

MEMORANDUM OF UNDERSTANDING

between

Southern Cross University

and

**The Bundjalung Nation Aboriginal Cultural Heritage, Natural
Resource and Environmental Management Committee**

regarding

**A collaboration on three projects funded by the National Heritage
Trust and administered by the Department of Infrastructure
Planning and Natural Resources**

Dated: 23rd December, 2003

1. Preamble

National Heritage Trust funding was sought for four Aboriginal Cultural Heritage Projects to be administered by the Department of Infrastructure Planning and Natural Resources. This followed priority initiatives identified by the Northern Rivers Catchment Management Board and Bill Walker, representing the Bundjalung Aboriginal community.

The initiatives focussed on the need to *protect Aboriginal sites and places, identify and map areas belonging to traditional Aboriginal people, and to improve skills and knowledge of contemporary Aboriginal people so that they represent Aboriginal values and ideals better, on management committees.*

Four projects received funding. A tender process by the Department of Infrastructure Planning and Natural Resources (DIPNR) judged Southern Cross University to be the successful tenderer for three projects:

- Reference No. NRACH1 03, Audit and Assessment of Aboriginal Sites/Places
- Reference No. NRACH2 03, Training Aboriginal Members on Northern Rivers Management Committees
- Reference No. NRACH4 03, Mapping of the Bundjalung Tribal Boundaries

In this Memorandum of Understanding, these three projects are referred to as the Projects.

2. Purpose of Memorandum of Understanding

This document sets out the framework and collaboration between Southern Cross University and the Bundjalung Aboriginal community, represented by the Bundjalung Nation Aboriginal Cultural Heritage, Natural Resource and Environmental Management Committee. Southern Cross University and the Bundjalung Nation Aboriginal Cultural Heritage, Natural Resource and Environmental Management Committee are the Parties of this Memorandum of Understanding.

In this Memorandum of Understanding, Southern Cross University is referred to as the University, and Bundjalung Nation Aboriginal Cultural Heritage, Natural Resource and Environmental Management Committee is referred to as the Committee.

This Memorandum of Understanding was drafted by the University, on request from representatives of the local Aboriginal Community at a workshop held at the Ballina Island Motor Inn on 6th November 2003. It formalises the roles and responsibilities of both Parties, ensuring a respectful, beneficial, harmonious and effective working relationship.

This Memorandum of Understanding constitutes the entire Memorandum of Understanding between both Parties, and may be amended at any time in accordance with clause 16.

3. Memorandum of Understanding timeframe

This Memorandum of Understanding shall remain in force for the period of the contracts for the Projects, as administered by the Department of Infrastructure Planning and Natural Resources, unless otherwise changed (see clause 16).

4. Bundjalung Nation Aboriginal Cultural Heritage, Natural Resource and Environmental Management Committee

The Committee is the elected body, endorsed by the project administrator at the Department of Infrastructure Planning and Natural Resources, to represent the Bundjalung Aboriginal community. Contact officers and details as follows.

Interim Chairperson: Bill Walker

Secretary: Rosanne Roberts

Address: C/- PO Box 664 Alstonville NSW 2477

Alternative contact person: Mrs Bertha Kapeen (02) 66868241

Phone: (02) 66832510 (Bill Walker)

Email: bogallalc@bigpond.com

5. Southern Cross University

The University is the contracted body for three approved Projects. The responsible department of the University is the School of Environmental Science and Management. The school works closely with the College of Indigenous Australian Peoples, and advice on cultural protocols within the University will be sought from the College. Contact officers and details as follows.

Head of School: Professor Don Gartside

Academic supervision: Associate Professor Bill Boyd

Project Manager: David Lloyd

Project Advisor (and Project Coordinator, Site Audit & Assessment): Ron Heron

Project Coordinator (Mapping): Terry Walker

Post Graduate Researcher: Ian Fox

Technical Support: Greg Luker

Project postal Address:

Bundjalung Cultural Heritage Projects,

School of Environmental Science and Management,

Southern Cross University, P.O. Box 157, Lismore, NSW 2480

Phone: 02 66203007 (Bill Boyd)

Email: bboyd@scu.edu.au

6. Agreement (Responsibilities, Protocols, Resources, and Access)

The Committee agrees to:

- Be fully involved in planning and decision making of the Projects.
- Contribute relevant knowledge and advice concerning the Projects.

