Nambucca Shire Council Aboriginal Cultural Heritage Management Plan

May 2003

A report to Nambucca Shire Council by Susan McIntyre-Tamwoy, Heritage Consultant

As amended by Council 26 November 2007

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Part One
Setting the scene for Aboriginal heritage conservation in Nambucca Shire Council’s local government area.
1.0 Introduction

This Aboriginal Cultural Heritage Management Plan was commissioned by the Nambucca Shire Council. It draws on available information arising from past studies in the area, limited archival research and field inspection aimed at assessing the archaeological potential of landscape units in the Nambucca Local Government Area (LGA).

Personnel

This report was written by Susan McIntyre-Tamwoy. Kerry Navin assisted with the field work in the field verification stage of the project and Julia McIntyre and Tessa Boer-Mah assisted with the historical research.

1.1 Scope of this Report

What is an Aboriginal Cultural Heritage Management Plan?

The Nambucca Shire Council’s Aboriginal Cultural Heritage Management Plan (ACHMP) was commissioned by the Nambucca Shire Council to develop and present standards and guidelines which promote the identification and conservation of known and unrecorded Aboriginal sites, places and landscapes in the LGA. The brief adopted the model provided by the Greater Taree LGA Aboriginal Cultural Heritage Management Plan (Louise Gay 2000). This was adapted to allow for more contextual information as requested by Council Planning staff and members of Council’s Aboriginal Community Advisory Committee (ACAC), and to reflect the specific variations in the Nambucca Shire.

Who uses the plan?

The ACHMP is intended for use by those council staff who are required to address the assessment and management of Aboriginal cultural heritage in the LGA. The plan may also be used by the Local Aboriginal Land Councils (LALC) in the LGA (i.e Nambucca, Unkya and Bowraville) in their roles in working with council and landowners to achieve positive conservation outcomes for sites in their area. Land owners and developers can use the plan to get an idea of issues and processes that relate to their proposed land uses and the conservation of Aboriginal heritage sites and places within the LGA.

This document provides a framework for the conservation and assessment of Aboriginal heritage sites and places within the LGA. It should be read in conjunction with any specific requirement or guidelines produced from time to time by the National Parks and Wildlife Service (NPWS) and/or in conjunction with the Director-General’s (NSW Department of Planning) requirements in relation to any Environmental Impact Statement (EIS) under preparation.

It should be remembered by all users of this ACHMP that while it provides some information about the distribution of known and recorded sites and the likely distribution of sites as yet unrecorded this document should not be taken to be a complete record of Aboriginal sites in the area. The Aboriginal community currently represented by the Unkya, Bowraville and Nambucca LALCs will have additional information regarding both the location of sites and their significance or importance to the community. In particular, at the time that this report was being prepared the Nambucca LALC was embarking on a major site recording project focussing on sites of particular significance to Aboriginal men in the area. Clearly it is important to use this ACHMP as a guide and check with the local community for more detailed information as required.

Archaeologists and other researchers carrying out investigations for Environmental Impacts Assessments (EIA) within the Nambucca LGA boundaries should be instructed as a matter of course to consult the relevant LALCs and to involve them in the assessments.
Figure 1: Location Map- The Nambucca Shire LGA Boundary.
1.2 Methodology

The parameters of the study were defined by the study brief provided by the Nambucca Shire Council and the project submission made by Susan McIntyre-Tamwoy Heritage Consultants. The study involved consultation with the three LALCs that occur within the LGA, a review of existing documentation including reports and data held by the NPWS and the Nambucca Shire Council. The study also included limited primary historic research including a review of local historical society and library collections, a review of material held by the Royal Australian Historical Society and the State Library of NSW as well as limited field verification inspections.

1.2.1 Aboriginal Consultation and Participation.

Nambucca Shire Council is assisted in matters relevant to the Aboriginal community in the LGA through input and advice from its ACAC which endorsed this project. This committee has representatives from each of the LALCs in the LGA as well as Council staff.

A draft of the historic background section and the outline of the study were presented to a meeting of the ACAC during the course of this project. Meetings with LALC officials and subsequent phone conversations were conducted to clarify the project and its relationship to studies and plans of the LALCs themselves.

A draft of the final report will be provided to the committee for comment and overview.

1.2.2 Review of Existing information and historic research.

This project included a review of all available existing documentation including a review of information held by the NPWS Aboriginal Heritage Information System (AHIMS) and catalogue of archaeological reports. Information held on Council files relating to Aboriginal sites and their location was also reviewed. The records of the historical societies at Bowraville and Nambucca Heads were reviewed, as were local library collections.

Resources of the following libraries were reviewed for relevant information:

- The Mitchell Library NSW
- The Royal Australian Historical Society Library, Sydney
- The Bowraville Historical Society
- The Nambucca Heads Historical Society
- The Nambucca Shire Library.

Searches of the following registers were conducted

- NPWS AHIMS
- State Heritage Register of NSW and the State Heritage Inventory
- Register of the National Estate.

1.2.3 Field Verification Inspections.

Field survey was limited to a total of 6 days. Often heritage studies of this type do not involve additional field work but rely on existing information. However in the case of Nambucca shire some field verification was necessary due to the lack of existing information on which to base any predictive statements relating to heritage potential.

The field work involved the ‘blind’ selection of samples of land from the major landscape units in the shire.
In relation to private land selected, the landowners were contacted by phone prior to the field inspection and the project explained to them. If landowners expressed concern, then the land was excluded from inspection and another area within the same landscape unit selected. This process was hampered by the fact that Council could only provide mailing addresses for land owners and was unable to provide these until the night prior to the scheduled field inspections. Apparently council records do not include phone contacts and some of the owners of selected areas either had unlisted numbers or were unable to be contacted at the time of the inspections. Where landowners could not be contacted prior to the field inspections, but were apparently resident on the property, they were approached at their homes for access. Once again, where landowners had concerns the property was excluded from the study. No private land was accessed without land owner permission.

It was clear from this contact with land owners that there is great variation in the level of understanding of heritage issues and Aboriginal rights of access and control. This is further discussed in Section 7. For the purpose of the field inspections however, it was considered unnecessary to persist beyond the landowner objections as the purpose of the field inspections were to verify the characteristics of the landscape units only and not to carry out systematic surveys or assessments. The primary aims of the field inspections were:

- To review landscape unit characteristics.
- To try and determine whether there was enough information to make general predictions about the archaeological sensitivity of the landscape units.
- Visual inspection of some of the known places of Aboriginal significance.
- Cross checking of areas of predicted archaeological sensitivity based on general predictions from existing reports and a general understanding of Aboriginal site locations.

### 1.3 Limitations of this Study

This study has relied heavily on an analysis of known and recorded information. With regard to the historical information available relating to the Aboriginal occupation and early European occupation of the Nambucca Valley, it is clear that this area did not attract the early documentary focus that the Macleay and Clarence River Valleys did. This has resulted in very limited historical information surviving that relates specifically to this area.

There have been few comprehensive archaeological surveys undertaken within the Nambucca Shire LGA. The NPWS AHIMS records only 76 Aboriginal sites in the area. The actual number of sites in the LGA is expected to substantially exceed this figure.

While this project was sponsored by Nambucca Shire Council’s ACAC, it was clear from the first meeting with that committee that a number of trust issues exist which limited the willingness of some representatives to participate openly in the project. The issues of trust are not only between some of the community representatives and council but also between the community and NPWS. At the time that the project commenced the Nambucca LALC had just commenced their own project to document sites and places of particular significance to Aboriginal men and they did not want that information to be incorporated into this report except in so far as they wanted to see effective protective mechanisms developed which would protect that heritage.

The brief specified that this study follow the model of the Greater Taree Local Government Area Aboriginal Cultural Heritage Management Plan (Heritage Search 2000). The brief therefore did not include a broader consideration of Aboriginal cultural heritage values or the collection of oral information. While the Nambucca study has been varied somewhat to cover issues relevant to the LGA it is limited by reference to the model document. It is important not to see this report as an absolute record of all Aboriginal heritage values and sites, but rather to see this report as a planning and management tool that makes specific recommendations for further investigation and for protective mechanisms that should be implemented to ensure an acceptable consideration of Aboriginal heritage values.
1.4 Report Format

This report is divided into two parts. Part one presents all the material required to describe the project and the known extent and nature of the Aboriginal heritage of the Nambucca Shire. It is divided into the following sections:

- Section one of this report introduces the study and describes the methodology used, the Aboriginal participation, the personnel involved and the limitations of the study.
- Section two expands on Nambucca Shire Council’s objectives in commissioning the study and the legislative framework for the protection of Aboriginal heritage in NSW.
- Section three describes the shire, the landscape.
- Section four describes the archaeological background and sites known to exist.
- Section five covers the prediction of site distribution and the results of field inspections.

Part two addresses the management of the Aboriginal heritage of Nambucca Shire Council area.

- **Section 6** reviews and evaluates the existing council planning documents as they relate to the identification and conservation of Aboriginal heritage. It proposes amendments to the Local Environmental Plan (LEP) and Development Control Plan (DCP) documents for council’s consideration.
- **Section 7** focuses on ways in which the Nambucca Community and the Council can work together to conserve Aboriginal heritage. It includes specific objectives and strategies to achieve positive heritage conservation outcomes for the shire.
- **Section 8** provides a summary of recommendations arising from the report.

The appendices include a summary of previous archaeological studies and archaeological sites, a detailed overview of relevant heritage legislation, a summary of the landscape units and relevant field inspections.

1.5 Acknowledgements

This project was commenced under the direction of Nambucca Council staff Mr Yves Watt, Planner, and Ms Michele Donovan, Aboriginal Liaison Officer. Their assistance in arranging meetings and providing access to files in the early stages of the project is appreciated. Mr Clinton Tink took over the management of the project during its final production. The assistance of volunteer staff at the Nambucca Heads Historical Society, especially Mrs Philipsen, and the friendly personnel at the Bowraville historical society is gratefully acknowledged. Ms Christine Kelly of the Nambucca LALC provided a general overview of the Nambucca LALC’s current men’s heritage project and discussed ways in which the two studies might complement each other. The advice of the Nambucca Council ACAC was also appreciated. Mr Rodney Harrison of the NPWS made available his historical research relating to the *Shared Histories of Pastoralism* project.

A special thank you to those land owners who allowed us access to their land, several of whom generously gave up time from their busy daily schedule to share their information about possible site locations.
Figure 2: Aboriginal Land Council Boundaries in relation to the Nambucca LGA
2.0 Nambucca Shire Council & Aboriginal Heritage

Nambucca Shire Council already has in place a number of planning guidelines that seek to ensure that significant Aboriginal heritage places are conserved (in particular Planning Guideline No. 12 - Aboriginal Sites Planning Guideline). Despite this, relatively few studies aimed at identifying and assessing Aboriginal heritage sites have been undertaken in the shire.

NPWS records only 22 studies being carried out in the Nambucca Shire since the commencement of the Aboriginal heritage provisions of the NPWS Act. The reports were undertaken in the period between 1976 and 1998 (see Appendix A). Apart from the NPWS Aboriginal Sacred Sites survey (reports C484 and C1482) the other studies have been small localised surveys related to residential developments and/or associated sewerage schemes, and the Pacific Highway deviation.

2.1 Nambucca Shire Council’s Objectives

Through this study the Nambucca Shire Council hopes to provide more effective protection for Aboriginal heritage places in the shire. The specific objectives stated in the consultant brief for the project are to:

- Ensure through this plan that appropriate assessment is made of the potential impact of a proposed development or rezoning application, on identified Aboriginal Cultural Heritage values and that ameliorative measures are taken to prevent or minimise the adverse impacts.
- Create a consultative relationship between Nambucca Shire Council and the Aboriginal Community for further dealings with Aboriginal heritage.
- Involve the Aboriginal Community in all phases of the study process.

2.2 Legislative framework for the conservation of heritage places and sites

Heritage management in NSW can seem confusing to those outside the heritage industry or heritage and planning regulatory bodies. There are a number of pieces of state legislation and then there is also relevant Commonwealth legislation to be considered. In practice though it is quite straightforward. The Heritage Act was introduced in 1977 in response to concerns from the community of NSW to the increasing loss of environmental heritage in NSW. The term environmental heritage is used to cover places and landscapes of historic, social, spiritual, archaeological architectural or aesthetic significance (HONSW: Heritage Guidelines).

In general terms the Heritage Office defers to the NPWS on the specific management of Aboriginal sites and places as the NPWS has specific responsibility in NSW for the protection and management of Aboriginal sites (objects). Aboriginal objects (previously referred to in legislation as ‘relics’) have blanket protection in NSW. This means that they are all protected regardless of whether or not objects or sites are listed on a register. This means that the onus is on a developer to assess the significance of any sites within a proposed development area and propose appropriate mitigation measures to protect it. If it cannot be protected then the onus is on the development proponent to demonstrate that the site is not significant and cannot be conserved within the development and that there is no reasonable alternative to its destruction. Of course in order to do this the NPWS expects them to use specialist expertise such as a qualified archaeologist, if required and to seek the opinions and input of relevant Aboriginal people.

For more detail on the relevant legislation including the relationship of Commonwealth legislation see Appendix B.

The fundamental rule underlying the management of heritage places is that heritage is managed in accordance with its significance. In its heritage guidelines for Local Government the Heritage Office puts
this simply:

The NSW heritage management system adopts a three step process for investigating, assessing and managing heritage resources as follows:
Step 1: INVESTIGATE significance
Step 2: ASSESS significance
Step 3: MANAGE significance (HONSW:2)

3.0 The Landscape of the Nambucca Shire Council

The landscape of the Nambucca LGA is defined by the eastern restriction of the Pacific Ocean and the western restriction of the Macleay escarpment. The land in between is predominantly mountainous to hilly with relatively small areas of flat land restricted to the river margins and coastal beaches.

3.1 The Size and shape of the LGA

The Nambucca LGA is shaped like a small version of the state of Tasmania with a pronounced extension in the NW corner. It is between the coastal shires of Kempsey to the south and Coffs Harbour to the North.

The major river that drains the area is the Nambucca and its tributaries. The Nambucca River was not as large or as navigable as the Macleay and Clarence Rivers and therefore was not as important in the economic development of the north coast in the historic past. This has resulted in a scarcity of detailed documentary records for the area when compared with areas to the north and south.

Much of the land in the shire is mountainous to hilly, with coastal hills reaching in parts right to the coast to form steep headlands. This means that current residential, commercial and industrial development is restricted to the small amounts of flat land on the coast and along the river and its major tributaries. The topography is likely to result in future development pressure being focussed on alluvial lands and the less steep of the coastal hills, that are currently zoned rural (non flooding) as these provide the only relatively level land areas.

3.2 Landscape Units

The Nambucca LGA can be divided into a number of different landscape units. Often landscape units are defined based on topography alone however the landscape units described below have been selected for use as they are defined by a number of different factors including geology and topography. The NSW landscapes coverage (Mitchell, 2002) is a state-wide map of landscapes, compiled using existing resources and describing land attributes considered to drive ecosystem processes. Definition of the landscapes emphasizes geologic, geomorphic and pedologic factors. In the Eastern and Central Divisions of the state, geology and topography were emphasised.

3.2.1 Macleay Escarpment foothills

The Macleay Escarpment foothills are characterised by steep often heavily wooded terrain. Although heavily dissected by permanent creeks, access to freshwater is often difficult due to the steepness of terrain. Throughout this landscape unit travel is easiest along long ridges which is attested to by the many forestry tracks along ridges in this area. Access to the Inglabar Coastal Hills landscape unit and the major creeks is facilitated along spurs that run off the ridges down into the valleys.

3.2.2 Ingalba Coastal Hills

The Ingalba Coastal hills comprise approximately 40% of the total LGA area. In some areas they go right to the coastline and are visible as prominent headlands and cliff lines e.g Nambucca Head. In some places access from the hills to freshwater may be relatively easy while at other times this is only practicable walking along small, but steep spurs. In some cases this landscape unit limits access to beach
resources suggesting that archaeological evidence may be concentrated along travel routes that allow easier access to coastal resources.

### 3.2.3 Manning Macleay Coastal Alluvial Plains

The alluvial plains are associated with the Nambucca River and its major tributaries such as Taylors Arm. While Europeans found the river of limited navigation potential, Aboriginal people would have been able to easily navigate the river and creeks in their canoes. There are many sites recorded along the Nambucca River (particularly towards its mouth).

This landscape unit becomes very narrow along the mid to upper reaches of the Nambucca River and Taylors arm and the Ingelba Coastal Hills landscape unit comes down almost to the river.

### 3.2.4 Manning Macleay Barriers and Beaches

Beaches, Dunes and dune swamps are generally of high archaeological sensitivity. In the past, the sea, beaches and rock platforms were an important course of food and raw materials.

Factors which limit the potential of such areas to contain significant archaeological sites are associated with past and current non indigenous land use. For example, sand mining along beaches, some infilling of swamplands etc.

### 3.2.5 Dingo Spur Meta Sediments

This landscape unit occurs in the northwest of the study area. This area is characterised by mountainous heavily forested country. These sediments may have provided a source of raw material for stone tool making. The spurs run down from the escarpment into the Macleay Escarpment Foothills.

### 3.2.6 Ebor Tops Basalt

This landscape unit is restricted to a very small area in the far north-western boundary of the LGA and extend further beyond that boundary. They are essentially protected within NPWS protected area reserve. These basalts may have provided an important source of raw materials for trade and stone tool making however, they are mostly outside the area of concern for Nambucca Shire Council in its planning responsibilities.

### 3.2.7 Valla Granite

This landscape unit is restricted to two relatively small localised areas not far from the coastline. One of these areas is to the north east of the LGA extending into the Coffs Harbour LGA and the other area is to the southeast of the Nambucca LGA and extending into the neighbouring Kempsey Shire. The underlying geology results in a localised change in the vegetation and generally the ecosystem of this landscape unit when compared to the surrounding landscape units of Ingelba Coastal Hills and the Manning–Macleay barriers and beaches.

### 3.2.8 Dorrigo Basalts

Dorrigo Basalts are again localised small landscape units surrounded by the Dingo Spur metasediments and the extensive Macleay Escarpment foothills. The unique geology is likely to effect the ecosystem of these areas which would in turn have defined the resources available to Aboriginal people in the past. The geology may also have provided people with a valuable source of high grade stone raw materials for use in trade and manufacture of stone artefacts.
Figure 3: Landscape Units in the Nambucca LGA
3.3 Land Uses and Disturbances

It is important to consider the impact of past land use on the archaeological potential of the shire. The major land use disturbances in the Nambucca shire relate to forestry, agriculture and pastoralism, urban commercial and light industrial development and to a lesser extent tourism and recreation.

Like most of the north coast of NSW the initial European settlement of the area was connected with the timber industry. Early cedar operation occurred in the 1830s and 40s but it wasn’t until the 1850s that speculators arrived and settled permanently in the area. Local historian Norma Townsend (Townsend 1993:18) points out that while the cedar resources of most areas were depleted by the time of the gold rush, the Nambucca still had substantial stands. In this respect the limitations of the River and port had probably resulted in cedar getters moving further northward to the Clarence River once the Hastings had been depleted. Forestry continues to be a prominent industry in the Nambucca LGA today.

A large proportion of the LGA has been cleared in the past, except for perhaps the north west corner of the shire which has retained dense forest cover, but which has nevertheless been subject to logging. Important early industries in the area were shipbuilding and sawmilling which also contributed to the clearing of the country side as well as more intense impacts around the immediate areas of the mills and shipyards and at localised points along the rivers for barge landings jetties etc. As well as major sawmills and shipyards at Nambucca Heads sawmills were also located at Macksville, Valla, Bowraville, Eungai Rail and Bellwood.

The main townships in the shire have centred along the coast and rivers reflecting the reliance on shipping as a means of transport. Early development was almost always associated with clear-felling of all surrounding vegetation.

Subsistence was sometimes difficult in the area and as in many such rural areas a variety of crops were planted with varying success (including corn and bananas). Dairying was an important agricultural pursuit. The main effect of agricultural activities on the likely impact of Aboriginal sites centres on the methods of clearing and ploughing. Clearing will have removed any scarred or carved trees but if this involved ripping and pulling of stumps it will also have damaged or destroyed any Aboriginal campsites present. Similarly ploughing for crops will have affected the survivability of intact deposits which occur in the top 20 cm of soil.

Ideally the Council should build up a digital layer of land use disturbance as part of the Geographic Information System to feed into the development of the archaeological potential model. Such a layer would also help with other environmental studies such as vegetation mapping and threatened species assessments. This layer could be built up from a series of aerial photographs through time.

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1 Townsend says sawyers were working on the Nambucca River as early as 1833. ‘Valley of the Crooked River’ 1993:19

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3.4 History and Ethnography

3.4.1 Aboriginal people in the Nambucca area before the arrival of Europeans

Tindale records that the Aboriginal language groups that occupied the land now part of Nambucca shire were the Kumbainggiri, and the Ngaku (see Appendix D). The Ngaku and the Kumbainggiri occupied the coastal land they formed a western border with the Dainggati along the western escarpment (see N.B. Tindale 1975). The territory of both these groups extended beyond the boundaries of the shire to the north and south (see extract from Tindale’s Map: Figure 4).

Townsend (1993:2) records that:

‘The name ‘Nambucca’, the use of which dates from at least 1835 comes from the Aboriginal, ngambugka. It has been variously translated as ‘winding or crooked river’ and as ‘entrance to the waters’.

Figure 4: Extract from Tindale’s Map of Tribal Boundaries in Aboriginal Australia published by University of California Press, 1974.

It is difficult to describe Aboriginal occupation of this area in detail prior to the European invasion of the area. Some information can be extrapolated back in time from the period of early contact between European explorers and surveyors and Aboriginal people of the area where this information has been
recorded (see for example Hodgkinson 1845). However, there is less information from such sources which is directly applicable to the Nambucca River Valley, rather than the larger rivers to the north and south. It is also worth remembering that such information is often a cross cultural interpretation of events. The observer (usually European) described what they understand to be happening but often with very little understanding of Aboriginal culture, value systems, cosmology or language. Therefore the meanings ascribed to Aboriginal actions and objects are not always accurate.

What we do know is that at the time of initial white settlement and in the period immediately preceding white settlement, the Nambucca Valley was occupied by two Aboriginal tribal groups, the Ngaku (Tindale) or the Ngumbar\(^2\), and the Kumbanggiri (now usually spelt as Gumbaingirr). The border between the two groups as described by Tindale (Figure 4) is the upper Nambucca River from the western boundary to Macksville and then a line drawn directly eastward to the coast from Macksville. Hodgkinson (1845) and Rudder (1883) provide some observation on the Yarahapinni clan of the southern Nambucca Aboriginal people and remark on their elaborate hairstyles and ceremonies.

Aboriginal oral traditions can be another source of information about the pre–contact period although in many areas of NSW there was significant disruption to social structures and associated breakdowns in traditional information transmission which were caused by forced removals to reserve, introduced illness. This has led to an incalculable loss of oral traditions; however, despite these factors a surprising amount of information has survived and is held by Aboriginal people today. The Sacred Sites Survey of NSW (NPWS 1974) was an early attempt by Aboriginal Sites Officers and the Services Anthropologist to record some of the places associated with these traditions.

It is likely that the resources of the coastline and the adjacent swamps and alluvial river flats enabled semi permanent occupation of the coastal strip with travel into the western steeper portions of the river valley for hunting and perhaps for trade, social and ceremonial reasons with the neighbouring Dainggatti.

