

NEW SOUTH WALES ABORIGINAL LAND COUNCIL SUBMISSION TO THE PARLIAMENT OF NEW SOUTH WALES COMMITTEE ON CHILDREN AND YOUNG PEOPLE

INQUIRY INTO, YOUNG PEOPLE AND THE BUILT ENVIRONMENT

Introduction

The New South Wales Aboriginal Land Council (NSWALC) is pleased to have received an invitation from the Commissioner for Children and Young People to make a submission to the Inquiry into Children, Young People and the Built Environment **(the Inquiry)**.

By way of introduction, the NSWALC is the peak representative body in Aboriginal affairs, in NSW. It represents 121 Local Aboriginal Land Councils throughout the State and aims to protect the interests and further the aspirations of the members of these organisations and the broader Aboriginal community. In short the NSWALC is committed to ensuring a better future for Aboriginal people.

In this submission NSWALC bases its comments on the three Issues Papers enclosed with the Commissioner's invitation.

The Built Environment

NSWALC accepts the proposition that poor planning and design of the built environment can have negative consequences for the target group, the population of children and young people. Whilst there is no question that there is a relationship between people and their environment, it seems difficult at this stage to describe that relationship and accurately predict outcomes for the target group from its interaction with the built environment.

NSWALC considers that the issue at present is one where good judgement rather than science prevails. NSWALC assumes that it will be sufficient at this stage for the Inquiry to solicit the views and preferences of a broad base of interested parties as the basis for developing future policy on the built environment.

It is noted from Issues Paper 1 that there are concerns about the built environment and its effect on children and young people in producing, promoting or otherwise influencing:

- anti social behaviour and crime,
- exposure to predation,
- exposure to the authorities and the justice system
- poor lifestyle and obesity and ultimately
- adverse health and social outcomes for some individuals.

In relation to these issues NSWALC would like to steer the Inquiry's attention towards contemporary reports about the over representation of Aboriginal people in just about every category of disadvantage that is currently being reported. NSWALC recommends that the Inquiry note the national report of the Productivity Commission's work on Indigenous Disadvantage and similar commentary in NSW on adverse health and social outcomes reported by the Department of Aboriginal Affairs.

If the relationship of children and young people with the built environment is generally conceived to be a negative one, then it follows that a considerable burden of that adversity is going to be placed upon Aboriginal children and young people. The description of the target population in Issues Paper 1 however tends to exclude consideration of Aboriginal children and young people by subsuming them within the statistics and commentary describing the broader 0-18 years population.

The word "inclusive" is used throughout the reading material supplied to signify the Inquiry's scope and intentions. Unfortunately neither the data nor commentary on the target group makes any reference to Aboriginal children and young people. NSWALC supports the inclusion principle but cautions that unless the Inquiry creates a particular focus on the interaction of Aboriginal children and young people with the built environment it will fail to be inclusive.

The demographic "backdrop" presented in Issues Paper 1 needs to be repainted somewhat if the Inquiry is to have the capacity to elicit the perspectives of Aboriginal children and young people towards the built environment. The broad demographic trends reported in Issues Paper 1 are not necessarily applicable to the Aboriginal population and this is also the case with the key trends reported for children and young people.

NSWALC suggests that in keeping with NSW's whole of government approach to improving outcomes for Aboriginal people that there is a case for the Inquiry to develop a focus on Aboriginal children and young people and their relationship to the built environment. Numerically this group is not large but it should not be ignored by including it in the mainstream target group

NSWALC considers it would be better to develop and promote within the Inquiry an understanding of the social position and life experiences of Aboriginal children and young people. There is benefit in considering how Aboriginal needs, lifestyle and experience are likely to be influenced by the built environment and how an Aboriginal child and youth perspective could be useful in improving it.

NSWALC is concerned that the reporting of key trends for the target group in Issues Paper 1 tends to hide the presence of Aboriginal children and young people and does not accurately reflect their circumstances. There is a “flip side” to the key trends reported and the following comments are made in relation to each of the key trends presented in Issues Paper 1:

1. Increasing dependence on families with more young people residing with their parents for longer periods

A different dynamic operates for Aboriginal families as there is a cultural tradition of accommodating members of the extended family and community leading to overcrowding in housing not designed for the purpose. Recognition of this sense of family and community obligation needs to be incorporated into the planning and building of accommodation for Aboriginal families and the provision of community and recreational spaces for Aboriginal children and young people in the future.

