
^{xviii} See for example LGA 2008, *Policy Statements* available at http://www.lgsa-plus.net.au/resources/documents/LGA_Policy_Statements_08.pdf and LGSA 2009, *Executive decisions with recommendation from conference* available at <http://www.lgsa-plus.net.au/resources/documents/Recommendations-Conference-2009.pdf>

ⁱ ALRA, Sections 52(4) and 106(7)

ⁱⁱ ALRA, Sections 82-83

ⁱⁱⁱ The Hon. Frank Walker, NSW Parliament Hansard, Legislative Assembly, 24 March 1983, at 5090, available at: [http://www.parliament.nsw.gov.au/Prod/parlment/hanstrans.nsf/V3ByKey/LA19830324/\\$file/473LA046.pdf](http://www.parliament.nsw.gov.au/Prod/parlment/hanstrans.nsf/V3ByKey/LA19830324/$file/473LA046.pdf)

^{iv} Local Government Act Taskforce, 4 April 2013, 'A New Local Government Act for NSW', Page 26 available at: <http://www.dlg.nsw.gov.au/dlg/dlghome/documents/information/A%20New%20Local%20Government%20Act%20For%20NSW%20-%20Discussion%20Paper%20-%20April%202013.pdf>

^v Ibid. Page 25

^{vi} Local Government Act Taskforce, 4 April 2013, 'A New Local Government Act for NSW', Page 4 available at: <http://www.dlg.nsw.gov.au/dlg/dlghome/documents/information/A%20New%20Local%20Government%20Act%20For%20NSW%20-%20Discussion%20Paper%20-%20April%202013.pdf>

^{vii} For further critiques of the current system please refer to previous NSWALC submissions to the NSW Government on this issues, including a joint submission by the NSW Aboriginal Land Council and NTSCORP Limited in response to the reform of Aboriginal Culture and Heritage laws in NSW, 'Our Culture in Our Hands', December 2011, available at:

http://www.alc.org.au/media/78829/120112%20nswalc_ntscorp%20broad%20reform%20submission%20final.pdf

^{viii} Destination 2036 Action Plan, June 2012:

<http://www.dlg.nsw.gov.au/dlg/dlghome/documents/information/Destination%202036%20-%20Action%20Plan.pdf>

^{ix} Local Government Act Taskforce, 4 April 2013, 'A New Local Government Act for NSW', Page 25 available at: <http://www.dlg.nsw.gov.au/dlg/dlghome/documents/information/A%20New%20Local%20Government%20Act%20For%20NSW%20-%20Discussion%20Paper%20-%20April%202013.pdf>

^x Local Government and Shires Association (2011) 'Your Council in the Community: A snapshot of council activities and services from the Local Government and Shires Associations' Social Policy and Community Services Survey', available at:

http://www.lgsa.org.au/resources/documents/LGSA010_SocialPolicyDoc_FINAL.pdf

^{xi} LGSA Aboriginal Affairs Policy Statement available online at: <http://www.lgsa.org.au/www/html/229-aboriginal-affairs.asp>

^{xii} Motions passed at annual LGSA conferences are available at: <http://www.lgsa.org.au/www/html/2838-previous-years.asp>

^{xiii} Guidelines and principles on best practice engagement with Aboriginal peoples have been developed by a number of organisations including: United Nations Permanent Forum on Indigenous Issues (UNPFII) and Human Rights Equal Opportunity Commission (HREOC). 2005, "Engaging the marginalized: Partnerships between indigenous peoples, governments and civil society", *United Nations Workshop – 2005 International Conference on Engaging Communities – Brisbane, Australia*, 15th August, pp.1-8, Accessed 19th December 2011, http://www.hreoc.gov.au/social_justice/conference/engaging_communities/sjr-unws-bw.pdf and Human Rights and Equal Opportunity Commission (HREOC). 2006, "Engaging Australian Indigenous Peoples: New arrangements for the administration of Indigenous affairs, economic and social development, and native title in Australia", *UN Workshop on Engaging the Marginalised: Partnerships between Indigenous Peoples, government and civil society*, Background Paper prepared by the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner, Human Rights & Equal Opportunity Commission, Australia, Brisbane 15th August, Updated 24th January 2006, Accessed 19th December 2011,

http://www.hreoc.gov.au/social_justice/conference/engaging_communities/background_paper.html

