

From: Dimitri Young
Sent: Monday, 27 March 2023 10:38 PM
To: Brendon Roberts
Cc: Tim Coorey; Bill Larkin
Subject: BCD Further Response - RE: BCD Response - Saltwater South West Rocks PP

Hi Brendon

Thank you for your e-mail below requesting further clarification from the Biodiversity and Conservation Division (BCD) on our previous advice on the recent ecological studies associated with the planning proposal for Saltwater South West Rocks, in relation to conditions 1 and 2 from the Northern Regional Planning Panel (NRPP). I appreciate the opportunity to provide further input.

In regards to the two questions in your e-mail below we provide the following advice.

1. We can confirm the information provided in the Songbird Ecology study and review (December 2021) indicates that a review and validation of the Koala Habitat Assessment undertaken by Naturecall in 2017 has been adequately carried out by Songbird ecology and the results of the review and on-site validation suggest the Naturecall Koala Habitat Assessment (2017) is correct and still remains applicable.
2. Section 5 of the Songbird Ecology study and review (December 2021) contains the following recommendations 2 to 5:

Koala Feed Trees

2. KFTSs will need to be surveyed by a registered surveyor relevant to roads and lot boundaries
3. That as many of the 23 KFTs be retained as far as possible. be offset at a ratio of 1:10 with trees and shrubs to be planted to the south of the deferred area. Details regarding the method should be captured in a VMP.

Alternatively, in accordance with the habitat compensation more than twice the area of land affected should be secured in the deferred area secured under a VMP.

Recommendation 3 above has included tree replacement ratios (1:10) be planted and maintained in the C2 zone of the deferred area. The basis for this recommendation (see section 3.8 of Songbird Ecology report) was the requirements of the Coffs Harbour Development Control Plan (2015) (DCP), as the Kempsey Shire Council does not have a DCP for tree replacement of Koala Food trees.

We note that Kempsey Shire Council has an approved Comprehensive Koala Plan of Management for the Eastern Portion of the Kempsey LGA (CKPoM) and Part 7 section 7.4 of the Kempsey Local Environment Plan 2013 requires the application of the provisions of the CKPoM to all land identified on the Koala Management Plan Map (which includes the subject land). Hence Songbird Ecology recommendations 3 and 5 are incorrect

as Section 4.12 (Habitat Compensation Measures) of the CKPoM are applicable to the rezoning proposal and not tree replacement ratios.

Section 4.12 of the CKPoM includes (but is not limited to) the following provisions:

- a. Loss of koala habitat must be compensated via the securement of a corresponding measure of land that equates to no less than two times the total area to be affected by vegetation removal. Habitat Compensation should be undertaken on the same site as clearing where possible;
- b. The Habitat Compensation Measures must take the form of a valid legally binding agreement between the proponent of the development and any person being the lawful owner of land that is (preferably) within a KMA, or otherwise on land to which the plan applies, to the satisfaction of Council. Consideration will be given to habitat compensation measures taking place outside the CKPoM boundary, but within the Kempsey Shire LGA, on a case by case basis, if the proponent can sufficiently demonstrate securement of appropriate habitat quality and area as per c) below, as well as evidence of a koala population on or near the habitat compensation site;
- c. For purposes of a) and b) above, the area to be secured as compensation must comprise no more than half existing preferred koala habitat, the remaining area comprising cleared or partially cleared land for revegetation purposes;

Recommendation 3 (Songbird Ecology) suggests the habitat compensation areas be located in the C2 area to the south of the subject land. The majority of the C2 land to the south at of a lower elevation, has a different plant species composition and Plant Community Type (PCT) and is not existing koala habitat. In addition, it may not be appropriate for revegetation as koala habitat. Hence condition 2 from the Northern Regional Planning Panel *‘Assuming the amended proposal does not include retention of existing Koala feed trees on the site, a study is to be undertaken by a suitably qualified ecologist to determine the compensation measures necessary to address the tree loss. The measures are to include the **location of the land on which compensation measures would be implemented** and the legal mechanism by which the measures would be secured’*, has not been addressed in the Songbird Ecology report (specifically the text in bold underline).

Further information is required which demonstrates the suitability of the Koala Habitat Compensation area to satisfy the requirements of section 4.12 of the CKPoM. Questions also remain on the ownership and management responsibilities of the C2 land to the south to achieve successful rehabilitation and management of the secured koala compensatory habitat.

In summary, Songbird Ecology has validated the information contained in the Koala Habitat Assessment carried out by Naturecall in 2017. However, it has recommended incorrect koala habitat compensation measures (tree replacement ratios) that do not accord with the Kempsey CKPoM and has not adequately demonstrated whether the C2 land to the south has the necessary ecological attributes for the required koala habitat compensation area. Further information is also required to determine the suitability of the C2 zoned area to the south in regards to ownership of this land and management responsibilities.

