

# **EUROBODALLA ABORIGINAL HERITAGE STUDY: STAGE FOUR**

## **MANAGING & PROTECTING ABORIGINAL HERITAGE IN THE EUROBODALLA WITHIN THE LOCAL GOVERNMENT PLANNING FRAMEWORK**



PREPARED FOR  
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SOUTHERN RIVERS CATCHMENT MANAGEMENT AUTHORITY  
LOCAL ABORIGINAL LAND COUNCILS  
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**2<sup>nd</sup> DECEMBER 2008: FINAL DRAFT**

**Warning: contains reference to Aboriginal people who have passed away.**

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COVER PHOTO *The connected landscape of Gulaga and Najanuka from Bermagui. Source: Susan Dale Donaldson 2007.*

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## **ACRONYMS USED**

Eurobodalla Shire Council	ESC
Local Aboriginal Land Council	LALC
Southern Rivers Catchment Management Authority	SRCMA
Department of Environment and Climate Change	DECC
Natural Heritage Trust	NHT
Aboriginal Heritage Information System	AHIMS
Development Application	DA
Local Environment Plan	LEP
Development Control Plan	DCP
Voluntary Conservation Agreement	VCA
Indigenous Land Use Agreement	ILUA
Aboriginal Culturally Sensitive Landscape	ACSL
Heritage Conservation Area	HCA

## **ACKNOWLEDGEMENTS**

The Natural Heritage Trust [NHT], the Southern Rivers Catchment Management Authority [SRCMA], the Eurobodalla Shire Council [ESC] and the Department of Environment and Climate Change [DECC] each provided funding to support this project. The project has been successful because of the partnerships forged between the funding bodies and the local Aboriginal community, through elders groups and Local Aboriginal Land Councils [LALC], and the dedicated efforts of the Eurobodalla Aboriginal Heritage Steering Committee, now formed as the Aboriginal Advisory Committee. These partnerships have been critical for guiding the project and keeping it on track.

We wish to acknowledge the Aboriginal people who participated in this project and to previous generations of Aboriginal people who were able to pass stories onto them. This project does not intend to breach traditional Aboriginal Law relating to the holding and passing on of information pertaining to places of Aboriginal cultural heritage. Aboriginal cultural heritage, including the physical, the intangible and the associated stories and mythologies belong to the Aboriginal community. These stories have been shared in the hope that these places can be protected and the broader community gains a greater respect for places of heritage value to the Aboriginal community.

We thank those who provided comments on previous drafts of this report, in particular the efforts of Deb Lenson for her sustained effort in initiating and driving the project over many years; Anita Brunhuber and Sue Feary for providing overall direction, comments and archaeological support, and to the LALCs for their ongoing participation and commitment to improving the cultural heritage management system. In particular we wish to thank Danny Chapman, Mal McCallum, Norman Russell and their teams for comments on the ESC Code of Practise and draft report.

## **EXECUTIVE SUMMARY**

During the four stages of the Eurobodalla Aboriginal Heritage Study, three hundred and thirty six [336] places within the Eurobodalla Local Government Area [LGA] have been identified as containing special heritage value to Aboriginal people. It is acknowledged that Aboriginal cultural heritage values exist beyond the places identified during the Eurobodalla Aboriginal Heritage Study, including an extensive array of Aboriginal archaeological heritage from the pre- European and post contact period that has not been recorded / rediscovered.

The majority of the places identified in this study relate to Aboriginal heritage post European contact relating to a broad range of heritage themes including seasonal camping, working, travelling, resource collection, places of conflict, burial places and spiritual places. This has been an area of heritage management that has had inadequate attention across Australia compared to the focus on European heritage since 1788. Council is to be congratulated in taking a lead in research to redress this deficiency and the Consultants see applicability in the recommendations of this report for many areas beyond Eurobodalla Shire.

The report demonstrates that many of these places require management in order to conserve their associated heritage values. Forms of management recommended in this report include:

- Registration in DECC's Aboriginal Heritage Information Management System (AHIMS);
- Listing in Council's Local Environmental Plan (LEP);
- Forming part of a Eurobodalla Shire Development Control Plan [DCP];
- Inclusion in the heritage inventory and protocol system proposed for further development between Council and the Local Aboriginal Land Councils.
- Aboriginal Place and Aboriginal Area nominations under the national parks and Wildlife Act 1974;
- Formal land use and access agreements such as a Voluntary Conservation Agreement under the NPW Act and Indigenous Land Use Agreements under the Native Title Act 1992.
- Land acquisition programs through DECC.

Although the primary focus of this report has been on actions Council might consider in their Local Environmental Plan, Development Control Plan and related inventories, other government agencies may find this material useful when establishing their approach to cultural heritage management.

Based on Aboriginal community responses<sup>1</sup>, it is recommended that 12 areas of special significance be defined as Aboriginal Heritage Conservation Areas in the current draft Local Environment Plan. This classification will ensure automatic Aboriginal community consultation for these highly sensitive cultural areas and minimise the risk of unintended damage as a result of new development. The 12 proposed Heritage Conservation Areas are:

- Najanuka;

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<sup>1</sup> Consultations with the Aboriginal community have taken place throughout the four year period of the Eurobodalla Aboriginal Heritage Study. For details see appendix one of this report, as well as Goulding 2005, Donaldson 2006 and Donaldson 2007.

- The Cricket ground;
- Smyth's Oval, Narooma;
- Trunketabella Lagoon;
- Whittakers Creek – Brou Lake;
- Malabar Lagoon;
- Pedro Swamp and Point;
- Bengello Creek and Beach, Moruya;
- Barlings corner and island, Tomakin;
- Grandfather's Gully Beach, Lilli Pilli;
- Hanging Rock, Catalina and
- Cullendulla Creek, Surfside.

Recommendation has also been made for the development of 5 broader landscape units to be classified as "Aboriginal Culturally Sensitive Lands" in the Eurobodalla Shire Development Control Plan. Consultation and assessment requirements would be more general for these DCP cultural landscape elements but, as with the protection of ecological and scenic landscapes, acknowledgement of spiritual value and historic usage patterns will enhance recognition of Aboriginal culture and inform the wider community of the Aboriginal values of these lands. These areas are:

- Gulaga [Mt Dromedary] including Dignams Creek, the shores of Wallaga Lake, Tilba Lake, Pooles Point, and Mystery Bay;
- Wagonga Inlet and coastal swampland;
- Tuross River and Lake including Potato Point, Coila Lake and 'Black Hill';
- Moruya River including Ryans Creek, the mangroves on the north side, north and south heads; and
- Batemans Bay and Clyde River.

Further culturally significant areas and heritage themes are recommended for possible future inclusion as Aboriginal Culturally Sensitive Lands, subject to further resources [consultation and research required]. These areas are:

- Mummaga Lake, Dalmeny Point;
- Corunna Lake;
- Tomaga River, Bevia Swamp and Barlings Beach;
- Durras / Murramarang area;
- Congo / Congo Creek;
- The fourteen Historical Aboriginal Reservations across the shire;
- Traditional traveling routes and
- Totemic species habitats.

The consultants recommend Council further develop an integrated Aboriginal Heritage Inventory detailing places of significance to the Aboriginal community, as identified by the Eurobodalla Aboriginal Heritage Study, including the HCA and CSL areas [see appendix 5B] and links to AHIMS. The inventory should be an electronic database with both public and confidential sections to address cultural requirements and sensitivity.

Council is well placed to coordinate this inventory subject to appropriate cultural sensitivity and training of staff. In fact the Environmental Planning and Assessment Act (EPAA) requires Council to keep an inventory for at least those



items in the LEP. As resources allow, the inventory could be shared [eg electronically] with Aboriginal Land Council offices as part of the developing land management systems of Land Councils.

Having identified and recorded the Aboriginal heritage described above, it is then vital that the use and management of that information and the methods of consulting the Aboriginal community about potential impacts be documented in clear and agreed protocols and practices.

The consultants recommend three interrelated documents to achieve these goals:

- Establishing a **Memorandum of Understanding** (MOU) between Local Aboriginal Land Councils (LALCs) and Eurobodalla Shire Council (ESC) defining guiding principles and understandings. Much of the work has already been done towards this during the 1998 drafting of a Framework Agreement [see section 4.6]. A MOU can address wider matters beyond heritage. The Bega valley Shire has an MOU that might serve as a model.
- Develop a Aboriginal Heritage **Protocol** outlining two main objectives: 1/ define how council are to consult the Aboriginal community and 2/ define the Development Application processes in relation to Aboriginal heritage. This protocol should be a public document, be referred to in the MOU and be endorsed by DECC to ensure that it compliments their legislation. As a component of the consultations required in relation to the proposed Heritage Conservation Areas, a custodian register is recommended. A draft protocol for the Protection of Aboriginal Heritage and Consultation with the Aboriginal Community in the Eurobodalla Shire has been produced during this stage of the project [see appendix 5B].
- Develop an internal ESC **Code of Practice** detailing how ESC staff are to operate / abide by the protocols [like a manual or guidelines for ESC staff with direct reference to the protocol]. We recommend that the current 'code of practice' [see appendix 5a] be restructured into an internal working document to ensure it reflects the intent of the Aboriginal Heritage Protocol and considers comments provided by the LALCs [appendix 11].

A number of places have also been recommended as potential Aboriginal Areas or Aboriginal Places under the NPW Act. These places are:

- The Cricket ground, Alolele;
- Najanuka [Little Dromedary], Tilba;
- Hanging Rock, Catalina.
- Brou Lake and Whittakers Creek;
- Barlings 'corner' and Barlings Island;
- Holmes Lookout and
- Montague Island.

It is recommended that a number of the identified places be afforded some form of acknowledgment in relation to local Aboriginal culture and history<sup>2</sup>. These places primarily include a variety of living [camping] places, work places, places associated with early contact with European explorers, birthplaces and meeting places. Ways in which Aboriginal heritage can be acknowledged include through

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<sup>2</sup> For instance the recent DECC/ CMA / ESC publication *Aboriginal Men and Women's Heritage: Eurobodalla* detailing 19 men and women's oral histories specifically relating to the Eurobodalla.

the public display of the Eurobodalla Aboriginal Heritage Time Line; by giving formal recognition to the Aboriginal origins of many of the shire's place names and through the development of a custodian register for consultation purposes.

Another task for the future is to improve predictive modelling and sensitivity mapping relating to protection of as yet unrecorded archeological heritage. Previous stages of the project indicate that there are many instances where the three sources of information on Aboriginal culture – archaeological sites, oral history and historical records overlap. A more comprehensive comparison of these three layers, to illustrate where there has been continuity of use and /or significance of places would be beneficial.

## 1. INTRODUCTION

### 1.1 CONTEXT OF THE STUDY

The Eurobodalla Local Government Area (LGA) encompasses the coastal strip between Durras and Wallaga Lake, westwards to the Clyde Mountain in the north to Dampier Mountain and Belowra in the south [See Map One page 10]. The Eurobodalla Shire covers 3,429sq km. The Eurobodalla Shire Council has jurisdiction over about 25% of the total area; whilst the other 75% is within conservation reserves, state forest or other Crown land [see Table One].

<i>Tenure type</i>	<i>Area</i>	<i>% of total</i>
National Park	1,363sq km	39.75%
State Forest	1,105sq km	32.22%
Freehold land	691.28sq km	20.16%
Rivers and estuaries	103sq km	3%
Crown Leases	60.8sq km	1.77%
Roads and road reserves	51sq km	1.49%
Crown land and reserves	39.92 sq km	1.16%
Community land	15sq km	0.45%

**TABLE ONE: Composition of land tenure within the Eurobodalla LGA**

At the time of the 2006 Census the population of the shire was 36,595. Over the next 25 years it is expected to grow by a further 15,000 people [NSW 2007: 10, 20]. The 2006 Census also demonstrated that, the Aboriginal population of the Eurobodalla was 1683 or 4.6% of the total population<sup>3</sup>. This is considerably higher than the national average of 2.5% and probably reflects high population densities in pre-contact times and the historical existence of major missions and reserves such as the one at Wallaga Lake.

Underlying the Eurobodalla Shire is an Aboriginal land tenure system that existed prior to European settlement of the area<sup>4</sup>. Aboriginal people's links to the region, in the past as well as in the present can be described according to a number of social groupings including tribal, sub-tribal, clans and linguistic.

The *Yuin* [Djuwin] tribal area as recorded by Howitt in 1904 extends from the Shoalhaven River in the north, to Cape Howe in the south and west to the Great Dividing Range. According to local Aboriginal knowledge, thirteen [13] sub tribal groupings exist within the Yuin tribal area. The mythological basis to this tribal subdivision is said to involve the mythical ancestor "Bundoola" who had thirteen [13] wives each representing the different tribal groups<sup>5</sup>. *Yuin* tribal subgroups with traditional links to the Eurobodalla include the *Walbanga*, *Bringa* and *Djirringanj* groups<sup>6</sup>.

<sup>3</sup> Census Statistics from the 2006 census is available at <http://www.abs.gov.au/>

<sup>4</sup> See Robinson 1844, Mathews 1902, Morris 1832, Oldrey 1842.

<sup>5</sup> Per comm. Trisha Ellis 4.2.2006.

<sup>6</sup> See Howitt 1904 [1996]; Egloff, Peterson and Wesson [2005]. Note, the description of the Yuin tribal area can vary according to context, level of knowledge and personal orientations.

Within the *Yuin* tribal area, Howitt recorded the *Guyangal* [guya = south] and *Kurial* [kuru = north] coastal subtribes, together known as *Katungal* [Katung = sea]<sup>7</sup>. Within the *Guyangal* sub tribe Howitt recorded a number of clan divisions, one of which being the *Bugelli Manji* clan group occupying the ‘Moruya district’<sup>8</sup>. Whilst the term *Manji* is a grammatical suffix referring to a place in general, earlier references relating to the *Bugelli Manji* clan identify their range as being associated with the Moruya, Bergalia, Congo and Bingi areas and record alternative spelling for the same term such as *Burgali*, *Borgalia*, *Bengalee*, *Birgalea*, *Bukelle*, *Bengalia*, *Bogalea* and *Bungully*<sup>9</sup>. Today, we know the area as ‘Bergalia’, immediately south of Moruya.

Other Aboriginal clan group and or place names recorded in the Eurobodalla in the early settlement period include *Currowan*, *Mooramorrang* [Murramarang], *Turras* [Durras], *Browley* [Broulee], *Canga* [Congo], *Kiyora* [Kiora], *Gundaree* [Gunday], *Duga* [Dooga], *Mullandurree* [Mullinderry], *Moorooya* [Moruya], *Terosse* [Tuross], *Bowdally* [Bodalla], *Wondeller* [Wandella], *Wokoonga* [Wagonga], *Noorama* [Narooma] and *Wallurga* [Wallaga]<sup>10</sup>.

On a linguistic level, the Eurobodalla Shire is associated primarily with the *Dhurga* [Thoorga / Durga] language, with the *Djirringanj* language region extending into the study area in the south and the *Thurumba Mudthung* language region extending into the study area in the north<sup>11</sup>. The Dhurga language is currently being taught at the Moruya TAFE as part of the Aboriginal Language Certificate 1 and 2 courses. Dhurga language programs also exist in a number of primary and secondary schools on the south coast (see Department of education website).

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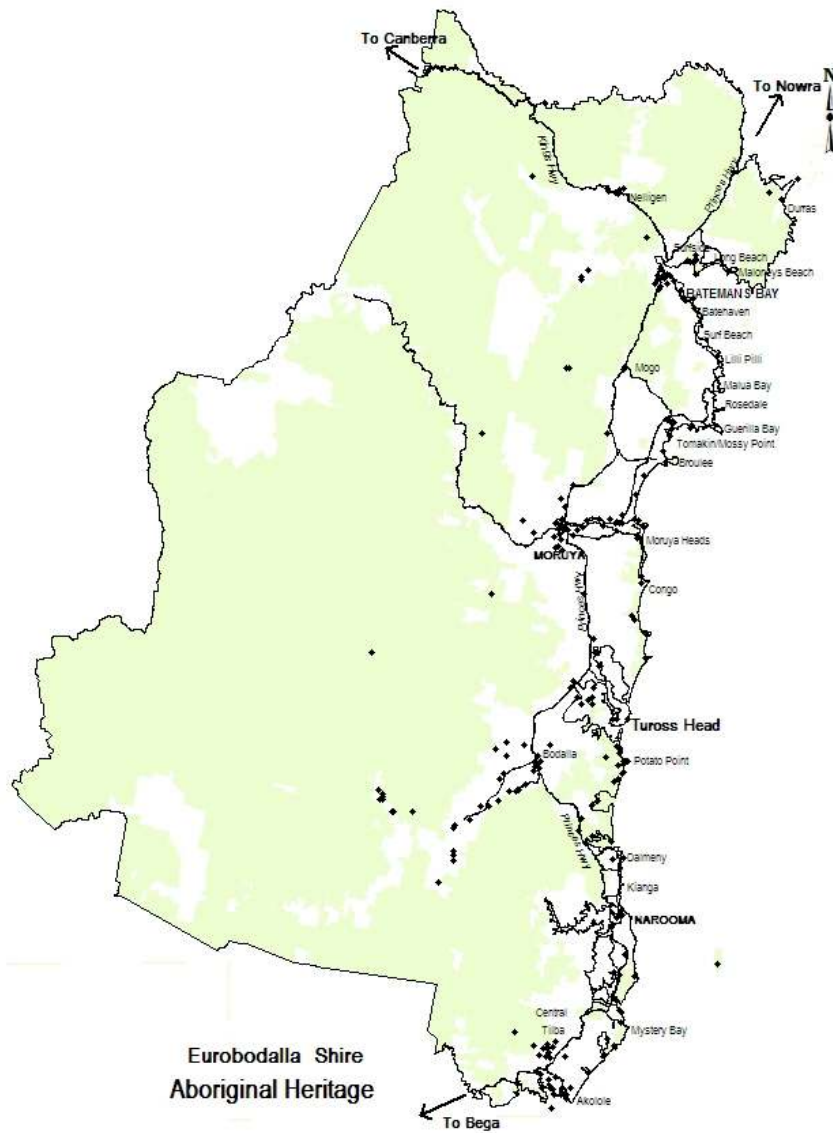
<sup>7</sup> Howitt 1904 [1996] 82.

<sup>8</sup> Howitt 1904 [1996] 82.

<sup>9</sup> Wesson 2000:136.

<sup>10</sup> S Wesson 2000: 131 – 147.

<sup>11</sup> Egloff, Peterson and Wesson [2005]: 17, 20.



**MAP ONE: Eurobodalla Shire:** showing location of Aboriginal places recorded during the project.

## **1.2 EUROBODALLA ABORIGINAL HERITAGE STUDY OUTLINE**

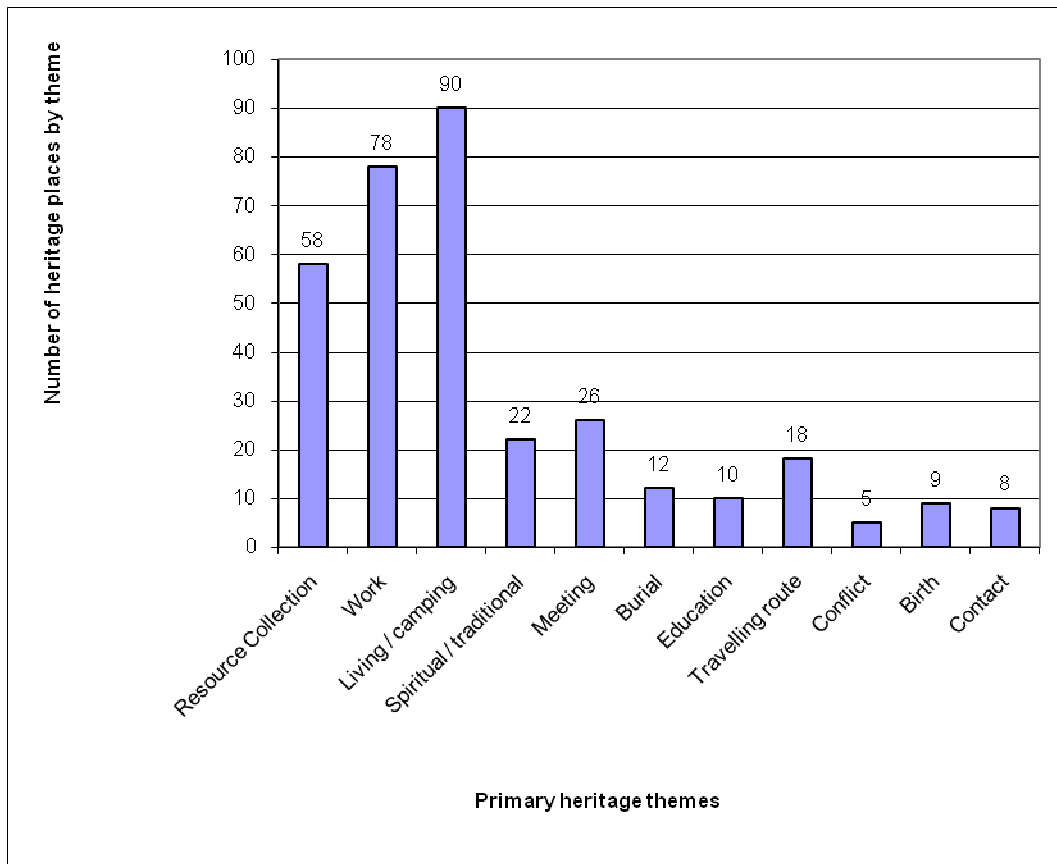
The Eurobodalla Aboriginal Heritage Study is a four-stage project involving a partnership between Aboriginal community members and NSW government agencies with land and heritage management responsibilities in the Eurobodalla Local Government Area. The project aims to develop a better understanding of Aboriginal cultural heritage in the Eurobodalla Shire and to develop better ways to manage, protect and acknowledge the heritage values within the local government-planning framework.

**Stage 1** of the Eurobodalla Aboriginal Heritage Study involved the compilation of text-based materials relating to the early contact period of the Eurobodalla region [Goulding 2005]. A historical narrative was produced to assist in the interpretation of 104 Aboriginal heritage places identified. The places revealed a rich history of Aboriginal people's attachment to and occupation of the landscape over the past 200 years and hinted at their substantial contribution to the region's social and economic development. Goulding [2005] applied the heritage themes of traditional, contact, conflict, living, work, resources, travelling routes, burials, religion, government, education, health, life events, recreation, self determination and land to the heritage places identified.

**Stage 2** of the study aimed to build upon the heritage themes identified by Goulding [2005] through fieldwork and the recording of individual [37] and group [25] oral histories with Aboriginal knowledge holders. An additional 230 heritage places were documented during this stage, demonstrating how oral histories and targeted fieldwork can expand on the written record [Donaldson 2006].

**Stage 3** of the study identified further relevant information from oral history research [Donaldson 2007]. In combining data from stages 1, 2 and 3 of the study three hundred and thirty six [336] places within the Eurobodalla Shire have been identified as having special heritage value to the Aboriginal community. The majority of places relate to the last 60 years, and is likely to be a reflection of the human memory capability. They include living / camping places [90], work places [78] and places where natural resources were/are collected [58]. To aid analysis, these three dominant themes were further subdivided into sub themes [Donaldson 2007: 24, 25, 26]. Management objectives, actions and / or recommendations were developed for each of the heritage places, based on their cultural and / or scientific significance.

In some cases, the heritage theme categories were reclassified to ensure they reflected the data set. In drawing out primary themes for analysis, the theme of government was absorbed into 'living places', as each of the government places related to Aboriginal Reservations. No places related to health, religion [non Aboriginal]. As a minor theme, segregation has been described as conflict and landownership as living places. Life events [birth and death] have been categorised separately. The relevant heritage themes or categories are spiritual / traditional places, contact, conflict, living [camping], work, resource collection, traveling routes, burial sites, religion, government, education, health, life events, recreation, segregation and land [ownership and living].



**CHART 1: HERITAGE PLACES IDENTIFIED BY PRIMARY THEME [STAGES 1, 2 & 3 combined].**

**Stage 4** of the Eurobodalla Aboriginal Study has been undertaken by Donaldson and Garret Barry Planning Services Pty Ltd and aims to identify special places and ensure their protection through the LEP and or other planning mechanisms. As outlined in the tender documentation, stage 4 of the project specifically involves:

- An assessment of relevant legislation and policy including a review of similar projects.
- An evaluation of heritage places documented in previous stages of the project and provision of advice on most effective management / acknowledgement options.
- An assessment of the heritage significance of places to be listed in the LEP.
- Drafting additional LEP provisions to cater for specific local circumstances.
- Undertake a review of Council's Codes of Practises and Policies relating to Aboriginal heritage assessment and the licence agreement with DECC for the use of AHIMS.

This report has been arranged in accordance with these research tasks.

### **1.3 STAGE FOUR RESEARCH METHODOLOGY**

Under the direction of the Eurobodalla Aboriginal Advisory Committee [‘the steering committee’], and according to the brief provided by Council, this stage of the project involved office based research combined with community-based consultations. Office based research took place between April and June 2008, with the use of the data from Goulding [2005] and Donaldson [2006 and 2007] as well as other planning documents.

All phases of research were conducted in close consultation with the ESC, DECC, the project steering committee, with key stakeholders and members of the Aboriginal community. Consultations also took place with planning and mapping professionals working locally for DECC, the Department of Planning, ESC and other departments.

As outlined in appendix two, community-based consultations took place in order to ensure that Aboriginal community members were equal partners in the project and able to inform project outcomes. A series of community participation workshops were undertaken using participatory planning methodologies to ensure participants are empowered through the ownership of the planning and development process and future uses of their knowledge. Workshops were held at Wallaga Lake, Narooma, Bodalla, Moruya, Mogo and Batemans Bay. The identified heritage places were discussed systematically according to available planning / protection options and field trips were undertaken to ascertain boundaries. The meetings combined with the fieldwork involved more than 70 people and although it is impossible to speak with everyone, the consultants believe that the consultation workshops captured the views of the main families/clan groups/ Aboriginal organizations across the region.

Advice was sought from the Local Aboriginal Land Councils, the Gadu Elders, the Djuwin Women’s Lore Council, the Ngarigu Dialect Boundary Native Title Applicant group, the Gulaga Board of Management and other interested people. The Gadu Elders, represented primarily by chairperson Georgina Parsons and secretary Maureen Davis offered advice regarding the identification and recognition of the local historical and cultural landscape and the development of a local heritage management model. The Gulaga National Park Board of Management was also kept informed of project details.



## **2 LEGISLATION AND POLICY ASSESSMENT**

### **2.1 SCOPE OF THE PROJECT BRIEF**

The Project Brief requires “an assessment of the requirements under the Environmental Planning and Assessment Act 1979 (EPA Act) and the Environmental Planning and Assessment Regulation 2000 in regard to protecting Aboriginal Heritage through the new LEP template...”.

The principle focus of this section will be on ensuring any recommendations contained in this report relating to protection measures in the proposed LEP meet legislative requirements and procedural guidelines of the NSW Department of Planning. Section 2.2 is an overview of the legislative context and linkages between relevant Acts. Section 2.3 summarises the current EPA Act requirements relating to the protection of Aboriginal Heritage and section 2.4 reviews guidelines and practice advice from the Department of Planning. Section 2.5 presents the consultants recommendations for addressing the statutory requirements and options open to council

### **2.2 LEGISLATION RELEVANT TO ABORIGINAL CULTURAL HERITAGE MANAGEMENT**

Local government’s responsibility for heritage management is bound by two acts; the *Heritage Act 1977* and the *Environmental Planning and Assessment Act (EP&A) 1979*. This legislation provides a number of limitations as well as opportunities in relation to the management of Aboriginal cultural heritage.

#### *Environmental Planning and Assessment Act 1979*

The Eurobodalla Shire Council’s Aboriginal Heritage protection responsibilities are detailed in the *Environmental Planning and Assessment Act 1979* where the definition of the ‘environment’ incorporates cultural and social values. Under this act, the Eurobodalla Shire Council’s Local Environmental Plans [LEP] require a Heritage Impact Statement if a development is proposed at a place of known or potential Aboriginal heritage significance. If required, the Aboriginal Heritage Statement is to be submitted with the Development Application.

Following the Heritage Impact Assessment, the Eurobodalla Shire Council may impose conditions on the development approval in relation to the protection and preservation of identified places of Aboriginal significance. Such conditions may involve monitoring by an Aboriginal Sites Officer, from a Local Aboriginal Land Council and/or an archaeologist during development activities that impact on the identified place. If Aboriginal objects are present, these impacts cannot occur unless the appropriate permit has been issued by DECC as the statutory authority for protecting Aboriginal heritage.

The Minister for Planning has directed all Councils to include provisions for protection of Aboriginal heritage in the new LEPs

#### *Heritage Act 1977 [NSW]*

The Heritage Act 1977 (NSW) can be applied to Aboriginal cultural heritage historic sites 'post 1950', which are also protected by the NPW Act. The 1999 amendments to the NSW Heritage Act passed the responsibility for identifying, assessing and managing items of local significance to local government.

The *Local Government Heritage Guidelines* have been prepared to provide a better understanding of local government heritage management for all those who have some responsibility in this area. Local councils play an important role in heritage management by identifying, assessing and managing heritage places and items in their local government area. They fulfil their role through the preparation of local environmental plans, development control, strategic planning, heritage promotion and education. All of these activities are conducted under the Environmental Planning and Assessment Act.

The NSW *Heritage Act 1977* offers protection to heritage places only *if* these places have been assessed and in turn listed on the State Heritage Register. The process of listing places of Aboriginal heritage value on the State Heritage Register identified within localised heritage impact assessments, is time consuming.

Within the Eurobodalla three [3] items of state Aboriginal heritage value are currently listed on the NSW State Heritage Register. These three items are not specifically identified as containing Aboriginal heritage values. Of the one hundred and twelve [112] items of local heritage significance listed on schedules to Eurobodalla Shire Local Environmental Plans [LEP], only two of these items relate directly to Aboriginal heritage values [Broulee Canoe Tree and Port Phillip Ned's Grave at Cadgee], although a number of listed 'European' places may also be significant to the Aboriginal community as a result of shared post contact history.

Several of the significance criteria used by the Heritage Council may apply to places identified in the Eurobodalla Aboriginal Heritage Study, namely  
a) an item is important in the course, or pattern, of NSW's cultural or natural history and criteria and/or b) an item has strong or special association with a particular community or cultural group in NSW for social, cultural or spiritual reasons. However this legislation does not provide adequate protection to the multifaceted, intangible components of Aboriginal cultural heritage and tends to be used mainly in cases where non-Aboriginal heritage requires protection.

#### *National Parks and Wildlife Act 1974 [NSW]*

The National Parks and Wildlife Act 1974 provides blanket protection to all Aboriginal objects in NSW, regardless of land tenure or whether the objects are listed on a register or database. It is an offence to knowingly destroy or disturb an object without a permit from the Director-General of the department that administers the Act, currently DECC, and fines for offences have been recently increased.

Enactment of the legislation was prompted by requests from Aboriginal people in the 1960s to have the sites made by their ancestors protected from fossickers who were collecting huge numbers of stone artefacts, defacing art sites and digging up skeletal remains for museums. DECC maintains a database (the Aboriginal

Heritage Information Management System - AHIMS) which contains information on more than 50,000 recorded Aboriginal sites across NSW, and an extensive catalogue of reports, prepared mainly by consultant archaeologists undertaking studies prior to developments.

The database is not a public database, but selected information can be accessed, for a fee, by developers, and bona fide researchers. On request, Aboriginal groups and shire councils are provided with information from AHIMS to assist in making decisions in regard to the impacts of land use planning and development on Aboriginal sites. The quality of site data provided to DECC has improved as a result of improved technologies such as Geographical Positioning Systems and greater adherence to DECC's guidelines for recording and reporting on Aboriginal heritage investigations (these are available on DECC's website).

Recorded sites on AHIMS represent only areas where systematic or opportunistic site investigation has occurred over the last 30 or so years and only represent a tiny proportion of the sites that are present on the landscape. In order to avoid destruction of unrecorded sites, DECC provides advice to developers on the need or otherwise for systematic archaeological surveys early in the planning and design process. This advice often uses informal 'predictive models' of where sites are likely to occur, based on the spatial relationship between site location and certain environmental parameters, such as distance from potable water or presence of sandstone overhangs. On completion of surveys, every effort is made to negotiate a design that avoids impacts on sites, usually through discussions with the consultant archaeologist and Aboriginal people engaged by the developer. However avoidance is not always possible and under these circumstances, DECC will consider applications for a 'consent to destroy or disturb' sites under Section 90 or 87 of the NPW Act.

One of the shortcomings of the NPW Act in regard to Aboriginal heritage is that legally it can only protect 'objects'. By legislative definition a object is any deposit, object or material evidence relating to indigenous and non European habitation of the area that comprises New South Wales, being habitation both prior to and concurrent with the occupation of that area by persons of European extraction, and included Aboriginal remains<sup>12</sup>. Features that are not objects can be legally protected by gazettal as an Aboriginal Place or an Aboriginal Area. As such, some of the heritage values relating to Aboriginal culture in the post contact period such as camps, spiritual themes and work places identified during the Eurobodalla Aboriginal Heritage Study may not be protected under the NPW Act unless there is some form of physical evidence present.

AHIMS contains categories relating to features that may not contain objects such as 'Aboriginal Dreaming and Ceremony [feature category 1], as well as Aboriginal resource and gathering places [feature category 2]. Technically these places, even if registered, are not protected under the Act if they exist in isolation from any physical remains. In this way, landscape features containing cultural significance, may not be protected unless they become an Aboriginal Place or Aboriginal Area. However, the meaning of the Act in regard to areas or sites that are not objects has not yet been tested in court.

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<sup>12</sup> NPW Act 1974, Section 5.

A natural landscape feature of spiritual /cultural significance can be protected under the NPW Act 1974<sup>13</sup>, if it has been assessed and recognised by the Minister as an 'Aboriginal Place' or Aboriginal Area. As highlighted by Goulding the highly methodical and protracted nature of Aboriginal Place assessments [for potential Aboriginal Place declarations] has been a barrier to declaration of Aboriginal Places in previous years [Goulding 2002: 46]. However, the process has recently been streamlined and gazettal of Aboriginal Places is a high priority for DECC.

Joint management of national parks is another mechanism for recognising and protecting significant spiritual and cultural landscapes. Under the *NSW National Parks and Wildlife Act 1974*, selected national parks can be handed back to the relevant Local Aboriginal Land Council(s) and leased back to the State Government for continued use as a national park. Gulaga National Park, in the south of the study area, is owned by Wagonga and Merrimans Local Aboriginal Lands Council, on behalf of Aboriginal Owners and is managed by the Gulaga National Park Board of Management which is made up of a majority of Aboriginal Owners. The Board of Management are responsible for the care, control and maintenance of Gulaga National Park<sup>14</sup>.

