboriginal cultural heritage in NSW. Specifically relevant objects of the NPW Act are:

“(b) the conservation of objects, places or features (including biological diversity) of cultural value within the landscape, including, but not limited to:

(i) places, objects and features of significance to Aboriginal people, and

(ii) places of social value to the people of New South Wales, and

(iii) places of historic, architectural or scientific significance,

(c) fostering public appreciation, understanding and enjoyment of nature and cultural heritage and their conservation,…”

The NPW Act includes the following definitions as they relate to Aboriginal cultural heritage:

Aboriginal Object: Any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.

Aboriginal Place: A place declared by the Minister by order published in a gazette “that, in the opinion of the Minister, is or was of special significance with respect to Aboriginal culture, to be an Aboriginal place” for the purposes of the NPW Act (s.84).

Aboriginal Area: The purpose of reserving land as an Aboriginal area is to identify, protect and conserve areas associated with a person, event or historical theme, or containing a building, place, object, feature or landscape:

a) Of natural or cultural significance to Aboriginal people, or

b) Of importance in improving public understanding of Aboriginal culture and its development and transition

Aboriginal areas also allow for traditional use of the land by Aboriginal people, in addition to conserving, and promoting knowledge of Aboriginal cultural heritage.

Harm: an object or place includes any act or omission that:

(a) destroys, defaces or damages the object or place, or

(b) in relation to an object—moves the object from the land on which it had been situated, or

(c) is specified by the regulations, or

(d) causes or permits the object or place to be harmed in a manner referred to in paragraph (a), (b) or (c),

but does not include any act or omission that:

(e) desecrates the object or place, or

(f) is trivial or negligible, or

(g) is excluded from this definition by the regulations.

Part 6 of the NPW Act provides specific protection for Aboriginal objects and places by making it an offence to harm them (Section 86). If “harm” to an Aboriginal object or place cannot be avoided, whether it is identified in the Aboriginal Heritage Information Management System (AHIMS), discovered during a survey or deemed likely to exist, the legislation requires issue of a permit, known as, Aboriginal Heritage Impact Permit (AHIP), which may be issued under Section 87 and Section 90.

It is noted that ignorance is not a defence under Section 86 of the National Parks and Wildlife Act where harm is caused to an Aboriginal object or place.
Undertaking a Due Diligence assessment provides a defence to prosecution for an offence under section 86(2) if the defendant shows that the defendant exercised due diligence to determine whether the act or omission constituting the alleged offence would harm an Aboriginal object and reasonably determined that no Aboriginal object would be harmed.

Section 84 of the NPW Act makes provision for the declaration of places of Aboriginal significance: places of special significance with respect to Aboriginal culture.

Within the Tweed Shire, Ukerebagh Island and Wollumbin (Mount Warning) are declared places of Aboriginal significance, current at the time of endorsement.

Further information on declared places of Aboriginal significance can be found at:

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

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

These requirements recognise and acknowledge the statutory role and responsibilities of NSWALC and LALCs.

The ALR Act also establishes the registrar, whose functions include, but are not limited to, maintaining the Register of Aboriginal Land Claims and the Register of Aboriginal Owners.

Under the ALR Act, the Registrar is to give priority to the entry in the Register of the names of Aboriginal persons who have a cultural Association with:

a) Lands listed in Schedule 14 of the NPW Act
b) Lands to which Section 36A of the ALR Act applies.

The Tweed Byron Local Aboriginal Land Council (TBLALC) is the LALC applicable to the Tweed Local Government Area (LGA).

Further information on the TBLALC and contact details may be accessed through:
www.tblalc.com (being developed)

Environmental Planning and Assessment Act, 1979 (EPA Act)
The EPA Act establishes the planning and development system for NSW. It enables the creation of environmental planning instruments, primarily State Environmental Planning Policies (SEPPs) and Local Environmental Plans (LEPs).

Clause 4.15 - Evaluation specifies the matters that must be considered in the determination of development applications. Matters of relevance to Aboriginal cultural heritage assessment arise as a consequence of the need to give consideration to:

i) Provisions contained in environmental planning instruments,
ii) Provisions contained in development control plans,
iii) Environmental impacts,
iv) Site suitability,
v) Submissions received,
vi) The public interest.

Clause 4.46 relates to integrated development. Integrated development is development that requires development consent and an approval under one or more of the Acts specified in this section. The NPW Act is specified and references s90, grant of an Aboriginal heritage impact permit (AHIP) as integrated development.

Heritage Act 1977
Significant Aboriginal heritage can be entered on the State Heritage Register if it is recognised by the community as important to the cultural and heritage values of Aboriginal people in NSW. There are just over twenty places currently entered on the State Heritage Register that are significant to Aboriginal people in NSW, including missions, reserves and massacre sites.

