



Local Land Services Feedback,
Department of Primary Industries,
PO Box 865, Dubbo, 2830

Dear Local Land Services Stakeholder Reference Panel,

NSW Aboriginal Land Council Submission – Governance structure for Local Land Services

The NSW Aboriginal Land Council (**NSWALC**) is the peak body representing the interests of Aboriginal peoples in NSW and with over 20,000 members is the largest Aboriginal member based organisation in Australia. NSWALC also provides support to the network of 120 autonomous Local Aboriginal Land Councils (**LALCs**) across the state.

Aboriginal Land Councils are significant land holders across the state and have functions under the *Aboriginal Land Rights Act 1983* (NSW) in respect to the management and development of lands as well as the protection and promotion of Aboriginal culture and heritage.

The objectives of the *Aboriginal Land Rights Act 1983* (NSW) include:

- (a) to provide land rights for Aboriginal persons in New South Wales,
- (b) to provide for representative Aboriginal Land Councils in New South Wales,
- (c) to vest land in those Councils,
- (d) to provide for the acquisition of land, and the management of land and other assets and investments, by or for those Councils and the allocation of funds to and by those Councils,
- (e) to provide for the provision of community benefit schemes by or on behalf of those Councils.

Aboriginal peoples in NSW and particularly the network of Aboriginal Land Council's that represent them (both NSWALC and LALCs) are key stakeholders in relation to natural resource management and at a local level are holders of Traditional Ecological Knowledge accumulated over millennia.

NSWALC understands that the Local Land Services Stakeholder Reference Panel is currently in the process of investigating governance arrangements for Local Land Services, which are due to be functioning by January 2014. With this in mind, and as the peak Aboriginal representative organisation in NSW, NSWALC makes the following submission regarding Local Land Services.

Head Office	Western Zone	Northern Zone	Easter Zone	Southern Zone	Far West Zone
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	2/36 Darling Street Riverview Business Park Dubbo NSW 2830 PO Box 1196 Dubbo NSW 2830 Tel: 02 6885 7000 Fax: 02 6881 6268 DX 4009 Dubbo 2830	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	50/24-26 Watt Street Gosford NSW 2250 Po Box 670 Gosford NSW 2250 Ph: 02 4337 4700	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	Level 3, NSW State Government Building, 32 Sulphide Street Broken Hill NSW 2880

Consultation

The capacity of Local Land Services to engage effectively with Aboriginal peoples in land management decision-making processes is crucial to achieving improved outcomes for Aboriginal communities. Furthermore, there is a clear need for the Local Land Services Stakeholder Reference Panel and the Department of Primary Industries to recognise that land management inherently involves Aboriginal social, cultural and economic elements and that these elements should be openly addressed through genuine community consultation processes.

To date the model of consultation employed by the Local Land Services Stakeholder Reference Panel and Department of Primary Industries has included online surveys and workshops and questionnaires. This consultation process has not fully supported the genuine engagement of Aboriginal communities in the establishment of governance arrangements for Local Land Services. While the current consultation processes employed have involved some general public notices and internet feedback options, and workshops, these processes are insufficient for the purpose of engaging with Aboriginal peoples and communities.

Aboriginal peoples must be provided with early and meaningful opportunities to influence the development of Local Land Services. This engagement must occur well before decisions are made regarding the governance arrangements and structure of Local Land Services and the scope of Local Land Services in relation to service delivery and land management.

Recommendation: NSWALC notes that the current consultation processes have not fully supported the engagement of Aboriginal peoples in the establishment of governance arrangements for Local Land Services. Aboriginal peoples must be provided with early and meaningful opportunities to influence the development of Local Land Services through culturally appropriate consultation processes.

Aboriginal participation on Local Land Services Boards

Under *NSW 2021* there are a number of targets relating to natural resource management, biodiversity and conservation. These include to 'increase Aboriginal participation in natural resource management by supporting Aboriginal Green Teams and other Aboriginal groups working to protect and conserve the natural environment.'