NSWALC wishes to comment upon homelessness and the relationship of the homeless to the built environment. The ‘No Home, No Justice’ report undertaken by the Law Foundation noted that in 2001 nearly 11, 500 people less than the age of 25 were homeless people in NSW. Nine per cent of the homeless group were children less than 12 years of age who were homeless with at least one adult and another 35% were people aged between 12 and 24 years of age.

The report also noted that high unemployment rates over the past few decades, coupled with decreasing affordability of housing, has placed many families at greater risk of homelessness. This impacts upon Aboriginal families in NSW with the rate of homelessness among Aboriginal people at 110 per 10 000 compared to 40 per 10 000 for the non- Aboriginal population.

The Salvation Army has undertaken research into youth homelessness and its Profile of Youth Homelessness Fact Sheet, indicates a doubling of youth homelessness in Australia since 1991. It is estimated that approximately 100,000 young people (12-24) experience homelessness every year in Australia.

Of that number, around 35% are homeless for less than 2 weeks, 45% for some months and 20% are *chronically* homeless for over a year).. Around 18% literally live on the streets, sleeping in parks, doorways, cars, clothing bins and under bridges, or squatting in derelict buildings. It is estimated that 90% of young people who become homeless have their first experience of homelessness when they are still at school and aged 15 or younger.

NSWALC provides this information to suggest to the Inquiry that whilst there may be a trend for some young people to continue to live with their parents there is also an accompanying and serious issue of youth homelessness. Given the relative incidence rates cited above homelessness is a state that seriously impacts upon Aboriginal children and young people.

It is important that the Inquiry acknowledges that the homeless take their refuge both within and on the fringes of the built environment with exposure to a number of attendant risks and consequences.

2. Increasing school retention rates and tertiary participation

In 2005, the Ministerial Council on Education, Employment, Training and Youth Affairs found that the majority of Indigenous young people dropped out of school. Indigenous children moving from primary school to secondary schools often faced difficulties in continuing their studies, due to a number having to leave their communities to undertake secondary schooling.

Despite this there is a high retention rate of Indigenous children up to Year 9, with the national retention rate for Indigenous students being 97.2 per cent compared to 99.9 per cent for non-Indigenous students. This positive comparison is partially explained by the fact that schooling is compulsory until Year 9.

For most Indigenous students, education ends in year 9 and 10. Many of the Indigenous students who elect to leave at this point have poor literacy and numeracy skills. This means they will have more limited options for the future and Aboriginal people have stressed this all too often contributes to boredom, despair, substance abuse, and criminal activity and the risk of long term disadvantage.

In 2002, 42.0 per cent of Indigenous people aged 18-24 years were not employed and not studying, compared with 12.6 per cent of non-Indigenous people of the same age.

3. Increased dual income families, with greater participation of females in the labour market

Issues paper 1 reports that The Year Book identifies an increase in dual income families, with greater participation of females in the labour market. This trend is not broadly applicable to Indigenous families with the Productivity Commission noting in its report ("Overcoming Indigenous Disadvantage") that poor labour market outcomes are major factors in the higher poverty levels of Indigenous people. It has also been noted that there are a range of social costs associated with Indigenous unemployment. These include high rates of arrest and low levels of civic engagement.

The age standardised labour force participation rate for Indigenous people fell from 30 per cent to 20 per cent and in 2002, both household and individual incomes were lower on average for Indigenous than for non indigenous people.

4. Increased car ownership and vehicular traffic in many urban locations,

Whilst NSWALC is not aware of any measurement or statistical evidence on car ownership within Indigenous communities; it is likely that given the overall low income status of Indigenous people there has not necessarily been an increase in car ownership.

Aboriginal Children and Young People's Interaction with the Built Environment

It is noted that the built environment covers a broad array of structures, developments and spaces, which have significant consequences for the quality of life, civic relationships, play, exploration, safety and security. Whilst the built environment can serve to exclude and exacerbate inequalities, it can enliven, stimulate and create new possibilities for socialising and interaction.

NSWALC is of the view that the planning, design and management of the built environment tends towards the exclusion of Aboriginal children and young people, exacerbating rather than reducing social inequalities.