We are happy to discuss further if required and would be pleased to review any further information in relation to biodiversity assessments for the planning proposal when it is available.

Cheers

D

Dimitri Young

Senior Team Leader Planning, North East Branch
Biodiversity and Conservation Division

Department of Planning and Environment

T (02) 6659 8272 E dimitri.young@environment.nsw.gov.au

dpie.nsw.gov.au

Locked Bag 914
(Level 8, 24 Moonee St)
Coffs Harbour NSW 2450

Working days Monday to Friday, 09:00am - 05:00pm



I acknowledge the traditional custodians of the land and pay respects to Elders past and present. I also acknowledge all the Aboriginal and Torres Strait Islander staff working with NSW Government at this time.

Please consider the environment before printing this email.

From: Brendon Roberts <brendon.roberts@planning.nsw.gov.au>
Sent: Friday, 10 March 2023 2:31 PM
To: Dimitri Young <Dimitri.Young@environment.nsw.gov.au>; Tim Coorey <tim.coorey@dpie.nsw.gov.au>
Cc: Bill Larkin <Bill.Larkin@environment.nsw.gov.au>
Subject: RE: BCD Response - Saltwater South West Rocks PP

Hi Dimitri

Many thanks again for this.

Before we go back to the proponent, I just wanted to note a few things in response to your advice:

- 1) The Panel decision is dated October 2021, so we need to clear that the Songbird Ecology study and review (December 2021) is independent from the Biodiversity Australia report (January 2021). In terms of the condition, I don't think it matters much that Biodiversity Australia and Naturecall are the same company, as both reports / assessments were carried out before the condition. However, I think it's important that Songbird Ecology adequately reviews and verifies the Koala Habitat Assessment carried out by Naturecall in 2017. Page 21 says: "*Songbird Ecology validated these on-ground surveys and confirmed the presence of 22 swamp mahogany (E. robusta) and one tallowwood (E. microcorys) mapped by Naturecall in 2017.*"
- 2) Recommendation 3 of the Songbird Ecology report (December 2021) notes that:

3. That as many of the 23 KFTs be retained as far as possible. Where this is not feasible they be offset at a ratio of 1:10 with trees and shrubs to be planted and maintained in the E2 zone to the south of the deferred area. Details regarding the methods and techniques for planting should be captured in a VMP.

Alternatively, in accordance with the habitat compensation measures, koala habitat no less than twice the area of land affected should be secured in the E2 – zoned area and plantings secured under a VMP.

While the E2 zoned area to the south of the site has been identified as a location for Koala offsets, I do question whether this location is a viable option (such as who owns the land and what's the legal mechanism to secure the offsets if the applicant does not own the land, noting the proponent speaks about a covenant on title or VMP).

Please let me know if you have any further thoughts on this – I'm happy to jump into a meeting to discuss it further?

Thanks again

Brendon

Brendon Roberts

Agile Planning
Delivery, Coordination, Digital and Insights | Planning Group
Department of Planning and Environment

T 02 9274 6422 E brendon.roberts@planning.nsw.gov.au
dpie.nsw.gov.au
4 Parramatta Square
12 Darcy Street
Parramatta NSW 2150



I acknowledge the traditional custodians of the land and pay respects to Elders past and present. I also acknowledge all the Aboriginal and Torres Strait Islander staff working with NSW Government at this time.

From: Dimitri Young <Dimitri.Young@environment.nsw.gov.au>

Sent: Wednesday, 8 March 2023 5:34 PM

To: Tim Coorey <tim.coorey@dpie.nsw.gov.au>; Brendon Roberts <brendon.roberts@planning.nsw.gov.au>

Cc: Bill Larkin <Bill.Larkin@environment.nsw.gov.au>

Subject: BCD Response - Saltwater South West Rocks PP

Hi Timothy and Brendon

Thank you for your e-mail below requesting the Biodiversity and Conservation Division to review the recent ecological studies associated with the planning proposal for Saltwater South West Rocks in relation to conditions 1 and 2 from the Northern Regional Planning Panel (NRPP). I appreciate the opportunity to provide input.