Any work to one of these places requires the approval of the OEH.

The Heritage Act requires a separate application and assessment process to the NPW Act.
**Tweed Local Environmental Plans (LEPs)**

Tweed Shire Council currently has three LEPs applying across the shire. The Tweed City Centre LEP 2012 and the Tweed LEP 2014, which applies outside of the city centre, are both prepared under the Standard Instrument Local Environmental Plan requirements and contain standardised and mandatory heritage provisions within Clause 5.10 of Part 5.

In addition, some areas deferred from the LEP 2014 or LEP 2012 are still regulated by the LEP 2000 and the heritage provisions of Part 8 of this instrument.

The LEPs prepared under the provisions of the Standard Instrument Local Environmental Plans include requirements for development in association with Aboriginal cultural heritage, including:

Clause 1.2 Aims of the Plan

(2) (c) to promote the responsible sustainable management and conservation of Tweed’s natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, built environmental, and cultural heritage.

Clause 5.10 Heritage Conservation

(1) the objectives of this clause are as follows:

(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

Relevant to Aboriginal cultural heritage, Clause 5.10 provides requirements for:

- when development consent is required (Clause 5.10(2));
- when consent may not be required (Clause 5.10(3));
- requirements for the consideration of archaeological sites (Clause 5.10(7));
- consideration of the impact/effect of proposed development on an Aboriginal place or object either known or reasonably likely to be located at the place by means of adequate investigation and assessment and consultation with the local Aboriginal communities (Clause 5.10(8)); and
- Conservation incentives (Clause 5.10(9)).

Further information related to the legislative context can be found in Section D of the Tweed Shire Aboriginal Cultural Heritage Management Plan 2017.

**State Environmental Planning Policy (SEPP) Infrastructure**

The SEPP Infrastructure provides a planning framework and flexibility for the provision of infrastructure and service facilities. The SEPP Infrastructure makes provision for exempt and complying development for a range of infrastructure undertaken by, or on behalf of, a public authority.

Aboriginal objects are captured under the definitions of *environmentally sensitive area* as defined within the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, Code SEPP.

**8 Works to which this procedure applies**

This Procedure applies to routine and/or essential maintenance and emergency works (defined below) typically undertaken without development consent and is therefore reliant on the process outlined in this Procedure to ensure compliance with Aboriginal cultural heritage legislative requirements.

All other ground disturbance works are to be subject to environmental planning assessment, as a minimum an Aboriginal Cultural Heritage Due Diligence which would determine whether a comprehensive ACHA is required. The process outlined in this Procedure may also be applied to those works to the extent that it doesn’t contradict project-specific mitigation measures and planning approval conditions, as determined through the planning assessment process.

Emergency works is as defined by the State Environmental Planning Policy (Infrastructure) (ISEPP) as:

*works for the purpose of maintaining or restoring infrastructure facilities or equipment in order to ensure public safety or to protect buildings or the environment due to:*

(a) a sudden natural event, including a storm, flood, tree fall, bush fire, land slip or coastal inundation, or

(b) accident, equipment failure or structural collapse, or

(c) damage caused by vandalism or arson,

provided the works involve no greater disturbance to soil or vegetation than necessary and are carried out in accordance with all applicable requirements of the Blue Book.
Emergency works require immediate action for public safety or protection of buildings or the environment and may include works such as:

- burst water main or sewer
- flood or bushfire repairs
- road slippage or damage
- bridge repair
- stormwater damage
- repair revetment walls
- tree pruning associated with road safety
- slip repair

Routine and/or essential maintenance or works are by nature minor in scale, routine, and are associated with existing infrastructure on land that has been previously disturbed (e.g. within the road reserve, cleared operational land or park land) and may include for example:

- mowing/slashing
- bridge repairs
- repairs to footpaths, resurface roads, water or sewer infrastructure (which does not increase capacity)
- replacement of barbecues, picnic tables and playground equipment or the like in order to ensure the safe and ongoing provision of services
- repairing potholes or cracks in road surfaces
- replacement, maintenance or repair to manholes, air values, isolation valves, hydrants and the like
- desilting or repair of table drains
- repairs to flood mitigation levees
- removal of dumped rubbish
- grading and resheeting gravel roads
- cleaning and repairing drainage structures (e.g. culverts, pits and GPTs)
- weed removal
- installation and repairs of guard rails, guide posts, signs and other roadside furniture

**Note: Having cultural monitors on site is not a sufficient defence against harm, undertaking due diligence is a defence against harm.**

Ground disturbance is discussed in Part C6.3 of the ACHMP and is to be considered as following:

**Excavation or ground disturbance** means excavation, filling of land, changes to hydrological regime, and/or clearing of native vegetation in a manner which disturbs the ground surface. Excavation or ground disturbance may have varying potential for risk depending on the locality, proximity to known Aboriginal cultural heritage, soil structure and type, landscape category etc (as discussed in Section B). In sandy coastal areas and dune systems Aboriginal cultural heritage may be found on the surface and up to a depth of 2 metres and disturbance of the soil has a higher potential risk. These factors must also be considered within the following level of excavation or ground disturbance and may be used as a guide:

**Minimal excavation or ground disturbance** may include cut and fill of less than 200mm; however may be deeper over a small area, such as small holes for fencing, signage etc and is generally associated with fencing, minor work, maintenance or repairs or internal work.

**Moderate excavation or ground disturbance** may include cut and fill of greater than 200mm and is generally associated with new development, structures or infrastructure.

**Major excavation or ground disturbance** may include cut and fill of greater than 200mm and is generally associated with development of significant impact either environmentally or the level of ground disturbance, such as pools, service stations, dams and the like.

Examples of ground disturbance include:

- de-silting / repair of table drains
- re-sheeting / regrading of unsealed roads
- excavation of post holes for the installation of signs / guard rails and the like
- excavation for sewer and water pipes and pits
- boxing out and replacement of road pavement and road base to repair roads
- kerb and gutter repairs
- mechanical removal of aquatic weeds
- boxing out and replacement of concrete pads / pavers of footpaths and bedding material
- removal of loose material from batter faces, including tree stumps, loose rock, associated with slips
- tree removal, including stump removal
9 Procedures for routine maintenance, works or activities within land mapped as Aboriginal Place of Heritage Significance

1. Routine or essential maintenance and/or emergency works (as defined in section 8) and are located within the mapped Aboriginal Place of Heritage Significance.

   **Induct all staff on this Procedure.**

   - Yes - proceed to Step 2
   - No - check and be aware of the Predictive Aboriginal Cultural Heritage mapping layer.
     Proceed with caution

2. Can works be undertaken without ground disturbance (e.g. can pipes be relined rather than removed and replaced? or can the road verge mower avoid areas of exposed midden or other cultural material? or can the picnic table be replaced without disturbance of the existing concrete slab?)

   - No - Proceed to Step 3 for Emergency works.
   - Yes - proceed with caution.
     [Note: maintenance mowing can proceed under the conditions outlined in section 9]

   or

3. Emergency Works - Make Area Safe:
   If works are to water or sewer infrastructure: isolate the system, make the area safe; put in any temporary measures to maintain supply or mitigate overflows that involves no greater disturbance to the soil or vegetation than necessary to minimise further disturbance.
   If works are on a road make safe and fence off access.
   If works are on a foreshore waterway make safe and fence off access.
   **Notify as soon as practicable the TBLALC and TSC Environmental Design Unit - Environmental Scientists**

   **HOLD POINT PRIOR TO COMMENCEMENT OF GROUND DISTURBANCE WORKS**
4. Can the routine or essential maintenance/repair or emergency works be carried out within existing disturbed land?
   - eg within a previously excavated service trench (ie not wider or deeper), within the same location of a previously installed item (ie slab to the same depth and location), within the road and sub-base profile, scraping sediment from within previously established table drains and culvert inlet/outlet.
   - Ground disturbance is to be confined to the minimum extent necessary or possible and involves no greater disturbance to the soil or vegetation than necessary to minimise further disturbance.
   - No new works (such as expansion in depth or width of a trench for underground services, road widening, no new pipelines, pipe extensions or increased dimensions) are permitted without further assessment.

   No - Proceed to Step 5
   Yes - Proceed to Step 6 and proceed with caution.

5. Proposed works are to be referred to the Environmental Design Unit Environmental Scientists of Council for advice and appropriate level of Aboriginal cultural heritage assessment.

   HOLD POINT PRIOR TO COMMENCEMENT OF GROUND DISTURBANCE WORKS SUBJECT TO ABORIGINAL CULTURAL HERITAGE ASSESSMENT

6. During the routine or essential maintenance / construction, have works encountered possible items of cultural heritage (eg shell midden material, stone artefacts, human remains).