Voluntary Conservation Agreements (VCA) are also possible under the *NSW National Parks and Wildlife Act 1974*. This agreement is noted on the title of the property in perpetuity. A Voluntary Conservation Agreement is a joint agreement between landowners and the Minister for the Environment. A VCA provides permanent protection for the special features of private land and can be used to protect Aboriginal heritage values, although this has not occurred thus far. The area under the Agreement is registered on the title of the land ensuring that if the land is sold, the Agreement and management requirements remain in place. A conservation agreement may be entered into<sup>15</sup>:

- for areas containing scenery, natural environments or natural phenomena worthy of preservation
- for areas of special scientific interest
- for areas that are the sites of buildings, objects, monuments or events of national significance
- in relation to areas in which Aboriginal objects, or Aboriginal places, of special significance are situated.

### *NSW Aboriginal Land Rights Act 1983*

The *NSW Aboriginal Land Rights Act 1983* recognises that the State of NSW was traditionally owned and occupied by Aboriginal people and that land is an integral aspect of Aboriginal culture. It enables Local and regional Aboriginal Land Councils identified under the Act, to make land claims over vacant crown land, not required for any public purpose. Currently, 1123 hectares of land in the Shire is owned by local and regional land councils. In recognition of the negative impacts of colonial history on traditional culture, Aboriginal people in NSW do not need to

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<sup>13</sup> NPW Act 1974, Section 84.

<sup>14</sup> 'Aboriginal Owners' are Aboriginal people whose cultural links to Gulaga National Park are registered by the NSW Office of the Registrar.

<sup>15</sup> <http://www.environment.nsw.gov.au/resources/howyoucanhelp/brochureVcas.pdf>

demonstrate any traditional associations with the land in order to make a land claim. Under the *NSW Aboriginal Land Rights Act 1983* there are currently six Local Aboriginal Land Councils [LALC] across the Eurobodalla Shire representing land interests of Aboriginal residents. Although the boundaries established under this Act do not reflect any traditional land ownership system, many Aboriginal people associated with local land councils in the Shire live on or close to their traditional lands. All of the LALCs have participated in this project, offering field support and advice. From north to south the LALC are Batemans Bay LALC, Mogo LALC, Cobowra [Moruya] LALC, Bodalla LALC, Wagonga [Narooma] LALC, and Merrimans [Wallaga Lake] LALC.

Some LALCs have trained and experienced Aboriginal Sites Officers who undertake assessments of land for developers, usually in association with consultant archaeologists. If sites are found during these surveys, the LALC is required to submit site cards and a technical report to DECC to enable any permits or consents to be issued. The Local Aboriginal Land Councils statutory functions in relation to Aboriginal Heritage protection are detailed in section 52[1][m] of the *NSW Aboriginal Land Rights Act 1983*.

### *Native Title Act 1993*

Indigenous Land Use Agreements [ILUA] are provided for under the *Native Title Act 1993*, although a beneficial process in terms of Aboriginal land management strategies, there are no registered Indigenous Land Use Agreements in the Eurobodalla Shire. An indigenous land use agreement (ILUA) is an agreement about native title and the use and management of land and waters made between one or more native title groups and other people.

An ILUA can be a most practical way to resolve native title issues. It allows people to make agreements about how land and waters are used without necessarily entering into the usual native title process. An ILUA may be a stepping stone on the way to a native title determination, be part of the determination process or it may suit the parties better than a determination. ILUAs may be made about matters such as mining developments, sharing land and exercising native title rights and interests, and compensation.

The advantage of an ILUA is its flexibility – it can be tailored to suit the needs of the people involved and their particular land use issues. By making agreements, Indigenous Australians may gain benefits such as employment, compensation and recognition of their native title<sup>16</sup>.

A step down from an ILUA, are Process Agreements, Framework Agreements and Memorandums of Understandings. These are all possible under the Native Title Act. These documents allow for parties to state their intentions [service delivery etc], their acknowledgments and respects [custodians of country] and outline management objectives [cultural heritage, town planning].

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<sup>16</sup> [http://www.nntt.gov.au/publications/1021435535\\_10212.html](http://www.nntt.gov.au/publications/1021435535_10212.html). See for instance the Githabul Peoples Indigenous Land Use Agreement, northern NSW.  
<http://www.atns.net.au/agreement.asp?EntityID=3992>

### 2.3 REQUIREMENTS OF THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT IN DETAIL

In 2006 as part of its planning reforms, the NSW government gazetted a standard instrument to apply to all Council Areas. The intent of the government is to streamline the planning process and improve consistency across local government environmental plans. An updated version of this Order was introduced on 1 January 2008. Eurobodalla Shire Council is obliged to prepare its new LEP in compliance with the template and any guidelines issued by the Department of Planning.

The Standard Instrument 2008 can be viewed in full on the web at [www.legislation.nsw.gov.au](http://www.legislation.nsw.gov.au). Clause 5.10 of this instrument relates to heritage conservation. The clause objectives include provisions to “conserve the heritage significance of heritage items and heritage conservation areas” and “conserve archaeological sites” and “places of Aboriginal Heritage significance”.

The Dictionary of the Standard Instrument defines a number of terms of relevance to Aboriginal Heritage:

*Aboriginal Object* means any deposit, object or other material evidence (not being a handcraft made for sale) relating to the Aboriginal habitation of an area of NSW, being habitation before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains.

*Archaeological site* means an area of land:

- a. shown on the heritage map as an archaeological site, and
- b. the location and nature of which is described in Schedule 5, and
- c. that contain one or more relics.

*Heritage conservation area* means an area of land:

- a. shown on the heritage map as a heritage conservation area or as a place of Aboriginal heritage significance, and
- b. the location and nature of which is described in schedule 5, and includes any heritage items situated on or within that area<sup>17</sup>.

*Heritage impact statement* means a document consisting of:

- a. a statement demonstrating the significance of a heritage item, archaeological site, place of Aboriginal heritage significance or other heritage conservation area, and
- b. an assessment of the impact that the proposed development will have on that significance, and
- c. proposals for measures to minimise that impact.

*Heritage item* means a building, work, archaeological site, tree, place or Aboriginal object:

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<sup>17</sup> As previously discussed, Aboriginal heritage, particularly intangible values are difficult to define with a fixed linear boundary.

- a. shown on the heritage map as a heritage item, and
- b. the location and nature of which is described in schedule 5, and
- c. specified in an inventory of heritage items that is available at the office of the Council.

*Place of Aboriginal heritage significance* means an area of land 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 can (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 of more contemporary cultural significance.

Clause 5.10 of the Standard Instrument requires development consent for most proposals where there might be potential to disturb a heritage item, archaeological site, place of Aboriginal heritage significance or heritage conservation area. The consent authority must consider the effect of the proposed development on the heritage significance of an item before granting consent and may require a heritage impact statement to be prepared before determining the application

In dealing with any application affecting a place of Aboriginal 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, and
- b. notify the Aboriginal communities (via appropriate consultation / notification processes) about the application and take into consideration any response received within 28 days after the notice is sent.

Where appropriate, the Council can include special local clauses in section 6 of the LEP and special maps. Under the section 117 of the EPA Act, the Minister may issue directions to Council to guide plan content and preparation. The current direction relevant to Aboriginal Heritage is Direction 2.3, which is presented below:

### ***Section 117 Direction No.2.3 Heritage Conservation***

#### *Objective*

- (1) *The objective of this direction is to conserve items, areas, objects and places of environmental heritage significance and indigenous heritage significance.*

#### *Where this direction applies*

- (2) *This direction applies to all councils.*

#### *When this direction applies*

- (3) *This direction applies when a council prepares a draft LEP.*

#### *What a Council must do if this direction applies*

- (4) *A draft LEP shall 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 council, which identifies the area, object, place or landscape as being of heritage significance to Aboriginal culture and people.*

*Consistency*

- (5) *A draft LEP may be inconsistent with the terms of this direction only if council can satisfy the Director-General of the Department of Planning (or an officer of the Department nominated by the Director-General) that the draft LEP complies with Part 5 of the Heritage Act 1977, and*
- (a) *the environmental or indigenous heritage significance of the item, area, object or place is conserved by existing or draft environmental planning instruments, legislation, or regulations that apply to the land, or*
  - (b) *the provisions of the draft LEP that are inconsistent are of minor significance.*

*Note: In this direction: “conservation”, “environmental heritage”, “item”, “place” and “relic” have the same meaning as in the Heritage Act 1977. “Aboriginal object”, “Aboriginal area” and “Aboriginal place” have the same meaning as in the National Parks and Wildlife Act 1974. Heritage conservation is covered by a compulsory clause in the Standard Instrument (Local Environmental Plans) Order 2006. A LEP that adopts the Standard Instrument should identify such items, areas, objects or places of environmental heritage significance or indigenous heritage significance as are relevant to the terms of this direction on the Heritage Map and relevant Schedule of the LEP.*

## **2.4 GUIDELINES AND ADVICE FROM THE DEPARTMENT OF PLANNING AND THE DEPARTMENT OF ENVIRONMENT AND CLIMATE CHANGE**

The Department of Planning has statutory responsibilities for consistency in the style and content of LEPs across the State. Council must obtain a certificate from the Director General before it can legally exhibit the draft plan for public comment



and the plan can only take legal effect once the Director General has reported satisfaction to the Minister and the Minister has gazetted the plan.

The Department produces “practice notes” to assist Councils in the preparation of LEPs. The following Practice notes have relevance to protection of Aboriginal Heritage:

*Planning circular 2006.008*

This gives general advice on preparing LEPs under the standard instrument and includes advice that it is acceptable to include local environmental overlay maps and related clauses, if warranted.

*Practice note 2007.001*

This note again confirms the appropriateness of overlays for local significance. It also advises, where Aboriginal items are of a sensitive nature, they can be shown in only a general way on LEP maps.

Advice to Council from the Department of Planning has confirmed that items of high sensitivity should not be listed in the LEP but dealt with via protocols and confidential inventories. Also, broader culturally sensitive landscapes may be best addressed in the Development Control Plan (DCP).

In regard to listing recorded Aboriginal sites, as discussed earlier AHIMS is not a public database and it is not appropriate nor helpful to list the more than 1600 sites in the LEP. However, those sites that exist on AHIMS and were also identified during previous stages of the project may be listed.

Aboriginal Places which have already been through a gazettal process could be listed in the LEP, although the approval of the landowner may be required. Similarly, Aboriginal Areas could also be listed.

As at the date of this report, most councils are still preparing their draft plans and practice requirements continue to evolve. Council will naturally seek an updated position from State Departments before completing its implementation of LEP protection measures for Aboriginal Heritage.

## **2.5 A summary of the legislative and policy requirements and options available to Council for the LEP process**

It is a legal requirement that DECC is informed of the discovery of all Aboriginal objects for inclusion on AHIMS, if not already listed. Many of the heritage items recorded during stages 1,2 and 3 of the project items justify listing on AHIMS but some are ruled out by the fact DECC require accurate grid referencing and that is not possible in many cases without expensive and detailed field survey.

Council has a formal licence agreement with DECC for accessing AHIMS items for use in the in the DA assessment process. The consultants propose Council retain and renew that agreement and incorporate continued assessment for AHIMS items in a revised consultation and development assessment protocol.

The consultants recommend Council should establish an Aboriginal Heritage Inventory system and include in it all items from Stage 3 plus cross linkages to AHIMS. Some items will not be appropriate for LEP or DCP listing on grounds of sensitivity as identified by the Aboriginal community or having indefinable boundaries, in which case it may be appropriate to acknowledge the value of the item by other means, for example, as was done with the oral history booklet. These items would remain in the confidential section of the inventory.

While the remaining items would be listed in the LEP and in the public section of the Inventory, some items may have confidential elements and as such the full inventory card for such items would reside in the confidential section and a more limited inventory card would appear in the public section.

The Standard Instrument provides 2 options for listing Aboriginal Heritage in the LEP:

1. Heritage Items (HI)- these include Aboriginal Objects such as the Cadgee grave
2. Heritage Conservation Areas (HCA)- these are other places of Aboriginal heritage significance where the significance and potential for adverse impact from development is of sufficient magnitude to warrant compulsory consideration and consultation. A recommended example could be Najanuka near Tilba.

The Development Control Plan can address the remaining category of Culturally Sensitive Lands (CSL)- these are areas containing wider landscapes within which are items, cultural and spiritual themes ...etc that warrant general consideration by developers and Council. A recommended example could be the Gulaga Mountain landscape.

Heritage items and heritage conservation areas would be mapped on the LEP Heritage map in accordance with the Department's "Standard technical requirements for LEP maps" 2007. Aboriginal heritage items would be mapped by filling in the relevant land light brown. For Aboriginal heritage conservation areas the land would be edged in light brown. In both cases, reference numbers can be

used to identify the land and cross reference to schedule 5 if greater detail is required.

To qualify as a heritage item or heritage conservation area, the land must be mapped, there must be a corresponding description in schedule 5 of the LEP and Council must list the item in an inventory available at Council's office. ( The inventory may have public and confidential sections.)

#### Options available to Council

The statutory processes are relatively inflexible to the extent that the "117 Direction" requires Council to contain LEP provisions that "facilitate the conservation" of Aboriginal heritage protected under the National Parks and Wildlife Act and identified in a heritage study such as that presented in stages 1-3 of this project.

Items to be listed are within Council's discretion but they would generally be items that could be adversely impacted by development and which are acceptable for public listing by the Aboriginal community.

The definition and management of Culturally Sensitive Lands in the DCP is optional but is recommended by the consultants as a way that Council can solve the problem of adequate protection for items not suitable or warranting *Heritage item* or *Heritage conservation area* status.

The style and extent of a public inventory to be held at the office of Council can be at Council discretion but should contain only information that is acceptable to the Aboriginal Community. It is also suggested that the additional sensitive information is also recorded in a limited access section of the inventory to ensure there is a full appreciation and advice to Council in its decision-making regarding development applications. Given the power of computerised data bases, the consultants recommend the inventory be an integrated data base and include links to all Aboriginal heritage data available to Council.

Consultation with Aboriginal Community members (those able to attend 6 community meetings in the week of 2-6 June 2008 and / or comment on the first draft of this report) has taken place with regard to all items recommended by the Consultants for LEP listing. However the consultants strongly recommend further consultation on the draft LEP content before the LEP proceeds to public exhibition. This may necessitate some items being deferred to a later amendment of the LEP.

The consultants strongly recommend both general public education and information on the process for listing all types of heritage (Aboriginal and non-Aboriginal) and direct consultation with affected land owners prior to the public exhibition of the LEP. There should also be adequate information on the listing methodology with the LEP public exhibition material, including reference to this report

It is open to Council to reconsider listings and content/ description of listings in the light of submissions received from both the pre public and public exhibition periods.

The following flow chart summarises the recommended process for applying protection to items identified in the Stage 3 report.

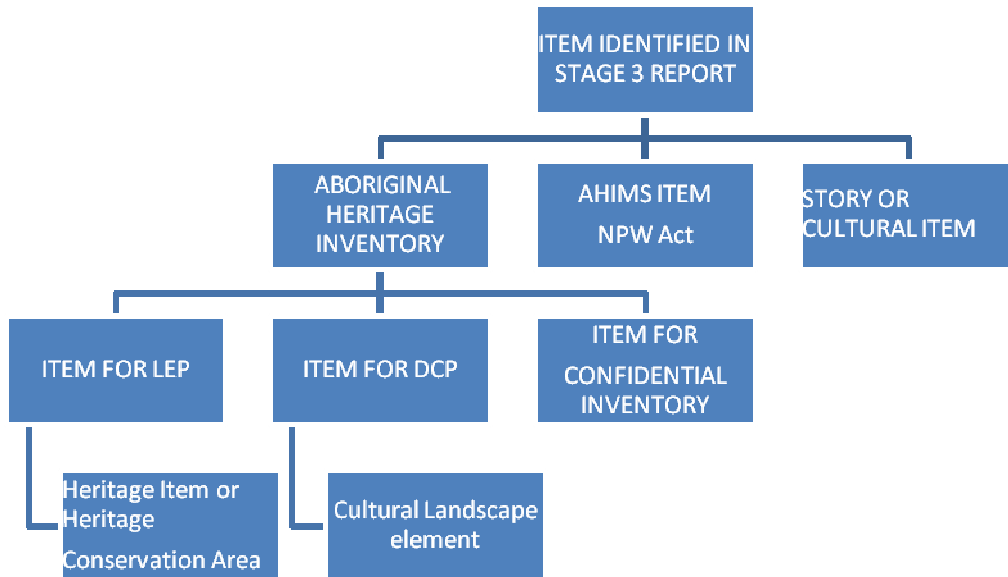


CHART TWO: SUGGESTED HERITAGE MANAGEMENT PROCESSES

### **3. REVIEW OF ESC HERITAGE MANAGEMENT PRACTICE**

#### **3.1 Review of ESC current codes and practices**

The Eurobodalla Aboriginal Heritage Study, Stage 3 [Donaldson 2007: 80] made the following recommendations in relation to ESC heritage management codes of practice:

In consultation with the Eurobodalla Aboriginal Advisory Committee and the broader Aboriginal community, the ESC and LALCs should review currently operational Aboriginal Heritage system with a view to:

- Having the code endorsed by DECC to ensure that the code of practice reflects the relevant legislation.
- Systemising the preliminary assessment stage across the shire be it based on a scientifically determined predictive model or other agreed approach. At the very least, a broader range of features / places should be incorporated into the 'hot zones' with which to trigger the code of practices.
- Any such model [and associated GIS tool] should be applied in conjunction with consultations with the Aboriginal community.
- Areas that have not been subject to past heritage surveys should be highlighted as being unassessed with the potential of containing cultural heritage values.

These recommendations remain relevant. It may be possible to access funding for a shire wide archaeological predictive modelling study through the NSW Heritage Office or the NSW Department of Planning. The determination and application of any such model should be made in partnership with the Aboriginal community and DECC.

A copy of the adopted code of practice forms appendix 5A. In summary

- Council adopted a Code of Practice on 28 March 2000.
- The code is titled "Subdivision Assessment and infrastructure Planning and Maintenance code of practices- Aboriginal Group Consultation".

The Code is in 6 sections relating to:

- New release subdivisions
- Extractive industries
- Developments in the Congo/ Bingie area
- Construction works
- Ground disturbance Council works Congo / Bingie area
- Emergency works.

The focus of the current code is on archaeological sites and related pre-contact heritage. The code of practice applies to both private development assessment and Council works. With Development Applications for private new release subdivision or extractive work, the Aboriginal Heritage Officer (AHO) checks the Council database of AHIMS listings to establish if a registered Aboriginal site exists on or

near the development site. Where it does the Local Aboriginal Land Council (LALC) is invited, at the developers expense, to conduct a site assessment. Where needed, a full archaeological assessment may follow. Also where staff considers the area may be sensitive, Council notifies the relevant LALC and Elders Group of the DA and invites submission within the DA notification period. Sometimes there may be a “site walk over” by the relevant Aboriginal group and the Aboriginal Heritage Officer.

Where appropriate, the development consent may be conditioned to require some on site monitoring of works by the relevant Aboriginal group during initial earth disturbance works. With Council works, Council provides a copy of its 2 year work program to each LALC for the area that the Land Council covers and invites comment on projects that might be in areas of sensitivity. Where there is considered to be high possibility of sensitivity in the view of works staff, consultation is had with the relevant Aboriginal Group and with DECC.

### **3.2 Comment on the current ESC Code of Practice from staff users**

The following is a summary of points raised from discussion with staff on the current Code of Practice:

- Current requirements for on site monitoring by Aboriginal Community representatives is variable and not always consistently applied.
- Where a formal archaeological survey is produced, Council should be copied the DECC endorsement and copies of related consents to destroy... etc.
- Endorsed archaeological reports from subdivisions need to be better utilised to lessen the need for subsequent further reports and assessment delays at building stages.
- The differentiation of assessment requirements for Congo and Barlings Beach seem unnecessary. A single approach shire wide seems to have merit.
- There could be advantages in utilising the Aboriginal Heritage Officer in the consultation process involving Council works.
- Council will always have resource limitations. There is no focus in the State legislation to compel adequate resourcing of Aboriginal heritage assessment in the DA process.
- The expectation of State government is for Council’s to shorten DA processing times which challenges opportunities for detailed consultation

### **3.3 Comment on the current ESC Code of Practice from Land Council users.**

Discussion with Chief Executive Officers and Assessment Officers in Land Councils have revealed a range of views and issues as summarised below:

- The resources in Land Councils vary from some assessment staff and administration support to Land Councils that are struggling to function. But no Land Council is well resourced.
- There is a lack of understanding of the current code and a lack of assessment skills in some land councils
- Some Land councils are involved in site inspections and others are not

- The Shire Council's application of the Code is seen as variable
- Land Councils do not have the resources to respond to the Council works program given its scale and often are not resourced to be able to respond to DA referrals within the specified 2 weeks given resource limitations and often a need for field review.
- Council refers most subdivisions but other categories of development are considered to be inadequately referred
- There is a lack of guidelines to ensure consistency and priority applications to scarce assessment resources to the more sensitive areas.
- The Shire Council's focus to date is on pre contact archaeology – more is requested on post contact and current culturally sensitive areas, this has been greatly assisted by the completion of the Regional Aboriginal Heritage Study
- A number of examples were given or alleged of Council not following the code of practice or of not enforcing conditions of consent
- Generally, a view that the Council works side was not consulting adequately.

### **3.4 Comment on Current ESC practice from DECC**

The current Council procedures and above comments in 3.2 and 3.3 were discussed with DECC and the following suggestions received:

- The current code is seen as having a specific focus on subdivision where all development likely to impact on heritage should be assessed.
- There could possibly be more clarity of the assessment procedures required for various levels of risk. eg a recorded AHIMS site as opposed to undisturbed land of probability to contain items as opposed to disturbed land or lesser probability.
- Site walkovers and predictive modelling of risk are useful so long as there is an awareness of the need for developers to stop work if artefacts are uncovered.
- DECC advice is available to Council and the developer in deciding what triggers the need for an archaeological report and the formal processes of the NPW Act.
- The earlier a developer can be aware of the requirements of Council's code or practice usually the better the assessment result.
- The current practice of placing condition on higher risk developments of the developer's obligations under the NPW Act is good but might apply to all consents.
- DECC practice in assessing archaeological reports is usually to copy the resultant permits to Council. Council can assume where it receives a permit copy, that DECC have endorsed the report.
- There is not the capacity in DECC, nor is it DECC's role to review Council 2 year work programs and the like. Council might consider an archaeological and Land Council representative overview of the program which could provide advice on the degree of risk and high risk areas which could then be the subject of more detailed assessment.

### **3.5 Review of other government heritage management systems.**

Appendix 4 is a summary of several local and State government agencies surveyed for protocol development. In short there seem to be few examples of a robust protocol / set of codes of practice that might transport direct into the Eurobodalla situation. There are ideas to be reviewed from Bega Valley Shire's assessment practices, which are also linked to a Memorandum of Understanding. Some of the lessons from other Council's and interstate include:

- Reasonable cost of reviews being paid by the developer..
- Being clear and consistent about when consultation is triggered and the range of consultation categories available.
- Utilise agreements or MOUs to reinforce the 2 way nature of the consultation and assessment process

Appendix 4 also includes a review of the Aboriginal Heritage Office project (AHOP). This is an initiative of 8 Sydney Councils in the region from North Sydney to Ku-ring-gai. The objectives of the project are to protect Aboriginal heritage in the 8 local government areas, improve public understanding and education and to be a vehicle for discussion / mediation / negotiation between Aboriginal and non-Aboriginal people to help solve heritage and related land use issues.

The AHOP has been in operation for about 8 years and is funded by the 8 Councils. The system links Land Council with DECC and helps ensure assessment of Aboriginal heritage is given adequate consideration in the development assessment process and that input is timely to ensure Councils do not incur long delays in DA processing.

The consultants have included a recommendation in Section 4 that Council and DECC may wish to further examine the potential for a similar approach involving a group of South East NSW Councils.

There is also a wide range of models available internationally relating to consultation with indigenous communities as part of the development assessment process. In particular, Canada and New Zealand have detailed models.<sup>18</sup> However, approaches such as that in New Zealand are based on Treaties and other formal national documents and as such the applicability is limited in Australia for adoption by a single local government Council without a major State or Federal initiative.

### **3.6 Resolving Improvements to Council's public Protocol and internal Code of Practice**

#### Reality of the limitations of Council and Land Council resources

The good will and intent of both the Shire Council and Land Councils for protection of Aboriginal heritage is clear. But there is a need for realism in resolving a workable code of practice:

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<sup>18</sup> An outline of the New Zealand experience is available at [http://www.pce.govt.nz/reports/allreports/o\\_908804\\_83\\_o.shtml](http://www.pce.govt.nz/reports/allreports/o_908804_83_o.shtml)



- Land Councils are under-resourced and it is beyond the role of just the Shire Council to address that. A stronger economic footing for Land Councils and the Aboriginal community in general needs State and national attention.
- The Shire Council is also at virtual resource capacity in trying to meet community service demands generally and DA processing times in particular.
- The quality of the data in AHIMS continues to improve with the introduction of technology such as GPS and GIS mapping. However, much of the older data has inaccuracies and generally the usefulness and accuracy of the information is influenced by the skill and equipment of those recording the data. It is unlikely that every site and place can expect to be recorded and as such there will be an ongoing need for protocols and codes of practice.
- The Legislation gives no power to stop works to Land Councils or the wider Aboriginal community. Enforcement is charged to DECC and in some cases the Local Government Council

### Public Protocols and Internal Codes of Practice

Council is a large public service organisation and, when dealing with complex issues such as Aboriginal Heritage that can span users across the community, both public protocols and internal codes of practice can be justified.

The focus of this report is on improvements to the *public* aspects by suggesting a protocol to ensure adequate heritage protection and consultation with the Aboriginal Community. But suggestions are also made for streamlining and improved coordination of Council's internal procedures.

### Certainty for developers but better protection of what is known

As far as practical, developers seek certainty in the development assessment process. They can improve surety through early consultation in the preparation of their applications with firstly Council and DECC, and if sensitivity is likely, with the relevant Aboriginal Group.

### Suggestions for a new public Protocol.

From the work in section 3 above, the following are seen as the core components of a new protocol:

- Encourage earlier consultation by developers
- Ensure all players: Councillors, staff, developers, Aboriginal groups and the general community can clearly understand the code of practice
- Address the multiple types and categories of development
- Address both recorded and yet to be recorded heritage
- A need for a comprehensive Council inventory system that links LEP items, NPW Act items, past studies and archaeological reports.
- Clear conditioning of Development Approvals to protect heritage and ensure appropriate consultation and policing of such conditions.

From consideration of these components, a **draft Protocol** is recommended and presented in Appendix 5B for the consideration of Council and the Aboriginal

Community. It is stressed it is a draft for further refinement through discussion between Council and the Aboriginal Community.

Consultation with the Aboriginal Community, including the Eurobodalla Aboriginal Advisory Committee, on the preliminary draft drew comment of a perceived need for greater consultation and land sensitivity assessment regarding the potential of unrecorded heritage.

Community members have suggested in particular that there be some level of consultation with Local Aboriginal Land Councils on all DAs and smaller Council works so that LALCs could interact with Council where potential was seen to exist.

The provision by Council of information on all DAs and lesser Council works to a level sufficient for meaningful identification and understanding of the land and project is considered to be beyond Council's current resources.

But better potential may arise, should Council move to the instillation of an on line DA tracking system. In such circumstances, it may be possible for adequate locational and project information to be publicly accessible and Local Aboriginal Land Councils could review this material weekly.

We have also recommended a standard condition in Appendix 5B to apply to all DAs and Council projects which cautions people of their obligations if unrecorded heritage is discovered during works.

Expanding Councils program of Aboriginal Heritage sensitivity training of relevant staff is recommended so that all relevant assessment staff reach defined competencies.

#### Suggestions for a refined internal code of practice

The following are seen as key points to ensuring a comprehensive structure for Council's internal practice in managing Aboriginal Heritage:

- Clearly identified roles and responsibilities for staff
- A multi level system of Cultural Awareness training ranging from general awareness for staff with ancillary roles, through to more comprehensive training for assessment staff, design staff and similar.
- Consistent consultation processes for DAs and Council works
- Keeping the Aboriginal Heritage officer informed of most DAs and works to provide a monitoring role.
- Clear delineation of levels of delegation for determining actions such as when to consult and what to action from submissions received. When to report to Senior Management or Council for determination.
- Periodic meetings with LALCs to discuss practice improvements from both players and including assessment staff at such meetings.

#### Summary of recommended improvements to the current 'code of practice'

There is confusion as to what is the role and function of the current "code of practice". The consultants recommend there be a clear distinction between Council's public commitment to consultation assessment and the internal staff instructions through which Council delivers that commitment.

**As such, it is recommended the external code be called a “Protocol” and the “code of practice” be restructured to function as purely an internal guide for staff.**

The public Protocol should encompass both the detail of consultation with the Aboriginal community and the actions for heritage assessment in the DA and Council work processes. Given the diversity and number of Council staff involved in Aboriginal heritage management, a formally documented internal code of practice is also recommended for coordination, efficiency and consistency.

We also feel Council and the Aboriginal Community should consider entering into an Indigenous Land Use Agreement, MOU or similar to enshrine the Protocol and perhaps address wider areas of the interrelationship between Council and the Aboriginal community.

### **3.7 Aboriginal heritage protection through the Local Environment Plan**

The State Government’s new Stand Instrument will coordinate and standardise LEPs across NSW. The Standard Instrument contemplates improvements to the management and protection of Aboriginal heritage.

The Minister has directed that suitable items come forward for exhibition in the LEP and public comment as potential Aboriginal heritage items and Aboriginal heritage Conservation Areas as detailed in 2.5.

The LEP listing invokes automatic requirements for consultation with the Aboriginal community when development may affect listed items.

The standard Instrument also requires that Council maintain an inventory with background information on listed items. Part of the inventory can be confidential if requested by the Aboriginal community and accessible to only approved persons.

### **3.8 Aboriginal heritage protection through Development Control Plans**

A DCP can provide guidelines on a broad range of develop issues, some of which may be useful in the ongoing management of identified Places of Aboriginal Heritage Significance. At this point it is recommended that a specific chapter on Aboriginal heritage form part of Council’s DCP to address the concept of culturally sensitive lands (CSL). The new LEP provisions adequately address Aboriginal Heritage Items and specific Places of Aboriginal Heritage Significance. But The Department of Planning considers the less tangible spatial and spiritual elements are better addressed in the DCP which has greater flexibility.

The DCP should reference and link to the consultation and assessment procedures contained in the Protocol.

### **3.9 State policies and plans**

*Comprehensive Coastal Assessment 2006*

Undertaken by the NSW Department of Planning, the NSW Comprehensive Coastal Assessment [CCA] involved a cultural heritage data audit [CCA # 10] and broad scale cultural values mapping [CCA #26]. One of the twelve maps produced relates to cultural areas of interest in the south coast region [Local Government boundaries within that region are detailed] and was utilised as a planning tool for the development of the *South Coast Regional Strategy 2006 – 2031* as detailed below.

*South Coast Regional Strategy 2006 - 2031*

Devised by the NSW Government Department of Planning to guide the development of new LEPs and DCP for the Shoalhaven, Eurobodalla and Bega Valley local government areas. These plans will in turn guide future developments across the region.

One of the identified regional ‘environmental’ challenges, to improve the understanding of Aboriginal Cultural Heritage values and to be able to incorporate this information into land use planning and natural resource management processes, is complemented by the strategy to ensure that Aboriginal heritage values are protected and that development in significant cultural landscapes is limited [NSW 2007: 5, 9]. An identified outcome is to identify and map Aboriginal cultural heritage to assist in the conservation and maintenance of Aboriginal cultural heritage amidst the predicted urban growth and development [32]. Actions outlined include [33]:

- Councils are to ensure that Aboriginal cultural and community values are considered in the future planning and management of the local government area;
- The Department of Planning and Councils will review the scope and quality of the existing statutory lists of heritage items and ensure that all places of significance are included in the heritage schedules of local environmental plans;
- The cultural heritage values of major regional centres [ie Batemans Bay] and major towns [Moruya, Narooma], which are to be the focus of urban renewal projects, will be reviewed with the aim of protecting cultural heritage;
- Local environmental plans will include appropriate provisions to protect coastal towns, along with associated natural and cultural landscapes. The aim will be to protect conservation Aboriginal values, amongst other things, to reinforce with economic value for tourism.

*Southern Rivers CMA Catchment Action Plan 2007*

The Catchment Management Authority recently finalised a Catchment Action Plan, which incorporates other plans relating to the catchment, for instance estuary management plans, in order to achieve long-term sustainable environmental management throughout the catchment. Management target [#C3] identifies how indigenous communities will be better engaged in natural resource management planning and resources and opportunities to “Care for Country” are increased. As custodians of the land, Aboriginal people will be actively involved in natural resource planning and in land management on the ground.

### **3.10 ESC / DECC AHIMS DATA LICENCE AGREEMENT**

ESC holds the current AHIMS data in the correct format for their information technology system, in accordance with the data licence agreement between DECC and ESC.

ESC would prefer to also hold DECC site cards relevant to the AHIMS sites across the Eurobodalla Shire, to assist in the assessment of DAs. Previously the only means by which Aboriginal Heritage values were considered during the development assessment process was through the site inspection process without any further investigation into existing relevant materials<sup>19</sup>.

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<sup>19</sup> Per comm. Anita Brunhuber 29.7.08.

## 4. HERITAGE MANAGEMENT OPTIONS

As identified by English [2002: 9] exploring planning options at a *range of scales* was necessary when determining how heritage places should be taken into account under current land use planning processes in NSW. Options and constraints are present at the strategic planning level as well as on the ground at the operational level. Management options should provide recognition to Aboriginal cultural heritage values, protect intangible heritage values and ensure cultural connections are maintained. Donaldson 2007 outlined the primary management objectives and strategies as raised by the Aboriginal community as:

- Aboriginal involvement through self-representation.
- Protocols for use of cultural information
- Communication between all stakeholders
- Assessment processes
- Protection of heritage values
- Maintenance of use and access in order to ensure heritage values are conserved.

It is acknowledged that Aboriginal cultural heritage values also exist beyond the places identified during the Eurobodalla Aboriginal Heritage Study.

Each of the following management options are managed in partnership and or consultation with the Aboriginal community. As detailed above, the development and maintenance of Local Environment Plans, Development Control Plans and related inventories is the responsibility of Local Government. The development and maintenance of the Aboriginal Heritage Information Management System, Aboriginal Areas and Aboriginal Places is the responsibility of the NSW State Government, in particular the Department of Environment and Climate Change. The development of land-based agreements [eg Indigenous Land Use Agreements and Voluntary Conservation Agreements] would be based on Aboriginal interests and perusal at the Local Aboriginal Land Council level and involve a variety of interests [eg private land holders, local government, state government].

### 4.1 ABORIGINAL HERITAGE LISTINGS IN THE LEP

Currently there are two Aboriginal Heritage Items in schedule 5 of the Eurobodalla Local Environmental Plan<sup>20</sup>. These are;

- Port Philip Neddie's Grave dated 1864 at Cadgee, and
- Canoe Tree, Broulee.

