



AHIMS LA [no.]
AHIMS service. [no.]

Licensee copy
Copy to be retained by Licensee

Licensor copy
Copy to be posted back to DEC

Aboriginal Heritage Information Licence Agreement

SAMPLE ONLY



Department of Environment and Conservation

[Date]

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→ _____ ←
Licensor contact person

→ _____ ←
Licensee contact person

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THIS ABORIGINAL HERITAGE INFORMATION LICENCE AGREEMENT

is made on ...**[date]**

BETWEEN [THE AHIMS REGISTRAR], INFORMATION SYSTEMS UNIT OF THE DEPARTMENT OF ENVIRONMENT AND CONSERVATION, 43 Bridge Street, Hurstville.

AND Darrell Creighton: Aboriginal Community Liaison Officer

Ballina Shire Council

Corner Tamar and Cherry Street Ballina NSW 2478

Post Office Box 450 Ballina

INTRODUCTION

This Licence Agreement will direct the release of Aboriginal Heritage Information by the Licensor to the Licensee. The release of this information by the Licensor to the Licensee is based on a recognised need for the Licensee to have access to specific Aboriginal Heritage Information. The Licensee will often be required to seek the endorsement of the relevant Aboriginal communities (as identified by the Licensor) before Aboriginal Heritage Information can be released by the Licensor.

The Licensor therefore provides this information on the understanding that the information will be used by the Licensee to identify and protect Aboriginal sites and heritage where ever possible. The Licensee should carry out this role where ever practicable in partnership with the relevant Aboriginal community organisations.

The principle objectives of this Licence Agreement are to ensure that:

1. The Licensee seeks the endorsement of any relevant Aboriginal community organisations (as identified by the Licensor) for the release and use of this Aboriginal Heritage Information;
2. Aboriginal Heritage Information is provided by the Licensor and used by the Licensee in a manner that respects the sensitive nature of this information;
3. The Licensee has access to Aboriginal Heritage Information that will assist it in making informed decisions for the management and protection of Aboriginal heritage and sites.

Details initialled by:

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Licensor contact person

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Licensee contact person

THE PARTIES AGREE:

ACROYMNS, DEFINITIONS AND INTERPRETATION

1.1 In this Licence Agreement the following acronyms apply:

- AHIMS:** Aboriginal Heritage Information Management System
ISU: Information Systems Unit of Cultural Heritage Branch of the Department of Environment and Conservation
CHB: Cultural Heritage Branch of the Department of Environment and Conservation
DEC Department of Environment and Conservation
GIS: Geographic Information System

1.2 In this Licence Agreement the following definitions apply:

“Aboriginal Heritage Information” means information on Sites recorded in the AHIMS.

“AHIMS Registrar” means the Aboriginal position that is responsible for ensuring that all external access to Aboriginal Heritage Information stored on AHIMS is appropriate.

“Contact Persons” will be the nominee staff of the Licensee and the Licensor who should be contacted in relation to this Licence Agreement listed in Annexure E.

“Director-General DEC” means the Director-General of the Department of Environment and Conservation and includes any person for the time being acting as such.

“Further Information Contact Person” means the person who has been nominated as the person who may provide further information about a Restricted Site.

“GIS layer” means information provided in a digital format that can be used in Arcview GIS (format being either a shapefile or digital spreadsheet with separate zone, eastings and northings).

“Licensee” means (the Licensee organisation) and where not repugnant to the context includes the Licensee’s staff, agents and contractors.

“Licensor” means the Director-General of DEC and his or her successors in title and where not repugnant to the context includes the Department of Environment and Conservation and the employees and agents of that Department.

“Licence Agreement” means this Aboriginal Heritage Information Licence Agreement and all Annexures to and variations of this Licence Agreement.

“Minister” means the Minister for the time being responsible for the Department of Environment and Conservation.

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Licensor contact person

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Licensee contact person

“Restricted Site” means any Site that has a restriction placed on access to Aboriginal Heritage Information contained on the AHIMS.

