

**INQUIRY INTO MANAGEMENT OF PUBLIC LAND IN  
NEW SOUTH WALES**

**Organisation:** NTSCORP  
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**Date received:** 31/08/2012

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The Director  
General Purpose Standing Committee No.5  
Legislative Council  
New South Wales Parliament  
Macquarie St  
SYDNEY NSW 2000

RECEIVED

31 AUG 2012

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30 August 2012

Dear Sir / Madam,

**RE: SUBMISSION TO 'INQUIRY INTO THE MANAGEMENT OF PUBLIC LAND  
IN NEW SOUTH WALES'**

Thank you for the opportunity to make a submission to the Inquiry into the Management of Public Land in New South Wales ("Inquiry").

As the native title service provider for New South Wales ("NSW") and the Australian Capital Territory ("ACT"), NTSCORP Limited ("NTSCORP") has statutory responsibilities under the *Native Title Act 1993* (Cth) ("NTA") to represent the native title rights and interests of Aboriginal Traditional Owners in NSW and the ACT. As such, NTSCORP has focused submissions on the aspects of the Inquiry's terms of reference most relevant to Aboriginal communities and Traditional Owners.

NTSCORP welcomes an examination into the process and impacts of any change to the management of public lands in NSW. For Aboriginal People, land is central to their identity and culture. Traditional Aboriginal beliefs, laws, and customs, which give rise to traditional rights and interests, are intricately linked to land and water, and subsequently the management of those resources, including: natural resource management, land access and land use. As such, Aboriginal People are key stakeholders in the matters being considered by this Inquiry. We look forward to the opportunity provided by the Inquiry to improve the current processes of the management of public lands in NSW and for the greater involvement of Aboriginal People in this initiative.

**INTRODUCTION**

NTSCORP is funded under Section 203FE of the NTA to carry out the functions of a native title representative body in NSW and the ACT. NTSCORP provides services to Aboriginal Peoples who hold or may hold native title rights and interests in NSW and the ACT, specifically to assist them in exercising their rights under the NTA. In summary, the functions and powers of NTSCORP under sections 203B to 203BK (inclusive) are:

- Facilitation and assistance, including representation in native title matters;
- Dispute resolution;
- Notification;
- Agreement making;
- Internal review; and
- Other functions (s203BJ in particular).

Both the United Nations Declaration on the Rights of Indigenous People ("The **UN Declaration**"), and the UN Convention on Biological Diversity (the "**CBD**"), which the Australian Government has endorsed, demonstrate global recognition of the unique skills and role Aboriginal People play in relation to land and natural resource management. These instruments provide a framework and should act as the starting point and foundation for any change to the use and management of public lands in NSW.

NTSCORP believes the Inquiry into the Management of Public Land in New South Wales provides an opportunity for the NSW State Government to implement these principles.

This submission focuses on four key areas within the Inquiry's Terms of Reference:

- The Process of Conversion and Impacts;
- Principles of 'sustainable use';
- Models for the Management of Public Land; and
- Management Practices.

### **PROCESS OF CONVERSION AND IMPACTS**

Past conversion processes, including the cases identified in the Inquiry's Terms of Reference, were highly criticised for being closed processes that limited stakeholder engagement. NTSCORP submits that any changes to the management of public lands in NSW must engage a fair, independent, impartial, open, and transparent process, guided by best practices in land management.

As outlined in the UN Declaration, Aboriginal People have the right to free, prior and informed consent in determining and developing priorities and strategies for their traditional lands. NTSCORP suggests a robust and comprehensive consultation strategy for engaging and involving Aboriginal communities in this initiative.

Aboriginal People have a unique relationship to the land. Country is central to Aboriginal People's culture, spirituality, identity and wellbeing. Aboriginal People have unique skills and traditional knowledge of Country that are highly relevant to assessing the impacts of converting any public land into national parks or other conservation areas. Aboriginal people bring specialized knowledge and perspective to land management and planning. NTSCORP believes that effective community engagement and consultation is central to ensuring that the skills and knowledge of Aboriginal communities and Traditional Owners are shared. Generally, Traditional Owners want to work with state and local governments, and other stakeholder groups to achieve mutually beneficial outcomes in a culturally appropriate manner.

The Aboriginal approach to caring for country has always been integrated and holistic. For Aboriginal People, the economic, social and cultural aspects of land and resource management are not separate entities, but inextricably and seamlessly linked. As such, Aboriginal People should be involved in all assessments of potential or real impacts of conversion.

