

I apologize for this submission being late. In 2023 I was involved in assisting the Bundjalung of Byron Bay (Arakwal) (BBBAC) Native Title holders to complete a cultural watering sharing plan for parts of arakwal country included in the Brunswick unregulated water sharing plan. This cultural watering plan was completed as part of the same project that helped the Banbai people complete their cultural watering plan (which is publicized on your web page).

In the recommendations section of the cultural watering plan the following issues were identified as critical:

In summary, the critical next steps for DPE Water include:

1. Facilitate the identification and installation of post-gauges in suitable locations at or near Tallow Creek, Belongil Creek and Simpsons Creek.
2. Increase cease to take limits to above 100 ML in the Brunswick Water Sharing Plan.
3. Share any information regarding water allocations/ entitlements affecting Tallow Creek, Belongil Creek, Kings Creek and Tyagarah Creek.
4. Facilitate training opportunities, including training for water quality testing.

The Arakwal were most concerned about water take during periods of low flow. In particular they want cease to pump rules to be included in the WSP that are ABOVE the current no visible flow level. This is particularly the case in the Tyagarah Creek WS.

I am unable to provide a copy of the Arakwal CWP without the permission of the Arakwal people as they own the CWP and the intellectual property within it.

You can obtain a copy by contacting Charmine Roberts at BBBAC RNTBC on

██████████.

An additional outcome of the CWP process was that the Arakwal identified they had Native Title interests in all the Water sources in the Brunswick unregulated WSP.

1. They wanted a 30% interest in the Long Term Annual Extraction Limits in each Water Source to be allocated to the BBBAC RNTBC as Aboriginal community development licenses This could be achieved by a direct allocation to the RNTBC after a change to the WSP.
2. BBBAC want the flow classes to be changed so that tyagarah creek WS is not able to be pumped at "no visible flow". The cease to pump for category A licenses needs to be increased by flow being at a certain height at the Tyagarah Creek crossing or linking the cease to pump to flow at (Sherrys Crossing) gauge (202001)

3. BBBAC wants the cease to pump at all other WSs to be increased from 2ML per day at (Sherrys Crossing) gauge (202001) to 4ML per day. It is currently 2ML/day but Arakwal believe this is to low and it needs to be increased to 4ml/day and it should also apply to the tyagarah creek WS
4. BBBAC wants Aboriginal community development licenses to be available in all water sources but particularly Tallow Breek, Belongil Creek and Tyagarah Creek Water Sources. These ACDLs should not be limited to high flow licenses but should include category A licenses.
5. Arakwal Native Title water rights must be included in the calculations for water requirements under the WSP. At present this is not considered when calculating available water.
6. BBBAC wants the maximum available harvestable rights in the WSP to be calculated and included in the total available water in the plan. At present harvestable rights are not calculated and are not listed. Arakwal have found dozens of "harvestable rights" dams in the WSP area which are much larger than their entitlement. NRAR have decided to not take any action over these oversized dams despite Arakwal requesting they do so.
7. BBBAC believes the access rules in Clause 45 need to be amended. The water sharing plan should not allow any water to be taken from off-river pools or in-river pools when there is no visible flow or when the cease to pump flow level of 4ml/day at Sherrys Crossing has been reached. Off-river and in-river pools have high cultural significance to arakwal people. sub clause 15 should be removed. There should be no exceptions to the cease to pump rules of 4ML/day at Sherrys crossing gauge or no visible flow.
8. BBAC wants mandatory conditions on all licenses and supply works approvals that they must supply their pump logs annually to DEEPwater and Water NSW. At present there is no record of any water take in the Brunswick unregulated WSp area. If it is not measured then it cannot be managed! This was a difficulty in producing the ARakwal CWp as there are no records on actual water take. Mandatory reporting will avoid this. Currently all licenses and approvals are required to keep log books. This new condition will just require that the log books be submitted as well. NB almost none of the pumps in th Brunswick WSP area will be captured by the changes to water metre rules as they all under the minimum pump size to require metres.
9. BBBAC wants mandatory conditions to be placed on all licenses, water use approvals, water supply works approvals and controlled activity approvals. The mandatory conditions should require Aboriginal cultural heritage assessments to be undertaken for any (1) new approvals, (2) renewal of existing approvals, (3)

amending existing approvals or (4) replacing existing approvals within the WSP area before they are authorised. The following are examples of proposed mandatory conditions:

### **Before work commences**

Before construction of the work authorised by this approval commences, contact is to be made with Bundjalung of Byron Bay (Arakwal) RNTBC PHONE: \*\*\*\*\* to arrange for engagement of Cultural Site Inspectors to conduct an Aboriginal Cultural Site Survey (Survey) and the preparation of an Aboriginal Cultural Heritage Site and Water Dependent Cultural Values Inspection Report (Report). This Survey and Report is to assess the potential for harm to Aboriginal Cultural Heritage and Aboriginal water dependent cultural values.

