

**Discussion
paper
response -
Submission
No 44**

INQUIRY INTO ECONOMIC DEVELOPMENT IN ABORIGINAL COMMUNITIES

Organisation: Shoalhaven City Council

Date received: 9/08/2016



**SUBMISSION - ECONOMIC
DEVELOPMENT IN ABORIGINAL
COMMUNITIES – DISCUSSION
PAPER**



Economic Development Office
SHOALHAVEN CITY COUNCIL

The Economic Development Office (EDO) of Shoalhaven City Council welcomes the opportunity to respond to the Standing Committee on State Development's 'Economic development in Aboriginal communities – Discussion paper'.

Preamble

The Economic Development Office of Shoalhaven City Council made a submission in February 2016 to the "Inquiry into Economic Development in Aboriginal Communities" conducted by the Standing Committee on State Development by the NSW Legislative Council.

This submission was addressed by Council's Economic Development Manager, Mr Greg Pullen, in evidence given to the Committee in Narooma on Thursday 26th May 2016.

This follow up submission will expand on some of the recommendations presented in Council's submission with reference to other evidence and the Discussion Paper released by the Committee in July 2016.

Council's submission included six recommendations to the Committee to assist the Committee in its deliberations. At the Inquiry into Crown Land, evidence has been presented by a number of parties, either in their submissions or in attendance at the Committee hearings, that the matter of economic development within Aboriginal communities is intertwined with Crown Land issues.

These recommendations are shown below:

RECOMMENDATIONS from Shoalhaven Council submission on Economic Development in Aboriginal Communities (February 2016)

- 1. To assist Aboriginal businesses establish and develop, the existing NSW Small Business assistance programs would seem to satisfy.*
- 2. Recognise that funding programs do exist for the financing of Aboriginal businesses and that the operation and management of these funds remain independent of government. Should the NSW Government wish to stimulate this sector then loan advances can be made to these bodies to expand their specific reach into this area.*
- 3. The NSW Government work with Aboriginal communities to develop a joint venture agreement template and negotiation framework to deliver meaningful*

and deliverable outcomes to both sides in any co-operative venture be it either social, environmental or economic.

4. *To promote successful Aboriginal owned/operated businesses, NSW Small Business Commissioner prepare case studies to be promoted within various forums including Aboriginal communities, local government, business chambers, banks and financial institutions, media*
5. *To be consistent with the 2015 Illawarra-Shoalhaven Regional Plan the NSW government could facilitate benefits being accrued to Aboriginal communities in accordance with the NSW Aboriginal Land Rights Act by the government either providing*
 - *an intermediary service*
 - *appropriate skills/services to the LALC's*
6. *In an attempt to unlock regional employment lands, it is proposed that a funding allocation be made to the NSW Department of Industry specifically to loan funds to joint ventures between an Aboriginal land council and a Local Government Authority to develop zoned employment lands. The loans to:*
 - *Have a term of say 5 years*
 - *Be limited to \$2million per project*
 - *Be interest free or at minimal interest*
 - *Be made to a legally formed joint venture, articulating inputs and outputs by both sides*
 - *LALC to be the land owner*
 - *LGA to be the land developer and project manager*
 - *Be competitively sought and subject to project viability.*

At this point, four of the above recommendations can stand on their own merit and the EDO would like to expand on recommendations 3 and 6 above.

Recommendations 1 & 2

Council's arguments for recommendations 1 & 2 have not changed and it is felt that the mainstream business assistance programs should be able to adequately address Aboriginal business development. If anything current small business programs should be intensified for all NSW small businesses and offer more one on one support. It needs to be appreciated that business acumen mainly comes from within and is scarce in all communities and even scarcer if it is to be sustainable.

Recommendation 4

This is made in the interest of informing the whole community and especially presenting role models for the Aboriginal community especially the youth. The EDO

agrees with many of the sentiments in the Discussion Paper in terms of the benefits of mentoring and strong role models.

Recommendation 5

Whilst this may be considered as part of the overall solution, government needs to appreciate the frustrations of both the Aboriginal communities in dealing with their growing land portfolio and that of any partner contemplating a Joint Venture with the indigenous owners and the complicated pathway to an economic return.