   No - Complete Works Procedure checklist and submit to TSC Manager (no need to submit to TBLAC or to OEH)
   Yes - Proceed to Step 7
7. Stop Work Procedure

It is an offence to harm an Aboriginal object or place under the NPW Act. Immediate Stop Work procedures are to be implemented when an activity or works reveal any Aboriginal object or remains so as to avoid harm (see definition of harm in Section 7). The following outlines the Stop Work Procedures:

**Inadvertent discovery of an Object**

On discovery of any surface or buried sub-surface cultural material (other than human remains, which is addressed following) the following actions should occur as soon as practicable:

- All work should cease at the location and if necessary, an appropriately qualified Aboriginal sites officer or experienced archaeologist, with expertise in Aboriginal cultural heritage, is to be notified, if not already present at the location. The area is to be made safe and cordoned off to prevent access and to protect the object. Construction workers and operational personnel will comply with the instructions of the qualified Aboriginal Sites Officer and/or experienced cultural professional (archaeologist).
- The TBLALC and OEH North East Region Planning Unit are to be notified.
- An Aboriginal cultural heritage assessment of the object and surrounding locality is to be undertaken. A written report of the archaeologist’s findings and recommendations is to be provided to registered Aboriginal parties and the OEH for their consideration.
- No further works or development may be undertaken at the location until the required investigations have been completed and permits or approvals obtained as required by the NPW Act and receipt of written authorisation by the OEH North East Region Planning Unit. Upon further advice, construction may be able to continue at an agreed distance away from the site.
- Aboriginal cultural heritage objects are to be registered to the AHIMS.

**Inadvertent discovery of a burial or human remains**

Burials of human remains are controlled by the following legislation:

- the Coroners Act 2009 (NSW);
- the Crimes Act 1900 (NSW) and Federal Crimes Act 1914;
- the National Parks and Wildlife Act 1974 (NSW) covers Aboriginal human remains; and
- Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW, 2010 by OEH

Should human remains be found during the activity or works, the following procedure should be followed:

On discovery of the remains the following actions should occur as soon as practicable:

- All work should cease at the location. The Police must be notified, and all personnel and contractors on site should be advised that it is an offence under the Coroners Act to interfere with the material remains.
- If necessary, an appropriately qualified Aboriginal or experienced archaeologist, with expertise in Aboriginal cultural heritage, is to be notified, if not already present at the location. The area is to be cordoned off to access and to protect the remains. Construction workers and operational personnel will comply with the instructions of the qualified Aboriginal sites officer or archaeologist.
- The TBLALC and the OEH North East Region Planning Unit are to be notified.
- No further works or development may be undertaken until the required investigations have been completed and permits or approvals obtained where required in accordance with the NPW Act. Upon further advice, construction may be able to continue at an agreed distance away from the site.
- Burial remains are to be registered to the AHIMS if found to be Aboriginal cultural remains.

Note: A Stop Work Order or Interim Protection Order may also be directed by the Chief Executive under S91AA of the NPW Act.
8. Refer to TSC Environmental Design Unit Environmental Scientists for appropriate assessment and approvals. Works may only recommence once this has been completed.

9. Complete Works Procedure Checklist and submit to TSC Manager, TBLALC and OEH
10 Maintenance and mowing

Regular mowing of the road verge is essential for road safety to maintain clear sight lines and prevent overgrowth encroaching onto the traffic lanes. Similarly maintenance and mowing of parks and gardens, caravan parks and around facilities is important to maintain a safe environment.

Maintenance and mowing can proceed on areas mapped as Aboriginal place of Cultural Heritage and/or Predictive Cultural Heritage by using the following conditions:

- Care is to taken with all mowing east of the Pacific Highway to ensure minimal ground disturbance.

- Within the mapped Aboriginal Place of Heritage Significance areas, the mowing method, whether flail, tow behind tractor, hand mowing or other is to be assessed to determine the most suitable method to minimise the potential for harm of Aboriginal cultural heritage.

- This may be a flail where set sufficiently high to not cause ground disturbance or where the tow behind tractor may cause harm, a single pass of a hand mower along roadsides or similar.

- Site specific inductions for all mowing staff and contractors working within Aboriginal Place of Heritage Significance areas is recommended.
## Procedure Checklist