“Site” means any Aboriginal object (as defined in *the National Parks and Wildlife Act 1974*) or other place of importance or significance to Aboriginal people that are recorded on the AHIMS.

“Standard Site Information” means the information referred to in clause 4.2 of this Licence Agreement.

1.3 In this Licence Agreement unless the context otherwise requires:

1.3.1 words denoting the singular number shall include the plural and vice versa;

1.3.2 words denoting any gender shall include all genders;

1.3.3 words denoting individuals shall include corporations and vice versa; and

1.3.4 a reference to any party or to any Government Department or Authority or to any other person, corporation or association shall be a reference to them as so constituted from time to time and shall include their successors and permitted assigns and in the case of a Government Department or Authority means the body which at the relevant time substantially fulfils the functions of that Government Department or Authority.

1.4 Joint and Several Liability

Any covenant or agreement on the part of or in favour of two or more persons shall be deemed to bind them or be in favour of them jointly and each of them severally.

1.5 Counterparts

This Licence Agreement may consist of counterparts and the counterparts taken together constitute one and the same instrument.

2. TERMS OF THIS LICENCE AGREEMENT

2.1. The Licensor hereby grants the Licensee a non-exclusive and non-transferable Licence to use the Aboriginal Heritage Information described in Annexure A, subject always to the conditions in this Licence Agreement.

2.2 The Aboriginal Heritage Information and copyright and other intellectual property rights in the Aboriginal Heritage Information are and shall remain the property of the copyright holder.

2.3 This Licence Agreement constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, either oral or written, between the parties with respect to the subject matter of this Licence

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→ _____ ←
Licensor contact person

→ _____ ←
Licensee contact person

Agreement. No modifications to this Licence Agreement shall be effective unless in writing signed by the parties.

3. PAYMENT SCHEDULE FOR THIS LICENCE AGREEMENT

The Licensee will pay the Licensor in accordance with Annexure C of this Licence Agreement for Aboriginal Heritage Information provided by the Licensor.

4. ABORIGINAL HERITAGE INFORMATION TO BE PROVIDED FOR THE TERM OF THIS LICENCE AGREEMENT

4.1 Aboriginal Heritage Information (as indicated in Annexure A) will be provided by the Licensor to the Licensee in accordance with the information supply and fee schedule in Annexure C.

4.2 The Licensee acknowledges and accepts that the Licensor may provide Aboriginal Heritage Information with respect to any site in a format that the Licensor deems appropriate.

4.3 Standard Site Information will include information in the following format:

- i) Aboriginal site unique identification number;
- ii) Aboriginal site name;
- iii) Grid Reference Type (AMG or GDA);
- iv) Grid Reference Zone;
- v) Grid Reference Easting;
- vi) Grid Reference Northing;
- vii) Site Feature(s) provided for all non-restricted sites;
- viii) Site Type(s): used for sites recorded prior to June 2001;
- ix) Recorder name;
- x) Recording date;
- xi) Report catalogue number: for further site information as held in reports on the AHIMS catalogue of reports.

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Licensee contact person

- 4.4 The Licensee acknowledges and accepts that while a single point is provided for each known site (as represented spatially by the Grid Reference zone, easting and northing) many sites will extend over an area of land and would need to be relocated in the field (as indicated in clause 6.5) and mapped in terms of site extent.
- 4.5. If Aboriginal Heritage Information to be provided as part of this Licence Agreement relates to a Restricted Site, the AHIMS Registrar or the DEC Contact Person may at their discretion, refuse to provide the Standard Site Information in relation to that Site. It will be the responsibility of the Licensee to contact the Further Information Contact Person in relation to further information about the Restricted Site.

