

# A brief response from the Dharriwaa Elders Group

ABN: 26 795 240 948, a tax-deductible gift recipient.

to “*Reforming the Aboriginal Cultural Heritage System in NSW*” - a NSW Government model in response to the ACH Reform Working Party’s recommendations and public consultation.



*Elders join a Dharriwaa Elders Group staff training survey at Llanillo Station near Walgett, for lunch, September 2013.*

**28 March 2014**

The Dharriwaa Elders Group offers its future time to seriously discuss the design of the local ACH committees in more detail. Aboriginal Cultural Heritage is the main business of this organization, and the ACH Reforms will have a big impact on its future. We ask that our submission be given weighty consideration as it will be one of the few submitted by locally-based Aboriginal groups in North West NSW.

## **1. Introduction to Walgett's Dharriwaa Elders Group**

The Dharriwaa Elders Group<sup>1</sup> (DEG) takes a leading interest in the protection of Aboriginal cultural heritage and maintaining Aboriginal Cultural Values (ACVs) in Walgett landscapes. DEG was born 20 November 2000 after Elders had worked together on projects since 1998. The Group took its name from one of its sacred sites - Narran Lakes - Dharriwaa (common meeting place) and its full members are Aboriginal people over 60 who live in Walgett. With the aid of governments, sponsors and volunteers, the organisation has worked to support Aboriginal Elders to resume leadership roles in the community, keeping active and healthy; promote local Aboriginal cultural knowledge and identity; and develop the Walgett Aboriginal community.

An important activity has been to protect and manage the ACVs of the Walgett area. This activity has involved supporting the people who hold the knowledge that provides Aboriginal Cultural Values, understanding and documenting Elders' knowledge and mapping significance in the landscape. It has involved conducting education activities including exhibitions, magazine production, schools programs, community induction for government and community education programs. It has also involved advocacy and negotiation which has sometimes produced outcomes that have protected significant places from destruction. It has involved maintaining a collection, database and working infrastructure and continually training and mentoring local Aboriginal staff.

**From practical experience the Dharriwaa Elders Group offers its advice to the ACH Reforms.**

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<sup>1</sup> a charitable incorporated Association with deductible gift recipient status.

## 2. Principles of Aboriginal Cultural Heritage

- a. Aboriginal Cultural Heritage (“ACH”) must be defined by Aboriginal people. ACH includes remnants of past material culture and habitation as well as significant places, landscapes, practices and events that were and are still important for creation and sustaining life. ACH includes places and events of high Aboriginal Cultural Value today, and in the recent past.
- b. The precious knowledge that gives ACH places, events, practices and objects “Aboriginal Cultural Values” must be nurtured. The Aboriginal Cultural Values of ACH are high when knowledge of them is strong.
- c. The health of landscapes and the lives that are supported by them is important for the maintenance of the ACVs of ACH places, practices and objects. Clusters of related ACH places should be recognised, and a holistic view of ACH which incorporates landscapes and biodiversity must be embedded in the new legislation.

## 3. Local people, local decisions

- d. Aboriginal Cultural Values can only be maintained by local Aboriginal communities living in or near country, supported by government and others. The proposed local committees will need to be given legislative authority to lead ACH priorities in their area. It has been DEG's experience that:
  - i. **DEG's evidence is not accepted by ACH decisionmakers.**

**CASE Study 1:** During the process of researching the Dungalear 2002 Aboriginal Place nomination made by the DEG, NSW OEH engaged historians to visit Walgett and document the nomination. The consultant historian travelled a long distance to Walgett and with NSW OEH staff was taken by Elders to Dungalear 3 May 2007. Recordings of Elders were undertaken then and again at a recording session DEG organised by phone in January 2009 and in person in October 2008. Because the evidence of the organisation was not considered enough, the consultants had to engage from scratch with the remaining Elders with cultural links to the significant place. DEG should have been engaged to produce the report, using the advice of professionals when needed. In this way, DEG's costs for the process would be recognised, and the quality of the report would have been greater, and undertaken in a timelier manner, when more Elders were living. Dungalear has still not been gazetted as an Aboriginal Place, despite its significance being accepted by all.