The other source of information relating to pre-contact Aboriginal lifestyles is through archaeological investigation. Unfortunately, there has been little detailed archaeological investigation in the Nambucca Shire area that can shed light of the detail of Aboriginal occupation prior to European contact. Most of the studies undertaken to date have been archaeological surface surveys of small areas and do not provide any detailed recording, time depth of occupation or other information that can help build up a picture of the pre–contact Aboriginal occupation of the area.

Shell midden sites along the line of the Pleistocene coastline from Colombatti to Grassy Head may have the potential to contain evidence of Aboriginal occupation in the period 10-25,000 years ago; however, little research has been undertaken to investigate this possibility. Dates resulting from the few investigations carried out to date relate to much more recent occupation. Tests of the Clybucca Shell middens have dated the midden to about 6,000 years ago which is around the time that the sea levels stabilised and the modern coastline was formed. Townsend quotes dates of 9000 BP for the middens at Stuarts Point (Townsend 1993:7).

3.4.2 First contacts

\(^2\) After Hary Buchanan see Ray Kelly and Terry Donovan 16 December 1976. Report to NPWS. C 484.
Captain Cook saw smoke at the mouth of the Macleay and along the mid north coast at Smoky Cape in 1770. In September 1816 a group of 13 convict escapees stole the Trial, hijacking it along with several crew members. They were wrecked at the mouth of the Macleay at Trial Bay. Aboriginal people reported the wreck and in February 1817 the Lady Nelson was sent to investigate. A party of soldiers questioned Aboriginal people and searched for survivors however, none were found (Weingarth 1924: 142-3). One woman is reputed to have lived with Aboriginal people and had two sons, one of whom was captured and the other was shot in an incident with cedar cutters in 1836 (Blomfield 1981: 21-22).

In 1818 John Oxley undertook exploration of the route between Walcha and the Hastings valley. He encountered Aboriginal people several times along his trail, giving them fishing hooks and line (Blomfield 1981: 54, Rich 1990: 81).

Following Oxley’s recommendation of the site of Port Macquarie for the establishment of a penal colony, the settlement was established in 1821 (Blomfield 1981: 55-6). The early period of this settlement seems to have been marked by hostilities between Aboriginal people and settlers.

Other irregular contacts with Aboriginal people likely occurred in the area as escapees from Moreton Bay travelled south to Port Macquarie.

3.4.2.1 Cedar getting

From the late 1820s cedar cutters were ‘leap-frogging’ northwards from coastal river to coastal river in search of ‘red gold’\(^3\). The cedar rich east coast of Australia was targeted from Ulladulla on the south NSW coast to northern Queensland, and within only ten years the Macleay was almost devoid of cedar\(^4\). Cedar was being cut on the Bellinger River in 1839; by 1837 there were 100 cedar getters on the Macleay and a village was established at Kempsey (Birrell 1987: 68).

Cedar getters moved northward along the coast rapidly. In 1841 cedar getters recorded the existence of the Bellinger River as they moved along the coast from the Macleay in search of fresh cedar stands. Clement Hodgkinson, who surveyed the coast between the Macleay and Moreton Bay over the period 1841-2, records details of the lives of cedar sawyers on the mid-north coast at this time.

> These men are generally convicts, who have become free by servitude; they live in pairs in the dense dark brushes; their habitation being merely a few sheets of bark temporarily piled together, as they are continually moving in search of fresh cedar…the cedar dealers furnish them from time to time with salt provisions, flour, tea, and sugar; and every three or four months the sawyers travel down to the cedar dealers, who live at the mouths of the rivers, for a settlement of their accounts. As these latter individuals are not remarkable for delicate scruples of conscience, they generally settle the balance due to the sawyers in a very summary way. They take care to have a good assortment of clothing, tobacco &c. in their huts, with which they furnish the sawyers at an advance of about three hundred percent of Sydney prices: this, with a cask or so of rum and wine, top enable the sawyers to have a fortnight’s drinking bout, generally balances

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\(^3\) Weingarth 1922
\(^4\) MRHS, op.cit., p.17; and Lines, op.cit., p.39-40.
their accounts. The scenes I have witnessed on the Macleay river, on these occasions, surpass all description. Men and women (for many of the sawyers have wives), lying day and night on the bare grass in a state of intoxication, and only recovering to renew their orgies, casks broken in and the contents passed around in buckets, men fighting; native blacks, who have been supplied with liquor, yelling and screeching like demons under the influence of alcohol. Such are a few of the accompaniments to the cedar sawyer’s drinking bouts. (Hodgkinson 1844: 11-12).

In 1839 it was noted that the Aboriginal people on the Bellinger were ‘…less experienced with whites than their neighbours…’(Ryan 1988: 178). Serious conflict between Aboriginal people and cedar getters developed in the 1840s. In 1840 massacres were reported along Nambucca River (Rich 1990: 110, Ryan 1988:176-178). In 1842 Aboriginal people inland north of Bellinger attacked cedar cutters, one of whom is reported to have received more than 50 spear wounds. A punitive expedition was mounted by local sawyers in retaliation for this murder. They approached

…in the dead of night; and next morning, on their making resistance, the whites poured a volley of ball and slugs among them, and killed and wounded several (Hodgkinson).

At Cogo in 1943, three white men were killed by Aboriginal people. Terrimidgee was tried, convicted and hung at Gaol Hill, Port Macquarie (Blomfield 1981:59-60, as cited in Rich 1990:110).

A massacre of Aboriginal people occurred at Yarrahappinni and on the Nambucca River (Rich 1990: 110). Descriptions of the massacres are generally poor and very brief, making it difficult to place them correctly, however, in some cases oral traditions associated with these sites exists (Blomfield 1981). Despite a withdrawal on the Macleay, in the late 1840s Bellinger River Aboriginal people were still at war with local sawyers, attacking three cedar getters on the river (Prentis 1972: 123).

However, clearly not all relations with cedar sawyers were violent. Hodgkinson records a group of ‘Yarra-Hapinni’ Aboriginal people camped with cedar sawyers at a cedar dealer’s store at the south arm of the Nambucca River near ‘Gurrasembi Creek’ in 1842. Clearly experiences of cedar getters from an Aboriginal perceptive included both instances of friendly and violent contact.

3.4.2.2 Pastoral settlement

Initially, the colonial government attempted to restrict official ‘settlement’ of this area by squatters. Prior to 1836 it was illegal to settle outside the Bounds of Location defined by the ‘Nineteen Counties’. The Macleay River inland from the town of Kempsey, established by cedar merchant William Rudder, was originally outside of the Bounds of Location. In 1836 an Act of Council was made to control illegal squatting on Crown Lands beyond the boundaries of the nineteen counties, by licensing the grazing of stock outside the boundary by the payment of an annual fee. This led to a rush of settlers to the Macleay largely from government and ex-military residents associated with the recently closed penal colony at Port Macquarie.

The consequences of this land grab for Aboriginal people, their economy and survival were well understood by the authorities at the time. For instance in 1845, George James MacDonald in a report to
the Legislative Council reports that:

> their ordinary means of subsistence must have diminished to a considerable extent: the introduction of five hundred thousand sheep into the original hunting grounds of the district, has nearly driven the kangaroo, on which the natives formerly subsisted, beyond its boundaries.\(^5\)

The Crown Lands Occupation Act 1836 began official occupation of the Macleay and Bellinger Rivers by squatters. Most of the squatters were men with the capital needed to stock big runs: officers, businessmen, and wealthy immigrants.\(^6\) Pastoralists first ran sheep on the coast side of the gorges (Apsley Falls) before too much wet weather, as well as dingoes, forced them to drier country on the tablelands. The development of the European pastoral ‘industry’ was more gradual in this region than in surrounding areas. It was not until 1879 that stock numbers reached anything near those of earlier pastoral districts.

In the early days of European settlement of the Nambucca River Valley Aboriginal people and isolated settler families often lived side by side although there are few official records of observation relating to Aboriginal people at this time from the Nambucca Valley, some local oral histories have been recorded that give us insight into the relationships between settlers and Aboriginal people. A rare female perspective is contained in the unpublished manuscript of ‘The Winslow Family’ which was compiled by the granddaughter of the original settlers. She recalls

> A tribe of 500 aborigines lived in the locality, my mother often watched the lubras climb trees by means of a plaited vine and toe holds cut in the trunk with a native axe, and bring out a possum from the dead limb and throw it to the ground to be stunned by the children armed with nulla nullas. The men hunted paddymelon from the scrub into clearings where picinnis (sic) hid in scrub at the edges, then rushed into the cleared space and killed them with paddymelon stick. The lubras cleaned and dried possum skins, then sewed them together with bone needles, using sinews and made rugs to sleep under during winter also a type of cape for their shoulders. They also made nets from certain river tree barks, and caught fish, mostly eels. Most families in the tribe only had 2 children, a small plant grew in the district known only by the head grandmother who gathered and dried the flowers and gave to the mothers when she considered they had as many children as the tribe could support. After a picinnis (sic) birth the mother stayed in camp for 3 months, the other lubras did her share of work\(^7\). (unpub Manuscript Hill 1968).

This is a rare insight into the way in which family groups worked as a team, involving men, women and children. In contrast most male observers focus on the activities of Aboriginal men and it may be that as a woman Mrs Winslow was not seen as a threat to the women and children. That there must have been some level of intimacy and trust between the women is indicated by the fact that they confided about

\(^5\) MacDonald in Blomfield 1981:78
\(^6\) see Neil, 1972 for comprehensive list
\(^7\) Mrs Laurel Hill of Wai Wai, Macksville who was the grand daughter of the original settlers, compiled the history of the Winslow Family in May 1968. Manuscript is held in the Bowraville Folk Museum.
matters such as contraception and child birth which no doubt were subjects of real concern to all women living in such remote areas but would be unlikely to be discussed readily with outsiders with whom they had not developed a strong relationship.

There were clearly some instances of accommodation and kindness between Aboriginal people and pastoral settlers in the area. For example, Hodgkinson notes that he spent a considerable amount of time with local Aboriginal people whilst he was resident in the area in 1841-2, often sharing food (see Ryan 1988: 175-7).

Despite this, not far to the south and west of the Nambucca Valley, the Macleay Gorges were the locale of some of the most violent and sustained periods of Aboriginal-settler conflict in NSW. Squatters invaded the New England Tableland in the mid 1830s, and between 1839 and 1842, Campbell describes 'the atrocities committed by both sides ...[as] both extreme and frequent'. Conflicts continued in the upper and middle reaches of the Macleay and the Bellinger, with one correspondent in the Sydney Morning Herald in 1849 making comment on the daily increasing depredations of the blacks on the upper part of the river and the borders of New England. In two instances, at Trappand's Flat and Kunderang, they have speared cattle in the stockyards...the hut at one station they have burned.

There appear to have been as many as 15 massacres of groups of Aboriginal people on the Macleay and south of the Nambucca River during the period 1838-1851, with suggestions of many more isolated killings by cedar cutters, graziers and police. Aboriginal people formed relatively large groups that attacked shepherds, homesteads, cattle and sheep using guerilla-style tactics before retreating into the gorges. The protracted period of massacres and 'hit and run' raids on pastoral properties was effectively ended in 1851 by the establishment of a native police force at Nulla Nulla Creek and the losses effected by this long period of punitive raids and skirmishes.

The period between 1839 and 1842 was particularly intense with at least 11 of these violent attacks on Aboriginal people occurring in this time. A study by NPWS into the Aboriginal Historic sites in Northeast NSW (Rich 1990) identifies the following 11 sites relating to warfare in the Macleay, Nambucca and Bellinger Valleys:

Red rock massacre - 1840
Yarrahapinni massacre - early 1840's (in Nambucca shire)
Nambucca River killings and massacre - early 1840's (in Nambucca Shire)
Sheep station bluff massacre [ASR 21-5-31] - early 1840's
Wabro Station attack and massacre [ASR21-6-100] - possibly 1840's
Kunderang West attack - c mid 1840's
Kunderang Brook massacre ASR[21-5-13] - c.mid 1840's
Hickey's Creek killing [white man killed] - 1854
Towel Creek massacre - [ASR21-5-25 c 1854]
Smiths Flat attack - no date

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9 Quoted in Prineas 1997, op cit, p. 195
Yassabah Caves - no date.
3.4.2.3 Yarrahapinni massacre

McDonald, Commissioner of Crown Lands for the New England District during the 1840s, indicates the way in which the geographic landscape of the Macleay river region impacted on frontier violence. His reports show that the area which is now known as the Oxley Wild Rivers National Park was once a place of refuge for Aboriginal guerrilla fighters engaged in a long and violent struggle against white invasion:

During the past year only one Outrage of a serious nature has been committed by the Natives which occurred in October last on the Station of the Messrs Irby on the Northern limit of the District where a shepherd was barbarously murdered and mangled by them – some cattle and sheep have been stolen and slaughtered on the Eastern Falls of the Table land – the precipitous and profound Ravines of which, afford them safe harbour and secure retreat, where neither man nor horse can follow

That the Macleay River Valley was a site of particularly intense colonial violence and Aboriginal resistance can be explained in part by the political timing of the squatter’s push into the Macleay. The Macleay was invaded during the time that Governor Brisbane and later Governor Darling were in rule. Brisbane had declared martial law in the colony and Darling later advised settlers to organise their own protection against Aboriginal resistance fighters who were defending their traditional lands. The specifics of geography also contributed to the high levels of violence on this ‘frontier’. The ‘Falls’ country, as the landscape came to be called, was where numbers of Aboriginal people retreated or were driven from the tablelands and fertile coastal strip - this is the place, as Blomfield puts it ‘they turned and fought back.’

The rugged country supported Aboriginal refugees from the white-occupied areas and provided a base for resistance for 30 or more years after about 1838.

3.4.2.4 Nambucca River Massacre

There was also conflict between sawyers and Aboriginal people that took place on the Nambucca River itself. In the 1840s sawyers;

gave the blacks a large quantity of flour, tobacco, sugar, etc in order to propitiate them [but]… the ceder cutters…were…exposed to murderous attacks from the native tribes on its banks, who killed and wounded several sawyers; and as retaliatory expeditions were undertaken…a great number of blacks were killed. (Ryan 1988:176-177,182 quoting from Hodgkinson)

Early contacts between some Aboriginal groups to the south of the study area and white settlers seems to have been the cause of some inter-group conflict between the Dhan-ghadi and Gumbaingirr Aboriginal

12 See also Neil, Marie H, 1972, Valley of the Macleay. The History of Kempsey and the Macleay River District, Wentworth Books, Sydney; Blomfield op cit, Weingarth op cit, Ellen op cit,
14 Blomfield, op cit, p. 14
15 Eg see Wright 1987 and Cohen 1987
people. For example, Oakes, H, Report to Commissioner of Crown Lands Office, MacLeay River, 22 March, 1842:

‘...Little change has taken place in the Natives of this District, or the Clarence River; the Natives at the last named place have shown no inclination to communicate with the Whites; since the unprovoked Murders committed by them they continue to traverse the Coast during the season favourable for fishing and the interior during the hunting season, and to plunder whenever they have the chance....On the McLeay River they are far more civilized and remain longer in one place; this is entirely owing to the good understanding and confidence subsisting between the Whites and themselves; they are chiefly employed by the Whites in hunting, fishing, going errands and seeking crooked Timber and such thing as may be required by the Ship builders.

Their numbers are fast decreasing: six of the best and most civilized Blacks I have ever known have died within the last years, one killed in open combat, one treacherously murdered by an adverse tribe and other by the common course of nature, all exceedingly regretted by the white people. I do not think 150 Blacks occupy the space between Wabbra and Trial Bay a distance of 80 miles.

As yet, little is known of the Blacks on the Nambucca; in consequence of the late attacks on the Sawyers, they keep out of sight, waiting an opportunity of a Successful attack for provisions. The Blacks at Trial Bay are, or appear to be, highly incensed against them, fearful as they say lest such outrages should be attributed to the Trial Bay Tribe...I continue of the same opinion, as expressed by me on a late occasion, that the distribution of Tools and implements to the Tribes is likely to check their depredations and encourage industry...’

Massie, who succeeded Oakes as Land Commissioner for the Macleay district, was also clearly pitting groups of Aboriginal people against each other in 1847 when he reported:

‘...With a view to stopping the depredations (referring to the spearing of cattle) I have made a requisition for a number of scarlet blankets, pocket scarves and tomahawks which I propose giving to those tribes who will furnish me with information when any members of their own or a neighbouring tribe propose committing an offence...’

Hodgkinson also notes fights breaking out between Yarra-bandinni Aboriginal people and people from Nambucca and Bellingen Rivers.

3.4.2.5 Aboriginal people on the Macleay, Nambucca and Bellinger Rivers in the 1840s and 1850s

At the time of first European invasion, the Macleay River Valley, from the steep and rugged tablelands and valleys to the west, downriver to the more humid and temperate coast, was inhabited by Dhan-gadi Aboriginal language speakers, while the Nambucca and Bellinger Rivers belonged to the territory of Ngaku and Gumbaingirr Aboriginal language speakers. Hodgkinson describes each dialect group as

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composed of 80-100 men and women excluding children, and estimates the population of the valley
during the 1830s of 660 to 800 adults. Godwin suggests that this is an underestimate due to the
decimation of the population due to the small-pox epidemic of 1829-31, and should by revised by 40% or
more to account for this. These dialect groups would split up into smaller groups during particular times of
the year, and re-join at others to undertake group ceremonies and meetings. While there is little evidence
for people from the coast moving into the gorge system, there is evidence of people from the hinterlands
moving up into the tablelands in summer. Crown Commissioner of Lands McDonald reports the presence
of Aboriginal people from the Macleay and the Clarence on the Tablelands in March 1840, for example.
The patterns of movement along the rivers from the coast and hinterland to the Tablelands have been an
important feature of archaeological models of site formation and use in the area.

Henderson, who owned and managed ‘Wobro’ station on the lower Macleay records many aspects of
Aboriginal people’s lives on the Macleay in the 1840s. Items of material culture used by Dhan-gadi
Aboriginal people include coolamons for carrying water, ground edged axes, 3-4 m long hunting spears
and shields. Possums were hunted in the upper reaches of the Macleay, either smoked or chopped out of
trees with the aid of a ground edged axe. Eels were caught in the river with the aid of a torch and clubs at
dusk. Kangaroos and other macropods were hunted with dogs and speared, while towwack, a yam found
on river flats and rainforest stands, was gathered by women. A soft purple fruit the size of an apple is also
described, as is the leaching, pounding and roasting of the roots of the rainforest fern Colonasis
macrorhizza. Shelters were constructed from sheets of bark in times of wet weather.

A remarkable ethnohistoric record is provided by Hodgkinson’s Australia from Moreton Bay to Port
Macquarie, written in 1844. Records of the lives of Ngaku Aboriginal people north of the Macleay in the
vicinity of ‘Yarabandini’ [Yarahapinni] station and Gumbaingirr Aboriginal people encountered on his trip
north to survey the Bellinger River form an invaluable resource for describing the lives of Aboriginal
people in the study area during the first 20 years of contact. Hodgkinson is a learned authority, and
appears to have formed close relationships with local Aboriginal people, observing their customs and
lifestyles sympathetically, unlike many other white observers at this time.

Hodgkinson records that Ngaku and Gumbaingirr Aboriginal people (whom he refers to by individual
‘band’ names, such as Yarra-bandini) came together for ceremonial meetings and marriage ceremonies.
Travelling north to the Bellinger in 1841, he is accompanied by two Aboriginal people from the Macleay
and a group of 5 local men who show them the way to the Bellinger River.

The next river, the native name of which is the Bellengen, was first found in the year 1841, by a party of Sawyers who went out on an expedition to discover new rivers to cut
cedar at. On their return, they said, that after travelling four days from Kempsey, on the
Macleay, keeping as near to the coast as they could, they came to a salt-water inlet, as

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Parks and Wildlife Service. Appendix 9 in Macleay-Apsley Natural Resources and Land-use study: The case for a National Park. Report by
NPWS to Department of Environment and Planning.

37 C. Hodgkinson 1845 Australia from Port Macquarie to Moreton Bay. T&W Boone, London; p. 222.
39 See discussion in V. Campbell, 1978, Ethnohistorical evidence on the diet and economy of the Aborigines of the Macleay River Valley. In I.
McBryde (ed) Records of Times past: Ethnohistorical Essays in the culture and ecology of the New England tribes. Australian Institute of
Aboriginal Studies Ethnohistorical Series No. 3. Australian Institute of Aboriginal Studies, Canberra.
large as the Macleay River at its mouth. On questioning the Yarra-Bandini tribes of blacks, at the Macleay River, I learnt from them that, in their corroborees, or dances of ceremony, with some of the tribes of the Nambucca, they had heard that there was another river, always containing plenty of fresh water farther on. (p. 26)

Having unloaded the packhorse, and lit a fire, we suddenly head the shrill loud couis of the natives, who turned out to be some old friends of mine belonging to the Tanban tribe. Having heard that they were now at peace with the tribes we should have to encounter on our journey towards the Bellingen, I persuaded a couple of them to accompany me, by the promise of a red shirt each and plenty of smoke (tobacco) whilst they remained with me; for I was well aware that they would be of great utility in searching out the best crossing places for our horses over the creeks, cutting a passage through the entangled brushes of the creepers, and acting as interpreters to the wild blacks. (p. 28)

On the journey, Hodgkinson names the Bellingen, Allgomera and Oankahini rivers and Odalberree stream, a tributary of the Bellingen, after their Aboriginal names. Hodgkinson records the hunting and gathering of a number of plant and animal species by Aboriginal people in the area.

My black companions had procured some honey in the course of the day, and had killed an opossum and a large dew-lizard…we bought sufficient water to the top of the range in the baskets of the wild natives with us. These baskets were made of the leaf of a large aquatic plant, and were perfectly water tight.

The process of hunting the Pademelon is particularly described in detail.

This morning we crossed another of the Nambucca streams., As we entered the brush we heard the loud shouts of the blacks who were busily engaged in hunting. The plan adopted by the natives in this pursuit, was somewhat similar, on a small scale, to the mode of hunting pursued by some of the Indian princes. The blacks first of all dispersed, and formed in the brush a circle of a quarter of a mile in diameter, and then, on a given signal, they all commenced shouting and advancing towards the centre, gradually lessening the circle. The brush kangaroos or pademellas were thus gradually enclosed, and driven into a small space, where, being surrounded on all sides, they were dispatched by the natives, who carried for this purpose short cylindrical pieces of wood, formed from a species of tree growing in the brushes, which is of greater specific gravity than any wood I am acquainted with. This tribe was the same we had met a few days before, and to which the five blacks, who I had just dismissed, belonged. Apparently they had been performing a corroboree dance the preceding evening, as their bodies still preserved the traces of pigments with which they adorn themselves for that occasion. Among these blacks were several old men with beards…on emerging from the brush, we passed the encampment of these natives, where we saw a number of women and boys who seemed excessively alarmed by our appearance. (p. 45)

He records the spearing and net-fishing of bream, salmon and ‘mullet’ by Aboriginal people, who gutted and cooked the fish over the coals. Mussels and oysters were dived for and tossed up onto the shore to be eaten raw, and Cobrah, [species name], a meal particularly relished by Aboriginal people both in the past and today.