5. CONDITIONS OF USE

- 5.1. The Licensee shall only copy, hold and use the Aboriginal Heritage Information in the manner specified in Annexure B.
- 5.2. The Licensee shall not further copy or hold the Aboriginal Heritage Information (including copies or translations into any medium or format) in whole or in part unless authorised by the Licensor in writing.
- 5.3. On expiration or termination of this Licence Agreement, the Licensee shall erase all copies of the Aboriginal Heritage Information in its possession including any derived data (unless otherwise authorised in Annexure B). The Licensor at its discretion may direct the Licensee to confirm in writing that the information as provided under the terms of this Licence Agreement has been destroyed.
- 5.4. The Aboriginal Heritage Information provided under this Licence Agreement shall only be used by the employees or contractors as identified in Annexure B, section 2. Any requests for this information by third parties should be referred to the Licensor's Contact Person.
- 5.5. Adequate security measures and systems must be installed and enforced by the Licensee to safeguard the Aboriginal Heritage Information provided by the Licensor from unauthorised amendment, access or use, including access or use by third parties.
- 5.6. Any hard copy maps/reports derived from the Aboriginal Heritage Information shall include an acknowledgment to the Licensor, the number of this Licence Agreement and the date on which the Aboriginal Heritage Information was provided.
- 5.7. The Aboriginal Heritage Information provided under this Licence Agreement must not be made publicly available or be published by the Licensee in any form or by any means; unless otherwise authorised in Annexure B prior to signing of this Licence Agreement, or after signing of this Licence Agreement where approval has been sought from the AHIMS Registrar and provided in writing to the Licensee.

Details initialled by:

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→ _____ ←
 Licensor contact person

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 Licensee contact person

6. LICENSEE LIABILITIES UNDER THIS AGREEMENT

- 6.1.** The Licensee acknowledges that the Aboriginal Heritage Information provided may contain errors or omissions.
- 6.2.** No representations are made by the Licensor as to the accuracy of the Aboriginal Heritage Information provided.
- 6.3.** The Licensee hereby releases and indemnifies, and will keep indemnified, the Licensor, the Minister, the Department of Environment and Conservation, the Crown in the right of New South Wales and their agents, servants and employees from and against all liability whatsoever in respect to or arising from or in connection with the Aboriginal Heritage Information or otherwise whether for breach of this Licence Agreement, negligence, injury, death, economic loss, loss of reputation or damages incidental or consequential to the provisions of this Licence Agreement AND IT IS FURTHER AGREED that the obligations of the Licensee under this subclause shall continue after the revocation discontinuance or other termination of this Licence Agreement in respect to any act deed matter or thing happening before such revocation discontinuance or other termination.
- 6.4** The Licensee acknowledges that the Aboriginal Heritage Information is current only at the date of release and should be regularly updated by the Licensee to ensure that newly recorded sites are incorporated into planning, maintenance and assessment activities undertaken by the Licensee. Provisions for the resupply of Aboriginal Heritage Information are listed in Annexure C.
- 6.5.** If precise locations are required for Sites then it will be the responsibility of the Licensee to verify the location and extent of those Sites in the field at its own cost.
- 6.6.** Where the Licensee identifies new Aboriginal sites as part of its operations the Licensee must notify the Director-General of DEC as required under Section 91 of the *National Parks and Wildlife Act 1974*.

7. ABORIGINAL COMMUNITY ENDORSEMENT SOUGHT FOR THE RELEASE OF THIS ABORIGINAL HERITAGE INFORMATION

- 7.1.** The Licensor provides this information on the understanding that where required the Licensee has sought endorsement from the relevant Aboriginal community organisations for the Licensor to release this Aboriginal Heritage Information and the Licensee warrants that such endorsement has been sought.
- 7.2.** The Licensee acknowledges that the Licensor has provided advice to the Licensee as to the Aboriginal communities (and representative organisations) that should be approached by the Licensee and endorsement sought for the release of Aboriginal Heritage Information.

Details initialled by:

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→ _____ ←
Licensor contact person

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Licensee contact person

7.3. The Aboriginal community organisations to be contacted by the Licensee are listed in Annexure D.

7.4 The Licensee must provide written evidence to the Licensor that the Licensee has reasonably sought the endorsement of Aboriginal community organisations identified in Annexure D for the Licensor to release Aboriginal Heritage Information to the Licensee, before Aboriginal Heritage Information is provided by the Licensor to the Licensee.

