

**Submission
No 226**

SUSTAINABILITY OF ENERGY SUPPLY AND RESOURCES IN NSW

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SUBMISSION to the Committee on Environment and Planning
Inquiry into the sustainability of energy supply and resources in NSW

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Submission to the Committee on Environment and Planning Inquiry into the sustainability of energy supply and resources in NSW

TERMS OF REFERENCE:

That the Committee on Environment and Planning inquire into and report on the sustainability of energy supply and resources in NSW, including:

1. The capacity and economic opportunities of renewable energy.
2. Emerging trends in energy supply and exports, including investment and other financial arrangements.
3. The status of and forecasts for energy and resource markets.
4. Effects on regional communities, water security, the environment and public health.
5. Opportunities to support sustainable economic development in regional and other communities likely to be affected by changing energy and resource markets, including the role of government policies.
6. Any other related matters.

The following submission highlights the capacity and economic opportunities of renewable energy in relation to the Aboriginal land estate in NSW. An appreciation of the potential for leveraging the Aboriginal land estate to create reliable energy supply across urban, regional and remote NSW that also creates opportunities for Aboriginal self-determination has been of little consideration in the emerging transitional energy sector.

This work draws on research undertaken by Professor Norman on NSW Aboriginal land rights (2015, 2017) and research currently underway (2018) examining the benefits and possibilities and limits of Aboriginal land recovery. This body of research sits within the Indigenous Land and Justice Research Hub at the University of Technology Sydney. The Indigenous Land and Justice Research Hub is an emerging team of academics and researchers with an interest in further Aboriginal interests in land and associated economies. Our research deals with broad range of topics including land and water rights; treaty & agreement-making processes; the relationships between the Aboriginal polity and other parties including government, NGOs and Aboriginal communities; contemporary Aboriginal nation building; renewable energy and climate justice; planning laws and policy reform relating to the Aboriginal land estate; development on Aboriginal land estate and economies associated with Indigenous lands.

Our research has found that opportunities for Aboriginal land holders, in particular Local Aboriginal Land Councils (LALCs) to mobilise their land estate for economic development has been limited. The proposed transition to renewable energy creates possibilities, with Aboriginal communities to be significant contributors and gain benefit from sustainable energy.

Aboriginal Land Recovery in NSW

In New South Wales the predominant way that Aboriginal interests and rights to land are recognised is through the *Aboriginal Land Rights Act 1983* (NSW) (the 'ALRA') and the *Native Title Act 1994* (Cth) (the 'NTA'). The intended land recovery and benefits more broadly of the NTA and the ALRA, premised as they are on different rights, are yet to be fully realised in NSW.

The Aboriginal Land Rights Act 1983

The ALRA created a mechanism for recovering certain Crown Lands, a 15-year compensation fund to finance the network and community initiated enterprises and created the community-controlled Aboriginal Land Council network. It was premised on some key ideas at the time including

consideration of the sustained loss of connection and land assets and marked a point of departure from the prevailing policy of assimilation to provide a form of self-determination.

Purpose of the ALRA

The purpose of the ALRA, as set out in Section 3, is to provide land rights for Aboriginal persons in New South Wales including the acquisition and the management of land and other assets and investments, for representative Aboriginal Land Councils to hold those lands and to provide for the provision of community benefit schemes.

When the then minister for Aboriginal Affairs Hon. Frank Walker introduced the Aboriginal Land Rights Bill 1983 into the NSW Parliament he noted that ‘...land rights has a dual purpose – cultural and economic’. This is echoed in the preamble of ALRA that recognises the ‘Land is of spiritual, social, cultural and economic importance to Aboriginal peoples’.

Recommendation 1: that the capacity and economic opportunities of renewable energy on Aboriginal land be recognised and supported through targeted policy measures. (Term of Reference 1 and 5).

This will have dual benefit of supporting the purposes of ALRA, but also creating greater resilience in Aboriginal communities, particularly in regional NSW where energy transitions can create Indigenous labour demand.

Recovering land under the ALRA: Claimable Crown Land

The land recovery mechanism under the ALRA is confined to certain types of ‘available Crown Land’. The process for making claims under the ALRA is relatively straight forward - a Local Aboriginal Land Council (LALC) writes to the Registrar identifying the land for claim who in turn, forwards the claim to the Minister for Crown Lands. The Minister, through the Department of Lands, considers the claim and determines if the land is ‘claimable Crown land’ as defined in section 36(1) and makes the appropriate action to approve the claim and return the land to the LALC. In instances where the land claim is refused, the LALC has the right to appeal the decision to the Land and Environment Court. A land claim, if granted, will generally result in the Local Aboriginal Land Council having a fee simple interest in the land, or freehold ownership - the strongest interest a landholder can have. Land recovered by ALCs also includes rights to certain minerals - a unique entitlement compared to all other freehold landowners in NSW.

Land rights claims and grants

Since 1983 there have been approximately 2,473 land claims successfully granted¹. Over the 34-year operation of the ALRA, NSWALC calculate (as at June 2017) that 44,118 Aboriginal Land Claims have been lodged state-wide. Of these 32,291 Aboriginal Land Claims await determination. This amounts to less than a fraction of 1 per cent of the Crown Land estate to New South Wales Aboriginal communities: 127,000 hectares of the potential 33.5 million hectares of Crown land Estate.² From 2017 both of these laws (that have been in place for 34 and 23 years respectively), are likely to see a rapid escalation in the recovery and the recognition of rights and interests in land.