Bellengen Billy amused me very much by his curious method of diving to the bottom of the river in search of cobberra…which abound in immersed wood. He swam to the centre of the river with a tomahawk in his hand, and then breathing hard so that his lungs might be collapsed, he rendered his body and tomahawk specifically denser than water, and sank feet foremost to the bottom. After groping about there for some moments, he emerged at the rivers edge, with several dead pieces of wood, which he had detached from the mud. (p. 58)

Clams, oysters and cockles were gathered on the sea beaches, while cray-fish and crabs were caught amongst the rocks. Eels, fish, freshwater crayfish and fresh-water mussels were collected in the upper...
reaches of rivers and fresh-water streams. In addition to the Pademelon, land game favoured by Aboriginal people included kangaroos, goannas, ‘Dew-lizards’, and snakes, along with a range of birds that were hunted using throwing sticks and clubs. These activities were divided amongst the sexes, with men hunting land game and possums and spearing fish, while women tended to gather shellfish and vegetable foods. Brush-turkey eggs were also often gathered by women. Vegetable foods recorded by Hodgkinson include yams which are dug by women and cooked over an open fire, the [Macrozamia] fern root, which was made edible by grinding it into a paste and cooking it over hot embers, and the root of the Conjeboi, which also required beating and grinding to render it edible. Bongolo palms and cabbage palms were also eaten by extracting the heart of the palm, which was eaten like sago.

Sketches accompanying Hodgkinson’s book show Aboriginal people in the lower reaches of the Macleay using dugout canoes and spearing fish with three and four pronged fishing spears, and groups of Aboriginal people engaged in mock warfare carrying shields and clubs. They also include illustrations of a male initiation ceremony called the Cawarra ceremony.

3.4.3 Working lives

As in many other parts of ‘settled’ NSW, by 1851 many of the massacres in the area had ceased, and those Aboriginal people who remained began to find work in the area in response to the shortage of men caused by the widespread migration to the goldfields. In 1853, Merewether, who had succeeded Massie as Commissioner for Crown Lands on the Macleay wrote of the demand for the services of Aboriginal people in the region.

‘...[C]aused by the withdrawal of the whole of the labouring population to the difference goldfields....The services of the natives have been indispensable. Indeed but for their presence most of the ordinary operations of the district would have been at a standstill and scarcely a single settler or squatter on the River is there, who has not had one or more in his employment under a written agreement at wages varying according to their degrees of usefulness and intelligence [from 30s to 15 pounds per annum].

Annie Baxter was the wife of Lieutenant John Baxter, who lived on Yessaba station in 1840-1841. She arrived in Australia in 1837 and at the time of her death left a journal of 32 volumes 845,000 words long, covering the years 1834-1868. Her discussions of relationships with Aboriginal people on their pastoral property on the Macleay are fleeting but reveal the close and comfortable relationship she enjoyed with 2 Aboriginal men who worked as station hands at the property. This is indicative of the kinds of relationships that developed between Aboriginal people and the settlers in the study area even in the earliest years of sustained settlement by non-Aboriginal people.

On the 20 April when the first crop of corn was ready to pull at Yesabba, Baxter went over to the blacks camp for people to husk it. Her diary also records that while relatively peaceful conditions occurred on the station, in the ‘bush’ conflict over resources often ended in violence.

Thur 30 Apr: Mr Freer came in today – he has met with quite an adventure with the blacks – it seems that after his bringing down the 3071 sheep to the McLeay, the men...
lost sight of 168 – and the blacks got them – they not only eat most of them, but wasted them in the most terrible manner possible – Mr Freer went with 2 men to get them and they defied him – of course his party not being sufficiently strong he had to return for more – He did so, and they surprised the Natives eating their mutton at their camp – there was a terrible rencontre – and some of the unfortunate creatures killed (p.34)

Pastoral settlement in the study area itself was far less dense along the Nambucca and Bellinger Rivers than along the Macleay and Hastings Rivers to the south, and the Clarence to the North. This meant that Aboriginal people in the study area were often forced to move out of the study area to find work in the pastoral industry. This is illustrated by the autobiography of Bill Cohen, a Gumbaingirr man who’s family eventually settled on Bellbrook mission, and who worked for much of his life on Kunderang pastoral station in the Upper Macleay which was Dhan Ghadi country.

3.4.4 Aboriginal missions and reserves

Between 1883 and 1908, 16 Aboriginal Reserves were established in the Macleay and Bellinger River valleys and set aside for the use of Aboriginal people23. Often these ‘reserves’ were lands that Aboriginal families had been working for a decade (see Register of Reserves, number 251, Pelican Island). The earliest of these were Stuarts Island Reserve, near the mouth of the Nambucca, and a reserve on the Macleay River at Arakoon, both gazetted in 1883. Other reserves were established at South West Rocks, Kempsey, Macksville, Bowraville, Nambucca Heads and Bellbrook. Later, during the 1930s Burnt Bridge Station was gazetted.

The Register of Aboriginal Reserves shows the date of the first notification of the reserve, a map of the area and bordering rivers, creeks etc, and sometimes includes information about the names of the Aboriginal farmers who were working the land, the acreage, and condition of the land (eg swamp, forest, scrub), whether the land was fenced and what crops were growing.

These notifications give a graphic depiction of the unequal opportunities afforded Aboriginal as compared to non-Aboriginal ‘squatters’. These Aboriginal farms became sites for increasing restriction and later institutionalisation of the original farming families and later ‘fringe’ populations of displaced Aboriginal pastoral workers and their children. Minne Quinlan’s (1983) oral history account of Bellbrook gives a clear depiction of this historical process. Even these lands were eventually taken away from people, and people were forcibly removed from many of these places and prevented from returning (see Goodall 1996 for a detailed account of the process of dispossession of lands particularly in the 1920s and 1950s).

3.4.4.1 Parish of Bowra

O’Rourke’s Settlement: AR 168 was gazetted on 17/11/1884 with an area of 20 acres and marked as revoked by AR 52841/2 on 30/10/1912 being part of portion 154, marked as O’Rourke’s settlement on Taylor’s Arm of the Nambucca River, Parish of Bowra, County of Raleigh. An extract from the Aborigines Protection Board states that about 20 “strong and healthy” Aborigines intended to prepare the reserve for cultivation purposes, 15 January 1885 (State records Kingswood 2/8349 Reel 2847:81).

23 Morris, 1989, op cit
AR 42775 and AR 57051 on Wirimbi Island were gazetted on 3/6/1908 with an area of 3.6 hectares and revoked on 9/5/1924. Parish of Bowra, County of Raleigh.
Figure 6: Section of Parish Map- Bowra County of Raleigh showing location of Wirimbi Island.
AR 62815/6 was gazetted on 7/7/1931 with an area of 36 acres. Parish of Bowra, County of Raleigh.

Dunne records that the Catholic Church and in particular Father Cohalan, the second priest to reside in the Parish (arriving in 1919) was instrumental in establishing a school for the Aboriginal children. Later, Sister Callistus recalled that in the early 1930s the Aboriginal Welfare Department decided to transfer the Bowraville Aboriginals to the Government Settlement at Bellingen. On the day that they arrived to do so, however, there was not a child at school. The people all went bush until the officials gave up and took their departure, leaving them to the Sisters. The Bishop then made official arrangements by which we could look after them (Dunne 2001:108).

AR50272 gazetted 14 October 1914 was about 62 acres. In the Parish of Bowra, County of Raleigh.

Figure 7: Section of Bowra Parish Map of showing location of AR 50272.

3.3.4.2 Parish of Warrell

AR 19667 was gazetted on 17/2/1894 with an area of 25 acres and marked as revoked on 2/11/1962 in the parish of Warrell, County of Raleigh.
3.4.4.3 Parish of Valley Valley

AR 31243/4 was gazetted on 17/2/1894 with an area of 40 acres marked as revoked on 4/4/1952. AR31243/31244 Reserve was 40 acres and was intended to be occupied and farmed during its later stages by an Aboriginal man, Fred Buchanan and his family; including 3 children (State records Kingswood 2/8349 Reel 2847:84).

Goodall (1996:297) reports that ‘The Buchanans’ land at Cow Creek near Nambucca had already been leased to whites in the devastating land loss of the 1920’s, so its revocation in 1952 was bitterly resented but did not lead to new dislocation’.

An unpublished manuscript by an unknown author in the Bowra Folk Museum contains a story called ‘The Last Full Blooded Aborigines of Valla.’ This is an account apparently by a European of the last years of Davy and Maggie Cowlin who lived on the reserve at Cow Creek. The old couple are described with obvious affection. Davy is described as man with power to make rain. It mentions that the government built two houses on the reserve for Aboriginal families but that while they kept them spotlessly clean, they preferred ‘their old way of living and slept and cooked in the open’. The story recounts the death and funeral of Maggie.
A large gathering of coloured people came to the funeral. It transpired that the old couple had been people of importance and were the last members of their particular tribe. Maggie was buried in a grove of trees in a corner of the Reserve. At sundown a bug fire was lit and shortly afterwards everybody left. The Reserve was deserted for a couple of weeks, then the families came back and lit another fire and again everybody left.

After a third fire, the families once more settled back on the Reserve. On being asked about the fires, they explained that the first two fires had thrown out many sparks and this showed that Maggie’s spirit still lingered and they could not stay. There had been no sparks from the third fire which meant that Maggie’s spirit had departed and they were free to return home (Anon n.d)24.

The account mentions that sometime after her death the people were moved to Stuart Island where Davy ‘the last of his tribe’ died. This then was probably sometime around the early 1920s.

Figure 9: Section of Parish Map – Valley Valley, County of Raleigh showing AR31243/31244.

24 unpub manuscript held at the Bowraville Folk Museum.
3.4.4.4 Parish of Nambucca:

Bellwood reserve is comprised of AR 73990 gazetted on 26/1/1951 with an area of 42 acres (portion s359 and 506) and AR 87256 gazetted on 4/7/1969 (part of portion 419). It is located 2 miles from Nambucca Heads.

Stuart Island is an important place for many Gumb aingir people. It was one of the earliest reserves established in the area, gazetted in 1883. An entry in the Aborigines Protection Board Register of Reserves from 1890 states that Jimmy Doyle and his family, as well as Charlie Harvey and his family inhabited 4 cottages that they had erected (State records Kingswood 2/8349 Reel 2847:80).

Figure 10: Section of Parish Map of Nambucca (dated 1956) showing AR73990.

Figure 11: Parish map dated 1909 showing R 140 Stuart’s Island Reserve ‘For the use of Aborigines’
3.4.4.5 Parish of Allgomera

Engau Reserve, in the parish of Allgomera, County of Raleigh with an area of 28 acres being part of portion 114 was gazetted as AR 39584/5 on 26/8/1905 the revoked on 7/5/1920.

AR 38625 was gazetted in 1904 by 1925 the parish map has a hand notation on this block of land which indicates that it has been issued as a Special lease ‘SPL 3719 A Grant 20Acres’.

![Figure 12: Section of Parish Map of Allgomera dated 1908 showing location of AR 38625](image)

3.4.4.6 Parish of South Bellingen

AR 14679 was an island situated at the convergence of the North arm and South Arm of the Bellinger River (note that the NSW Guide to Aboriginal reserves misnames this the Nambucca River) in the Parish of South Bellingen, County of Raleigh with an area of 250 acres was gazetted 24/10/1891 and revoked 17/12/1954. An entry in the Aboriginal Protection Board Register of Reserves states that three Aboriginal families settled on the reserve in 1892 (State records Kingswood 2/8349 Reel 2847:82). This reserve is situated outside the Nambucca Shire to the north but is likely to be significant to many Aboriginal residents of the Nambucca LGA.

Goodall (1996:297) comments ‘At Urunga to, at the mouth of the South Bellinger River, the population had already been forcibly transported to Burnt Bridge in 1937, so there were no large scale movements when the 250 acres of reserve land were revoked in 1954.’
Yellow Rock Burials, AR 14678, is a reserve set aside in the Parish of South Bellingen, County of Raleigh gazetted on 28/4/1961 being portion 571. This is also just outside the LGA to the north.

**Other historic Aboriginal settlements**

Aboriginal people are reported to have established long term settlements at Tilly Willy Campsite, Macksville and Goat/Moses Island.

An Aboriginal school was established at Stuart’s Island in 1916 and transferred to Bellwood Reserve in 1948. In 1967 it was amalgamated with Nambucca Heads Public School (Rich 1989: 16). (Long: Aboriginal settlements in eastern NSW 1970).

### 3.4.5 Recent history

Goodall reminds us that

> The invasion of Australia by Britain in 1788 is usually seen as either the beginning of the story of settler progress or the end of the story of Aboriginal civilisation. Yet while the invasion forced great changes onto Aboriginal societies, Aboriginal people were not wiped out, and they drew on their cultural, social and economic knowledge to negotiate the directions for their varied futures (Goodall 1996:1).

Any summary of history tends to imply an ending at the point where the story is left off. Just as it is important not to see Aboriginal culture as ending with the European Invasion of the continent it is also important to realise that it doesn’t end with the mission period or at any other significant point in the recent history of the Aboriginal people. Aboriginal people still form a vibrant part of the Nambucca community. For many people in the shire who have been resident for several generations there is a large and undocumented *shared* aspect of the history of the Nambucca River Valley. While the stories of these shared experiences may be obvious to those who lived them they are probably unknown to newcomers to the shire. Newcomers and visitors may not know of the important role that Aboriginal people played in the development of the Nambucca community, economy and society. Certainly this shared heritage is difficult to access as it is not well documented.
The historical societies including the Bowraville Folk Museum tend to present a very European view of local history which no doubt is because most of their participating members are of that background. There are however hints of some of the interrelationships between Aboriginal and non-Aboriginal residents. The Bowraville Folk Museum has collections of the recollections of early European residents some of which contain reference to Aboriginal neighbours. For example in a oral history of Hepsibah Ballard (nee Argent)

There were two aboriginal (sic) camps in the near vicinity; one within 300 yards of the homestead [the homestead referred to is her childhood home, the home of Allen Argent], on top or the hill where the old Presbyterian Church now stands. With others the Dhottis lived there, and another 'wild' old man called Benny. The aborigines were very friendly and came to get clotting, tobacco and flour, sometimes bringing honey and fish in exchange. They has a 'Kiparra' ground between the two camps, a few hundred yards up the hill from the old homestead. The carved trees were still standing a few years back, being well remembered by many residents. (unpublished manuscript held by the Bowraville Folk Museum entitled ‘Stories of our Pioneers : a series prepared by the Guardian Gazette).

As in may other places Aboriginal prowess in sporting events is well remembered. Dunnne (1996:100) includes a photo of the Bowra Regents All blacks from 1945. He notes that ‘This Aboriginal team played and won all games in the local competition. They played and beat Bowraville (all Whites) in the Grand Final’. Reginald Mackay records the much earlier reminiscences of his father Douglas Mackay when the later was about 87 years old. The manuscript which is also held by the Bowraville Folk Museum is undated. Douglas Mackay recalls amongst other well known sportsmen of his day was a young Aboriginal man called Barber.

Barber, by the way was a specialist as a jumper. He would take a run of no more than four yards and clear a hurdle six inches over his own height with ease.

He also recalls the Aboriginal people who lived on his father’s farm.

In those days there was a camping ground on my father's farm, where many lived and died. The dead were buried there in a selected area and that cemetery is still to be seen on the property about two miles from Bowra. They were peaceful enough and many were good workers, reliable and trustworthy. I had a good deal of experience amongst them and learnt to speak their language fluently – actually better than many of the aborigines today, some of whom cannot speak the old language at all, mainly because of present environment and schooling. My friendships were many and sincere and I have a whole hearted respect for them. Some of the names of those I knew and remember were Billy Burrapine, Billy Chooki, Phut, Ballangarry, Toby, Wambo, Dick Dotti, Barber, Benny Kuraboo, Fanny, Kitty and Lily. (Douglas Mackay aged 87yrs as told to his son Reginald Mackay n.d).

A number of older landowners recall Aboriginal people living on their properties when they were children
and there are accounts of Aboriginal people featuring in sporting and social events and playing significant roles in certain industries such as shipbuilding\textsuperscript{25} (Dunne 2001:12) and timber milling. It is likely that there are a range of places that are associated with this history that should be identified and might help in raising the awareness of this aspect of the recent past. This would make an ideal ‘reconciliation project that could bring together Aboriginal and non indigenous Nambucca residents (see Section 7).

\textsuperscript{25} Dunne records that when Rock Davis launched his ship the ‘Crinoline’ at Blackwall in 1863 ‘Ned Davis with his long flowing main and beard had come down from the Nambucca River, in his ketch manned by his crew of Aboriginals’ Swancott, C in Dunne.
4.0 Aboriginal Sites and Places in the Nambucca LGA

Most archaeological surveys undertaken in the Nambucca LGA have been restricted to specific development areas and thus have covered only a small area of the LGA. Despite this, 76 sites have been registered with the NPWS in the Nambucca LGA. Whilst the Nambucca LGA has not been subject to a systematic archaeological survey, research conducted in adjacent areas offer some insight into the patterns of archaeological site distribution that may be present in the Nambucca shire. The sections below summarise what is known and can be predicted about the range and distribution of sites in the LGA. It is important to note, however, that of the sites that are known an unusually high proportion are ceremonial and or mythological sites. As such, it is likely that considerable information about these sites and their location will still reside with sections of the Aboriginal community. A broad scale oral history project would be beneficial in identifying sites of importance to Aboriginal people. The protocols to be developed in the later sections of this plan will reflect the need to involve the Aboriginal LALCs directly in the planning and assessment process to ensure that known (but unrecorded) sites are appropriately considered in development and planning within the shire.

4.1 Limitations of the Existing Site Inventory and Survey Base

The existing site inventory is very limited in its application for the analysis of site distribution patterns and predictive trends. This is because it does not present a representative sample of the probable surviving cultural heritage resource. The inventory is biased by its two main sources of information:

- opportunistic and periodic recordings of mostly visually obtrusive sites such as coastal middens; and
- recordings from systematic archaeological surveys of localised areas prior to developments such as forestry, urban infrastructure, or residential development projects.

Less than 5% of the Nambucca LGA has been subject to systematic and comprehensive surface archaeological survey. The majority of these surveys have been conducted in urban infrastructure and urban release areas situated around the coast line and existing town centres. Archaeological surveys do not appear to be carried out as a matter of course before most developments in the Nambucca area. This has resulted in a lower than average survey coverage for the area.

Very few archaeological investigations have conducted follow-on sub-surface testing programs. There have been no systematic testing programs with the aim of testing the archaeological potential of landforms from which no surface artefacts have been detected.

There are 76 archaeological site recordings within the study area, 34% of lithic artefact scatters 20% of which consist of middens, 22% of natural mythological/ceremonial, 9% carved tree, two wells, two historic sites, three burials and one art site. This breakdown of site types reflects the biases in previous research and survey and cannot be taken as an indication of the potentially surviving cultural heritage resource. While shell based sites such as middens are likely to dominate the marine and estuarine margins, open artefact scatters are most likely to predominate in the hinterland and ranges, and the total resource as a whole. Scarred trees could be expected to occur wherever the forest has survived with minimal logging and particularly where these occur close to Aboriginal reserves and settlements. Historic sites, including reserves are likely to be much more prevalent than suggested by the recorded sites (see Section 3.3.2).
4.2 Archaeological Studies

4.2.1 What do we know?

Relatively few archaeological surveys have been carried out in the immediate Nambucca LGA area and most of the surveys that have been carried out have been relatively small. Kelly and Donovan (1976a and b) included the Nambucca/ Macksville region in their sacred sites survey of the Gumbangarra tribal area. Several important campsites and mythological sites were recorded for the area. Because of the cultural sensitivity of some of the information relating to these sites only very general information about them is provided in this report.

The sites recorded by Kelly and Donovan include the Mucki Site on the banks of the Nambucca River, Goat or Moses Island in the Nambucca River, Swimming Creek Campsite on Swimming Creek, Tilly Willy Campsite on Tilly Willy Creek, Ngumbars Knee in the Nambucca area, the Ngumbar Corroboree ground in the Scotts Head area, three Keepara (bora) Grounds on the Nambucca River, Berrougan’s Canoe and Berrougan’s Crossing on the Nambucca River, the Blue Tongue Lizard increase site near the Nambucca River and several carved trees.

Other surveys have largely been carried out as part of environmental impact assessment processes and are often confined to small areas of expected development impact. Such surveys have identified a number of sites including shell middens, campsites and Potential Archaeological Deposits (PADs). A surprising number of such surveys, however, did not result in the identification of any sites and in most cases this was explained in terms of previous disturbance from past land uses or thick vegetation coverage.

To get an understanding of what sites might occur within the LGA it is important to look at broader regional studies of the mid north coast to get a more comprehensive view of the potential for archaeological sites. Archaeological research has been carried out in the mid North coast area by McBryde (1974, 1982), Coleman (1982) and Lane (1970, 1974, 1978).

McBryde undertook the first regional archaeological study in the area as part of her research into the prehistory of the Clarence and its tributaries (1982). Her excavations at Seelands rockshelter, to the south of the Clarence River, uncovered archaeological evidence for human occupation of the rockshelter to 6400 years BP. This is the oldest evidence recorded so far for human occupation on the mid North Coast of NSW. McBryde proposed a model of seasonal movement between coastal and inland areas, and this has been disputed by Godwin (1982) who suggested that Aboriginal people remained on the resource rich estuarine areas for most of the year. This notion of seasonal movement between coast and mountainous hinterland along the mid North coast has been the subject of considerable debate amongst archaeologists. McBryde’s earlier work in the New England Tablelands (1974) led her to develop a hypothesis of seasonal mobility characterised by the exploitation of coastal resources during the summer months and upland resources during the winter. Coleman (1983) disputed this hypothesis, mustering the support of ethnohistoric observations by Hodgkinson (1845), Henderson (1855) and Bundock (1898) to suggest that Aboriginal people along the Macleay and the Nambucca Rivers were generally relatively sedentary and moved along the coastal zone in search of economic resources, utilising the uplands areas...
only for ceremonial activities. Godwin (1981) has modelled Aboriginal subsistence patterns in this area as involving the regular exploitation of estuarine/tidal creek environments, with use of beaches in the autumn and winter for short periods of time, and use of hilly country as refuges during times of flood.

4.2.1.1 Models from the adjacent Macleay area.

Belshaw\(^{26}\), based on an analysis of historic accounts of the area, developed a hypothesis of seasonal movement of the Aboriginal people of the northern Tablelands. He thought the tablelands were a ‘marchland’ area used largely for travel and for the use of seasonally available resources between the western slopes and coastal Aboriginal people. Blomfield records that Allan Youdale believed a seasonal travel route of the Dhan-Gadi crossed the head of Kunderang Brook and came out near Rollands Plains. He noted the movement of people from the Tablelands down to the gorges and coastal areas during the bleak winter months. Similarly, Campbell\(^{27}\) suggested that coastal people moved inland for the winter for the same reasons. This suggests that the gorge country may have formed a refuge for Aboriginal people from both the tableland and coastal areas during the cold winter months. This pattern of seasonal movement through the gorges seems broadly consistent with the available archaeological evidence in this area\(^{28}\). Lourandos suggested that the higher parts of the tablelands were occupied on a permanent basis by one group and seasonally by others from the coast and western slopes\(^{29}\). Davidson and Godwin have suggested that avifauna and aquatic resources in the upland swamps would have provided abundant food supplies for year round occupation of these areas, while Bowdler suggests that a staple food in the higher elevations of the plateau country may have been the yam daisy. Morris\(^{30}\) summarised the available historical references for the Macleay Valley to estimate the pre-contact population of the valley at up to 600 people not counting children.

Luke Godwin’s archaeological research in the Upper Macleay located a number of archaeological campsites in alluvial and colluvial soils near or adjacent to cleared, relatively flat areas along or immediately above watercourses. All sites were within 100m of a river or permanent watercourse.


