

HEADS OF AGREEMENT

(BYRON SHIRE COUNCIL and the ARAKWAL PEOPLE)

Date: 16 October 1998

BETWEEN

ARAKWAL ABORIGINAL CORPORATION (the Corporation)

AND

BYRON SHIRE COUNCIL (the Council)

1. RECITALS

- A. LORNA KELLY, LINDA VIDLER AND YVONNE GRAHAM on behalf of the ARAKWAL PEOPLE (the Applicants) have 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.
- B. The Applicants assert 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.
- C. The Council asserts its desire to promote mutual respect between Aboriginal and non-Aboriginal people and harmonious community relations among those who live and work in the Byron Shire community.
- D. The Corporation has assumed responsibility for the Native Title application made by the Applicants.
- E. The purpose of this agreement is to establish a basis, process and timetable for the establishment of a committee that will make recommendations to the Council on planning and land use issues within the shire on an ongoing basis.

THE PARTIES AGREE:

2. DEFINITIONS

The following definitions apply in this agreement:

- 2.1 “**Applicants**” means Lorna Kelly, Linda Vidler and Yvonne Graham.

- 2.2 “**Application**” means the Applicant’s Application for a determination of Native Title under s.61 of the *Native Title Act (1993)* (Commonwealth), as amended, which was lodged with the National Native Title Tribunal (the “Tribunal”) on 22 December 1994 and accepted by the Tribunal 20 September 1995 (NC95/1).
- 2.3 “**Arakwal Aboriginal Corporation**” (the Corporation) is a corporation established under the *Aboriginal Councils and Associations Act (1976)* (Commonwealth) and is a prescribed body corporate as determined by the *Native Title Act (1993)*. The Arakwal Aboriginal Corporation represents the Applicants and the Native Title Holders in relation to their Native Title claim NC95/1.
- 2.4 “**Byron Shire Area**” means the designated local government area of the Byron Shire.
- 2.5 “**Cape Byron Consultative Committee**” means the committee established in Byron Bay and convened by the National Parks and Wildlife Service.
- 2.6 “**Cape Byron Consultative Committee report**” means the report as amended produced by the Cape Byron Consultative Committee.
- 2.7 “**Local Environmental Plan**” has the meaning given to it within the *Environmental Planning and Assessment Act NSW (1979)* and
- 2.8 “**Native Title Act**” means the *Native Title Act (1993)* (Commonwealth).
- 2.9 “**Native Title Holders**” has the meaning given to it within the *Native Title Act (1993)* (Commonwealth).
- 2.10 “**Plan of Management**” has the meaning given to it within the *NSW National Parks and Wildlife Act (1974)* (NSW).
- 2.11 “**The Corporation**” has the same meaning as “Arakwal Aboriginal Corporation”.
- 2.12 “**The Parties**” means the Corporation and the Council.
- 2.13 “**Traditional owners**” means the Applicants, members of the Arakwal Aboriginal Corporation and others recognised as belonging to the Arakwal People.
- 2.14 “**The Committee**” means “Byron Shire Council Aboriginal Consultative Committee”.

3. OBJECTS

- 3.1 The Council acknowledges that Aboriginal people are the original inhabitants of the Byron Shire area and that according to their continuing law traditions and customs it remains their traditional country. The Council also acknowledges and respects the Corporation's right to speak for its country and the duties imposed on it to look after its traditional country in accordance with its laws, customs and traditions.
- 3.2 The Parties commit themselves to seek together ways in which Aboriginal Interests can be advanced where decisions are to be made about their traditional country.
- 3.3 The Parties commit themselves to work together to ensure that this is done in a way that advances the interests of the whole community and promotes harmonious community interests.

4. NATIVE TITLE

- 4.1 This agreement is made without prejudice to the existence or non-existence of Native Title rights.
- 4.2 The Parties acknowledge that this agreement does not constitute any surrender of Native Title by the Arakwal People.
- 4.3 The Parties acknowledge that the agreement does not constitute any acknowledgment of Native Title by the Council.