In order to meet the *NSW 2021* goals, the NSW Government must include Aboriginal groups, organisations and individuals in the decision making processes of Local Land Services. Aboriginal people's engagement in natural resource management in NSW historically has been marred by a lack of understanding of Aboriginal natural resource management issues.¹ There has been conflicting understandings of Aboriginal people's involvement in natural resource management and it is often the case that Aboriginal peoples are regarded as merely another stakeholder.

Aboriginal peoples engagement in natural resource management is not only confined to ensuring that Aboriginal peoples can exercise inherent rights to manage Country and protect their cultural

¹ Smyth, D., Szabo, S., and George, M. 2004, *Case Studies in Indigenous engagement in Natural Resource Management in Australia*, p. 10.

values, but it is also essential in addressing issues of disadvantage in terms of economic development as well as other social and cultural determinants of health.

The Local Land Services Stakeholder Reference Panel is currently seeking views on the mix and number of Board members and the type of voting rights to elect Board members.

NSWALC understands that the current proposal in relation to the structure and election of Boards includes:

- Boards will potentially be made up of four (4) Minister appointed positions and four (4) ratepayer elected members or alternatively that Boards will potentially be made up of four Minister appointed positions and three ratepayer elected members;
- For the four Minister appointed positions, the Chair of the Board (who is nominated by the Board) will oversee the selection process of nominations for the Ministerial appointed Board members, which the Minister will consider and appoint;
- For the three or four elected members, the Local Community Advisory Group will review nominees against a required skills set and will endorse nominees for election by ratepayers;
- The Local Community Advisory Group will consist of 12 members, comprising core representatives from stakeholder groups, agency representatives and other individuals;
- The elected Board members will be elected by ratepayers in a 'cost effective and transparent manner';
- Voting rights for elections are yet to be determined, however could be based on;
 - The amount (\$) of rates paid per ratepayer;
 - The size (ha) of rateable area and holding;
 - The type (e.g. animal, general) of rates; or
 - One vote per ratepayer regardless of the above.
- The Board is to appoint the Local Advisory Committee.

NSWALC has a number of concerns regarding the proposed governance arrangements. These concerns are in relation to the processes involved in appointing the Board and the Local Community Advisory Group, as well as more broadly in regards to the prioritisation of agricultural, biosecurity and natural resource management advice while there is little mention of Aboriginal interests in this area or the importance and value of Aboriginal input in these areas.²

In relation to the proposal regarding the number of Minister appointed and elected Board members, NSWALC recommends that the Local Land Services Stakeholder Reference Panel not pursue the proposal of having four Minister appointed positions and three elected Board members.

In addition NSWALC does not agree with the proposal of having four Minister appointed and four elected Board members. NSWALC is concerned regarding the level of discretion that is afforded to the Minister regarding Board appointments. NSWALC recommends that four Board positions on Local Land Services are elected by ratepayers, while four positions are appointed by the Land and

² This is evident in the Minister for Primary Industries, Katrina Hodgkinson's media release, *Local Land Services to Transform Service Delivery to NSW Farmers and Landowners*, 4 October 2012, available http://www.dpi.nsw.gov.au/_data/assets/pdf_file/0010/444808/121004-FINAL-MR-Regional-Service-Delivery-Transformed.pdf.

Water Advisory Panel with one of these positions being an Aboriginal designated position. The Land and Water Advisory Panel facilitates stakeholder and community advice on current natural resource management and water issues in NSW and is made up of senior representatives from peak and representative organisations including the NSW Farmers' Association, NSW Irrigators' Council, NSW Aboriginal Land Council, Total Environment Centre, Nature Conservation Council of NSW and the Local Government and Shires Associations of NSW as well as representatives from the NSW Department of Primary Industries, NSW Office of Environment and Heritage, Aboriginal Affairs NSW, NSW Department of Planning and Infrastructure and the NSW Office of Water. The panel has significant expertise in land and water management in NSW.