<table>
<thead>
<tr>
<th>Action</th>
<th>Timeframe to complete</th>
<th>Staff member responsible (strike out whichever responsible person is not relevant)</th>
<th>Responsible staff member to check off upon completion</th>
<th>N/A</th>
</tr>
</thead>
<tbody>
<tr>
<td>Confirm works are Routine or essential maintenance or emergency works (Step 1)</td>
<td>Prior to commencement of works</td>
<td>Operations Coordinator – Reticulation; R&amp;S Senior Engineer Assets &amp; Maintenance</td>
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<tr>
<td>Confirm works are related to existing infrastructure within existing disturbed areas. (Step 4)</td>
<td>Prior to commencement of works</td>
<td>Operations Coordinator – Reticulation; R&amp;S Senior Engineer Assets &amp; Maintenance</td>
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<tr>
<td>Confirm ground disturbance is unavoidable (e.g. no alternative maintenance/repair techniques such as pipe relining or midden protection measures are feasible). (Step 2)</td>
<td>Prior to commencement of works</td>
<td>Operations Coordinator – Reticulation; R&amp;S Senior Engineer Assets &amp; Maintenance</td>
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</tr>
<tr>
<td>Notify TBLALC by phone and email. Invite TBLALC site monitor/s to site to inspect works. (Step 3 &amp; Step 7 only)</td>
<td>Prior to commencement of works</td>
<td>Operations Coordinator – Reticulation; R&amp;S Senior Engineer Assets &amp; Maintenance</td>
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<tr>
<td>Document any specific actions, advice or requirements received by TBLALC. (Step 3 &amp; Step 7 only)</td>
<td>Prior to commencement of ground disturbance works</td>
<td>Operations Coordinator – Reticulation; R&amp;S Senior Engineer Assets &amp; Maintenance</td>
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<tr>
<td>Hold Point to undertake any Aboriginal Cultural Heritage Assessment, as required. (Step 3 &amp; Step 7 only)</td>
<td>Prior to commencement of ground disturbance works</td>
<td>Operations Coordinator – Reticulation; R&amp;S Senior Engineer Assets &amp; Maintenance</td>
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<tr>
<td>Stop works immediately if items of actual or possible cultural heritage significance are encountered; fence off area; contact TBLALC and an Archaeologist for further advice. If human remains are discovered, notify the Police immediately. Notify OEH if objects are confirmed to be of Aboriginal cultural heritage significance. (Step 7 only)</td>
<td>Immediate and follow up within 24 hours.</td>
<td>Works Supervisor – (to stop works and arrange fencing) Operations Coordinator - Reticulation or R&amp;S Senior Engineer (to notify TBLALC, Archaeologist, OEH (if required) and Police (if human remains are discovered))</td>
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<tr>
<td>Finalise harm avoidance, mitigation actions and archaeological documentation requirements for cultural heritage items in consultation with TBLALC, an Archaeologist and OEH representatives. (Step 7 only)</td>
<td>Prior to relocating item and resuming works.</td>
<td>Operations Coordinator – Reticulation &amp;/or TSC Environmental Scientist</td>
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<tr>
<td>Save procedure works checklist to project server and submit a copy to TBLALC if Step 7 triggered.</td>
<td>Within 7 days of completing works.</td>
<td>Operations Coordinator – Reticulation &amp;/or TSC Environmental Scientist</td>
<td></td>
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</tr>
<tr>
<td>Submit a copy of the checklist to OEH if objects confirmed to be of Aboriginal cultural heritage significance were located.</td>
<td>Within 7 days of completing works.</td>
<td>Operations Coordinator – Reticulation &amp;/or TSC Environmental Scientist</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Signed by [name] [position]
## Contact details

<table>
<thead>
<tr>
<th>Position</th>
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</thead>
<tbody>
<tr>
<td>TSC W&amp;W Senior Engineer - Operations &amp; Maintenance</td>
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<td>TSC Operations Coordinator - Reticulation</td>
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<td>TSC Supervisor - Reticulation</td>
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<td>TSC R&amp;S Senior Engineer - Assets &amp; Maintenance</td>
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<td>TSC R&amp;S Supervisor – Maintenance</td>
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<td>TSC Environmental Scientist</td>
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<td>TSC Senior Environmental Scientist</td>
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<td>TSC Community Development Officer - Aboriginal</td>
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<td>Acting Unit Coordinator – Holiday Parks</td>
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<td>TBLALC CEO</td>
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<tr>
<td>TBLALC Administration Officer</td>
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<td>OEH Archaeologist Planning - Regional</td>
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Appendix 8 - Mapping and monitoring procedures
Following is the content of the Draft TSC Standard Procedure for Management and Currency of Aboriginal Cultural Heritage Mapping

**Introduction**

This Procedure has been prepared to provide a clear framework for the management of, and ensuring the currency of, the Aboriginal Cultural Heritage Mapping developed in association with the Aboriginal Cultural Heritage Management Plan (ACHMP) 2017.

As further assessment and investigation of ACH occurs through the development process, it is inevitable that further Aboriginal objects and places will be found/revealed.

These finds result in the following associated pathways, being:

- The registration of the object or place to the Aboriginal Heritage Information Management System (AHIMS), and
- Updating the Aboriginal cultural heritage (ACH) mapping for currency and accuracy.
- Ensuring the TSC and TBLALC are using the same and current ACH mapping data.

This Procedure outlines the key actions and responsibilities required for both the TSC and the TBLALC to ensure the mapping remains current.