We have reviewed the two ecological assessments provided, *Preliminary Ecological Assessment for RU2 Rezoning Planning Proposal – Wainbar Avenue, South West Rocks* (Biodiversity Australia, January 2021) and *Ecological Study and Review ‘Seabreeze’ South West Rocks*, (Songbird Ecology, December 2021), and raise the following issues:

1. **Suitability of the ecologists undertaking review of previous studies** - Condition 1 from the NRPP states that; *‘An ecological study is to be undertaken by suitably qualified specialists who have not been involved in earlier ecological studies of the site. The study is to involve appropriate on-site surveys and is to review the findings of earlier ecological studies of the site.’* Both reports include a review of previous ecological studies conducted at the subject site including a Koala Habitat Assessment by Naturecall (2017) which included a compliance assessment in accordance with the Kempsey Comprehensive Koala Plan of Management.

We note the company Naturecall changed its name to Biodiversity Australia in recent years. See the following link <https://biodiversityaust.com.au/naturecall-environmental-is-proud-to-unveil-our-fresh-new-brand/>. Hence, Biodiversity Australia is reviewing and providing comment on its own company’s work (Naturecall). In order to satisfy condition 1 from the NRPP, this may not be appropriate.

2. **Koala habitat compensation measures** - Condition 2 from the NRPP states that; *‘Assuming the amended proposal does not include retention of existing Koala feed trees on the site, a study is to be undertaken by a suitably qualified ecologist to determine the compensation measures necessary to address the tree loss. The measures are to include the location of the land on which compensation measures would be implemented and the legal mechanism by which the measures would be secured’*. We note that both ecological reports have identified that koala habitat will be removed and the compensation measures in accordance with the Kempsey Comprehensive Koala Plan of Management will be required. However neither report has indicated the location of the land on which the compensation measures would be implemented.
3. **Protection of High Environmental Value (HEV) Land** – The ecological assessments have failed to identify or acknowledge HEV land within the planning area. To accord with the North Coast Regional Plan (NCRP) 2041, at the planning proposal stage areas of HEV must be identified and land use intensification is to be focused away from HEV land and suitable mechanisms put in place to avoid and protect areas of HEV. The BCD North East Branch has developed guidance material (attached) which assists with the steps of biodiversity assessment for a planning proposal to identify and protect HEV land and demonstrate consistency with the NCRP. The following dot points contain the information from both ecological assessments and current mapping which identify extensive areas of HEV land within the planning area.
 - **NCRP HEV Criterion 1 - Sensitive biodiversity mapped on the Biodiversity Values Map** – Figure 1 below from the Biodiversity Values Map (BV Map) indicates a large part of the planning area contains is mapped by the BV Map (purple) and is therefore HEV land.