- Recognise and acknowledge that the Projects are jointly undertaken by the University and the Committee.
- Respect and acknowledge the roles of all relevant University and Committee members.
- Allow University to publish non-cultural information, resulting from the projects with permission from the Committee, to fulfil the academic requirements of staff and students.

The University agrees to:

- Manage the day-to-day running of the Projects.
- Supply and maintain technical resources, including workspace and storage resources for the Projects' duration.
- Meet costs associated with each project as identified in each Project's budget.
- Provide a written and oral report to the Committee on a quarterly basis. Written reports will be provided seven days before the Committee meets for distribution to its members.
- Respect the confidentiality of identified cultural information.
- Respect and acknowledge the Committee, including the Committee's role as representatives of Bundjalung people for the Projects.

Both Parties to the Memorandum of Understanding agree that:

- The Projects will be undertaken within the identified area of the Bundjalung Nation.
- Aboriginal cultural heritage data collected within the Projects remains the property of the Bundjalung Nation, individual elders, groups of elders, traditional owners, or other Bundjalung people or groups who are the recognised holders of specific knowledge of sites and places.
- Any technical process, developed for the projects, remains the property of Southern Cross University. Technical processes are the ways of managing the information collected during the Projects. These include information management system developed within the Projects, and data storage systems. Technical processes do not include the cultural knowledge that is managed within the Projects.
- Any technical resources and equipment, supplied by the University for the Projects, remains the property of the University.

- Both Parties may promote and publicise aspects of the projects that do not contain confidential cultural information (defined in clause 8).
- These Projects are not related to any Native Title Claim, either at present or in the future, and have no bearing on Native Title Claims.

7. Training

The University will facilitate appropriate training for Terry Walker as part of the Mapping of the Bundjalung Tribal Boundaries Project (Project No. NRACH4 03). Training for Bundjalung people is also the outcome of Project No. NRACH2 03 (Training of Aboriginal Members on Northern Rivers Management Committees).

The exact training for Terry Walker will be discussed between the Parties as the Project progresses. Training will be in the skills needed by Terry Walker to complete the work, and will enhance his ability to support the Committee and the Bundjalung Nation. Both the University and the Committee may identify training needs, and bring these to any discussions between the two Parties. Examples of training include computer use, database management, geographic information systems, report writing, and field recording of cultural places.

8. Restrictions on knowledge of Aboriginal cultural sites and places

The University acknowledges the confidentiality of Aboriginal cultural sites and places. The University will seek and respect advice from the Committee regarding culturally confidential knowledge. Such knowledge will be identified as “Confidential”, and may require restricted access, as determined by the Committee.

Both Parties acknowledge that protocols will be developed as a key part of the information management system to ensure appropriate confidentiality. Only relevant Aboriginal members of the project team may access such identified cultural information, as determined by the Committee.

9. Access agreements

All Project participants will seek advice from the Committee prior to accessing any Aboriginal cultural sites or places. Any site validation, audit or assessment will only take place with the knowledge and approval of Ron Heron. Access women's sites will require Ron Heron to seek advice from the relevant Aboriginal female.

All access to Bundjalung country will follow the access to country protocols as developed by the Committee for the Projects.

10. Keeping place (Data storage)

For the duration of the Projects, the University agrees to provide and maintain secure data storage facilities. Access will only be made by authorised Project participants (see clause 8).

On completion of the Projects, all Project data will be given to the Committee. University will not retain any data after the completion of the Projects, unless directed by the Committee.

11. Publication and promotion

All Parties to this Memorandum of Understanding will be identified in any reports and/or promotion. Copies of all reports regarding the Projects will be supplied to both Parties.

Authorship of reports is defined, as in the Southern Cross University *Policy on Quality in Research Practice*, as follows.

