

TWEED BYRON LOCAL ABORIGINAL LAND COUNCIL



P.O. Box 6967
Tweed Heads South NSW 2486
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Friday, 8th June 2012

David Keenan
General Manager
Tweed Shire Council
PO Box 816
MURWILLUMBAH NSW 2484

Dear David,

RE: Development Application DA 11/0356 for a Wakeboarding Coaching Clinic between Fingal and Chinderah along the Tweed River (Operating from Fingal Boat Ramp) at Lot 403 DP 755740 Main Road, Fingal Head.

I am writing regarding the above Development Application (DA) for the operation of a wakeboarding coaching clinic between Fingal Head and Chinderah along the Tweed River, NSW. The proposal requires the use of Fingal Head boat ramp for launching and car parking and the Tweed River upon which to undertake commercial wakeboarding activities.

There were 39 submissions and four (4) late submissions objecting to the proposal following exhibition for a two week period in August 2011. Tweed Byron Local Aboriginal Land Council (TBLALC) submitted an objection on a range of grounds including impact to cultural sites, cultural practice, environment and migratory birds. A subsequent two (2) letters were sent by TBLALC to Tweed Shire Council outlining concerns relating to disruption of cultural fishing practices and damage to eight (8) registered and two (2) unregistered cultural heritage sites (attached).

Tweed Shire Council (TSC) executives, Vince Connell (Director Planning and Regulation) and David Oxenham (Director Community and Natural Resources) met with TBLALC and members of the Aboriginal Advisory Committee in May 2012 where our concerns were again emphasised. TBLALC was assured that TSC would require the applicant to demonstrate how they will avoid negative impact to these Aboriginal cultural heritage sites and cultural fishing practices.

We understand that the DA has been called up for the June 26th Council meeting and that the applicant has not provided any additional information to demonstrate efforts to protect these sites and cultural practices from their proposed commercial wakeboarding activities.

While TBLALC has appreciated the comprehensive report prepared by TSC staff to reject this DA on planning, environmental and local amenity grounds, TBLALC is concerned that the Aboriginal cultural sites and practices must be considered and addressed by the applicant when considering this DA. Consequently, TBLALC has called on the Office of Environment and Heritage to provide clarification

and input into the decision making process to protect our cultural heritage sites and practices from this inappropriate development.

In addition, there has been an illegal wakeboarding ramp built in a SEPP 14 protected wetland on TBLALC land. Two professional wakeboarders and their sponsor Jetpilot Pty Ltd have admitted to building the ramp in the lagoon without permission or authority. They took video footage of themselves wakeboarding in this protected waterway and TBLALC is in possession of this footage.

The TBLALC Board of Directors and Members take this trespass and vandalism to this important fish breeding ground very seriously and have sought legal advice. TSC has indicated in an email last week that they have not taken steps to prosecute this illegal act as the wakeboarders have claimed to have moved overseas. These are professional wakeboarders who travel between the USA and Australia to compete in wakeboarding events including the annual national Tige Tour sponsored by the above mentioned DA applicant.

TBLALC has been advised that if TSC fails to prosecute in this matter, TBLALC can initiate Class 4 civil enforcement proceedings in the Land and Environment Court pursuant to s123 of the EPA Act. TBLALC believes that this prosecution would be brought in the public interest.

Could Council please confirm what action they intend to take in this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Leweena Williams', with a stylized flourish at the end.

Leweena Williams
CEO



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Doc 47705284

Monday, 19 March 2012

Mr Mike Raynor
General Manager
Tweed Shire Council
PO Box 816
Murwillumbah NSW 2484

Dear Mr Raynor,

Re: DA11/0356 - Wake boarding coaching clinic between Fingal and Chinderah along the Tweed River (operating from Fingal boat ramp) Lot 403 DP 755740, Main Road, Fingal Head - Pro-Wake Academy Pty Ltd

Subject: TSC Councillors legal obligations under recent amendments to the National Parks and Wildlife Act 1974 and the Threatened Species Conservation Act 1995 (TSC Act).