Stage three of the Eurobodalla Aboriginal Heritage Study [Donaldson 2007: 81, 82] recommended a number of additional places listed in the LEP as a result of each place's local heritage value, in accordance with the heritage significance assessment criteria under NSW Heritage Act 1977. Given further field assessment coupled with an improved understanding of available statutory and non statutory options, the

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<sup>20</sup> There are a number of items in schedule 5 of the current LEP that are not listed as 'Aboriginal' heritage as such, but have been identified in this study as containing heritage value to the Aboriginal community. See listing in appendix 11.

consultants now recommend that the following twelve places be scheduled in the new LEP as Aboriginal Heritage Conservation Areas;

- Najanuka [Little Dromedary Mountain], Akolele;
- The Cricket ground, Akolele;
- Smyth's Oval, Narooma;
- Trunketabella Lagoon, Bodalla;
- Whittakers Creek – Brou Lake, Bodalla [including Two Sisters AP];
- Malabar Lagoon, Moruya;
- Pedro Swamp and Point, Moruya;
- Bengello Creek and Beach, Moruya;
- Barlings corner and island, Tomakin;
- Grandfather's Gully Beach, Lilli Pilli;
- Hanging Rock, Catalina and
- Cullendulla Creek, Surfside.

Appendix seven contains heritage significance assessment [public] details for each of the proposed Heritage Conservation Areas. LEP standard maps have been produced for each of these areas. The LEP also has the capacity to list some AHIMS recorded sites. Moreover, as further research and community consultations are developed, additional culturally sensitive areas can become scheduled in the LEP as Heritage Conservation Areas and or the boundaries of the currently proposed areas adjusted.

While there has been preliminary consultation with the Aboriginal Community, the public exhibition of the LEP and DCP will give further opportunity for review and refinement. It is recommended Council formally write to each Local Aboriginal Land Council as part of the LEP / DCP exhibition(s) providing detail of listings in each Land Council's area.

An opportunity might also be afforded for the Aboriginal Advisory Committee to meet during and after the exhibition and be briefed on the plan and any submissions received on Aboriginal heritage matters.

#### **4.2 CULTURALLY SENSITIVE LANDSCAPE PROVISION IN THE DCP.**

A special clause and map set for the DCP defining and protecting wider elements of the Aboriginal and Cultural landscape is recommended. Given the general and broad-ranging nature of such lands, we suggest the clause not invoke automatic consultation or too elaborate assessment processes but generally be used to improve awareness that such areas have cultural sensitivity and seek for new development and works to respect such values. In most instances, a number of Heritage Conservation Areas will be located within any given Culturally Sensitive Landscape.

As advised by the Batemans Bay, Cobowra and Mogo LALCs, 'culturally and spiritually all the land in the Eurobodalla Shire belong to Aboriginal people...', as such lands classified as 'culturally sensitive' should encompass these heritage

values<sup>21</sup>. With further fieldwork and community input, this will be possible. A number of additional areas already identified as culturally sensitive, yet require additional groundwork for mapping purposes, have been listed in section 4.2.2 below.

#### **4.2.1 SPECIAL LOCAL CLAUSE FOR DCP- ABORIGINAL CULTURALLY SENSITIVE LANDSCAPE PROVISION**

A special local clause is recommended for Council's DCP to address the issue of "spiritual theme landscapes" such as Gulaga [see appendix six].

The clause would refer to a specific map set in the DCP called *Aboriginal Culturally Sensitive Landscapes (ACSL)*. Five areas are recommended for inclusion in the current draft DCP. The recommended areas are outlined in section 4.2.2 and further detailed in appendices eight and fourteen. Additional areas and timing of possible fine-tuning of the boundaries of identified areas would be dependent on resources and form part of later DCP amendments.

The impact of the clause would require Council to be satisfied that any development proposed in an area mapped as Aboriginal Culturally Sensitive Landscapes would not adversely affect the cultural theme(s) and sensitive elements defined in the Aboriginal Heritage register. Development applications in such areas should show respect for the cultural elements and features and enhance the opportunities for protection and improved public appreciation of the elements and features.

#### **4.2.2 PROPOSED DCP ABORIGINAL CULTURALLY SENSITIVE LANDSCAPE AREAS**

There are a number of areas in the Eurobodalla Shire where 'nodes' or clusters of interrelated places of heritage significance exist. Understanding the geography of 'place' can connect people to the physical landscape. Considering the combination of heritage values in a localised geographical area, and in particular the spatial and temporal relationship between the places or items representing these values, substantially strengthens the cumulative heritage values of the nodal landscape. By taking a broader landscape view of Aboriginal cultural heritage, the problem of demarking boundaries [where does the significance begin and end, particularly for intangible values], is eliminated. For instance, the significance of working at Nerrigundah is rarely talked about without reference to where families lived whilst they worked, the weekend camping trips to Potato Point or fishing in the Tuross River.

Anthropologist Denis Byrne directs us to investigate the 'back yards' of areas of high significance to Aboriginal people, highlighting that these areas often contain interlinked cultural values. Byrne recommends incorporating these areas into sensitivity mapping [spatial patterning] and notes, for instance, how one can expect a common pattern around historical Aboriginal reservations across the state<sup>22</sup>.

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<sup>21</sup> Submission to draft report 21.11.2008 by Mogo, Batemans Bay and Cobowra LALC.

<sup>22</sup> Byrne 2004: 128.



Stages three and four of the study have identified five nodal areas of cultural significance within the Eurobodalla Shire. It is now recommended that each of the identified nodes be classified as Aboriginal Culturally Sensitive Landscapes in the DCP. It is anticipated that each landscape area be accompanied in the DCP by a publicly available description of the associated cultural heritage values;

- Gulaga [Mt Dromedary] including Dignams Creek, the shores of Wallaga Lake, Tilba Lake, Pooles Point, and Mystery Bay<sup>23</sup>;
- Wagonga Inlet and coastal swampland;
- Tuross River and Lake including Potato Point, Coila Lake and 'Black Hill'<sup>24</sup>;
- Moruya River including Ryans Creek, the mangroves on the northside, north and south heads<sup>25</sup>;
- Batemans Bay and Clyde River.

There are a number of other culturally sensitive landscapes of significance to the Aboriginal community that should be considered for future Aboriginal Culturally Sensitive Landscape classification, given further anthropological and archaeological research. These areas include;

- Mummaga Lake, Dalmeny Point;
- Corunna Lake;
- Tomaga River, Bevia Swamp and Barlings Beach [including Barlings Beach AP and Barlings Island / Corner HCA];
- Durras / Murramarang area<sup>26</sup>;
- Congo Creek

Details pertaining to Mummaga Lake, Dalmeny Point; Corunna Lake; Tomaga River, Bevia Swamp and Barlings Beach; Congo and the Durras / Murramarang area have been collated separately in the table in appendix ten under the heading "NOMINATIONS FOR INCLUSION IN THE DCP as Aboriginal Culturally Sensitive Landscape – more research required".

There are a number of other heritage *themes* of significance to the Aboriginal community that should be considered for future Aboriginal Culturally Sensitive Landscape (ACSL) classification, given further research. These areas include;

- The fourteen Historical Aboriginal Reservations across the shire<sup>27</sup>;
- Traditional traveling routes<sup>28</sup>
- Totemic species habitats.

Details pertaining to the Aboriginal Reservations, Traditional traveling routes and totemic species habitats have been outlined in section 6 below and further collated in appendix ten.

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<sup>23</sup> Previously recommended for scheduling in the LEP as Aboriginal HCA.

<sup>24</sup> Previously recommended for scheduling in the LEP as Aboriginal HCA.

<sup>25</sup> Previously recommended for scheduling in the LEP as Aboriginal HCA.

<sup>26</sup> More research required in relation to the 'Murramarang Massacre'.

<sup>27</sup> A few of these are within the proposed CSL; precise mapping is however required.

<sup>28</sup> The preliminary data suggests that these routes will link up with a number of the proposed Culturally Sensitive Landscapes, in particular, the Clyde, Moruya and Tuross Rivers.

At this juncture it is important to note that the heritage values of the individual components within each ACSL as well as the values placed on elements beyond the ACSL are not diminished or erased by the presence of a boundary. Furthermore, if the draft code of practice is adopted, the management options relating to the Heritage Conservation Areas and the Culturally Sensitive Landscapes, differ. The former triggers automatic / required consultation with the Aboriginal Community, the later ensures that the council *consider* heritage values in relation to a given development.

Moreover, the heritage themes associated with the pre contact period, with traditional uses of the landscape, continue to be valued today. Shell middens, burial places and stone artefact assemblages for instance, provide a physical link to the past and affirm traditional connections to country. Reaffirmation of traditional relationships with the land and waterways takes place when these places continue to be used today for the same purposes.

Interpretive signage could be placed across the shire to highlight localised Aboriginal cultural heritage values, particularly relevant to the ACSL proposed [see text drafted in appendix eight]. It has been suggested that the historic component of such a project could include photos from Australian Institute for Aboriginal and Torres Strait Islander Studies [AIATSIS] or elsewhere.

#### **4.3 DATA COMPILATION AND ANALYSIS**

A comprehensive comparison of the oral and historical layers with the archaeological sites layer to illustrate where there has been continuity of use and /or significance of places across the Eurobodalla Shire has *not* been undertaken to date. As of 19 September 2007 however, the DECC AHIMS database lists 1627 archaeological 'sites' recorded within the Eurobodalla LGA boundary<sup>29</sup>. The pattern of the 1627 registered sites is a direct reflection of where archaeological surveys have been conducted, rather than an accurate representation of pre-contact patterns of site distribution. Registered sites are concentrated along the coastal zone and in the southern inland region reflecting the increasing amount of coastal development and construction of lineal features such as roads and pipelines.

Despite the incompleteness of all three layers of information, in comparing the oral and historical layers with the AHIMS archaeological sites layer, the consultants see the continuity of land use patterns in coastal and estuarine zones. Whilst some places are embedded in traditional practises, other places are valued in accordance with historical, post contact experiences, not all of which find their source in traditional law and custom, but have become incorporated into local cultural systems and ways of knowing [Sue Feary in Donaldson 2007: 29].

All places identified during the study, for which a firm or indicative grid reference can be provided should be entered on AHIMS. Crosschecking has been undertaken by DECC to establish which places have previously been entered into the AHIMS. Completion of site forms for the remainder of places will also be required. If no grid reference has been provided, further research may be required.

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<sup>29</sup> Per comm. Sue Feary 2007

It may be possible to access funding for shire wide, archaeological predictive modelling through the NSW Heritage Office or the NSW Department of Planning. The determination and application of any such model should be undertaken in partnership with the Aboriginal community.

There may also be opportunities for Council to investigate a pooled heritage management system across several councils based on the Sydney Aboriginal Heritage office model (see appendix 4).

#### **4.4 ABORIGINAL AREA DECLARATION**

Aboriginal Areas are a form of reservation under the NPW Act, administered by DECC for locations of significant Aboriginal cultural deposits and/or places which have been identified as having special significance to Aboriginal people. As with all lands reserved under the NPW Act, Aboriginal Areas may allow for the use of the area by Aboriginal people for cultural purposes. They are also intended to promote public understanding and appreciation of their natural and cultural values and significance to Aboriginal people, and provide opportunities for appropriate research in accordance with Aboriginal cultural values.

There is one Aboriginal Area in the Eurobodalla Shire – Murramarang Aboriginal Area, near Bawley Point. The area was gazetted in the late 1970s in recognition of the depth and extent of the midden deposits on the headland and in the knowledge that the place has been continually occupied from around 12,000 years ago until the arrival of British explorers. It is one of the most studied Aboriginal sites in Australia and is known internationally for the wealth of information about traditional Aboriginal culture contained in the deposits. Swan Lagoon, adjacent to the headland is partially within the Aboriginal Area and is culturally significant as it is home to a serpent associated with traditional religious beliefs about the creation of the land. The area continues to be used by local Aboriginal people for fishing, recreation and educational activities. It is currently the only Aboriginal site in the shire that is interpreted to the public, by way of a self guided walking track containing a number of signs along its route.

Declaration of Aboriginal Areas has many advantages over Aboriginal Places, as the tenure of the land is transferred to DECC rather than remaining with the original landowner. It requires a Plan of management and will receive funding through DECC's budget allocations. An Aboriginal Area facilitates strong partnerships between DECC and local Aboriginal communities and has many parallels with jointly managed conservation reserves.

Given further investigation and community consultation, the consultants recommend the following places require Aboriginal Area status<sup>30</sup>;

- The Cricket ground, Alolele;
- Najanuka [Little Dromedary], Tilba;
- Hanging Rock, Catalina.

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<sup>30</sup> See also section 4.6 agreement making and 4.7 land acquisition relating to the Cricket ground.

DECC does not compulsorily acquire land, but waits until it comes on the market or is offered<sup>31</sup>.

#### 4.5 ABORIGINAL PLACE DECLARATION

Aboriginal Place nominations are investigated by DECC on behalf of Aboriginal groups and organizations. If declared, the tenure of the land remains with the original landowner. Currently there are two Aboriginal Places within the Eurobodalla LGA;

- Two Sisters along Whittakers Creek [on private freehold land] and
- Barlings Beach [on Council land].

Given further investigation and community consultation, the consultants recommend the following places as requiring Aboriginal Place status;

- Brou Lake and Whittakers Creek;
- Barlings 'corner' and Barlings Island;
- Holmes Lookout and
- Montague Island;

Further consultations with the Aboriginal community are required.

#### 4.6 FORMAL AGREEMENTS

##### MEMORANDUM OF UNDERSTANDING / INDIGENOUS LAND USE AGREEMENTS

There are currently no registered Indigenous Land Use Agreements under the *Native Title Act 1993* within the Eurobodalla Shire. There is however one registered Native Title Application concerning the Eurobodalla Local Government Area. The Ngarigu Dialect Boundary Application was lodged in 2005 and extends from Cooma covering 24,015sq km including twelve Local Government Areas and the ACT<sup>32</sup>.

According to the agreements, treaties and negotiated settlements register, compiled in 2007 by the University of Melbourne <sup>33</sup>, the Eurobodalla Shire Council and the Aboriginal Community *drafted* a Framework Agreement in January 1998 regarding goals and service provision<sup>34</sup>.

According to the agreements register, the proposed Local Agreement between Eurobodalla Shire Council and the Eurobodalla Aboriginal Community was developed by the Department of Local Government and the Local Government and Shires Association. Workshops were held by the Department of Local Government and attended by representatives of Eurobodalla Shire Council and the local

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<sup>31</sup> Per comm. Sue Feary DECC Archaeologist 21.11.2008.

<sup>32</sup> See [www.ntt.gov.au](http://www.ntt.gov.au). Application NSD 2620/05. Site accessed 15<sup>th</sup> April 2008.

<sup>33</sup>Project details available at <http://www.atns.net.au/>

<sup>34</sup> <http://www.atns.net.au/agreement.asp?EntityID=1019>. See also Quinn, R 2005 Local Government Agreements: Content Ideas. Native Title Tribunal.

Aboriginal community in June 1998 to look at developing a local agreement to improve service delivery to the Aboriginal communities in the Eurobodalla Shire Council area.

In 1997 a number of comprehensive community consultations were held which identified issues that needed to be addressed in the areas of infrastructure and services, employment, heritage, rates, NAIDOC and libraries. The consultations were the outcome of a resolution from the Local Government Ministers' Conference of 1995 and were held between representatives of the NSW Department of Local Government, the state offices of the Aboriginal and Torres Strait Islander Commission, NSW Land Council, Department of Aboriginal Affairs and several Aboriginal Local Government councillors.

The aim of the consultations was to examine the services that were currently being provided by councils to Aboriginal communities. This was being undertaken in a number of selected Council areas over a two year period. Local agreements were seen as being the best method to clarify local situations, define goals and lead to provision of adequate services.

As previously recommended a number of places containing heritage values to the Aboriginal community should be assessed in terms of access issues, with a view to negotiate formal access arrangements to enable Aboriginal people to maintain the cultural practises particular to each of the areas. Access restrictions are viewed in the following way by Batemans Bay, Mogo and Cobowra LALC:

‘.....our connection to country has been limited over the years by Government selling off our land and denying access. Also Government has created National Parks and commercial camping grounds that was once Aboriginal land. Government regulations has severely limited our hunting and gathering and this has contributed to our lack of access....’<sup>35</sup>

Access to declared Aboriginal Places and proposed LEP Heritage Conservations Areas and DCP Culturally Sensitive Landscapes should be prioritised and given particular consideration during the planning and conditioning of developments.

#### VOLUNTARY CONSERVATION AGREEMENTS

Under the *National Parks and Wildlife Act 1974* (NSW) (s 69B), private landholders can enter into a land management agreement with the New South Wales Minister for the Environment. Presently two private properties in the Eurobodalla Shire are under this form of agreement. A VCA is effective from the date it is signed by the Minister and Council and may only be varied by a subsequent agreement between both parties. One VCA in the Eurobodalla Shire suits as an example of a private landholder providing ongoing protection to Aboriginal cultural heritage values on their property.

“The *Cudbugga Creek Voluntary Conservation Agreement* (the VCA) was signed by a private landholder at Bingie Bingie in the Eurobodalla Shire and the New South Wales National Parks and Wildlife Service (NWPS) (on

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<sup>35</sup> Submission on draft report Batemans Bay, Mogo and Cobowra LALC 21.11.2008.

behalf of the New South Wales Minister for the Environment) on 16 April 2004. The VCA provides long-term protection for 30 hectares of coastal forest, woodland and Coila Lake frontage. The agreement guarantees permanent protection of important habitat for native flora and fauna as well as significant Aboriginal heritage values. The VCA sets out a Management Plan which covers matters relating to weed control, regeneration issues, feral animals, erosion control, grazing, buffer zones, gates and fencing, flora and fauna management, productive yield, aboriginal heritage, fire management, education, and development. The VCA is legally binding on the Commonwealth and the owners of the land covered by the agreement. If the land is sold, the agreement remains in place. ...”<sup>36</sup>

Several other Councils in the State have entered into VCAs over high conservation lands under their care and control. These Councils include Bega Valley, Shellharbour, Young, Coolamon, Kuringai, Tamworth, Cootamundra, Uralla and Upper Hunter, (DEC 2006). The main obstacle challenging the development of further VCA in the Eurobodalla Shire is funding availability<sup>37</sup>.

#### STATEMENT OF COMMITMENT / ACKNOWLEDGMENT

According to the “*Australian Agreements, Treaties and Negotiated Settlements Register*” project, undertaken in 2007 by The University of Melbourne, a formal ‘Commitment to Indigenous Australians’ was signed for and on behalf of the Eurobodalla Shire Council by the Mayor and for and on behalf of the Aboriginal Community<sup>38</sup>. The Commitment, as summarised by the agreements register states that:

The Council of the Shire of Eurobodalla acknowledges that Indigenous Australians were the first people of this area and survived European settlement for two centuries.

Eurobodalla Shire Council acknowledges and grieves for the loss by the Indigenous people of their land, their children, their health and their lives.

We acknowledge the right of Indigenous Australians to live according to their values and custom, subject to law and we commit ourselves to respect Aboriginal special places.

The Council supports working together with Indigenous Australians to bring about a mutually acceptable instrument of reconciliation which will promote a greater understanding of our peoples, their history and culture.

The Council recognises the valuable contribution of Indigenous Australians to our area and we look forward to a future of mutual respect and harmony.

The document could not be located and has not been sighted by the consultants. It is anticipated that the Eurobodalla Aboriginal Heritage Advisory Committee locate

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<sup>36</sup> <http://www.atns.net.au/agreement.asp?EntityID=703>

<sup>37</sup> Per comm. Tim Shepherd [NPWS Far South Coast Regional Manager ]17.7.2008.

<sup>38</sup> <http://www.atns.net.au:80/agreement.asp?EntityID=1017>

the aforementioned documents and build upon them in the process of drafting a more applicable agreement given the outcomes of this study and the current political climate.

#### 4.7 LAND ACQUISITION

The purchase of culturally sensitive lands is possible through a number of avenues including the commonwealth Indigenous Land Corporation [ILC], the Gulaga National Park Board of Management and through the NSW DECC's cultural land acquisition program. Any land purchased would be owned and managed by the purchasing organization [ie LALC]. ILC funding is available for application all year round and favours lands that will provide sustainable outcomes [economically, socially, culturally] for the Aboriginal community.

The DECC's program aims 'to protect cultural heritage values of landscapes and places through land acquisition and reservation under the *National Parks and Wildlife Act 1974*<sup>39</sup>;

For many years the main way in which areas of Aboriginal cultural significance have been protected within the DECC reserve system has been as a by-product of land acquisition programs focussed mainly on biodiversity conservation. This has meant that significant cultural sites on lands which may otherwise not have high biodiversity values have rarely been given priority for acquisition on the strength of their Aboriginal cultural significance alone. Accordingly, this program seeks to restore a balanced approach to building the reserve system in NSW by specifically targeting the protection of places of Aboriginal cultural heritage significance.

Lands will be identified by the Cultural Heritage Division which will undertake appropriate liaison with local Aboriginal communities. Areas to be given priority will include:

- landscapes with spiritual significance such as those associated with 'creation' stories;
- ceremonial places and rock art sites;
- places that contain significant objects related to traditional uses of the land such as occupation sites, scarred trees, art sites, middens or artefact scatters;
- burial sites;
- places which relate to post-contact history (such as missions and reserves); and
- places significant for their current/ongoing cultural uses such as teaching and discussing lore.

The purchase of lands in the vicinity of Gulaga National Park, by the Gulaga Board of Management, is also an option. The Gulaga National Park lease agreement states that it is 'desirable that further land be reserved or dedicated' to become incorporated into Gulaga National Park [clause 2.4] and thus become managed by

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<sup>39</sup> Programme outline provided by Paul House.

the Gulaga Board of Management [of which Aboriginal Owners maintain a majority of the decision making powers]<sup>40</sup>.

A number of private portions straddle Najanuka [Little Dromedary], one of which is owned by Merrimans LALC. It is recommended that the remaining portions covering Najanuka be prioritised for purchase allowing for a more wholistic management strategy, by the Gulaga Board of Management for instance. Another portion suitable for such an acquisition is the culturally sensitive land defined in the draft LEP as 'Wallaga Lake Cricket Ground', immediately east of Najanuka.

Management of culturally sensitive lands in the vicinity of Gulaga National Park, in particular Najanuka and 'the Cricket Ground' could become incorporation into the lands managed by Gulaga National Park Board of Management, not through actual purchase, but through the development of a special agreement with landholders or through the declaration of an 'Aboriginal Area'.

#### **4.8 POSSIBLE RESOURCE POOLING FOR ASSESSMENT AND CONSULTATION**

Section 3 .5 and Appendix 4 include an outline of the Aboriginal Heritage Office project funded by 8 Sydney Councils. There may be benefit in Council investigating the potential for a modified version of this project on the South Coast including pooling resources with Bega Valley Shire and perhaps Shoalhaven Shire Council.

The goals would be:

- To look at increased resource sharing amongst neighbouring Councils Land Councils and resource management agencies such as DECC, both in terms of human consultation and assessment resources and for a combined data base of Aboriginal Heritage.
- Minimising duplication
- Developing a single, consistent approach for developers and for consultation with the Aboriginal communities
- Improving turn-around times for DAs and consultation on Council works without jeopardising adequate assessment and consultation.

Given the potential of such research to also work in other regions, Federal and / or State funding for a pilot project seems warranted. Pooling resources and combining approaches would allow for the extension of the Gulaga Culturally Sensitive Landscape [DCP] further south into the Bega Valley LGA, encompassing Murrinna Point and the southern side of Wallaga Lake.

#### **4.9 THE NEED FOR BETTER INTEGRATION IN THE MANAGEMENT OF ABORIGINAL HERITAGE**

It is clear that much remains to be done in Australia generally to improve on the administration of Aboriginal Heritage. All levels of Government have some roles and sometimes duplicate administration. There are a variety of Aboriginal organisations and sometimes overlaps between such organisations regarding a role

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<sup>40</sup> Gulaga National Park lease to the Minister for the Environment December 2005.



in Heritage management. Not only is there a disjointed approach to Aboriginal heritage management, all the agencies involved appear under-funded to address the task.

In NSW, there has long been a legitimate desire for a more direct role by, for example, Local Aboriginal Land Councils in Aboriginal Heritage administration. This could be a good way of improving Land Council resources. In NSW (and indeed other States) it is not uncommon in assessing a large development project for a group of people to be involved at much cost and time covering Land Councils, private archaeologists, DECC, Local Government Council, State Department of Planning, other Aboriginals who are not linked to the Land Council.

It is beyond the scope of this project to resolve a better system of Aboriginal Heritage management for NSW but action is required and needs to go beyond NSW to being part of the National focus on Reconciliation and improvement to the lot of Aboriginal people generally. There is scope for better integration of existing processes. Most of the risk to Aboriginal heritage is from poorly assessed Development Applications and public works by all three levels of Government.

Federal and State public works are beyond this project brief but Council in the assessment of DAs and infrastructure works has access to the products of most of the heritage protection measures identified in sections 4.1 to 4.8.

- Council has access to AHIMS, recorded Aboriginal Places and Areas and registered VCAs, be sure where recorded sites may be impacted. It has mechanisms to ensure culturally sensitive material is restricted and respected.
- The LEP can identify physical Aboriginal heritage and importantly invokes the concept of an “inventory of heritage items”
- The DCP, with its more flexible provisions, can address the less tangible physical and place linked heritage such as cultural landscapes
- Protocols and codes of practice can ensure appropriate consultation and consistent approaches to various categories of assessment.
- Enshrining some aspects of these protocols and codes in a MOU or other celebrated agreement between Council and the Aboriginal Community strengthens the whole community and improves non-Aboriginal understanding of culture.
- Council is well placed to assist with general community education and awareness raising of the importance of respect for the rich culture of Aboriginal Australians.
- Council may explore resource pooling with other Councils and other measures to improve assessment within restricted budgets.

The LEP listings and DCP provisions will strengthen current heritage assessment.

The development of a comprehensive Aboriginal Heritage Inventory will coordinate all Council’s relevant information. It should contain the public detail on the Heritage Items, Heritage Conservation areas and Culturally Sensitive Lands as listed in appendices 7 and 8 and additional items as they are added over time. It should include the remaining items from the stage 3 report that do not fit the LEP / DCP process and include a confidential section where culturally sensitive

information (including links to the AHIMS data) is stored for access by approved persons who in turn will guide development to respect these sensitive matters.

The key to coordination of the use of this information and ensuring adequate consultation with the Aboriginal Community is a carefully drafted and consulted public Protocol linked to an internal code of practice to guide staff in the operation of the Protocol and Inventory.

This package of measures has the potential to improve the protection of Aboriginal Heritage, ensure Council and developers comply with statutory requirements and lead to a better appreciation of and respect for Aboriginal culture by the wider community.

## 5. ACKNOWLEDGEMENT and EDUCATION OPTIONS

### 5.1 CUSTODIANS OF THE EUROBODALLA

Custodianship of the land and waterways is a position inherited by Yuin people from their ancestors. Custodial obligations have been refined over thousands of years and originate in the spiritual connections between Aboriginal people and the land, as exemplified by the Dreamtime. To many Aboriginal people, the entire landscape is imbued with a spirituality, which is intertwined with them as custodians of the land for which they have ongoing responsibilities to care for. As previously noted, many places of heritage value are personal and have not been presented to this investigation, particularly those places relating to intangible spirituality.

Yuin custodianship can be understood as a culturally engrained care and concern for the natural world. Yuin custodianship can be valued through regular and meaningful communication between government and the Aboriginal custodians who hold traditional knowledge. A number of enduring, intangible cultural elements in the Eurobodalla, for instance the Aboriginal origins of place names and the links between people and totemic species can be understood and valued within the framework of Aboriginal custodianship.

- Register of Aboriginal Custodians for each of the Heritage Conservation Area; ie establish a list of Aboriginal people with cultural interests in each HCA. Mapping people to country can be a complex task involving genealogical data compilation. However, for the purpose of ESC / DECC consultations, traditional responsibilities and obligations to care for country should be encouraged, through the compilation of an inclusive contact list with consideration given to family and localised affiliations. DECC utilises a register of stakeholders, including Aboriginal people. Expressions of interest could be sought from the Aboriginal community to add to this contact list.
- Call for 'nominations' from a broad range of Aboriginal organizations and family groups for the Eurobodalla Aboriginal Advisory Committee. Advertise meetings in Coastal custodians, Koori Mail, Moruya Voice, Local radio and TV announcements to increase participation at meetings.

### 5.2. ABORIGINAL ORIGINS OF PLACE NAMES

Although not widely acknowledged, many places in the Eurobodalla have traditional Aboriginal origins, for instance Browley [Broulee], Kiyora [Kiora], Gundaree [Gunday] and Terosse [Tuross] refer to the Aboriginal groups who occupied those particular areas, as we know them today. Named places and associated traditions have been handed down by generations of Aboriginal people through oral history and provide a connection with the ancestral past where the names were, according to Aboriginal mythology, the names were established. The focal Creation Beings were *Biaami* and his wife *Birrahgnooloo*, who gave form to waterways, landforms, animals [including totems], humans, power to 'clever people' and the overarching Aboriginal Lore<sup>41</sup>.

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<sup>41</sup> Rose, James, Watson 2003: 21-22.

European development in the region had a devastating impact on the use and transmission of traditional Aboriginal languages. Aboriginal names are frequently contested due to the current knowledge of local languages and approaches to historical contexts<sup>42</sup>. See summary of Aboriginal place name table in Appendix 10.

The Aboriginal community endorse the recognition of the Aboriginal heritage associated with many place names across the shire. It has been suggested that this type of project be done in conjunction with a public cultural interpretive signage project. In partnership with the Australian National University and the education department, there is a revival of the Dhurga language in primary schools [in particular Broulee primary school]. Batemans Bay, Cobowra and Mogo LALC endorse naming a certain percentage of elements within new subdivisions [ie streets, parks and other places] in recognition of elders or the significance of the cultural heritage of the area<sup>43</sup>.

The Department of Environment and Climate Change's dual naming policy emphasised the need for community consultations in regards to establishing appropriate place names. DECC has indicated that they would investigate recommendations regarding dual naming on DECC managed lands. We recommend that a name recognition project off park be undertaken by an Aboriginal organization, in consultation with the broader Aboriginal community, under the advice of linguists [as noted above], in partnership with DECC.

The Geographical Names Board would facilitate / endorse naming projects<sup>44</sup>. A place name project incorporating the skills of professional linguists with an understanding of the local Dhurga language and place names in general could be undertaken<sup>45</sup>.

### **5.3 ARTISTIC EXPRESSION**

Further woodcarvings could be created around the shire with a focus on particular themes. For instance, a woodcarvings placed in relation to sawmills across the shire to highlight the contribution Aboriginal people made to the sawmill industry along the Tuross River. Carvings could be placed in conjunction with interpretive signage.

A wall mural detailing the Eurobodalla Aboriginal Heritage Time Line could be developed. As initiated by local artists the song 'Eurobodalla' highlights Aboriginal cultural links to the land and waterways and features a Dhurga chorus. The song is a very useful resource for acknowledgement and educational purposes. An Oral history book in relation to places that relate to working and camping, some of

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<sup>42</sup> Reconstructing language is a difficult task and should be undertaken collaboratively with Aboriginal community members and specialist linguists [see recommendation #].

<sup>43</sup> Submission on draft report by Batemans Bay, Cobowra and Mogo LALC 21.11.2008.

<sup>44</sup> The placenames application form is at <http://www.gnb.nsw.gov.au/info/>, which the next step after the research phase.

<sup>45</sup> As advised by Dhurga linguist Jutta Bessold, funding for the recognition of Aboriginal place names has been sourced in the past from DAA [http://www.daa.nsw.gov.au/grants/clap\\_guidelines.html](http://www.daa.nsw.gov.au/grants/clap_guidelines.html) and the Aboriginal Unit of the NSW Heritage Office [http://www.heritage.nsw.gov.au/02\\_subnav\\_01.htm#aboriginal](http://www.heritage.nsw.gov.au/02_subnav_01.htm#aboriginal). The Royal Australian Historical Society has two kinds of grants, one of which mentions place names specifically <http://www.rahs.org.au/grants.html>.

which no longer exist. Stage three of the Eurobodalla Heritage Study has collated and categorised data pertaining to work places and work related camp places, which can be used as a basis for adding further details.

#### **5.4 HEALTH AND WELL BEING WALKS**

The link between one's spiritual and mental well-being and the cultural landscape could be further nurtured. This study has identified a number of traditional travelling routes across the shire [see section 6.1 below regarding the need to further research traditional travelling routes across the shire]. It is recommended that walking in family or gendered groups be emphasised as a means to maintain health and well being as relevant to the cultural landscape and kinship connections.

It is recommended that coastal day trips, such as walking between Pooles Point and Wallaga Lake be encouraged to foster communication between older and younger generations and maintain links to the coastal environment. Services such as the Southern General Practise Network, would be good contact points for this type of project.

#### **5.5 EUROBODALLA HERITAGE TIME LINE**

The draft Eurobodalla Aboriginal Heritage Time line [appendix three] has been updated during stage four research. It is recommended for use as a community education tool promoting a broad definition of Aboriginal heritage values across the shire. Fixed and mobile versions could be established for use in schools, public areas, and libraries<sup>46</sup>.

#### **5.6 CULTURAL AWARENESS TRAINING**

This recommendation continues to be identified as a priority by members of the Aboriginal community. It has been suggested that ESC Councillors and indoor and outdoor staff who have not attended cultural awareness training do so. It is further recommended that Cultural Awareness Training, for all new councillors, indoor and outdoor staff be compulsory.

The following recommendations are made specifically for construction staff:

1. A broad understanding of 'Aboriginal cultural heritage' will be promoted in Council's Aboriginal Cultural Heritage Awareness training; archaeological and anthropological elements should be addressed, as well as local Aboriginal history.
2. Council will ensure that Council construction work sites are adequately supervised by staff with appropriate training in Aboriginal Cultural Heritage.
3. Council will encourage all private earth moving and construction companies Contracted to Council in the Shire to provide appropriate Aboriginal Cultural Heritage training to staff.

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<sup>46</sup> The NSW Council for Reconciliation have local history grants on an annual basis [nswrecon.com/projects\_and\_grants], as does the NSW Heritage Office [http://www.heritage.nsw.gov.au/02\\_subnav\\_01\\_2008\\_ind.htm](http://www.heritage.nsw.gov.au/02_subnav_01_2008_ind.htm)

4. Council will encourage all private earth moving and construction companies contracted to Council to participate in the cultural awareness training provided to Council staff [indoor and outdoor].
5. In tenders for significant Council works, Council may give weighting to tenders where the company demonstrates it employs staff who have had appropriate training in cultural heritage awareness.

Included in any future cultural awareness training could be the multifaceted definition of “Aboriginal heritage values” in the shire. This could incorporate a walk along the Bingi to Congo Dreaming track, in Eurobodalla National Park, a walk through the recent Botanical garden Dhurga plant walk and or a field trip to one or more of the Aboriginal Heritage Conservation Areas. The community also call for a road representation of elders shire wide to be involved, i.e. from Wallaga Lake to Durras.