- CASE STUDY 2:** Despite DEG expressing its concerns regarding the quantity of Aboriginal Cultural Heritage needing to be protected in the Walgett region, legally it seems to us that if it is not registered in AIHMS, it does not exist. The fact that places are not registered in AIHMS reflects a lack of resources and will to survey ACH in the Walgett region, not that it doesn't exist.
- ii. **Employees of the NSW OEH and other agencies have the attitude that they must lead communities in ACH activities.** DEG has witnessed a slow withdrawal of services to the Walgett community by NSW OEH and other agencies managing ACH. At the same time, DEG's concerns about Aboriginal Cultural Heritage in the region have increased.

**CASE STUDY 3:** Sydney University visited Walgett in 2000 and offered to return 5 set of ancestral remains sent to the Macleay Museum from the Glebe morgue. DEG Elders determined that they wanted the ancestors reburied as close as possible to where they were taken from. After no action was forthcoming from NSW National Parks and Wildlife Service the DEG realised that it should lead the way for the reburial to be undertaken, and approached Walgett Councillor Joan Treweek to negotiate with landholders in 2003. The project then became a Walgett Reconciliation C'tee project. Meetings were held through 2004 and 2005. Two landholders were supportive. DEG resolved to arrange reburials at Borokaville burial ground (which had been used by the community with NSW National Parks and Wildlife Service support for a similar reburial in 2001) and the welcoming properties. When NSW Dept. of Environment and Climate Change (now NSW OEH) wouldn't allow the Borokaville option, due to concern we might damage existing graves, after a period of despair, DEG designed a memorial garden to be established in the Walgett cemetery for the purpose and made submissions to use Walgett Aboriginal Community Capability Funds in 2009 for materials. DEG requested permission from Council in April 2009 which was granted August 2010. Meanwhile the Walgett Aboriginal Community Capability Funds had to be committed elsewhere due to the delay. DEG resumed seeking funds for materials. In 2012 the NSW OEH announced they would assist the Walgett community to undertake the reburials at Borokaville only. Suddenly with new staff and budget in place, NSW OEH led the project. On 3 and 20 May 2013 a group of volunteers organised by the DEG prepared Borokaville

burial ground in readiness with OEH staff, a DEG Elder travelled to Sydney with OEH staff to retrieve the remains and reburials were undertaken in a rush in the last week of June 2013 before the budget disappeared again. This is an example of a project that DEG ended up relying on NSW OEH to complete. It could have been completed earlier and according to Elders wishes if DEG had been supported to lead the project from its start.

**CASE STUDY 4:** Requests by DEG for ACH surveys in the Walgett area in threatened areas and requests for the provision of survey techniques training, in phone calls, meetings and correspondence have rarely been supplied by NSW OEH to the Walgett community, due we think to inadequate resourcing by successive governments. DEG first began writing to the authority enforcing the NSW National Parks and Wildlife Act and NSW Threatened Species Act in February 2002, asking for action to protect places of high Aboriginal Cultural Value after a letter to the Lightning Ridge Mining Registrar in January 2002 expressing concern about uncontrolled opal mining produced little action. For a while, personal relationships with the NPWS ranger at Narran Lake, and archaeologist Alan Hutchins, developed since the 1990s and earlier, produced some support. Archaeologist Alan Hutchins had responded to DEG requests to accompany Elders in order that places were protected, from 1999 until February 2004 when he left the service, and advised DEG that his position would not be continued. Since then NPWS archaeologists have rarely had the resources to respond to DEG requests.

Examples of a good working relationship were the two visits by NPWS staff to consult Elders regarding the Narran Lakes Fire Management Plan in October 2004 and February 2006. Also Elders celebrated the purchase of properties to add to the Narran Lake Nature Reserve with NPWS staff in 2004, and met with the NPWS Regional and Area Managers in July 2005 to discuss how the community would use the East Mullane facilities for visits and Elders' retreats in the future. But with a new Narran Lakes ranger, and other changes we are not aware of in the department, these plans never eventuated.

