

## **INQUIRY INTO REGIONAL PLANNING PROCESSES IN NSW**

**Organisation:** Darkinjung Local Aboriginal Land Council

**Date received:** 5/02/2016

---



Local Aboriginal Land Council  
**DARKINJUNG**

168 Pacific Highway Watanobbi NSW 2259

PO Box 401 Wyong NSW 2259

Phone (02) 4351 2930

Fax (02) 4351 2946

ABN 99 583 297 167

Email [darkinjung@dlalc.org.au](mailto:darkinjung@dlalc.org.au)

The Director  
Standing Committee on State Development  
Parliament House  
Macquarie St  
Sydney NSW 2000

Dear Sir

## **INQUIRY INTO THE REGIONAL PLANNING PROCESSES IN NSW**

The Darkinjung Local Aboriginal Land Council (Darkinjung) thanks the NSW Government for the opportunity to make a submission to this inquiry concerning regional planning processes in NSW.

Darkinjung has also made a separate and distinct submission to the concurrent inquiry into *economic development in Aboriginal Communities*. A copy of this submission is provided as **Attachment A**. The submission concerning *economic development in Aboriginal Communities* has relevance and provides useful background to the inquiry on regional planning processes.

### **Why consider Local Aboriginal Land Council's in regional planning?**

#### **Extent of land ownership**

Only in recent years has Government started to appreciate the extent of land interests held by Local Aboriginal Land Council (LALC). In some cases, the LALC will be the single largest private land owner in a Local Government Area. This factor is expected to continue and increase as the Government continues to process over 26,000 Land Claims lodged in the system.

Determining land owned by a LALC can be easily established by a Title search. The greater challenge Government planners face is to understand where LALC's have other interests in land - by way of an Aboriginal Land Claim lodged pursuant to the Aboriginal Land Rights Act 1983<sup>1</sup>, or land granted to a LALC, subsequent to a successful assessment of an Aboriginal Land Claim.

---

<sup>1</sup> The Aboriginal Land Rights Act 1983 (ALRA) provides that the New South Wales Aboriginal Land Council (NSWALC) and Local Aboriginal Land Councils (LALCs) may make claim(s) to claimable Crown land(s). The relevant sections of the Act are sections 36 and 37.

It becomes more problematic where a decision has been made to grant an Aboriginal Land Claim, but where Title has not yet transferred to a LALC. Under the current system it may be many years between the decision to grant a Claim and transfer of Title. During this period, a Title search may reveal the allotment as Crown land, but not reflect the fact that a LALC now has vested interest in that allotment.

#### **RECOMMENDATION 1: TITLE NOTATION**

That upon the determination of an Aboriginal Land Claim, the Crown makes a Title reference that a decision has been made to transfer this land to the relevant LALC

#### **RECOMMENDATION 2: MAPPING**

That Government develop a GIS system to readily identify land that is owned, granted to, or subject to and Aboriginal Land Claim.

Local Aboriginal Land Councils form a network of 120 individual organisations across the State, each with varying ability to contribute to the development of economic land, or provisions of Regional conservation corridors.

#### **Aboriginal land is not default conservation land**

The Aboriginal people of Australia have been displaced since European settlement.

Until the introduction of the Aboriginal Land Rights Act (ALRA) in 1982 there was little recognition and no form of compensation for this displacement. The ALRA recognised the loss of land to indigenous Australians and provided for a means of compensation through the Aboriginal Land Claims process.

Whilst well-intentioned, the last 30 years has demonstrated that unfortunately the ALRA has not been as effective in allowing Aboriginal people to gain their economic independence and to improve social and cultural well-being, with many social indicators well below that of non-Aboriginal people.

Unfortunately, Government planners appear not to understand the objects and intents of the Aboriginal Land Rights Act 1983, and the extent of Aboriginal Land interests.

This has resulted in large portions of land over which LALC's have interests being identified in future green/conservation corridors. Whilst the retention and classification of some land into conservation corridors is supported (reinforcing and preserving the cultural landscape, environmental values and connection to land), it becomes increasingly difficult for Aboriginal landowners to unlock any economic potential and to achieve the aims and intent of the Aboriginal Land Rights Act 1983.



### **CASE STUDY - North Wyong Shire Structure Plan.**

At the end of 2010 the Department of Planning released the draft North Wyong Shire Structure Plan.

This draft plan noted most of Darkinjung LALC's lands interest in the area as either strategically located but significantly constraint land subject to further investigation, or within green corridors and buffer zone areas.

The **attached** plan shows Darkinjung LALC's ownership across the Structure Plan area, with owned land outlined read and land Claimed in yellow/black. This highlights a case where a LALC hasn't/may not have responded to a strategic planning document and would have otherwise had their land locked away in future green corridors.