As a way to positively promote project outcomes, members of the Steering Committee should continue to present an update of the project to council meetings.

## 6. FURTHER RESEARCH REQUIRED

### 6.1 TRAVELLING ROUTES

It is widely, informally recognised that Aboriginal people formed and utilised tracks across Australia. We have seen these heritage values formally recognised in the Eurobodalla National Park [Congo to Bingi Dreaming Track] as well as in other parts of NSW [Great North RD]. Other such projects should be encouraged through public lands to foster an understanding and provide access to Aboriginal heritage values. Eg linking the ‘Corn trail’ through to Batemans Bay. Travelling routes or walking tracks used by people can be distinct, yet interrelated with Dreaming tracks. Travelling routes exist along the entire length of the Eurobodalla Shire coastline, extending beyond the Shire boundary to the north and south. Such tracks also extend between the coast and inland creeks and ranges. Travelling routes generally relate to food gathering, recreational activities, the ritual retracing of ancestral dreaming tracks and meeting to maintain kinship connections, to fight, trade, undertake a ceremony or to exchange goods.

The Eurobodalla Aboriginal Heritage Study has identified, through a combination of written documentations and oral accounts, a number of travelling routes throughout the Shire. These include Batemans Bay to Monga; Braidwood to Moruya / Moruya to Braidwood; Braidwood to Mumbulla; Broulee / Moruya to Mumbulla; Clyde Mountain to Buckenbowra [Corn Trail]; Clyde [Bhundoo] River to Moruya River; Gulaga to Mt Kosciuszko, via Tuross River / Wadbilliga River / Belowra Valley; Jembaicumbene to Batemans Bay and Murramarang; Marka Point to Bodalla; Moruya to Bodalla; Moruya to Bendethra; Murramarang to Moruya River via Batemans Bay, Nelligen and Runnyford; Shoalhaven to Gulaga / Mumbulla; Tomago River to Batemans Bay; Ulladulla to Moruya via Buckenbowra and Wallaga Lake to Ulladulla along coast.

Kabaila has researched this aspect of Aboriginal culture, as relevant to the Bega Valley Shire. Some of his research relates to the Eurobodalla Shire<sup>47</sup>. Interestingly, a number of routes are internationally recognised and promoted as public walking routes and generate a substantial amount of tourism. The English government is currently preparing maps detailing accessible, open country and registered common land. This is a statutory process taking place under the Countryside and Rights of Way Act 2000. Moreover, in Europe from the 10th century to the present day, pilgrims have made their way to Santiago de Compostela, Portugal along four traditional routes. These routes are incorporated into tourism ventures as well as daily cultural activities.

Further community consultation is required in order to clarify and build upon information collected during this project. It is anticipated that the proposed Culturally Sensitive Landscapes, in particular Tuross, Clyde and Moruya River be extended to include any additional data relating to travelling routes. Further

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<sup>47</sup> Permission to use / build upon materials collected by Peter Kabaila [PO Box 279 Jamison Centre, ACT 2614] is required. P Kabaila 2005 *“High country Footprints: Aboriginal pathways and movement in the high country of south eastern Australia. Recognising the ancient paths beside modern highways”*. See also McCarthy, Frederick D. (Frederick David), 1905-1997, *Trade in Aboriginal Australia, and trade relationships with Torres Strait, New Guinea and Malaya*.

research into this heritage theme is recommended, with a view to incorporating findings into the Culturally Sensitive Landscape overlay in the DCP. Further involvement with the Tourism Industry in relation to this heritage theme should be investigated.

## **6.2 HISTORIC GOVERNMENT ABORIGINAL RESERVATIONS**

The fourteen portions of land set aside for Aboriginal people to use in the late 1800s to throughout the 1900s are of historical and cultural significance to Aboriginal people today. The land, which was set aside for Aboriginal people's use, has become an important aspect of Aboriginal cultural heritage. Social ties were also forged at these places and remain significant to Aboriginal people today. Lives were lived and stories were told at these places. Reservations provided a link to nearby work places, whilst fringe camps were established on the periphery, as a way to avoid the authorities if need be.

One of the fourteen portions in the shire is under Aboriginal ownership today; the portion set aside in 1891 at Wallaga Lake<sup>48</sup>. Title for the remaining portions were revoked throughout the 1900s and returned to the crown. It is likely that the portions, other than Wallaga Lake, are located amongst present day settlement s across the shire; whilst others may be located in vacant bush lands. Culturally significant [post contact archeological] material, including burial sites has been documented on some of these lands<sup>49</sup>.

In his publication 'Mapping Attachment', Denis Byrne speaks of undertaking archaeological assessments in areas where historical Aboriginal Reservations were located [61: 2004] as a way to identify post contact Aboriginal heritage. Without an assessment of the physical remains on these reserves, even if revoked, it is difficult to draw conclusions as to the present status of these areas and how to best recognise and protect them, if required. The Heritage Act has the capacity to protect post contact places of Aboriginal Heritage Value.

It is recommended that these places be further researched, in particular from a mapping and archaeological perspective, with a view to incorporating findings into the Culturally Sensitive Landscape overlay within the DCP. Community consultations should be incorporated into any future assessment of these areas where determined.

See table of 'Historic government Aboriginal Reservations' in Appendix 11.

## **6.3 TOTEMISM: THE CULTURE OF THE ECOLOGY**

Traditionally, each Aboriginal group was responsible for the well being of several species<sup>50</sup>. The term 'totem' has been used to describe this complex inter-relationship between people and the natural world, the two providing mutual benefits to each other through a spiritual, yet tangible inter-dependency. There are

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<sup>48</sup>Note: 21 acres was revoked in 22.11.1963 and now forms part of the Akolele Township.

<sup>49</sup> See Warner H 'Reconnaissance Report on the Brinja Tribe material culture and prehistory [archaeology] of the lagoon coast [Moruya Head to South Kianga, NSW]'

<sup>50</sup> Rose, James and Watson 2003: 3, 21.



a number of different forms or categories of totems including personal, gender, family or clan, tribal and those relating to the specialised powers of ‘clever people’. Totems can stand for or represent aspects of the natural world as well as providing kinship links between the people or group whom identify with a particular totem.

Rose highlights the ‘ecological relevance’ of totemism, where species are protected through the creation of sanctuary zones in which restraints were applied in order to protect habitat areas. Traditional forms of land management were enforced through ritual codes and provided for long-term sustainable productivity<sup>51</sup>. Baranguba [Montague Island] and Najanuka [Little Dromedary Mt] for instance function as bird sanctuaries<sup>52</sup>.

Although information pertaining to personal, family and tribal totems largely remains restricted, it is possible for environmental scientists and Aboriginal custodians to work collaboratively to identify the primary breeding grounds of the *Gunyung* [Black Swan / *Cygnus atratus*] for instance, the totemic species for the Bringa Yuin tribe whose territory includes the Moruya area. Trunketabella Lake is one of the places where the Black Swan breeds. Currently operational GIS can cater for environmental features, which in turn would assist in the conservation [and acknowledgement] of interrelated totemic species. LEP and DCP processes can cater for environmental types, and should be able to offer protection to totemic species and their habitat, as detailed in table two below.

As described by Brinja – Yuin woman, Trisha Ellis, many local totemic species are birds as a result of past mythological happenings, as described below;

*“Creation of the diving birds’ by Trisha Ellis<sup>53</sup>*

*The story starts with a group of Aboriginal people in the Ngarigo (Monaro) area. Their creator Biaami held Dumbi the owl in high regard and expected all people to protect the owl. Two young and foolish boys of this particular tribe saw an owl in a tree. They threw rocks and sticks at it till it fell out of the tree then they plucked out its feathers and replaced them with twigs. Biaami was so outraged he caused a great flood to wash away these horrible people.*

*On the coast as the water level rose the local Yuin people tried to take refuge on Gulaga Mountain. The waters rose so swiftly that many people were taken and drowned. Others tried to save their kin but were drowned too. Dharramullin (what we call Biaami here) seeing what was happening thought he may have been too harsh on all people and relented some. He turned the brave rescuers into diving birds, cormorants, darters, shags, etc so that they could dive deeper and swim stronger to rescue their kin. Many were saved and remember their kinship to the diving birds.*

A number of totemic species have been identified as existing within the Eurobodalla. The identification and protection of totemic species and their habitat is a means of valuing a very important element of Aboriginal cultural heritage. At

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<sup>51</sup> Rose, James and Watson 2003: 13.

<sup>52</sup> Rose 2003: 47.

<sup>53</sup> Permission to utilise story sought [per comm.Trisha Ellis 28.9.07].

the very least, breeding grounds. The following table provides a summary of birds associated with local Yuin totemism.

COMMON NAME	SCIENTIFIC NAME <sup>54</sup>	DHURGA NAME <sup>55</sup>	LOCATION / RANGE
Pacific Black Duck	<i>Anas superciliosa</i>	Umbarra	Wetlands.
Crow	<i>Corvus coronoides</i>	Waagura	Woodlands and open habitats.
Willy Wagtail	<i>Rhipidura leucophrys.</i>	-	Throughout Australia.
Australian Magpie	<i>Gymnorhina tibicen</i>	Diriwun	Throughout Australia.
Magpie Lark [Pee Wee].	<i>Grallina cyanoleuca</i>	-	Throughout Australia.
Black Swan	<i>Cygnus atratus</i>	Gunying	Wetlands. Less common inland.
White Breasted Sea Eagle	<i>Haliaeetus leucogaster</i>	-	Coastal
Laughing Kookaburra	<i>Dacelo novaeguineae</i>	Gugara	Eastern Australia.
Boobook [Mopoke]	<i>Ninox novaeseelandiae</i>	Googoog	Woodlands.
Bellbird			
Black snake		Murumbul	
Echidna			
Yellow Belly fish			
Goanna			
Grey Thrush		Koori-tu-ku	
Emperor pigeon			
Lyre bird			
Tawny Frog Mouth	<i>Pogargus strigoides</i>	-	Woodlands

**TABLE two: Totemic species in the Eurobodalla**

Further research into this heritage theme is recommended, with a view to incorporating findings into the Culturally Sensitive Lands Overlay of the DCP.

<sup>54</sup> Hardwick, RJ 2001. Slater, Slater and Slater 1995. Cruse, Stewart and Norman 2005. Renwick and the Wreck Bay Community 2000. Costermans 2002.

<sup>55</sup> H Hale 1846 [1968] pp 106 – 116, 479. See also Eades, Diana Kelloway 1976.

## 7 SUMMARY OF RECOMMENDATIONS

### Listing Aboriginal Heritage Conservation Areas in Eurobodalla Shire Local Environmental Plan (LEP).

It is recommended that 12 areas of special significance be defined as Aboriginal Heritage Conservation Areas in the current draft Local Environment Plan. A cultural heritage assessment has been undertaken for each of these areas. Each one has also been mapped [see Appendix 7]. The 12 proposed LEP Heritage Conservation Areas are:

- Najanuka;
- The Cricket ground;
- Smyth's Oval, Narooma;
- Trunketabella Lagoon;
- Whittakers Creek – Brou Lake;
- Malabar Lagoon;
- Pedro Swamp and Point;
- Bengello Creek and Beach, Moruya;
- Barlings corner and island, Tomakin;
- Grandfather's Gully Beach, Lilli Pilli;
- Hanging Rock, Catalina and
- Cullendulla Creek, Surfside.

The consultants strongly recommend further consultation on the draft LEP content before the LEP proceeds to public exhibition. This may necessitate some items being deferred to a later amendment of the LEP.

The consultants strongly recommend both general public education and information on the process for listing all types of heritage (Aboriginal and non-Aboriginal) and direct consultation with affected landowners prior to the public exhibition of the LEP. There should also be adequate information on the listing methodology with the LEP public exhibition material, including reference to this report.

### Forming a Culturally Sensitive Landscape section for the Eurobodalla Shire Development Control Plan [DCP]

It is recommended that a specific chapter on Aboriginal heritage form part of Council's DCP incorporating the concept of Aboriginal Culturally Sensitive Lands (ACSL) to assist Council in adequately protecting items not suitable or warranting LEP Heritage Item or Heritage Conservation Area status. In most instances, a number of Heritage Conservation Areas will be located within any given Culturally Sensitive Landscape. The Department of Planning considers the less tangible spatial and spiritual elements are better addressed in the DCP, which offers greater flexibility.

A special DCP clause and a written and mapped description of five proposed CSL has been produced [see appendices 6 and 8]. Given the general and broad-ranging nature of spiritual heritage values, we suggest the clause not invoke automatic consultation or too elaborate assessment processes but generally be used to improve awareness that such areas have cultural sensitivity and seek for new development and works to respect such values.

At this stage, the five recommended Culturally Sensitive Landscape encompass:

- Gulaga [Mt Dromedary] including Dignams Creek, the shores of Wallaga Lake, Tilba Lake, Pooles Point, and Mystery Bay;
- Wagonga Inlet and coastal swampland;
- Tuross River and Lake including Potato Point, Coila Lake and 'Black Hill';
- Moruya River including Ryans Creek, the mangroves on the north side, north and south heads; and
- Batemans Bay and Clyde River.

Future additions to the Culturally Sensitive Landscape section of the Eurobodalla Shire Development Control Plan [DCP]

Further culturally significant areas and heritage themes are recommended for possible future inclusion as Aboriginal Culturally Sensitive Lands within the ESC DCP, subject to further resources [consultation and field research required]. These areas and or themes are:

- Mummaga Lake, Dalmeny Point;
- Corunna Lake;
- Tomaga River, Bevia Swamp and Barlings Beach;
- Durras / Murramarang area;
- Congo / Congo Creek;
- The fourteen Historical Aboriginal Reservations across the shire;
- Traditional traveling routes and
- Totemic species habitats.

Further develop and utilise an Aboriginal Heritage inventory

The consultants recommend Council further develop an integrated Aboriginal Heritage Inventory detailing places of significance to the Aboriginal community, as identified by the Eurobodalla Aboriginal Heritage Study, including the HCA and CSL areas [see appendix 5B] and links to AHIMS. The inventory should be an electronic database with both public and confidential sections to address cultural requirements and sensitivity.

Council is well placed to coordinate this inventory subject to appropriate cultural sensitivity and training of staff. In fact the Environmental Planning and Assessment Act (EPAA) requires Council to keep an inventory for at least those items in the LEP. As resources allow, the inventory could be shared [eg electronically] with Aboriginal Land Council offices as part of the developing land management systems of Land Councils.

Further develop the Eurobodalla heritage Protocol system between Council and the Local Aboriginal Land Councils.

Having identified and recorded the Aboriginal heritage described above, it is then vital that the use and management of that information and the methods of consulting the Aboriginal community about potential impacts, be documented in clear and agreed protocols and practices.

The consultants recommend three interrelated documents be developed with further consultation with the Aboriginal community to achieve these goals:

- Establishing a **Memorandum of Understanding** (MOU) between Local Aboriginal Land Councils (LALCs) and Eurobodalla Shire Council (ESC) defining guiding principles and understandings. Much of the work has already been done towards this during the 1998 drafting of a Framework Agreement [see section 4.6]. A MOU can address wider matters beyond heritage. The Bega valley Shire has an MOU that might serve as a model.
- Develop a Aboriginal Heritage **Protocol** outlining two main objectives: 1/ define how council are to consult the Aboriginal community and 2/ define the Development Application processes in relation to Aboriginal heritage. This protocol should be a public document, be referred to in the MOU and be endorsed by DECC to ensure that it compliments their legislation. As a component of the consultations required in relation to the proposed Heritage Conservation Areas, a custodian register is recommended. A draft protocol for the Protection of Aboriginal Heritage and Consultation with the Aboriginal Community in the Eurobodalla Shire has been produced during this stage of the project [see appendix 5B].
- Develop an internal ESC **Code of Practice** detailing how ESC staff are to operate / abide by the protocols [like a manual or guidelines for ESC staff with direct reference to the protocol]. We recommend that the current ‘code of practice’ [see appendix 5a] be restructured into an internal working document to ensure it reflects the intent of the Aboriginal Heritage Protocol and considers comments provided by the LALCs [appendix 11].

It is recommended that management options and actions be underpinned by Aboriginal people’s direct input and ongoing participation and the development of an improved consultation process. It is further recommend that a series of regular facilitated workshops be undertaken to further develop and “road test” the Protocol from which ESC can develop their internal code of practice.

#### Comprehensive comparison of archaeological, historical and anthropological information.

Previous stages of the project indicate that there are many instances where the three sources of information on local Aboriginal culture – archaeological sites, oral history and historical records overlap. A more comprehensive comparison of these three layers, to illustrate where there has been continuity of use and /or significance of places would be beneficial.

It may be possible to access funding for a shire wide archaeological predictive modelling study through the NSW Heritage Office or the NSW Department of Planning. The determination and application of any such model should be made in partnership with the Aboriginal community and DECC.

This type of comparative archaeological and anthropological research would allow for a greater understanding of the cultural landscape and provide a clear basis on which to further develop the Cultural Sensitive Landscape layer of the DCP and or define additional LEP Heritage Conservation Areas.

Moreover, with a deeper understanding of the complete landscape [pre and post contact] the preliminary assessment of DAs could be systemised and areas that

have not been subject to past heritage [archaeological] surveys should be highlighted as being unassessed with the potential of containing cultural heritage values.

#### Aboriginal Heritage Information Management System registrations

As detailed in the Aboriginal Heritage Inventory table [appendix 11], 23 places of heritage significance, within the NPW ACT definition of an 'object', are not recorded on the DECC AHIMS. Many of these places were identified during the oral history component of this project [stage two]. It is recommended that these 23 places be located and recorded with AHIMS. Fieldwork will be required in order to GPS the objects.

#### Aboriginal Place nominations

Given further investigation and community consultation, the consultants recommend the following places as requiring Aboriginal Place status;

- Brou Lake and Whittakers Creek;
- Barlings 'corner' and Barlings Island;
- Holmes Lookout and
- Montague Island;

#### Aboriginal Area nominations

Given further investigation and community consultation, the consultants recommend the following places as requiring Aboriginal Area status;

- The Cricket ground, Alolele;
- Najanuka [Little Dromedary], Tilba;
- Hanging Rock, Catalina.

#### Land Access and Use Agreements

As previously recommended a number of places containing heritage values to the Aboriginal community should be assessed in terms of access issues.

Formal land use and access agreements such as a Voluntary Conservation Agreement under the NPW Act and Indigenous Land Use Agreements under the Native Title Act 1992 should be considered. Access to declared Aboriginal Places and the proposed LEP Heritage Conservations Areas and DCP Culturally Sensitive Landscapes should be prioritised and given particular consideration during the planning and conditioning of developments.

#### Land Acquisition

A number of private portions straddle Najanuka [Little Dromedary], one of which is owned by Merrimans LALC. It is recommended that the remaining portions covering Najanuka be prioritised for purchase by Merrimans LALC allowing for a more wholistic management strategy. Other portions suitable for acquisition is the 'Wallaga Lake Cricket Ground', immediately east of Najanuka.

Management of culturally sensitive lands in the vicinity of Gulaga National Park, in particular Najanuka and the 'Wallaga Lake Cricket Ground' could become incorporation into the lands managed by Gulaga National Park Board of Management, through the development of a special agreement with landholders or through the declaration of an 'Aboriginal Area'.

#### Development of the Eurobodalla Aboriginal heritage Timeline

The Eurobodalla Aboriginal Heritage Time line [appendix three] has been updated during stage four of research. The time line reveals a broad spectrum of local heritage values [living /camping places, work places, places associated with early contact with European explorers, birthplaces and meeting places] and would assist in a greater appreciation and acknowledgement of local cultural values. It is recommended that a public display of the Eurobodalla Aboriginal Heritage Time Line be developed for use as a community education tool promoting a broad definition of Aboriginal heritage values across the shire. Fixed and mobile versions could be established for use in schools, public areas, and libraries.

The NSW Council for Reconciliation have local history grants on an annual basis [nswrecon.com/projects\_and\_grants], as does the NSW Heritage Office [http://www.heritage.nsw.gov.au/02\\_subnav\\_01\\_2008\\_ind.htm](http://www.heritage.nsw.gov.au/02_subnav_01_2008_ind.htm).

#### Formally recognising Aboriginal place names across the shire

Formal recognition to the Aboriginal origins of many of the shire's place names is recommended in the form of naming elements in new developments and developing cultural interpretation signage to describe the cultural origins of existing place names eg Tilba Tilba, Narooma, Durras. A listing of Aboriginal place names has been developed throughout the course of this project [see appendix 10].

The Geographical Names Board would facilitate / endorse naming projects. The placenames application form is at <http://www.gnb.nsw.gov.au/info/>. A place name project incorporating the skills of professional linguists with an understanding of the local Dhurga language and place names in general could be undertaken. As advised by Dhurga linguist Jutta Bessold, funding for the recognition of Aboriginal place names has been sourced in the past from DAA

[http://www.daa.nsw.gov.au/grants/clap\\_guidelines.html](http://www.daa.nsw.gov.au/grants/clap_guidelines.html) and the Aboriginal Unit of the NSW Heritage Office

[http://www.heritage.nsw.gov.au/02\\_subnav\\_01.htm#aboriginal](http://www.heritage.nsw.gov.au/02_subnav_01.htm#aboriginal). The Royal Australian Historical Society has two kinds of grants, one of which mentions place names specifically <http://www.rahs.org.au/grants.html>.

The Department of Environment and Climate Change's dual naming policy emphasised the need for community consultations in regards to establishing appropriate place names. DECC has indicated that they would investigate recommendations regarding dual naming on DECC managed lands. It is recommended that a name recognition project off park be undertaken by an Aboriginal organization, in consultation with the broader Aboriginal community, under the advice of linguists [as noted above] and in partnership with DECC.

#### Health and well-being walks

The link between one's spiritual and mental well-being and the cultural landscape could be further nurtured. This study has identified a number of traditional travelling routes across the shire [see section 6.1 below regarding the need to further research traditional travelling routes across the shire]. It is recommended that walking in family or gendered groups be emphasised as a means to maintain health and well being as relevant to the cultural landscape and kinship connections.

It is recommended that coastal day trips, such as walking between Pooles Point and Wallaga Lake [historical route] be encouraged to foster communication between

older and younger generations and maintain links to the coastal environment. Services such as the Southern General Practise Network, would be good contact points for this type of project.

#### Cultural Awareness Training

This recommendation continues to be identified as a priority by members of the Aboriginal community. It has been suggested that ESC Councillors and indoor and outdoor staff who have not attended cultural awareness training do so. It is further recommended that Cultural Awareness Training, for all new councillors, indoor and outdoor staff be compulsory.

The following recommendations are made specifically for construction staff:

- A broad understanding of ‘Aboriginal cultural heritage’ will be promoted in Council’s Aboriginal Cultural Heritage Awareness training; archaeological and anthropological elements should be addressed, as well as local Aboriginal history.
- Council will ensure that Council construction work sites are adequately supervised by staff with appropriate training in Aboriginal Cultural Heritage.
- Council will encourage all private earth moving and construction companies Contracted to Council in the Shire to provide appropriate Aboriginal Cultural Heritage training to staff.
- Council will encourage all private earth moving and construction companies contracted to Council to participate in the cultural awareness training provided to Council staff [indoor and outdoor].
- In tenders for significant Council works, Council may give weighting to tenders where the company demonstrates it employs staff who have had appropriate training in cultural heritage awareness.

Included in any future cultural awareness training could be the multifaceted definition of “Aboriginal heritage values” in the shire. This could incorporate a walk along the Bingi to Congo Dreaming track, in Eurobodalla National Park, a walk through the recent Botanical garden Dhurga plant walk and or a field trip to one or more of the Aboriginal Heritage Conservation Areas. The community also call for a road representation of elders shire wide to be involved, i.e. from Wallaga Lake to Durras.

As a way to positively promote project outcomes, members of the Steering Committee should continue to present an update of the project to council meetings.



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**APPENDIX ONE: CONSULTATION SUMMARY**

EUROBODALLA ABORIGINAL HERITAGE STUDY Stage four: May 2008 to SUMMARY OF COMMUNITY CONSULTATIONS / MEETINGS / SIGNIFICANT DISCUSSIONS		
MEETING / CONSULTATION	DATE	PURPOSE
Telephone discussion. Sue Feary [DEC] and Susan Donaldson	22.04.08	DECC update, reporting procedures.
Inception meeting, Eurobodalla Shire Council, Moruya. Garret Barry and Susan Donaldson. Follow up meeting Deb Purss, Deb Lenson, Shannon Burt, Sue Feary.	9.5.08	Aboriginal research assistant, workshop locations, ESC staff contacts, ESC heritage guidelines and payment schedule.
Liaise Merrimans, Wagonga, Bodalla, Cobowra, Mogo, Batemans Bay LALC and Gadu elders and Susan Donaldson	12.5.08	Meeting notice etc
Telephone discussion. Adell Hyslop [CHD DECC] and Susan Donaldson.	12.5.08	AP process – benefits and obstacles. LEP process – benefits and obstacles.
Email correspondence Sue Feary, Trisha Ellis and Christine Lee [Susan Donaldson].	12.5.08	
Telephone discussion. Trisha Ellis [DECC / LALC] and Susan Donaldson	13.5.08	Meeting notice and project update.
Liaise Gadu Elders and Susan Donaldson	13.5.08	Meeting notice and project update. Billy Davis, Maureen Davis, Louie Davis. Georgina Parsons.
Liaise Peter Donahue [Central Land Council Alice Springs Joint Management coordinator], Austin Sweeny [Lawyer – Agreement Making - Melbourne], Grace Koch [Research Manager – AIATSIS Canberra] and David Martin [Anthropologist - Perth].	15.5.08	Discussion of local, regional, state and national heritage management options [whilst attending a research workshop].
Email correspondence [Susan Donaldson] Anita Brunhuber, Deb Purss.	19.5.08	
Meeting ESC Deb Purss, Shannon Burt, Heidi Webber, Lee Wade	21.5.08	Establish mapping procedures, LEP processes, code of practice issues.
Liaise [Susan Donaldson] Merrimans, Wagonga, Bodalla, Cobowra, Mogo, Batemans Bay LALC and Gadu elders.	22.5.08	Meeting notice
Email correspondence [Susan Donaldson] Carla Rodgers [Planner DECC], Deb Purss, Native Title Tribunal [ILUA], Adell Hyslop, Trisha Ellis.	22.5.08	
Email correspondence [Susan Donaldson] Anita Brunhuber, Neil Watson [DECC], Tony Baxter [DECC], Chris Griffiths [DECC], Deb Purss [ESC].	23.5.08	
Email correspondence [Susan Donaldson] Adell Hyslop, Anita Brunhuber, Heidie Weber, Bruce Macpherson.	26.5.08	

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Email correspondence [Susan Donaldson] Neil Watson, Anita Brunhuber, Deb Purss, Lee Wade, Lynne Thomas, Sue Feary.	27.5.08	
Email correspondence [Susan Donaldson] Harold Koch [place name linguist], Trisha Ellis, Anita Brunhuber, Bruce Machperson, Deb Purss,	28.5.08	
Meeting ESC Anita Brunhuber, Karen Lee, Michelle Mongta, Deb Lenson, Shannon Burt, Deb Purss, Lee Wade.	29.5.08	Mapping, code of practices, LEP.
Liaise Merrimans, Wagonga, Bodalla, Cobowra, Mogo, Batemans Bay LALC and Gadu elders.	30.5.08	Meeting reminder. Instructions regarding recent deaths.
Email correspondence [Susan Donaldson] Lee Wade, Deb Purss, Anita Brunhuber, Christine Lee, Umbarra Cultural Centre.	30.5.08	Meeting reminder and preparation.
Community Workshop Wallaga Lake and Narooma	2.6.08	Present Merrimans: Lynne Thomas, Pam Flanders, Ken Campbell, Albert Solomon, Shirley Foster, Pauline Thomas, Maxine Kelly, Yuin Kelly, Earl Mongta, Eddie Foster, Loraine Naylor, Mal Dibden, Eric Naylor and Noeline Leha [CEO]. Present Wagonga: Ursula Moore, Vanessa Mason [CEO], Gary Daley, Lyn Thomas, Tanya Parsons, Leslie Campbell and Martin Mason.
ESC mapping. Community workshop Moruya	3.6.08	Present: Mary Duroux and Graham White. Trisha Ellis [telephone] and Georgina Parsons [visit].
Liaise Merrimans LALC, Lynne Thomas, Sue Feary, Adell Hyslop.	3.6.08	
Community workshop Mogo and Batemans Bay	4.6.08	Present Mogo: Tom Butler, Madaline Butler, Norman Russell [CEO], June Russell, Jo Becchio, Gloria Carberry, Fances Andy, Dean Butler, Gloria Nye, Mary Anne Nye. Present Batemans Bay: Violet Parsons, Loretta Parsley, Robby Towers, Bob Slockee.
Telephone discussion Paul House [CHD DECC]. Email corospondance [Susan Donaldson] Chris Griffiths, Lynne Thomas, Bodalla LALC, Merrimans LALC, Mogo LALC, Sue Feary.	5.6.08	Fieldwork preparation.
Telephone discussion Preston Cope [DECC],	6.6.08	
Community meeting Bodalla LALC.	7.7.08	Kevin Cruse, Cecil Stewart, David Mongta, Stella, Janelle, Alan Mongta, Gary Mongta. Lionel Mongta.
Field assessment Narooma	8.7.08	Gary, Rochelle, Marree Stewart, Nicole Stewart, Ursula Moore, and Vanessa Mason.

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Field assessment Cricket Ground,	8.7.08	Wallaga Lake Pam Flanders, Shirley Foster, Ken Campbell, Mal Dibden, Marree Stewart.
Telephone discussions Dave Watts [North Sydney Council]	10.7.08	
Progress Meeting with committee and Council staff at ESC office	21.7.08	
Heritage assessments – Mary Duroux	22.7.08	
Heritage assessments – Georgina Parsons	22.7.08	
Heritage Assessment Bengello Creek with Tom Butler	24.7.08	
Telephone discussions Danny Chapman [Cobowra LALC]	28.7.08	
Emails Lee Wade re mapping for LEP	28.7.08	
Telephone discussions Dave Watts [North Sydney Council]	14.8.08	
Complete first draft report and provide to Council and DECC. Several emails and discussions on draft	29.9.08	
Committee meeting and presentation of draft report	23.10.08	
Meeting at ESC with S Burt to discuss staff comment on draft	2.11.08	

## APPENDIX TWO: SUMMARY OF IDENTIFIED SPECIES

COMMON NAME	SCIENTIFIC NAME <sup>56</sup>	DHURGA NAME <sup>57</sup>	HERITAGE VALUE	LOCATION / RANGE
Pacific Black Duck	Anas superciliosa	Umbarra	Totemic species	Wetlands throughout Australia, common in the southeast and southwest.
Crow	Corvus coronoides	Waagura	Totemic species	Woodlands and open habitats in eastern, south and western Australia.
Willy Wagtail	Rhipidura leucophrys.	-	Totemic species	Throughout Australia.
Australian Magpie	Gymnorhina tibicen	Diriwun	Totemic species	Throughout Australia.
Magpie Lark [Pee Wee].	Grallina cyanoleuca	-	Totemic species	Throughout Australia.
Black Swan	Cygnus atratus	Gunzung	Totemic species. Food source: eggs.	Wetlands across Australia. Less common inland.
White Breasted Sea Eagle	Haliaeetus leucogaster	-	Totemic species	Coastal Australia.
Laughing Kookaburra	Dacelo novaeguineae	Gugara	Totemic species	Mainly eastern Australia.
Boobook [Mopoke]	Ninox novaeseelandiae	Googoog	Totemic species	Woodlands across Australia.
Tawny Frog Mouth	Pogargus strigoides	-	Totemic species	Woodlands across Australia.
Glossy Black Cockatoo	Calyptorhynchus lathami	Nyaagaan	Weather Bird	Casuarina woodlands southeastern Australia.

COMMON NAME	SCIENTIFIC NAME	DHURGA NAME	HERITAGE VALUE	LOCATION / RANGE
White-headed Pigeon	Columba leucomela	Guriwal / Jerriwonga	Food source	Coastal forests eastern Australia.
Turquoise Parrot	Neophema pulchella	-	Food source	Grasslands and woodlands southeast Australia.
Short-tailed Shearwater [Muttonbird]	Puffinus tenuirostris	-	Food source: eggs in particular.	Coastal zone.
Eastern Grey Kangaroo	Macropus giganteus	Buru	Food Source	Through eastern Australia and across the southern coast to southwest Western Australia.
Red-necked Wallaby [Eastern Brush]	Macropus rufogriseus	Baraal	Food source.	East coast and inland ranges of Australia.
Brush Tail Possum	Trichosurus vulpecula	Gumara	Food source	Across Australia, in decline in central regions.
Rabbit	Oryctolagus	-	Food source	Across Australia, except for

<sup>56</sup> Hardwick, RJ 2001. Slater, Slater and Slater 1995. Cruse, Stewart and Norman 2005. Renwick and the Wreck Bay Community 2000. Costermans 2002.

<sup>57</sup> H Hale 1846 [1968] pp 106 – 116, 479. See also Eades, Diana Kelloway 1976.

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	cuniculus			the far north.
Short-beaked Echidna	Tachyglossus aculeatus	-	Food source	Across Australia, including in the Wallaga Lake area.
Goanna	Aranus gouldii	Jiriwaa	Food source	Across Australia.
Native Bee	Apidae Trigona	Naga / Yilberi	Food source	Across Australia, including in the bushlands surrounding Wallaga Lake and on Broulee Island.
Sydney Cockles	Anadara trapezia	Bimbulla	Food source.	Coastal zone, including Cullendullah Creek, Ryans Creek and Wallaga Lake.
-	Anadara spp	Conk	Food source.	Coastal zone.
Green Eel	Alabes dorsalis	Gunyu / Bari	Food source	Coastal river systems in southern Queensland, New South Wales, Victoria and Tasmania.
Octopus	Cephalopod	Jungгаа	Food source.	Coastal zone.