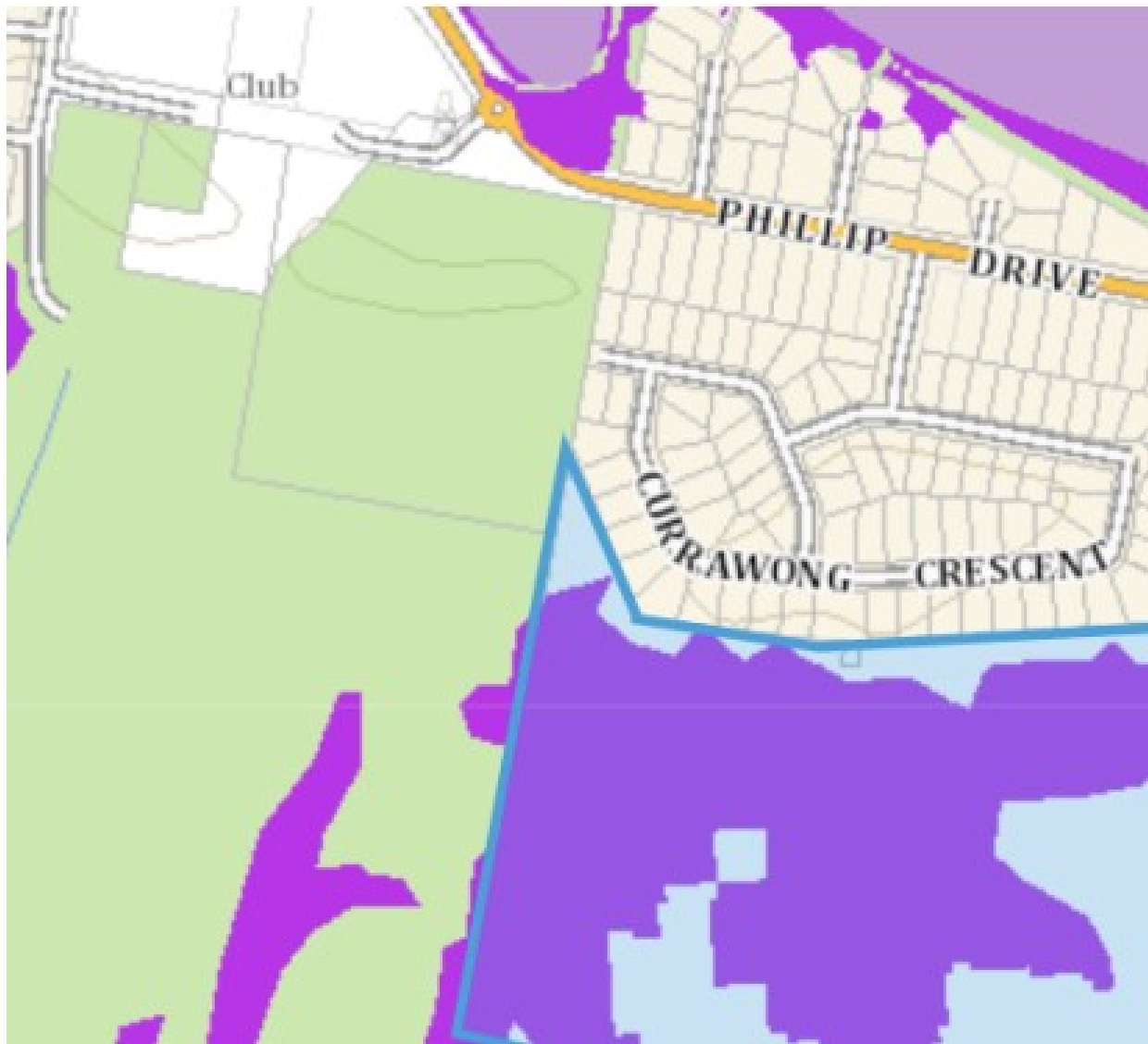


Figure 1. Biodiversity Values Map

- NCRP HEV Criterion 3 – Key habitat of threatened species** – Figure 2 below indicates that previous wallum froglet studies include the majority of the planning area as predicted wallum froglet habitat. Figure 3 below shows the majority of the planning area to be mapped on the Swift Parrot Important Habitat Map. Noting the swift parrot is a listed Serious and Irreversible Impact species. Figures 3 and 4 below indicate potential koala habitat and a koala record within a residential lot on the edge of the site. All of these areas comprise key threatened species habitat which is HEV land.