Providing a solution to benefit Aboriginal economic development

From this point, this submission will direct more attention to proposing a solution rather than articulating the issues and problems.

Recommendation 3 (above)

Stories abound of the failure of negotiations between Aboriginal groups and other parties to reach agreement and that the expectations of the Aboriginal communities are not being met. The expectations of both sides are influenced by different cultures and the meeting of the minds can be difficult to achieve. The development of a “Joint Venture Template” as contained in Council’s Recommendation 3 needs to articulate the cultural differences from the perspectives of both sides and establish the parameters within which the parties are operating.

Having a good foundation to move forward in any relationship is essential.

Using the premise that any Joint Venture (JV) is to produce economic gain to all sides, the parameters within any such agreement should be directed at this goal. This project is a complicated one and may take a period of time to be drafted but there are sufficient knowledgeable people around that could contribute to this process to produce a template that gives scope to all parties to be comfortable to achieving an outcome, clearly understandable and legally binding.

If this exercise is not undertaken and completed at the outset then the continuation of mistrust and frustration resulting in no progress will continue to prevail.

This outcome is fundamental to moving forward to subsequent steps.

If in establishing a JV agreement, there is to be an “independent Registrar” in place, then any JV agreement should be accompanied by a Business Plan for the project. The benefit of formulating a Business Plan is that the project has a clear basis for delivering outcomes. The Business Plan should also contain:

- A dispute resolution process
- A finite term and a process for extending the term

- A definition and plan that articulate what each party will bring to the project
- What income streams are anticipated for the project
- Anticipated expenditure streams
- Cashflow budgets
- Apportionment and distribution of any profits or losses

Consideration needs to be given as to whether any changes to legislation need to be made to enable joint venturing between Aboriginal entities (local Aboriginal land councils) and other parties (Local Government, Government agencies, private enterprises).

Recommendation 6 (above)

In the case of Shoalhaven City Council, this Council would like to joint venture with local Aboriginal land councils for the combined benefit of the Aboriginal and wider community but being reflective primarily to the needs of Aboriginal economic development.

Specifically Council seeks that Local Government in NSW be allowed to joint venture with local Aboriginal land councils. Council can bring to a JV project management skills as well as expertise in construction, both civil and structural. A local Aboriginal land council can bring land and community requirements to the table. Both organisations can benefit by way of the facilitation of communal benefit, supportive profile, jobs and profitable outcomes.

Both sides will base participation and involvement in any JV on the business outcomes. As such a proven business case will be required to move forward into any JV agreement.

Resolving Land Claims

Where a joint venture requires the resolution of an Aboriginal land claim under the *NSW Aboriginal Land Rights Act 1983* then this needs to be resolved by government in the first instance.

A method of paying for an accelerated land claim assessment is suggested to be that in accordance with the Business Plan and JV agreement that a proportion, say 1% of the capital expense of the project, be paid to an independent assessor to expedite the processing of a land claim. (Question 17)

An additional fee could be charged by Government to provide Title by survey or this cost could be accepted by the JV. (Question 18)

Question 19 refers to limited title and it is assumed to be an unresolved Native Title process. Again this can either be addressed by the JV or by some assistance

mechanism by Government to address the issues through the Native Title Tribunal. Crown Lands and Local Government do have experience in this regard of addressing Native Title and this could be seen as one of the benefits of local Aboriginal land councils partnering with local government. (Question 21)

Seed Funding for a Joint Venture Development

If both the Joint Venture Agreement (including a Business Case) and the Land Claim have been resolved, the project is ready to be implemented.

It is recommended that if Government wants to promote this form of co-operative project as a means of delivering Aboriginal economic development, then a “bank” to provide seed funding is recommended.

Subject to an assessment process, as done with other NSW business assistance programs through the Department of Industry, an application be invited for a loan to groups with a signed and executed JV Agreement, land claim resolution and Title to property. Any loan would have an interest rate applicable at between 0% and the rate applicable to Government Bills and be repayable over a set, but short, period.

In the case of a JV with Local Government, the holding of monies and the project management for the project would rest with the Local Government Authority. Appropriate commercial security arrangements and mortgages would apply. This would, in part, address Question 13.