In May 2006, DEG wrote "I write to request that your department undertake environmental and archaeological assessments of the region so that this information can be used to prevent Mineral Resources and landholders from further reducing the

Aboriginal cultural and other values of our region" and "In addition we recommend that opal mining be listed as a threatening process under the NSW Threatened Species Act"<sup>2</sup>. DEG wrote in May 2006 "I request that the staff and delegates of your Aboriginal Cultural Heritage Committee spend regular time with our organisation in Walgett so that we can keep them informed of our issues of concern and so that they can feed back to us regarding matters in which they are supposed to be representing our interests. Also I write to request a "site school" so that our members can work with an archaeologist and heritage officer from your department to document the Aboriginal cultural heritage in the area known as OPA 4, and to pass on skills to younger Aboriginal people in site identification, monitoring, assessment and documentation work so that we can act to protect sites in the future....If mining is to proceed then our organisation needs to be able to call upon local Aboriginal people it has trained to perform cultural heritage site assessments of areas to be mined. Our members are extremely elderly and cannot do this ourselves (sic). Also I request that community education be provided in Walgett as a matter of urgency, in conjunction with our organisation, about these matters so that we can work to ensure our heritage is protected into the future. Also I request that our members and their nominees be invited to attend any NPWS training courses that may be conducted so that we can better participate in managing natural resources and Aboriginal cultural heritage in the future. We and our younger nominees and guests need to learn the skills and language to be able to communicate effectively with scientists and government in order to pursue our concerns".<sup>3</sup> A site assessment training course was delivered by NPWS with DEG in October 2006, but none have been delivered since. In July 2006 DEG wrote "Our organisation will apply for an Interim Protection Order to the Director-General if we are not satisfied that threatened species and Aboriginal objects and places of Aboriginal significance will be protected by your Department in OPA4. In order for us to be satisfied, I request that your department perform environmental and Aboriginal cultural heritage impact assessments within the area

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<sup>2</sup> Letter 6 June 2006 to Richard Whyte, A/Director, North West Branch, Environment Protection and Regulation, NSW Dept. Environment and Climate Change

<sup>3</sup> Letter May 2006 to Jason Ardler, Director Aboriginal Cultural Heritage Unit, NSW Dept. Environment and Conservation

known as OPA 4, and to report the findings to our organisation as well as to your Minister and Director General".<sup>4</sup>

In March 2007 DEG wrote to Department of Environment and Conservation requesting urgent declaration of Aboriginal Places within OPA4 so they are not destroyed due to the recent granting of opal prospecting approvals.<sup>5</sup>

To our knowledge, DEC (later NSW OEH) has not been able to respond to DEG's requests.

In May 2008, DEG wrote to NSW DECC requesting it assess the adequacy of the methods used described in a threatened biodiversity survey and assessment of significance commissioned by NSW Dept. of Minerals and Energy.<sup>6</sup> To our knowledge, DECC (later NSW OEH) has not been able to respond to DEG's request.

**CASE STUDY 5:** There has been slow progress towards two of the three highest priority Aboriginal Place nominations made by the DEG in 2002 – Dungalear and Narran Lakes. DEG wrote to NSW Dept. and Environment and Conservation in 2006<sup>7</sup>, to NSW Office of Environment and Heritage in 2011<sup>8</sup> requesting news of the nominations. Face to face meetings and email contact has been regularly maintained with NSW OEH staff regarding the nominations. As described above, work with outside historians was undertaken by DEG regarding Dungalear in 2007, 2008 and 2009. We are not aware of any work being done to progress the Narran Lakes nomination. DEG has many more Aboriginal Place nominations it wishes to make but was advised to wait until the first three are completed, as NSW OEH only has a limited budget for Aboriginal Places and there are many nominations to process around NSW.