^{xiii} United Nations Declaration on the Rights of Indigenous Peoples, available at:

http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

^{xiv} United Nations Declaration on the Rights of Indigenous Peoples, available at:

http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf

^{xv} Local Government Act Taskforce, 4 April 2013, 'A New Local Government Act for NSW', Page 30 available at: <http://www.dlg.nsw.gov.au/dlg/dlghome/documents/information/A%20New%20Local%20Government%20Act%20For%20NSW%20-%20Discussion%20Paper%20-%20April%202013.pdf>

^{xvi} Local Government Act Taskforce, 4 April 2013, 'A New Local Government Act for NSW', Pg33 available at: <http://www.dlg.nsw.gov.au/dlg/dlghome/documents/information/A%20New%20Local%20Government%20Act%20For%20NSW%20-%20Discussion%20Paper%20-%20April%202013.pdf>

^{xvii} for example, see Australian Institute of Health and Welfare (2011) 'What works to overcome Indigenous Disadvantage', available at <http://caepn.anu.edu.au/publications/working.php> ; Janet Hunt (2010) *Looking after Country in New South Wales: Two case studies of socio-economic benefits for Aboriginal peoples* available at: <http://caepn.anu.edu.au/publications/working.php>

mechanisms that are developed and implemented with Aboriginal peoples in line with best practice consultation principles can play a significant role in the protection of Aboriginal culture and heritage, as they provide opportunities to intercede in the early stages of proposed development and land use activities.

Recommendation 5: That Local Government are required to publicly report regularly on the actions they have taken to protect and promote Aboriginal heritage.

The recommendations made in this submission are designed to promote the protection of Aboriginal culture and heritage in NSW, and to better recognise the rights of Aboriginal people to control and manage Aboriginal culture and heritage and to access and use lands in accordance with the intent of the ALRA, it is the expectation of NSWALC, in line with the NSW Government Taskforce sentiments of consultation, engagement and integration that the new *Local Government Act* will provide positive principles and practical outcomes to rectify the past inadequacies of the Act currently experienced by the Aboriginal Land Council network.

Again, I thank you for the opportunity to provide comment on the Local Government Acts Taskforce Discussion Paper, *A New Local Government Act for NSW*. I trust that genuine consideration will be given to our comments and that a response to the issues we have raised will be forthcoming.

If you have any questions regarding this letter, please do not hesitate to contact Justine Trounce (Policy Officer) on (02) 9689 4464 or justine.trounce@alc.org.au.

Yours sincerely,



Clare McHugh

Director, Policy and Research Unit
NSW Aboriginal Land Council

Date: 18/6/13

consideration to best practice engagement with Aboriginal people, without access to modern technology must be taken into account.

One example of how information can be made available to Aboriginal peoples in NSW includes publishing notices in accessible media and providing direct notification to relevant community organisations including LALCs. NSWALC recommends that notification is provided to Aboriginal communities through at least the following channels:

- Advertisements published in Aboriginal media including Tracker, Koori Mail and National Indigenous Times, and other local and state Indigenous media,
- Advertisements published in local community newspapers,
- Notification letters sent to all relevant Local Aboriginal Land Councils,
- Notification letters sent to Aboriginal organisations operating in the locations where consultations are being held including Aboriginal Medical Services, Aboriginal Legal Services, Elders Councils, NTSCORP, and Aboriginal Corporations registered with the Office of Indigenous Corporations,
- Details of the consultation meetings and processes to be featured on centralised systems, such as local council and Department of Planning websites.

Meetings and face to face consultations specifically with local Aboriginal community members should also be encouraged at places and times that are appropriate for the local community. Furthermore, NSWALC encourages relevant planning authorities, to keep communities informed and engaged throughout the life of any initiative, and opposes 'one-off' consultation.

Recommendation 4: That capacity building for Aboriginal communities and specifically LALCs is resourced and funded as a government priority to assist Aboriginal peoples to engage in local government processes and decision-making by the measures described above.