The future of the Aboriginal Land Estate

¹ NSW Aboriginal Land Council, 2016, Land rights and native title, A guide for the community, at 2.

² ‘Crown Land’, Department of Industry website, http://www.crownland.nsw.gov.au/crown_land/about_crown_land, accessed 26th June 2017. Note that this includes the 3 nautical mile zone and Western Crown land and several thousand leases.

Australian governments widely acknowledge that land is pivotal to the economic, social and cultural worlds of Indigenous peoples. The NSW Government's 2016 report of the Aboriginal Economic Development Inquiry continued this observation. They concluded that improving social and economic outcomes for Aboriginal people, creating conditions for Indigenous knowledge and cultural expression, and alleviating large-scale disadvantage will depend on the timely processing of land claims³.

Aboriginal Land Councils and Traditional Owner groups are on the precipice of a new era of land justice. Since the introduction of the two legislative land recovery mechanisms only a fraction of 1 per cent of the total land mass of New South Wales to Aboriginal community control/ownership under the ALRA and lengthy and protracted court action has seen only eleven Native Title claims favourably determined.

Government commitment to resolving outstanding land claims along with new negotiated settlement provisions in the ALRA will see resolution in thousands of land claims. Criticism of the slow and protracted native title determination in New South Wales will see more expeditious processing of claims currently in place over more than 35 per cent of the state. These two land recovery statutes will also have significant, although largely untested interaction, as well as crossover with the conservation estate and Aboriginal land management interests, unique land grants (such as Goat Island) and divestment of the Crown Land estate.

Recommendation 2: The NSW government consider the emergence and expansion of the Aboriginal land estate and greater recognition of Aboriginal interests in land when considering and forecasts for energy and resource markets.
(Term of Reference 3).

Renewables on Aboriginal land: some examples from Canada and New Zealand.

Canadian scholars Krupa et al (2012, 2015) argue domestic energy supply diversification and accelerating effects of anthropogenic climate change call for new models of sustainability-focused economic development. These challenges involve First Nation collaboration and leadership in renewable energy projects. They emphasise, with reference to two comparative case studies, one clean energy project and wind farm project, that 'truly sustainable renewable energy development requires a project design that reflects community values, incorporates community control, and incentivises indigenous ownership'.

The recognition of Barkandji Traditional Owners' (Barkandji and Malyangapa People) native title rights in 2015 and 2017 included a recognition of their rights to water. The Barkandji people, however continue to face ongoing struggles to have these rights accommodated by Australian water governance regimes. Maori scholar Marama Muru-Lanning (2017), details the Maori involvement in hydro power. In this study, she highlights Maori involvement in hydro power and debates in relation to 'duty of care passed down from ancestors to descendants, to nurture and protect places, natural resources and taonga in their territories'. Renewable energy has a similar potential in NSW to support Aboriginal connection and care of Country.

³ The Honourable Paul Green, MLC, in New South Wales Legislative Council, *Inquiry into Economic Development in Aboriginal Communities*, Report no. 40, New South Wales Government, Sydney, 2016, p. ix.

Recommendation 3: The NSW Government consider the potential for renewable energy to contribute to greater water security, improving the health of river systems and providing a basis for increased allocation environmental and cultural flows. (Term of Reference 4).

New models of sustainability-focused economic development in Australia

The above studies by Indigenous anthropologists from New Zealand and Canada highlight the emerging cultural, resource management and governance debates as the new economic development paradigm seeks to engage Indigenous people. The paucity of response to dealing with climate change in Australia and limited economic development on the Aboriginal land estate has meant that Aboriginal engagement is limited to a few examples. Carbon off set is one area where Indigenous land owners have been active.

Our research thus far has found no examples of Indigenous communally held land operationalised in energy diversification in NSW. There are several examples of the Aboriginal Housing Office and with federal funding support, installing solar panels on houses. In remote Aboriginal communities renewable energy has been used as a means of reducing the reliance of remote communities on diesel fuel generator. This has the combined benefit of reducing cost for communities which is high and reducing fossil fuel emissions. Renewable energy supply seems a powerful 'fit' with potential to contribute a capital stream for LALCs, improve social relations, encourage sustainability-focused economic development and supply energy to regional NSW. Solar panels on houses at the Aboriginal village at Enngonia is one instructive example. In areas such as Brewarrina and Mungindi in north-western NSW energy supply is a critical issue during high industry demand. Brewarrina LALC, despite the sizeable Aboriginal population has secured only one land claim. They are currently in negotiation over a land claim outstanding since 1984 that will see the LALC secure most of the available crown land in the town centre. This particular land claim presents opportunities and challenges for the LALC. Their ability to utilise their land for sustainable economic development, including renewable energy supply and associated training and employment for the township along with a revenue stream could prove a highly beneficial outcome.

Recommendation 4: The NSW consider the potential for renewable energy sources to ameliorate energy and power demands in regional NSW (Term of Reference 4).

References

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