**CASE STUDY 6:** Scientists working for the Murray Darling Freshwater Co-operative Research Centre based in Goondiwindi held a science field day at Narran Lake in April 2005 which the Dharriwaa Elders Group attended. They had been working on the first substantial scientific study of the RAMSAR wetland for the Murray Darling Basin

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<sup>4</sup> Letter July 2006 to Debbie Frail, NSW Dept. of Environment and Conservation, Environment Protection Regulation Division, Environment & Conservation section

<sup>5</sup> Letter March 2007 to The Honourable Mr Bob Debus, Minister for the Environment

<sup>6</sup> Letter April 2008 to Peter Christie, Manager of the Biodiversity and Conservation Unit NSW Dept. Environment and Climate Change

<sup>7</sup> Letter July 2006 to Debbie Frail, NSW Dept. of Environment and Conservation, Environment Protection Regulation Division, Environment & Conservation section

Commission. The organisation had long advocated for scientific work to prove the values of the wetland so it can be protected, and so were very pleased the study was occurring. However, this enthusiasm was dampened when we realised that Elders were lucky to be invited to the community information day and had no input or engagement with the studies. The DEG encouraged engagement with the scientific team. From time to time DEG hears of environmental studies being undertaken in our area of interest. They include by the Botanical Gardens, and we hear, soon a university project yet to be explained. DEG believes this work is very important and would like a greater community participation and ownership of the works undertaken.

- iii. **Conflicted priorities.** The NSW OEH prioritises activities around permitting the destruction of Aboriginal heritage and never seems to have the resources or will to support local Aboriginal communities with their ACH priorities.
  - iv. **Currently, local Aboriginal communities have no decision-making rights regarding ACH.** DEG discovered recently that the fate of ancient Aboriginal ancestral remains found in its region legally vests in the NSW Govt. and local communities have no decision-making rights in regard to investigating the burial, its reburial, etc.<sup>9</sup>. DEG does not support this. We believe that local Aboriginal communities should have the legal right to determine the safety and reburial of ancestral remains.
- b. **Practically, committees will need to be “custom fit” for each community.**
- i. **Walgett Aboriginal community ACH decision-making should be made by family clan groups** who speak for different places. Communities comprise of a number of different family / clan groups which should be resourced through a local organisation to elect representatives who make decisions together, deferring to the clan group which can speak for an area of country, and acting as a group to support clan group decisions. This occurs today within the DEG with no dispute. In this way, no one family clan can dominate because the size of the family clan does not determine their vote.
  - ii. **Boundaries should be determined according to the country** attached to the local clan groups who are practically resourced to meet together regularly. Boundary issues will need

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<sup>8</sup> Letter 28 October 2011 to Craig Trindall

<sup>9</sup> The discovery of ancestral remains on the property Netherby in 2013

to be discussed with adjoining local communities. Native title laws have not yet impacted how this group of Elders located in Walgett today, operate as cultural custodians.

- iii. **In some communities the Local Land Council would be the more appropriate body.** In other communities there may be another body that already facilitates an ACH committee. Because Aboriginal Cultural Heritage has been so under-supported by governments, it is not hard to find the Aboriginal organisations in communities who have the commitment and track record for leading ACH in their community. Some communities struggle with very little capacity, and they will need to be given extra support from stronger, nearby ACH organisations, to establish and take on this role. Appropriate local community assets and people would need to be identified and then supported to take on the role of the local committee. Aboriginal communities already know the Aboriginal organisations that could be supported to make this happen. **NB: In DEG's experience this will not work in Walgett if employees of the NSW Office of DAA undertake this community development activity.**
- c. **Regional alliances of the locally-controlled committees will be required** to assist resourcing and advocacy activities for the local committees. When local Aboriginal communities need to discuss cross-border issues, share resources (e.g. group software and map data licences, consultants, training) or when they require regional or state representation or advocacy, these activities will need to be negotiated by the local committees meeting at regional and state levels, and they will need to be resourced to meet via webcam and face to face. At all times the state and regional peaks should act according to direction from the local committees.
- d. **Healing and inclusion activities must be supported** so that Aboriginal people dispossessed of native title, language, cultural identity and meaningful roles in ACH leadership, are welcomed into their community's ACH decision-making, supported to heal and given a role. DEG members have heard that Indigenous Americans have advanced these processes, and are keen to learn more from North America<sup>10</sup> about useful healing programs that could be custom fit for Walgett and other communities. Reclaiming history, cultural and therapeutic interventions are the three pillars of healing found to be necessary. It has been well documented how Aboriginal wellbeing is promoted by caring for country<sup>11</sup>.