COMMON NAME	SCIENTIFIC NAME	DHURGA NAME	HERITAGE VALUE	LOCATION / RANGE
Sea Mullet	Mugil cephalus	Maara Maara / Jeebaraay	Food source	Coastal zone.
Goolwa Cockle [Pipi]	Donax deltoides	-	Food source	Coastal zone.
Oysters	Ostrea angasi	Bidhingga	Food	Coastal zone.
Lobster [Crayfish]	Cherax sp	Yangga	Food source	Coastal zone.
Sea Urchin	Helicoidaris erythrogramma	Sea eggs	Food source	Ocean waters.
Black-lipped Abalone	Haliotis ruber	Mutton Fish	Food source	Ocean waters.
Black periwinkles	Bembicium spp	-	Food source	Ocean waters.
Blackfish	Girella elevata	Waagal	Food source	Ocean waters.
Black Bream	Acanthopagrus butcheri	Bari [Dharawal]	Food source	Ryans Creek area
Flat head	Platycephalus sp	Dhagalang	Food source	Ryans Creek area
Sting Ray	Myliobatis australis	-	Food source	Ocean waters.
Ocean Leather Jacket	Nelusetta ayraudi	-	Food source	Ryans Creek area
Mud crabs	Scylla serrata	-	Food source	Ryans Creek area
Mangrove crabs	Decapoda: Brachyura	-	Food source	Ryans Creek area
King fish	Seriola sp.	Gumbiringgal	Food source	Ocean waters.
Snapper	Pagrus auratus	Walimaa	Food source	Ocean waters.
Blue Mussel	Mytilus edulis	-	Food source	Tidal zone.
Cunjevoi [sea squirt]	Pyura stolonifera	-	Food source	Ocean rock platforms, coastal zone.
Pinkwood [Plumwood]	Eucryphia moorei	-	Medicinal, Canoe	Deua National Park
Bloodwood	Corymbia	Gulgul	Food and	Coastal forest zone.

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	gummifera		medicinal uses.	
Green Wattle	Acacia Mearnsii	Gum Tree	Food – gum, Dye - bark	Across Australia, Ryans Creek.
Yam: Fringe Lilly	Thysaotus spp.	Yam	Food source.	South coast region, including Potato Point and Ryans Creek.
Yam: 'Rain Flower':	-	-	Used to make rain.	RESTRICTED

COMMON NAME	SCIENTIFIC NAME	DHURGA NAME	HERITAGE VALUE	LOCATION / RANGE
Grass tree	Xanthorrhoea resinosa	Mingo	Spear from stem. Resin from base used as glue.	Across Australia.
Devils twine [Dodder]	Cassytha spp	Snotgollin	Food source: fruit.	Parasitic vine across the south east coast, including Ryans Creek.
Appleberry	Billardiera scandens	Wondarma	Food source, especially the seed.	Coastal zone including Ryans Creek and the Batemans Bay area.
Native Sarsaparilla	Smilax glycyphylla	-	Food and medicinal use.	Grows on shrubs and trees in open forests, including along the Deua River.
Prickly Pear	Opuntia stricta	-	Food source	Australia wide. Introduced.
Ink weed	Phytolacca octandra	-	Leaves and sap for medicinal use.	Australia wide.
Rib grass	Plantago spp	-	Medicinal use.	Australia wide, including the Ryans Creek area.
Native Raspberry	Rubus rosifolius	-	Food source.	Sheltered areas throughout southeast coastal forests, including bush lands near Ryans Creek.
Native Cherry	Exocarpos cupressiformis	-	Food source	Grassy woodlands, southeastern Australia.
Japanese Honey Suckle	Lonicera japonica.	-	Food source	Australia wide. Introduced.
Pigface	Carpobrotus glaucescens	-	Food source.	Coastal zone eastern NSW.
Water	H <sub>2</sub> O	Nadu	Healing	Gulaga, bendethra



**APPENDIX three: EUROBODALLA ABORIGINAL HERITAGE  
TIME LINE**

## APPENDIX FOUR: SUMMARY OF ALTERNATIVE APPROACHES TO DEVELOPMENT CONSULTATION

### BYRON BAY SHIRE: Public consultations for Aboriginal heritage and the LEP Byron Shire

- Byron has no specific aboriginal consultation process outlined on their LEP web site.
- Aboriginal Consultation Meeting on LEP - 7 November 2007. Letters sent to Aboriginal groups providing information on the importance of the Shire Wide LEP and seeking their input on places of cultural significance.
- Byron do try to Operate a general Aboriginal consultation program (It would seem to currently be unsuccessful. Only 1 of 3 planned meetings have been successful.

### WYONG AND GOSFORD COUNCILS: Protection of Aboriginal Heritage

It is anticipated that the next step to the Heritage LEP will be the inclusion of land affected by Aboriginal Heritage Significance. Currently the known aboriginal sites in the Gosford LGA are on the individual 149 certificates for each property. It is anticipated that Gosford Council will undertake local area mapping, both hard copy and on the GIB, and develop a list of each of these sites so that this information is readily accessible to Council staff. The Premier's Department has initiated a consultation process between National Parks Service, Department of Infrastructure, Planning and Natural Resources, NSW State Forests, Wyong Shire Council, Gosford City Council and Darkinjung Aboriginal Land Council entitled "Creating a Protocol that Facilitates Responsible Development Incorporating Aboriginal Sites". The protocol will also incorporate a secondary protocol that will be used by Wyong Shire and Gosford City Councils. This protocol outlines the notification and referral of development, as classified under Part 3,4 or 5 of the *Environmental Planning & Assessment Act 1979*, that is proposed on or near land that is affected by Aboriginal Heritage Significance, to the Local Aboriginal Land Council - Darkinjung. To facilitate the referral process, Gosford City Council has applied to National Parks and Wildlife for a licence to receive access to the Aboriginal Heritage Management Information System (AHIMS), formerly known as the NPWS Aboriginal Site Register. It is anticipated that this protocol will be adopted by the end of 2003.

### CITY OF CANADA BAY: Aboriginal Cultural Heritage Study and Management Plan – City of Canada Bay DRAFT 2/06

#### 9.6.3 Planning Controls for Site Protection

Aboriginal site protection is not, at present, addressed in The City of Canada Bay's Local Environmental Plan (LEP), various Development Control Plans (DCP), or Heritage and Conservation Controls. Council will amend the LEP to include provisions for Aboriginal heritage site protection, including both tangible and intangible sites. Areas of Aboriginal heritage site potential will be addressed at the LEP level or in individual DCPs as appropriate and practical. Council may also consider preparing a Development Control Plan specifically for the protection of

**Aboriginal heritage** sites and values through out the Canada Bay area. Such a DCP would include identification, if appropriate, of known Aboriginal sites and areas of Aboriginal heritage site potential; measures to control works or activities likely to impact known or potential Aboriginal heritage sites; requirements and protocols for Aboriginal heritage site assessment; issues for consideration in the assessment of known or potential Aboriginal heritage sites, the identification and evaluation of likely development impacts, Development or Building Application assessment standards, and a comparison of alternative site management and impact amelioration measures; conservation incentives and support for private landholders whose property includes known or potential Aboriginal heritage site.

#### Yarra Ranges (VIC)

Council has also established an **Aboriginal Consultation** Committee comprising Councillors, Council officers and members of the Indigenous community.

#### Goulburn Mulwaree LEP 2007

Extract from Information sheet; Clause 35. Heritage Conservation:

This clause aims to conserve Council's environmental heritage by conserving heritage items, heritage conservation areas, archaeological sites and places of Aboriginal heritage significance.

It provides protection to nominated Heritage Items in schedule 5, heritage conservation areas depicted in Heritage Maps, sheets 1-4, archaeological sites and places of Aboriginal heritage significance by requiring consent for nominated works affecting those sites. Sub clauses (2) and (3) nominates when development consent (i.e. submission of a development application) is required and when it is not required.

In certain circumstances (i.e. demolition of items of State Heritage Significance identified in schedule 5 and the carrying out of development on archaeological sites) the Heritage Council of NSW has to be notified. Heritage Impact Statements and Heritage Conservation Management Plans may also be required, in certain circumstances to accompany development applications. Goulburn Mulwaree Development Control Plan 2008 explains those circumstances.

This clause also provides for conservation incentives under subclause (9).

Places of Aboriginal heritage significance must also be taken into consideration before granting consent to development applications and the Local Aboriginal Communities notified and their responses also taken into consideration.

Council has available for inspection a map depicting the general potential location on known aboriginal items. This map may also be referenced via Goulburn Mulwaree Development Control Plan 2008.

#### Armidale Dumaresq LEP

Clause 16, Part 2 General restrictions on the development of land

Before granting consent under paragraph (c), the consent authority must be satisfied that:

- (vi) Aboriginal heritage values associated with the land are not adversely affected by the proposed development, and
- (3) When consent is not required
- (b) the development is in a cemetery or burial ground and the proposed development:
  - (ii) would not cause disturbance to human remains, relics, Aboriginal objects in the form of grave goods, or

ARMIDALE DUMARESQ COUNCIL DCP 2007 CHAPTER D4 – RURAL AND RURAL RESIDENTIAL ZONES CODE

PART 2 - DEVELOPMENT CONTROLS – ALL DEVELOPMENT (cont)

2.1 Site Analysis Plan

The Site Analysis Plan should identify the location of areas or places of Aboriginal or European heritage significance on the site or in the vicinity. Council's LEP identifies heritage items, although the LEP listings are not complete, particularly in relation to places of Aboriginal heritage significance and a survey by a suitably qualified person may be required to determine whether heritage values are present. See also Chapter C5 – Development involving Places of Heritage Significance.

Municipal Association of Victoria "Wurreker: Local Government – Indigenous Partnerships Resource Guide"

Introduction

Effective Council rapport and consultation with the local Indigenous community are essential and to facilitate the building of better relationships between Local Councils and their Indigenous communities, in joint planning of strategies, programs, initiatives, projects and activities.

Based on experience to date, Councils are advised to progress through the following eight steps which involve the establishment and regular monitoring of a formal consultation mechanism.

Council Consultation Checklist:

*Step One - Involvement from the Beginning*

Involve Indigenous individuals, organisations and communities right from the beginning as this will help empower Indigenous people enabling them to take on the responsibility for self-determination when planning for future strategies and initiatives.

*Step Two - Inclusiveness*

Identify the key Indigenous contacts within your community and invite them all to participate in an informal meeting with Council representatives to get to know each other.

*Note:* Do not assume that one Indigenous organisation represents the community. Make sure you talk to all Indigenous organisations and relevant individuals in your Council area.

*Step Three - Seek Skilled Aboriginal Facilitation*

(a) Invite the Local Council Aboriginal Policy Officer to facilitate the meeting with all Indigenous community members, relevant local Council staff and service providers.

(b) Where a local Council Aboriginal Policy Officer has not been appointed contact the MAV Aboriginal Policy Officer who will provide advice on the facilitation of the meetings.

*Step Four - Formalise Consultation Mechanism*

As there will be a range of issues and concerns the meeting should discuss the establishment of the local Council Aboriginal Advisory/Consultative Committee so that all matters can be addressed in a considered and timely way. (refer next section on Advisory Committees and Working Parties)

*Step Five - Agree on Membership and Terms of Reference*

The Terms of Reference for the Aboriginal Advisory Committee should include the following:

- Equal representation of Indigenous and non-Indigenous people
- Aims and objectives
- Number of task groups and sub-committees
- Life time of the Committee
- Schedule of meetings no less than six weeks apart
- Rotating chairperson - Indigenous and non- Indigenous
- Rotating venues between Indigenous organisations and the Local Council
- Joint responsibility for committee administration
- Resolving Conflict

*Step Six - Cross Cultural Awareness Training*

Once the establishment of the Local Council Aboriginal Advisory/Consultative Committee has been agreed, all non- Indigenous representatives must participate in Aboriginal Cross Cultural Awareness Training. (refer section on Cross Cultural Awareness Training)

*Step Seven - Members Commitment and Alternative Representatives*

If any representative is unable to meet the responsibility of attending Committee meetings or participating in the implementation of developed strategies, then consideration by the Committee should be given to an alternative person attending.

*Step Eight - Monitoring and Reporting*

Regular monitoring of the Committee's progress and recommendations is important to ensure outcomes are achieved and results celebrated.

The monitoring of individual local Committees should be reported to Council, Indigenous organisations and the MAV Aboriginal Policy Officer for preparation of a Statewide report and input to the National evaluation of the Local Government Aboriginal and Torres Strait Islander program. The mechanism for this will be developed by the MAV Local Government Indigenous Network, established in April, 1998.

TOOMNUNGI- INDIGENOUS COMMUNITY & LOCAL GOVERNMENT

Prepared by the Indigenous Interagency Coordinating Committee for Local Government (Victoria). 5.5 Protocols: Developing protocols between council and local Indigenous communities can be a way of setting out agreed ways to deal with sensitive issues. In so doing, both councils and Indigenous communities learn more about each other. In turn this can lead to improved relationships and greater efficiencies in dealings on sensitive matters. One area particularly suited to the development of protocols is Aboriginal cultural heritage.

City of Greater Geelong – an Aboriginal Cultural Heritage Management and Protection Development Planning Protocol

An Aboriginal Development Protocol was signed by the City of Greater Geelong and the Wathaurong Aboriginal community at a full meeting of council held at the Wathaurong Aboriginal Cooperative head office on 12 July 2000. This agreement was produced in conjunction with Aboriginal Affairs Victoria. While this agreement is not unique, it is pioneering in its specific purpose in this part of Australia.

The process for the preparation of the Aboriginal Development Protocol by the City of Greater Geelong and the Wathaurong Aboriginal Cooperative began in 1995. This was largely in response to concerns raised by Wathaurong in respect to developments impinging on their sensitive cultural heritage sites, such as those in Lara, Barwon Heads Caravan Park and Wandana Heights.

The protocol provides the basis for the management, protection and enhancement of culturally significant Aboriginal sites. The effectiveness of the protocol, which has a three- year sunset clause, will be reviewed and modified as required.

In entering into the protocol, the City of Greater Geelong has accepted a moral obligation and recognised a duty of care to assist in protecting sites of Aboriginal cultural heritage. The protocol has also alerted property owners and developers to their responsibilities under existing State and Commonwealth legislation.

Through its own project management and the development approvals process, the council is in a position to lead by example, facilitate an understanding of the legislative obligations to the development industry and, if considered appropriate, require certain actions to be satisfied in accordance with the protocol.

The protocol is not a document about native title or reconciliation, although the genuine co-operation that has gone into its development is a sign of how both communities can work together to achieve a common benefit.

Above all else, the protocol is a response to legislative requirements at both Commonwealth and State levels to protect sites and artefacts of Aboriginal cultural heritage significance.

*Trigger points*

The Protocol sets out a number of obligations on both council and the Wathaurong. It uses the Planning and Environment Act 1987 as the trigger to assess the extent to which further consultation with the Wathaurong is needed or if an archaeological survey is required. Other aspects of the protocol include:

- providing an outline for the consideration of development applications, such as time frames for response by council
- recognition that Aboriginal cultural heritage sites should be given greater recognition than they have in the past, or at least equal weighting to post-contact cultural heritage sites
- reference to existing State and Commonwealth legislation that set out requirements to protect Aboriginal sites
- understanding what Aboriginal cultural heritage sites are, such as burial sites, artefacts, shell middens and scarred trees
- recognition that Aboriginal cultural sites are a non-renewable resource.

The Protocol has proven to be an effective tool in raising the profile of the identification and management of Aboriginal sites. After the initial developing, where developers and land surveyors were required to become familiar with the protocol, there has been little concern expressed by any party.

The pamphlet, Aboriginal sites on private property, prepared by AAV, provides a useful summary of cultural heritage issues.

For further information contact City of Greater Geelong, telephone 5227 0270.

Aboriginal Heritage Office project (AHOP)<sup>58</sup>

This project is an initiative of 8 Sydney Councils in the region from North Sydney to Ku-ring-gai. The objectives of the project are to protect Aboriginal heritage in the 8 local government areas, improve public understanding and education and to be a vehicle for discussion / mediation / negotiation between Aboriginal and non Aboriginal people to help solve heritage and related land use issues.

The AHOP has been in operation about 9 years and is funded by the 8 Councils. Its work links with Land Council and DECC and helps ensure assessment of Aboriginal heritage is given adequate consideration in the development assessment process and that input is timely to ensure Councils do not incur long delays in DA processing. Background on the project is available on their web site [www.aboriginalheritage.org](http://www.aboriginalheritage.org) David Watts is the Aboriginal Heritage Manager for the project and has provided the following detail:

**Funding:** Each Council evidently contributes equally to the operation of the Office and each has equal time and resourcing. The office makes applications for funding for special projects through State and Federal agencies such as NSW Heritage . Staff of the Office have the ability to respond quickly to help on urgent DAs and such like.

**Site data:** The office holds its own data and has Map info GIS. All recorded AHIMS sites are on the database and the Office have been able to file truth the information and positioning. David Watts advised, (as experienced in Eurobodalla) that the DECC AHIMS data has many errors and has needed careful checking before being entered in their data base.

**Liaison with Aboriginal Organisations:** The Aboriginal Heritage Manager advised that his Office works closely with all Aboriginal groups in the area and assist with site assessments when Land Councils can not meet the DA deadlines etc. The Office holds regular meetings with the Aboriginal Community and has an open door policy for community inquiry and help. The office provides site assessment training- not only for its region but further a field on request. The Aboriginal Heritage Manager has experienced the same issues that have been known to limit the effectiveness of consultation and assessment at Councils like Euroboballa and Bega Valley including:

- differing views expressed from different Aboriginal groups and organisations
- under-resourced Land Councils struggling to meet Council response deadlines
- difficulty in ensuring all relevant Aboriginal people are consulted regarding any particular DA.

He feels his Office's approach has some answers to these problems. The Office acts as a resource to ensure there is a timely response to all DAs through completing a site assessment when Land Councils are unable to get to a site. This helps the 8

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<sup>58</sup> Per comm. Garret Barry and Dave Watts 14.8.08.

local government councils keep DA processing times reasonable. His office has built up the repour and knowledge to improve consultation and contact across the whole Aboriginal community of their region and importantly has the trust of the community. Their educational role seems to also be working in ensuring a better understanding of Aboriginal heritage in the non Aboriginal community and developers in particular. Where there are divisions of view in the Aboriginal communities over a DA or other land use issues, David advises his office “sticks to the science ” of the DA in hand and as such avoids some of the internal politics of groups.

There could be scope for Eurobodalla to consider a program similar to the Sydney example:

- There could be benefits in pooling assessment and Shire council consultation resources across several Shires. The different challenge to Sydney could be the much greater distance and travel costs. The nature of the country in the south east also means potential for a far higher number of sites, items and surviving post contact cultural heritage than might be found in a heavily developed urban environment.
- The resources of south east council’s are more limited that most Sydney councils but perhaps this only adds weight to ideas on pooling resources. Currently in Eurobodalla there is a Council Aboriginal heritage officer and a range of assessment staff in the 6 Land Councils. The situation in Bega Valley Shire is somewhat similar.
- A shire wide or several shires wide GIS database on not just AHIMS but wider cultural heritage seems essential . Eurobodalla has the makings of such a data base and this report makes further recommendations for inventory development . But the 6 land councils are all poorly resourced and a common shared data base would seem to be the answer. Recent development is in broadband, GIS and security access systems allow consideration of a computerised database shared between several organisations.
- With better pooling of resources ( including pooling with DECC) gradual data base improvements might also be tackled. For example, like the Sydney project, much AHIMS data in the south east contains inaccuracies and needs to be reassessed as resources allow. There are also other long term tasks like predictive modelling of Archaeological sensitivity that could be accelerated through better pooling.



## APPENDIX FIVE A: CURRENT CODE OF PRACTICE FOR THE PROTECTION OF ABORIGINAL HERITAGE IN EUROBODALLA SHIRE

### CODE OF PRACTICE

Code Title: SUBDIVISION AND INFRASTRUCTURE ASSESSMENT  
ABORIGINAL HERITAGE

Reason for Code: (Background; Problems to be addressed; Legislative requirements;  
Provide details of any related policy)

Introduction: (Assists the reader understand the terms and gist of the code)

Code of Practice  
details:

The following Codes of Practice be endorsed in addressing Koori issues in assessment of development or subdivision applications, and the design and maintenance of infrastructure; and weed control,

#### Code of Practice 1

##### New Release Subdivisions

- (a) Consult Council's Aboriginal Sites/NPWS Database to Determine whether proposed development is within an identified or known Aboriginal site;
- (b) If there may be an Aboriginal Site or Relic (identified on site register or NPWS predictive model) in proximity to an area identified on Aboriginal Sites Database, Council will consult with relevant Local Aboriginal Land Council (LALC) and Elder Group (EG) through Council's Aboriginal Liaison Officer (ALO) through the notification of development applications and subdivision applications. Submissions or comments from those groups are required before the close of the notification period, indicating whether a site assessment and/or an archaeological assessment is required;
- (c) If the proposed subdivision is in an area identified on the database, or a request for a site assessment has been received, then the relevant LALC/EG will be invited, at the developers' expense, to conduct a site assessment over the proposed subdivision area. NPWS and the LALC/EG will then determine if a Cultural Heritage assessment is necessary (as some sites may have already been subject to archaeological assessment). That request should be received through Council to NPWS within 14 days.

For all Development Applications, Council only considers submissions received during the notification period, unless forewarned of a submission to arrive after the closing date.

- (d) All assessments shall be referred to National Parks and Wildlife Service (NPWS) Southern Area Heritage Unit for endorsement. Such endorsements, unless integrated applications, should be received in 14 days. Such endorsements shall be deemed to have been granted if notice to the contrary is not received within 14 days.
- (e) Preferably, an archaeological site assessment of the subdivision identifying allotments within the subdivision that contain and Aboriginal archaeological or heritage site should be provided by the applicant prior to formal assessment of the application. A qualified archaeologist and representatives of the relevant Aboriginal community should undertake

the archaeological assessment. That assessment should be forwarded to NPWS SAHU for review and comment

Lot design/layout may be reconfigured to accommodate or excise those parts of lots subject to identified artefacts or envelopes be nominated to protect those areas.

- (f) New release subdivisions will be approved as a deferred commencement requiring, before the issue of the Construction Certificate, provision of valid NPWS approvals.
- (g) Where appropriate, subdivision consents will be conditioned to require the developer to consult with relevant LALC/ EG after provision of relevant NPWS research/monitoring permit for site monitoring during construction of the subdivision. Should any artefact be uncovered, work will cease on that specific site and relevant consents to be sought from NPWS, and renewed across the life of the subdivision approval;
- (h) Only those allotments where sites or artefacts have been found will require a further site specific assessment when Development Applications are lodged for construction of structures on that particular allotment. Should any artefact be uncovered, work will cease and relevant consents to be sought from NPWS;
- (i) Where building envelopes are nominated on the subdivision plan and no sites or artefacts exist on or adjacent to that envelope, a further site assessment upon lodgment of a DA will not be required.
- (j) When archaeological assessments are required, the relevant LALC Site Assessment Officer is to conduct the assessment in conjunction with the NPWS or other nominated archaeologist;
- (k) A copy of site assessments to be provided to Council's ALO to update database.
- (l) Council will not make information regarding the identified sites available to external parties – enquiries will be referred to NPWS. Written consent of relevant LALC will be required from those external parties.
- (m) Should an archaeological survey be completed and endorsed by LALC/EG/NPWS, lots will be recorded to not require further notification for development applications proposing ground disturbance (for structures, etc).

## Code of Practice 2

### Development Assessment

- (a) Consult Council's Aboriginal Sites/NPWS Database to determine whether proposed development is within an identified or known Aboriginal site;
- (b) If there may be an Aboriginal Site or Relic (identified on site register or NPWS predictive model) in proximity to an area identified on Aboriginal Sites Database, Council will consult with relevant Local Aboriginal Land Council (LALC) and Elder Group (EG) through Council's Aboriginal Liaison Officer (ALO) through the notification of development applications and subdivision applications. Submissions or comments from those groups are required before the close of the notification period, indicating whether a site assessment and/or an archaeological assessment is required;  

For all DA's, Council only considers submissions received during the notification period, unless forewarned of a submission to arrive after the closing date.
- (c) All assessments shall be referred to National Parks and Wildlife Service (NPWS), Southern Area Heritage Unit for endorsement. Such endorsements, unless integrated applications, should be received in 14 days. Such endorsements shall be deemed to have been granted if notice to the contrary is not received within 14 days.
- (d) Development consents will be conditioned so that should any artefact be uncovered, work will cease and relevant consents be sought from NPWS.

- (e) Should an archaeological survey be completed and endorsed by LALC/EG/NPWS, lots will be recorded to not require further notification for development applications proposing ground disturbance (for structures, etc).

Code of Practice 3

Extractive Industries and Related Developments

- (a) Applications for extractive industries and related developments will be referred to comment to NPWS and LALC/Elders Groups. Responses must be received within notification period.
- (b) Sites identified through NPWS or LALC/EG assessments will be conditioned to require relevant consents from NPWS.
- (c) All assessments shall be referred to National Parks and Wildlife Service (NPWS), Southern Area Heritage Unit for endorsement. Such endorsements, unless integrated applications, should be received in 14 days. Such endorsements shall be deemed to have been granted if notice to the contrary is not received within 14 days.
- (d) Development consents will be conditioned so that should any artefact be uncovered, work will cease and relevant consents be sought from NPWS.

Code of Practice 4

Developments in Congo/Bingie and Barlings Beach Areas

- (a) Upon enquiry of a proposed Development Application in the Congo/Bingie defined area, applicants will be encouraged to participate in the Application Enquiry Panel to identify/clarify any potential issues. A separate Development Application information package, including a copy of this Code, will be issued.
- (b) Upon receive of Development Applications in Congo/Bingie using the perimeter established on Council's GIS, customer staff will arrange notification. Council will consult with relevant Local Aboriginal Land Council (LALC) and Elder Groups (EG) through Council's Aboriginal Liaison Officer (ALO) during the notification of development applications and subdivision applications. Submissions or comments from those groups are required before the close of the notification period, indicating whether a site assessment and/or an archaeological assessment is required;
- (c) If so requested, the relevant LALC/EG will be invited, at the developers' expense, to conduct a site assessment over the proposed development site. NPWS SAHU and the LALC/EG to determine if a Cultural Heritage (archaeological) assessment is necessary (as some sites may have already been subject to archaeological assessment);
- (d) When archaeological assessments are required, LALC Site Assessment Officer is to conduct the assessment in conjunction with the NPWS SAHU or other nominated archaeologist. The property owner may chooses an archaeologist generally from the relevant Society or telephone directory.
- (e) Only those allotments where sites or artefacts have been found on or adjacent to, or it is predicted that they will occur, will require a further site specific assessment when Development Applications are lodged for construction of structures on that particular allotment.
- (f) All assessments shall be referred to National Parks and Wildlife Service (NPWS) Southern Area Heritage Unit for endorsement. Such endorsements, unless integrated applications, should be received in 14 days. Such endorsements shall be deemed to have been granted if notice to the contrary is not received within 14 days
- (g) Development consents will be conditioned so that should any artefact be uncovered, work will cease and relevant consents be sought from NPWS.

## *EUROBODALLA ABORIGINAL CULTURAL HERITAGE STUDY STAGE FOUR*

- (h) Should an archaeological survey be completed on a property and endorsed by NPWS, it will be ‘tagged’ as not requiring LALC notification or a heritage assessment for future developments on that property.

### Code of Practice 5

#### Construction - Roads, Water, Sewerage and Drainage Works involving ground disturbance

- (a) Proposed works (construction and maintenance) as outlined in Council’s Five-Year Management Plan for the upcoming two year period are to be distributed to LALC, EG and the NPWS (Cultural Heritage Unit) for comment within 30 days; subsequent dealings should be concluded in 14 days. The location of Works are to be marked on topography maps
- (b) Consult Council’s /NPWS Aboriginal Sites Database to ensure proposed works are not within an identified or “known” Aboriginal Site or Relic;
- (c) If no “known” Aboriginal Sites or Relics are within the proposed works area, Council should proceed with detailed design of the works;
- (d) If an Aboriginal Site or Relic is identified from the Council/NPWS Aboriginal Sites database, Council will consult with NPWS and the LALC/EG to determine if a Cultural Heritage assessment is necessary (as some sites may have already been subject to archaeological assessment). If requested by NPWS, a site research/monitoring permit from NPWS should be sought.
- (e) Any work undertaken should be in accord with the relevant NPWS consent.
- (f) Reviews of Environmental Factors (REF) should accommodate issues identified in site assessments, prior to design of proposed works;
- (g) Council will not make information regarding the identified sites available to external parties – enquiries will be referred to NPWS.
- (h) Archaeological assessment will generally not be required for Council’s infrastructure works. The advance site assessments conducted by the LALC will indicate whether further investigation is required (the cost of which are usually included in the design for the works).
- (i) Technologies such as ground penetrating radar may be used to mitigate the archaeological assessment process.

### Code of Practice 6

#### Maintenance Works - Involving Ground Disturbance - Congo/Bingie Area

- (a) Copy of programmed works maintenance (for re-sheeting, table drain scouring, trench clearing, road or reserve slashing) to be forwarded to Cobowra LALC/EG and NPWS SAHU.
- (b) LALC/EG to advise within 14 days of requirements for site supervision or nominate sites for site assessment by LALC/EG prior to conduct of those maintenance works. A site research/monitoring permit from NPWS should be sought if sites are nominated.
- (c) Approval to undertake those works on a continuing basis should be sought.
- (d) Should sites or artefacts be identified, works should cease immediately on that specific site and relevant advice or consents from NPWS should be sought.

### Code of Practice 7

#### Weed Control Activities - Involving Ground Disturbance - Congo/Bingie Area

*EUROBODALLA ABORIGINAL CULTURAL HERITAGE STUDY STAGE FOUR*

- (a) Copy of programmed annual weed control activities to be forwarded to Cobowra LALC/EG, and NPWS SAHU.
- (b) LALC/EG to advise within 14 days of requirements for site supervision or nominate sites for site assessment by LALC/EG prior to conduct of those weed control activities. If sites nominated, a site monitoring/research permit from NPWS should be sought.
- (c) Approval to undertake those works on a continuing basis should be sought.
- (d) Should sites or artefacts be identified, works should cease immediately and relevant advice or consents from NPWS should be sought.

Code of Practice 8

Emergency Works

Council activities to attend to bushfire, flood, inundation and similar natural disasters can be undertaken without referral to LALC/EG. As a courtesy the Groups will be advised of the conduct of those emergency works after the event, where significant ground disturbance occurs.

Code of Practice 9

149 Certificates

S149 Certificates will be annexed including the following information:

“The National Parks and Wildlife Act 1974 provides protection to Aboriginal Heritage on all land within NSW. Certain land within Eurobodalla Shire may contain relics which may have significance to the Aboriginal Community. It may be advisable for potential purchasers of land to undertake appropriate searches to determine whether or not Aboriginal heritage may effect the land.”

The National Parks and Wildlife Service can provide a search of their Aboriginal Sites Register. Any enquiries regarding this should be directed to the National Parks and Wildlife Service SAHU.

*OFFICE USE ONLY - NOT FOR PUBLICATION ON WEBSITE*

Corporate Goal  
(Customer/Employment/Environment/Asset/Development/Governance/Competitive)

Code Co-ordinator: Ron Nye  
Measurement: (Explains how the effectiveness of the code will be measured)  
Consultation: (List staff/public/other agencies with whom consultation has occurred and when)  
Approved by Council: 377 24/10/00  
References: (Identify code(s) that this replaces; identify related code or policies – hyperlink to whole document)  
Significance of code of practice: (Very high – needs review annually – include review date)  
(High – needs review every two years – include review date)  
(Mod – needs review every three years – include review date)  
(Low – must review every four years – include review date)

*Implementation process*

and coordinator: (Details of how the code is to be effectively implemented and by whom)  
(Include details of training and education required)

Access: (Is it appropriate for the code to be published on Council website)

Computer file name: H:\Pub\Manual\Policy.Reg\Code Name

***RECOMMENDED DRAFT***  
**PROTOCOL FOR THE PROTECTION OF ABORIGINAL  
HERITAGE AND CONSULTATION WITH THE ABORIGINAL  
COMMUNITY IN THE EUROBODALLA SHIRE**

NB. This is a draft protocol prepared by Susan Donaldson and Garret Barry Planning Services as part of Stage Four of the Eurobodalla Aboriginal Heritage Study. The draft as been prepared on the assumption that the recommendations for the 2008 LEP will be adopted but the appraisal of Council and the Aboriginal Community are important considerations that may lead to amendments to this draft.

## **INTRODUCTION**

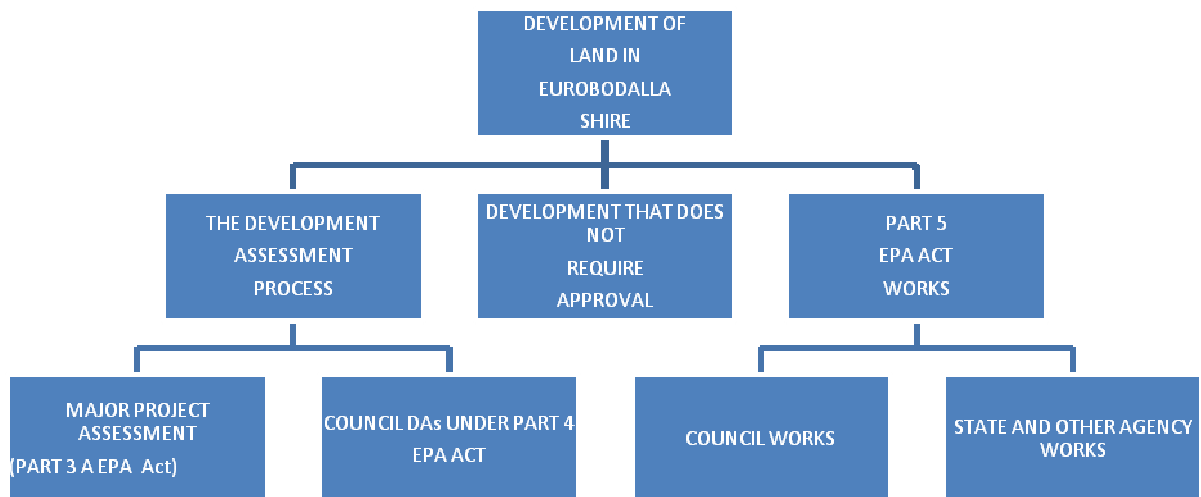
The protection and management of Aboriginal heritage is one of the more important considerations in assessing development proposals. Developers, Councils, State Agencies and the Federal government are all bound to adequately consider Aboriginal heritage under one or more of the following principle pieces of Legislation:

- Environmental Planning and Assessment Act 1979 (NSW EPA A)
- National Parks and Wildlife Act 1974 (NSW NPWA)
- Heritage Act 1977 (NSW HA)
- Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (Fed.)
- National Environmental protection Measures (Implementation) Act 1998. (Fed.)

This draft protocol is recommended for consideration by Eurobodalla Shire Council to assist Council in meeting its obligations under the above and related legislation when assessing development proposals for private or Council works and to provide information to both the Aboriginal and wider community on the system and practice Council uses to protect Aboriginal heritage.



## Development works covered by this protocol



## DEVELOPMENT THAT DOES NOT REQUIRE APPROVALS

Certain (mostly minor) development is exempt from the need for development consent under Councils Local Environmental Plan (LEP) and the EPAA. However, landowners contemplating development that they consider is exempt should ensure the subject land is not defined as “environmentally sensitive land” under section 3.3 of the LEP. Such land may not be exempt if it contains an Aboriginal Heritage item or Aboriginal heritage Conservation Area. These items are mapped on the Heritage map of the LEP.

Private developers are also bound by the provisions of the NPWA which makes it an offence to knowingly disturb an item of Aboriginal heritage as defined in that Act.

