



*Jingi wahlu wiqtha*  
Welcome to Country



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

**Memorandum of Understanding**

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# BINING

## *Background and Development of the Totem*

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

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

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

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

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



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# Byron Shire Council and the Bundjalung of Byron Bay Arakwal People

## MEMORANDUM OF UNDERSTANDING (MOU)

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

### BACKGROUND

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

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

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

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

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

### NATIVE TITLE

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

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

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



**NSD6020/01 (NC01/8)**  
Byron Bay Bundjalung People 3

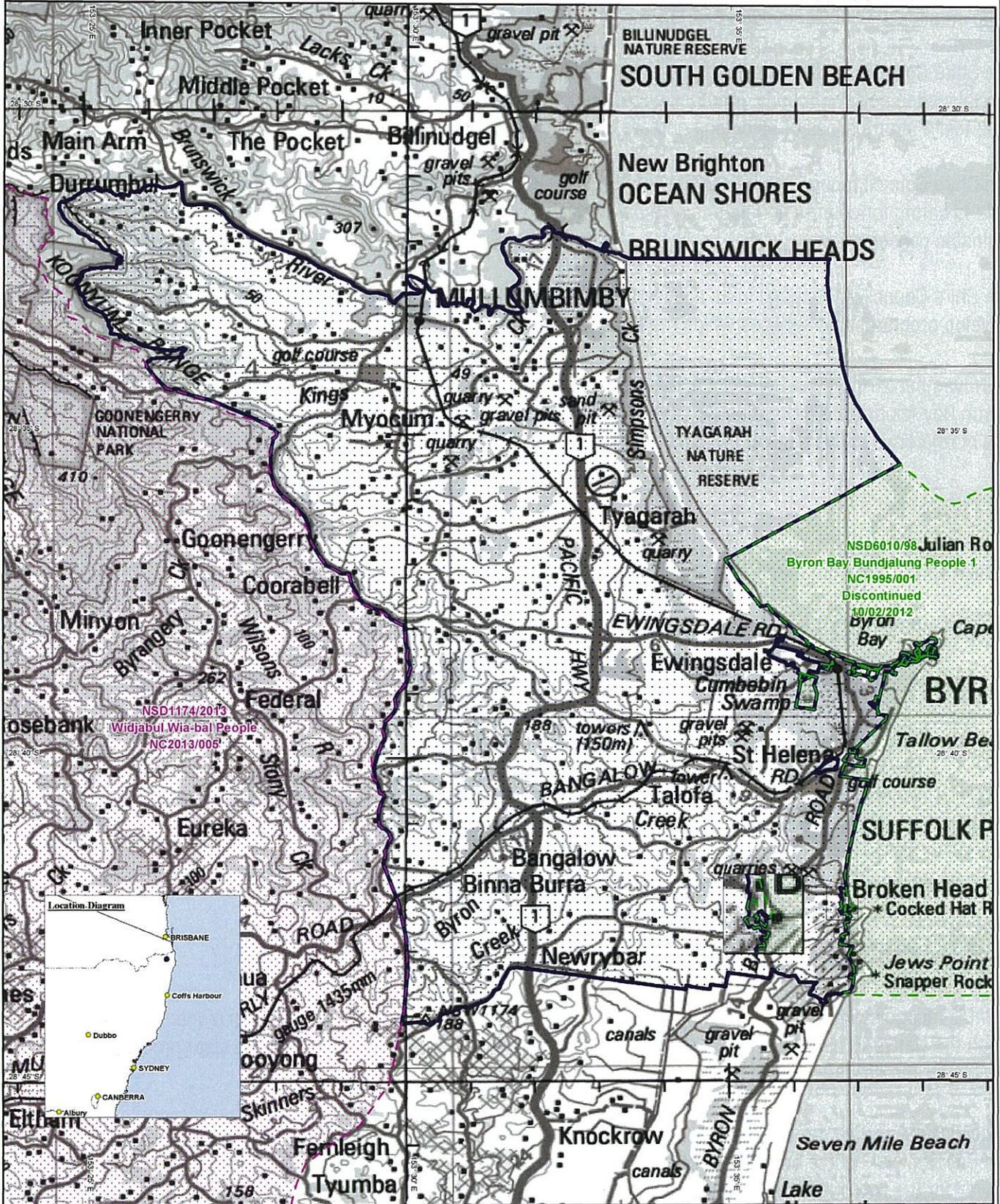
**NSD1174/2013 (NC2013/005)**  
Widjabul Wia-bal People

**NSD6010/98 (NC1995/001)**  
Byron Bay Bundjalung People 1  
Discontinued - 10/02/2012

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KILOMETRES  
Latitude and Longitude based on Geocentric Datum of Australia 1994  
Non Projection  
© Commonwealth of Australia 2013

NOTE: To determine areas subject to claim within the external boundary, reference to the application description is necessary.  
Application boundaries data compiled by the NNTT from data sourced from DOL (NSW).  
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Map created by: Geospatial Services, National Native Title Tribunal (04/07/2013)

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## STATEMENT OF COMMITMENT

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

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

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

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

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

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

## PARTIES

"Council" refers to Byron Shire Council.