\(^{30}\) Morris, 1989, op cit; p. 19ff
Davidson\textsuperscript{31} notes that there was a flat below an overhang on the Kunderang Brook which was reported to have been used by Aboriginal people as an overnight campsite until about 1940 when people travelled between Kempsey and the Aboriginal settlement at Walcha. This general pattern of movement along river systems and spurs, with overnight camping spots on cleared, flat areas near the river or on saddles or surface flats on spurs leading up to the Tablelands obviously continued a long traditional pattern of movement for the Aboriginal people who used the Macleay River Valley. The constraints caused by such dissected landscapes has been recognised as producing a general pattern of archaeological sites being located along spur lines in saddles and on gently sloping ground on ridges in other forested areas of NSW\textsuperscript{32}.

4.2.1.2 Godwin’s model based on Scotts Head survey

Godwin carried out an archaeological survey for Nambucca Shire council around the Township of Scotts Head (Godwin n.d, NPWS report C331) at some time in the early to mid 1980s. He prefaced his discussion by acknowledging that there was some debate over which Aboriginal groups laid claim to this prior to European contact.

The model he proposes can be summarised as:

- Aboriginal people of the area lived on or near the coast for the whole of the year.
- Aquatic resources (i.e marine, littoral and estuarine/tidal creek) were favoured over land foods.
- The estuarine/tidal creek zone was the most heavily exploited and over most of the year.
- The beaches mainly visited in autumn or winter for short period of time.
- Hilly area used as refuge in times of flood.

He speculates that this will result in the following range of archaeological sites/ evidence in the study area.

1. Large middens near Warrell Creek composed chiefly of estuarine/tidal creek species.
2. Coastal sites consisting of less established perhaps ephemeral shell middens composed of pips.
3. Ephemeral sites in the hills. The latter would consist mainly of stone artefact scatters. There may be stratified deposits on any caves on the hills. Exploitation of land mammals may be associated with these sites. (Godwin n.d:5)

4.2.1.3 Navin Officers model for the Macksville area

Navin Officer Cultural Heritage Management has undertaken a series of archaeological surveys over a number of years along the north coast of NSW associated with the Pacific Highway extensions and

\textsuperscript{31} Davidson 1982, op cit, p. 49
\textsuperscript{32} Eg see D. Byrne, 984, A survey Strategy for a coastal Forest in S. Sullivan and S. Bowdler (eds) Site Surveys and Significance Assessment in Australian Archaeology, Department of Prehistory, Research School of Pacific Studies, The Australian National University, Canberra, p. 61-70; B. Egloff, 1984, Sampling the Five Forests, in S. Sullivan and S. Bowdler (eds) Site Surveys and Significance Assessment in Australian Archaeology, Department of Prehistory, Research School of Pacific Studies, The Australian National University, Canberra, p. 71-78.
realignments. Based on existing site records they proposed a tentative site location model for the Macksville/ Nambucca area as follows:

Existing sites occur within the Nambucca River wetland Corridor on elevated, well drained ground adjacent to freshwater wetlands and creeks particularly where ridgeline spurs descend to the river margins. Even cosmological sites tend to conform to this site distribution pattern with sites occurring at creek mouths (which tend to be located adjacent to spurs), and carved trees on ridges etc.

The Nambucca River and adjacent wetlands would have presented an extensive, diverse and potentially prolific food resource in prehistoric times. The ethnographic information suggests that this potential was extensively utilised and that the River corridor was a major focus for the regional exploitation of resources.

It is probable that spur lines were used as preferred access routes to the Nambucca River and its associated floodplain and wetlands. The good drainage and sparse undergrowth of the ridgeline forest structure offered the easiest travel conditions, in contrast to the dense vegetation of the creek corridors and inundated or permanent wetlands. The river itself would have provided good canoe access. (Navin Officer 1991:10)

This particular survey located two areas considered to have archaeological potential and one site. All low lying swampy areas were assessed as having low archaeological potential. The two areas of archaeological potential identified were locally elevated area adjacent to wetlands. The site identified was on a prominent ridgeline spur adjacent to a wetland. The densest part of the site was limited to the main crest of the spur. There was low density artefact distribution along the margins of the spur and most important (in terms of implications for site detection in this area) the site was essentially sub surface and only the occasional artefact was unearthed by ploughing.

4.2.2 What don’t we know?

Clearly although the north coast region is known to be rich in Aboriginal sites both in terms of the number of sites and the diversity of site types, relatively little is known about the actual locations of Aboriginal sites within the LGA itself. This means that there is a high potential under the current situation for future developments to affect as yet unrecorded Aboriginal sites.

Several models have been postulated by archaeologists carrying out localised studies in the LGA but there has been insufficient field testing of the models to date. In most archaeological surveys conducted, the general lack of surface visibility has had a negative effect on the area effectively surveyed and is likely to have caused an underestimation of the number of sites in the area. There is some indication that many Aboriginal archaeological sites may be predominantly subsurface and therefore difficult to detect during surface surveys. This has been inadequately tested through excavation. It is important therefore that archaeological surveys include an assessment of ‘archaeological potential’ as well as a record of visible evidence and that follow up excavations are undertaken to refine the assessment of potential.
4.3 Types of Aboriginal Sites and Places in the LGA

4.3.1 pre contact archaeological sites

Previous archaeological and historical investigations have shown that a number of different site types exist within the Nambucca LGA and have been registered with NPWS. These sites include both archaeological and natural mythological sites. Natural mythological sites are places that have been identified as being significant to local Aboriginal people. Both the archaeological and mythological sites in the Nambucca LGA are listed in Table 1. In addition, there are a number of Aboriginal historic sites, such as Aboriginal reserves, camps and schools that have recorded been recorded in the Nambucca LGA. A brief explanation of the different archaeological, mythological and historical sites follows.

4.3.1.1 Shell Middens

Middens are defined as a concentration of artefactual debris that includes a significant percentage of marine or freshwater shell. They are usually the result of interim or base camp activity and are normally located close to the aquatic environment from which the shellfish have been extracted. Shell middens are comprised of the shell discarded after the molluscs have been eaten. These sites may include evidence of campfires or hearths and sometimes include fish and animal bone as well. Middens are most commonly found along major rivers, on beaches and headlands and in rock shelters where these occur close enough to beaches, rock platforms or rivers. There are 13 middens currently recorded within the LGA.

4.3.1.2 Open Artefact Scatters

Open artefacts scatters may occur almost anywhere across the landscape where Aboriginal people have travelled. They may be associated with hunting and gathering activities, domestic base camps, or the manufacture and maintenance of stone tools. The density of artefacts represented in these scatters can vary dramatically. Theses sites are sometimes referred to as open campsites. These sites can result from someone briefly stopping to repair a tool kit while out hunting and losing or discarding some stone tools in the process or alternatively they can result from almost semi permanent camps where people had separate areas for discrete activities such as a stone tool manufacture and repair.

Most open campsites within the Nambucca LGA are located close to permanent creeks. There are 17 open campsites currently recorded within the LGA. These include sites at Scotts Head 21-6-0011; Tilly Willy Creek 21-6-0005, Stuarts Island 21-6-0008 and a range of smaller sites.
<table>
<thead>
<tr>
<th>Site Type</th>
<th>No. sites in Nambucca LGA</th>
<th>NPWS site card number/s</th>
</tr>
</thead>
<tbody>
<tr>
<td>Middens</td>
<td>13</td>
<td>21-6-0091, 21-6-123 to 21-6-127, 21-6-0129, 21-6-0131 to 21-6-0133, 30-6-0083 to 000085.</td>
</tr>
<tr>
<td>Open artefact scatters</td>
<td>17</td>
<td>21-6-0005, 21-6-0008, 21-6-0011, 21-6-0122, 21-6-0128, 21-6-0138, 21-6-0139, 21-6-0141, 21-6-0156 to 21-6-0159, 21-6-0161, 21-6-0165 to 21-6-166, 22-4-0003, 22-4-0053.</td>
</tr>
<tr>
<td>Waterholes or wells</td>
<td>2</td>
<td>21-6-0102, 22-4-0055.</td>
</tr>
<tr>
<td>Burials</td>
<td>4</td>
<td>21-6-0030, 21-6-0085, 21-6-0088, 21-6-0164.</td>
</tr>
<tr>
<td>Keepara (bora) grounds</td>
<td>6</td>
<td>21-6-0007, 21-6-0009, 21-6-0076, 21-6-0089, 22-4-0001, 30-6-0092.</td>
</tr>
<tr>
<td>Keepara (bora) grounds + carved tree</td>
<td>2</td>
<td>21-6-0095, 21-6-0103.</td>
</tr>
<tr>
<td>Carved trees</td>
<td>4</td>
<td>21-6-0010, 21-6-0090, 21-6-0093, 21-6-0167</td>
</tr>
<tr>
<td>Carved tree associated with burial ground</td>
<td>1</td>
<td>21-6-0029</td>
</tr>
<tr>
<td>Mythological sites</td>
<td>13</td>
<td>21-6-0001 to 21-6-0004, 21-6-0006, 21-6-0012, 21-6-0016, 21-6-0036, 21-6-039, 21-6-0044, 21-6-0045, 21-6-0064, 21-6-0163.</td>
</tr>
<tr>
<td>Isolated finds</td>
<td>11</td>
<td>21-4-0039, 21-6-0154, 21-6-155, 21-6-0160, 21-6-0175, 21-6-0187, 21-6-0190, 21-6-0192 to 21-6-0193, 21-6-0195, 30-3-0265.</td>
</tr>
<tr>
<td>Stone arrangements</td>
<td>1</td>
<td>21-6-0130</td>
</tr>
<tr>
<td>Open camp &amp; midden</td>
<td>1</td>
<td>21-6-0142</td>
</tr>
<tr>
<td>Total</td>
<td>75</td>
<td>35</td>
</tr>
</tbody>
</table>

*Table 1: Shows count of different site types and NPWS site card numbers.*

### 4.3.1.3 Waterholes & Wells

Waterholes or wells can be any natural or excavated water retaining feature, such as a pothole in rock outcrops, a spring or soak or a deep pool in a water course. Their identification as an Aboriginal site may depend on historic or ethnographic information or be indicated by evidence of modification of the feature such as by excavation, carving or a capping rock. Two of these site types are currently recorded within the Nambucca LGA these are 21-6-0102; 22-4-0055.

### 4.3.1.4 Burials and Cemeteries

Burials can take the form of an isolated grave or a burial ground or cemetery within which several people are buried, in the case of traditional burial carried out before the impact of Europeans. These burial sites

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35 Note: 76 sites are known to exist in the Nambucca shire, however, one site card could not be located during the site card search and thus has not been tabulated here.
are generally found in soft sediments such as sand or alluvial silts. They can also occur in middens, rock shelters and hollow trees. Burials are generally only visible where there has been some disturbance of subsurface sediments or where some erosional process has exposed them. In the period after European settlement most burials occurred within cemeteries associated with reserves and missions although sometimes, unlike European cemeteries, these may not have been gazetted formally. A burial ground is known to exist on Stuarts Island where twenty to thirty infants were buried more than 80 years ago (NPWS Site # 21-6-0088). This burial ground was disturbed when a golf course was constructed on the island. Three other burial sites/grounds are currently recorded within the LGA. These are at Bowraville (21-6-0029; 21-6-0030) and Warrell Creek (21-6-0085).

4.3.1.5 Story /ceremonial places (also called Natural Mythological sites).

Bora grounds or Keepara Grounds functioned as a prepared stage for initiation and other ceremonial activities which played a key role in the teaching and maintenance of the complex religious and social framework within Aboriginal society. Bora Grounds consist mostly of one or more circular rings defined by mounded earth, sand and/or rocks. There may also be an associated depression within the ring. A pathway generally connected two rings and was often many hundreds of meters long. Typically one ring was associated with more public ceremonies and the second with restricted and sacred information. Bora Grounds are most often located on river flats and low ridges.

Three bora grounds are known to occur within the Nambucca LGA (NPWS 21-6-0076, 21-6-0089 and 22-4-0001), however, the exact location of these sites is no longer known. The sites have not been used since the late 1920’s and they have been reported as most likely ‘destroyed’.

Natural mythological sites are frequently natural features, such as mountains and waterholes, which may not exhibit any material evidence that could indicate their importance to an uninformed person. Identification of this site type is dependent on information being available from informed Aboriginal people.

The Nambucca LGA is unusual for its relatively large number of well documented natural mythological and ritual sites. Thirteen mythological sites have been recorded for the Nambucca region making them among the most common sites in the LGA after open scatters (see NPWS Site #'s: 21-6-0001, 0002, 0003, 0004, 0006, 0012, 0036, 0039, 0044, 0045, 0064 and 0163).

4.3.1.6 Carved Trees

Carved Trees, a rare site type, are often found in association with ceremonial or burial grounds and characteristically include carved figurative and non-figurative motifs on the exposed wood created within a scar produced by bark removal. In the case of carved trees in the Nambucca area it is the bark of the tree that has been carved.

Seven carved trees have been recorded with NPWS in the Nambucca region. Three of these trees were

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36 See Byrne Aboriginal Cemeteries and Missions NPWS NSW.
37 Kelly and Donovan 1976a report that these sites have most likely been ‘destroyed by the natural elements’.
recorded as being associated with burials or bora grounds. NPWS site # 21-6-0095 was located in the Macksville area. NPWS Site # 21-6-0090 is located in the Nambucca area. The bloodwood tree was carved in the 1930s and is generally referred to as the ‘Diamond tree’. This tree is now in an advanced state of decay and was wire wrapped by the NPWS in April 1991. The Diamond Tree is of particular importance to local Aboriginal people. This site is also entered on the Register of the National Estate (see Appendix E).

4.3.1.7 Isolated artefacts.

Isolated finds are artefacts that have been found in isolation from any other archaeological material. Isolated finds are generally found on the surface of the soil or from eroding areas of the landscape. In the Nambucca LGA isolated finds are usually flaked stone or ground stone artefacts. Eleven isolated artefacts have been found and registered with the NPWS (NPWS site cards numbers: 21-4-0039, 21-6-154, 21-6-0155, 21-6-0160, 21-6-0175, 21-6-187, 21-6-0190, 21-6-0192, 21-6-0193, 21-6-0195, 30-3-0265).

Stone arrangements are stones that have been ceremonially arranged in the landscape, these can take the form of stone cairns or stones arranged in a line or in a particular shape. Only one such site has been recorded in the Nambucca LGA and may be of European origin (NPWS site card #21-6-0130).

4.3.1.8 Traditional travel routes or pathways

No places of this type have been recorded within the Nambucca LGA. However, it is likely that as in other areas along the north coast, travel routes existed up onto the escarpment.

4.3.2 Contact or Historic Sites

It is important not to overlook the important places from the contact and post contact period. Of course many of these places may have been important prior to European invasion and may therefore provide evidence of Aboriginal tradition continuity from the pre contact to the post contact period. Such places may included burial sites and important campsites. Other places may have been created after the contact period and therefore may provide evidence of Aboriginal adaptations to the new pressures and confines of the post invasion environment and society.

4.3.2.1 Aboriginal Reserves and missions

The mid north coast had an amazing number of Aboriginal reserves and missions. Between 1883 and 1908, 16 Aboriginal Reserves were established in the Macleay and Bellinger River valleys and set aside for the use of Aboriginal people See section 3.4. Within the Nambucca LGA there were Aboriginal reserves at Bowraville (AR 168 & AR 52841/2 O’Rourke’s settlement: AR 42775 and AR 57051 Wirrimbi Island and AR 62815/6), Nambucca Heads (AR 19667, AR31243/4, AR73990, AR87256) and Stuarts Island (AR140); Allgomera parish (Engau Reserve AR 39584/5), Bellingen (AR 14679 and yellow Rock Burials).

Plate 2: Children of the Brown, Harvey, Buchanan and Kelly families outside Charlie Harvey’s home that was built from kerosene tins on the Bowraville Mission around 1936. (Source Dunne 2001:63).
4.3.2.2 Post Contact Camps

Other Aboriginal settlements are known to have been located at Fernmount on the Bellinger River in 1873, at Tilly Willy campsite at Macksville and on Goat/Moses Island. An Aboriginal school was established on Stuart’s Island in 1916 but moved to Bellwood Reserve in 1958. In 1967 it was amalgamated with Nambucca heads primary school.

4.3.2.3 Places where conflict occurred

Several well publicised massacres and other violent encounters are known to have occurred in the early period of European invasion of the mid north coast area. Notably massacres occurred at Yarrahappinni probably just within Kempsey Shire LGA boundaries and on the Nambucca River itself. Conflict also occurred in the Cogo parish located south of the Nambucca LGA.

4.3.2.4 Significant buildings ruins or potential archaeological deposits.

No buildings or structures of significance to Aboriginal people are listed on any registers although it is possible that such places exist unrecorded in the Nambucca LGA.

The recent study carried out for NPWS (Goulding Heritage Consulting P/L 2002) in the Coffs Harbour area\(^{38}\) might result in such places being identified.

\(^{38}\) NPWS study not yet released.

Susan McIntyre-Tamwoy•34A Hardy St ASHBURY 2193 NSW•Tel: 0425215012•Fax: (02)97972466•stamwoy@bigpond.net.au
4.3.3 Places of Contemporary Social Value

Heritage legislation, principles and charters have long included the need to consider social value but it is really only recently that heritage professionals have looked at really exploring this type of heritage. This is not to say that places of social value have not been recognised and protected in the past however, this has largely been because social value overlapped with other more easily quantifiable and verifiable values such as scientific importance or historic importance.

Recently, however, there have been moves to recognise those places that Aboriginal communities use today and to recognise the importance of such places in the development and maintenance of community identity.

4.3.3.1 Places where post contact wild resources collection occurred (s)

Little information has been recorded about places that were regularly used by Aboriginal people for hunting and gathering and other resource extraction such as stone quarrying or ochre quarrying. While Aboriginal people had access to the entire landscape within their territory, their knowledge of the environment would have led them to favour certain places for hunting, fishing etc. There may be places used regularly by Aboriginal community people today in the same way.

NPWS has just recently completed a study into the cultural places used by Aboriginal people in the Coffs Harbour area. This information was gathered through archival research and interviews with Aboriginal people39. Consideration should be given to conducting a similar study in the Nambucca area with a view to increasing the knowledge of places of importance to Aboriginal people which exist within the LGA. English (2001:42) points out that such places can be of social significance to Aboriginal people as they can be bound into notion of community health and well being.

39 It is understood that this project carried out by Meg Goulding for the research unit CHD, NPWS has just been completed however the report has not yet been released. Enquiries should be directed to Tony English.
4.4 Assessing Heritage Significance of Sites and Places

Identification and recording of Aboriginal heritage sites is an important first step in planning for future development that is sensitive to the heritage of the shire. However, equally important and perhaps more difficult and sometimes contentious, is the process of assessing the significance of heritage places and sites.

The basic premise of heritage management in Australia is that management should be based on an assessment of significance (see The Burra Charter: Australia ICOMOS 1999). In assessing significance it is important to consider all relevant values. These values are not unique to any particular culture and may apply to Aboriginal and non-indigenous sites. They include:

- **Scientific value**: only a percentage of sites will be of value for archaeological or other research. Usually these sites have potential for investigation through excavation and are therefore stratified archaeological sites, and /or have the potential to answer strategic research questions.

- **Social value or community value**: some sites are more important than others to particular communities, family groups or individuals.
  - Often such places date to the historic period and form direct links to what the person, or group of persons, sees as their heritage and identify. For example, mission sites or some homesteads.
  - Religious sites and place of cosmological importance such as creation sites and other natural mythological sites may be significant in terms of this value regardless of whether or not there is evidence of physical modification.
  - Places can be of great social value because they are still used by people and are an important part of the fabric of community life. For example, a popular swimming hole on the river that is a focus of community social activity or places that people use for hunting and fishing.
  - Places can important to communities because they draw a strong emotional response such as outback landscapes that appeal to the Australian identity and some of the beautiful and rugged waterfalls of the Macleay escarpment.

- **Educational value**: some places are ideal for providing learning and cultural tourism opportunities. Such places are often representative of a type of site.

- **Places can be of historic significance as a result of the events that unfolded there or the famous people who may have lived and worked there.**

Some of these values can be assessed by specialists for example scientific/archaeological and historic importance but others such as social value while their assessment may be facilitated by specialist their identification and assessment lie squarely with the relevant communities themselves. This is one of the reasons why it is important to see the conservation of heritage as a whole of community effort (ways of achieving this in Nambucca will be discussed in Section 7).

The NSW Heritage Office provides criteria and guidelines for the assessment and management of heritage values. Inclusion guidelines are use to assess whether places and items are of State significance and therefore should be included on the State Heritage Register of NSW.

The criteria as set out below refer to a state level of significance but also are applied to determining whether items are of local significance by assessing importance in the local area as the threshold. Guidelines for inclusion or exclusion that are used to determine whether an item is eligible for entry on the
Criteria for the NSW State Heritage Register are included.

**Criterion A:**
An item is important in the course, or pattern, of NSW's cultural or natural history

Guidelines for inclusion on the State Heritage Register, are that an item:
- Shows evidence of a significant human activity;
- Is associated with a significant activity or historic phase;
- Maintains or shows the continuity of a historical process or activity.

**Criterion B:**
An item has strong or special association with the life or works of a person, or group of persons, of importance in NSW’s cultural or natural history;

Guidelines for inclusion on the State Heritage Register, are that an item:
- Shows evidence of a significant human occupation;
- Is associated with a significant event, person or group of persons.

**Criterion C:**
An item is important in demonstrating aesthetic characteristics and/or a high degree of creative or technical achievement in NSW

Guidelines for inclusion on the State Heritage Register, are that an item:
- Shows or is associated with creative or technical innovation or achievement;
- Is the inspiration for a creative or technical innovation or achievement;
- Is aesthetically distinctive;
- Has landmark qualities;
- Exemplifies a particular taste, style or technology.

**Criterion D:**
An item has strong or special association with a particular community or cultural group in NSW for social, cultural or spiritual reasons.

Guidelines for inclusion on the State Heritage Register, are that an item:
- Is important for its association with an identifiable group;
- Is important to a community's sense of place.

**Criterion E:**
An item has potential to yield information that will contribute to an understanding of NSW's cultural or natural history.

Guidelines for inclusion on the State Heritage Register, are that an item:
- Has the potential to yield new or further substantial scientific and/or archaeological information;
- Is an important benchmark reference site or type;
- Provides evidence of past human cultures that is unavailable elsewhere.
One standard formulation for how this criterion can be assessed in relation to archaeological evidence is to ask three specific questions of the potential archaeological resource (Bickford and Sullivan 1984):

- What can this site tell us that we cannot find from other sources?
- What can this site tell us that we cannot find from other sites?
- Does this contribute to current areas of research and enquiry?

The terms used to grade archaeological significance are set out below.