Note. Whenever works are proposed to be undertaken, it is Bundjalung of Byron Bay (Arakwal) RNTBC expectation that at least two Traditional Owners are engaged to conduct the Aboriginal Cultural Site Survey and that the Bundjalung of Byron Bay (Arakwal) RNTBC will prepare the Aboriginal Cultural Heritage Site and Water

Dependent Cultural Values Inspection Report. **Notification for Cultural Site Monitors**

Before construction of the work authorised by this approval commences, contact is to be made with Bundjalung of Byron Bay (Arakwal) RNTBC PHONE: (02) \*\*\*\* to arrange for engagement of Cultural Site Monitors for the duration of works to oversee and assess the potential for harm to Aboriginal Cultural Heritage.

Please be aware that excavation works taking place will be in an area that is high in Aboriginal Cultural Heritage and there is a high risk of uncovering or disturbing Aboriginal Cultural Heritage.

Note. wherever ground disturbing works are being undertaken, it is Bundjalung of Byron Bay (Arakwal) RNTBC expectation that at least two Traditional Owners are engaged as Cultural Site Monitors for the duration of works to oversee and assess the potential for harm to Aboriginal Cultural Heritage. **Cultural Site Monitors**

Cultural site monitors must be present for the duration of the construction of the work authorised by this approval as prior agreed to with Bundjalung of Byron Bay (Arakwal) RNTBC to oversee and assess the potential for harm to Aboriginal Cultural Heritage.

Note. Excavation works taking place will be in an area that is high in Aboriginal Cultural Heritage and there is a high risk of uncovering or disturbing Aboriginal Cultural

Heritage. Wherever ground disturbing works are being undertaken, it is Bundjalung of Byron Bay (Arakwal) RNTBC s expectation that one or two Traditional Owners are

engaged as Cultural Site Monitors for the duration of works to oversee and assess the potential for harm to Aboriginal Cultural Heritage. **Aboriginal Heritage Impact Permits**

The works authorised by this approval must not commence unless Aboriginal Heritage Impact Permits have been obtained for the project area with the agreement of Bundjalung of Byron Bay (Arakwal) RNTBC.

### **Compliance with report**

The work authorised by this approval must comply with the recommendations of the Aboriginal Cultural Heritage Site and Water Dependent Cultural Values Inspection Report at all times for the life of this approval

### **Setback from Aboriginal heritage**

The work authorised by this approval must not be located within a 200m radius of any known Aboriginal heritage site. Before construction of the work authorised by this approval commences, protective measures must be put in place to preserve any unknown Aboriginal cultural heritage sites that are discovered within 200m of the work.

### **Approval to be kept on-site**

A copy of this approval and the plan showing the location of Aboriginal cultural heritage site(s) must be kept on site and must be provided to all personnel constructing, carrying out; construction, operation or maintenance of the works on the property. **No discharge on heritage sites**

Used water must not be discharged on any Aboriginal heritage site. **Discovery of sites**

If during the construction, operation and/or maintenance of the works and use areas authorised by this approval a previously unknown Aboriginal site is uncovered, the approval holder must:

- A. cease all construction, operation and/or maintenance works immediately, and
- B. advise DCCEEW Water and WaterNSW in writing of the location and extent of the Aboriginal site, and
- C. consult with: (1) Heritage Council of New South Wales or its delegate, (2) the Secretary of the Department of Planning and Environment or their delegate, (3) NSW Heritage Branch, (4) Bundjalung of Byron Bay (Arakwal) RNTBC , and
- D. obtain written notice from DCCEEW Water and WaterNSW before resuming and construction, operations or maintenance on site

### **Aboriginal Relics**

While any construction work is being carried out, all such works must cease immediately if a relic or Aboriginal object is unexpectedly discovered. The applicant must notify the Heritage Council of NSW in respect of a relic and notify DCCEEW Water and WaterNSW and the Heritage Council of NSW in respect of an Aboriginal object. Building work may recommence at a time confirmed by either the Heritage Council of NSW or DCCEEW Water and WaterNSW.

In this condition:

- “relic” means any deposit, artefact, object or material evidence that:
  - a. relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement, and
  - b. is of State or local heritage significance; and
- “Aboriginal object” means any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises New South Wales, being habitation before or concurrent with (or both) the occupation

of that area by persons of non-Aboriginal extraction and includes Aboriginal remains.

**Relics Provisions- Advice**

Attention is directed to the NSW Heritage Act 1977 and the provisions of the Act in relation to the exposure of relics. The Act requires that if:

- a) a relic is suspected, or there are reasonable grounds to suspect a relic in ground, that is likely to be disturbed damaged or destroyed by excavation; and/or
- b) any relic is discovered in the course of excavation that will be disturbed, damaged or destroyed by further excavation;

Those responsible for the discovery must notify nominated management personnel who will in turn notify the Heritage Council of New South Wales or its delegate, DCCEEW Water and WaterNSW, NSW Heritage Branch, and suspend work that might have the effect of disturbing, damaging or destroying such relic until the requirements of the NSW Heritage Council have been satisfied (ss139, 146).

yours sincerely Matthew O'Reilly ph [REDACTED]

ps I am ccing this submission to BBAC so they are aware I have made it.