As part of any JV the non-Aboriginal partner needs to pass skills and training onto the Aboriginal community in land management and development skills. Previously Shoalhaven City Council invited Aboriginal youth to participate in a cadetship program based on land management skills but found it difficult to attract applicants. Council, in a JV arrangement, would embark on a capacity building exercise with the local Aboriginal community – not just in trades but in professional development as well.

The reporting of the progress of the project would be the responsibility of the project manager and these could be reported as case studies to encourage others to replicate if applicable.

Positive Outcomes

Various levels of positive outputs can be achieved through a process as outlined above; some of these are described in the table below.

Attribute	Aboriginal Outcomes	Local Govt Outcomes
Land development	Jobs, cashflow,	Local devt, linear development
Residential development	Jobs, housing, cashflow,	Local development, linear development
Industrial development	Jobs, factory to use, cashflow	Local development, local business
Commercial development	Jobs, commercial premises Cashflow	Local development, local business
Recreational development	Jobs, cashflow, maintenance workcrews	Local assets for community use
Water Bodies (Question 22)	Jobs, cashflow, business opportunities in aquaculture	Local development, local business

In reality, the development of projects that deliver both short and medium term outcomes are desirable as they can deliver both jobs during the project and create an ongoing asset like a factory or residential units or playing fields that can in themselves create economic outcomes into the future.

Summary

The Economic Development Office of Shoalhaven City Council is committed to participating in joint ventures with Aboriginal groups. A previous co-operative venture has worked but appeared to have failed from an Aboriginal perspective because with the opportunities set up, there was a gap in the time to realise these benefits and this was not understood by the community.

To lift the level of understanding and appreciation of the development process, the partnership relationship, the management of project operations and the timeframes would be of benefit to all parties.

Answers to specific questions as per the discussion paper.

Question 2

What are the options of the governance of Aboriginal affairs in New South Wales given the complexities, history, stakeholders, the need for accountability and transparency, and the need to engage the private sector?

The Economic Development Office of Shoalhaven City Council (EDO) agrees with the sentiments expressed in 1.18 that there is some concern that the Department of Education may not be the most appropriate government agency to house Aboriginal Affairs and drive economic reform. While education is the cornerstone of economic and community development, there may need to be more of a focus on realising current economic opportunities such as business development and land development. For this reason certain business development aspects of Aboriginal Affairs NSW may benefit from support from the Department of Industry. The NSW Department of Industry has experience in the development of industry sectors and would be able to provide assistance and expertise in terms of the development of Manufacturing, Tourism and Arts, Culture & Creative Industries. In addition, the NSW Department of Industry deals with the Infrastructure and Construction sector and could provide advice and broker partnership arrangements.

The EDO is looking forward to the release of the Aboriginal Economic Development Framework as this document will provide both Council and Local Aboriginal Land Council's with some much needed direction in terms of economic development for the betterment of all of the community of the Shoalhaven. This document should articulate the economic objectives of Aboriginal land grants and go a long way in addressing the following issue (6.33) of 'Educat[ing] State planning authorities, local councils and the community that Land Council lands may have an economic potential, and have not been claimed solely for cultural/nature conservation reasons'. This document is sorely overdue and needs to be developed as a matter of urgency.

Question 3

What can the NSW Government do to improve coordination in the area of economic development in Aboriginal communities?

The development and release of the Aboriginal Economic Development Framework is the first step in improving coordination in the area of economic development in Aboriginal communities. The fact that it is still not developed may point to an underlying issue. The EDO suggests that the development of the Framework be a State Government priority and potentially appoint an overseer to coordinate the development of this plan and bring all the necessary agencies to the table.

There are a number of skilled facilitators within numerous state government departments, such as NSW Premier and Cabinet or the Department of Industry, who have been involved in the development of similar documents requiring a coordinated response. The EDO acknowledges that 3.12 and 3.13 claim that the Department of Industry is currently working with Aboriginal Affairs to develop the Framework and encourages this involvement. However, it is unclear from the submissions as to the extent of the involvement of the Department of Industry.