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>High</td>
<td>Relates directly to current research issues</td>
</tr>
<tr>
<td></td>
<td>Site has good condition and integrity</td>
</tr>
<tr>
<td></td>
<td>Site is unique or rare</td>
</tr>
<tr>
<td></td>
<td>Site is not well understood from other sources</td>
</tr>
<tr>
<td></td>
<td>Site type has not been investigated</td>
</tr>
<tr>
<td></td>
<td>Contributes information across discipline</td>
</tr>
<tr>
<td>Medium</td>
<td>Relates to current research issues</td>
</tr>
<tr>
<td></td>
<td>Site has good condition and integrity</td>
</tr>
<tr>
<td></td>
<td>Site is not rare</td>
</tr>
<tr>
<td></td>
<td>Site is understood from other sources</td>
</tr>
<tr>
<td></td>
<td>Site type has been previously investigated</td>
</tr>
<tr>
<td>Low</td>
<td>Does not relate to current research issues in archaeology</td>
</tr>
<tr>
<td></td>
<td>Site is well understood from other sources</td>
</tr>
<tr>
<td></td>
<td>Site is common and others have been investigated</td>
</tr>
<tr>
<td></td>
<td>Contributes more detailed information about the site itself</td>
</tr>
<tr>
<td>Nil / negligible</td>
<td>Does not relate to current research issues in archaeology</td>
</tr>
<tr>
<td></td>
<td>Condition too compromised to allow the data to be interpreted</td>
</tr>
<tr>
<td></td>
<td>Largely destroyed</td>
</tr>
<tr>
<td></td>
<td>Provenience unknown</td>
</tr>
<tr>
<td></td>
<td>Site is well understood from other sources, including living informants</td>
</tr>
</tbody>
</table>

**Criterion F:**

*An item possesses uncommon, rare or endangered aspects of NSW's cultural or natural history.*

Guidelines for inclusion on the State Heritage Register, are that an item:

- Provides evidence of a defunct custom, way of life or process;
- Demonstrates a process, custom or other human activity that is in danger of being lost;
- Shows unusually accurate evidence of a significant human activity;
- Is the only example of its type;
- Demonstrates designs or techniques of exceptional interest;
• Shows rare evidence of a significant human activity important to a community.

**Criterion G:**

*An item is important in demonstrating the principal characteristics of a class of NSW’s cultural or natural places.*

Guidelines for inclusion on the State Heritage Register, are that an item:

- Is a fine example of its type;
- Has the principal characteristics of an important class or group of items;
- Has attributes typical of a particular way of life, philosophy, custom, significant process, design, technique or activity;
- Is a significant variation on a class or theme;
- Is part of a group which collectively illustrates a representative type;
- Is outstanding because of its setting, condition or size;
- Is outstanding because of its integrity or the esteem in which it is held.
- Has the principal characteristics of an important class or group of items;
- Has attributes typical of a particular way of life, philosophy, custom, significant process, design, technique or activity;
5.0 Predicting the Location of Undetected Sites and Places

There are only 76 Aboriginal sites recorded by NPWS in the Nambucca LGA. This means that any predictive model based on known site distribution can only be tentative. To augment the information we have looked at the broader mid north coast region but it should be noted that the predictive model outlined below should be reviewed and refined through time. It should not be used as a site protection strategy in isolation. As there are likely to be many knowledgeable Aboriginal people within the Nambucca area good communication with the LALCs and elders groups is likely to assist greatly in refining site location models.

Based on existing site records, a tentative site location model can be postulated for the LGA. Existing sites occur along the coast and headlands and within the Nambucca River wetland corridor. In the latter area they are located on elevated well drained ground adjacent to freshwater wetlands and creeks, particularly where ridgeline spurs descend to the river margins. Mythological sites related to Aboriginal cosmology rather than environmental resource locations also conform to this pattern of site distribution. It is therefore probable that spurs lines were the preferred access routes to the wetlands and the Nambucca River and offered the easiest travel corridors. This would be because the vegetation on the ridgelines would have been sclerophyll forest with sparse undergrowth, whereas the low-lying areas would have had dense vegetation along creek corridors and inundated or marshy land. The river itself is wide and would have offered good canoe access.

5.1 Predictive Site Location Statements

Based on the local and regional site database, Aboriginal settlement models, and the results of studies elsewhere on the NSW north coast, the following predictive statements regarding site location can be made for the Nambucca Council Area:

- Sites are likely to occur at varying densities in all broad topographic zones. However a range of micro-topographic variables can effectively predict topographies which are archaeologically sensitive. These include: relatively level ground without significant surface rock, proximity to a freshwater source, and locally elevated and well drained ground.
- Sites tend to be situated at or close to ecotones – the areas at which different environmental zones meet.
- Artefact occurrences, detectable as isolated finds or surface scatters of artefacts and/or subsurface archaeological deposits, are likely to be the most common site type within the Nambucca LGA.
- Artefact scatters (also termed open camp sites) are most likely to occur on level, well drained ground, either adjacent to sources of freshwater and wetlands, or along the crests of spurs and ridgelines.
- Ridge and spur lines which afford effective through-access across, and relative to, the surrounding landscape will tend to contain more and larger sites.
- The crests of low relief spurs which extend into and across valley floor flats are likely to be a focus for occupation due to their well drained and elevated context in close proximity to a range of exploitable environments.
- Estuarine midden sites are normally located close to the estuarine environment, on elevated ground.
- Coastal middens are frequently located on or near rocky headlands or rock platforms, adjacent to a creek mouth or hind-dune water sources. Smaller and lower density middens comprising sandy-shore shell species are frequently exposed in hind dune swales.
• Sites containing both midden shell and lithic material are likely to occur on elevated ground adjacent to wetlands or valley floor drainage corridors. The following topographies fall into this category: low gradient basal colluvial slopes, terminal spur line crests, alluvial terraces, and valley floor sand bodies.
• Burial sites are generally found in landforms characterised by a relatively deep profile of soft sediments such as aeolian sand and alluvium. Burials characteristically occur in the deposits of occupation sites such as middens.
• Scarred trees may occur in all topographies where old growth trees survive, either as isolated trees or as part of remnant or continuous forest.
• Rock shelters will be rare within the Nambucca LGA as generally the geology does not favour the formation of rockshelters. Large leaning boulders may however provide shelter. These are most likely to occur in the Macleay escarpment foothills, if at all. Should they exist they are likely to contain evidence of Aboriginal occupation if they are relatively dry, have a level floor with a significant proportion consisting of sediment rather than rock, are at least 1 m high, and are close to a water source or major ridgeline. Shelters with larger internal spaces which comply with these criteria are more likely to have occupation evidence, than smaller shelters. In topographies where rock overhangs are rare, even small sheltered spaces may have been occupied. Occupation evidence may be in the form of occupation deposit, pigment art on the wall and ceiling, grinding grooves, and rarely engraved art.
• Engraving sites in open contexts (not in a rock shelter) are very rare in the Nambucca LGA as suitable rock surfaces are unlikely to occur.
• Grinding grooves may occur singly or, more commonly in groups and are typically situated close to or within a local water source, such as a streamline or pothole. Grinding grooves typically occur on fine grained, relatively level sandstone platforms in the upper catchments of streamlines. However, in topographies where sandstone is scarce, any suitable surface exposure may be utilised, regardless of its proximity to water. This site type is not expected to be common in the Nambucca LGA.
• Isolated finds can occur anywhere in the landscape and may represent the random loss or deliberate discard of artefacts, or the remains of dispersed artefact scatters. This site type is expected to be commonly found along ridgeline tracks where pre-contact travel would also have been facilitated by the ridges and current day vehicle traffic provides reasonable surface visibility.
• The Nambucca area has a relatively high proportion of known ceremonial and mythological sites. These sites are sometimes but not always prominent landscape features for example Scotts Head Headland. Identification of such sites requires advice and information from knowledgeable Aboriginal people.
• Carved trees are known to occur within the Nambucca LGA but are expected now to be rare due to age and the impact of threatening processes.

5.2 Testing Predictions

A number of areas were selected from the topographic 1:25,000 map series to conduct limited ground truthing of the predicted model. All areas were inspected at the discretion of the landowners. Some areas were not accessed because the landowners either refused access or were not available to contact.

The smaller landscape units (i.e Ebor Tops Basalt, Dingo Spur Meta Sediments, Valla, Granite and Dorrigo Basalts) were not selected for field inspection because of limited field time, relative inaccessibility and confined distribution across the shire area.

Testing of these predictive statements will need to be ongoing. It is important to undertake further investigations and in particular to follow up recommendations for the testing of Potential Archaeological Deposits (PAD) should they be identified in the course of routine environmental impact assessments.
<table>
<thead>
<tr>
<th>Landform Unit</th>
<th>Characteristics</th>
<th>% of shire area</th>
<th>Known sites</th>
<th>Expected site types</th>
<th>Potential</th>
</tr>
</thead>
<tbody>
<tr>
<td>Macleay Escarpment Foothills</td>
<td>Steep to mountainous</td>
<td>48</td>
<td>9 Art (1) Artefacts (5) Midden (3)</td>
<td>Small artefact scatters.</td>
<td>Medium potential along ridgelines especially where these eventually lead down to the valley floor. If boulders provide suitable shelters art sites may occur. Low in all areas with a slope &gt; 30deg.</td>
</tr>
<tr>
<td>Ingalba Coastal hills</td>
<td>Steeply undulating</td>
<td>35</td>
<td>35 artefacts (15) burials (2) midden (5) natural myth/ceremonial (3) Stone arrangement (1) Well (2) Carved tree (6) Historic (1)</td>
<td>Open campsites on major spur lines especially close to rivers, creeks and swamps. Isolated artefacts</td>
<td>High potential on the discontinuous open elevated areas along major rivers especially where ridges and spurs descend to River Valley and also where coastal hill extend to the coastline and present as headlands. Low elsewhere.</td>
</tr>
<tr>
<td>Manning Macleay coastal Alluvial plains</td>
<td>Fertile but often flood prone</td>
<td>10</td>
<td>25 artefact (5) burial (1) midden (7) natural myth/ceremonial (8) carved tree (1) historic (2) cache (1)</td>
<td>Large semi permanent campsites. Estuarine middens Evidence of early contact sites. Burials.</td>
<td>High on elevated areas close to permanent water. High in areas known to have been historic reserves and missions. Medium elsewhere.</td>
</tr>
<tr>
<td>Manning – Macleay Barriers and Beaches</td>
<td>Storm washed and often deflated dunes with swamps immediately behind dunes</td>
<td>&lt;5</td>
<td>1 natural myth/ceremonial (1)</td>
<td>Shell middens, burials, campsites.</td>
<td>High in areas undisturbed by intrusive land uses. Medium in areas of moderate disturbance. Low in highly disturbed areas.</td>
</tr>
<tr>
<td>Ebor Tops basalt</td>
<td>On steep ridge crests</td>
<td>&lt;1</td>
<td>Nil</td>
<td>Isolated finds</td>
<td>Low although isolated basalt outcrops may have been used as stone tool resource</td>
</tr>
<tr>
<td>Dingo Spur metasediment</td>
<td>One ridge crests in escarpment foothills extend outside the shire</td>
<td>&lt;1</td>
<td>Nil</td>
<td>Possible quarries Isolated finds</td>
<td>Unknown – Potential for small artefact scatters along ridgelines also possible that they have been used as raw material source.</td>
</tr>
<tr>
<td>Dorrigo Basalts</td>
<td></td>
<td>&lt;1</td>
<td>Nil</td>
<td>Unknown</td>
<td>Low although localised areas may have been used as stone tool resource.</td>
</tr>
</tbody>
</table>
Table 2: Summary of predictions relating to landscape units

<table>
<thead>
<tr>
<th>Landform Unit</th>
<th>Characteristics</th>
<th>% of shire area</th>
<th>Known sites</th>
<th>Expected site types</th>
<th>Potential</th>
</tr>
</thead>
<tbody>
<tr>
<td>Valla Granite</td>
<td></td>
<td>&lt;1</td>
<td>6 artefact (1) natural myth/ceremonial (5)</td>
<td>Campsites Natural Mythological/ ceremonial sites</td>
<td>Medium where undisturbed.</td>
</tr>
</tbody>
</table>

5.2.1 Results of field tests

The results of field tests clearly indicate that there are unrecorded sites in the LGA and they are not particularly difficult to find. The field work involved speaking to landowners to gain access to properties and this in turn revealed that there is a lot of misunderstanding in the local community about Aboriginal sites, rights of access on to private property, Aboriginal land rights and Aboriginal community aspirations.

The results of the field testing do not provide comprehensive survey data from which definitive conclusions can be drawn about site distribution in the area. They do however confirm that the actual site numbers in the Nambucca Shire are likely to far exceed the known and recorded sites. It is likely that the shire contains thousands of Aboriginal sites. Most of these will be stone artefacts scatters, isolated finds and disturbed shell middens of relatively low significance, however a small but significant proportion of the sites area likely to be ceremonial sites, historic sites, burials, dense and intact artefacts scatters and insitu middens that are of high archaeological, historic and social.

Sixteen sites were recorded in the process of looking at selected parcels of land in the major landscape units i.e: the Macleay escarpment foothills, the Ingalba Coastal hills, Manning Macleay Barriers and beaches.

Table 3: New Sites Recorded for Nambucca Shire

<table>
<thead>
<tr>
<th>site name</th>
<th>site type</th>
<th>easting</th>
<th>northing</th>
<th>FOM</th>
<th>land unit</th>
<th>LEP-protected or recreational</th>
<th>State</th>
<th>NPWS</th>
</tr>
</thead>
<tbody>
<tr>
<td>nam1</td>
<td>midden</td>
<td>0501294</td>
<td>4.10</td>
<td>Ingalba coastal hills</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>nam2</td>
<td>artefact</td>
<td>0500951</td>
<td>6611861</td>
<td>Manning-Macleay barriers and beaches</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>nam3</td>
<td>artefact</td>
<td>0501010</td>
<td>6611744</td>
<td>Ingalba coastal hills</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>nam4</td>
<td>isolated</td>
<td>0500981</td>
<td>6611440</td>
<td>Ingalba coastal hills</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>nam5</td>
<td>artefact</td>
<td>0501040</td>
<td>6611460</td>
<td>Ingalba coastal hills</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>nam6</td>
<td>isolated</td>
<td>0500213</td>
<td>6611095</td>
<td>Ingalba coastal hills</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>nam7</td>
<td>scarred tree</td>
<td>0485267</td>
<td>6608594</td>
<td>Ingalba coastal hills</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
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<tr>
<td>nam8</td>
<td>isolated</td>
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<td>6608631</td>
<td>Ingalba coastal hills</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>nam9</td>
<td>scarred tree</td>
<td>0485257</td>
<td>6608644</td>
<td>Ingalba coastal hills</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>nam10</td>
<td>scarred tree</td>
<td>0488836</td>
<td>6608602</td>
<td>Ingalba coastal hills</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>nam11</td>
<td>artefact</td>
<td>0488808</td>
<td>6608589</td>
<td>Ingalba coastal hills</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>nam12</td>
<td>isolated</td>
<td>0475412</td>
<td>6596377</td>
<td>Ingalba coastal hills</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>nam13</td>
<td>isolated</td>
<td>0471833</td>
<td>6594941</td>
<td>Ingalba coastal hills</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>nam14</td>
<td>artefact</td>
<td>0466214</td>
<td>6597519</td>
<td>Macleay Escarpment foothills</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>nam15</td>
<td>isolated</td>
<td>0466437</td>
<td>6597685</td>
<td>Macleay Escarpment foothills</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>nam16</td>
<td>midden</td>
<td>0499482</td>
<td>6598603</td>
<td>Ingalba coastal hills</td>
<td>y</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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Part Two

Working together to conserve Aboriginal heritage in Nambucca Shire.
6.0 Evaluation of Council’s Environmental Planning Instruments

Nambucca Shire Council has a number of planning instruments and guidelines in place which aim to ensure that Aboriginal heritage sites and places are adequately protected. These documents are the Nambucca Shire LEP 1995 and the Nambucca Shire Councils Aboriginal Sites Planning Guideline #12. There is no specific Development Control Plan (DCP) relevant to Aboriginal sites or places although there are DCPs relevant to the Bowraville township in relation to European Heritage (Bowraville Heritage Guidelines).

6.1 Nambucca Shire Council’s LEP

The Nambucca Shire LEP aims to guide the responsible development of the shire while at the same time protecting items of cultural and natural significance. It does this through a system of zones and schedules. Zones categorise the landscape and its values and guide the long term development of the landscapes within the categories. Schedules list places, structures or items of particular relevance e.g heritage buildings threatened ecosystems and /or species.

The zones most likely to assist in the conservation of heritage in the Nambucca LEP are:

- Zone 7 - Environmental Protection;
- Zone 5 – special use zones (some Aboriginal reserves are currently zoned under 5);
- Zone 6 recreation;
- Zone 8 National parks and Nature Reserves.

The relevant schedules (see Appendix C) are:

- Schedule 1 Clause 16 Considerations for Rural –Residential Subdivision
- Schedule 2 Clause 41–Heritage Conservation Areas.
- Schedule 3 Clause 41 – Heritage items
- Schedule 4 Clause 41 – Potential Archaeological Site.
- Special Provisions- What restrictions apply to development of Aboriginal Conservation areas and objects?

6.1.1 Rural Lands

In looking at the Nambucca Shire LEP maps two main generalisations can be drawn. First the bulk of the shire is zoned Rural, with a large component of it zoned Rural (forestry). Some of these lands have recently been transferred to the NPWS through the Regional Forest Agreement process (the zoning maps have not yet been updated). The second observation is that the residential development is restricted to relatively flat to undulating land on the coastal strip and along the major rivers and creeks. Residential development is constrained visually on the maps by the escarpment foothills to the west and the coastline to the east. It would seem obvious then that future residential development will put increasing pressure on rural lands especially those that are not prone to inundation.
Figure 14: This map shows the location of known and recorded Aboriginal sites and land which is potentially suitable for development.

The LEP describes Zone 1(a1) as

*This zone identifies land which is of secondary agricultural value and includes localities identified as appropriate for rural–residential development.* (LEP1995:16)
Similarly, Zone 1 (d) is described as

*This zone applies to land for future urban release at Macksville, Nambucca Heads, Valla Beach and Scotts Head. The zone is intended to operate as a holding zone for land until it is released for urban development.*

Clearly there is also potential for such land to contain relatively undisturbed archaeological sites. Survey and assessment of this land is a priority. There are three approaches to such investigation.

1. The most common one is the ‘user pays’ approach. If a land owner wants to redevelop land including subdividing the property for rural-residential development under this scenario they are required to carry out an archaeological assessment. The only drawback to this type of approach is that the assessments would often be done on small properties one at a time as they come up for redevelopment. Under such a scenario sites then get assessed in isolation and management or conservation of sites may be difficult.

2. The second option is for Council to carry out a study of a bigger area as part of its urban release area zoning process. The benefit here is that a more comprehensive study might be possible that looks at a larger area and can assess sites in relation to each other. The cost of the project can be later divided and shared by the landowners through adding them to the rezoning fees. This will usually work out more cost effective for landowners than commissioning separate studies. The drawback of this option is economic. To be carried out at a level which would provide effective survey coverage and assessment would be cost prohibitive. As some areas would have potential and no surface visibility, excavation techniques would need to be employed to adequately assess the landscape. As the development of this land is likely to be sometime in the future this option represents a substantial up front investment by council that it might take some time to recoup from land sales and development.

3. The third option is a combination of these. Council carries out a more detailed archaeological study of lands both zoned for residential development or likely to be rezoned in the next 10-15 years. This study would be aimed at refining the predictions of archaeological potential to the extent that the entire study area could be zoned according to its potential. All developments in the areas assessed as having medium to high potential would require developers to carry out further investigation as part of their development application process, while others identified as having no or little potential would involve no such study but the development application approval process would include standard conditions to deal with the possibility of unforeseen evidence being found in the course of the development.

The third option is the preferred one as it combines a strategic approach with reasonable costs.

Environmental Zones are a good way to protect significant environmental values both cultural and natural. It is important to ensure that wherever possible the management or these values is integrated. For example while the most significant value of an area might be the wetland ecosystem or even a specific endangered plant, the area should be managed so as not to unnecessarily or inadvertently detract from the other cultural and natural values which exist. Similarly in Portion 56 Nambucca Shire it is the Aboriginal archaeological features that the zoning aims to protect however, that is not to say that the area should be managed in as way so as to negatively impact on other values unless this was essential to the management of the cultural feature e.g. hazard reduction might be required to protect carved trees from fire.

### 6.1.2 Suggested amendments to the LEP

In relation to rural land it is recommended that the document recognise the value of protecting Aboriginal and other archaeological sites. This is a matter of adequate and timely planning.
It is recommended that an objective be added to Zone 1(d) worded to the effect that:

<table>
<thead>
<tr>
<th>Zone</th>
<th>Add to Objective</th>
<th>Suggested wording</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 (a1)</td>
<td>1d</td>
<td>To protect, conserve and enhance natural and scenic resources, wildlife habitat refuges and corridors and Aboriginal and other archaeological sites; and</td>
</tr>
<tr>
<td>1(a1) and 1(d)</td>
<td>1f</td>
<td>To ensure that development within the zone adequately considers the natural and cultural values of the area,</td>
</tr>
</tbody>
</table>

Table 4: Proposed changes to LEP-Rural Lands

Zone 7 (a), (b) (g) (f) are all environmental protection zones. They are described respectively as follows:

7(a) The environment Protection (Wetlands) Zone contains all wetlands within the area of Nambucca identified in Sate Environmental Planning Policy No 14- Coastal Wetlands and by NSW Fisheries. (LEP 1995:23)

7(b) This Zone identified natural, scenic bushland areas of the Nambucca are not suitable for urban development. Such areas need to be protected and preserved for their value to the community as part of the natural heritage, their aesthetic value and value as a recreational, educational and scientific resource. (LEP 1995:24)

7 (f) This Zone identifies the coastal foreshore areas of the Nambucca Shire Council’s area, which are important environmental and recreational resources for residents and tourists of the area and the mid north coast region. The zone also serves to protect development from coastal hazards as well as to ensure development does not adversely affect the ecology and scenic value of the coastal areas (LEP 1995:25)

7(g) Environmental Protection (Archaeological). The Zone identifies Aboriginal archaeological sites of special significance to Aboriginal Culture (LEP1995:26).

Each of these environmental zones does not allow development without development consent except in the case of bush fire hazard reduction in some cases. It is important therefore to

a) Ensure that bush fire hazard reduction is undertaken account to approved Fire Management Plans and does not involve unnecessary damage to Aboriginal sites when bulldozing fire trails and breaks etc.

b) Ensure that the guidelines provided to assist developers and land owners in preparing their Development Application strongly reflects the need to consider Aboriginal sites. This has always been important to ensure the effective conservation and management of Aboriginal sites. In addition it is now more important than ever before, even for those who do not particularly care about the conservation of Aboriginal sites. Recent changes to the National Parks and Wildlife Act have removed the word ‘knowingly’ from the descriptions of offences. In the past it has been a legitimate defence to the damage or destruction of a site if the offender could demonstrate that he/she did not ‘know‘ of the site or did not ‘know’ that their action would negatively affect the site. Now however developers and landowners are required to adopt the precautionary approach. They must be able to demonstrate that they took reasonable steps to identify where sites were and what impact their actions would have on them and sought to avoid unnecessary impact and/or obtained a permit from the Director-General DECC for any acceptable impact.
It is recommended that each of the environmental zones have the following additions to their objectives:

<table>
<thead>
<tr>
<th>Zone</th>
<th>Add to Objective</th>
<th>Suggested wording</th>
</tr>
</thead>
<tbody>
<tr>
<td>7(a)</td>
<td>1e</td>
<td>To ensure that any Aboriginal cultural heritage sites that exist on the margins of estuaries and wetlands are conserved in their natural context and recognised as an important part of the natural and cultural landscape.</td>
</tr>
<tr>
<td>7(b)</td>
<td>1a</td>
<td>To promote the preservation, conservation and enhancement of significant indigenous fauna and flora and other natural and cultural landscape features in the area of Nambucca.</td>
</tr>
<tr>
<td></td>
<td>1b</td>
<td>To prohibit development within this zone which likely to have a detrimental effect on the habitat, landscape and/or scenic quality of the locality or which would negatively affect Aboriginal sites within this zone; and</td>
</tr>
<tr>
<td></td>
<td>1c</td>
<td>To enable the development of public works and ancillary recreation amenities where such development does not have significant detrimental effect on the habitat cultural sites, landscape or scenic quality of the locality.</td>
</tr>
<tr>
<td>7(g)</td>
<td>1</td>
<td>The objectives of this zone is to preserve areas that are of significance to the Aboriginal community because of their historical or mythological association, in their natural and cultural landscape context.</td>
</tr>
<tr>
<td>7(f)</td>
<td>1b</td>
<td>To preserve wildlife habitats and cultural values;</td>
</tr>
<tr>
<td></td>
<td>1d</td>
<td>To enable the development of public works and recreation amenities where such development does not have significant detrimental effect on the habitat, cultural sites, landscape or scenic quality of the locality.</td>
</tr>
<tr>
<td></td>
<td>1e</td>
<td>To prevent development which would adversely affect cultural heritage values</td>
</tr>
</tbody>
</table>

Table 5: Proposed Changes to LEP Zone 7.