5. CONSULTATIVE COMMITTEE

- 5.1 The Parties agree to convene a committee called the "Byron Shire Council Aboriginal Consultative Committee".
- 5.2 The Council shall nominate two (2) members of the Committee and the Corporation shall nominate two (2) members of the Committee.
- 5.3 Either party may whenever it thinks fit change any one or more of its nominated members or fill any vacancy which occurs.
- 5.4 The Committee shall meet six (6) times per year or at other times as needed.
- 5.5 The Committee shall elect a chairman and shall determine its rules for meetings provided that should no rules be adopted or should such rules that are adopted not provide for a particular circumstance then the rules adopted from time to time by the Council for its Committee shall apply until the Committee adopts rules for its meetings.

6. OBJECTS OF THE BYRON SHIRE COUNCIL ABORIGINAL CONSULTATIVE COMMITTEE

- 6.1 The Corporation and the Council agree to work towards future co-operation.
- 6.2 The Committee shall make recommendations to the Council on the development of a planning strategy for Byron Shire which will identify:
 - 6.2.1 areas of land of special cultural significance to Aboriginal people;
 - 6.2.2 areas of land recommended to be the subject of joint management arrangements; and
 - 6.2.3 areas of land subject to continuing development pressures in respect of which Aboriginal interests require specific recognition and protection.
- 6.3 The Committee will recommend to the Council a list of those areas of land of special cultural significance to Aboriginal people for the Council's approval:
 - 6.3.1 The Council agrees to seek the Committee's recommendations when dealing with proposals which specifically involve such areas.
 - 6.3.2 The Committee may from time to time recommend the addition or remove areas of land from the list.
 - 6.3.3 The Council may refer any other matters to the Committee for its recommendation.
 - 6.3.4 The Committee may make recommendations to the Council regarding any other matters notwithstanding that they do not affect areas of land on the list.
- 6.4 The formulation of mechanisms for inclusion in the planning strategy of provisions for recognition and protection of Aboriginal interests in decisions made by the Council.
- 6.5 The formulation of mechanisms for the inclusion of the planning strategy into the Local Environmental Plan.
- 6.6 Arrangements for access by traditional owners to land within Byron Shire for traditional purposes, including but not limited to rights to fish, gather material for traditional medicines and ceremonies; access to sites of significance; access for ceremonies under traditional law; and protection and conservation of cultural heritage.

- 6.7 Arrangements under which areas of land in the Byron Shire would be the subject of joint management arrangements including reserves vested with the Byron Shire Council, or in which the Council manages the land under trust arrangements or otherwise.
- 6.8 Joint management agreements shall include as their objects:
- 6.8.1 the protection and enhancement of Aboriginal traditions and values in relation to the land and recognition of their status as traditional owners of the land;
 - 6.8.2 the protection and enhancement of the coastal environment; and
 - 6.8.3 public access to, and the use of, coastal and other areas in ways that are compatible with these objects.
- 6.9 The Parties agree to approach the State and Commonwealth Governments and State and Federal agencies for assistance in the formulation of a planning strategy and its incorporation in the Local Environmental Plan.
- 6.10 The Applicants agree to deal with the Council and the State with a view to reaching substantial agreements as a matter of priority.
- 6.11 The Council agrees to provide administrative resources to facilitate the meetings and site inspections held pursuant to this arrangement.

7. PRIORITY DEVELOPMENTS

- 7.1 The Applicants acknowledge that the Council has notified them of developments that require the Applicants' comments as a matter of priority.
- 7.2 A list of those developments are found in Schedule A to this agreement.

8. TERMINATION

- 8.1 Either Party may by giving six (6) months notice in writing to the other terminate this agreement and the Committee shall thereupon be disbanded.

9. SCHEDULES

The following are the Schedules to this agreement:

- A. Priority Developments.

Executed on the date set out at the commencement of this agreement

Signed and sealed on behalf of the **Arakwal People** by:

.....
Lorna Kelly

.....
Linda Jane Vidler

Signed and sealed on behalf of **Byron Shire Council** by:

.....
Cr. Ian Bramwell Kingston
Mayor

.....
Cr. Lisa Maree Christoffersen
Deputy Mayor

*The common seal of the Council of the
Shire of Byron was hereto affixed
pursuant to a resolution of Council
dated 8 September 1998.*

Witnessed by:

.....
The Hon. Bob Carr, MP
Premier of New South Wales

SCHEDULE A

PRIORITY DEVELOPMENTS

1. TAYLORS LAKE AND LAND TO THE NORTH OF TAYLORS LAKE

- 1.1 It is a priority of the Corporation that the Taylors Lake area is protected in accordance with the wishes of the the Corporation. The Corporation wishes to redraft the management plan for the area with Byron Shire Council and State Government assistance and involvement.
- 1.2 The Corporation requests that the land to the north of Taylors Lake described as Part 4 (lot 4) DP 830202 and Part 50 (lot 50) DP 838451 is protected and included into the Nature Reserve in accordance with the Cape Byron Consultative Committee report. The Council agrees to consider such a request.