Part 5 EPA Act: Works of State and other agencies.

Council has no power to compel State and other agencies (RTA, Telstra...etc) to follow this code of practice when carrying out works

that are defined under part 5 of the EPA Act. However, such agencies are duty bound under that section to consider their impact on the environment and Council recommends their consideration of this protocol.

### Council Works

Many Council works are exempt from the need for Development Consent and are effected under the provisions of part 5. This section still requires Council to consider the environmental impacts of these works .

This protocol defines the processes for Council to assess the impacts of its part 5 works on Aboriginal heritage and the triggers for consultation with the Aboriginal community.

## **DEVELOPMENT ASSESSMENT PROCESSES**

### MAJOR PROJECT ASSESSMENT UNDER PART 3 A

Under part 3 A of the EPAA and State Environmental Planning Policy “Major Projects” certain more significant developments are assessed by the State Department of Planning.

While the State is not bound by Council’s protocol, Council seeks the Department’s consideration of it in its assessments under this section and will utilise the protocol in preparing any Council input to such projects.

### COUNCIL ASSESSMENT OF DAs UNDER PART 4

#### Local Environmental Plan

Councils LEP 2008 contains 2 measures for the protection of Aboriginal heritage:

- Definition of Aboriginal heritage items (AHI)
- Definition of Aboriginal Heritage Conservation Areas (AHCA)

AHIs and AHCAs are mapped on the LEP Heritage map and invoke the consideration of clause 5.10 of the LEP which includes requirements for Council to consider the potential for impact on this heritage and consult with the Aboriginal community. This protocol defines the detail relating to such assessment and consultation.

#### Development Control Plan

Council's DCP Contains a further measure to address the issue of culturally sensitive landscapes:

- Areas of Aboriginal cultural sensitivity are defined as Aboriginal Culturally sensitive landscapes (ACSL).

ACSLs are more general landscape units where Council needs to have general consideration to cultural issues and may consult as defined in this protocol. They are mapped in the DCP and Clause (number to be inserted) applies.

#### National Parks and Wildlife Act

The NPWA has requirements for protection of Aboriginal Objects and Aboriginal Places. Council has a licence agreement with the Department of Environment and Climate Change that allows access to the data base of such items located in Eurobodalla Shire. For cultural and protection reasons, access to this database is limited to appropriately trained and authorized staff. Where land contains an item listed in the NPWA database, the provisions of that act and the EPA Act impose certain requirements on Council and the developer.

#### Eurobodalla Aboriginal Heritage Inventory (EAHI)

The State template for LEPs, specifies a requirement that councils maintain "an inventory of heritage items that is available at the office of the Council". To address the requirements for Aboriginal heritage items, Council has created an Aboriginal Heritage inventory. The inventory contains public information on each AHI, AHCA or CSLA.

For cultural and item security reasons, there may also be information about the item that is sensitive and which the Aboriginal Community seeks to retain as confidential. To address this yet ensure adequate assessment and consideration by Council, a confidential section of the Inventory has been created and is subject to the same restricted access as NPWA sites.

#### ASSESSMENT PROCESSES FOR COUNCIL DAs

##### Pre lodgment advice

Developers for more significant projects are always invited by Council to consult regarding Council requirements before finalizing a DA for lodgment with Council. Early disclosure of requirements can have significant cost and time savings later in the process.

Pre-lodgment consultation with staff can identify if land is affected by the various heritage items above and direct action towards assessment and consultation with the Aboriginal community that can then be incorporated in the DA. Where Council identifies potential for significant impact on heritage, a Heritage Impact Assessment report may be requested (see clause 5.10(5) of the LEP). This may involve consultation with Department of Environment and Climate Change and if necessary an archaeological survey.

At time of DA lodgment advice

As soon as possible after lodgment, staff should assess if the land is affected by a AHI, AHCA, ACSL, NPWA site or is an item restricted to the confidential section of the Aboriginal Heritage Inventory. Where land is so affected, a decision needs to be made as to whether the application has sufficient information to meet the likely assessment requirements of the LEP and where deemed inadequate, the DA should be subject to “stop the clock“ action- where the DA is placed in abeyance pending this additional work being provided to Council.

## CONSULTATION AND ASSESSMENT REQUIREMENTS FOR DAs AND COUNCIL WORKS

Three categories of development or Council work are identified under this protocol:

### *Category A Land*

Development or Council works on land in the curtilage (within 50 meters) of or forming part of a recorded Aboriginal Site registered with the National Parks and Wildlife Service (AHIMS site or Aboriginal Place) or land defined as an Aboriginal Heritage Item or Aboriginal Heritage Conservation Area in the LEP.

If development or Council work is identified as Category A, the provisions of the National Parks and Wildlife Act may be triggered and specified assessment actions are required under the LEP. There may be a requirement for a Heritage Impact assessment and/or an archaeological assessment report when a development is proposed on Category A lands that involves surface and /or subsurface disturbance.

The LEP triggers an automatic need for referral to the relevant Local Aboriginal Land Council, to allow 2 weeks for response and then to consider any submission.

Proponents are strongly encouraged to consult the Local Aboriginal Land Council as part of the preparation of a DA or Council work on Category A land and to include evidence of such consultation and actions to address any concerns raised, in the application or Council works report. Land Councils may require a reasonable fee for providing comment on a proposal affecting a category A item.

Where proponents take such consultation action, there could be considerable time savings after DA lodgement. The proponent for the development or Council work on Category A land may need to demonstrate in the application or Council works assessment that the Department of Environment and Climate Change has been consulted about the item and include any advice from that Department and comment as to what actions were proposed by the proponent to address that advice. (the department is responsible for the administration of the NPWA).

The Aboriginal community would also be separately consulted as part of an archaeological review, if any of the requirements of the National Parks and Wildlife Act were triggered.

Should Council receive any submission from the Land Council, Council will assess the submission and may require the proponent to furnish additional information before determining the application. Where an application is submitted for Category A land without evidence of consultation, Council may require a “walk over” inspection by Council’s Aboriginal Heritage Officer and up to two Aboriginal representatives. A fee as presented in Council’s annual fees and charges will be payable to the relevant Local Aboriginal Land Council by the developer.

### *Category B Land*

Land mapped in the DCP as Aboriginal Culturally Sensitive Landscape. (ACSL) and land containing other items recorded in the Aboriginal Heritage Inventory

Where a DA or Council work is on land in this category, there would be written notification to the relevant Local Aboriginal Land Council where, in the view of assessment staff (having reviewed information from the Council officer(s) with access to the confidential section of the Aboriginal Heritage register) there was some potential for impact on the cultural / spiritual elements as defined in the resource information about the ACSL. or other confidential site

Where representations were received following notification of the relevant Land Council and Council does not consider the issues can be addressed by standard conditions of consent, the proponent for the development or Council work may be requested to furnish a heritage impact assessment to address the concerns and /or requested to consult direct with the relevant Local Aboriginal Land Council.

### *Category C Land*

Other lands not identified in the LEP, DCP or Aboriginal heritage Inventory.

Development or Council works involving site earthworks of area 500m<sup>2</sup> or greater on land in this Category will be reviewed by the Aboriginal Heritage Officer or a Council officer with training in assessment of lands for likely Aboriginal Heritage Sensitivity.

If the land is considered to have some potential for sensitivity, the procedures of category B will be invoked.

#### Placement of conditions on development approvals

Council will consider the inclusion of special conditions on any consent or Council works approval to reasonably address the impacts identified through the processes specified in this protocol.

Council will also include the following standard condition on all Development Approvals where there is potential for disturbance of undeveloped land:

*In the event possible items of Aboriginal Cultural heritage are discovered in the course of works under this consent, the Applicant will cease works in the affected area and consult DECC.*



## **APPENDIX SIX: SPECIAL CLAUSE FOR THE EUROBODALLA DCP RELATING TO ABORIGINAL CULTURALLY SENSITIVE LANDSCAPES**

### **Clause no x Aboriginal Culturally Sensitive Landscapes**

1. The objectives of this clause are to:
  - a. Identify and acknowledge land of cultural sensitivity to the Aboriginal community,
  - b. Protect landscapes of cultural sensitivity to the Aboriginal community from inappropriate development.
  - c. Maintain the cultural integrity of landscapes of heritage and cultural value to the Aboriginal community,
2. This clause applies to land identified as Aboriginal Culturally Sensitive Landscapes in the maps applying to this clause..
3. Consent must not be granted for development on Aboriginal Culturally Sensitive Landscapes unless the consent authority is satisfied that the development satisfies the objectives of this clause and has taken into consideration the cultural and spiritual theme for the land as defined for the particular landscape defined in this DCP and possible culturally sensitive information held in the confidential register of the office of the Council.

APPENDIX SEVEN Heritage Significance Assessments [public] for  
the proposed Aboriginal Heritage Conservation Areas.

## APPENDIX EIGHT: DESCRIPTION OF THE FIVE PROPOSED CULTURALLY SENSITIVE LANDSCAPES

### The culturally sensitive landscape of Batemans Bay.

The combination of heritage values in the Batemans Bay area reveals a complex picture, historically and spatially. The underlying Aboriginal land tenure system, present prior to European settlement of the area, continues to shape Aboriginal people's connections to the area, as well as inform many of the ways places are generally understood<sup>59</sup>. Archaeological and archival evidence reveal a variety of cultural uses of land and waterways. The *Bhundoo* [Clyde] River for instance is recognised as a traditional travelling route, is spiritual associated with elements in the surrounding and is valued for resource collection purposes.

A large number of archaeological sites have been recorded within the CSL<sup>60</sup>. These include middens, scarred trees, artefact scatters and burials. These sites are significant to Aboriginal people as a tangible link between past and present and there are often overlaps between places of contemporary or historical value and archaeological sites. If left undisturbed, archaeological sites can provide valuable information on traditional life ways. For example, middens contain evidence of traditional diet from the remains of shellfish, fish and other species of plants and animals that were hunted and gathered. They also contain the tools of traditional culture, such as bone points, stone axes or fish hooks.

Charcoal from ancient fires can be dated, and dates from this area indicate a presence from at least 3,000 years ago. Burials provide important information on traditional burial practices and ceremonial activity. The large numbers of recorded sites may reflect relatively high population densities in traditional times, due to the presence of rich and varied resources of the forest, ocean and estuaries. The high numbers may also be a product of numerous systematic archaeological surveys as done as part of environmental assessments for developments. The increasingly popularity of this area as a tourist destination is leading to increasing developments and urban expansion, which in turn, puts pressure on archaeological sites.

The *Yuin* [Djuwin] tribal area as recorded in 1904 by Howitt extends from the Shoalhaven River in the north, to Cape Howe in the south and west to the Great Dividing Range. According to local Aboriginal knowledge, thirteen [13] sub tribal groupings exist within the Yuin tribal area. The *Yuin* tribal subgroups with traditional links to the Batemans Bay area is the *Walbanga* group<sup>61</sup>. Linguistically, the Batemans Bay area is associated with the *Thurumba Mudthung* language from the north and the *Dhurga* [Thoorga / Durga] language from the south<sup>62</sup>. Other Aboriginal clan group and or place names recorded in the Batemans Bay area

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<sup>59</sup> See Robinson 1844, Mathews 1902, Morris 1832, Oldrey 1842.

<sup>60</sup> Archaeological description provided by DECC archaeologist Sue Feary 25.11.2008.

<sup>61</sup> See Howitt 1904 [1996]; Egloff, Peterson and Wesson [2005]. Note, the description of the Yuin tribal area can vary according to context, level of knowledge and personal orientations.

<sup>62</sup> Egloff, Peterson and Wesson [2005]: 17, 20.

during the early settlement period include *Currowan*, *Mooramorrang* [Murramarang] and *Turras* [Durras]<sup>63</sup>.

Batemans Bay contains six of the eight European – Aboriginal contact sites documented in the Eurobodalla. On the 23<sup>rd</sup> April 1770 Captain James Cook sailed past the area in the Endeavour and noted five Aboriginal men standing on the northern shore of Batemans Bay. Twenty-six years later nine men from the wrecked ‘Sydney Cove’ died in Batemans Bay [possible starvation], whilst others were assisted by Aboriginal people to return, by foot, to Sydney. The 1808 and 1821 encounters between local Aboriginal people and European explorers resulted in conflict, which led to the death and injury of a number of European people. It is assumed that Aboriginal people also suffered death and or injury at this time, although it was not reported.

In 1822 Kearns documented traditional hunting practises, employed by the Aboriginal people in the Batemans Bay area; and in 1826 Harper traded gifts with Aboriginal people residing in Batemans Bay. Resource collection across the Batemans Bay area continued through the contact and settlement period, as industries developed, as settlement expanded and the Batemans Bay Aboriginal Reservation was established in 1902. This reservation was previously located in the vicinity of the current day Batemans Bay High School. Oral and documented history tell of how Walbanga people did not like living their, instead choosing to camp closer to Joes Creek where conditions were more favourable<sup>64</sup>. Mud Crabs were caught in Hanging Rock Creek whilst wallaby, kangaroo, rabbits, echidna, bush pigeons [wanga], eels [Gunyu], and other birds [budjarn] were collected from the surrounding bush lands. <sup>65</sup>.

In 1822 Kearns documented traditional hunting practises, employed by the Aboriginal people in the Batemans Bay area; and in 1826 Harper traded gifts with Aboriginal people residing in Batemans Bay. Resource collection across the Batemans Bay area continued through the contact and settlement period. Cullendulla Creek provided a sheltered, well resourced environment within which to reside. Aboriginal people’s oral stories date back to the 1940s when Cullendulla Creek was visited for a ‘good feed of oysters’. Shellfish continue to be prepared and eaten in the location traditionally used to eat and prepare shellfish and other seafood; a shell midden marks the spot. Batemans Bay continues to be utilised today as a primary resource collection place, particular for flathead [*Platycephalus sp.*], black bream [*Acanthopagrus butcheri*], blackfish [*Girella elevata*], stingray [*Myliobatis australis*], green eel [*Alabes dorsalis*], shark [*Galeorhinus galeus*], oysters [*Ostrea angasi*], cockles [*Anadara trapezia*], leather jackets [*Nelusetta ayraudi*], mud and mangrove crabs [*Scylla serrata* / *Decapoda: Brachyura*].

As industries developed and the settlement expanded the government established the Batemans Bay Aboriginal Reservation in 1902; previously located in the vicinity of the current day Batemans Bay High School. During this period, living areas outside of the designated Aboriginal Reservation were established on the fringes of Batemans Bay and in pockets within the township by Aboriginal families. Many of

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<sup>63</sup> S Wesson 2000: 131 – 147.

<sup>64</sup> Donaldson 2006: 43

<sup>65</sup> Donaldson 2006: 46.

these seasonally and self-determined living places aligned with traditional, pre contact camping places. Oral and documented history tell of how *Walbanga* objected to living on the Batemans Bay Aboriginal Reservation, instead choosing to camp closer to Hanging Rock Creek where conditions were more favourable<sup>66</sup>.

‘Hanging Rock’ became a local geographical reference point and meeting place for *Walbanga* people and their itinerant kin. An ironstone pillar once stood on the banks of the creek whilst a she oak tree grew up and around it, appearing as if the rock was hanging out of the tree. Hanging Rock was as tall as a power pole. Although the tree died of natural causes decades ago, the rock continued to be called ‘Hanging Rock’ and the nearby creek was granted the same name.

Throughout the 1950s the area surrounding Hanging Rock was bush land and boats parked along Hanging Rock Creek. Deep pools formed with the incoming tide and made for a good place to swim. Mud Crabs were caught in Hanging Rock Creek whilst Wallabies, Kangaroos, Rabbits, Echidna, *wanga* [Pigeons] and other *budjarn* [birds] were collected from the surrounding bush lands<sup>67</sup>. A number of Aboriginal families camped here, lived off the sea and worked at the nearby sawmill. People passing through the area would always camp at Hanging Rock, because of the fresh water stream. Although Hanging Rock was highly significant to Aboriginal people, the Council knocked it down in 1994; it was believed the rock was at risk of falling over and causing damage. Today, the area continues to be known as ‘Hanging Rock’, after this cultural site.

Historically, the old Batemans Bay Public School was an important place for Aboriginal students, particularly during the segregation period when equal rights to education were being determined. In 1926 a local Aboriginal woman Jane Duren wrote to the King of England in regards to her grandchildren’s lack educational opportunities. The government at the time felt that if Aboriginal children were not permitted into the local school their families would have to relocate; providing grounds for the Aboriginal Reserve to be revoked to make way for development. The Reserve was revoked after two-years of segregation at the local school even though the education department inspector supported Jane’s grandchildren’s readmission into Batemans Bay Public School<sup>68</sup>.

The contribution Aboriginal people made to the economy in the Batemans Bay area revolved around town based employment, at a time when a great portion of work, for Aboriginal people, related to the land and waterways in the saw milling, fishing and seasonal farming industries. Batemans Bay in particular had large representation of Aboriginal workers in mainstream shops. Dress shops, restaurants, cafes and pubs all employed Aboriginal people. This was at a time when Aboriginal people were not formally acknowledged as Australian citizens. Oral histories reveal the determination required in order for Aboriginal people to gain mainstream employment during the segregation and non-citizenship period.

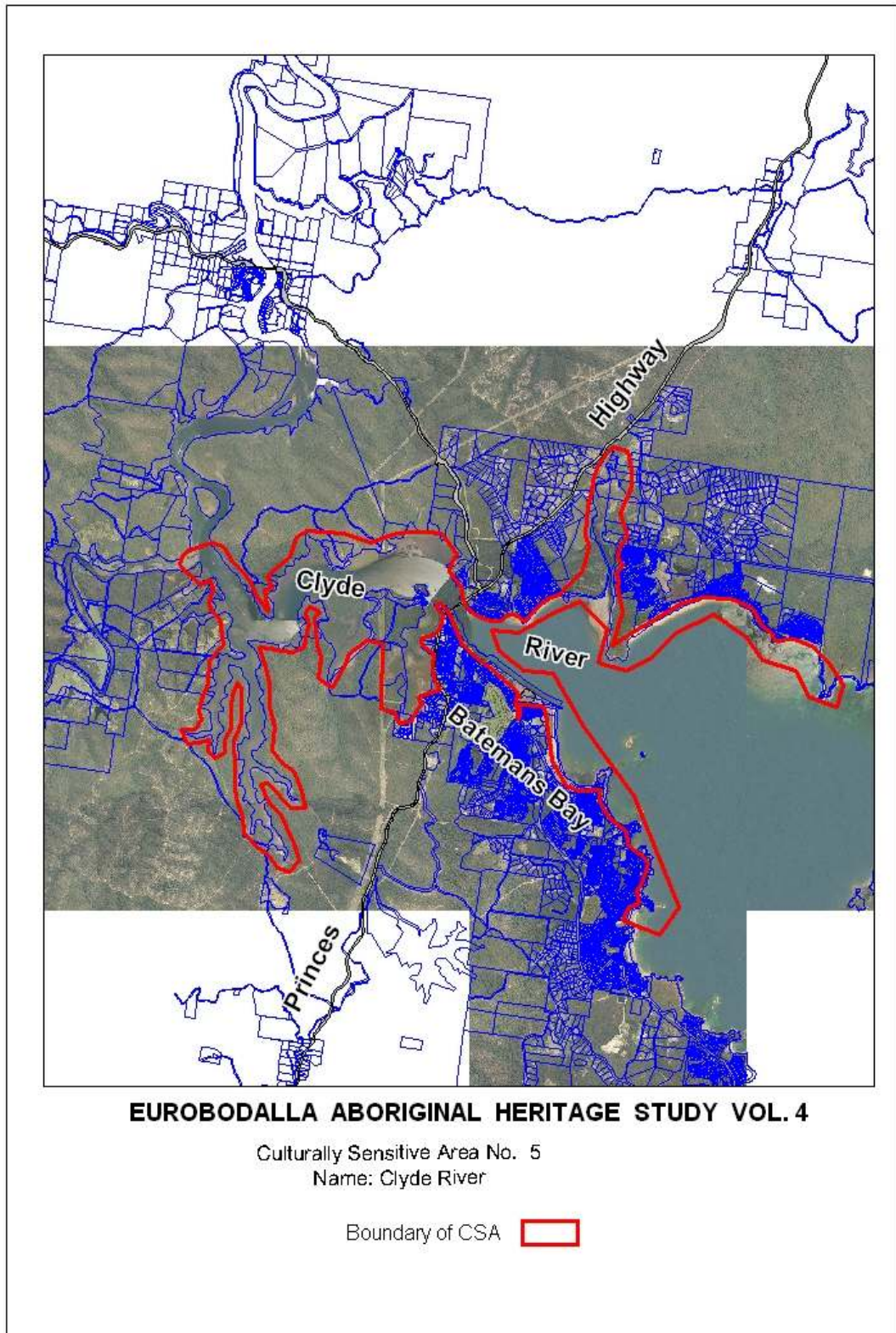
A wide range of cultural heritage themes across the Batemans Bay waters and surrounding landscape, continue to be valued by the Aboriginal community today.

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<sup>66</sup> Donaldson 2006.

<sup>67</sup> Donaldson 2006.

<sup>68</sup> See Goodall [1996] *Invasion to Embassy: Land in Aboriginal Politics in NSW 1770 – 1982*.



### The culturally sensitive landscape of the Moruya – Deua River.

The combination of heritage values associated with the Moruya – Deua River system reveals a complex picture, historically and spatially. The underlying Aboriginal land tenure system, present prior to European settlement of the area, continues to shape Aboriginal people's connections to the area, as well as inform many of the ways places are generally understood<sup>69</sup>. Archaeological and archival evidence reveal a variety of cultural uses of land and waterways. The Moruya – Deua River for instance is interlinked with a network of traditional travelling routes, is spiritual associated with elements in the surrounding and is valued for resource collection purposes.

A large number of archaeological sites have been recorded within the CSL<sup>70</sup>. These include middens, scarred trees, artefact scatters, bora grounds and burials. Some of these records, including those referring to bora/ceremonial grounds on the northern side of the Moruya River have been found in historical records or are recordings from the 1970s, hence there is minimal information and the locations are sometimes incorrectly recorded. The pattern of recorded sites shows distinct clustering at Moruya heads, South Moruya and around the Anchorage, which is more a reflection where surveys have been conducted rather than of traditional Aboriginal occupation. The largest concentration of archaeological sites in this area is at Congo, to the south of the CSL.

The *Yuin* [Djuwin] tribal area as recorded by Howitt in 1904 extends from the Shoalhaven River in the north, to Cape Howe in the south and west to the Great Dividing Range. According to local Aboriginal knowledge, thirteen [13] sub tribal groupings exist within the *Yuin* tribal area. *Yuin* tribal subgroups with traditional links to the Eurobodalla shire include the *Walbanga*, *Bringa* and *Djirringanj* groups<sup>71</sup>. Within the *Yuin* tribal area Howitt recorded another type of division; the *Guyangal* [guya = south] and *Kurial* [kuru = north] coastal sub tribes, together known as *Katungal* [Katung = sea]<sup>72</sup>. Within the *Guyangal* sub tribe Howitt recorded number of clan divisions, one of which being the *Bugelli Manji* clan group occupying the 'Moruya district'<sup>73</sup>. Whilst the term *Manji* is a grammatical suffix referring to a place in general, earlier references relating to the *Bugelli Manji* clan identify their range as being associated with the Moruya, Bergalia, Congo and Bingi areas and record alternative spelling for the same term such as *Burgali*, *Borgalia*, *Bengalee*, *Birgalea*, *Bukelle*, *Bengalia*, *Bogalea* and *Bungully*<sup>74</sup>. Today, we know the area as 'Bergalia', immediately south of Moruya. Other Aboriginal clan group and or place names recorded in the Eurobodalla in the early settlement period include *Browley* [Broulee], *Canga* [Congo], *Kiyora* [Kiora], *Gundaree* [Gunday], *Duga* [Dooga], *Mullandurree* [Mullinderry], *Moorooya* [Moruya], *Terosse* [Tuross] and *Bowdally* [Bodalla]<sup>75</sup>. On a linguistic level, the Moruya area is associated with the *Dhurga* [Thoorga / Durga] language, however the *Djirringanj*

<sup>69</sup> See Robinson 1844, Mathews 1902, Morris 1832, Oldrey 1842.

<sup>70</sup> Archaeological description provided by DECC archaeologist Sue Feary 25.11.2008.

<sup>71</sup> See Howitt 1904 [1996]; Egloff, Peterson and Wesson [2005]. Note, the description of the *Yuin* tribal area can vary according to context, level of knowledge and personal orientations.

<sup>72</sup> Howitt 1904 [1996] 82.

<sup>73</sup> Howitt 1904 [1996] 82.

<sup>74</sup> Wesson 2000:136.

<sup>75</sup> S Wesson 2000: 131 – 147.

language region extends into the Eurobodalla Shire in the south and the *Thurumba Mudthung* language region extends into the Eurobodalla Shire in the north<sup>76</sup>.

Aboriginal cultural heritage along the Moruya Deua River, incorporating North Moruya Heads, Garlandtown, South Moruya Heads, Ryans Creek, The Anchorage, Yarragee, Kiora, combines pre-contact values such as habitates supporting totemic species, through to post contact values relating to residential, work, recreation, teaching and resource collection. These places are culturally interlinked with the upper catchment area including Donalds Creek, McGregors Creek, and Bendethra. Moreover, Bengello Creek and Beach to the north and Congo Creek and Beach to the south, were also integral elements of the cultural landscape in this localised area. Traditional travelling routes have been recorded as extending between Moruya and Braidwood; Moruya and Mumbulla [Biamanaga] Mountain; between Moruya and Bodalla; Moruya and Bendethra; Murramarang to Moruya via Batemans Bay, Nelligen and Runnyford and Ulladulla to Moruya via Buckenbowra.

The presence of the midden reveals how the area was used in the past to consume seafoods<sup>77</sup>. Seafoods found in the Moruya River today include flathead [*Platycephalus sp*], black bream [*Acanthopagrus butcheri*], blackfish [*Girella elevata*], stingray [*Myliobatis australis*], green eel [*Alabes dorsalis*], shark [*Galeorhinus galeus*], oysters [*Ostrea angasi*], cockles [*Anadara trapezia*], leather jackets [*Nelusetta ayraudi*], mud and mangrove crabs [*Scylla serrata / Decapoda: Brachyura*], gum from the black wattle [*Acacia Mearnsii*], parrots, mistletoe [*Amyema sp*], bracken fern [*pteridium esculentum*], native cherry [*Exocarpos cupressiformis*], river oak [*Casurina cunninghamiana*], bush tobacco [*Solanum mauritianum*], white-headed pigeon [*Columba leucomela*], ink weed [*Phytolacca octandra*], warrigal spinach [*tetragonia tetragonioides*], native raspberry [*Rubus rosifolius*], spiky matrush [*Lomandra longifolia*] and stinging nettle [*urtica sp*]<sup>78</sup>.

In 1883 320 acres was set-aside at Moruya South Heads by the government for an Aboriginal Reservation. In 1875 a further 24 acres was set-aside for an Aboriginal man by the name of Campbell, ancestor of the Campbell family present in the area today. Cultural heritage values attributed to the South Moruya Heads area also relate to resource collection, education and living / camping. Shelley Beach is described as a place to camp and collect resources whilst Toragy Point was and continues to be utilised as a fishing lookout<sup>79</sup>. Native cherries [*Exocarpos cupressiformis*], native raspberries [*Rubus rosifolius*], native yams [*Thysaotus spp.*], honey suckle [*Lonicera japonica.*], pig face [*Carpobrotus glaucescens*] and 'gum' from black wattle trees [*Acacia Mearnsii*] can also be found in the area<sup>80</sup>.

As with the entire coastline, Moruya Heads is part of a coastal travelling route linking people and resources together. Oral histories record usage of the area in the 1940s as families walked along the coast, particularly between Wallaga Lake and Ulladulla, camping along the way on the flatlands at Garlandtown, Moruya<sup>81</sup>. There were three main bush camping area; one at the end of the present day airport run

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<sup>76</sup> Egloff, Peterson and Wesson [2005]: 17, 20.

<sup>77</sup> Ellis and Nye 2001: 9.

<sup>78</sup> Donaldson 2006: 69.

<sup>79</sup> Donaldson 2006: 72.

<sup>80</sup> Donaldson 2006: 14, 59.

<sup>81</sup> Donaldson 2006: 10.



way, one close to the present day airport toilet block and one at the present day boat ramp. In the 1950s fringe camps were established at Garlandtown providing close access to seafood resources. The area is closely associated with nearby quarry work and the Brierley family who resided along the Moruya River in the area adjacent to the airport now known as 'Brierley's Boat ramp and utilised the river for fishing<sup>82</sup>. The Moruya Army Barracks were also located at Garland Town and have become intertwined with Aboriginal history as many Aboriginal people served in World War 1 and World War 11.

A few km up the river at the junction of Malabar Lagoon and the Moruya River is the 'Moruya Weir'. The catchment for Malabar Lagoon includes Malabar Creek, Dooga Creek and Mullenderee Creek. The terms Mullenderee and Dooga were recorded in the late 1800s as the names of two Aboriginal groups who occupied the Mullenderee and Dooga Creek areas respectively<sup>83</sup>. Two small, unnamed swamps are located along the Moruya River banks between Garlandtown and Malabar Lagoon. They provide habitat for local totemic bird species and are valued for this reason<sup>84</sup>. Malabar Lagoon has also been utilised throughout the 1900s and to the present day as a resource collection place. Camping also took place here from time to time. Rocks near the weir and mud flats at Malabar Lagoon provided habitat for oysters [*O angasi*], mud crabs [*Scylla serrata*], pipis [*Donax deltoides*], Sea Mullet [*Mugil cephalus*] and Flathead [*Platycephalus sp*]. Ducks were collected from the surrounding area<sup>85</sup>. Malabar Lagoon continues to be valued as a recreational place. Families meet here to fish, swim, and eat.

The Ryans Creek area is documented as containing cultural heritage significances from the pre contact period through the early contact period to the present day. The midden site indicates prior use of the area as a gathering for resource consumption site<sup>86</sup>. Aboriginal families visiting Moruya to work in the seasonal farm industry throughout the mid 1900s would camp at Ryans Creek and collect natural resources from the creek, river, riverbanks, and nearby bushland. Seasonal peas, corn, potatoes and beans pickers based at Macintosh's farm, located on Ryans Creek, would regularly visit Ryans Creek to collect mussels and go for a swim. The area continues to be valued today for its natural resources and as a place to camp and pass on cultural practises<sup>87</sup>.

Oral histories document how Aboriginal families camped at the 'Moruya Lagoon' in the early 1900s, located in the vicinity of the present day Gundry Oval. The families camped there would spear eels and fish<sup>88</sup>. The term *Gundaree* [= Gundry] was recorded as the name of an Aboriginal group who occupied the Moruya and Deua area<sup>89</sup>. A number of Aboriginal people in the area today directly descend from Sally, an Aboriginal woman from the Gundry tribe<sup>90</sup>.

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<sup>82</sup> Donaldson 2006b: 13

<sup>83</sup> Wesson 2000: 141.

<sup>84</sup> Donaldson 2006: 61.

<sup>85</sup> Donaldson 2006b: 15

<sup>86</sup> Ellis and Nye 2001: 11.

<sup>87</sup> Donaldson 2006: 68 – 70.

<sup>88</sup> Donaldson 2006: 65.

<sup>89</sup> Wesson 2000: 131 – 147.

<sup>90</sup> Donaldson 2006: 67.

Throughout the 1900s Moruya maintained seasonal farm and saw mill industries, supported by a predominantly Aboriginal labour force. Aboriginal people worked on many farms along the Moruya River including at the McKay, Loutitt and Hunt farms on along the north side of the Moruya River, and Dionts, Palmers, Turners, Murphys and Macintoshs on the south side of the Moruya River. At various times, Booth, Smith, Crocker and Fitzgerald operated sawmills in the Moruya Township, all of which employed Aboriginal people.

Archeological evidence along the northern banks of the Moruya River in vicinity of the historic Glenduart Cemetery indicates prior use of the area, possibly as a tool manufacture, trade or storage site<sup>91</sup>. A number of Aboriginal families directly descend from Richard Piety, buried at the Old Moruya Cemetery, Glenduart<sup>92</sup>. Glenduart is well regarded as a place to collect natural resources, both from the river and the surrounding landscape. This practise continues today. Foods found in the immediate Glenduart area include: black wattle [*Acacia Mearnsii*], mistletoe [*Amyema sp*], bracken fern [*pteridium esculentum*], native cherry [*Exocarpos cupressiformis*], native raspberry [*Rubus rosifolius*] and wombat berry [*Eustrephus latifolius*]. Sedge grass and spiky mat rush [*Lomandra longifolia*] can also be found in the immediate area and are used to make baskets. Medicinal species include inkweed [*Phytolacca*], river oak [*Casurina cunninghamiana*], ribgrass [*plantago spp*] and violet [*viola betonicifolia*]. Other resources include bush tobacco [*Solanum mauritianum*], flax lily [*Dianella caerulea*] to make whistles, stringy bark [*Eucalyptus botryoides*] for rope, lichen as a fire starter, and pittosporum [*Pittosporum undulatum*] for spiritual spells<sup>93</sup>.

The presence of scarred trees in the Yarragee area indicates use of the area for canoe manufacturing and or ceremonial purposes<sup>94</sup>. Yarragee continues to be used for recreation purposes and family gatherings, providing good access to recreational and food gathering activities. Like Yarragee, the Kiora area is utilised as a meeting and recreation place. A scarred tree in the Kiora area indicates previous use of the area for canoe building or other ceremonial purposes<sup>95</sup>. The area between Kiora and the junction of Wamban Creek and the Moruya River continues to be used as a fishing place. The term *Kiyora* [= Kiora] was recorded as the name of an Aboriginal group who occupied territory west of Moruya<sup>96</sup>.

There are no recorded places in the Moruya area where contact with Europeans first took place, however a number of conflict places have been documented. Oral histories document conflict between settlers and local Aboriginal people in the early 1900s in the vicinity of the swamp to the west of The Anchorage<sup>97</sup>, whilst historical documentation reveal an intertribal fighting ground [between Aboriginal tribes from Braidwood and Moruya] in the Kiora area, west of Moruya. The area accords with the Aboriginal inter tribal 'Kiora Barnyard battle'<sup>98</sup>.

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<sup>91</sup> Ellis and Nye 2002: 10.

<sup>92</sup> Donaldson 2006: b: 18

<sup>93</sup> Donaldson 2006:b: 18.

<sup>94</sup> Ellis and Nye 2001: 10.

<sup>95</sup> Ellis and Nye 2001: 10.

<sup>96</sup> Wesson 2000: 131 – 147.

<sup>97</sup> Donaldson 2006: 71.

<sup>98</sup> Goulding 2003: 33.

A number of heritage places exist in the broader Moruya area relating to birth and death. Pre contact burials have been documented at Yarragee and North Moruya Heads; early post contact burial at the old Moruya Cemetery and Mynora; and more recent burials are known at the present day Moruya Cemetery. Places of birth are known for a number of people including Annie Hannah Nicholson born in 1844 at Kiora; Richard [Dick] Piety born in 1844 at Mullenderee; and Margaret Connell [nee Piety] born 1869 and James Chapman born in 1866 at Mynora.