Over the last four years Darkinjung LALC has been working with Government to identify economic opportunity for Darkinjung LALC as well as potential offset lands across the broader Region.

A multi-site resigning application was lodged in June 2014, identifying potential for:

- Over 1,500 residential lots,
- 42 hectares of employment land
- Over 800 hectares on environmental conservation 'offset' land

Council has now supported 3 of the 5 sites, with a 4th site subject to Pre-Gateway Review, and the 5th site pending the results of a Land & Environment Court challenge.

A great challenge for Darkinjung LALC has been, in consultation with relevant Agencies, to find the right balance for land to be set aside for conservation whilst enabling other land to be investigated for the 'unlocking' economic opportunities consistent with the aims and intent of the Aboriginal Land Rights Act 1983.

As Local Aboriginal Land Councils seek to enter into the 'development space' in pursuit of economic opportunities consistent with the aims and intent of the Aboriginal Land Rights Act 1983, they are at a disadvantage to many other traditional 'developers' in that, the Land Council may already have a significant land holding, much of which is likely to be vegetated, and subject to years of neglect by Government, burdened by weed infestations, unauthorised activities such as 4 wheel driving and illegal dumping. Deterrent and rehabilitation work comes at a cost to the Land Council, which cannot be sustained without the ability to unlock economic opportunities at other sites.



Darkinjung accepts that there is an obligation to 'offset' the potential impacts of development upon certain land, by way of conserving and enhancing environmental conditions at other appropriate locations. The NSW Government attempts to address this issue by the introduction of initiatives like *Biobanking & Property Vegetation Plans*.

The concern for Darkinjung and other Local Aboriginal Land Council's, is that the calculations used to determine appropriate offset ratios/credit requirements currently do not have the flexibility to reflect the unique nature of Aboriginal Land ownership, the objects & intents of the Aboriginal Land Rights Act 1983, and the extent of Aboriginal owned land.

### **How can things be improved?**

Darkinjung LALC has identified and appreciates that there is no one simple solution or fix to the problem, but rather a suite of tools that might be investigated and implemented to facilitate LALC initiatives.

Some of the solutions may include;

#### **RECOMMENDATION 3: Investigate a new Part 3C to the EPAA**

Darkinjung LALC is particularly encouraged by the recent introduction of the Greater Sydney Commission Bill 2015 and proposed amendments to the EPAA (by way of Part 3B) to facilitate development within the Greater Sydney Region.

Perhaps there is opportunity for the Government to consider/introduce an additional *Part 3C* to the EPAA address proposals by LALC's across the State.

Consider the benefits to the State if a single authority could consider the *net community benefit* of a LALC proposal.

#### **RECOMMENDATION 4: Investigate a new SEPP (Aboriginal Landholding)**

A specific Policy to address potential Regional outcomes and *net community benefit* for proposals put forward by a LALC.

A SEPP might employ a *site compatibility* qualifying provision, linked to the LALC's Community Plan & Business Plan (CLBP), and overall net community benefit.

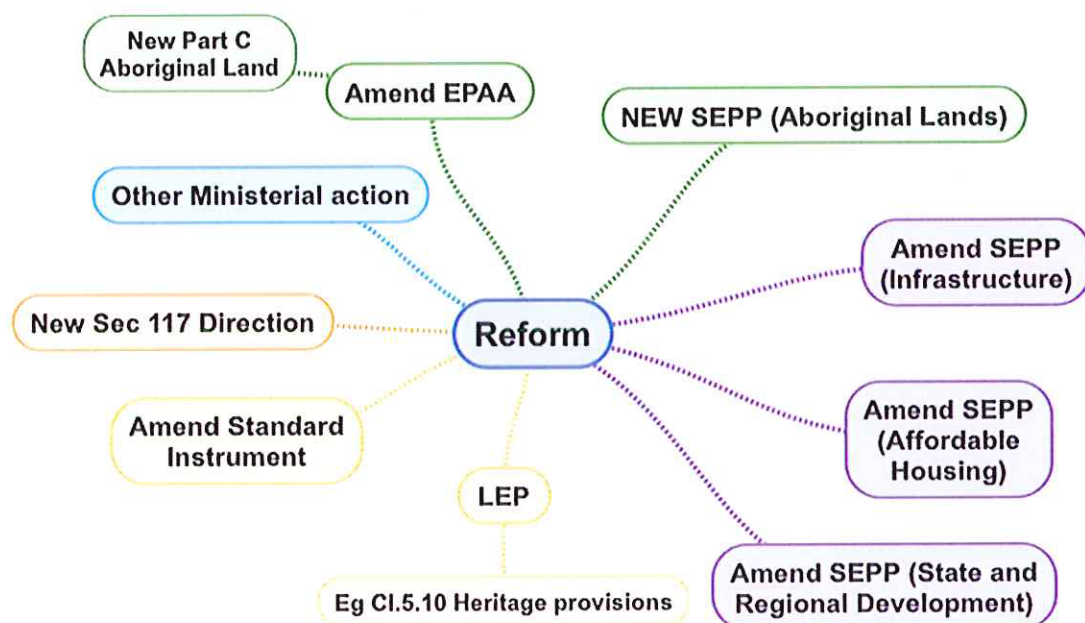
#### **RECOMMENDATION 5: Review methodology to determine offset ratios/credit calculations generated under Biobanking and development of Property Vegetation Plans**