While NTSCORP acknowledges that the physical connection between Aboriginal People and their Country has been affected in some circumstances by the impact of European settlement, Aboriginal People have continued to exercise their cultural practices and rights in accordance with traditional law and customs. These practices



include cultural hunting, fishing, gathering, and land access for other purposes. Public lands have, in large part, provided the lands and waters in which these activities have continued to be undertaken.

Regard must also be given to Aboriginal heritage, including Aboriginal objects, sites and places that may be impacted by any conversion process. The ongoing engagement of Aboriginal People in any conversion process is an important step in natural resource management on Aboriginal lands and one that supports the maintenance of Aboriginal culture. NTSCORP believes that is the NSW government's responsibility to appropriately engage Traditional Owners to conduct heritage assessments to identify all potential cultural areas that may be affected by any conversion process.

Any assessment of a conversion process must also include examining the economic impact on Aboriginal communities. NTSCORP supports processes that build capacity for Aboriginal People to manage and develop their land, and encourages economic opportunities that flow from their Country and their culture.

While scientific data forms the basis for many management plans, NTSCORP would like to draw attention to the equally important traditional Aboriginal environmental knowledge of regional communities. Aboriginal People possess unique and invaluable knowledge of the land and environment which is not captured by mainstream science in relation to natural resource management. NTSCORP suggests that this traditional specialised knowledge be incorporated as part of any conversion process, through Aboriginal People's active participation in planning and implementation activities.

#### *The Native Title Context*

Under the NTA, Traditional Owners who are registered native title claimants or native title holders are afforded a number of procedural rights over a 'future act'. A future act is a proposed act on land or waters that affects native title rights and interests. NTSCORP submits that a conversion of Crown Land, State Forests or agricultural land into a National Park or Conservation Area may constitute a future act, and if so, must be notified in accordance with the NTA. For example, where Aboriginal Traditional Owners are exercising their native title right to hunt in a State Forest, and the State of NSW decides to convert the State Forest to a National Park, where hunting is not permitted or is otherwise impacted, the conversion will constitute a future act under the NTA. Under the NTA, this proposed conversion and the legislation required to give it effect, is required to be notified, and Traditional Owners are to be afforded procedural rights.

The type of procedural right which the native title claim group can exercise will vary depending on the type of future act that is being proposed, but may include the right to be notified, the right to comment, the right to object or in some cases the right to negotiate. As such, any act of converting public land into National Parks or other conservation areas needs to be carefully considered by the NSW government to ensure that Traditional Owners are notified about the activities occurring on their traditional lands and are able to participate in decisions about these activities. This approach also accords with international legal principles and with State and Federal government priorities concerning consultation with Aboriginal People.



Failure of the State Government to appropriately notify a future act under the NTA will result in the act being invalid for native title purposes, and may create compensation liability for the State Government.

#### **PRINCIPLES OF 'SUSTAINABLE USE'**

While the Inquiry's Terms of Reference refer to models for the management of public land which utilise the 'Principles of "sustainable use"', 'sustainable use' is not defined. NTSCORP suggests that for an effective approach in moving forward on the conversion of any public lands in NSW, and to provide certainty and clarity in this approach, 'sustainable use' must be defined.

A definition of 'sustainable use' may start with the premise outlined in Article 10 of the CBD - to protect and encourage the customary use of biological resources in accordance with traditional cultural practices that uphold conservation principles.

NTSCORP supports a definition of 'sustainable use' that conserves and protects the environment while maintaining the productive capacity of Country. Consideration must be given to actions that both support biological diversity and maintain ecological systems.

In utilising 'Principles of "sustainable use"', much can be learned from Aboriginal People's traditional law and customs and related land management processes. 'Sustainable use' is an integral part of traditional land and resource management systems. A key focus is on balancing interests – the wellbeing of Aboriginal People and communities is interconnected to the wellbeing of Country. In balancing the interests of Aboriginal People and their Country, traditional law and customs places restrictions on hunting, fishing and gathering based on sustainability principles. For example, many Aboriginal communities in NSW have systems which prevent fishing during spawning season, or which prevent hunting of female members of species at certain times of the year. Traditional Aboriginal knowledge and practices exemplify responsibly caring for Country, and can provide a foundation for principles of 'sustainable use' in any model for the management of public lands.