6.1.3 General considerations which apply to Developments in Rural and environmental zones.

The LEP contains a list of general considerations which apply to development in these zones. This states that amongst other considerations

*The Council must not consent to development on rural land …without taking into consideration the effect of carrying out of that development on:…*

d) The protection and conservation of areas of significance for nature conservation (including wildlife habitat areas and corridors, significant wetlands, dunes, or remnant rainforest vegetation systems) of high scenic or recreational value, and places and buildings of archaeological or heritage significance, including Aboriginal relics and places; and… (LEP 1995,13(1):27).

This clause puts a clear onus on Nambucca Shire Council to ensure that the proponent has adequately identified and assessed the archaeological resource on the subject land. This section should be updated to specifically take into account the requirements relating to integrated developments.
<table>
<thead>
<tr>
<th>Add to Clause</th>
<th>Section name</th>
<th>Proposed wording</th>
</tr>
</thead>
<tbody>
<tr>
<td>13(3)</td>
<td>What general considerations apply to development in rural and environmental zones</td>
<td>A Development Application relating to development of land which contains a known Aboriginal object, is an Aboriginal place or identified Potential Archaeological Deposit, is an ‘Integrated Development’ in terms of section 79C of the EP&amp;A Amendment Act. In such cases DECC is an approval body and council must not consent to such development without ensuring that all relevant approvals and permits from the Director-General DECC have first been obtained.</td>
</tr>
<tr>
<td>14(5)</td>
<td>What Controls apply to the erection of dwelling houses in rural Zones?</td>
<td>As above</td>
</tr>
<tr>
<td>16(7)</td>
<td>What Controls apply to a rural residential development?</td>
<td>As above</td>
</tr>
<tr>
<td>17(7)</td>
<td>What controls apply to multiple occupancy development?</td>
<td>As above</td>
</tr>
<tr>
<td>17(3)(l)</td>
<td></td>
<td>The effect of the proposed development on any Aboriginal objects or places or Aboriginal heritage values.</td>
</tr>
<tr>
<td>18(2)(e)</td>
<td>What controls apply to clearing of land?</td>
<td>The land is an Aboriginal place or object (as defined by the NPW Act).</td>
</tr>
<tr>
<td>18(2)(f)</td>
<td></td>
<td>The land is within 500m of a recorded site and has not first been subject to a comprehensive assessment to define the specific location of the Aboriginal place or object.</td>
</tr>
<tr>
<td>1(3)</td>
<td></td>
<td>…except where subclause 2(e) or 2(f) apply unless the written approval of the Director-General DECC has been obtained.</td>
</tr>
<tr>
<td>18(5)(f)</td>
<td></td>
<td>The clearing methods used will not adversely affect Aboriginal cultural heritage places or objects.</td>
</tr>
<tr>
<td>19(e)(f)</td>
<td>What controls apply to development adjoining the wetland zone?</td>
<td>…the likely effect on known or potential Aboriginal cultural heritage places and/or objects.</td>
</tr>
<tr>
<td>20(1)(g)</td>
<td>What controls apply to development in the coastal protection zone?</td>
<td>Will not detract from the significant cultural values</td>
</tr>
<tr>
<td>20(1)(h)</td>
<td></td>
<td>Will not adversely affect Aboriginal sites without the prior written approval of the Director-General DECC.</td>
</tr>
</tbody>
</table>
Add to Sections | Section name | Proposed wording
--- | --- | ---
21(a) | Who must be consulted about proposed development in the coastal hazard area? | In a case where a development proposal will impact a known aboriginal object or place (as defined by the NPW Act) or an identified Potential Archaeological Deposit then the development is an ‘Integrated development’ under the EP&A Amendment Act and Council must not grant development consent until necessary approvals have been obtained from the Director-General DECC.

24(1)(d) | Can Industries be undertaken on rural land? | The development is located and designed to minimise any adverse environmental impact, including the impact on cultural heritage sites and places.

|  |  | Developments that involve impact to known Aboriginal objects, places or identified Potential Archaeological Deposits will be processed as Integrated Development Applications under the EP&A Amendment Act. Development Consent will not be granted until the appropriate consents are obtained from the Director-General DECC.

Table 6: Proposed changes to LEP- General

The Nambucca Shire LEP includes Zone 5(a) Special Uses and 5 (b) Special uses railways. This zone is intended as a catch all for a variety of community and government infrastructure uses. This zone even includes some Aboriginal land at Bowraville. Development in special use areas is generally restricted to the specific nature of the ‘special use’ and any essential ancillary development. With the proviso that the general development guidelines be amended as recommended. It is considered that this Zone requires no further changes.

The Recreational Zoning in Nambucca Shire includes 6(a) Public Recreation and 6(c) Private Recreation. In relation to these zones all development beyond landscaping, gardening or bushfire hazard reduction requires the consent of Council. With the proviso that council’s general provisions require an assessment of impact on the environment including Aboriginal cultural heritage values then this protection is considered to be sufficient.

In relation to Zone 8(a), the description of the zone is confusing. It currently reads that:

This Zone identifies land administered by the National parks and Wildlife Service. The zone applied to part of the New England National Park and Aboriginal sites, Nambucca Heads.

This description needs to be updated to refer to all the parks and nature reserves that have transferred over to DECC (now incorporating NPWS) management as a result of the recent Regional Forest Agreement. Also the reference to Aboriginal sites at Nambucca Heads needs to be clarified. Land owners are responsible for the day to day management of Aboriginal sites on their property. DECC has regulatory responsibilities for all Aboriginal objects and places in NSW but does not normally get involved in the day to day management of them except in special circumstances such as at the request of Aboriginal groups and/or the landowner. Therefore it is incorrect to say that Aboriginal sites are ‘land administered by the NPWS’ unless it is an Aboriginal place under the NPW Act, a National Park or Natural Reserve or unless
there is a Voluntary Conservation Agreement in place in which case DECC may administer the land in partnership with other stakeholders/owners depending on the specific agreement.

The Director-General DECC is now a consent authority in Integrated Development Application where these affect or are likely to affect a known Aboriginal site (see Appendix C (2) for the NPWS Guidelines in relation to IDA and Aboriginal objects).

In relation to the section ‘What provisions apply to the protection of heritage items heritage conservation areas and relics?’ it should be noted that increased restrictions on impacts and more detailed documentations might be required in relation to development proposals on State significant heritage items (i.e items on the State Heritage Register).

Council may only approve such development Applications if it holds delegated authority from the Heritage Council of NSW for this purpose. Development consent will be granted if the proposed development is in accordance with proposed activities in an endorsed Conservation Management Plan.

Aboriginal objects (previously called relics under the NPW Act) are protected throughout NSW whether or not they are listed on a register. Recent changes to the NPW Act highlight the importance of landowners and developers taking reasonable steps to ascertain whether or not sites exist on their property and to assess the potential of impact from their proposed development on such site.

<table>
<thead>
<tr>
<th>Add to Sections</th>
<th>Section name</th>
<th>Proposed wording</th>
</tr>
</thead>
<tbody>
<tr>
<td>43(4)</td>
<td>What Provisions apply to protection of heritage items heritage conservation areas and relics?</td>
<td>Development Applications relating to items listed on the State Heritage Register (SHR) require the approval of the Heritage Council of NSW under s60 of the Heritage Act of NSW unless the proposed development is in accordance with an endorsed Conservation Management Plan.</td>
</tr>
<tr>
<td>43(5)</td>
<td></td>
<td>A development application that involves moving an Aboriginal object or excavation of land for the purpose of discovering, exposing or moving an object is an integrated development and requires the prior consent of the Heritage office of NSW. Similarly if the proposal is likely to affect Aboriginal sites then the prior consent of the Director General DECC is required.</td>
</tr>
<tr>
<td>54(4)(b)</td>
<td>What restrictions apply to development of Aboriginal conservation areas and relics?</td>
<td>Landowners and managers need to adopt a precautionary approach to the identification of Aboriginal objects and ensure that they obtain the appropriate permits and consents from DECC</td>
</tr>
</tbody>
</table>

Table 7: Proposed changes to LEP Heritage Items and Aboriginal areas and relics.

6.1.4 LEP Schedules.

While the LEP provides special consideration for archaeological sites through the possibility of listing identified sites worthy of protection under schedule 4, only one such site is listed. This site is the keepara or bora ground with carved trees. It is also listed on the Register of the National Estate (RNE 003447). The LEP also has a Heritage Schedule which lists heritage items. This list is comprised of buildings in Bowraville Village, none of which appear to have been listed due to any Aboriginal values. It is worth remembering in any future assessments that buildings from the historic period may have as much
significance for Aboriginal people as archaeological evidence from the pre-contact period. For this reason it would be worth doing an audit of all the reserves and Aboriginal farms and other sites of historic significance to Aboriginal people (most of which are likely to be now on private property) in Nambucca shire to try and ascertain if any buildings or cemeteries remain from this early historic period.

The relevant schedules are:

- Schedule 1 Clause 16 Considerations for Rural Residential Subdivisions
- Schedule 2 Clause 41- Heritage Conservation Areas
- Schedule 3 Clause 41 Heritage Items
- Schedule 4 Clause 41- Potential Archaeological Site.

Proposed changes and additions to these schedules are summarised in the Table below:

<table>
<thead>
<tr>
<th>Schedule</th>
<th>Clause or subsection if relevant</th>
<th>Proposed addition or change</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schedule 1-Clause 16</td>
<td>p</td>
<td>No change - adequately covers Aboriginal heritage</td>
</tr>
<tr>
<td>Schedule 2</td>
<td>Heritage Conservation areas</td>
<td>Add: Scotts Head Headland; the Warrell Creek wetlands at the northern end of Forster Beach; Whale Site/Cobra Increase site (see photo front cover); Stuarts Island.</td>
</tr>
<tr>
<td>Schedule 3</td>
<td>Heritage items</td>
<td>Ngumbars Knee, Newee Creek; Ngumbar ceremonial area</td>
</tr>
<tr>
<td>Schedule 4</td>
<td>Potential Archaeological sites</td>
<td>All past mission and reserves (see section 3 and site cards Appendix E). Portions 212,161,211 parish of Bowra. Dunes along Forster Beach</td>
</tr>
</tbody>
</table>

Table 8: Recommended additions and changes to relevant schedules
6.2 Nambucca Shire Council’s Aboriginal Sites Planning Guideline no. 12

A copy of this guideline is produced here in Appendix C part 2. The purpose of these guidelines is to assist applicants (Development Applications) to understand Council’s responsibilities in regard to Aboriginal cultural heritage and hence to adequately prepare development applications.

This document was prepared in 1997 and states that there are only 34 Aboriginal sites in the shire. There are currently 76 sites recorded on the AHIMS maintained by the NPWS of NSW. As a result of the limited field inspections carried out as part of this project a further 16 sites have been located bringing the total to 92 sites. Clearly the relatively low number of sites recorded in the Nambucca Shire is a product of the relative lack of comprehensive archaeological surveys and not a real indication of the number of sites that might be present.

While NPWS certainly carried out some investigation in the late 1970’s most studies since that time have been undertaken by private consultants as part of EIAs.

6.2.1 Suggested amendments to the Guideline

This document is now rather dated. It needs to be updated to include a brief mention of Integrated developments and recent changes to the NPW Act. In recognition of the fact that the conservation of heritage is a whole of community responsibility this document should also contain a sub-headings ‘What is the Role of the Landowner/developer in Aboriginal cultural heritage protection’ as well as ‘What is the role of Aboriginal Land Councils in Aboriginal Cultural heritage protection’?

This guideline will be redesigned together with the Environmental Planning section of Council and the Aboriginal Heritage Consultative Committee following the review and acceptance of this report.

6.2.2 Integrated Developments and Aboriginal Sites

A copy of the NPWS guidelines relating to Integrated Development Applications (IDA) and Aboriginal Sites is attached in Appendix C. The basic principle behind NPWS advice is that

‘Aboriginal heritage issues should be addressed upfront as part of the planning process undertaken for developments, and prior to the lodgement of a development application. The NPWS requires that options for conserving Aboriginal relics within development footprints be fully explored in discussion with the Aboriginal community as part of the development assessment process. Impacts on Aboriginal relics should only be considered where there are no viable alternatives. The NPWS will require a clear demonstration that alternatives to site destruction have been fully explored. (NPWS 2001:1)

This was previously known as the Aboriginal Sites Register of NSW

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It can be seen from a comparison of the wording in the above guideline and some of the wording in the LEP that there is a difference of approach that could lead to misunderstandings. With the introduction of the integrated development provisions of the EP&A Amendment Act 1997, DECC now see their role as something more than concurrence with local government assessments. DECC is now an approval body for development applications under the IDA process when:

- an Aboriginal ‘object’ is known to exist on the land to which the DA applies and/or
- the land to which the DA applies is an Aboriginal Place (under the NPW Act) and
- the development proposal will destroy, deface or damage an Aboriginal object or Aboriginal place and a consent to destroy from the Director-General of DECC is required.

For the purpose of the IDA process, an object is ‘known to exist if:

- It is registered on the AHIMS and /or
- It is an Aboriginal site known to the Aboriginal community; and/or
- It is located during anthropological or archaeological surveys or test excavations conducted prior to the lodgement of the DA.

The second dot point is important to consider, and relevant to the concept that the responsibility that the conservation of cultural heritage is a whole, of community responsibility. Dialogue between Council and the local Aboriginal community and between the non indigenous and Aboriginal sections of the community area necessary to ensure access to the information required to adequately protect cultural heritage sites.

The environmental planning section of Nambucca Council already routinely seek advice on DAs in relation to potential impact of Aboriginal heritage from the three LALCs in the shire. Council does this by forwarding on DA notifications. Each of the LALCs has some degree of difficulty in handling the fast turn around times while ensuring that appropriate elders get the opportunity to consider the proposals. The Nambucca LALC is currently undertaking an Aboriginal men’s project aimed at documenting spatially a number of sites of particular significance to men. This will assist the LALC in considering DAs.
7.0 Working together

The effective conservation of cultural heritage sites, places and values is the responsibility of the entire community. It is important to recognise that Aboriginal people, the Nambucca Shire Council and land owners need to work together to identify and conserve significant heritage sites and places.

7.1 Identifying heritage stakeholders

Often the notion of heritage stakeholders is overly simplified so that Aboriginal people are assumed to be the only interested stakeholders in Aboriginal heritage objects and places and the non-indigenous community is seen as having a mandate over all other heritage sites and places. However clearly this is not the case! The entire community has some sort of stake in that past as well as the future. This is not to say that Aboriginal people do not have particular rights as ‘owners’ of their heritage but rather a recognition that any one place may have different value to different people.

Currently, the council has established an Aboriginal Community Advisory Committee (ACAC) which appears to be treated very positively by the Aboriginal community. Consideration could be given to establishing some sort of heritage forum for Aboriginal and non Aboriginal people to meet who are specifically interested in the documentation and conservation of heritage.

7.2 How can Council work with Aboriginal communities and stakeholders to achieve heritage outcomes

Local governments have specific responsibilities in terms of guiding and directing development in their LGA so as to enhance both the amenity of the area and facilitate its responsible economic development. Local Councils interact on a day to day basis with local communities and are ideally placed to understand community identity which is also inextricably linked with a community’s sense of history and the heritage places that they value.

Local government’s responsibilities under the EP&A Act mean that local government has a key role in heritage conservation. These include:

- Implementing heritage legislation at the local level by ensuring local planning and development control is sensitive to cultural heritage.
- Developing appropriate development control plans or planning guidelines to assist landowners and developers to understand their responsibilities and plan their proposals taking account of significant heritage matters.
- Conserving places of heritage significance which are located on land owned and/or managed by local government.
- Providing opportunities for public involvement in the conservation of cultural heritage, encouraging public awareness and sensitivity to heritage and initiating heritage education programs

7.2.1 Developing a Heritage Policy and Strategies for Nambucca Shire Council

The following objectives are proposed as core statements for the Aboriginal cultural heritage policy within the Nambucca Shire Council area:

1. To achieve, in consultation with local Aboriginal Community representatives, the long term conservation of significant Aboriginal cultural heritage places, and a representative
sample of the range of Aboriginal archaeological site types within the LGA.

2. To conserve and appropriately manage Aboriginal cultural heritage places within lands owned and managed by the Nambucca Shire Council.

3. To promote awareness and understanding of Aboriginal cultural heritage and to encourage community attitudes which are consistent with the conservation of Aboriginal cultural heritage values.

7.2.1.1 Implementation Strategies

The implementation of the core objectives is dependent on a set of strategies. Each strategy relates to specific issues or management procedures:

1. Adopt as Council policy and amend existing policy statements, to incorporate the three Aboriginal cultural heritage objectives, and specifically:

2. Amend the LEP to reflect the three Aboriginal cultural heritage objectives.

3. Include within future planning instruments Aboriginal provisions which ensure that various categories of development, and proposed developments in specific areas, are preceded by an Aboriginal cultural heritage assessment.

4. Build up GIS information relating to past land use history and disturbance and make this available to council officers and consultants preparing heritage assessments and archaeological surveys. In particular identify those areas in the LGA that have been substantially disturbed in ways that will have resulted in them having little or no likelihood of retaining intact Aboriginal sites.

5. In consultation with local Aboriginal community representatives, heritage professionals and the lists of sites presented in this report (see Appendix E), compile a Heritage Schedule of Aboriginal sites and places which are to be listed on the LEP Schedules 2, 3 and 4 (as appropriate) and managed according to stated conservation provisions to be listed in the plan.

6. Implement a development application procedure (for both designated and non-designated developments) which includes, as a compulsory element, an appropriate level of Aboriginal cultural heritage assessment.

7. Aboriginal cultural heritage assessment should include the following:

- For any development proposals where land surface disturbance is anticipated, an assessment is to be made about the need to conduct an Aboriginal cultural heritage assessment.

- To make this assessment, reference should be made to the archaeological sensitivity of each of the landscape units as described in this document, which indicate the likely surviving archaeological resource within an area.

- Proposals which fall within urban landscapes and outside of the littoral (coastal and estuarine) zone may not require detailed assessment (and use disturbance information would assist in assessing this.

- Furthermore the following guidelines relate to Aboriginal cultural heritage assessment and impact assessment carried out within the LGA

  i. An Aboriginal cultural heritage survey and assessment to be conducted for all developments which will cause land surface disturbance within archaeologically sensitive landforms, or within zones of known Aboriginal cultural significance.
ii. All Aboriginal cultural heritage work is to be conducted by suitably qualified personnel and is to comply with the Guidelines specified from time to time by the DECC.

iii. Archaeological assessments are to address the issue of potential subsurface archaeological deposits, and where necessary conduct subsurface testing to test assumptions or predictions.

iv. All cultural heritage survey and assessment work is to include appropriate levels of consultation with, and the participation of local Aboriginal community representatives.

v. Two copies of Aboriginal cultural heritage assessment reports are provided by the applicant to the DECC to provide opportunity for the Service to review and comment on the report.

vi. One copy of an Aboriginal cultural heritage assessment report is to be provided to each relevant LALC to provide opportunity for the Council to review and comment upon the report.

vii. The ACAC is to be provided with an opportunity to review reports that affect Aboriginal sites identified as having Aboriginal significance through listing on LEP schedules.

viii. Development Application assessment is to have due reference to the comments received by the DECC, Aboriginal Community Groups, and the ACAC.

ix. Where necessary recommended impact mitigation strategies are to be specified as a condition of the development approval.

8. Establish and instigate a series of consultation protocols with the local Aboriginal community. The following elements could be considered as part of this strategy:

- Initiate discussions with the three LALCs with the aim of developing a mutually acceptable protocol for effective consultation. The protocol should have provision for routine and emergency levels of consultation and specify the type and stages of the input sought. This may be simply a formalisation of the current process if it is considered satisfactory by Council and the LALCs.

- Council consideration of employment of a permanent Aboriginal Sites Officer, with training in site recognition, recording and assessment. Such a position could have responsibilities in conducting community liaison, advising the ACAC and commenting on cultural heritage assessments for non-designated developments. Alternatively, establish a trainee position and provide access to appropriate training.

- Review membership of the present the ACAC from time to time to ensure that is representative of community elders and organisations from within the local community.

- Ensure that appropriate measures are in place which secure and limit access to sensitive Aboriginal cultural information about significant places or site locations should be identified in consultation with local Aboriginal community representatives, statutory authorities (DECC) and heritage professionals.

9. Integrate the Aboriginal cultural heritage objectives within current and future planning studies, and within Council's maintenance and emergency work strategies.
10. Ensure that fire protection strategies, hazard reduction and fire management plans, allow for the active conservation (and where necessary avoidance) of known Aboriginal scarred trees or areas of old-growth forest with potential for Aboriginal scarred trees.

11. Ensure that future planning studies and development control plans recognise the conservation of significant Aboriginal cultural heritage places as a primary objective.

12. Instigate a heritage management planning study with the objectives of identifying any components of the surviving archaeological resource which may be at risk, and the degree to which a representative sample of the resource is adequately conserved within landscape based reserves or management zones. The study should identify planning priorities with the aim of realising the conservation of a representative sample of the archaeological resource, using a landscape based approach.

13. Ensure that effective inventories of Aboriginal heritage sites and places are maintained and are accessible to planning and works personnel within the Council. Ensure that adequate information is held to facilitate management of these sites and /or flag cases where more detailed information is held by the Aboriginal community or DECC.

14. Conduct a detailed field based study with supportive landowners to test the archaeological potential of the various landscape units and use the outcomes and the outcomes of any impact assessment reports to develop and refine a predictive model for site distribution and archaeological potential across the shire.

15. Similarly, conduct systematic cultural heritage surveys of Council owned lands and reserves so that the known and potential archaeological resource and other potential cultural heritage places can be identified along with their management requirements.

16. Through regular consultation with the DECC, ensure that the Council has access to up-to-date Aboriginal site register information for use in the assessment of proposed development works and maintenance activities. (It should be noted that many site locations are recorded incorrectly on the register.)

17. Conduct an oral history recording and compilation program with the aim of documenting the oral record of Aboriginal occupation and lifestyles within Nambucca Council Area and its relationship to the wider Aboriginal history of the north coast and northern rivers. Such a project could access the histories of both Aboriginal and other community members. The opportunity to record the memories and experiences of the surviving older generations is finite and becoming increasingly limited with passage of time (see Schilling 2003).

18. Ensure that the adopted Aboriginal cultural heritage management strategies and Aboriginal site inventories remain relevant, effective, and reflect current issues.

19. Conduct a review of the ACHMP every five years with the aim of reviewing the effectiveness of adopted strategies, updating heritage registers, and ensuring that objectives and strategies reflect the identified issues. Involve ACAC in this process.