Aboriginal cultural heritage in the upper Moruya Deua River catchment area is associated with a number of spiritually imbued waterholes. Bood-jarn [Hanging Mountain], at the headwaters of Donalds Creek, acts as a beacon throughout the surrounding bushlands and is spiritually linked to the Deua River and Gulaga [Mt Dromedary] in the south<sup>99</sup>. Aboriginal families continue to meet at 8 Mile, McGregors Creek and Donald's Creek along the Deua River. The areas are highly regarded as teaching grounds holding spiritual values. Natural resources are found and utilised in the immediate area including sarsaparilla [*Smilax glyciphylla*], bloodwood [*Corymbia gummifera*], yam [*Thysaotus* spp.], spiky mat rush [*Lomandra longifolia*], river oak [*Casurina cunninghamiana*], water cress, bush lemon, black wattles [*Acacia Mearnsii*], bracken fern [*pteridium esculentum*], burrawang palm [*Macrozamia communis*], bush tobacco [*Solanum mauritianum*], minga [*Xanthorrhoea resinosa*], raspberry [*Rubus rosifolius*] and fresh water mussels<sup>100</sup>.

Bendethra, at the junction of the Con Creek and Deua River, is recognised as a traditional meeting place holding regional significance. As documented by Barlow in 1890, a ceremonial gathering took place at Bendethra involving Aboriginal people from the Gundayri tribe, Moruya<sup>101</sup>. People use to go to Bendethra to collect the seasonal influx of bogong moths and to drink the water, which filtered through limestone rocks. The water is known to have healing qualities<sup>102</sup>.

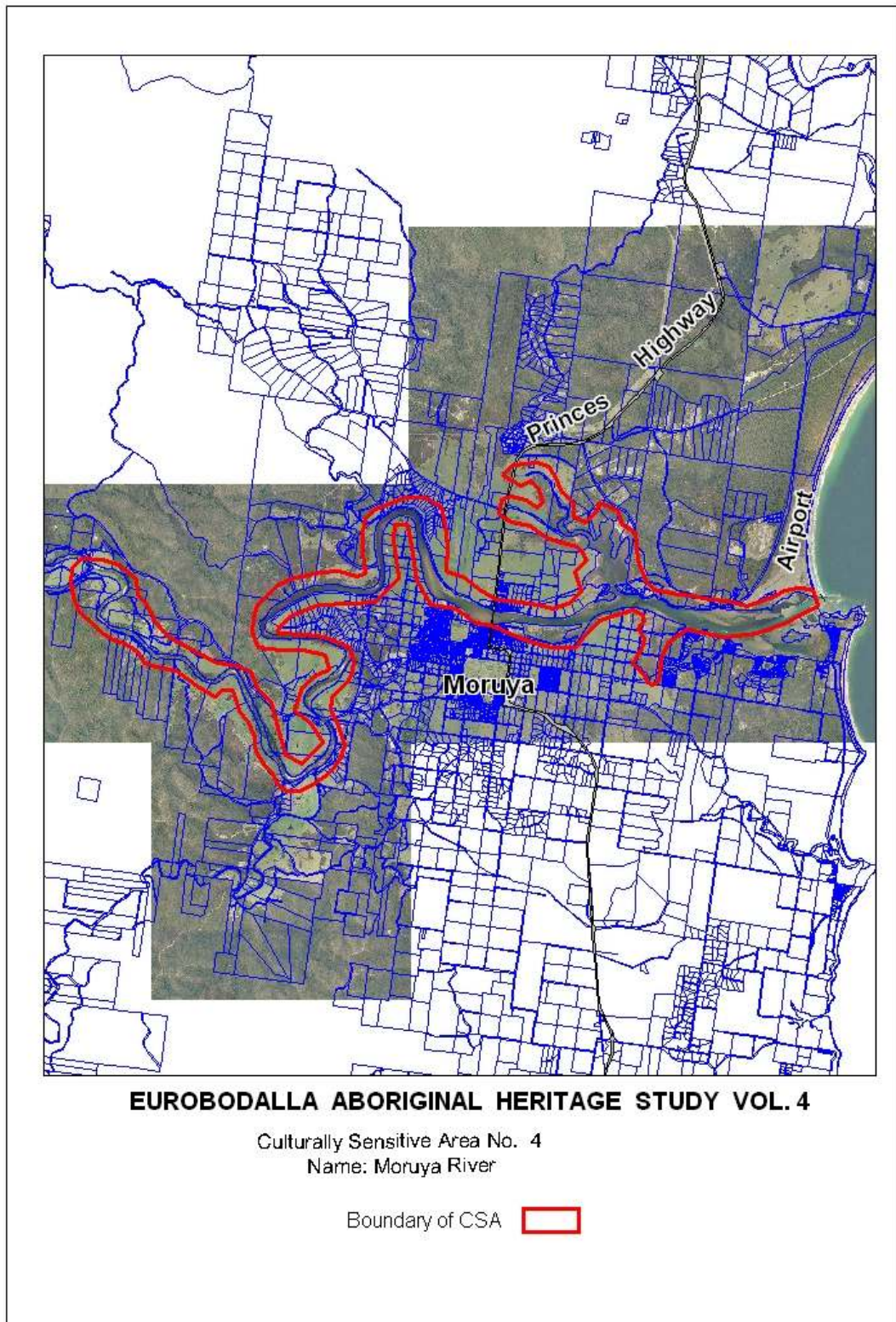
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<sup>99</sup> Donaldson 2006 : b : 20

<sup>100</sup> Donaldson 2006b : 21.

<sup>101</sup> See related discussion in Wesson 2000: 164.

<sup>102</sup> Donaldson 2006b: 21 See also Donaldson 2002: 74.



### **The culturally sensitive landscape of the Tuross River including Coila Lake.**

This area contains a combination of Aboriginal heritage values relating to traditional spirituality, travelling, working, living and resource collection. Large numbers of archaeological sites have been recorded within the boundaries of this CSL, with concentrations around Meringo/Congo, Tuross Heads and between Blackfellows Point and Potato Point<sup>103</sup>. The majority of archaeological sites are stone artefact assemblages, some of which are very extensive, such as at Congo. A number of large middens have been recorded on headlands, such as at Binge Point and in dune fields behind beaches such as at that north of Blackfellows Point. The contents of some middens indicate economies based on a wide range of resources, from the forests, oceans and wetlands. Other middens suggest a focus on a particular resource zone such as mudflats. Rare site types – ochre quarries and silcrete quarries have also been recorded at Congo, suggesting that this area may have had particular significance in traditional times.

One contact site is recorded in this region. In the late 1800s, Coorall, a young Aboriginal boy provided an oral account of a ship passing by Tuross Point, no doubt his family were camped nearby. Resource collection places within this landscape primarily relate to the coastal, estuarine and river systems; Potato Point, Tuross River and Tuross Lake all contain heritage value in relation to resource collection. The Coila Lake and Coila Creek system contain a variety of pre and post contact cultural heritage values for Aboriginal people associated with work, camping and living, conflict, recreation, birth as well as ancient ceremonial practises. Shell midden grounds in the area provide evidence of pre and post contact food consumption practices.

The *Yuin* [Djuwin] tribal area as recorded by Howitt in 1904 extends from the Shoalhaven River in the north, to Cape Howe in the south and west to the Great Dividing Range. According to local Aboriginal knowledge, thirteen [13] sub tribal groupings exist within the *Yuin* tribal area. *Yuin* tribal subgroups with traditional links to the Eurobodalla shire include the *Walbanga*, *Bringa* and *Djirringanj* groups<sup>104</sup>. Within the *Yuin* tribal area Howitt recorded another type of division; the *Guyangal* [guya = south] and *Kurial* [kuru = north] coastal sub tribes, together known as *Katungal* [Katung = sea]<sup>105</sup>. Within the *Guyangal* sub tribe Howitt recorded number of clan divisions, one of which being the *Bugelli Manji* clan group occupying the 'Moruya district'<sup>106</sup>, north of Coila Lake. Whilst the term *Manji* is a grammatical suffix referring to a place in general, earlier references relating to the *Bugelli Manji* clan identify their range as being associated with the Moruya, Bergalia, Congo and Bingi areas, not far from Coila Lake and record alternative spelling for the same term such as *Burgali*, *Borgalia*, *Bengalee*, *Birgalea*, *Bukelle*,

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<sup>103</sup> These concentrations reflect where developments are occurring and where sites have been recorded as part of systematic archaeological surveys, rather than accurately reflecting traditional settlement patterns. Archeological description provided by Sue Feary DECC.

<sup>104</sup> See Howitt 1904 [1996]; Egloff, Peterson and Wesson [2005]. Note, the description of the *Yuin* tribal area can vary according to context, level of knowledge and personal orientations.

<sup>105</sup> Howitt 1904 [1996] 82.

<sup>106</sup> Howitt 1904 [1996] 82.

*Bengalia*, *Bogalea* and *Bungully*<sup>107</sup>. Today, we know the area as ‘Bergalia’, immediately south of Moruya.

Other Aboriginal clan group and or place names recorded in the Eurobodalla in the early settlement period include *Browley* [Broulee], *Canga* [Congo], *Kiyora* [Kiora], *Gundaree* [Gunday], *Duga* [Dooga], *Mullandurree* [Mullinderry], *Moorooya* [Moruya], *Terosse* [Tuross] and *Bowdally* [Bodalla]<sup>108</sup>. On a linguistic level, the Coila and Tuross area is associated with the *Dhurga* [Thoorga / Durga] language, however the *Djirringanj* language region extends into the Eurobodalla Shire in the south and the *Thurumba Mudthung* language region extends into the Eurobodalla Shire in the north<sup>109</sup>.

Oral accounts record ‘Black Hill’, on the northern slopes above Coila Lake, east of the highway as the site of conflict between European settlers and the local Aboriginal residence. A number of scenarios have been recorded including a potential massacre and or an extensive burial of Aboriginal people struck by Yellow Fever in the late 1800s. Although some regions of Australia were less violent than others disease and violence during the frontier period were often hidden from the public records thus limiting relevant evidence. None the less, the area is considered to contain spiritual elements; spirits are sometimes seen and heard in the area [Trisha Ellis in Donaldson 2006]. Moreover, there is a ceremonial ground on the south west side of Coila Lake; it is revered as place restricted to men, women are not permitted to enter / use the area – they are to stay in the Black Hill area.

The cultural landscape incorporating Coila Lake and Coila Creek and the immediate surrounding area hold a high level of significance to Aboriginal people today; some of whose ancestors lived and worked in the immediate area. Throughout the early 1900’s, Coila Lake continued to form part of the traditional fishing grounds for the local Aboriginal people. In 1930s, Linda Cruse’s parents lived next to Coila Creek in a shack, near where the service station is today. Her father fished on Coila Lake. He sold the fish to feed his family [Linda Cruse in Donaldson 2006]. Coila Lake is classified as a traditional prawn collection site [Vivienne Mason in Donaldson 2006]. The Connell family moved from Nerrigundah to Black Hill in 1948. The family lived there for two years in an old house that Ernest Connell ‘fixed up’. They were working at Coopers Island at the time picking seasonal vegetables. Margaret remembers fishing and prawning in Coila Lake and walking to Bingi through the bush and across the paddocks [Margaret Carriage in Donaldson 2006].

Six of the fourteen Aboriginal Reservations declared across the Eurobodalla Shire were located in the Tuross area. In 1850 the Eurobodalla Reserve was established at Eurobodalla, west of Bodalla. In 1877 the government declared a further three; one at Blackfellows Point for Yarraro, one at Terouga Lake for Merriman and one at Tuross Lake for Richard Bolloway. In 1878, a fifth reserve was declared at Tuross Lake for Neddy, and in 1880 a sixth reserve was set-aside at Turlinjah for Benson Wynoo who worked for John Hawdon. Aboriginal children attended Turlinjah Public School. The area was still being used into the 1940s. Six reserves is a

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<sup>107</sup> Wesson 2000:136.

<sup>108</sup> S Wesson 2000: 131 – 147.

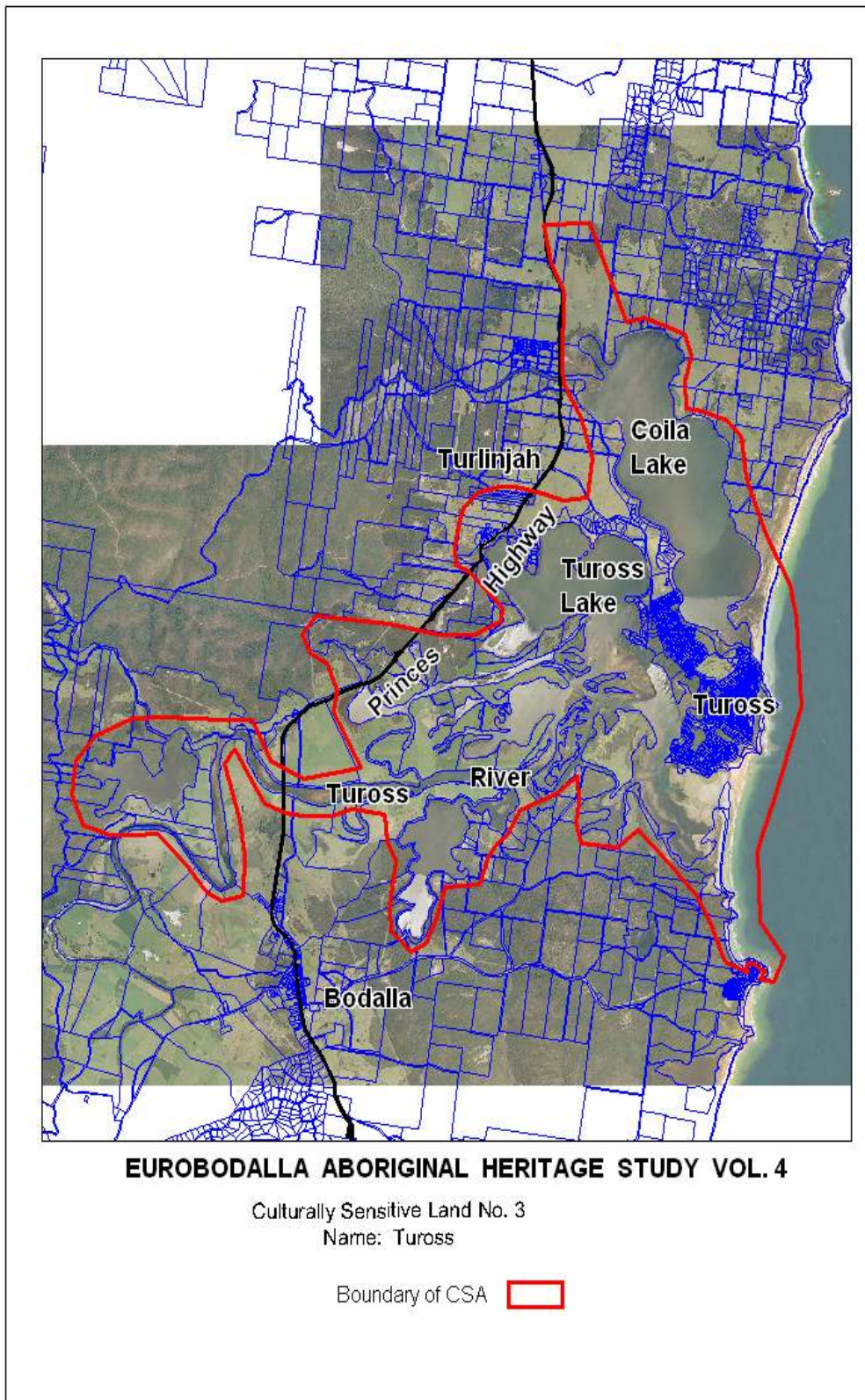
<sup>109</sup> Egloff, Peterson and Wesson [2005]: 17, 20.

substantial number of reservations in a relatively small area. Birth and death records correlate with the occupation of reservations in the area. Richard Bolloway was born at Brou Lake in 1831. Elizabeth Jane Chapman and Rosa Bolloway were both born at Turilinjah in 1891 and 1873 respectively. Bodalla, Nerrigundah and Cadgee all contain Aboriginal burial places.

During the early 1900s, seasonal farm work along the Tuross River and the related holiday camps at nearby coastal locations such as Potato Point and Blackfella Point involved hundreds of Aboriginal families. Almost half of the heritage places associated with Aboriginal people's participation in the seasonal farm industry across the Eurobodalla are located along the Tuross River. The farmlands stretched along the Tuross River, from the headwaters at Tuross Heads, around Tuross Lake, upstream to Nerrigundah in the west. Coopers Island, also within Tuross Lake, was a major seasonal work place. Work camps evolved on or close by the farms where families worked. Pocket camps were also established in Bodalla in response to the available seasonal picking work. Additionally, Sawmills were established at Potato Point and Nerrigundah. Both of these places employed Aboriginal people

Time off work was spent dancing at the Nerrigundah Barn, swimming at the 'Blue Hole' at Nerrigundah, Singing at the Tally ho Hall and watching movies at the Bodalla Hall. In this area 'holiday camps' were frequented when the picking season came to an end and include Blackfellows Point, Potato Point, Brunderee Lake, Little Lake, Tuross Lake, Tuross Heads, Coila Lake and Brou Lake. Many of these places align with traditionally utilised camping places and as such relate to heritage values associated with traditional spirituality, resource collection and travelling routes. The Schools at Cadgee, Turilinjah, Bodalla and Nerrigundah were attended by Aboriginal children whose families worked on farms in the area.

Aboriginal spirituality is a primary feature of the cultural heritage values associated with the Tuross River and Tuross Lake landscape. The area not only provides an important habitat for a number of totemic species such as the black swan [gunyu], it is also associated with the creation story relating to the Jumalung (Platypus). The area of spiritual significance encompasses the Tuross Falls, the Tuross River, the Tuross Lake and associated islands, through to the ocean headwaters. Ancient traveling routes incorporate the Tuross and Wadbilliga Rivers in the pathway linking significant features along the coast [for instance Gulaga] to significant inland features. Additionally, the coastal traveling route made use of Tuross Heads as a stop over point during extended journeys.





### **The culturally sensitive landscape of the Wagonga Inlet.**

Wagonga Inlet continues to be a focal point for Aboriginal people's cultural connection to the area. It is used as a meeting place, a teaching place, for travelling, resource collection and as a camping place. A number of pre-contact places have also been documented as well as mythological associations and present day connections relating to Baranguba [Montague Island]. The spirituality of the land remains, as does Aboriginal perceptions of the landscape.

Because there has been relatively less development around Wagonga Inlet, the distribution of archaeological sites is likely to be relatively accurate reflection of traditional patterns of Aboriginal settlement<sup>110</sup>. Extensive middens on the shores of the inlet demonstrate a reliance on oysters in the diet, although other molluscan species and fish would have also been important. Storm waves have mixed midden contents with natural shell deposits in some locations. Rising sea levels will have a significant impact on the complex of middens associated with Wagonga Inlet.

The *Yuin* [Djuwin] tribal area as recorded by Howitt in 1904 extends from the Shoalhaven River in the north, to Cape Howe in the south and west to the Great Dividing Range. According to local Aboriginal knowledge, thirteen [13] sub tribal groupings exist within the Yuin tribal area. *Yuin* tribal subgroups with traditional links to the Eurobodalla shire include the *Walbanga*, *Bringa* and *Djirringanj* groups<sup>111</sup>; the *Djirringanj* group is traditionally responsible for the Wagonga Inlet system. Within the *Yuin* tribal area Howitt recorded another type of division; the *Guyangal* [guya = south] and *Kurial* [kuru = north] coastal sub tribes, together known as *Katungal* [Katung = sea]<sup>112</sup>. Other Aboriginal clan group and or place names recorded in this area in the early settlement period include *Terosse* [Tuross], *Bowdally* [Bodalla], *Wondeller* [Wandella], *Wokoonga* [Wagonga], *Noorama* [Narooma] and *Wallurga* [Wallaga]<sup>113</sup>. On a linguistic level, the Wagonga area is associated with the *Dhurga* [Thoorga / Durga] language, however the *Djirringanj* language region extends into the area from the south<sup>114</sup>.

In 1835 the first Aboriginal Government Reservation in the Eurobodalla Shire was gazetted along the coastline, north of the Wagonga Inlet. The 180 acres was known as the Wagonga Reserve. There are no records to indicate if the area was utilised. In 1904 Mathews recorded a ceremonial 'Pirrimbir tree' in the Narooma area, whilst the cliff line above Bar Beach is associated with a massacre and contains associated spiritual attributes. Bar Beach, Narooma is a traditional Aboriginal place to fish; annual gatherings are held there. There is a burial at Bar Beach, near the quarry on top of that hill. There is a cut out in the cliff there. ".....*I was fishing with Wendy and Doug with six hand lines along Bar Beach. We heard a scream coming from up the hill. The scream came closer, closer towards us, then from under the ground. We grabbed the lines and buckets and got into the car. I have never been so scarred in all my life. A friend's father lives in a house on the hill, near the*

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<sup>110</sup> Archeological descriptions provided by Sue Feary DECC.

<sup>111</sup> See Howitt 1904 [1996]; Egloff, Peterson and Wesson [2005]. Note, the description of the Yuin tribal area can vary according to context, level of knowledge and personal orientations.

<sup>112</sup> Howitt 1904 [1996] 82.

<sup>113</sup> S Wesson 2000: 131 – 147.

<sup>114</sup> Egloff, Peterson and Wesson [2005]: 17, 20.

*burial ground. He has seen old black fellas walking through his yard.....”* [Vivienne Mason 5.1.2006].

Wagonga Inlet, North Head: Ken Campbell’s grandfather’s brother was born there. The area contains a fresh water spring and is culturally connected to Montague Island. The Wagonga people use to go over to Baranguba each year to collect muttonbird eggs. According to an old newspaper article, one time when the men and boys were returning, they had their canoes all tied together, a huge wave came and drowned the lot. All the women and children were waiting on the headland for them to return, but they didn’t [Vivienne Mason 1.6.2006].

To the north, Bar Beach Lagoon is associated with the black swan, a totemic species of value to Yuin people. The water reeds in Bar Beach Lagoon continue to be used for basket weaving, whilst other valuable natural resources such as pig face and the coastal Banksia are located in the nearby bushland. The Bar Beach area contains pre contact heritage values evidenced by ancient shell midden exposed on the footpaths.

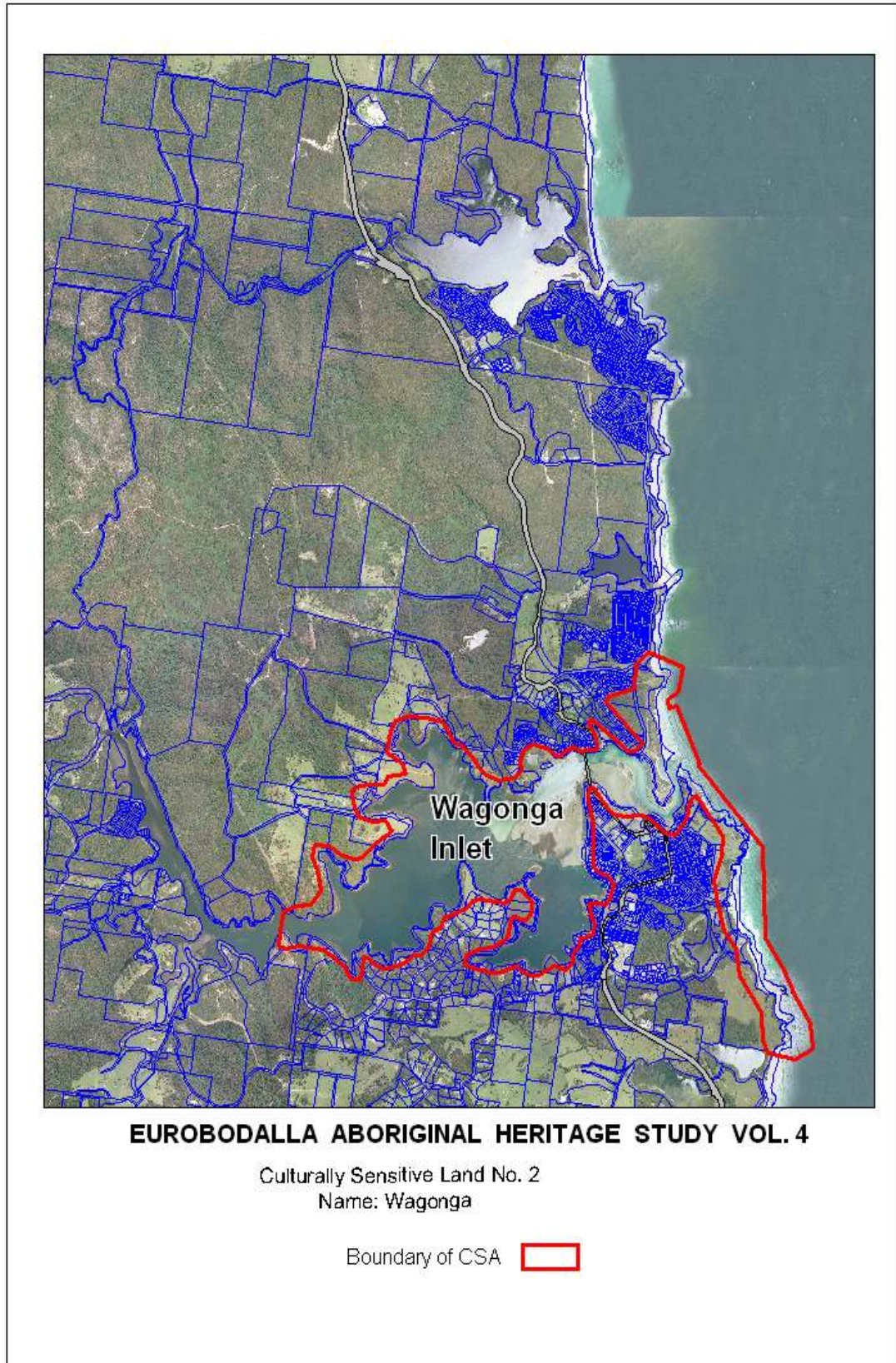
During the early 1900s the Narooma ‘Flat lands’ were utilised as an Aboriginal camping area. Oral accounts describe Ester Mundy as living in a ‘slab hut’ there. The rise above Smyth’s Oval contains cultural heritage values associated with resource collection and ceremonial exchange. The area is also known as a historical Aboriginal camping area. As children Ted Thomas and others camped on the Narooma Flatlands. In the area of Bill Smyth Oval, Narooma, there is a scarred tree and ochre quarry [Chris Griffiths’ consults 16.3.2006]. Before my time there were koori people living all around the hills overlooking the flatlands. The old Koori people use to have foot races there, they raced for money [Vivienne Mason 1.6.2006]. Governor Stewart, the two brothers Henry and Christy Stewart lived in the Wagonga Inlet area [Vivienne Mason 1.6.2006]. There are ancient fish traps around Lewis Island, near the footbridge. There are shell middens along each side of Wagonga Inlet. My son found a grinding stone under the water at Ringlands Point, opposite Taylor’s Wharf. [Vivienne Mason 1.6.2006].

Many places around Wagonga Inlet are significant to Aboriginal people including the ‘Old Wharf’ at the end of Wagonga Picnic Area Road, used for day picnics, oyster, scallop and fishing; There was a road from Nerrigundah to Wagonga Inlet, coming out at the old wharf. ‘.....*On our way from Nerrigundah to Wallaga Lake to go to a dance, we would stop for a feed of bimbullas at the old wharf. I was about 17 years old, so around 1946 ...*’ [Georgina Parsons 6.6.2006]. ‘Shell Point’ mainly day use and ‘Paradise Point’ used for picnics and women’s gatherings to collect bush medicine and foods. / Vanessa Mason 22.5.2006]. Megan Patten recalls going to Wagonga Inlet, off McMillian Drive, with her grandparents. She was taught about traditional uses for the Mangrove. The family still lives in the McMillian Drive area today and utilize the resources in the vicinity [Megan Patten 29.5.2006]. Forsters Bay in Wagonga Inlet is a traditional fishing place where oysters and bimbullas are collected [Vivienne Mason 5.1.2006].

*‘.....Glasshouse Rocks is another significant, traditional fishing area. [Vivienne Mason 5.1.2006]. ‘.....Last year, Glen, Ronnie and Viv were at Glasshouse teaching Marcia and Madison how to catch and prepare abs, the proper way. Culture is an ever-evolving thing. No longer are we looking for vines for fishing*

*nets, they are made; bark canoes are now power boats.....but the practice stays the same..... [Phil Duncan 5.1.2006].*

Many koori people were working at the Narooma Cannery, at the end of Forsters Bay, including Bruce Ella and Lionel Mongta. Bream, flathead, salmon and kingfish were caught and canned here [Chris Griffiths' consults 16.3.2006]. Valerie Andy worked at the Narooma Cannery, Forsters Bay for two years during the mid 1950s [Valerie Andy 20.12.2005].



### The culturally sensitive landscape surrounding Gulaga.

The cultural landscape surrounding Gulaga contains important heritage values to Aboriginal people. Heritage themes relate to traditional spirituality, travelling routes, education, living and resource collection. The dominating theme here is that of the spiritual landscape. Gulaga [Mount Dromedary], Najanuka [Little Dromedary Mountain], in the Tilba area and Baranguba [Montague Island] to the north off the coast at Narooma, remain deeply precious to the Aboriginal community across the south –east coast<sup>115</sup>. The Yuin lores that govern the customs and traditions relating to Gulaga have been handed down through the generations and continue to be observed by the Yuin people today. These places are spiritually interlinked and together hold a great deal of cultural history. They offer a link between the Dreamtime past and the spirituality of the land in the present; they are places on which personal and group identities are based; and they provide a place to take refuge, rest and reflect.

Few archaeological sites are recorded in this CSL<sup>116</sup>, reflecting the lack of major developments and the spiritual, rather than utilitarian values of the landscape to Aboriginal people. Mystery Bay has a number of middens and artefact scatters, as does the northern side of Wallaga Lake.

The *Yuin* [Djuwin] tribal area as recorded by Howitt in 1904 extends from the Shoalhaven River in the north, to Cape Howe in the south and west to the Great Dividing Range. According to local Aboriginal knowledge, thirteen [13] sub tribal groupings exist within the Yuin tribal area. *Yuin* tribal subgroups with traditional links to the Eurobodalla shire include the *Walbanga*, *Bringa* and *Djirringanj* groups<sup>117</sup>. Within the *Yuin* tribal area Howitt recorded another type of division; the *Guyangal* [guya = south] and *Kurial* [kuru = north] coastal sub tribes, together known as *Katungal* [Katung = sea]<sup>118</sup>. Other Aboriginal clan group and or place names recorded in the Eurobodalla in the early settlement period include *Terosse* [Tuross], *Bowdally* [Bodalla], *Wondeller* [Wandella], *Wokoonga* [Wagonga], *Noorama* [Narooma] and *Wallurga* [Wallaga]<sup>119</sup>. On a linguistic level, the Gulaga area is associated with the *Dhurga* [Thoorga / Durga] language, however the *Djirringanj* language region extends into the area from the south<sup>120</sup>.

The array of ecological zones, including Dignams Creek, Wallaga Lake, Wallaga Beach and the surrounding bushlands, have supplied a diversity of natural resources to the Aboriginal community, both to the residents of Wallaga Lake community and itinerant travellers. Tilba Lake was popularly used as a camping base during the 1950s and 60s; families' fishing in Tilba Lake, around Pooles Point to the north and along Wallaga Beach to the south. Mystery Bay continues to be a highly valued place to camp, initially due to its proximity to a fresh water source and sea foods, as well as providing shelter from the wind and sun. Today a

<sup>115</sup> See also Rose D [2007] *Reports from a wild country: ethics for decolonisation; love and reconciliation in the forest.*

<sup>116</sup> Archeological description provided by Sue Feary DECC.

<sup>117</sup> See Howitt 1904 [1996]; Egloff, Peterson and Wesson [2005]. Note, the description of the Yuin tribal area can vary according to context, level of knowledge and personal orientations.

<sup>118</sup> Howitt 1904 [1996] 82.

<sup>119</sup> S Wesson 2000: 131 – 147.

<sup>120</sup> Egloff, Peterson and Wesson [2005]: 17, 20.

government-supplied tap has replaced the fresh water source, and fishing has its limitations. However, the need to unite with family, to maintain cultural connections with the land and sea, and teach younger generations traditional fishing techniques, for instance, remains strong. The collection of natural resources takes place throughout this nodal area. From Gulaga, to Dignams Creek, Wallaga Lake, Wallaga Beach, Tilba Lake and Pooles Point. Walking trips are still undertaken to nearby locations such as Pooles Point, Tilba Lake, Gulaga and Mystery Bay.

Gulaga [Mt Dromedary], located immediately west of Tilba Tilba, is the place of ancestral origin for Yuin people. Gulaga itself symbolises the mother and provides a basis for Aboriginal spiritual identity, for both Aboriginal women and men. Gulaga had two sons; Najanuka [Little Dromedary Mt], the youngest, and Baranguba [Montague Island] the eldest. Both sons lived with their mother, Gulaga. When it came time for the eldest son to leave home, he was sent to where he is today, as represented by Montague Island. When it was time for the youngest son to leave home, Gulaga did not want him to go as far away as his brother, so she let him go as far as where he is today, as represented by Little Dromedary Mountain. The landscape surrounding Gulaga and Najanuka also contain Aboriginal cultural and spiritual elements and continue to be valued today. The impact of colonisation on many local cultural traditions associated with ancient Dreamtime mythology was devastating. The normative transmission systems pertaining to cultural knowledge was adversely affected and many stories were 'lost'. Subsequently, the mythological elements associated with Gulaga are exceptionally precious to Aboriginal people. Despite the historical obstacles, the stories were transmitted to the current generation of custodians.

Captain Cook was the first recorded European person in the region who on 22 April 1770 saw a sign of habitation, smoke, near Gulaga. On this day he renamed Gulaga 'Mt Dromedary'; one of the first landmarks on the east coast of Australia to be named by Captain Cook.

Historical records document how Aboriginal families camped at the base of Gulaga in the late 1800s. There was also a camp at Mystery Bay to the north, Pooles Point to the east and various camps on the banks of Wallaga Lake. In the early 1900s when the police came to Wallaga Lake to take the children away to institutions, families ran away, and hid on Gulaga Mountain. During these times the Aboriginal people being chased knew where the old walking tracks were over Gulaga and took refuge there. In wintertime, Aboriginal people from Cooma would avoid the snow by travelling over Gulaga to the coast, and return in springtime when it warmed up. Records from the early 1900s document an Aboriginal camp belonging to the 'Addygaddy' [= Haddigaddy] family at the base of Gulaga; Haddigaddy descendants remain in the area today.