8. DURATION AND RENEWAL OF THIS AGREEMENT

8.1. The Licence granted in this Licence Agreement will be for a period of 2 years and shall expire on **[Date]**. If the Licensee requires Aboriginal Heritage Information past this date a new Licence Agreement must be negotiated.

8.2 The Licensee will be responsible for advising the Licensor no later than 2 months before the expiry of this Licence Agreement that a new Licence Agreement will be sought.

8.3. Prior to the expiration of this Licence Agreement a new Licence Agreement may be negotiated at the discretion of the Licensor.

9. TERMINATION OF THIS AGREEMENT

9.1 The Licensor reserves the right to terminate this Licence Agreement at any time for any breaches of this Licence Agreement by giving 7 days notice in writing to the Licensee, but without prejudice to any action or remedy which the Licensor has for arrears of fees or breach of any covenant or damages or any other remedy as a result of any such event. The Licensee agrees that the Licensor is not liable for and releases the Licensor from liability or loss arising from, and costs, charges and expenses incurred in connection with, anything done by the Licensor under this clause.

9.2. Notwithstanding any thing in clause 9.1, the Licensor shall not terminate this Licence Agreement by notice unless the Licensee has failed to remedy the breach or default (if capable of remedy) within seven (7) days after written notice thereof has been given by the Licensor to the Licensee.

9.3. Upon the revocation, discontinuance or other termination of this Licence Agreement the Licensee shall not be entitled to any compensation whatsoever from the Licensor, the Department of Environment and Conservation, the Minister or the Crown in the right of New South Wales (“the released persons”) with respect to any loss, damage or other liability which the Licensee may at any time suffer or incur as a consequence of or in connection with any such revocation, discontinuance or other termination and the Licensee hereby releases the released persons from all claims and demands in that regard.

Details initialled by:

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→ _____ ←
Licensor contact person

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Licensee contact person

10. NOTICES

Any notice or other communication to be given under this Licence Agreement shall be sufficiently served on the Licensee if signed by the Licensor or the Licensor’s delegate for the time being and if forwarded by post or left addressed to the Licensee at the address set out in Annexure E or the principal office of the Licensee last known to the Licensor, and shall be sufficiently served on the Licensor if addressed to the Licensor and left at or sent by post addressed to the Licensor at the Licensor’s address specified in this Licence Agreement at Annexure E or such other address that the Licensor may notify to the Licensee from time to time, and a notice sent by post shall be deemed to be given at the time when it ought to be delivered in due course of post.

11. ASSIGNMENT

The Licensee must not assign, transfer, or other wise deal with or dispose of this Licence Agreement or any rights granted under it or by any act or deed procure any of the foregoing.

12. VARIATION OR WAIVER

None of the provisions of this Licence Agreement shall be taken either at law or in equity to have been varied waived discharged or released by the Licensor unless by his or her express consent in writing. No waiver by the Licensor of any breach of any condition contained or implied in this Licence Agreement shall operate as a waiver of another breach of the same or of any other condition in this Licence Agreement.

Details initialled by:

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→ _____ ←
Licensor contact person

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Licensee contact person

13. GOVERNING LAW

This Licence Agreement shall be governed by, and construed in accordance with the law of New South Wales and the parties submit to the jurisdiction of the Courts of New South Wales.

IN WITNESS THEREOF the parties have executed this Licence Agreement the day and year hereinbefore written.