In 3.12 to 3.17 there is discussion about the development and content of the Framework. It is strongly suggested that Government, in conjunction with other agencies such as Councils, that have experience in this realm to sit with some leading Aboriginal stakeholders to develop a draft Framework as a matter of urgency.

Potentially the answer could be to help build skills within Aboriginal Affairs rather than the establishment of another agency and to provide Aboriginal Affairs with the necessary authority to bring other agencies to the table to develop a coordinated response.

In reference to 3.8 which states:

A single agency be given responsibility for identifying and facilitating partnerships between the private sector, government and Aboriginal entities to create successful commercial enterprises and, in partnership with AA, deliver on the framework's commitments.

Local communities know their local area the best and the EDO cautions against a metro based single agency.

Shoalhaven City Council and local Aboriginal land councils have worked together to progress projects, such as housing and industrial developments, for the betterment of the entire Shoalhaven community. The aims of the EDO are to enhance economic development of the Shoalhaven and so focus on economic growth and job creation rather than profit maximisation on land developments. Therefore Shoalhaven City Council and local Aboriginal land councils have the same end goal in mind. This is not to say that partnerships with the private sector would not lead to economic development in local Aboriginal communities but it needs to be kept in mind that different developments will have different goals and outcomes and hence there is a need to engage a variety of partners.

Land dealings can be complex and can operate in extended time periods. There may be a need for a trusted independent Registrar to act as an arbitrator to protect the financial interests of all JV partners. This is particularly important where there are staff changes in Council, staff/contact changes within private enterprise and changes to the boards of local Aboriginal land councils. The independent Registrar would hold the

history in regards to the land dealing and offer an improved vehicle of transparency. This information could form the base of a number of case studies and inform future best practice. This Registrar would also be the repository of submitted progress reports for JV's.

Question 5

What actions or decisions should the NSW Government take to ensure that place-based approaches are embedded as a key component of the development and implementation of initiatives to drive Aboriginal economic development?

Firstly the EDO would like to reiterate 5.15 and the negative impact of funding cycles on program delivery. Any actions or decisions to ensure place-based approaches are utilised must be established for the long term and sit outside of funding cycles. All projects need to establish relationships and this takes time. Project momentum, trust and staff skills are all lost at the end of a funding cycle affecting not only the project in question but taints any future attempts at similar projects.

Secondly, local input into economic development is imperative and as such the place-based approach is key to economic success. As pointed out in 3.51 this cannot happen without the involvement of local Aboriginal communities. In terms of local land development, the EDO would like to truly partner with local Aboriginal land councils to undertake much needed industrial, recreational and residential expansion. As stated before the EDO has a broad view of economic development with the ultimate goal of such developments not only being the release of land but more importantly increased skill development and capacity building within Aboriginal land councils. For this reason the EDO recommends looking at a mentorship type process where Aboriginal people develop the skills that they need to participate in economic development. Independent business mentors could be appointed to each land council (where invited) to provide support in terms of negotiation and all steps of land (and business) development ensuring not only economic development but providing land councils with confidence that could be used in subsequent dealings. Mentoring is critical and the EDO agrees with sentiments expressed in section 5.

Finally, as stated earlier education is the foundation of economic development. However there is a gap between education and implementation. According to NSW Parliamentary Research Service (e-brief, August 2012) 74% of NSW businesses fail in the first five years. The EDO suggests that Aboriginal businesses could be set up to fail without access to tailored and intensive business advisory support. As per Recommendation 1 the EDO supports the use of intensified and locally delivered NSW Small Business Programs.

Question 11

What training or other services could be provided to enhance the governance capacity of Aboriginal organisations? Who should provide the training and other services?

It is stated in 5.9 that local Aboriginal land councils have suffered from poor governance; 'made poor business decisions, with many being the subject of maladministration and fraud'. Poor governance is not unique to local Aboriginal land councils and is not uncommon among other community organisations and committees. In response to this ICAC and a number of training organisations have developed a myriad of governance workshops and courses. These workshops and courses should be more widely utilised by all members of the community who are involved in land councils, committees and community organisations. Any Aboriginal specific governance capacity training would be a duplication of what is currently available and could be misconstrued by the wider community. This training may need to be a pre-requisite to any JV involvement.

End of submission.