2. TARRING OF THE REMAINDER OF RUSKIN STREET BYRON BAY (PORTION 172)

- 2.1 The Corporation has received information from the Council about the tarring of the remainder of Ruskin Street Byron Bay. The Corporation has assessed the material and has agreed to the tarring of the remainder of the street.
- 2.2 The Corporation agrees to the dedication and acquisition of the road reserve by the Council.

3. ARANGA DEVELOPMENT AND PATERSON STREET WATER RUNOFF

- 3.1 The Corporation is aware and concerned that water runoff from the Aranga development runs into the Cibum Margil Swamp and that present filter mechanisms are not working.
- 3.2 The Corporation understands that water runs from Paterson Street and joins water from the Aranga site that flows into Cibum Margil Swamp.
- 3.3 The Corporation is aware that the Aranga development conditions require a wetland filter.
- 3.4 The Corporation is aware that there is an alternative proposal to divert water from the east of the Aranga development to Evans Street.

- 3.5 The Corporation agrees that the alternative proposal has merit if environmental safeguards are implemented.
- 3.6 The alternative proposal will result in the water being diverted to the Cowper Street drainage system that flows onto Main Beach.
- 3.7 The Corporation is also concerned that polluted water currently runs from the Cowper Street drainage system onto Main Beach.
- 3.8 The Corporation therefore gives its approval for the alternative proposal if the Council agrees to investigate the management of the Cowper Street drainage system with a view to preventing polluted water from running onto Main Beach as a matter of urgency.

4. SANDHILLS ESTATE

- 4.1 Discussions are to take place with the Corporation and the Council concerning this site.

5. BELONGIL SPORTING FIELDS PROPOSAL

- 5.1 Discussions are to take place with the Corporation and the Council concerning this site.
- 5.2 The Corporation has selected Ron Heron as its preferred archaeologist.

6. PROPOSED MULTI-PURPOSE HALL AT THE BYRON BAY HIGH SCHOOL

- 6.1 The Corporation agrees to the construction of the multi-functional hall to be built over the basketball courts at Byron Bay High School.

7. VEHICLE ACCESS TO BEACHES

- 7.1 The Corporation wishes to include in the planning strategy improved ways of regulating authorised vehicle access to beaches within the Byron Shire area for the purpose of assisting the long-term protection of the beach and dune environment.

8. BYPASS

- 8.1 Before consideration of the proposal by the Corporation, the Council will facilitate the inspection of the routes proposed for the bypass with the Corporation, including an actual physical inspection of the proposed route.

9. ORTHODOX HOME FOR THE AGED AND FEROS VILLAGES

- 9.1 The Corporation has agreed as part of this agreement and the agreement with the State of New South Wales to withdraw the Native Title claim over the Orthodox Home for the Aged.
- 9.2 The Corporation has agreed as part of this agreement and the agreement with the State of New South Wales to authorise the construction of an aged care facility to the north of the current Feros Village.

10. REZONING OF CULTURAL CENTRE SITE AND IRONBARK SITE

- 10.1 It is the intention of the Corporation to create a joint cultural centre on the site described as portion 218 Paterson Street Byron Bay. Tenure of this land is to be part of the agreement with the State of New South Wales.
- 10.2 The Council agrees to expedite the assessment of any rezoning application for this land for the construction of the centre in accordance with statutory requirements.
- 10.3 The Corporation seeks the support of the Council for rezoning of this land to allow the construction of the centre.
- 10.4 It is the intention of the Corporation to build four houses on land described as lot 436 Ironbark Avenue Byron Bay. Tenure of this land is to be part of the agreement with the State of New South Wales.
- 10.5 The Council agrees to expedite the assessment of any rezoning application for this land for residential purposes in accordance with statutory requirements.