Furthermore, NSWALC is concerned regarding the processes relating to the Board appointment of Local Community Advisory Group members. NSWALC is of the view that the Board should not appoint members of the Local Advisory Group as there is the potential for there to be a narrowing of input received by the Board if it directly appoints members to the Local Community Advisory Group. There is the real risk that if a certain industry is heavily represented on the Board, that these Board members will in turn disproportionately appoint individuals from that industry to the Local Community Advisory Group.

NSWALC recommends that the Board does not appoint the Local Community Advisory Group and that instead the Local Community Advisory Groups are appointed in appropriate ways for the specific communities with parameters relating to industries, sectors and organisations that should be represented on the Local Community Advisory Groups. Consultation within each of the proposed Local Land Services regions should be undertaken to determine the appropriate way for each community to appoint their Local Community Advisory Group so that they are representative of the community's needs in relation to land and water management.

In addition, NSWALC has reservations regarding the 'extensive experience in working with Aboriginal groups and communities' criteria (which is one of a series of criteria) for appointment to the Board. NSWALC is of the view that it is essential that Aboriginal peoples are represented on the Board and that such positions are designated for Aboriginal peoples. Those who are not Aboriginal should not be eligible for appointment to a Local Land Service Board based on the above proposed criteria.

NSWALC expects that Aboriginal peoples, who are already marginalised in relation to government acknowledgment of skills and expertise in natural resource management in NSW, will again be significantly disadvantaged in the process of Local Land Service Board and Local Community Advisory Group appointment if the recommendations below are not adequately addressed.

Recommendations:

NSWALC recommends that:

- The Local Land Services Stakeholder Reference Panel does not pursue the proposal of having four Minister appointed positions and three elected Board members;
- The Local Land Services Stakeholder Reference Panel does not pursue the proposal of having four Minister and four elected Board members;
- That four Board positions on Local Land Service Boards are elected, while four positions are appointed by the Land and Water Advisory Panel with one of these positions being an Aboriginal designated position;
- That the Local Land Services Board is not given power to appoint the Local Community Advisory Group;

- That Local Community Advisory Groups are appointed through processes determined by the relevant local communities with parameters relating to industries, sectors and organisations that should be represented on the Local Community Advisory Group;
- That those who are not Aboriginal should not be eligible for appointment to a Local Land Service Board based on the criteria of having 'extensive experience in working with Aboriginal groups and communities';
- That the proposed option 'one vote per ratepayer' regardless of the amount of rates paid, the size of the rateable land and the type of rates, is the most appropriate way for voting rights to be determined.

Local Community Advisory Groups and Aboriginal reference groups

Currently some Catchment Management Authorities have Aboriginal reference groups, while Livestock Health and Pest Authorities have not had a consistent policy regarding Aboriginal advisory or reference groups.

NSWALC has undertaken discussions with a number of Aboriginal landholders in relation to engagement with CMAs and their approaches to consultation and communication with Aboriginal landowners. A number of issues were raised in these discussions including:

- Although CMAs may have Aboriginal reference groups, CMAs often do not have regular and meaningful contact with Aboriginal landowners within their areas;
- Aboriginal landowners have felt that decisions made by CMAs in some circumstances have little regard to Aboriginal land and water management. Decision making that incorporates Aboriginal land and water management is often ad hoc;
- In some circumstances decisions have been made by CMAs regarding land management activities that do not have adequate regard to Aboriginal culture and heritage and Aboriginal land and water management;
- That CMAs do not have clear protocols in working with Aboriginal landowners that adequately support Aboriginal peoples inherent rights over land, waters and natural resources;

NSWALC is concerned that the current Local Land Services model will do little to address the issues above. The reduced number of Local Land Services compared to CMAs has the potential to further contribute to limited consultation processes and result in a regional rather than local approach to decision making. Similarly, without compulsory Aboriginal reference groups for each Local Land Service, issues relating to consultation, communication, and supporting the inherent rights of Aboriginal peoples over land, waters and natural resources not be alleviated.