In many cities and towns throughout NSW, young Aboriginal people have found that the built environment serves to exclude them and increase their sense of inequality and alienation. Aboriginal children and young people have found that in many situations they are denied access to public spaces in streets and shopping malls. Research tends to demonstrate that Indigenous people face disproportionate impacts of 'public order' laws which allow police to 'move on' people if there is a suggestion that they are obstructing others, causing fear in others or may be in danger. If police or security officers in using their powers are seen to be provocative, young people run risks of charges of offensive language and/or offensive conduct.

There has been a trend of State and local governments resurrecting old policies that segregate and exclude Aboriginal people from public places. These laws and policies in theory apply to everyone, but in practice target Aboriginal people.¹

The local government sector is reported to have demanded more punitive approaches to young people, including attempts to impose youth curfews

¹ Human Rights and Equal Opportunity Commission, Annual Report 2002-2003, Chapter 7: Race Discrimination, cited on website: http://www.hreoc.gov.au/annrep02_03/chap7.html (23/01/06).

(Simpson & Simpson 1993). In addition, it is reported that local government has played a role in the direct regulation of public space through use of by-laws. In several States of Australia, local government has the power to introduce alcohol-free zones and to regulate the use of public places and shopping centres for activities like skateboarding. These regulations bring local government officers or private security guards into a direct policing role in relation to young people.²

Over the last five years in NSW, changes to the law have led to an increase in police powers over citizens, especially young people. Some NSW towns have seen the introduction of the *Children (Protection and Parental Responsibility) Act 1997* (CPPR Act) where the police have the power to remove unaccompanied young people under 16 years of age from public places if they consider them to be 'at risk'.

'At risk' is defined in the Act as being in danger or physical harm, in danger of abuse or about to commit an offence. The police in removing a young person must take them home to a relative or to the house of an 'approved person' where they can stay for up to 24 hours. Removal under these circumstances has high potential for provocation and the risk of committing chargeable offences.

In NSW, Moree, Coonamble, Orange and Ballina have all introduced child at risk removal powers under the *Children (Protection and Parental Responsibility) Act 1997* (NSW). The CCR Act was introduced as a strategy for dealing with juvenile crime and anti-social behaviour. The children (15 years and younger) being removed from public places are predominantly Aboriginal, and in Moree and Coonamble almost exclusively so.³

The necessity for the introduction of such laws and the extent to which they are instrumental in increasing Aboriginal disadvantage raises questions about the adequacy of the built environment. It raises questions about whether the mandatory provision of separate and quality space for children and young people reduces exposure to hostile or suspicious attitudes of the adult population and whether it might reduce the level of police interest.

If so it may reduce the perverse incentives that seem to exist for local councils. The Safe Communities Development Fund, within the Crime Prevention Division Shire Councils to develop and implement their local crime prevention plans for "Safer Community Compacts". It also provides for a further grant of up to \$60,000 to an area declared 'operational under the *Children (Protection and Parental Responsibility) Act*.

Councils which have their local crime prevention plans endorsed as Safe Community Compacts and are also declared 'operational' under the CPPR Act

² Cunneen, Chris, *Young People, Crime and the Law* 'Chapter 4 The Institutions of Juvenile Justice', Volume 2, Course Materials, 2002, p.65.

³ Ibid

are entitled to apply for two grants of \$60,000 each. For the cash starved local government sector the provision of additional funds for law and order strategies is a distraction from finding "built environment solutions". If as suggested local government is responsive to such funding incentives, consideration needs to be given to providing similar incentives for engineering "built environment solutions".

Urban Design Guidelines with Young People in Mind

The local government sector has wide ranging responsibilities for social and environmental planning and setting the conditions for approved developments within the built environment. It is also responsible for allocating space for public, private and commercial purposes. Local Government is required to provide opportunities for interested parties to make input into policy decisions on the usage of public and private space and the building approval process. The Inquiry needs to give consideration to providing either the incentive or challenge to the local government sector to firstly recognise the needs of (Aboriginal and non Aboriginal) children and young people and secondly facilitate their (or their advocates) involvement as "interested parties".

The *Urban Design Guidelines with Young People in Mind*, a booklet produced by the NSW Government for planners and designers interested in making public areas more youth friendly, identified strategies that could be used to make public spaces more attractive and welcoming for everyone.⁴

Whilst the Guidelines recommended that young people's needs should be in mind when designing public space, the presence of young people, particularly in groups, is considered threatening by some people, including older people and retailers⁵. It is not hard to imagine under such circumstances that there would be a tendency for consumer and retail interests to outweigh the needs of young people.