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<sup>10</sup> Final Report of the Aboriginal Healing Foundation, Volume III, Promising Healing Practices in Aboriginal Communities, 2006 Aboriginal Healing Foundation, Ontario Canada

<sup>11</sup> A literature review cites evidence collected from around Australia - *The Benefits of Caring for Country*, was prepared for the Department of Sustainability, Environment, Water, Population and Communities by Dr Jessica K Weir, Ms Claire Stacey and Dr Kara Youngerob from the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS), Canberra, June 2011. ([www.environment.gov.au/indigenous/workingoncountry/publications/pubs/benefits-cfc.doc](http://www.environment.gov.au/indigenous/workingoncountry/publications/pubs/benefits-cfc.doc)). "Indigenous Health and Wellbeing:

e. **How the local committees interact with other bodies.**

- i. The roles and functions of the local committees should be legislated so that relationships between them and other agencies like NSW Aboriginal Land Council, native title groups and Local Land Services are defined. There is not enough information given in the NSW Government's model about how the ACH Reforms will determine these relationships.
- ii. The role of local Aboriginal committees should be recognised formally by NSW govt, and not supplanted by the activities of Aboriginal advisory committees set up by NSW agencies. Ideally government advisory bodies would contain representatives from the local representative committees, who are tasked and resourced to feedback committee business to their local community from the advisory committee – and represent their local committee in their work on the advisory committee.
- iii. Aboriginal local committees must have access to ANY country in their area of interest, for any purpose, provided the landholder (private or otherwise) is given the courtesy of notification. We are not given any further information in the NSW Government Model about legislative changes that would enable this.

f. **Aboriginal communities define and should decide ACH matters.** If there is no agreement between developers and the local committee the action should not be allowed to proceed. The local committee should have the right to veto a development that will impact their cultural heritage.

g. **There needs to be a right of appeal for local committees** when Plans of Management agreed by local committees are rejected by the Minister for Planning.

h. **The 20 day period to negotiate between developers and committee is not adequate** and if negotiations break down there needs to be some form of mediation. There should be no time limit for mediation and if there is no agreement the action should not proceed.

i. **Local committees need to have a right to take direct action against developers** for harming ACH rather than having to rely on the poorly-resourced non-local NSW OEH to act. Because NSW OEH is not resourced to monitor on the ground they are often unable to prosecute breaches of the law. Local Committees need to be able to take direct civil action, have the right to investigate, and make claims in order to prove the likelihood that ACH will or has been

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*The Importance of Country*”, Cynthia Ganesharajah, Australian Institute of Aboriginal and Torres Strait Islander Studies, 2009, also provides valuable evidence.

destroyed if an action proceeds. Also local committees will need to seek remedies e.g. compensation to community, remediation plans etc. A penalty system that is adequate and is more of a deterrent will also need to be legislated.

## 4. Negotiation and interactions with developers.

- a. **What would a negotiation “in good faith” with a developer look like and how would negotiations practically happen?** A developer will need to meet face to face with the local committees in order to understand how to negotiate in good faith. Local committees will need to discuss and define what “good faith negotiations” will mean to them (there will be protocols for each committee) and this will depend on their previous experiences when trying to negotiate ACH protection in the face of a developer and governments who stand to make millions from destroying it.
- b. **Adequate time** will need to be allowed for local committees to research and consult in order to come to a decision in the best interest for their community. Sorry business and natural disasters (fires and floods in our area) will sometimes delay processes. Consultations may need to occur with consultants who are not local, with the local community and possibly other communities or custodians who are no longer local.
- c. **The community’s health, poverty, education levels and trauma induced over generations in NSW from dispossession must be taken into account.** Aboriginal community’s limited skills and weakness in the face of well-resourced mining companies and others must somehow be addressed. Developers will need training and education to understand “good faith negotiations”. Fairness will need to be considered. We are concerned that DEG members would find it difficult in their current circumstances to negotiate and stand firm in the faces of conflict. We think other communities would have these problems and issues as well. Training resources will need to be devoted to develop conflict resolution and negotiation skills, personal and community growth.
- d. **Staff retention and succession planning** will be very important, and must be supported, for the local Aboriginal organisations hosting the committees. The legal advice and experience gained over years of ACH protection work is very valuable corporate knowledge and all efforts will need to be made to retain it for the work of the committees.
- e. **Pro bono legal and advocacy resources** will need to be available to assist local committees to make considered decisions, using the legal remedies and frameworks available. Negotiations