**RECOMMENDATION 6: Review delegations for types of application lodged by a LALC and determined appropriate consent authority.**

Similar to delegations established for proposals referred to a Joint Regional Planning Panel (& PAC), pre-determined delegations could be established to identify the appropriate consent authority. For example,

- the Council having the function to determine the application valued less than AUD1million, or
- the Minister of Planning, or at their directive a joint regional planning panel or public authority (other than a council) as having the function to determine the application for developments valued at and over AUD1million.
- development with a CIV greater than \$5 million which are referred to the regional panel by the applicant after 120 days,
- any proposal greater than \$1 million where Council has related interests

The diagram following illustrates that reform to improve development prospects in Aboriginal communities may require a suite of new and amended tools.



**Figure 1 – Options to planning reform to assist Aboriginal participation in regional planning**

The following table highlights some specific issues which might be addressed in planning reforms.



Darkinjung's experience in economic development to date has been uneasy and costly, largely as a fault of a planning systems that has not recognised or respected the objects & intents of the Aboriginal Land Rights Act 1983, and the extent of Aboriginal owned land.

I would welcome the opportunity to appear at a public hearing, and again thank the Committee for the opportunity to have input into the inquiry to regional planning reforms.

Regards,

Sean Gordon  
CEO

## Planning challenges for LALC's

Issue	Comment /examples	Solution
Biobanking ratios	<p>Traditional certification/ biobanking calculator likely to require offsets in the order of 6:1</p> <p>This high ratio sterilizes significant land expressly for conservation purposes, thus limiting LALC's to achieve other broader social benefits intended under ALRA.</p>	<p>Minister given authority to determine appropriate ratios, similar to provisions that apply to SSD's (Sec 89I of EPAA , and repealed Sec 75JA applying to former Part 3A projects)</p>
Offset requirements – dual legislation	<p>LALC may be required to provide offsets under:</p> <ul style="list-style-type: none"> <li>• TSCA, 1995, and</li> <li>• NVA, 2003, and</li> <li>• EPAA, 1979 - LEP/DCP (Council's discretion)</li> </ul>	<p>Ability to 'turn-off' certain legislation, similar provisions to that apply to SSD's (Sec 89J of EPAA and repealed Sec 75U applying to former Part 3A projects)</p>
External influences - Local politics	<p><b>Bushells Ridge rezoning</b></p> <ul style="list-style-type: none"> <li>- Deferred by WSC Dec 2014</li> <li>- Deferred by WSC June 2015</li> </ul> <p>(Supported by Council officers on both occasions)</p> <ul style="list-style-type: none"> <li>- Pre-Gateway review held Nov 2015 supported proponent. Council has been asked to reconsider it's position as the relevant planning authority.</li> </ul> <p><b>DA for a manufactured home estate at Halekulani</b></p> <p>Original proposal 251 sites; Refined to 178 sites; Appeal lodged to L&amp;E Court; "Agreement" for 99 sites, but still fighting through L&amp;E Court.</p> <p>A significant factor was the level of public concern, we suspect based on ill-advice and pre-conceived ideas unfortunately with a racial element.</p>	<p>Removal local decision making from Local Government.</p> <p>This could occur by referring all applications exceeding a certain threshold to JRPP, or other body (e.g. Greater Sydney Commission)</p>
Lack of understanding of LALC functions	<p>LALC's considered as defacto custodians of conservation land</p> <ul style="list-style-type: none"> <li>- Draft NWSSP identified green corridors over Darkinjung LALC land.</li> <li>- Gosford City Council rezones land from 5 (Special Uses) to E2 Environmental Conservation in Standard Instrument LEP conversion, despite objection from Darkinjung LALC.</li> <li>- Little appreciation/understanding of the role LALC's fulfil: <ul style="list-style-type: none"> <li>• Extent of land</li> <li>• Land rehabilitation and regeneration programs;</li> <li>• Preservation of cultural sites</li> <li>• provision of housing</li> <li>• social &amp; community programs</li> </ul> </li> </ul>	<p>Encouraged by the imminent introduction of a Part 3B to the EPAA, the introduction of a Part 3C to the EPAA to specifically address LALC develops, give consideration for objects and intents of ALRA and provide appropriate planning tools to facilitate developments having a net community benefit.</p>