It is not uncommon for youth in public places to be stereotyped en masse and a standard response to be applied to individuals. Where there have been incidents where **some** young people have shoplifted from shopping centres, young people have complained that they are **all** seen as criminals and dealt with unreasonably and unfairly by security guards and police.

The Inquiry cannot assume that the laws are applied correctly, fairly and reasonably as the following example tends to suggest

⁴ Urban Design Guidelines with Young People in Mind, Community Builders. NSW, cited on website: http://www.communitybuilders.nsw.gov.au/building_stronger/safer/young.html (23/01/06).

⁵ Ibid

BROADWAY SHOPPING CENTRE, NSW

In 2004 an Aboriginal mother reported that her four year old child had been arrested for shoplifting whilst in the presence of her grandmother.

The mother sought legal representation and the Solicitor informed the Glebe Police that the child could not be charged due to *doli Incapax*. It was explained to the police, that a child younger than ten years of age was absent of criminal responsibility due to their immaturity.⁶

It is understood that the Broadway Shopping Centre has a local reputation for treating young Aboriginal people differently. The shopping centre has adopted an urban design with young people in mind, providing young people with a basket ball court and youth centre at the back of the shopping centre. It appears that young Aboriginal people are not expected to frequent the main shopping centre.

In 2001 during a two week period the Glebe Police received eighty trespass notices involving young people, mainly young Aboriginal people.

NSWALC understands that Wirringa Baiya Aboriginal Women's Legal Centre, Broadway Shopping Centre Security, Glebe Police, Glebe Youth Centre, and the Crime Prevention Division, NSW Attorney General's Department, and young Aboriginal people from Glebe, held a conference to discuss the treatment by Security Guards towards Aboriginal young people.

The security company indicated the incident was a "one off" with the security guard responsible subsequently dismissed. However it is suggested that this example is not an isolated event. Current reports suggest that the banning of young people from shopping centres, pools, libraries, public spaces, government agencies such as Centrelink offices and youth centres⁷ is a relatively common occurrence.

Parks and public spaces in the middle of town or busy retail centres are often popular with young people. Many young people claim that they often experience harassment from shop owners and authorities such as the police and security guards despite the area they frequent being a public space.⁸

⁶ Aboriginal student, attending Tranby Aboriginal College.

⁷ YAPA, Western Sydney, "When is Banning OK? How to keep staff, property and other services users safe", Forum Report, August 12, 2005, p.3.

⁸ Urban Design Guidelines with Young People in Mind, Community Builders. NSW, cited on website: http://www.communitybuilders.nsw.gov.au/building_stronger/safer/young.html (23/01/06).

The 2002 report from NYARS Sercombe et al stated that young people are socially excluded from society,

“there are for all young people sets of practices in law, social policy, and in everyday custom which exclude them from full participation. While some of these are protective in intent, many of them create a range of difficulties for young people, especially in combination with other factors, which may add to their alienation.”⁹

From all the evidence and research undertaken it appears that some local councils, shires and private building sectors do cater for young peoples needs.

Whilst the Government has introduced the *Urban Design Guidelines with Young People In Mind* it appears from the paper “Inquiry Into Children, Young People and the Built Environment”, that more consideration has to be given to cater for young peoples needs, particularly young Aboriginal people¹⁰.

NSWALC is aware that the NSW Department of Planning is currently introducing reforms to the planning system which will streamline and make consistent the planning process for large scale property developments which will create new built environments. Whilst there is some recognition of the need to protect Aboriginal heritage there is little to suggest that the contemporary needs of Aboriginal children and young people form part of the planning perspective for these developments and thus far NSWALC is concerned that there has been limited consultation with Aboriginal communities

Recommendations

It is reasonable to expect that the social planning process should make robust attempts to accommodate the social needs of all people who are affected by the planning, design and development of the built environment.

NSWALC predicts that current efforts to streamline the State-wide planning system by removing red tape and bureaucratic obstacles and impediments to development will militate against the formulation of planning approaches that are inclusive of the populations of Aboriginal and non Aboriginal children and young people.