Signed by: **Rebecca Simon**, → _____ ←
the authorised delegate of
Lisa Corbyn, the Director-General of the
NSW Department of Environment and Conservation

in the presence of → _____ ←

Signed by: Darrell Creighton → _____ ←
on behalf of

Ballina Shire Council

in the presence of → _____ ←

Details initialled by:

→ _____ ←
Licensor contact person

→ _____ ←
Licensee contact person

ANNEXURE A

Aboriginal Heritage Information to be provided

1. **Description of the extent of area for the release of Aboriginal heritage information:**

Ballina Shire Councils boundary

2. **Number of Aboriginal sites as part of this area:**

Unknown to date

Including nil restricted Aboriginal sites

Unknown to date

3. **Format in which information is to be provided:**

Overlapping Data

4. **Where format differs from standard format:**

Restriction of information on Aboriginal Sites and Places of significant identified

Details initialled by:

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Licensor contact person

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Licensee contact person

ANNEXURE B

Use of Aboriginal Heritage Information

1. **For what type of activities can this Aboriginal Heritage Information only be used (list): JAMES TO COMPLETE**

2. **What people (or groups of people) can access this information:** Ballina Shire Council Aboriginal Community Liaison Officer

3. **In what specific manner would this information be stored and protected:**
The information will be stored in a keeping place in Ballina Shire Council office

4. **How will this Aboriginal Heritage Information be erased upon completion of the current DLA.**

All information collected will be handed back to Jali LALC to decide what they will do with the information

5. **How will this Aboriginal Heritage Information be published, or otherwise reproduced in any map or visual format.**
Restriction will be put in place for Aboriginal Sites and Places this is very sensitive to the Jali LALC and the nominated contact person

Details initialled by: 13

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Licensee contact person

ANNEXURE C

Aboriginal Heritage Information updates and Schedule of Fees

This Aboriginal Heritage Information is provided for: **12Months**

Aboriginal Heritage Information resupplies are every: **6 months**

Aboriginal Heritage Information Service	Date to be provided	Fee	Number of sites	Date actually provided	Release confirmed by:
Aboriginal Heritage Information supply	After Signed copies of Licence received in Head Office	\$100.00	236		DG

Details initialled by:

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Licensee contact person

ANNEXURE C (continued)

General schedule of fees for AHIMS services

No	AHIMS service	AHIMS service fee	Service provided to client
1	AHIMS database search	\$50.00	Printed AHIMS report plus cover letter
2	AHIMS/GIS search	\$75.00	Cover letter & digital data
3	Express search surcharge	\$50.00	Service provided in 2 working days
4	Processing surcharge	\$60.00 per hour	Specialist services that cannot be processed under normal service conditions
5	Archive visit	\$0	Access to AHIMS archive
6	Archive visit AHIMS search	\$50.00	AHIMS report only
7	Archive visit photocopy	\$0.40 each	Photocopies
8	AHIMS staff photocopy	\$1.00 each (minimum charge \$20.00) or associated with previous search service	Photocopies faxed to client, normally after an AHIMS database search
9	Data Licence Agreement (Now called Aboriginal Heritage Information Licence Agreement)	\$50.00	Use of or access to data for up to two years
10	Resupply of Aboriginal Heritage Information from DLA (Licence Agreement)	\$25.00	Resupply of Aboriginal Heritage Information based on current DLA (includes the new search)

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ANNEXURE D

Aboriginal community endorsement for this Licence Agreement

The following Aboriginal community groups were identified by the DEC in relation to endorsement sought for the release of this information

Aboriginal community group	Endorsement sought		Endorsement given (Endorsement letter to be attached if yes)	
Jali Local Aboriginal Land Council	Support Letter		YES	

Details initialled by:

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Licensee contact person

ANNEXURE E

Nominated contact persons for this Licence Agreement

The nominated contact person for the Licensee (SCC)

Name: Darrell Creighton

Title: Aboriginal Community Liaison Officer

Phone: 0266861416

Fax: 0266869514

PO Address: Post Office Box 450 Ballina NSW 2478

The nominated contact person for the Licensor (DEC) and for any notices.

Name: Ashley Moran

Title: Aboriginal Heritage & Conservation Officer

Phone: 0266270205

Fax: 0266283937

PO Address: Post Office Box 856 75 Main Street Alstonville NSW 2477

Details initialled by:

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Licensor contact person

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Licensee contact person