20. Conduct a program of training for Nambucca Council personnel to ensure that Council staff are familiar with both Aboriginal heritage issues and Council’s responsibilities relating to Aboriginal heritage.

- The program should consist of workshops or seminars presented by Aboriginal heritage specialists and local Aboriginal representatives. The educational program should be conducted at least once every three years to take account of staff turnover.

21. Develop a public awareness campaign aimed at increasing public awareness of Aboriginal heritage and Aboriginal sites, their value to the local community and promoting responsible
behaviour towards indigenous heritage sites. This could include, with the agreement of the local Aboriginal community, active promotion of sites as items of public interest.

7.2.2 The role of Aboriginal Land Councils

While many people mistakenly assume that The Aboriginal Land Rights Act 1983 allows Aboriginal people to claim places of Aboriginal heritage, this is not the case. This Act allows LALCs to make claims over ‘Vacant Crown Land’ (which is not required for an essential public purpose) only! This Act does not specifically protect Aboriginal heritage places and makes no provision for them to be claimed by Aboriginal people unless they are located within vacant Crown land. The preamble to the Act recognises the relationship between land, heritage and spirituality and has been taken by many land councils as a mandate to make sure their voice is heard in relation to heritage matters despite no funding provisions to do so. The preamble states:

**Whereas:**

- Land in the State of NSW was traditionally owned and occupied by Aborigines:
- Land is of spiritual, social, cultural and economic importance to Aborigines:
- It is fitting to acknowledge the importance which land has for Aborigines and the need of Aborigines for land:
- It is accepted that as a result of past Government decisions the amount of land set aside for Aborigines has been progressively reduced without compensation (ALRA 1983)

The Act provides for the establishment of a system of elected Land Councils. The role of these Councils is to deal with the land and monies flowing from activities under the Act. However, in many areas Land Councils have developed a vital role in the community. The system of Land Councils covers the entire state and therefore provides a point of formal contact with Aboriginal communities which was not available in some areas prior to the introduction of the Act. NPWS has had a policy of consulting with Aboriginal people since its inception and it has encouraged consultation with LALCs since they were established.

Of course Land Councils vary depending on the people involved and the community politics of the area. In the Nambucca LGA there are three LALCs each with specific geographical areas of responsibility. These groups come together with the council and other community members to meet as the Aboriginal Community Advisory Committee.

Each of the LALCs provide an important link to Aboriginal communities in their areas and all have displayed a keen interest in Aboriginal heritage matters. The Nambucca LALC is currently undertaking their own study into sites of significance in their area. Currently the Environment and Planning Department of Council refers DAs to each of the LALCs for their feedback as to any Aboriginal heritage matters.

It is a recommendation of this report that the ACAC which includes each of the three LALCs should be involved in the regular review of the Nambucca Shire Council’s ACHMP. It is also a recommendation that

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41 In some parts of the state since Native Title Legislation has been enacted many smaller interest groups of Native Title claimants have been established. Sometimes these groups and LALCs work together and in some areas these groups may compete with or oppose one another. NPWS has an inclusive policy of consultation with all groups on heritage issues.
the Nambucca Shire Council continue to work with Nambucca LALC with a view to developing a protocol that ensure that information collected and maintained by the LALC through their Aboriginal Men’s Sites program is somehow taken into account in the determination of development applications.

7.2.3 The role of the Aboriginal Community Advisory Committee

The role of this committee extends beyond the management of Aboriginal cultural heritage sites and places however, it is clear that the members of this committee have a keen interest in and commitment to cultural heritage conservation. It is therefore recommended that this committee have a review role in terms of this plan and its regular review which should occur at least every 5 years to ensure currency of the plan.

The committee should also be involved in any of the partnership projects and initiatives such as the development of further studies as suggested in Section 7.2.4 below.

7.2.4 Initiatives: working as a community

It is important to ensure that there is sufficient information available to the public to enable them to make informed decisions and to understand matters that they clearly perceive to be related to Aboriginal heritage.

Native Title is clearly one such issue. It is not sufficient to dismiss the misinformation in the general community about Native Title and Native Title rights as a State and Commonwealth issue. This is because it is clearly a factor which will hinder the Nambucca Shire Council’s ability to effectively identify sites on private land and to negotiate suitable conservation outcomes for significant sites.

There are several strategies that Council could consider to promote satisfactory community heritage outcomes. These include:

1. Disseminate information freely to the local community on issues either within the shire or from adjacent LGAs that are likely to be of interest. For example one farmer met during field testing commented on his disillusionment with Aboriginal people as a result of his perceptions of the successful Crescent Head (Kempsey LGA) Native Title decision. His worry and concern of such perceived avarice was the reason he cited for not wanting his property surveyed for Aboriginal sites. He clearly did not understand the reason why the Traditional owners accepted cash compensation and assumed that they had won Native Title only to ‘sell’ the land, demonstrating that money was their only real objective. It would be beneficial for Nambucca to work with Aboriginal people and the Native Title Tribunal to prepare information on such case in a summarised format that could be disseminated cheaply to rate payers as a pamphlet along with their rate notices. A general statement on Native Title and the ‘rights’ this gives Aboriginal people and its relationship to different tenures would also be useful to disseminate. It is surprising that more than 10 years after the Mabo determination a large proportion of the general public clearly have no idea what Native Title entails.

2. Develop a joint project between a group of selected landowners and the relevant Aboriginal community which involves the survey, identification and recording of both Aboriginal sites and Aboriginal ‘social’ values on their properties. Agreed outcomes of such a project could be promoted within the Nambucca community. Should significant places be identified, non acquisition protective measures such as Voluntary Conservation Agreements (VCA’s) or gazettal as an Aboriginal place should be negotiated. Land owners who participate in such a project should be recognised formally by the council for their contribution to heritage conservation.

3. Establishment by Council of an Annual Heritage Award. There is no doubt that annual competitions for the cleanest street, the best garden and so forth are embraced by many people. For many people recognition of their community peers is as important, if not more so than monetary prizes. Such an award could embrace other types of heritage and include categories that recognised indigenous and non indigenous values.
4. Proactively seeking to identify significant sites and establishing protective zonings that ensure their long-term conservation. There is scope here to perhaps work with Nambucca Local Aboriginal Land Council who are undertaking a ‘men’s heritage study’ to protect specific sites that are of particular significance. This would not necessarily involve the divulging of ‘restricted’ information relating to the sites significance.

5. Developing an Oral History program that targeted both Aboriginal and non-Aboriginal people to record information on Aboriginal heritage and history within the shire. Many farmers whose families have been on the land for several generations have an amazing amount of historical history about Aboriginal sites and also the period of shared heritage since European settlement. One farmer talked about how when he was a child an Aboriginal man and his family camped on the property and of the strong bond of respect and friendship that developed between his father and this Aboriginal man. Such stories help bond communities and reveal a notion of a shared landscape.

6. Develop a brochure, and poster explaining the outcomes of this project and the benefits of heritage conservation. The design of a brochure is included as an outcome of this project, however a free community information night is recommended to present the document. Alternatively a small travelling exhibition could involve input from both Aboriginal and non-Aboriginal community members and travel around the local community villages.

7.5 Performance indicators for measuring the success of this Aboriginal Cultural Heritage Management Plan and Council’s Performance on Cultural Heritage

Assuming that Nambucca Shire Council implements this ACHMP, how will it know if it is having a positive impact of the conservation of Aboriginal heritage in the shire? It is important to establish indicators and benchmarks that will allow positive or negative change to be measured over time. This information can then be used to fine tune strategies in the ACHMP. It is recommended that these be kept simple and easy to measure at this stage especially as so few sites have been recorded and Council has to date conducted few cultural heritage projects or studies.

Some preliminary indicators are recommended for the first 5 years of the operation of this plan:

- Percentage increase in sites recorded within the LGA.
- Yr 1: at least five significant Aboriginal sites are added (with the concurrence of the ACAC) to schedule 3 of the LEP
  - Subsequent years, measure and report on the percentage increase in additions to this schedule
- Development and completion of at least two (over the 5 year period) cultural heritage projects that involve Aboriginal and non-Aboriginal community members working together to identify and document heritage stories and places of relevance to them both.
- Numbers of Aboriginal sites or heritage places that have an Aboriginal heritage management plan developed and conservation works carried out in accordance with that plan.
- Archaeological sensitivity zoning across Rural 1(a) and 1(d) lands, developed as a planning tool to help guide Aboriginal heritage assessments and investigations relating to future development of these areas.
Number of VCA developed between Council, the relevant LALC, landowner (this can be Council) and DECC to ensure the long term conservation of Aboriginal cultural heritage. Calculation of numbers for this category may include VCAs over wetlands or other ‘natural’ areas as long as cultural heritage values are also explicitly included.
8.0 Summary of Recommendations

It is not intended that all recommendations of the AHCMP be repeated here as there are a number of detailed recommendations relating to the LEP and other documents. This section however, acts as a summary with reference back to other sections where appropriate for more detail.

1. In relation to the LEP it is recommended that changes as recommended in tables in Section 6 are made to ensure that Aboriginal Cultural Heritage is adequately considered in Council’s planning process.

2. In relation to rural lands zoned 1(a1) which may be suitable for rural residential development and subdivision. It is recommended that:

   a. Council carries out a detailed archaeological study of lands both already zoned for residential development and likely to be rezoned in the next 10-15 years. This study would be aimed at refining the predictions of archaeological potential to the extent that the entire study area could be zoned according to its potential. All developments in the areas assessed as having medium to high potential would require developers to carry out further investigation as part of their development application process, while others identified as having no or little potential would involve no such study but the DA approval would include standard conditions to deal with the possibility of unforeseen evidence being found in the course of the development.

3. In relation to the heritage schedules ie 2, 3, 4 it is recommended that:

   a. Discussions be commenced with each of the LALCs regarding the nomination of places of particular significance to the Aboriginal community for protection and recognition of these places.

   b. The places indicated in Table 8 Section 6 be added to the Schedules 2, 3 and 4 as appropriate.

4. In relation to Nambucca Shire Council’s Aboriginal Sites Planning Guideline No. 12 it is recommended that this document is updated and rewritten upon finalisation and acceptance of this ACHMP.

5. A number of initiatives have been proposed under the heading ‘working as a community’ in Section 7.2.4 and it is recommended that Council consider and implement these involving both aboriginal and non Aboriginal people from the community as appropriate.

6. It is recommended that the success or otherwise of Council’s initiatives is measured by the indicators as suggested in Section 7.5.

7. In addition to the above, it is recommended that copies of this report be forwarded to:

   a. The Unkya LALC

   b. The Nambucca LALC

   c. The Bowraville LALC

   d. Nambucca Councils ACAC

   e. Manager Aboriginal heritage Unit - Northern NPWS
f. The Aboriginal Sites Registrar  
NPWS  
PO Box 1967 HURSTVILLE 2220

g. The Heritage Office of NSW  
Locked Bag 5020  
Parramatta NSW 2124

h. Local libraries and historical societies within the Nambucca LGA [without Appendix E – Site cards which are not for general distribution].

8. Finally, it is recommended that this document be reviewed no later than 5 years from its completion.
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### Glossary of Terms & Abbreviations

#### Abbreviations:

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
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<tbody>
<tr>
<td>ACAC</td>
<td>Aboriginal Community Advisory Committee</td>
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<tr>
<td>AHC</td>
<td>Australian Heritage Commission</td>
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<tr>
<td>B.P</td>
<td>Before present – where ‘present’ is taken to be 1950. The principal modern radiocarbon standard is N.I.S.T (National Institute of Standards and Technology; Gaithersburg, Maryland, USA) Oxalic Acid I (C2H2O4). Oxalic acid I is N.I.S.T designation SRM 4990 B and is termed HOx1. This is the International Radiocarbon Dating Standard. Ninety-five percent of the activity of Oxalic Acid from the year 1950 is equal to the measured activity of the absolute radiocarbon standard which is 1890 wood. 1890 wood was chosen as the radiocarbon standard because it was growing prior to the fossil fuel effects of the industrial revolution. The activity of 1890 wood is corrected for radioactive decay to 1950. Thus 1950, is year 0 BP by convention in radiocarbon dating and is deemed to be the ‘present’. 1950 was chosen for no particular reason other than to honour the publication of the first radiocarbon dates calculated in December 1949. (<a href="http://www.rlaha.ox.ac.uk/orau/01_04.htm">www.rlaha.ox.ac.uk/orau/01_04.htm</a> consulted 28 October 2002).</td>
</tr>
<tr>
<td>DCP</td>
<td>Development Control Plan</td>
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<tr>
<td>EIS</td>
<td>Environmental Impact Statement</td>
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<tr>
<td>LEP</td>
<td>Local Environmental Study</td>
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<tr>
<td>PAD</td>
<td>Potential Archaeological Deposit: ie an area assessed as likely to contain subsurface archaeological material although visible remains may not occur on the surface</td>
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<tr>
<td>RNE</td>
<td>Register of the National Estate</td>
</tr>
<tr>
<td>SHI</td>
<td>State Heritage Inventory: an inventory maintained by the Heritage Office of NSW of known heritage items of varying levels of significance. Established under the Heritage Act, 1974 (as amended).</td>
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<tr>
<td>SHR</td>
<td>Heritage Register: a statutory register maintained by the Heritage Office of NSW that lists known items of State significance. Listing on this Register invokes specific management requirements and certain activities affecting such items require the consent/approval of the Heritage Council of NSW unless exemptions are in place.</td>
</tr>
<tr>
<td>VCA</td>
<td>Voluntary Conservation Agreements.</td>
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### Terms:

<table>
<thead>
<tr>
<th>Term</th>
<th>Description</th>
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<tbody>
<tr>
<td>Alluvial</td>
<td>pertaining to alluvium and fluvial processes.</td>
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<tr>
<td>Alluvial terrace</td>
<td>an abandoned flood plain or fluvial plain above the level of most contemporary floods.</td>
</tr>
<tr>
<td>Alluvium</td>
<td>unconsolidated deposit of gravel, sand, mud etc., formed by water flowing in identifiable channels. Commonly well sorted and stratified.</td>
</tr>
<tr>
<td>Bench</td>
<td>a short gently inclined mid-slope landscape element.</td>
</tr>
<tr>
<td>Bioturbation</td>
<td>the process of mixing soil materials or sediments by living organisms.</td>
</tr>
<tr>
<td>Catchment</td>
<td>the geographic drainage area of a stream defined by the watershed or drainage divide.</td>
</tr>
<tr>
<td>Colluvium</td>
<td>an unconsolidated deposit of gravel, sand, mud etc., formed by water flowing across a hillslope surface (slopewash, sheetwash, rainwash) and/or by mass movement. Commonly poorly sorted and stratified</td>
</tr>
<tr>
<td>Confluence</td>
<td>junction of two streams.</td>
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<tr>
<td>Conservation</td>
<td>All the processes of looking after a place so as to retain its heritage significance. Includes maintenance and may according to circumstances, include preservation, restoration. Reconstructions and adaptation and will be commonly a combination of more than one of these.</td>
</tr>
<tr>
<td>Contact sites</td>
<td>Sites which are associated with the interaction between Aboriginal and non-Aboriginal people.</td>
</tr>
<tr>
<td>Crest</td>
<td>a landform element with convex slopes on a drainage divide which stands above all other features.</td>
</tr>
<tr>
<td>Cultural Significance</td>
<td>Aesthetic, historic, scientific or social value for past, present or future generations.</td>
</tr>
<tr>
<td>Determining/ Consent Authority</td>
<td>The body with the authority to approve or refuse development applications usually the local council but in some cases a State government department.</td>
</tr>
<tr>
<td>Embankment</td>
<td>a ridge or slope constructed by human activity. May be cut or fill.</td>
</tr>
<tr>
<td>Floodplain</td>
<td>valley floor flat adjacent to a stream which is flooded by the 'annual' flood (often considered to be the flood with a recurrence interval of about 1.6 years).</td>
</tr>
<tr>
<td>Flat</td>
<td>a landform element which is planar or near horizontal; creek flat - flat adjacent to a creek usually a floodplain</td>
</tr>
<tr>
<td>Fluvial</td>
<td>pertaining to a stream or river</td>
</tr>
<tr>
<td>Geomorphic units</td>
<td>an informal landscape description based on geomorphology and pedology</td>
</tr>
<tr>
<td>Holocene</td>
<td>The most recent epoch of the Quaternary period. The past 10,000 years of geological time.</td>
</tr>
<tr>
<td>Term</td>
<td>Definition</td>
</tr>
<tr>
<td>----------------------</td>
<td>-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Knoll</td>
<td>a small rounded hill or eminence on a ridge, a symmetrical crest.</td>
</tr>
<tr>
<td>Lowlands</td>
<td>having a general elevation below the surrounding country.</td>
</tr>
<tr>
<td>Object</td>
<td>NPW Act has changed the word ‘relic’ to ‘object’ – it still means any deposit, object or material evidence (not being a handicraft made for sale) relating to indigenous and non-European habitation of the area that comprised NSW, being habitation both prior to and concurrent with the occupation of that area by persons of European extraction, and includes Aboriginal remains.</td>
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<tr>
<td>Potential Archaeological Deposit</td>
<td>A place or site that has been assessed (requires field verification) as having potential to contain sub-surface archaeological material.</td>
</tr>
<tr>
<td>Potential Archaeological Site</td>
<td>A place that may contain evidence of past human activity. May have been determined through documentary and/or oral research and not yet field verified.</td>
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<tr>
<td>pH</td>
<td>acidity or alkalinity of soil or water. Expressed in logarithmic units either side of 7 which is neutral. &lt;7 = acid, &gt;7 = alkaline.</td>
</tr>
<tr>
<td>Post-contact</td>
<td>The period after European invasion of the continent in 1788.</td>
</tr>
<tr>
<td>Quaternary</td>
<td>The most recent geological time period. Divided into the Holocene and the Pleistocene. Began 1.8 million years ago.</td>
</tr>
<tr>
<td>Rainwash</td>
<td>downslope movement of soil materials or sediment in raindrop agitated surface flow of water.</td>
</tr>
<tr>
<td>Relief</td>
<td>difference in elevation between highest and lowest parts of a landscape.</td>
</tr>
<tr>
<td>Research Potential</td>
<td>The ability of a site, feature, place or object to yield information through archaeological investigation. The significance of archaeological sites is assessed according to their ability to contribute information to substantive research questions.</td>
</tr>
<tr>
<td>Soil horizon</td>
<td>differentiation of topsoils and subsoils in conventional pedology. Care must be taken in the acceptance of traditional concepts of soil horizon genesis when working in archaeological deposits.</td>
</tr>
<tr>
<td>Soil layer</td>
<td>a discrete body of soil material which can be treated stratigraphically. Layers may or may not be soil horizons.</td>
</tr>
<tr>
<td>Spur</td>
<td>a ridge line subordinate to the main divide.</td>
</tr>
<tr>
<td>State heritage significance</td>
<td>Significance to the State on relation to the historical, scientific, cultural, social, archaeological, architectural, natural or aesthetic value of the item.</td>
</tr>
<tr>
<td>Stream order</td>
<td>a numerical sequencing of streams according to the number of tributaries. In one system of annotation fingertip tributaries are designated as first order streams; two first order streams join to form a second order stream and two second order streams form a third order stream etc.</td>
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<tr>
<td>Tertiary</td>
<td>the geological period prior to the Quaternary, divided into four epochs, extended from 65 to 1.8 million years ago.</td>
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# Appendix A
## Summary of Previous Studies

<table>
<thead>
<tr>
<th>Report Number</th>
<th>Author</th>
<th>Date</th>
<th>Title</th>
<th>Site Type</th>
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<th>landform</th>
<th>location</th>
<th>Type</th>
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<tbody>
<tr>
<td>c3817</td>
<td>J. Appleton</td>
<td>1996</td>
<td>The archaeological investigation of the site of a proposed residential development Scotts Head, mid North Coast NSW. Prepared for Resource Design and Management Pty Ltd for Mantoya Pty Ltd.</td>
<td>Scarred tree</td>
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<td>c2510</td>
<td>J. Appleton</td>
<td>1993</td>
<td>A report of the archaeological investigation of the site of a proposed gravel extraction quarry at Gumma, near Nambucca Heads, Lower North Coast, NSW</td>
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<td>J. Appleton</td>
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<td>A report of the archaeological investigation of a proposed cable route between Thalgarrah Telephone Exchange and Argyle Telephone Exchange, Gara River, Northern Tablelands, NSW</td>
<td>Artefact scatters</td>
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<td>Gara River</td>
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<td>J. Appleton</td>
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<td>The archaeological Investigation of a proposed residential subdivision, Swimming Creek Estate, Nambucca Heads, Mid North Coast NSW</td>
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<td>c227</td>
<td>A. Djekic</td>
<td>1980</td>
<td>Archaeological survey of Scotts Head to Grassy Head coastline, mid North Coast NSW</td>
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<td>c281</td>
<td>A. Djekic</td>
<td>1979</td>
<td>An archaeological survey of the proposed Hideaway Estate, Nambucca Shire, NSW</td>
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<td>c1482</td>
<td>H. Creamer</td>
<td>1979</td>
<td>A report on the Aboriginal significance of Stuarts Island, Nambucca Heads</td>
<td>Reserve including house sites and school</td>
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<td>4239</td>
<td>J. Collins</td>
<td>1998</td>
<td>Nambucca Heads Sewerage Augmentation Scheme: Archaeological Investigation of the Site Proposed for Pumping Station 2A, Bellwood creek, Nambucca Heads.</td>
<td>No sites (despite early record by Haglund 1997)</td>
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<td>Preliminary Report on skeletal material found at Stuart's point</td>
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<td>Stuart's point Specialist Report</td>
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<td>C484</td>
<td>R. Kelly and T. Donovan</td>
<td>1976</td>
<td>Survey of Aboriginal Sacred Sites in NSW</td>
<td>Ceremonial sites</td>
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<td>Miscellaneou s, mostly mountains</td>
<td>Sacred sites survey</td>
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<td>c4203</td>
<td>Robynne Mills</td>
<td>1997</td>
<td>Archaeological assessment of indigenous heritage within the proposed Shopping Centre complex, Bellwood Road, Nambucca Heads</td>
<td>?House sites</td>
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<td>c2240</td>
<td>Navin, K</td>
<td>1991</td>
<td>An archaeological survey of the preferred Pacific Highway By-Pass around Macksville, NSW</td>
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<td>C 2213</td>
<td>Navin, K</td>
<td>1991</td>
<td>Archaeological survey of proposed Pacific Highway Deviation between Watt Creek and Teagues Creek Nambucca Heads, NSW.</td>
<td>1 PAD</td>
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<td>C610</td>
<td>A. Piper</td>
<td>1980</td>
<td>An Archaeological Survey of Aboriginal sites and relics affected by the proposed Sewerage treatment works between Warrell Creek and Forsters Beach, Scotts Head NSW</td>
<td>NO SITES</td>
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<td>c1645</td>
<td>Rich, E</td>
<td>1989</td>
<td>Stuart’s Island, Nambucca Heads: Archaeological survey for Aboriginal sites</td>
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<td>C1746</td>
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<td>Aboriginal historic Sites in north east NSW Management Study. Unpub report for NPWS and the Australian Heritage Commission.</td>
<td>29 site types</td>
<td>311</td>
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<td>J.A. Starling</td>
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</table>
Appendix B
Relevant Legislation

There are a range of statutory and non-statutory measures at both the State and Commonwealth level, which can be invoked, to protect cultural and natural heritage features and places. The main ones are outlined below.