NSWALC recommends that the Inquiry should consider the need for state wide leadership and policy guidance. In part planning for children and young people on state significant projects must be driven by the NSW government. However

⁹ YAPA, Western Sydney, “When is Banning OK? How to keep staff, property and other services users safe”, Forum Report, August 12, 2005, p.3.

¹⁰ Inquiry into Children, Young People and the Built Environment, Parliament of New South Wales, Committee on Children and Young People.

the local government sector also needs State guidance in meeting its responsibilities for children and young people. At present contemporary social planning approaches tend towards exclusivity by relying on processes that fail to encourage participation by all members of a community with interest in the built environment. Aboriginal people whether young or old need to be part of this consultation and not just seen as needed to be consulted if there is a threat of a native title claim, land claim, or sacred site.

The NSW Government has established the *Two Ways Together* Working Group which coordinates a whole of government response to Indigenous issues; this model needs to be adopted when Local Government and other players are planning an urban design.

Whilst International examples of good practices on planning a Child Friendly City, and has adopted the United Nations Convention on the Rights of the Child. The Inquiry should acknowledge the needs of young Indigenous people and consider the application of the articles of the Draft United Nations Declaration on The Rights of Indigenous Peoples in particular:

- **Article 4:** Indigenous peoples have the right to maintain and strengthen their distinct political, economic, social and cultural characteristics, as well as their legal systems, while retaining their rights to participate fully, if they choose, in political, economic, social and cultural life of the State;
- **Article 19:** Indigenous peoples have the right to maintain and strengthen their distinct political, social and cultural characteristics, as well as their well as their legal systems, while retaining their rights to participate fully, if they so choose, in the political, economic, social and cultural life of the State.
- **Article 22:** Indigenous people have the right to special measures for the immediate, effective continuing improvement of their economic and social conditions, including in the areas of employment, vocational training and retraining, housing, sanitation, health and social security.
- **Article 23:** Indigenous peoples have the right to determine and develop priorities and strategies for exercising their right to development. In particular, indigenous peoples have the right to develop all health, housing and other economic and social programmes affecting them and, as far as possible, to administer such programs through their own institutions.
- **Article 25:** Indigenous peoples have the right to maintain and strengthen their distinctive spiritual and material relationship with the lands, territories, waters and coastal seas and other resources which

they have traditionally owned or otherwise occupied or used, and to uphold their responsibilities to future generations in this regard.

- **Article 26:** Indigenous peoples have the right to own, develop, control and use the lands and territories, including the total environment of the lands, airs, waters, coastal seas, sea-ice, flora and fauna and other resources which they have traditionally owned or otherwise occupied or used. This includes the right to the full recognition of their laws, traditions and customs, land-tenure systems and institutions for the development and management of resources, and the right to effective measures by States to prevent any interference with, alienation of encroachment upon these rights.
- **Article 29:** Indigenous peoples are entitled to the recognition of the full ownership, control and protection of their cultural and intellectual property. They have the right to special measures to control, develop and protect their sciences, technologies and cultural manifestations, including human and genetic resources, seeds, medicines, knowledge of properties of fauna and flora, oral traditions, literatures, designs and visual and performing arts.
- **Article 30:** Indigenous peoples have the rights to determine and develop priorities and strategies for the development or use of their lands, territories and other resources, including the right to require that the State obtain their free and informed consent prior to the approval of any project affecting their lands, territories and other resources, particularly in connection with the development, utilization or exploitation of mineral, water or other resources. Pursuant to agreement with the indigenous peoples concerned, just and fair compensation shall be provided for any such activities and measures taken to mitigate adverse environmental, economic, social, cultural or spiritual impact.
- **Article 37:** States shall take effective and appropriate measures, in consultation with indigenous peoples concerned, to give full effect to the provisions of this Declaration. The rights recognized herein shall be adopted and included in national legislation in such a manner that Indigenous peoples can avail themselves of such rights in practice.

Whilst there has been numerous Indigenous Reference Groups set up to consult with different Government agencies on cultural and intellectual property, Indigenous people need to be included in all discussions about intellectual and cultural and property rights and obligations to their land¹¹ including urban planning.

¹¹ Janke, Terri "Our Culture: Our Future, Report on Australian Indigenous Cultural and Intellectual Property Rights", p.8. Australian Institute of Aboriginal and Torres Strait Islander Commission.

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