The Tweed Byron Local Aboriginal Land Council (TBLALC) met on Friday to discuss their concerns about the impact upon the environment and cultural sites should the previous decision of Council to disapprove the DA be rescinded. Arising from the meeting TBLALC would like to add further detail to its submission dated August 2011 on the above DA. These details further emphasis TBLALC's strongest objection to the above DA due to serious environmental and cultural concerns.

TBLALC has been advised that the activities outlined in the above described DA will threaten to harm and desecrate a possible eight (8) government registered Aboriginal cultural heritage sites as described on the Australian Heritage Information Management System (www.environment.nsw.com.au) and two (2) unregistered middens. In outlining details on the sensitivity of these AHIMS registered aboriginal cultural heritage sites along and close to the section of the Tweed River subject to this DA, TBLALC draws Councillors attention to recent amendments to the Aboriginal heritage provisions contained in the National Parks and Wildlife Act 1974 (NPW Act) introducing two new types of offences for harming Aboriginal places and objects.

The first offence is for harming or desecrating an Aboriginal object which a person knows is an Aboriginal object/place. This is the most serious offence, and has higher penalties. The second offence is that of harming an Aboriginal object/place, whether or not the person knows it is an Aboriginal object/place. This is a strict liability offence, and is committed even if the harm was unintentional. The common law defence of honest and reasonable mistake of fact applies to strict liability offences.

Similarly, new sections in the National Parks and Wildlife Act 1974 and the Threatened Species Conservation Act 1995 (TSC Act) allow prosecution of a person who aids, abets, attempts and/or conspires to commit an offence against the NPW Act or TSC Act.

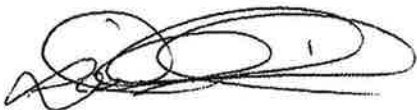
Section 176A of the NPW Act and s.147 of the TSC Act have been amended to clarify that proceedings may be brought in the Land and Environment Court for an order to remedy or restrain a breach or a threatened or apprehended breach of the Act or related Regulations. Previously the legislation only allowed proceedings to be taken to restrain actual breaches of the Acts.

TBLALC asks that TSC Councillors seek advice on their obligations under these two new legislative amendments, regarding damage to known registered Aboriginal cultural heritage sites and the protection and conservation of native animals and plants, including species protected under the Threatened Species Conservation Act 1995 and international migratory bird treaties.

Attached are the penalties under The Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW (the Code) for your reference.

TBLALC acknowledges and welcomes Council's recent commitment to developing a Shire wide Aboriginal Cultural Heritage Management Plan (ACHMP). We look forward to further developing our working relationship such that Aboriginal sites and places within Tweed Shire will be appropriately recorded and Council will have a more effective capacity to assist with ongoing conservation and management. Together, we can ensure that inadvertent breaches of the Act are avoided.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Leweena Williams', written over a horizontal line.

Leweena Williams
CEO

Attachment A



National Parks and Wildlife Act 1974 Fact sheet 3

Better law enforcement for the protection of Aboriginal heritage, national parks and threatened species in New South Wales

Recent amendments to the *National Parks and Wildlife Act 1974* (NPW Act) have brought its compliance and enforcement provisions more into line with those in other NSW environmental protection and heritage legislation, and with those in some other states.

Offences and penalties for harming or desecrating Aboriginal objects and declared Aboriginal Places

The new and existing Aboriginal cultural heritage offences and the penalty for each offence are summarised below.