With the establishment of Wallaga Lake Aboriginal Reserve in 1891, immediately to the south east of Gulaga, cultural, social and economic connections to Gulaga landscape continued to be forged. Life at the 'mission' was restricted by government protectionist policy, however fishing in Wallaga Lake and 'rabbitting' in the surrounding bush lands was popular. The Wallaga Lake Community 'adopted' *Umbarra* [Black Duck] as the local community totem. After the first Aboriginal School in NSW was established at Wallaga Lake, other schools in the region would not enrol Aboriginal students, even if they lived close by. Aboriginal

children living in Tilba, Narooma and as far away as Batemans Bay were forced to attend school at Wallaga Lake. A portion of the original Wallaga Lake Reserve is owned by the Aboriginal community today, as granted in 1984. The remaining section forms the present day township of Akolele. Shirley Foster recalls being taken to the Akolele area by her mother. It is recognised as a woman's meeting place.

To the east of Wallaga Lake is an area known as the 'Cricket ground'. It was a camping place for people visiting family residing at Wallaga Lake community. The people that lived there played cricket, giving the place the name. The manager at the Wallaga Lake Reserve during the 1950s was hard on people; so many people camped at the Cricket ground, where they knew they could stay and source plenty of fresh food and water. There were loads of people camped under the trees during school holidays.

The Tilba Tilba and Central Tilba area is in close proximity to the Wallaga Lake community. Many Aboriginal people's stories about Tilba relate to employment in the agricultural industry and the presence of Gulaga Mountain to the west of the village. People would work chipping bracken fern and milking cows. The settler families showed good will to Aboriginal people. Vivienne Mason's grandfather Edward 'Ted' Stewart was born at Tilba Tilba. He married Muriel Coolie from Nelligen. Ted's father was Christy Stewart and mother Emily Walker. Emily Walker's father was Neddy Walker from Wallaga Lake. The Stewart family left the Tilba Tilba area following the timber industry to Annandale, Sydney, where they stayed. Every year the families '*trek back to ancestral land...to maintain their connection*'. Grandfather Stewart passed away when he was 50 years old. He always sang the name 'Tilba Tilba', that was his country and he died before he could take the family back [Vivienne Mason 5.1.2006].

Tilba also provided a training ground for the World War 1 light horse brigade, many of whom were Aboriginal. The Tilba Hotel and Cheese factory also employed Aboriginal people. There was a sawmill above Wallaga Lake, opposite the turn off to Bermagui. Men from Wallaga Lake worked there. Georgina Parson's youngest brother Stanley Parsons 'bugs' drove the crane truck at the sawmill; 'We lived there in an old bus with a shade built off the side from mill timber. .... Once a goanna ate all our pups. I lived there with my brothers Barry, Stanley and Ernie. I looked after the kids and cook for the workers. Max Harrison worked there too' [Georgina Parsons 2008].

In 1979 the Aboriginal community protested against a logging on Mumbulla Mountain. Mumbulla is cultural linked to Gulaga Mountain. A signed petition was taken to Canberra, the logging was stopped and the process to return the ownership of both Mumbulla and Gulaga mountains back to Aboriginal people began. In 2001, Gulaga National Park was created out of the existing Wallaga Lake National Park, the Goura Nature Reserve and the Mt Dromedary Flora Reserve. In 2005 freehold title of Gulaga National Park was transferred to the Merrimans and Wagonga Local Aboriginal Land Councils [held on behalf of Aboriginal Owners] and leased back to the NSW Government for use as a National Park. Gulaga National Park is now jointly managed by Aboriginal Owners, environmental conservationist, local government, neighbours and the NSW Department of Environment and Climate Change.

Beryl Brierley, born in the Tilba area, has memories of camping and fishing at Mystery Bay throughout the 1940s. ‘.....people from Wallaga Lake always collected white clay along the creek. The place has been covered over by the road now. Everyone painted their wood fire chimneys with the white clay, everyone was proud of their white chimneys. There was a fresh water spring where the houses are now. It is probably in someone’s back yard.....’. [Beryl Brierley 12.5.2006]. ‘...Traditionally, Mystery Bay was the place to find muttonfish. Nan Stewart cooked muttonfish on the beach at Mystery Bay. ....Once I saw the rocks in water light up, .....the surface and the rocks under the water were luminous...’ [Vivienne Mason 5.1.2006].

For the residents of Wallaga Lake, Mystery Bay is one of the main camping and fishing places. Sisters Harriett and Pam often walked with their parents between Wallaga Lake and Mystery Bay. Harriett’s mother once found a skeleton on the point at Mystery Bay. So the families choose to camp in the bush, closer to where the houses are now. Harriet remembers her grandparents fishing and camping here, and also at a place between Bunga Head and Mystery Bay. There was a fresh water spring flowing onto Mystery Bay, near where the campground is today. Pam recalls collecting abalone here [Pam Flanders and Harriett Walker 11.4.2006].

Lionel Mongta recalls the Andy, Parsons, Davis, Noble and Carter families camping at Mystery Bay. The Noble family had tribal markings on their bodies. Fresh water once flowed onto the beach. There is also a man made well on the north side of the campsite. This campsite was good all year around, so people could stay for months at a time. Fish would be fried with butter bartered, in exchange for snapper, from the Thompson’s farm. Percy Davis’s brother, ‘Uby’ camped at the most easterly end of Mystery Bay. ‘Uby’ travelled between Tilba Tilba Lake and Mystery Bay depending on the availability of fish. If bream were plentiful at Tilba Lake he would camp there. If snapper were on at Mystery Bay he would camp there. Lionel’s grandfather, Bob Andy worked as a tracker in search of the gold missing from Mystery Bay from off Le Mont Young’s boat which was sailing from Bermagui to Sydney. The story, as told to Lionel, was that the boat anchored in the Bay in search of water, a smaller rowboat came ashore. The smaller rowboat was found with spears, and bullet holes but without people [alive or dead] or gold [Lionel Mongta 2.1.2006].

“.....Dad always took us here to fish and camp. There were a lot of Aboriginal families living at Mystery over summer. They picked up the river when the work was on. I was last there 20 years ago. We camped on the beach just south of the Mystery Bay. ....where fresh water came onto the Beach ...” [Linda Cruse 1.3.2006]. It is mainly the Solomon family from Victoria who camp at Mystery Bay today. Ted Thomas used the traditional fish traps at Boat Harbour Point when he was a child [Chris Griffiths’ consultations 16.3.2006].

People residing at Wallaga Lake also used 1080 Beach, also known as Tilba Beach during the 1950s and 1960s as a summer camping area. It was not a long walk from Wallaga Lake. Pam Flanders recalls fishing for flat head, prawning and collecting blackberries here. The area is seen as a teaching place where traditional ecological knowledge can be passed onto the younger generations. Families from other areas would meet here with Wallaga Lake families. The Tilba Lake was once open, but is

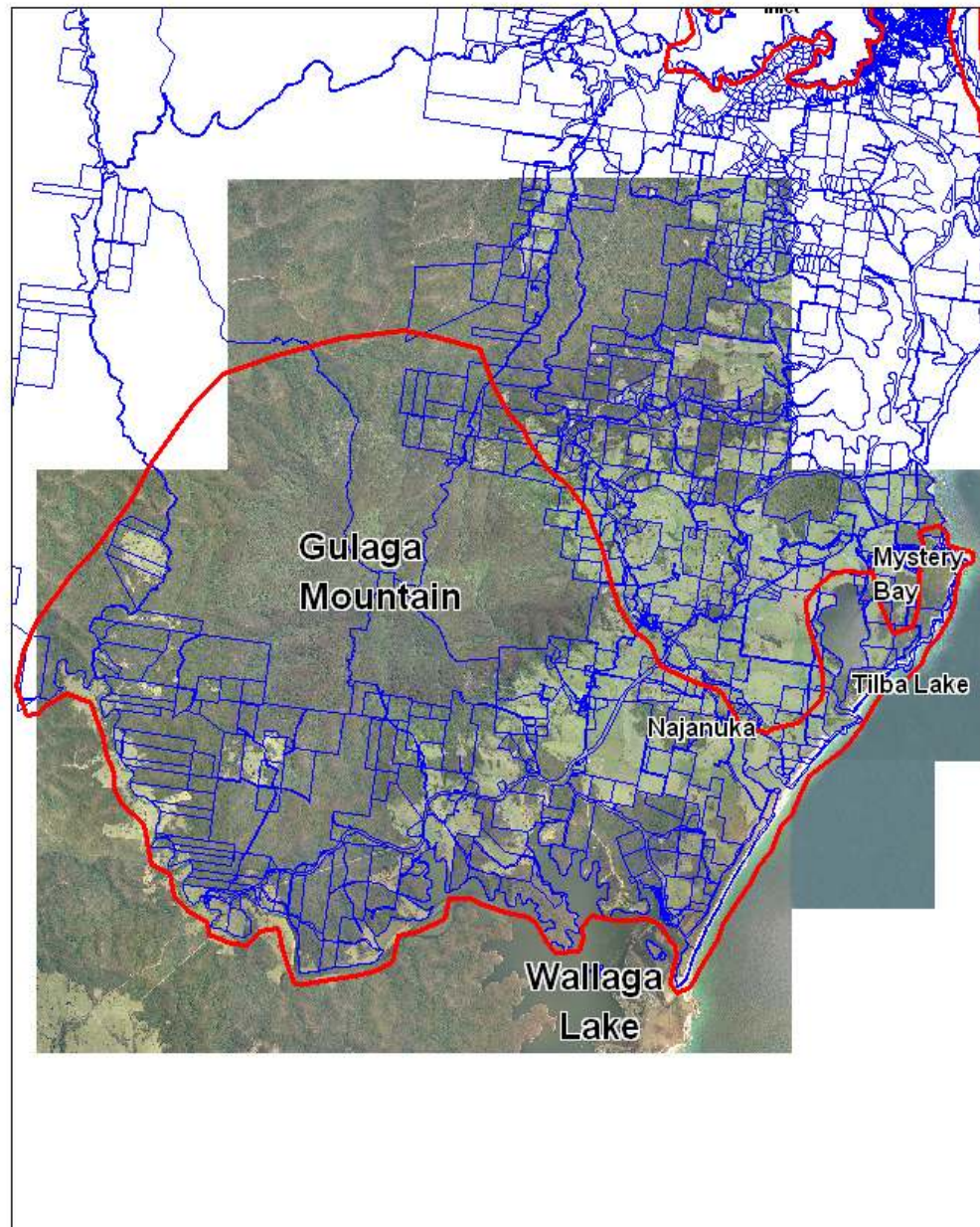


currently closed to the ocean [Chris Griffiths 16.3.2006]. Lionel recalls there being a spring fed fresh water creek at the northern end of the beach however, weeds presently choke the creek and the water is not running [Lionel Mongta 2.1.2006]. Throughout the 1960s and 1970s Merv Penrith and Shirley Foster frequently took their kids to camp at Tilba Lake, Mystery Bay and 1080 Beach. They slept in a tent and fished on the beach and in the lake. They took fresh water to Tilba Lake from Wallaga Lake. *'I have been through a lore that is 1000s of years old, if I can't fish in Tilba Lake, there'd be hell to pay, I need to fish...'*. [Mervyn Penrith 11.4.2006].

With her family and friends, Beryl would camp at Tilba Lake in the school holidays, when people did not have to work all day long. The usual camp was under the fig tree, now covered by sand dunes. The sand is creeping towards the lake. There were always plenty of prawns and fish in the Tilba Lake. We slept in 'woggas', with canvas and corn bags sewn together like blankets to keep the dew off, like a fly over a tent. When camping at Tilba Lake, we always went to Tilba Beach [1080 Beach] and around the rocks to Mystery Bay for lobster and muttonfish. We usually returned to Tilba Lake to camp. *'I crave our natural foods...I try to eat fresh food when ever I can....'*. [Beryl Brierley 12.5.2006].


Pam Flanders and Harriet Walker recall prawning in the Tilba Lake. They camped in the sheltered heath land, near a fresh waterhole. Alex Walker recalls a lot of koori families camping there throughout the 1950s [Alex Walker and Pam Flanders 11.4.2006]. During the war years, a well-used camp was established and used by the Wallaga Lake mob. When camping at Tilba Lake, if night fishing was on at Poole's Point, those fishing would camp over night at Pooles point, returning back to the main camp the following morning. Lionel recalls camping here over the summer holidays when the picking work was at a stand still [Lionel Mongta 2.1.2006].

Pam Flanders and Harriet Walker have memories of fishing with lines and spears off Pooles Point, a rocky point close to Tilba Lake. This area is commonly used by residence of Wallaga Lake for day trips, as it is a short walk from Wallaga Lake along the Wallaga Beach. Harriett recalls camping at Poole's Point with her grandparents. They took a little swag each and made wind breaks from the shrubs and trees in the area. There was running fresh water near Poole's Point [Pam Flanders and Harriett Walker 11.4.2006].



**EUROBODALLA ABORIGINAL HERITAGE STUDY VOL. 4**

Culturally Sensitive Land No. 1  
Name: Gulaga

Boundary of CSA 

## APPENDIX NINE: SUMMARY OF PROPOSED HERITAGE OPTIONS BY LALC REGION

SUMMARY OF PROPOSED HERITAGE OPTIONS BY LALC REGION <i>Italicised refers to places that area already declared / listed.</i>		
PLACE	OPTION	LALC
Gulaga, Wallaga Lake, Mystery Bay	CSL	MERRIMANS LALC / WAGONGA LALC
The Cricket Ground	AP, HCA and CSL	MERRIMANS LALC
Najanuka [Little Dromedary Mt]	HCA and CSL	MERRIMANS LALC
Smyth Oval, Narooma	HCA	WAGONGA LALC
Wagonga Inlet and coast	CSL	WAGONGA LALC
Montague Island	AP	WAGONGA LALC
Trunketabella Lagoon	HCA and CSL	BODALLA LALC
<i>Port Philip Neddie's 1864 Grave Cadgee</i>	<i>HI</i>	<i>BODALLA LALC</i>
Brou Lake, Two Sisters and Whittaker Creek	HCA and AP	BODALLA LALC
Tuross River and Lake	CSL	BODALLA LALC
Pedro Swamp and Point	HCA	COBOWRA LALC
Malabar Lagoon	HCA and CSL	COBOWRA LALC
Moruya River	CSL	COBOWRA LALC
Coila Lake and Black Hill	CSL	COBOWRA LALC
Bengello Creek	HCA	MOGO LALC
Barlings Island and Barlings Beach 'corner' . .	HCA	MOGO LALC
<i>Barlings Beach</i>	<i>AP</i>	<i>MOGO LALC</i>
<i>Canoe Tree Broulee</i>	<i>HI</i>	<i>MOGO LALC</i>
Grandfather's Gully Beach, Lilli Pilli	HCA	BATEMANS BAY LALC
Hanging Rock, Catalina	HCA	BATEMANS BAY LALC
Cullendulla Creek	HCA and CSL	BATEMANS BAY LALC
Clyde River Batemans Bay	CSL	BATEMANS BAY LALC
Holmes Lookout	AP and CSL	BATEMANS BAY LALC

## APPENDIX TEN: ABORIGINAL PLACE NAMES IN THE EUROBODLLA

Place	Meaning	Source <sup>121</sup>
Baranguba	Name of Montague Island	Umbarra booklet
	Bunabarr meaning the shape of a ship.	Royal Anthropological Society of Australaiasia 1890s – 1910, as cited in Coastal Custodians v2, is 8: 9.
Bhundoo	Name of a section of the Clyde River	Phil Boot 2002
Bingie:	Belly	RAS 1890 - 1910, as cited in Coastal Custodians v2, is 8: 9.
	Pregnant Women	Georgina Parsons
Bowdally [Bodalla]	Several waters	DAWN magazine V7, issue 6: 13 – 19.
	‘you run hard’, ‘a haven for boats’ or ‘to toss a child up and down in arms’.	Royal Anthropological Society of Australaiasia 1890s – 1910, as cited in Coastal Custodians v2, is 8: 9.
	The Aboriginal group in the Bergalia and Brou Lake areas;	Wesson 2000: 131 – 147.
Browley [Broulee]	The Aboriginal group who occupied land between Congo and Batemans Bay.	Source: S Wesson 2000: 131 – 147
Burgali [Bergalia]	The Aboriginal group in the Congo and Bingi area;	Source: S Wesson 2000: 131 – 147.
Cobowra	Where the river is crossable by foot. Now known as Moruya.	Royal Anthropological Society of Australaiasia 1890s – 1910, as cited in Coastal Custodians v2, is 8: 9.
Currowan	The Aboriginal group who occupied Currowan Creek area near Nelligen.	Source: S Wesson 2000: 131 – 147.
Dignmans Creek	Once called wullunthar, meaning ‘very crooked’.	Royal Anthropological Society of Australaiasia 1890s – 1910, as cited in Coastal Custodians v2, is 8: 9.
Duga [Dooga]	The Aboriginal group who occupied the Moruya and Deua River area.	Source: S Wesson 2000: 131 – 147.
Eurobodalla	Land between water	DAWN magazine V7, issue 6: 13 – 19.
Gulaga	Mt Dromedary	Umbarra booklet
	After the Dooligal [spirit being].	Georgina Parsons
Gundaree [Gunday]	The Aboriginal group who occupied the Moruya and Deua River area.	Wesson 2000: 131 – 147.
Kianga	‘spear fish with light’.	Royal Anthropological Society of Australaiasia 1890s – 1910, as cited in Coastal Custodians v2, is 8: 9.
Kiyora [Kiora]	The Aboriginal group west of Moruya;	Source: S Wesson 2000: 131 – 147.
Mogo	Small hatchet	DAWN magazine V7, issue 6: 13 – 19.
	pipe clay creek	Royal Anthropological Society of Australaiasia 1890s – 1910, as cited in Coastal Custodians v2, is 8: 9.
Mokondoora [Mogendoura]	The Aboriginal group who occupied the Moruya and Deua River area.	Wesson 2000: 131 – 147.
Moorooya [Moruya]	Water ford	DAWN magazine V7, issue 6: 13 – 19.
	The Aboriginal group who occupied the Moruya and Deua River area.	Source: S Wesson 2000: 131 – 147.

<sup>121</sup> This word list should be used in the full knowledge that none of the sources are primary and that there is no scope for validating the information. There are many other ethnographic word lists that have not been mentioned here.

*EUROBODALLA ABORIGINAL CULTURAL HERITAGE STUDY STAGE FOUR*

	The term Moruya does not mean 'black swan'. Moruya is a term meaning 'where the river is crossable by foot'. Black Swan is the totemic species for the Bringa Yuin tribe whose territory included the Moruya area.	CWM Georgina Parsons Trisha Ellis.
Mullenderee [Mullinderry]	The Aboriginal group who occupied the Moruya and Deua River area.	Source: S Wesson 2000: 131 – 147.
Noorama [Narooma]	Zamia Palm growing in water	Royal Anthropological Society of Australaiasia1890s – 1910, as cited in Coastal Custodians v2, is 8: 9.
	The Aboriginal group in the Wagonga and Tilba areas;	Source: S Wesson 2000: 131 – 147.
	Blue Water	Ellis 1996 Brinja – Yuin.
	Burrawang growing in the water	Royal Anthropological Society of Australaiasia1890s – 1910, as cited in Coastal Custodians v2, is 8: 9.
Nerrigundah	Narrow river	Lionel Mongta 1992 in Ellis 1996 Brinja – Yuin.
Najanuka	Little Dromedary	Umbarra booklet
Tilba Tilba	Windy Windy	Ellis 1996 Brinja – Yuin.
	Pinnowier after a peculiar weed.	Royal Anthropological Society of Australaiasia1890s – 1910, as cited in Coastal Custodians v2, is 8: 9.
	Many waters	DAWN magazine V7, issue 6: 13 – 19.
	Tolbedilbo = Windy	Pacey and Hoyer 1995: 2 Tilba Times.
Terosse [Tuross]	The Aboriginal group in the Tuross area;	Source: S Wesson 2000: 131 – 147.
Turlinjah	Elbow	Royal Anthropological Society of Australaiasia1890s – 1910, as cited in Coastal Custodians v2, is 8: 9.
Wagunga [Wagonga]	Home of the stinging nettle	DAWN magazine V7, issue 6: 13 – 19.
	Stinging nettle grows	Royal Anthropological Society of Australaiasia1890s – 1910, as cited in Coastal Custodians v2, is 8: 9.
	The Aboriginal group in the Wagonga and Tilba areas;	Source: S Wesson 2000: 131 – 147.
Wandella	Initiated youth	DAWN magazine V7, issue 6: 13 – 19.
	Bark stripped from a tree to carry water [coolamons].	Royal Anthropological Society of Australaiasia1890s – 1910, as cited in Coastal Custodians v2, is 8: 9.
Wollaga [Wallaga]	The Aboriginal group in the Tilba, Wallaga Lake and Narooma area.	Source: S Wesson 2000: 131 – 147.
	Beauty spot	Ernie Andy [1965] in Ellis 1996 Brinja – Yuin.
	Beautiful water	Mrs Arther Thomas 1966 in Ellis 1996 Brinja – Yuin.

## APPENDIX ELEVEN: LALC COMMENTS ON ESC CODE OF PRACTICE

**CODE OF PRACTICE** (*suggested rewrite and footnote comments was done 20/11/08 by BBLALC, Cobowra LALC and Mogo LALC CEO's Mal MacCallum, Danny Chapman and Norman Russel*),

**Code Title:** SUBDIVISION AND INFRASTRUCTURE ASSESSMENT  
ABORIGINAL HERITAGE

**Reason for Code:** (Background; Problems to be addressed; Legislative requirements; Provide details of any related policy)<sup>122</sup> The reason for the Code of Practice is primarily to show recognition, due respect and ongoing protection of Aboriginal culture and heritage in the Eurobodalla.

**Introduction:** (Assists the reader understand the terms and gist of the code)

Code of Practice  
details:

The following Codes of Practice be endorsed in addressing Koori<sup>123</sup> issues in assessment of development or subdivision applications, and the design and maintenance of infrastructure; and weed control,

Abbreviations

ESC	Eurobodalla Shire Council's
ALO	Aboriginal Liaison Officer
DECC	The Department of Environment and Climate Change
AHIMS	Aboriginal Heritage I ??? S ???
LALC/EG	Local Aboriginal Land Council and traditional owners Elders' Group
SAHU	Southern Area Heritage Unit

### Code of Practice 1

#### New Release Subdivisions

- (n) All DA's are provided to ESC's ALO to consult DECC AHIMS and ESC Aboriginal culture and heritage databases and predictive models to determine whether the proposed development is within an identified, known or possible Aboriginal culture and heritage sensitive area;
- (o) If there may be an Aboriginal site or relic (as identified on site databases, registers or predictive models) in proximity to an area identified ESC will consult with the relevant LALC/EG) through the ALO A site officer from the relevant LALC/EG will conduct a walkover of the proposed site with the ALO at the developer's expense. In consultation with DECC and the ALO the site officer will advise:
- as to whether an archeological assessment is required and/or

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<sup>122</sup> Also Reason for Code should be to show clear recognition, due respect and ongoing protection of Aboriginal (original) heritage in the Eurobodalla.

<sup>123</sup> Is this the word the Aboriginal community want used in this COP?

- whether site monitoring is required including salvage opportunity for some or all of ground disturbance of the particular DA.
  - (p) All assessments shall be referred to DECC (SAHU) for endorsement.
  - (q) Preferably, an archaeological site assessment of the subdivision identifying allotments within the subdivision that contain Aboriginal archaeological or heritage sites should be provided by the applicant prior to formal assessment of the application. A qualified archaeologist and representatives of the relevant LALC/EG should undertake the archaeological assessment. That assessment should be forwarded to DECC SAHU for review and comment.
- Lot design/layout may be reconfigured to accommodate or excise those parts of lots subject to identified artefacts or envelopes be nominated to protect those areas.
- (r) New release subdivisions will be approved as a deferred commencement requiring, before the issue of the Construction Certificate, provision of valid DECC approvals.
  - (s) Subdivision consents will be conditioned to require the developer to consult with relevant LALC/EG after provision of relevant DECC research/monitoring permit for site monitoring during construction of the subdivision. Should any artefact be uncovered, work will cease on that specific site and relevant consents to be sought from DECC, and renewed across the life of the subdivision approval;
  - (t) Only those allotments where sites or artefacts have been found will require a further site-specific assessment when Development Applications are lodged for construction of structures on that particular allotment. Should any artefact be uncovered, work will cease and relevant consents to be sought from DECC;
  - (u) Where building envelopes are nominated on the subdivision plan and no sites or artefacts exist on or adjacent to that envelope, a further site assessment upon lodgment of a DA will not be required.
  - (v) When archaeological assessments are required, the relevant LALC/EG Site Assessment Officer is to conduct the assessment in conjunction with the DECC or other nominated archaeologist;
  - (w) A copy of site assessments to be provided to Council's ALO to update database.
  - (x) Council will not make information regarding the identified sites available to external parties – enquiries will be referred to DECC. Written consent of relevant LALC/EG will be required from those external parties.
  - (y) Should an archaeological survey be completed and endorsed by LALC/EG/DECC, lots will be recorded to not require further notification for development applications proposing ground disturbance (for structures, etc)<sup>124</sup>.

## Code of Practice 2

### Development Assessment

- (f) ALO will consult Council's Aboriginal Sites/DECC database and predictive model to determine whether proposed development is within an identified, known or possible Aboriginal site;
- (g) If there may be an Aboriginal Site or Relic (identified on site register or DECC predictive model) in proximity to an area identified on Aboriginal Sites Database, Council's ALO will consult with relevant LALC/EG. Submissions or comments from those groups are required

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<sup>124</sup> What does this mean?

before the close of the notification period<sup>125126</sup>, indicating whether a site assessment and/or an archaeological assessment is required;

For all DA's, ESC only considers submissions received during the notification period, unless forewarned of a submission to arrive after the closing date.

- (h) All assessments shall be referred to DECC SAHU for endorsement. Such endorsements, unless integrated applications, should be received in notification period. Such endorsements shall be deemed to have been granted if notice to the contrary is not received within notification period days.
- (i) Development consents will be conditioned so that should any artefact be uncovered, work will cease and relevant instructions and consents be sought from DECC.
- (j) Should an archaeological survey be completed and endorsed by LALC/EG/DECC, lots will be recorded to not require further notification for development applications proposing ground disturbance (for structures, etc). Nevertheless, the relevant LALC/EG will always be consulted for additional DA's on the lot.

### **Code of Practice 3**

#### Extractive Industries and Related Developments

- (e) Applications for extractive industries and related developments will be referred for comment to DECC and LALC/EG. Responses must be received within notification period.
- (f) Sites identified through DECC or LALC/EG assessments will be conditioned to require relevant consents from DECC.
- (g) All assessments shall be referred to DECC, SAHU for endorsement. Such endorsements, unless integrated applications, should be received in notification period. Such endorsements shall be deemed to have been granted if notice to the contrary is not received within notification period.
- (h) Development consents will be conditioned so that should any artefact be uncovered, work will cease and relevant consents be sought from DECC.

### **Code of Practice 4**

#### Developments in Congo/Bingie and Barlings Beach Areas \*

- (i) Upon enquiry of a proposed Development Application in the Congo/Bingie defined area, applicants will be encouraged to participate in the Application Enquiry Panel<sup>127</sup> to identify/clarify any potential issues. A separate Development Application information package, including a copy of this Code, will be issued.
- (j) Upon receipt of Development Applications in Congo/Bingie using the perimeter established on Council's GIS, customer staff will arrange notification. Council will consult with relevant LALC/EG through Council's ALO during the notification of development applications and subdivision applications. Submissions or comments from those groups are required before the close of the notification period, indicating whether a site assessment and/or an archaeological assessment is required;
- (k) If so requested, the relevant LALC/EG will be invited, at the developers' expense, to conduct a site assessment over the proposed development site. DECC SAHU and the

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<sup>125</sup> It is the opinion of BBLALC, Cobowra and Mogo LALCs that all of the Eurobodalla coastal strip is extremely sensitive in the context of Aboriginal Culture and Heritage and so these special conditions for Congo/Bingie, and Barlings should apply across the whole shire coastal strip to 10 km inland.

<sup>126</sup> What is a realistic period?

<sup>127</sup> What is this? Why only for these two spots



LALC/EG to determine if a Cultural Heritage (archaeological) assessment is necessary (as some sites may have already been subject to archaeological assessment);

- (l) When archaeological assessments are required, LALC/EG the appointed Site Assessment Officer is to conduct the assessment in conjunction with the DECC SAHU or other nominated archaeologist. The property owner may choose an archaeologist from the relevant Society or telephone directory.
- (m) Only those allotments where sites or artefacts have been found on or adjacent to, or it is predicted that they will occur, will require a further site specific assessment when Development Applications are lodged for construction of structures on that particular allotment. Nevertheless, the relevant LALC/EG will always be invited to conduct site assessment.
- (n) All assessments shall be referred to DECCSAHU for endorsement. Such endorsements, unless integrated<sup>128</sup> applications, should be received in notification period. Such endorsements shall be deemed to have been granted if notice to the contrary is not received within notification period
- (o) Development consents will be conditioned so that should any artefact be uncovered, work will cease and relevant instructions and consents be sought from DECC.
- (p) Should an archaeological survey be completed on a property and endorsed by DECC, it will be 'tagged' as not requiring LALC/EG a heritage assessment for future developments on that property.

### **Code of Practice 5**

#### Construction - Roads, Water, Sewerage and Drainage Works involving ground disturbance

- (j) Proposed works (construction and maintenance) as outlined in Council's Five-Year Management Plan for the upcoming two year period are to be taken to each LALC/EG by the ALO for discussion and comment /In addition plans are also and DECC SAHU for comment within 30 days; The location of Works are to be marked on topography maps
- (k) ALO Consult Council's/DECC Aboriginal Sites Database and Predictive Model to ensure proposed works are not within an identified or "known" Aboriginal Site or Relic;
- (l) If no "known" Aboriginal Sites or Relics are within the proposed works area, Council should proceed with detailed design of the works;
- (m) If an Aboriginal Site or Relic is identified from the Council/DECC Aboriginal Sites database or Predictive Model, Council will consult with DECC and the LALC/EG to determine if a Cultural Heritage assessment is necessary (as some sites may have already been subject to archaeological assessment). If requested by DECC, a site research/monitoring permit from DECC should be sought.
- (n) Any work undertaken should be in accord with the relevant DECC consent.
- (o) Reviews of Environmental Factors (REF) should accommodate issues identified in site assessments, prior to design of proposed works;
- (p) Council will not make information regarding the identified sites available to external parties – enquiries will be referred to DECC.
- (q) Archaeological assessment will generally not be required for Council's infrastructure works. The advance site assessments conducted by the LALC/EG will indicate whether further investigation is required (the cost of which are usually included in the design for the works).
- (r) Technologies such as ground penetrating radar may be used to mitigate the archaeological assessment process.

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<sup>128</sup> Please explain an Integrated application and its relevance to aboriginal culture and heritage.

### Code of Practice 6

#### Maintenance Works - Involving Ground Disturbance - Congo/Bingie Area<sup>129</sup>

- (e) Copy of programmed works maintenance (for re-sheeting, table drain scouring, trench clearing, road or reserve slashing) to be forwarded to Cobowra LALC/EG and DECC SAHU.
- (f) LALC/EG to advise within notification period of requirements for site supervision or nominate sites for site assessment by LALC/EG prior to conduct of those maintenance works. A site research/monitoring permit from DECC should be sought if sites are nominated.
- (g) Approval to undertake those works on a continuing basis should be sought.
- (h) Should sites or artefacts be identified, works should cease immediately on that specific site and relevant advice or consents from DECC should be sought.

### Code of Practice 7

#### Weed Control Activities - Involving Ground Disturbance - Congo/Bingie Area<sup>130</sup>

- (e) Copy of programmed annual weed control activities to be forwarded to all LALC/EGs, and DECC SAHU.
- (f) LALC/EG to advise within notification period of requirements for site supervision or nominate sites for site assessment by LALC/EG prior to conduct of those weed control activities. If sites nominated, a site monitoring/research permit from DECC should be sought.
- (g) Approval to undertake those works on a continuing basis should be sought.
- (h) Should sites or artefacts be identified, works should cease immediately and relevant advice or consents from DECC should be sought.

### Code of Practice 8

#### Emergency Works

Council activities to attend to bushfire, flood, inundation and similar natural disasters can be undertaken without referral to LALC/EG. As a courtesy the LALC/EG will be informed and requested to visit site after the emergency has passed if ground disturbance occurs.

### Code of Practice 9

#### 149 Certificates

S149 Certificates will be annexed including the following information:

“The National Parks and Wildlife Act 1974 provides protection to Aboriginal Heritage on all land within NSW. Certain land within Eurobodalla Shire may contain relics which may have significance to the Aboriginal Community. It may be advisable for potential purchasers of land to undertake appropriate searches to determine whether or not Aboriginal heritage may effect the land.”

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<sup>129</sup> Why are these areas different?

<sup>130</sup> Why only this area?

*EUROBODALLA ABORIGINAL CULTURAL HERITAGE STUDY STAGE FOUR*

DECC can provide a search of their Aboriginal Sites Register. Any enquiries regarding this should be directed to the DECC SAHU.

Costs of LALC/EG Consultation

1. Site walkover, site assessment, archeological consultation and site monitoring are all charged at \$60 per hour. Time will be charged from departure and return time to the LALC/EG office taking into account travelling time.
2. If salvage (Section 90 Consent to Destroy) is required on any site in the Eurobodalla the developer will cover costs of salvage in negotiation with the relevant LALC/EG and consultation with the appointed archaeologist

*Definitions (Only include where necessary)*

*OFFICE USE ONLY - NOT FOR PUBLICATION ON WEBSITE*

Corporate mpetitive)	(Customer/Employment/Environment/Asset/Development/Governance/Co	Goal
Code Co-ordinator:	Anita Brunhuber	
Measurement:	(Explains how the effectiveness of the code will be measured)	
Consultation: when)	(List staff/public/other agencies with whom consultation has occurred and	
Approved by Council:	377 24/10/00	
References:	(Identify code(s) that this replaces; identify related code or policies – hyperlink to whole document)	
Significance of code of practice:	(Very high – needs review annually – include review date) (High – needs review every two years – include review date) (Mod – needs review every three years – include review date) (Low – must review every four years – include review date)	

*Implementation process*

and coordinator:	(Details of how the code is to be effectively implemented and by whom) (Include details of training and education required)
Access:	(Is it appropriate for the code to be published on Council website)
Computer file name:	H:\Pub\Manual\Policy.Reg\Code Name)

Costs of LALC/EG Consultation

3. Site walkover, site assessment, archaeological consultation and site monitoring are all charged at \$60 per hour. Time will be charged from departure and return time to the LALC/EG office taking into account travelling time.
4. If salvage (Section 90 Consent to Destroy) is required on any site in the Eurobodalla the developer will cover costs of salvage in negotiation with the relevant LALC/EG and consultation with the appointed archaeologist

**APPENDIX TWELVE: EUROBODALLA ABORIGINAL HERITAGE INVENTORY**