Protection and promotion of Aboriginal Culture and Heritage

Aboriginal culture and heritage in NSW dates back tens of thousands of years and richly informs the living culture of Aboriginal peoples of NSW, as it enriches the broader cultural heritage of this state and the world. It is well understood that for Aboriginal people's maintenance of culture, and by extension the protection of Aboriginal culture and heritage, is a key factor in achieving success in community development initiatives and overcoming disadvantage.^{xvii}

Local Government is currently in the process of review and reform under the guidance of the Governments 10 and 25 year strategic plans. As such the definition of local government authorities in regards to key responsibilities is integral to incorporating a range of local community and heritage values. In this regard, it should be noted that local government authorities across NSW have made commitments to recognise and respect the role and rights of Aboriginal communities in respect to Aboriginal culture and heritage amongst other things, and are working actively in partnership with Aboriginal groups in a number of areas.^{xviii}

There is agreement from Aboriginal peoples, industry and government that there needs to be better involvement of Aboriginal people in heritage management, better identification and protection of Aboriginal heritage and upfront rather than reactive heritage planning. Strategic planning

While LGSW has developed positive policy statements on engaging with Aboriginal communities^{xi} and have passed several motions at their annual conferences^{xiii} this has not necessarily translated to significant improvements in the manner in which Local Government engage with Aboriginal communities in general.

Best practice in engaging Aboriginal peoples in consultation processes must fundamentally recognise and promote the inherent rights of Aboriginal peoples as outlined in the United Nations Declaration on the Rights of Indigenous Peoples which highlights Aboriginal peoples rights to maintain and strengthen distinct political, legal, economic, social and cultural institutions.^{xiii}

The United Nations Declaration on the Rights of Indigenous Peoples also states:

Article 18
Indigenous peoples have the right to participate in decision-making matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own indigenous decision-making institutions.

Article 19
States shall consult and cooperate in good faith with the indigenous peoples concerned through their own representative institutions in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them.^{xiv} (emphasis added)

A New Local Government Act Discussion Paper notes the importance of community consultation and engagement within its guiding principles:

- Ensuring that council, in exercising its discretion as to how consultation will proceed in any particular circumstance, has regard to the reasonable expectations of the community, the nature and significance of the decision or matter, and the costs and benefits of the consultation process^{xv}

In keeping with the intent of the discussion paper, to promote efficiency, effectiveness and strong relationships, NSWALC recommends that any council exercise in discretion as to how consultation will proceed, places Aboriginal engagement as inherent to that process, thus inherent to the nature, significance, costs and benefits of the consultation process.

Recommendation 3: That, in consultation with NSWALC as a peak Aboriginal organisation in NSW, guidelines are developed to assist Local Government to engage with Aboriginal peoples.

Technology

The discussion paper notes for each council to determine the most appropriate use of technology taking into account the principles for local government and community engagement through the IPR framework.^{xvi} The use of technology is encouraged, however it should not replace other forms of notification, engagement and consultation. The use of modern technology has the potential to ostracise those members of the Aboriginal community who do not have access to facilities. Special

partners, to create downstream outcomes of community strategic planning, delivery programs, operational plans and resourcing strategies as part of local council asset management plans.

In view of the new framework NSWALC contends that Aboriginal peoples, Aboriginal communities and Aboriginal Land Councils must be recognised as key stakeholders in local government processes and decision making based on the following:

- The unique status of Aboriginal peoples as the First Peoples of NSW,
- The significant landholdings of the Aboriginal Land Council network, and
- Aboriginal peoples ownership of Aboriginal culture and heritage.

Concerns have consistently been raised with NSWALC and LALCs in relation to the poor and often lack of consultation by Local Governments in relation to the development of existing structures; Local Environmental Plans (LEPs) and planning proposals.

This lack of consultation is having significant negative impacts for Aboriginal peoples, particularly in relation to a lack of protection of Aboriginal heritage sites, access to lands being restricted and detrimental zoning decisions resulting in economic development opportunities being prevented.

Furthermore, it is of concern to NSWALC that there appears to be low levels of consideration of the needs of Aboriginal peoples in the Local Council developed community and social plans, which were to recognise the need for more holistic planning in communities generally.

In a recent Local Government and Shires Association (LGSA), now Local Government NSW (LGNSW) survey, less than half of all Local Councils reported that they include the interests and needs of Aboriginal peoples in their Social Plan.^x While these figures are somewhat encouraging compared to previous years, the current levels of engagement of Local Government with Aboriginal communities remain relatively low compared with other sectors of the community.

There are 152 Local Councils in NSW, and of those who responded to the then LGSA survey, only 12 Local Councils indicated that they had developed a specific plan to meet the needs of Aboriginal and Torres Strait Islander Peoples. Only 33 Local Councils identified that they had established a cross cultural awareness training policy for Councillors, management and staff, and only 18 Local Councils had established an Aboriginal Cultural Heritage Policy. This amounts to a mere average of 21 Councils employing measures for more inherently aware forms of governance.