**Objectives**

1. Ensure the currency and accuracy of the Aboriginal cultural heritage mapping data.
2. Ensure the Tweed Byron Local Aboriginal Land Council and Tweed Shire Council are using the same data and information.
3. Ensure a consistent procedure for updating the Aboriginal cultural heritage mapping data and promote this procedure to all relevant staff and parties.

**Background**

Knowledge of Aboriginal objects or places must be registered to the Aboriginal Heritage Information Management System (AHIMS), a requirement which is governed by the National Parks and Wildlife Act (NPW Act). Under the NPW Act it is an offence to harm Aboriginal cultural heritage. Should an object or place be revealed through assessment or investigation there is a legislative responsibility for that person(s) to register the find on the AHIMS, within a reasonable timeframe. Similarly should an object or place be revealed through inadvertent harm, works must stop immediately, appropriate investigations and assessment must be carried out and the objects or places registered to the AHIMS.

The ACH mapping has been developed based on two layers, being:

- Aboriginal place of heritage significance (known ACH), and
- Predictive Aboriginal cultural heritage

The mapping layers trigger an appropriate level of assessment and investigation, and this may ultimately lead to an Aboriginal Cultural Heritage Assessment compliant with the OEH Guide to Investigating, Assessing and Reporting on Aboriginal Cultural Heritage in NSW (2011) and Aboriginal Cultural Heritage Consultation Requirements for Proponents, 2010.

It is important that the mapping layers are kept current and accurate to ensure the appropriate assessment pathway and to reflect changes which may arise due to new finds of ACH, for example: new locations; or new sites within the Predictive ACH which then becomes Aboriginal place of heritage significance.

**Council responsibilities**

Council has a responsibility to ensure the ACH mapping is kept current and to ensure that the mapping data used by both TSC and the TBLALC is consistent and regularly updated.

**Tweed Byron Local Aboriginal Land Council responsibilities**

The TBLALC has a responsibility under the Aboriginal Land Rights Act, 1983 to:

(a) to take action to protect the culture and heritage of Aboriginal person in the Council’s area, subject to any other law;
(b) to promote awareness in the community of the culture and heritage of Aboriginal persons in the Council’s area.
The TBLALC is actively working with Tweed Shire Council to ensure the ACH mapping data is kept current through their management and sharing of Aboriginal cultural knowledge of known objects and places.

**Legislative Context**

**National Parks and Wildlife Act, 1974 (NPW Act)**

The NPW Act is the primary legislation for the protection of aspects of Aboriginal cultural heritage in NSW. Specifically one of the objects of the NPW Act is:

“(b) the conservation of objects, places or features (including biological diversity) of cultural value within the landscape, including, but not limited to:

(i) places, objects and features of significance to Aboriginal people, and

(ii) places of social value to the people of New South Wales, and

(iii) places of historic, architectural or scientific significance,

(c) fostering public appreciation, understanding and enjoyment of nature and cultural heritage and their conservation,…”

The NPW Act includes the following definitions as they relate to Aboriginal cultural heritage:

**Aboriginal Object:** Any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.

**Aboriginal Place:** A place declared by the Minister by order published in a gazette “that, in the opinion of the Minister, is or was of special significance with respect to Aboriginal culture, to be an Aboriginal place” for the purposes of the NPW Act (s.84).

**Aboriginal Area:** The purpose of reserving land as an Aboriginal area is to identify, protect and conserve areas associated with a person, event or historical theme, or containing a building, place, object, feature or landscape:

a) Of natural or cultural significance to Aboriginal people, or

b) Of importance in improving public understanding of Aboriginal culture and its development and transition

Aboriginal areas also allow for traditional use of the land by Aboriginal people, in addition to conserving, and promoting knowledge of Aboriginal cultural heritage.

**Harm:** an object or place includes any act or omission that:

(a) destroys, defaces or damages the object or place, or

(b) in relation to an object—moves the object from the land on which it had been situated, or

(c) is specified by the regulations, or

(d) causes or permits the object or place to be harmed in a manner referred to in paragraph (a), (b) or (c),

but does not include any act or omission that:

(e) desecrates the object or place, or

(f) is trivial or negligible, or

(g) is excluded from this definition by the regulations.

Part 6 of the NPW Act provides specific protection for Aboriginal objects and places by making it an offence to harm them (Section 86). If “harm” to an Aboriginal object or place cannot be avoided, whether it is identified in the Aboriginal Heritage Information Management System (AHIMS), discovered during a survey or deemed likely to exist, the legislation requires issue of a permit, known as, Aboriginal Heritage Impact Permit (AHIP), which may be issued under Section 87 and Section 90.