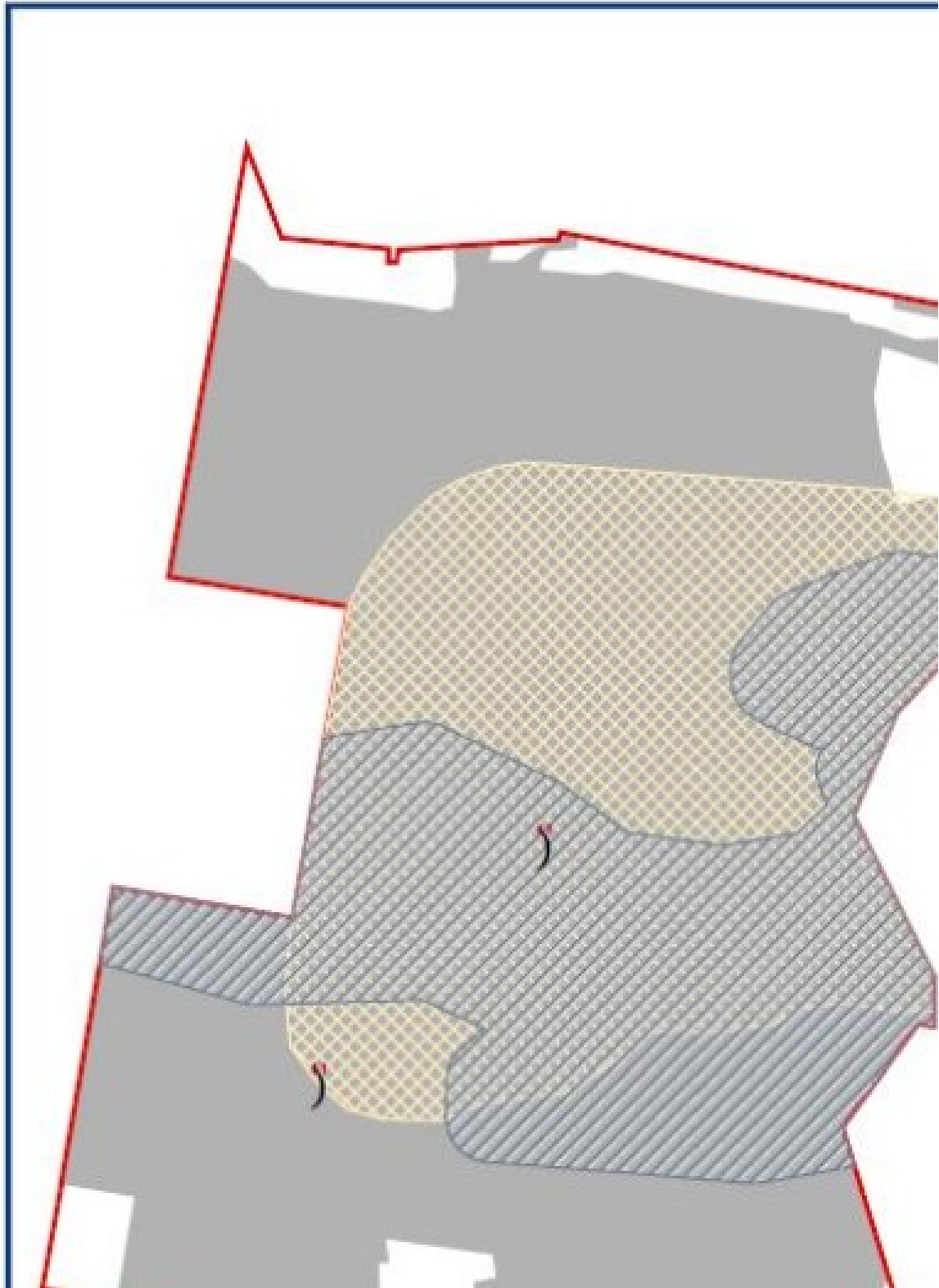


Figure 2 – Predicted Wallum froglet habitat



Figure 3. Swift Parrot Important Habitat Map





Figures 4 and 5 Potential Koala habitat and koala record on the edge of the site

- **NCRP HEV Criterion 2 – Native vegetation of high conservation value including Threatened Ecological Communities** – From the information provided we note that two of the vegetation communities present in the planning area (Plant Community Type (PCT) 1230 and 1717) are representative of the Endangered Ecological Community '*Swamp Sclerophyll Forest on Coastal Floodplain*', hence these areas are HEV land. We note that PCT mapping was not provided with either report.

In summary it appears that some components of the NRPP conditions 1 and 2 have not been addressed. In addition, the planning proposal has not demonstrated consistency with Objective 3 of the North Coast Regional Plan 2041. Information from previous studies and current mapping indicate significant areas of HEV land are present in the planning area. At the planning proposal stage areas of HEV land must be identified and land use intensification is to be focused away from HEV land with suitable mechanisms, such as C zones, applied to protect areas of HEV land.

The proponent should use the (attached) BCD North East Branch guidance document to guide the biodiversity assessment for the planning proposal to identify and protect HEV land and demonstrate consistency with the NCRP.

We would be pleased to review any further Biodiversity and HEV assessment information in relation to the planning proposal when it is completed.

Cheers
D

Dimitri Young

Senior Team Leader Planning, North East Branch
Biodiversity and Conservation Division
Department of Planning and Environment

T (02) 6659 8272 E dimitri.young@environment.nsw.gov.au

dpie.nsw.gov.au

Locked Bag 914
(Level 8, 24 Moonee St)
Coffs Harbour NSW 2450

Working days Monday to Friday, 09:00am - 05:00pm



I acknowledge the traditional custodians of the land and pay respects to Elders past and present. I also acknowledge all the Aboriginal and Torres Strait Islander staff working with NSW Government at this time.

Please consider the environment before printing this email.

From: Tim Coorey <tim.coorey@dpie.nsw.gov.au>
Sent: Monday, 27 February 2023 10:09 AM
To: Dimitri Young <Dimitri.Young@environment.nsw.gov.au>
Cc: Brendon Roberts <brendon.roberts@planning.nsw.gov.au>
Subject: Saltwater South West Rocks PP

Hi Dimitri,

I hope you had a good weekend.

Thank you for our chat last week about, we were hoping to take you up on your offer for someone to have a look over the ecological studies attached. I have also attached a document that contains some context and the conditions provided by the planning panel that need to be addressed. If you could provide a response to the conditions relevant to the biodiversity reports (conditions 1 and 2), that would be great.

Kind Regards,

Timothy Coorey
Planning Officer

Agile Planning | Department of Planning and Environment

E tim.coorey@dpie.nsw.gov.au

Level 31, 12 Darcy Street, Parramatta NSW Postcode

www.dpie.nsw.gov.au



The Department of Planning and Environment acknowledges that it stands on Aboriginal land.

We acknowledge the traditional custodians of the land and we show our respect for elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.