“Where appropriate to the academic profession, discipline or field of research, authorship is ascribed to participants of research output, where the author or authors have contributed substantially to one or more of the following: (i) the conception and design of the research; (ii) the collection, analysis and interpretation of data; and (iii) the writing of the publication. An author’s role in a research output must be sufficient for that person to take public responsibility for at least part of the output in that person’s area of expertise.”

Authorship referred to in this document cannot be used for any other purpose other than for the Projects. Authorship for the purposes of the Projects does not indicate ownership to country.

12. Treatment of confidential material

All Parties will respect the confidentiality of cultural information, and will observe standard protocols. Neither Party will disclose or distribute any information that is identified as “Confidential”, except by agreement in writing by both Parties. This clause applies both throughout the life of the Projects, and forever thereafter.

13. Additional funding

Either Party may seek additional funding at any time, provided the funding is used to facilitate or enhance the Projects.

14. Insurance

Each Party must hold appropriate insurance for activities undertaken within the Projects, including, where relevant:

- Worker’s compensation insurance as required by law.
- Public liability insurance to an amount of at least \$10m.
- Professional indemnity insurance to an amount of at least \$10m.

15. Indemnity

Both Parties agree that each will indemnify and keep indemnified the other Party and its members for and against any legal action arising directly or indirectly out of or in

connection with any negligent act or omission of the other Party and/or its members, or the other Party's non-compliance with its obligations under this memorandum of understanding.

A member means, for the purpose of this Memorandum of Understanding, an employee, representative, agent, trustee or joint venturer.

16. Review and evaluation of Memorandum of Understanding

This Memorandum of Understanding will be reviewed after six months from the date of signing, unless otherwise dissolved or cancelled (see clause 17).

17. Amendment and termination of Memorandum of Understanding

This Memorandum of Understanding may be changed or terminated by written agreement of both Parties. Written notice of change or termination must be given to both Parties at least 21 days before the suggested date of change or termination.

18. Representation of the Parties

Members of each Party shall not represent themselves as being a member (clause 15) of the other Party. Staff and students of the University may not claim to be members of the Committee, and likewise, members of the Committee cannot claim to be staff or students of the University unless formally enrolled in or employed by the University.

19. Application of law (State, Federal, and Aboriginal traditional and customary law)

The laws of New South Wales and Australia apply to this Memorandum of Understanding.

State and Federal law should be interpreted to work in conjunction with or reflect Aboriginal traditional and customary lore when dealing with Aboriginal cultural issues. Aboriginal traditional and customary lore may be applied to matters of Aboriginal culture that are not subject to any statute or common law.

20. Occupational health and safety

All activities undertaken under this Memorandum of Understanding will comply with all occupational health and safety requirements under the Occupational Health & Safety (2001) Act.

21. Dispute resolution

Both Parties agree that any dispute arising during the course of this Memorandum of Understanding will be dealt with as follows.

- (a) First, the Party claiming that there is a dispute will send to a notice to the other Party. That notice will explain out the nature of the dispute.

- (b) Secondly, both Parties will try to resolve by direct negotiation. This negotiation may include referring the matter to a person or people who have the ability and/or authority to intervene and facilitate some form of resolution.
- (c) Thirdly, both Parties have ten business days from the sending of the notice to reach a resolution. Ideally the resolution will solve the dispute. However, resolution may be an agreement that the dispute be submitted to mediation or other form of dispute resolution.
- (d) Lastly, if there is no resolution or agreement within one month of the submission (or sooner by agreement by both Parties), either Party may commence legal proceedings.

Where the law is silent on any matters of dispute, the standing policies of either Party will apply and be referred to, before commencing to any legal proceedings.

Signatures

Uncle Bill Walker, Interim Chair, Bundjalung Nation Aboriginal Cultural Heritage, Natural Resource and Environmental Management Committee

Professor Angela Delves, Acting Vice-Chancellor, Southern Cross University

Professor Jenny Graham, Executive Dean, Division of Health & Applied Sciences, Southern Cross University