It is noted that ignorance of the law is not a defence under Section 86 of the National Parks and Wildlife Act where harm is caused to an Aboriginal object or place.

Undertaking an assessment in accordance with the Due Diligence Code provides a defence to prosecution for an offence under section 86(2) if the defendant shows that they exercised due diligence to determine whether the act or omission constituting the alleged offence would harm an Aboriginal object and reasonably determined that no Aboriginal object would be harmed.

Section 89A of the NPW Act requires the notification to the Chief Executive in the prescribed manner, currently registration to the AHIMS database, within a reasonable time of becoming aware of the location of an Aboriginal object.
Aboriginal Land Rights 1983 (ALR Act)
The NSW ALR Act establishes the NSW Aboriginal Land Council (NSWALC) and Local Aboriginal Land Councils (LALCs). The Act requires these bodies to:

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

These requirements recognise and acknowledge the statutory role and responsibilities of NSWALC and LALCs.

The ALR Act also establishes the registrar, whose functions include, but are not limited to, maintaining the Register of Aboriginal Land Claims and the Register of Aboriginal Owners.

Under the ALR Act, the Registrar is to give priority to the entry in the Register of the names of Aboriginal persons who have a cultural Association with:

a) Lands listed in Schedule 14 of the NPW Act
b) Lands to which Section 36A of the ALR Act applies.

The Tweed Byron Local Aboriginal Land Council (TBLALC) is the LALC applicable to the Tweed Local Government Area (LGA).

Further information on the TBLALC and contact details may be accessed through:
www.tblalc.com (being developed)

Note: It is not the TBLALC responsibility to register objects or site to the AHIMS, this is the responsibility of the person(s) who have become aware / revealed their location. The TBLALC may be able to provide advice and/or assistance.

Environmental Planning and Assessment Act, 1979 (EP&A Act)
The EPA Act establishes the planning and development system for NSW. It enables the creation of environmental planning instruments, primarily State Environmental Planning Policies (SEPPs) and Local Environmental Plans (LEPs).

Section 4.15 specifies the matters that must be considered in the determination of development applications. Matters of relevance to Aboriginal cultural heritage assessment arise as a consequence of the need to give consideration to:
i) Provisions contained in environmental planning instruments,
ii) Provisions contained in development control plans,
iii) Environmental impacts,
iv) Site suitability,
v) Submissions received,
vi) The public interest.

Section 4.46 relates to integrated development. Integrated development is development that requires development consent and an approval under one or more of the Acts specified in this section. The NPW Act is specified and references s90, the granting of an Aboriginal heritage impact permit (AHIP) as integrated development.

Heritage Act 1977
Significant Aboriginal heritage can be entered on the State Heritage Register if it is recognised by the community as important to the cultural and heritage values of Aboriginal people in NSW. There are just over twenty places currently entered on the State Heritage Register that are significant to Aboriginal people in NSW, including missions, reserves and massacre sites.

Any work to one of these places requires the approval of the OEH.

The Heritage Act requires a separate application and assessment process to the NPW Act.

Tweed Local Environmental Plans (LEPs)
Tweed Shire Council currently has three LEPs applying across the shire. The Tweed City Centre LEP 2012 and the Tweed LEP 2014, which applies outside of the city centre, are both prepared under the Standard Instrument Local Environmental Plan requirements and contain standardised and mandatory heritage provisions within Clause 5.10 of Part 5.

In addition, some areas deferred from the LEP 2014 or LEP 2012 are still regulated by the LEP 2000 and the heritage provisions of Part 8 of this instrument.
The LEPs prepared under the provisions of the Standard Instrument Local Environmental Plans include requirements for development in association with Aboriginal cultural heritage, including:

Clause 1.2 Aims of the Plan
(2) (c) to promote the responsible sustainable management and conservation of Tweed’s natural and environmentally sensitive areas and waterways, visual amenity and scenic routes, built environmental, and cultural heritage.

Clause 5.10 Heritage Conservation
(1) the objectives of this clause are as follows:
(d) to conserve Aboriginal objects and Aboriginal places of heritage significance.

 Relevant to Aboriginal cultural heritage, Clause 5.10 provides requirements for:
- when development consent is required (Clause 5.10(2));
- when consent may not be required (Clause 5.10(3));
- requirements for the consideration of archaeological sites (Clause 5.10(7));
- consideration of the impact/effect of proposed development on an Aboriginal place or object either known or reasonably likely to be located at the place by means of adequate investigation and assessment and consultation with the local Aboriginal communities (Clause 5.10(8)); and
- Conservation incentives (Clause 5.10(9)).

Further information related to the legislative context can be found in Section D of the Tweed Shire Aboriginal Cultural Heritage Management Plan 2017.