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

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

"The Parties" means the Corporation and the Council.

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

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

## INTENT / PURPOSE

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

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

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

## **INTELLECTUAL PROPERTY**

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

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

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

## **MEETINGS AND REPORTING**

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

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

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

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

## **IMPLEMENTATION PLAN** (measurable outcomes with timeframe)

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

## **DISPUTE RESOLUTION / MEDIATION**

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

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

## **TERMINATION**

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

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## CARING FOR COUNTRY

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

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

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



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## **KEY PRIORITIES OF THE MEMORANDUM OF UNDERSTANDING**

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

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

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

# 1. CULTURE AND HERITAGE

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

## 1.1 Culture and Heritage: Guiding Principles

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

## 1.2 Culture and Heritage: Guiding Principles

### 1.2.1 Arakwal Language Revitalisation

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

### 1.2.2 Ti Tree Lake (Taylors Lake)

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

### 1.2.3 Access to monitor important Aboriginal sites on private land

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

### 1.2.4 Ongoing Cultural Heritage Management and Land Management Rights

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

### 1.2.5 Council support of important cultural events

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

### 1.2.6 Tourism

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

## **2. PARTICIPATION IN GOVERNANCE**

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

### **2.1 Participation in Governance: Guiding Principles**

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

### **2.2 Participation in Governance: Specific Projects**

#### **2.2.1 Participation in Committees**

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

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

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

## **3. CULTURAL AND ECONOMIC DEVELOPMENT**

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

### **3.1 Cultural and Economic Development: Guiding Principles**

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

### **3.2 Cultural and Economic Development: Specific Projects**

#### **3.2.1 Indigenous Employment Strategies**

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

#### **3.2.2 Arakwal Cultural Centre**

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

### **3.2.3 Public Art Opportunities**

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

The July 2012 Public Art Policy Guidelines and Criteria state :

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

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

### **3.2.4 Arakwal Room at the Byron Bay Library**

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

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

## **4. CARING FOR COUNTRY**

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

### **4.1 Caring for Country: Guiding Principles**

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

### **4.2 Caring for Country: Specific Projects**

#### **4.2.1 Caring for Country**

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

#### **4.2.2 Protecting Wetlands**

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

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

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

#### **4.2.3 Byron sewerage treatment plant at Tallow Creek**

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

#### **4.2.4 Cultural Awareness Training**

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

#### **4.2.5 Tourism**

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

## **5. SOCIAL JUSTICE AND COMMUNITY DEVELOPMENT**

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

### **5.1 Social Justice and Community Development: Guiding Principles**

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

### **5.2 Social Justice and Community Development: Specific Projects**

#### **5.2.1 Housing at Ironbark Avenue**

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

#### **5.2.2 Aboriginal social, economic and community development projects**

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

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

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### **5.2.3 Sandhills Estate**

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

### **5.2.4 Aboriginal Housing**

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

### **5.2.5 Aboriginal Health**

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

### **5.2.6 Tourism**

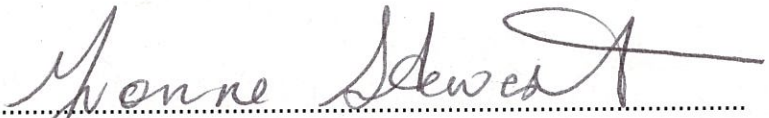
Council to monitor the negative impacts of tourism on Arakwal people, lands and culture while identifying opportunities for Arakwal to benefit from tourism.

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

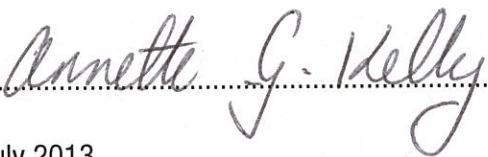
**The Arakwal Memorandum of Understanding**

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

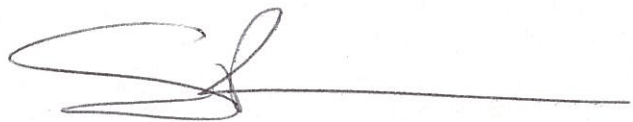
Bundjalung of Byron Bay Arakwal People  
Yvonne Stewart, CEO

  
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8 July 2013

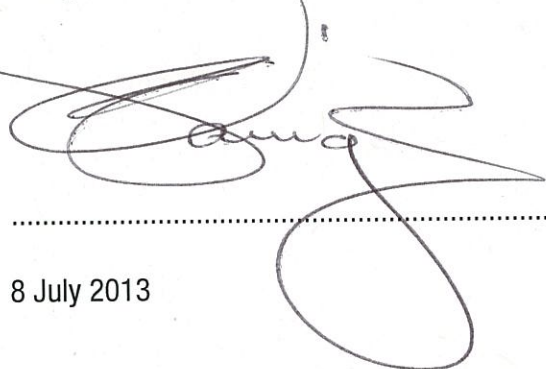
Bundjalung of Byron Bay Arakwal People  
Annette Kelly, Board Member

  
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8 July 2013

Byron Shire Council  
Cr Simon Richardson (Mayor)

  
.....  
8 July 2013

Byron Shire Council  
Ken Gainger (General Manager)

  
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8 July 2013