1.3.1 New South Wales Legislation

The NSW Heritage Act (1977)

The purpose of the NSW Heritage Act 1977 is to ensure that the heritage of New South Wales is adequately identified and conserved. In practice the NSW Heritage Act has focused on items and places of non-indigenous heritage to avoid overlap with the National Parks and Wildlife Act 1974 (NPWS Act), which relates primarily to nature conservation and the protection of Aboriginal objects, areas, remains and places in NSW. In recent years however, the Heritage Council has targeted Aboriginal cultural heritage, working with relevant state agencies such as the Department of Environment and Climate Change (DECC) to identify gaps in the protection of Aboriginal and natural heritage places (for example the Cyprus Hellene Club was protected under the Heritage Act as a place of historic significance to Aboriginal people amongst other values).

The Heritage Amendment Act 1998 came into effect in April 1999. This Act instigated changes to the NSW heritage system, which were the result of a substantial review begun in 1992. A central feature of the amendments was the clarification and strengthening of shared responsibility for heritage management between local government authorities, responsible for items of local significance, and the NSW Heritage Council. The Heritage Council retained its consent powers for alterations to heritage items of state significance.

The Heritage Act is concerned with all aspects of conservation ranging from the most basic protection against damage and demolition, to restoration and enhancement. It recognises two levels of heritage significance; State significance and Local significance across a broad range of values (see Section 4.4).

Some key provisions of the Act are the establishment and functions of the Heritage Council (Part 2), Interim Heritage Orders (Part 3), the State Heritage Register (Part 3A), Heritage Agreements (Part 3B), Environmental Planning Instruments (Part 5), The protection of archaeological deposits and relics (Part 6, Division 9) and the establishment of Heritage and Conservation Registers for state government owned and managed items (Part 8, s170).

Generally protection under this Act is given to items that have been identified, assessed and listed on various registers including State government s170 registers, local government LEPs and the State Heritage Register. There is however, provision for the minister or his delegates (local government may have delegated authority) to provide emergency protection to items not previously identified if they are threatened through the Interim Heritage Order (IHO) provisions. The only ‘blanket’ protection provisions in the Act relate to the protection of archaeological deposits and relics greater than 50 years old, but this protection does not relate to Aboriginal settlements.

The Heritage Council of NSW

The role of the Heritage Council is to provide the Minister with advice on a broad range of matters relating to the conservation of the heritage of NSW. It also has a role in promoting heritage conservation through research, seminars and publications. The membership of the heritage Council is designed to reflect a broad range of interests and areas of expertise.
Interim Heritage Orders

Under the provisions of Part 3 of the Act, the Minister can make an IHO. A recommendation with respect to an order can come from the Heritage Council, either based on a request for the Minister or the Heritage Council’s own considerations. The Minister can also authorise local councils to make IHOs within their area. An IHO may remain in force for up to 12 months, until such time as it is revoked or the item is listed on the State Heritage Register. An IHO may control activities such as demolition of structures, damage to relics, places or land, development and alteration of buildings, works or relic.

The State Heritage Register

Changes to the Heritage Act in the 1998 amendments established the State Heritage Register which includes all places previously protected by permanent conservation orders and items identified as being of state significance in heritage and conservation registers prepared by State Government instrumentalities. Sites or places which are found to have a state level of heritage significance should be formally identified to the Heritage Council and considered for inclusion on the State Heritage Register.

Heritage Agreements

Under s39 of the Heritage Act, the Minister can enter into an Agreement with the owner of a heritage item listed on the State Heritage Register to ensure its conservation. Such an Agreement can cover a range of responsibilities including financial or specialist assistance and can be attached to the title of the land. Under this section, the Minister is to obtain and consider the advice of the Heritage Council before entering into a heritage agreement.

Environmental Planning Instruments

Part 5 of the Heritage Act gives the Heritage Council the authority to request that a local council or the Director-General of Planning prepare an EPI covering lands to which an IHO applies or which includes an item listed on the State Heritage Register. Part 5 also directs that the Heritage Council shall be consulted in relation to the preparation of draft EPIs affecting land to which an IHO applies or which includes an item listed on the State Heritage Register. In addition, it gives the Heritage Council the authority to produce guidelines for the preparation of LEPs by local councils.

Protection of archaeological relics and deposits.

Section 139 of the Act specifically provides protection for any item classed as a relic. A relic is defined in s4 as “...any deposit, object, or material evidence -

(a) which relates to the settlement of the area that comprises New South Wales, not being Aboriginal settlement; and

(b) which is 50 or more years old.”

Section 139(2) of the Act disallows disturbance of a relic unless in accordance with an 'excavation permit' from the Heritage Council. In practise, excavation permits are required only for relics which according to their assessed heritage significance warrant this form of documentation and control.

Section 146 of the Act requires that the discovery of a previously unknown relic be reported to the Heritage Council within a reasonable time of its discovery.

Heritage and Conservation Registers

Section 170 of the Act requires all state government instrumentalities to establish and maintain a Heritage and Conservation Register, which lists items of environmental heritage. The register is to include items which are, or could potentially be, the subject of a conservation instrument, and which are owned, occupied or otherwise under the control of that instrumentality.
The Heritage Act and shipwrecks

In general, the Heritage Act is only used as a means of protecting shipwrecks within inland and state waters. Although, if tested the Act probably also protects maritime relics within 3 nautical miles of the coast. In NSW, the Commonwealth Historic Shipwrecks Act 1976 is generally applied as the principal means of protecting shipwreck sites and associated artefacts. However, maritime relics such as wharves, jetties or aeroplane wrecks are considered to be included in the general application of the Heritage Act (advice from Heritage Office, NSW Department of Planning).

The National Trust (NSW)

The National Trust is a community-based conservation charity, and is not a government body. Whilst the National Trust Register does not provide any statutory obligations for protection of a site as such, the acknowledgment of a place being listed on the Register as a significant site lends weight to its heritage value. Also, the fact that the actual data for sites may be minimal does not diminish the significance of a place. In fact, many sites were listed with only basic data added, especially in the early developmental stages of the Register.

The Trust, over the last few years have been upgrading the information for places listed, with criteria for assessment for listing based on the Australian Heritage Commission Criteria of assessment for entry to the Register of the National Estate.

The National Parks and Wildlife Act 1974

The National Parks and Wildlife Act 1974 (NPW Act) provides the primary basis for the legal protection and management of Aboriginal sites within NSW. The implementation of the Aboriginal heritage provisions of the Act are the responsibility of the DECC.

The rationale behind the heritage provisions of the NPW Act is “the conservation of objects, places or features (including biological diversity) of cultural value within the landscape, including places, objects and features of significance to Aboriginal people” and “fostering public appreciation, understanding and enjoyment of nature and cultural heritage and their conservation” (s2A).

With the exception of some artefacts in collections, the NPW Act generally defines all Aboriginal objects to be the property of the Crown. The Act then provides various controls for the protection, management and destruction of these objects.

An ‘Aboriginal Object’ is defined as:

‘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 of concurrent with (or both) the occupation of that area by persons of non-European extraction, and includes Aboriginal remains’ (s5(1)).

‘Aboriginal remains’ means the body or the remains of the body of a deceased Aboriginal, but does not include:

“(a) a body or the remains of a body buried in a cemetery in which non-Aboriginals are also buried, or

(b) a body or the remains of a body dealt with or to be dealt with in accordance with a law of the State relating to medical treatment or the examination, for forensic of other purposes, of the bodies of deceased persons” (s5(1))

In practice, archaeologists tend to subdivide the legal category of 'object' into different site types which relate to the way artefacts are found within the landscape. The archaeological definition of a site may vary...
according to survey objectives, however it should be noted that even single and isolated artefacts are protected as relics under the NPW Act.

It is an offence to disturb or to excavate any land for the purpose of discovering, disturbing or moving an Aboriginal object without the written consent of the Director-General of the DECC (s86). Consents regarding the use or destruction of Aboriginal objects are managed through a permit system (s87). The issuing of permits is dependent upon adequate archaeological review and assessment, together with an appropriate level of Aboriginal community liaison and involvement.

The NPW Act, together with the policies of the DECC provide the following constraints and requirements on land owners and managers:

- it is an offence to knowingly destroy, deface or damage an Aboriginal object or place without an appropriate permit (s87);
- prior to instigating any action which may conceivably disturb a an Aboriginal object (generally land surface disturbance or felling of mature trees), archaeological survey and assessment is required;
- when the archaeological resource of an area is known or can be reliably predicted, appropriate land use practices should be adopted which will minimise the necessity for the destruction of Aboriginal objects or places, and prevent destruction of objects and places which warrant conservation.
- documented and appropriate consultation with relevant Aboriginal Community representatives is required by the DECC as part of the prerequisite information necessary for endorsement of consultant recommendations or the provision of consents and permits by the DECC.

**Environment Planning & Assessment Act (1979)**

The EP&A Act and its regulations, schedules and associated guidelines require that environmental impacts are considered in land use planning and decision making. Environmental impacts includes cultural heritage assessment.

There are three main areas of protection under the Act:

1. Environmental Planning Instrument (EPI), such as LEPs, allow particular uses for land and specify constraints. Part 3 of the EP&A Act governs the preparation of EPIs. Both Aboriginal and non-indigenous) cultural heritage values should be assessed when determining land use planning. This is to be done by local councils and the NSW Department of Planning (DoP).

2. Part 4 relates to the determination of development applications which require consent under a LEP. Section 79C lists impacts which must be considered before development approval is granted. Impacts to both Aboriginal and non-indigenous cultural heritage values are to be considered.

   Best Practice Guidelines have been issued by DoP on the use of section 79C(1) and include an assessment of how the proposed development will affect the heritage significance of the property, or adjacent properties, in terms of the historic, scientific, cultural, spiritual and archaeological values of Aboriginal, non-Aboriginal and natural heritage.

   If the development proposal involves the damage or destruction of an Aboriginal object or place, a permit from the DECC under s90 of the NPW Act is required before consent to the development can be granted (known as ‘integrated development’). Any development approval issued for an integrated development of this kind must be consistent with the general terms of approval or requirements provided by the DECC.

3. State Government agencies which act as the determining authority on the environmental impacts

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of proposed activities must consider a variety of community and cultural factors in their decisions, including Aboriginal and non-indigenous cultural heritage values. Part 5 of the EP&A Act relates to activities which do not require consent but still require an environmental evaluation, such as proposals by government authorities.

Under the EP&A Act, the Minister for Planning may make EPIs such State Environmental Planning Policies (SEPP) and Regional Environmental Plans (REP) (Part 3, Divisions 2 and 3). The Minister may direct a local council to exercise certain actions within a specified time, including the preparation of draft LEPs with appropriate provisions to achieve the principles and objects of the Act (s117).

EPIs may identify places and features of cultural heritage significance and define various statutory requirements regarding the potential development, modification and conservation of these items. In general, places of identified significance, or places requiring further assessment, are listed in various heritage schedules that may form part of a LEP or a REP. Listed heritage items are then protected from certain defined activities, normally including demolition, renovation, excavation, subdivision, and other forms or damage, unless consent has been gained from an identified consent authority. The consent authority under a LEP is normally the local Shire or City Council.

In addition to the development of EOIs, the Director-General of the DoP or a local council may prepare a Development Control Plan (DCP) where it is considered that more detailed provisions or guidelines are required over any part of land covered by an REP or LEP (Part 3, Division 6).

The EP&A Act provides for the listing of heritage items and conservation areas and for the protection of these items or areas through EPIs (like LEPs and REPs) at the local government and State planning levels. These statutory planning instruments usually contain provisions for the conservation of these items and areas as well as an assessment process to reduce the impacts of new development on the heritage significance of a place, building or conservation area.

Section 75U of the EP&A Act provides that certain authorisations are not required for major infrastructure or critical infrastructure projects approved by the Minister for Planning under Part 3A of the Act. Major infrastructure projects are developments which in the opinion of the Minister are of State or regional environmental planning significance (s75B(2)). Critical infrastructure projects are development which in the opinion of the Minister are essential for the State for economic, environmental or social reasons (s75C). Once such projects are approved they do not require a consent of a permit with respect to the destruction of Aboriginal objects or places or an excavation permit under the Heritage Act (s75U(1)). Furthermore, an interim heritage order or listing on the State heritage register under the Heritage Act cannot prevent the carrying out of an approved project under Part 3A (s75U(2))

**NSW Aboriginal Land Rights Act 1983**

The purpose of this Act is to provide land rights for Aboriginal people in NSW vested in Aboriginal land councils. The Act has been substantially amended by the Aboriginal Land Rights Amendment Act (2006).

The Aboriginal Land Rights Act was originally designed to give control over land, where possible, to local Aboriginal communities. The principal objectives of the Act are to:

- constitute Aboriginal Land Councils as Aboriginal land holding and managing bodies corporate;
- facilitate the acquisition of land by transfer (of existing Aboriginal reserves), and open market purchase;
- define a process for the processing of land claims against certain forms of Crown land;
- define which crown lands are open to claim,
- and provide for Land Council funding (7.5% of the previous years land tax, to end after 15 years, i.e., 1998).
The Amendment sought to insert two new additions into the purpose of the Act. The first is the management of land and other assets and investments by Land Councils, and the second is to provide for the provision of community benefit schemes by or on behalf of those Land Councils.

The Aboriginal Land Rights Act defines claimable land as Crown lands as those which are not lawfully used or occupied and which are not needed nor likely to be needed for “an essential public purpose” (s36). The Lands Department includes the following as lands which need to be retained for future public purposes: lands needed or likely to be needed for conservation reserves, dams, forestry, flood mitigation, urban commercial and industrial development, public recreation, and public access.

Once granted, s42 exempts Aboriginal land from compulsory acquisition except by a special Act of Parliament.

The Act provides for a two-tiered structure of Aboriginal Land Councils at the Local and State level, being the LALCs and NSW Aboriginal Land Council (NSWALC) respectively. The aim of the Aboriginal Land Council system is to provide representation at local levels across the whole of NSW. Land Council membership is open to any Aboriginal person over 18 who lives within the defined boundaries of a Council area, or has since moved elsewhere. In the latter case membership is subject to a vote by Council members. Council executive positions are elected from and by the membership.

The functions of the LALCs include: acquisition and management of land on behalf of the local Aboriginal community, the protection and promotion of awareness of Aboriginal cultural heritage and the provision of community benefits and social housing schemes (Part 5, Division 1A).

In the absence of any purposefully constituted system of representation for Aboriginal cultural heritage management, the Aboriginal Land Councils have, until recently, acted as the most accessible and representative bodies for providing community comment on cultural site management and development assessment investigations.

A criticism of the use of the Aboriginal Land Council system in consultation on cultural heritage issues has been the lack of formal representation for people with local tribal and cultural affiliations. Land Council office bearers are elected from contemporary resident Land Council members and need not have traditional ties to the Council area. Similarly, Land Council boundaries do not necessarily relate to tribal or traditional boundaries. For these reasons, and particularly following the recognition of native title rights, additional Aboriginal organizations have developed which specifically seek to represent traditional cultural interests and rights according to various tribal group criteria.

Native Title (NSW) Act 1994

The Native Title (NSW) Act 1994 was passed to ensure that NSW law is consistent with the standards set by the Commonwealth Native Title Act in relation to future dealings affecting native title. The Act establishes state based mechanisms for deciding claims to native title. It validates past acts that would otherwise be invalidated by the existence of Native Title and confirms certain state rights.

1.3.2 Commonwealth Legislation

While the primary heritage legislation offering protection to Aboriginal and non-indigenous sites is enacted by the individual states, several Acts administered by the Commonwealth are also relevant to protection of cultural heritage.
Environment Protection & Biodiversity Conservation Act 1999

The scope and coverage of the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) is wide and far reaching. The Objectives of the Act include: the protection of the environment, especially those aspects of national significance; to promote the conservation of biodiversity and ecologically sustainable development, and to recognise the role of indigenous people and their knowledge in realising these aims.

The EPBC Act makes it a criminal offence to undertake actions having a significant impact on any matter of national environmental significance (NES) without the approval of the Environment Minister. Actions which have, may have or are likely to have a relevant impact on a matter of NES may be taken only:

- in accordance with an assessment bilateral agreement (which may accredit a State approval process) or a declaration (which may accredit another Commonwealth approval process); and
- with the approval of the Environment Minister under Part 9 of the Act. An action that requires this Commonwealth approval is called a 'controlled action'

- Matters of national environmental significance (NES) are defined as:
  - World heritage values within declared World Heritage Properties (s12(1));
  - National heritage places (section 15B);
  - Ramsar wetlands of international importance (s16(1));
  - nationally threatened species and communities (s18);
  - migratory species protected under international agreements (s20);
  - nuclear actions (s21);
  - the Commonwealth marine environment as defined in s24 (generally outside 3 nautical miles from the coast) (s23(1&2)); and
  - any additional matters specified by regulation (following consultation with the States) (s25).

In addition, the EPBC Act makes it a criminal offence to take on Commonwealth land an action that has, will have, or is likely to have a significant impact on the environment (s26(1)). A similar prohibition (without approval) operates in respect of actions taken outside of Commonwealth land, if it has, or is likely to have a significant impact on the environment on Commonwealth land (s26(2)). Section 28, in general, requires that the Commonwealth (or its agencies) must gain approval (unless otherwise excluded from this provision), prior to conducting actions which has, will, or is likely to have a significant impact on the environment inside or outside the Australian jurisdiction.

The EPBC Act adopts a broad definition of the environment which is inclusive of cultural heritage values. In particular, the ‘environment’ is defined to include the social, economic and cultural aspects of ecosystems, natural and physical resources, the heritage value of places, and the qualities and characteristics of locations, places and areas (s528).

The Act allows for several means by which a controlled action can be assessed, including an accredited assessment process, a public environment report, an environmental impact statement, and a public inquiry (Part 8).

World heritage values are defined to be inclusive of natural and cultural heritage (s12(3)), and a declared World Heritage Property is one included on the World Heritage List, or is declared to be such by the Minister (ss13 and 14). The EPBC Act defines various procedures, objectives and Commonwealth
obligations relating to the nomination and management of World Heritage Properties (Part 15, Division 1).

The EPBC Act also provides for the listing and protection of places on the National Heritage List (Part 15, Division 1A). The National Heritage List is intended to include natural, indigenous and historic places with outstanding heritage value. In order to be included on the list, a place must satisfy at least one of the National Heritage criteria set out in the Environment Protection and Biodiversity Conservation Regulations 2000 (ss324C-324D)

There are provisions for emergency listing of the national heritage values of a place of the Minister believes that those heritage values are under threat (s324F)

There is also a Commonwealth Heritage List which lists natural, Indigenous and historic places that have significant rather than outstanding heritage values, and are in Commonwealth areas or owned or leased by the Commonwealth Government (s341C(2)).

The list may include places outside Australia that are owned or leased by the Commonwealth Government (s341C).

**Aboriginal and Torres Strait Islander Heritage Protection Act, 1984**

The Aboriginal and Torres Strait Islander Heritage Protection Act, 1984 provides for the protection of areas and objects which are of significance to Aboriginal people in accordance with Aboriginal tradition. The Act allows Aborigines to apply to the Minister to seek protection for significant Aboriginal areas and objects. The Minister has broad powers to make such a declaration should the Minister be satisfied that the area or object is a significant Aboriginal area or object and is under immediate threat of injury or desecration. A duly processed declaration by the Minister can have effect for any specified time period. An 'emergency declaration' can remain in force for up to thirty days.

It is an offence under the Act to contravene a provision of a declaration. Provisions are made for penalties of up to $50,000 for a corporation found guilty of contravening the Act and up to $10,000 and imprisonment for a maximum of five years for a person found guilty of contravening the Act.

Under the Act, 'Aboriginal tradition' means:

> 'the body of traditions, observances, customs and beliefs of Aboriginals generally or of a particular community or group of Aboriginals, and includes such traditions, observances, customs or beliefs relating to particular persons, areas, objects or relationships' (section 3).

A 'significant Aboriginal area' refers to:

> an area of land or water in Australia being of 'particular significance to Aboriginals in accordance with Aboriginal tradition' (s3).

A 'significant Aboriginal object' refers to:

> an object (including Aboriginal remains) of 'particular significance to Aboriginals in accordance with Aboriginal tradition' (s3).

For the purposes of the Act, an area or object is taken to be injured or desecrated if:

a) in the case of an area it is used or treated in a manner inconsistent with Aboriginal tradition; the use or significance of the area in accordance with Aboriginal tradition is adversely affected by reason of anything done in or near the area; or passage through or over, or entry upon the area by any person occurs in a manner inconsistent with Aboriginal tradition;

b) in the case of an object it is used or treated in a manner inconsistent with Aboriginal tradition (s3).
**Native Title Act, 1993**

The main purpose of the Act is to recognise and protect Native Title, which can be defined as the ‘rights and interests in land and waters that Aboriginal and Torres Strait Islander people have under laws and customs and that are recognised by the common law’ (s223).

The Act contains a process for determining whether native title exists, what rights and interests native title holders have (ss13 and 61) and whether people who have title have ‘exclusive possession’ (s225).

The Act provides for the validation of various categories of past government acts and grants of rights to use or own land or waters (prior to 1/1/94), which might have been invalid because the land or waters was native title land or waters at the time (ss14 and 19). As a consequence, native title does not exist over grants of freehold land, or grants of a commercial, agricultural, pastoral or residential lease (defined in ss246 to 249), or the construction of a public work (defined in s253). Other forms of leasehold interest, licences and permits do not extinguish native title, or may only extinguish native title rights where these cannot co-exist with the granted rights and interests (as in the case of some leasehold rights). The determination of where and when native title rights have been extinguished by past acts is complex and remains subject to court interpretation.

The Act establishes the National Native Title Tribunal which has various responsibilities regarding the hearing and processing of native title claims. The Tribunal maintains a public Register of Native Title Claims and Claimants (Part 7) and a Register of Native Title Determinations (Part 8). The Register of Native Title Claims provides a useful means of identifying individuals and organisations which claim traditional cultural links and associations. It should not however be considered in any way to provide a definitive or comprehensive compilation of such potential claimants.

Under the Act, registered native title holders and registered native title claimants have a right to negotiate before certain ‘permissible future acts’ happen (Subdivision B of Division 3 of Part 2). These acts may involve mining or other development activities, and compulsory acquisition of native title for the alienation of crown lands. The right to negotiate is not a ‘veto’ or right to reject. Where negotiation fails to provide agreement between the parties, the Act provides various means for an arbitrated decision to be made (ss27, 35 and 39). These determinations can be overridden in certain circumstances by State, Territory of Commonwealth Ministers (s42).

The Act allows ‘non-claimants’ with an interest in land to ask for a determination about native title (ss61 and 67). If no one opposes a non-claimant application, future acts over the lands or waters are valid (s24).

The Act also allows for and defines procedures for the acquisition of native title lands for public purposes.

**Commonwealth Historic Shipwrecks Act (1976)**

This Act applies to all historic shipwreck sites, associated artefacts, flotsam and jetsam in open water and below low water mark, within Australian territorial waters.

Section 4A(1)(b) of the Act states that a wreck must be at least 75 years old for it to qualify as an historic shipwreck. This Commonwealth Act is the main form of protection of maritime relics and sites within NSW apart from the provision s of Part 3C of the Heritage Act 1977 (NSW). A permit from the NSW Director of Planning is required before any disturbance to a NSW historic shipwreck can occur.
Appendix C
Planning Documents and Guidelines
C1: Extracts from Nambucca Shire Council's LEP gazetted 1995
C2: Nambucca Shire Council’s Aboriginal Sites Planning Guideline No 12
C4: Heritage Model LEP Provisions
Appendix D
Information on Aboriginal tribal groups (Tindale)
Appendix E
Site Cards and Register Listings

[Recommended not for inclusion in public document]

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