Note: The mapping associated with the Aboriginal Cultural Heritage Management Plan 2017 does not form part of Schedule 5 of the applicable LEP. It is however, triggered by the definition of Aboriginal place of Heritage Significance.

State Environmental Planning Policy (SEPP) Infrastructure

The SEPP Infrastructure provides a planning framework and flexibility for the provision of infrastructure and service facilities. The SEPP Infrastructure makes provision for exempt and complying development for a range of infrastructure undertaken by, or on behalf of, a public authority.

Aboriginal objects are captured under the definitions of environmentally sensitive area as defined within the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, Code SEPP.
Procedure

The TBLALC, as custodians and managers of their cultural knowledge, belief systems and statutory role for the protection of culture and heritage will hold the primary responsibility for the currency and maintenance of the Aboriginal cultural heritage information and data. Tweed Shire Council will hold the primary responsibility for the maintenance of the GIS mapping.

The TBLALC shall on a six monthly basis request a full update of the AHIMS database and site cards from the Office of Environment and Heritage (OEH).

The TBLALC shall complete a ACH Notification for Mapping Amendments Form and submit to:

- TSC GIS Analyst within the Strategic Planning and Urban Design Unit
- Community Development Officer - Aboriginal

The GIS Analyst shall update the mapping layers and liaise with the following for review and accuracy:

- Community Development Officer - Aboriginal
- Senior Strategic Planner and/or Unit Coordinator Strategic Planning and Urban Design
- Senior Environmental Scientist

The GIS Analyst within the Strategic Planning and Urban Design Unit shall:

- Finalise mapping layer
- Release to internal mapping system
- Release polygon data to external system
- Update notification to s10.7 (former s149) certificates
- Export the updated GIS mapping layers and data to the TBLALC

The TBLALC shall:

- Check for accuracy with the Conservation Planning Officer
- Updates the TBLALC GIS system internally

This procedure is outlined in the following flow chart.
Mapping Procedure flow chart

Tweed Byron Local Aboriginal Land Council

Six monthly request for full update of ANMIS data and site cards

Data agreement and update with the TBLALC

TBLALC complete ACH Notification Form and submit to TSC

TSC prepares mapping amendments

TSC GIS Analyst (SPUD) liaise with:
- Community Development Officer - Aboriginal
- Senior Strategic Planner and/or Unit Coordinator Strategic Planning and Urban Design
- Senior Environmental Scientist

TSC GIS Analyst (SPUD):
- Finalise mapping layer
- Update internal mapping system
- Update spatial data to external system
- Update notification to S10.7 (former S149) certificates

TBLALC updates the GIS mapping data and layers

TSC GIS Analyst
- Export the mapping layer to the TBLALC

TSC GIS Analyst and P&R Admin
- Update notification to S10.7 (former S149) certificates
**ACH notification form for mapping amendments**

Following is a draft ACH notification form for mapping amendments to be provided by the TBLALC to TSC

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<thead>
<tr>
<th>Lot / Section</th>
<th>Plan</th>
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<tr>
<td><strong>GPS co-ordinates</strong></td>
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<td>(MGA94-56)</td>
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<tr>
<td>Horizontal datums: geodetic datum of Australia 1994</td>
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<tr>
<td>Grid &amp; Map Grid of Australia, zone 56</td>
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| Description of the site |      |
| (where appropriate to be identified) |      |

| Map/Sketch |      |
| (use sufficient information to describe the location and mapping requirements/changes - such as the extent of amendment to the size and shape of the polygon, any AHIMS point data etc) |      |

<p>| Site Name |      |
| Site ID | Site number |
| Site TSCID |      |</p>
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<tr>
<th>Confirmed Predictive</th>
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<table>
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<tr>
<th>Confirmed Aboriginal place of heritage significance</th>
<th>Yes</th>
<th>No</th>
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<td>(Circle as appropriate)</td>
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<td>AHIMS adjustment</td>
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<td>Suitable campsite</td>
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<td>Access route</td>
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<tr>
<td>Probable cultural site</td>
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<td>Proximity to cultural site</td>
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<td>Unique landform</td>
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<td>Indigenous oral history</td>
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<td>Documented sources</td>
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<td>Community knowledge</td>
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<td>Contemporary historical</td>
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<td>Comments / directions</td>
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<td>(Comments to be detailed outlining the extent of the changes required to the polygon, any actions, information or other relevant considerations, such as cultural sensitivity)</td>
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**TBLALC Office Use**

- Notification to Heritage Management Section and key staff
- Spatial data updated

**TSC Office Use**

- Spatial data updated
- s10.7 (former s149) process updated
- Internal mapping data updated
- Notification to key staff of updated data