In relation to how Local Government specifically engage with Aboriginal peoples, the LGSA survey indicated that:

- 75 councils have knowledge of Traditional Custodians and group naming
- 61 councils engage with volunteers within the community to work with council on Aboriginal and Torres Strait Islander Peoples programs
- 48 councils have Aboriginal and Torres Strait Islander Peoples Advisory Groups/Committees
- 35 councils utilise an Aboriginal Police Liaison Officer
- 18 councils identified Aboriginal Heritage Advisory Committees/Groups
- 15 councils have Local Service Agreements, (compared with 4 in 1999)

By extending and strengthening the principles, the new *Local Government Act* will be better positioned to ensure the long-term protection and management of Aboriginal culture and heritage, and to facilitate positive outcomes for Aboriginal communities. It is the view held by NSWALC that, in order to achieve equity, all aspects of NSW Government laws and policies must seek to protect and support the rights and aspirations of Aboriginal peoples.

Recommendation 1: Aboriginal Land Councils and the Aboriginal community must be recognised in local government processes, relevant laws and policies. This recognition must be within the principles and practices of engagement and partnerships with Aboriginal communities as key stakeholders in local government.

NSWALC welcomes the Local Government Acts Taskforce commitment to facilitating Local Government to act fairly, responsibly, ethically and in the public interest as contained within the framework considerations.^{vi} As previously noted, current legislation, by way of Planning Laws have failed to provide such provisions. Furthermore, the principle governing mechanism of Aboriginal Culture and Heritage, the *National Parks and Wildlife Act 1974* currently fails to prevent the wide-spread destruction of Aboriginal heritage, and is viewed as a system for the regulated destruction of Aboriginal culture and heritage, rather than for its protection.^{vii}

Within this context, NSWALC emphasises the needs of Aboriginal peoples to be addressed concerning:

- Decisions relating to zoning, so as not to undermine the *Aboriginal Land Rights Act 1983*, the ability for Aboriginal Land Councils to have an input into the reclassification of land under Local Government control,
- That local employment and service delivery opportunities are provided the significant consideration due to Aboriginal people and Aboriginal communities by mean of effective and sustained engagement, and
- The protection of Aboriginal Culture and Heritage as a determinate towards the cultural and economic development of Aboriginal people in NSW.

Recommendation 2: That Local Governments are legislatively required to genuinely engage with Aboriginal peoples and specifically Local Aboriginal Land Councils, as legislated bodies with a range of land, cultural and community responsibilities.

Community Consultation and Engagement

As per the NSW Government Action Plan, Destination 2036, Integrated Planning and Reporting (IPR) is the preferred framework for the strategic direction for NSW Local Government. IPR is expected to provide efficient and effective service delivery, quality governance, financial sustainability, appropriate structures and strong relationships.^{viii}

The Local Government Act Discussion Paper advocates for the broader application of IPR, from what is currently in place, to act as the Strategic Framework for the new *Local Government Act*. The aim is to improve roles of leadership, advocacy, service provision, accountability and sustainability of local councils.^{ix} The cornerstone of the IPR framework is engagement with the local community, and other

NSWALC is the peak body representing Aboriginal peoples in NSW and with over 20,000 members, is the largest Aboriginal member based organisation in Australia. Established under the *Aboriginal Land Rights Act 1983 (NSW) (ALRA)*, NSWALC is an independent, self-funded non-government organisation that has an elected governing council and the objective of fostering the aspirations and improving the lives of the Aboriginal people of NSW.

NSWALC provides support to the network of 120 autonomous Local Aboriginal Land Councils (**LALCs**) that exist in NSW. A map showing LALC boundaries and Local Government Areas has been enclosed for your reference. Contact details for all Aboriginal Land Councils in NSW are available on the NSWALC website: <http://www.alc.org.au/land-councils/overview.aspx>.