Offence	Maximum penalty: Individual	Maximum penalty: Corporation
A person must not harm or desecrate an Aboriginal object that the person knows is an Aboriginal object.	2,500 penalty units (\$275,000) or imprisonment for 1 year 5,000 penalty units (\$550,000) or imprisonment for 2 years or both (in circumstances of aggravation)	10,000 penalty units (\$1,100,000)
A person must not harm or desecrate an Aboriginal object (strict liability offence).	500 penalty units (\$55,000) 1,000 penalty units (\$110,000) (in circumstances of aggravation)	2,000 penalty units (\$220,000)
A person must not harm or desecrate an Aboriginal Place (strict liability offence).	5,000 penalty units (\$550,000) or imprisonment for 2 years or both	10,000 penalty units (\$1,100,000)
Failure to notify DECCW of the location of an Aboriginal object (existing offence and penalty)	100 penalty units (\$11,000). For continuing offences a further maximum penalty of 10 penalty units (\$1,100) applies for each day the offence continues.	200 penalty units (\$22,000). For continuing offences a further maximum penalty of 20 penalty units (\$2,200) applies for each day the offence continues
Contravention of any condition of an Aboriginal Heritage Impact Permit	1,000 penalty units (\$110,000) or imprisonment for 6 months, or both, and in the case of a continuing offence a further penalty of 100 penalty units (\$11,000) for each day the offence continues	2,000 penalty units (\$220,000) and in the case of a continuing offence a further penalty of 200 penalty units (\$22,000) for each day the offence continues



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Thursday, 29 March 2012

Mr Mike Raynor
The General Manager
Tweed Shire Council
PO Box 816
Murwillumbah NSW 2484

Attention: Mr Vince Connell (Director Planning and Regulation)
Mr David Oxenham (Director Community and Natural Resources)

Dear Mr Raynor,

Re: DA11/0356 - Wake boarding coaching clinic between Fingal and Chinderah along the Tweed River (operating from Fingal boat ramp) Lot 403 DP 755740, Main Road, Fingal Head - Pro-Wake Academy Pty Ltd

Subject: Conservation of Aboriginal Heritage in NSW - Indigenous cultural fishing in the Tweed region.

Further to our meeting of 26/03/12, the Tweed Byron Local Aboriginal Land Council (TBLALC) continues to express its strongest objection to the above mentioned DA for commercial wakeboarding on the Tweed River due to serious cultural and environmental concerns.

In addition to the concerns outlined in our letter dated 19 March 2012, regarding the harm and desecration of a possible eight (8) Government registered Aboriginal cultural heritage sites as described on the Australian Heritage Information Management System (www.environment.nsw.com.au) and four (4) unregistered middens. TBLALC also wish to bring to the attention of Tweed Shire Council its concerns relating to cultural fishing and gathering of resource material in the Tweed region and concern for possible cultural heritage sites along the entire Tweed River, if a commercial wakeboarding license is granted.

The *NSW Fisheries Management Act 1994 (FM Act)* now formally recognises the "spiritual, social and customary significance to Aboriginal persons of fisheries resources" and one of its objectives is to 'protect, and promote the continuation of Aboriginal cultural fishing'. The *FM Act* defines Aboriginal cultural fishing as '*fishing activities and practices carried out by Aboriginal persons for the purpose of satisfying their personal, domestic or communal needs, or for the educational, ceremonial or other traditional purposes, and which do not have a commercial purpose*' (Office of Environment and Heritage, October 2011)

As part of the NSW Indigenous Fishing Strategy, TBLALC, the Tweed Shire Aboriginal Advisory Committee and other community members have been active participants in the Southern Cross University study into cultural fishing and gathering practices in the Tweed region. This work will inform the NSW Indigenous Fishing Strategy which is the tool to recognise cultural fishing and gathering of resource material under the amended *FM Act*. The study "*Indigenous Cultural Fishing in the Tweed Region, Southern Cross University, October 2010* clearly demonstrates that fishing remains an important cultural activity for the Aboriginal people of the Tweed region.

The proposal for commercial wakeboarding in the area where cultural fishing takes place will have a serious negative effect on the ability of Aboriginal people to continue with these well documented cultural fishing practices. TBLALC considers that this may be an infringement of the *FM Act* and will impede the intent of the 2009 Amendment to "*protect, and promote the continuation of Aboriginal cultural fishing*" (*Fisheries Management Act 1994*) and will be referred to the Aboriginal Fisheries Advisory Council (*Fisheries Management (General) Regulation 2010*) for advice and action.