Additionally, 'sustainable use' includes, 'cultural sustainability', the ability of Aboriginal People to maintain their cultural identity among a changing environment. This is a fundamental principle within Aboriginal communities. Cultural sustainability enables culture to be passed on to future generations and should be a consideration in any management change to public lands.

#### **MODELS FOR THE MANAGEMENT OF PUBLIC LAND**

As highlighted in Article 18 of the UN Declaration, Aboriginal People have the right to participate in decision-making in matters affecting their rights. The NSW Government has acknowledged that Aboriginal People are the original custodians of the lands, water, and natural resources in NSW, and any authority exercised in relation to the management of lands and resources must have regard to Aboriginal interests over the area concerned. Aboriginal People's greater involvement in joint management initiatives, and particularly the planning, decision-making and management of public lands, ensures that this commitment is upheld.

Aboriginal People's participation on Committees and Boards supports greater Aboriginal involvement in land management processes. Membership on Committees and Boards capitalises on traditional land management expertise and the transfer of knowledge that Aboriginal People can bring to managing the natural resources of an area. Aboriginal People's active participation in land management decisions also builds strong partnerships and collaborative relationships with State agencies and other local stakeholders.

Fairly negotiated, well-structured and comprehensive partnership arrangements are key for the effective management of NSW public lands. NTSCORP believes that any model utilised to manage public lands must include meaningful partnership arrangements with Aboriginal People and Traditional Owners at all levels of the process: from planning, to delivery, monitoring, evaluation, and decision-making.

The following are examples of effective partnership arrangements that can serve as models for managing land and resources.

#### *Memorandum of Understanding*

A Memorandum of Understanding ("MOU") is a voluntary non-legally binding agreements entered into between parties describing a bilateral or multilateral agreement between parties. MOUs are most effective, when both parties enter into the MOU in good faith and intend to carry out the intent of the document. An MOU can be entered into with Aboriginal People outlining the Aboriginal community's interest and involvement in the planning and management of a national park or reserve. The MOU recognises the local Aboriginal community's cultural ties to the land, while enabling greater involvement in management processes.

An MOU allows the parties to the agreement to clarify their roles and responsibilities, while enhancing communication and understanding. NTSCORP believes that MOUs entered into with Aboriginal communities can establish a process for developing and implementing common goals, while promising that actions taken are coordinated and help capitalise the most effective use of resources for the benefit of Aboriginal communities and the broader society.

#### *Indigenous Land Use Agreements*

Indigenous Land Use Agreements ("ILUAs") are voluntary legally binding agreements between a native title group and others about the use and management of land and water. An ILUA can be negotiated over areas where native title has, or has not yet been determined. An ILUA may be negotiated separately or as part of a native title settlement.

NTSCORP believes that ILUAs provide a culturally appropriate means for acknowledging and recognizing Traditional Owners' connections to Country. ILUAs can also provide the basis for the development of constructive relationships between Traditional Owners and other parties with an interest in land. NTSCORP notes that good faith negotiations and a willingness to make agreements fosters a good working relationship 'on the ground' between parties whose interests may be affected. A key benefit of an ILUA is that it allows parties involved to negotiate flexible and pragmatic agreements to suit particular circumstances.



The NTA provides for different types of ILUAs to be registered, including area ILUAs. An ILUA may also provide a legal mechanism for Aboriginal Traditional Owners to agree to a future development, or outline how a native title right can co-exist with the rights of other parties.

#### Githabul ILUA

The Githabul ILUA, negotiated between the Githabul People, the Githabul National Aboriginal Corporation and the NSW State Government provides one example of how an ILUA can be utilised for the management of public lands. The Githabul ILUA was registered in 2007 by the National Native Title Tribunal. Following the registration, the parties asked the Federal Court to make a consent determination recognising a range of non-exclusive rights for the Githabul People in the claim area. These rights include: land access, camping, fishing, hunting, gathering animal and plant resources for personal use, taking and using water, accessing the area and sites for spiritual purposes, accessing sites of spiritual significance in the area, and protecting places of importance to the Githabul People from physical harm. The ILUA also establishes some binding restrictions on these rights. Through the ILUA, the parties agreed on how native title rights would be exercised in parks.