The current proposal in relation to the Local Land Services model is that each Local Land Services will have the ability to establish a Local Community Advisory Group. These Local Community Advisory Groups will have up to 12 members comprising core representatives from stakeholder groups including agency representatives. NSWALC is concerned regarding the inclusion of agency representatives on community advisory groups. Agency representatives do not represent the community and should not be included in such a group.

Additionally, the terms of reference of Local Community Advisory Groups are unclear and the roles that these Community Advisory Groups will play and the type of advice they will be required to provide is uncertain. NSWALC requests clarification regarding these issues.

In addition to the Local Community Advisory Group and the recommendations made regarding the Local Community Group previously in this submission, NSWALC recommends that every Local Land Service should be required to have an Aboriginal reference group to provide advice regarding local Aboriginal peoples' interests in land management and cultural, social and economic needs. These reference groups should consist of individuals appointed through expression of interest processes and should not be Minister, Local Land Services Board or Local Community Advisory Group appointed. As the legislated Aboriginal community representative bodies across NSW, LALCs should be provided an opportunity to participate in Local Land Services community and reference group, should they choose. LALC members and native title holders should be invited to submit expressions of interests to become members of the reference groups.

Aboriginal reference groups afford opportunities for Local Land Services Boards to access local Aboriginal input in relation to issues including; culture and heritage protection, planning and long term management of cultural sites of significance, as well as economic development opportunities for Aboriginal peoples.

Recommendation: NSWALC recommends that every Local Land Service should be required to have an Aboriginal reference group. These reference groups should consist of individuals appointed through expression of interest processes and should not be Minister, Local Land Services Board or Local Community Advisory Group appointed.

Boundaries of proposed Local Land Services

Since the establishment of Catchment Management Authorities, the NSW Government has taken a regional approach to natural resource management planning and decision making. While a regional approach is a more appropriate scale for natural resource management planning than a state wide approach, regional approaches are not an ideal scale for Aboriginal peoples and groups.

The current proposal relating to the boundaries of Local Land Services includes the amalgamation of 13 Catchment Management Authorities, 14 Livestock Health and Pest Authorities as well as agricultural advisory services currently provided by Agriculture NSW and the development of 11 Local Land Services across NSW to replace CMAs, LHPAs and the agricultural advisory services.

Local Land Services have been created to 'better connect with customers and engage communities in decision making at the local level'. It is unclear how the 11 Local Land Service Boards in NSW can undertake decision making at a local level when there are only 11 Boards throughout NSW and the proposed boundaries are regional, not local, boundaries.

As previously stated the Aboriginal Land Council network in NSW is made up of 120 LALCs.³ As a result natural resource management is often undertaken and understood at a local level. The proposed boundaries for Local Land Services cover multiple LALCs and in addition, some LALC

³ See attachment for a map of Aboriginal Land Council boundaries.

boundary areas cover more than one Local Land Service region. For Aboriginal Land Councils to engage with the proposed Local Land Services regional structure, it is important that Local Land Services boundaries are negotiated with the relevant LALCs. There is a need for both boundaries as well as, more broadly, governance arrangements to be collaborative and inclusive and accommodate diversity from a range of LALCs.

Recommendation: NSWALC recommends that Local Land Services boundaries are negotiated with the relevant Local Aboriginal Land Councils

It is essential for the Local Land Services Stakeholder Reference Panel and the Department of Primary Industries to recognise that Aboriginal peoples are not simply 'special interest groups' to be consulted on limited issues during the development, and thereafter the operation, of Local Land Services. It instead should be recognised that Aboriginal peoples, and particularly the Aboriginal Land Council network, have considerable land management skills and knowledge, are experts in the field of natural resources and have inherent rights over lands, waters and natural resources. It is vitally important that the recommendations within this submission are given their due considerations, and the concerns raised are addressed.

If you have any questions regarding the content of this submission, please do not hesitate in contacting the NSWALC Policy and Research Unit on (02) 9689 4444 or policy@alc.org.au.

Kind Regards,



Stephen Hynd

A/Director, Policy

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