As democratically elected bodies, LALCs represent not only the interests of their members, but of the wider Aboriginal community. The network of LALCs was established to acquire and manage land as an economic base for Aboriginal communities, as compensation for historic dispossession and in recognition of the ongoing disadvantage suffered by Aboriginal communities. Aboriginal Land Councils are significant land holders across the state and have functions under the ALRA in respect to the management and development of lands as well as the protection and promotion of Aboriginal culture and heritage.ⁱ The key goals of LALCs are outlined in their Community Land and Business Plans (**CLBPs**).ⁱⁱ

The preamble of the ALRA recognises that 'Land is of spiritual, social, cultural, and economic importance to Aboriginal peoples'. When introducing the Aboriginal Land Rights Bill 1983 into the NSW Parliament, the then Minister for Aboriginal Affairs, the Hon. Frank Walker identified that '...land rights has a dual purpose – cultural and economic.'ⁱⁱⁱ

The Principles of the new Act

The NSW Local Government Act Taskforce Discussion Paper proposes a set of principles to replace the current charter in the new *Local Government Act*. The second proposed principle is to 'engage with and respond to the needs and interests of individuals and diverse community groups'.^{iv}

NSWALC contends the 'tone' of these principles could be strengthened to address past inadequacies of the *Local Government Act*, including councils ability to act as an enabler to meet community needs.^v In a previous submission to the Planning Review Panel, which has consequence on the new *Local Government Act*, NSWALC demonstrated a number of areas where the planning system is actively impeding on the goals and aspirations of Aboriginal communities by:

- Failing to create an inclusive planning system that meaningfully engages with Aboriginal peoples,
- Failing to recognise that Aboriginal peoples have the right to determine and develop priorities and strategies for the development of use of Aboriginal lands, territories and other resources, as per Article 32 of the United Nations *Declaration on the Rights of Indigenous Peoples*, and
- Inadequately recognising and protecting Aboriginal culture and heritage.

As such the principle for councils to engage and respond should extend to enable effective engagement and accountability with the community, with special consideration of Aboriginal people as key stakeholders.



Mr John Turner, Chair
Local Government Acts Taskforce
C/- Division of Local Government
Department of Premier and Cabinet
Locked Bag 3015
NOWRA NSW 2541

18 June 2013

Dear Chair,

The NSW Aboriginal Land Council (**NSWALC**) welcomes the opportunity to make comment on the Local Government Acts Taskforce Discussion Paper, *A New Local Government Act for NSW*.

Local Government in NSW has diverse and important roles and responsibilities relating to their local communities, and specifically Aboriginal communities. The management of public lands, providing and maintaining community infrastructure and services, representing and responding to the needs of local communities, and preparing and implementing a range of plans, including land and community and social plans, are of key importance to Aboriginal communities in NSW. The range of impacts Local Government has on the ability for Aboriginal people to access and use lands, access and use local services, and protect and promote Aboriginal culture and heritage is significant.

The below comments particularly relate to a variety of taskforce proposals of the Local Government Acts Taskforce:

1. The Principles of the new Act
2. Community Consultation and Engagement
3. Technology

NSWALC notes that the NSW Government is currently undertaking a number of significant reviews and reforms, including the NSW Planning System as part of Destination 2036 and State Plan 2021. A number of issues related to these reviews and plans are of direct relevance to the review of the *Local Government Act*, in particular issues related to consultation and engagement with Aboriginal peoples, protection of Aboriginal culture and heritage, economic development of Aboriginal owned lands, and the integration of former Aboriginal missions and reserves into the planning system. As such NSWALC had provided submissions to the NSW Government and review panels relating to the planning review and review of Aboriginal culture and heritage legislation.

Head Office
Ground Floor, 33 Argyle Street
Parramatta NSW 2150
PO Box 1125
Parramatta NSW 2124
Tel: 02 9689 4444
Fax: 02 9687 1234
DX 28308 Parramatta 2150

Western Zone
2/36 Darling Street
Dubbo NSW 2830
PO Box 1196
Dubbo NSW 2830
Tel: 02 6885 7000
Fax: 02 6881 6268
DX 4009 Dubbo 2830

Northern Zone
Suite 2-26, Park Avenue
Coffs Harbour NSW 2450
PO Box 1912
Coffs Harbour NSW 2450
Tel: 02 6659 1200
Fax: 02 6650 0420
DX 7557 Coffs Harbour 2450

Eastern Zone
Level 5, 33 Argyle Street
Parramatta NSW 2150
PO Box 1125
Parramatta NSW 2124
Tel: 02 9689 4444
Fax: 02 9689 4503
DX 28308 Parramatta 2150

Southern Zone
Suite 110, Corporate Level
Riverside Plaza
Monaro Street
Queanbeyan NSW 2620
PO Box 619
Queanbeyan NSW 2620
Tel: 02 6124 3555
Fax: 02 6297 3541
DX 24202 Queanbeyan 2620