The consent determination and ILUA together cover over 112,000 hectares of national parks and state forests around Kyogle, Woodenbong and Tenterfield, NSW. The ILUA establishes a joint management regime for eleven parks in the claim area. A joint management committee was established, composing of a majority of local Githabul People, to provide advice on the care, control and management of the lands. The ILUA also provides for cultural heritage management, education and interpretation of the parks, management plans, employment, training and community capacity building for Githabul People.

The Githabul ILUA demonstrates that through parties working together with open and transparent processes, an effective agreement can be established that benefits all parties.

#### Lease-Back Arrangements

Under the *National Parks and Wildlife Act 1974* (NSW) and the *Aboriginal Lands Rights Act 1983* (NSW), mechanisms exist for parks to be returned to Local Aboriginal Land Councils to hold on behalf of Aboriginal owners. The parks are then leased back to the State government, with lease payments to be allocated for the care, control and management of the park. Under the lease-back arrangement, parks are managed by a Board of Management, with Aboriginal Owners making up majority representation on the Board.

#### Gumbaynggirr Lease-Back Scheme: Gaagal Wangaan National Park

The Gaagal Wangaan (South Beach) National Park on the mid-north coast of NSW is an excellent example of a lease-back arrangement used to create a comprehensive and effective joint management scheme. As a result of negotiations between the NSW government, and the Nambucca Heads and Unkya Local Aboriginal Land Council, a national park was created in April 2010. The creation of the park was part of a resolution to land claims lodged between 1994 and 1995.



The lease agreement comprehensively covers all aspects of park management. Sustainability is a key component throughout the agreement. The agreement recognises the traditional ownership of the Gumbaynggirr People and that environmental protection and sustainable land use management practices form an integral part of Gumbaynggirr culture. The agreement also notes the direct relationship between the health of the natural environment, sustainable development, and the social, economic, physical and spiritual well-being of the Gumbaynggirr People.

The care, control, and management of the Gaagal Wangaan National Park is vested in a Board of Management. While the Board is constituted with a majority of Aboriginal Owners, it also represents diverse interests including a member representing conservation interests, and another member representing the interests of owners, lessees, and occupiers of lands adjoining or in the vicinity of the park.

Provisions for employment, education, training and community capacity building are all included in the lease arrangement. The Gumbaynggirr People have secured employment, with responsibilities relating to the day-to-day care, control and management of the park lands. Cultural awareness training is provided for the Board and the State officers. The agreement establishes that a Business Opportunities Analysis will be conducted, and educational programs will be offered for the general public.

While the agreement provides a general right of access for the public, Aboriginal People also have non-exclusive rights over the area. These rights include: an entitlement to enter and use the lands for hunting, fishing and gathering traditional foods for ceremonial and cultural purposes.

The Gumbaynggirr Lease Back Scheme establishes a comprehensive management scheme for the Gaagal Wangaan National Park. The scheme provides the Gumbaynggirr People with the opportunity to integrate their traditional knowledge systems with non-Aboriginal science and technology systems for identifying and implementing improved techniques for the conservation and sustainable use of the biological diversity in the area. The scheme exemplifies how joint management can contribute to better land management outcomes, as well as supporting Aboriginal socio-economic development.

#### **MANAGEMENT PRACTICES**

NTSCORP believes that management practices on public land including: fire, weed and pest management practices offer an excellent opportunity for the NSW State Government to deliver economic development and employment opportunities to Aboriginal People in NSW.

Aboriginal People also have unique cultural knowledge to provide the State of NSW in relation to these processes. It is also relevant to note for the Inquiry that where these processes may impact Aboriginal culture, such as sites, objects, and places of importance, that the Government is required to comply with the *National Parks and Wildlife Act 1974 (NSW)*, including the *Aboriginal cultural heritage consultation requirements for proponents 2010*.

## **CONCLUSION**

Aboriginal People are major stakeholders in NSW public lands and water and their management. Any contemplated conversion of Crown land, State Forests or agricultural land into National Parks or other types of conservation areas must involve Aboriginal People and comply with legislative requirements, including the NTA and *National Parks and Wildlife Act 1974* (NSW).

Thank you again for the opportunity to provide a submission to the Inquiry into the Management of Public Land in NSW. NTSCORP notes that we are also prepared to appear before the Inquiry if appropriate. Should you require any clarification or further information, please don't hesitate to contact Ms Carla Di Giusto, Solicitor, on

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NTSCORP Limited**