with developers would be UNFAIR if pro bono legal advisers were not available for the local ACH communities to access. Dharriwaa Elders Group has benefitted from pro bono advice from two private legal firms and the NSW Environmental Defenders Office. The EDO will become even more important after the NSW ACH Reforms, as it will be needed to travel to remote communities in NSW as well as service those on the coastal strip, provide legal workshops and legal advice on a regular basis.

## 5. Resourcing of community committees

- a. **Arm's length from government and developers.** To ensure independence, and that the local committees act in the best interest of their local Aboriginal community, resourcing of the proposed local committees must not be made directly by parties like governments and developers. A third, independent party bound by terms of reference should receive legislated royalties from developers, which would then be issued to support the operations of the local committees in response to submissions made from local committees. This body would also regulate the local committees and ensure their independence and appropriate conduct.

**CASE STUDY 7:** The Walgett Aboriginal community has learnt much from the recent implementation of the Indigenous Remote Service Delivery Agreement in Walgett. Walgett's representative group, the "Walgett Gamilaraay Aboriginal Community Working Party" (WGACWP) which worked with COAG in the implementation of the "Closing the Gap" until the IRSD Agreement ends in June 2014, found that the NSW Office of Aboriginal Affairs was unable to accept that the WGACWP's secretariat should be located and operated independently of the government. Despite the intervention of the Co-ordinator General of the IRSD, NSW government systems would not allow the WGACWP's secretariat to be funded by the department, yet community-controlled. This lack of flexibility would indicate a need for legislative proscription. It has also prevented the position operating to its full potential, to the point where they recently resigned, and it is uncertain whether NSW OAA is going to keep the commitment to continue the position until 30 June 2014.

**CASE STUDY 8:** DEG heard recently of the employment of two key Aboriginal cultural heritage officers in another Gamilaraay community who we knew when they were previously engaged by the Namoi CMA, have now been engaged by coal seam gas mining companies. We are concerned that resources offered by developers are very difficult to resist and can be used to limit ACH advocacy and protection.

- b. **Realistic resourcing.** Funding of the local committees should be according to project agreements and should reflect normal government costs for supporting employees, their office and on-costs, training and project-specific costs. Projects should be granted to local Aboriginal heritage organisations with existing networks and resources, over 3 year terms. Reporting requirements should reflect the risk of projects and relative capacity of organisations.

**CASE STUDY 9:** DEG participated in a review undertaken by the Commonwealth into the Indigenous Heritage Program in 2008.<sup>12</sup> This review explored the difficulties funded organisations had with short-term, annual projects, limited small budgets, and onerous submission-writing and reporting requirements, and made recommendations for improved departmental processes.

**CASE STUDY 10:** DEG has always found it difficult to attract government ACH project funds to cover the costs of its operating overheads, despite these costs being higher due to remoteness. Government agencies refuse to accept more than 10% overheads in a budget. DEG has never been able to employ its staff on a fulltime basis, or with the pay and conditions of government. Most funded projects do not cover operating overheads at all. Increasingly, larger national or regional NGOs (usually charities e.g. Mission Australia, Centacare, Burnside, Mackillop and the churches) are the only bodies who can afford to deliver services in Walgett other than government agencies. The only exception to this is the Aboriginal Medical Service which is supported by a locally-controlled regional network of AMSs<sup>13</sup>, and the NSW land council network. This will have to change for the ACH local committees, who will most often not be supported by other larger organisations. Only local Aboriginal committees will be able to undertake ACH work and decision-making, so their operating costs will need to be recognised.