In addition, local Indigenous kayak business *Balunjali* assists young local Aboriginal youth to experience local cultural fishing practices on the Tweed River. This takes place along the expanse of the Tweed River including, Letitia spit channel and across the river to Minjungbal Museum and the AHIMS registered Bora ring. Use of this area by a commercial wakeboarding business, including noise, wake and interference will severely compromise the integrity of this practice and our efforts to involve our young people in traditional cultural fishing practices. This business is supported by the Police who refer youth at risk to this program. The proposed wakeboard activity also poses a significant safety risk to the Balunjali participants and threatens to jeopardise Cultural teaching and learning.

Ukerebagh Island is a declared Aboriginal Place and was recognised as such by the NSW Government. In 1975, Federal Minister, the late Senator Neville Bonner crossed the senate floor to plead his case for protection of the Aboriginal Reserve where he and many others were born. Tweed Shire Council could demonstrate their commitment to preserving this asset by not allowing a license for any activities that will cause further damage to the already severely eroded eastern bank of Ukerebagh Island.

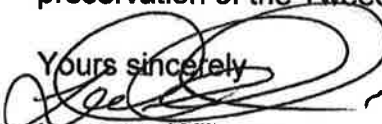
Tweed Byron LALC believes the precautionary principle should be activated through the *EPBC Act 1999* and Clause 92(a) Government Coastal Policy Intergovernmental Agreement on the Environment (*IGAE 1992*) as locational considerations are critical to this DA and damage to cultural sites and negative environmental impacts are potentially highly significant.

Can you please outline the process of this DA and provide clarity on the following questions:

- Will you be making a recommendation to the April Council meeting?
- Will you be forwarding TBLALC your recommendation prior to it going to Council?
- Will any variation to the current DA trigger the need for a new DA to be considered?

TBLALC acknowledges the support of TSC in developing strategies to improve the recognition of Aboriginal cultural heritage in program planning and policy development for the Shire. This DA however foreshadows the urgent need for these policies and programs to be in place. Tweed Byron LALC reject these proposed licensed activities and seek to ensure the preservation of the Tweed River and its surrounds for generations to come.

Yours sincerely


Leweena Williams
(CEO)

To whom it may concern,

Our team is writing to support the Tweed Byron Local Aboriginal Land Council and Aboriginal Cultural Fishers that consider the Tweed River their traditional hunting grounds. We agree that the approval of the Development Application 11/0356 – Wake boarding coaching clinic between Fingal and Chinderah along the Tweed River, will not only impact traditional practice in the area, but also the ecosystems that support the resources the community depend on.

This DA will impact the community's access to its traditional foods and also sacred sites. Our team would also like to raise the concerns of the Minjungbal community's Aboriginal commercial fishing family, who depend on the Tweed River for their income and also to provide a source of protein free of charge to their community. Approval of this DA will make it impossible for commercial fishers to generate an income. This not only affects one family but also the wider community who rely on these fishers.

We recently completed a research project in the Tweed region titled:

"Aboriginal fisheries in New South Wales: determining catch, cultural significance of species and traditional fishing knowledge needs"

Key findings estimate over 85% of the community still harvest aquatic resources and over 90% of fishing events occurred on traditional waters, with over 60% of fishing occurring in estuarine environments. The harvest of resources on country aids not only in cultural continuity but also economic, health and social aspirations of the Tweed community.

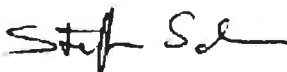
Our team is would like to formally oppose this DA on cultural and environmental grounds. After further research it is apparent that this sort of activity contradicts current legislation in the *Fisheries Management Act 1994*, which now distinctively recognizes the rights of Aboriginal people to access fisheries resources and the *National Parks and Wildlife Act 1974* in regards to Cultural Heritage. In regards to habitat this DA needs further Environmental Impact Assessments to determine its impacts on protected ecosystems and species in the Tweed area.

Please don't hesitate to call 0409023197 for further information.

Sincerely



Hayley Egan



Assoc. Prof Stephan Schnierer