- c. **Need for changed procurement policies.** In Walgett there is one local Aboriginal organisation with the necessary probity and experience to manage the proposed local ACH committee, yet nationally-based non-local organisations are better resourced currently to tender for Walgett projects. NSW procurement policies would need to prefer local Aboriginal organisations for Aboriginal cultural management projects. Communities should then be free to form regional alliances to share submission-writing and project development resources.

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<sup>12</sup> Australian Government Department of Finance and Deregulation Office of Evaluation and Audit (Indigenous Programs), Audit of the Indigenous Heritage program, Final Report, December 2009.

- d. **Time is money.** Currently, because ACH organisations are so under-resourced, they are earning their income by undertaking other activities, and often can only devote spare time to ACH activities. If developers need fast decisions, then local committees will need to be resourced to be able to act quickly. This has not been DEG's experience. Decision-making takes time. Surveys need to be conducted, meetings and sometimes workshops need to be held, legal advice obtained, which sometimes involve travel and co-ordinating different groups of people to interact – all with different timetables and priorities. It's amazing how a good feed, adequate time, professional organisation and comfortable surroundings assist progress and the meeting of minds.
- e. **What would a budget for an ACH committee in Walgett need to support?** Aboriginal Cultural Values maintenance for an Aboriginal community like Walgett involves the following activities and costs:
  - i. Staffing and on-costs, project management and accounting, office rent and utilities, telecommunications, vehicle use, office costs including printing, insurances including good public liability and workers compensation insurances so that landholders are not liable for injury from committee's actions.
  - ii. Staff training in project and event management, business, identification and documentation of ACH values in archaeology, landscapes, habitats and community's memories, first aid, literacy and numeracy, training and assessment, GIS systems.
  - iii. Conducting archaeological and environmental surveys on country, recording evidence and entering captured data in a database that is accessible and well-maintained
  - iv. Maintaining a watching brief over ACH in the area of interest and troubleshooting as needed. Equipment would include satellite and mapping data and software, 4WD vehicle. Regular physical or remote surveillance required and unstaffed aerial video may be useful
  - v. Advocacy and liaison with governments, agencies, services, landholders, community including schools. These relationships are built carefully over years and are renewed regularly due to high turnover of agencies, reducing budgets and legislative changes.

**CASE STUDY 11:** As discussed above, DEG nominated Narran Lakes, Dungalear and Angledool in 2002 for gazettal as Aboriginal Places under the NSW National Parks and Wildlife Act. Angledool was gazetted in 2013, and the others are still in process. This glacial progress is typical of NSW ACH management and makes it difficult for Aboriginal communities to

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<sup>13</sup> <http://www.bilamuuijihallservices.org.au/about-us.htm>

recognise success. Many of our members die before seeing their nominations bear fruit. The local committee need long term resources to carry through ACH processes.

**CASE STUDY 12:** As a result of DEG's concerns regarding the protection of ACH from opal mining, and a lack of support from NSW OEH in undertaking surveys to identify the threatened ACH values of the region (as detailed briefly above), the DEG has used every opportunity to attract training funds that can be used to undertake training surveys in areas of high Aboriginal Cultural Value. To do this, DEG has been supported by landholders who in this case, support our efforts. Relationships have been developed over the last 15 years with landholders and their representatives which enable Elders and community to access country. This trust is slowly built and necessary to maintain.

**CASE STUDY 13:** After developing relationships with the Namoi CMA and the Western CMA through membership of the Aboriginal Advisory groups, DEG will have to learn and develop new relationships now these groups have been discontinued, and the North West Local Land Service has been instituted. We look forward to developing a good working relationship with this new body, but will have to promote afresh our role and activities to the new leadership.

- vi. Education activities in the community and schools to promote ACH values and ensure maintenance of these values and the success and succession of the project. Many education policies speak of "connection to community" and importance of culture and Elders involvement with schools. Over the years Dharriwaa Elders Group has explored what this has meant to governments and school principals. While we see it is of vital importance to engage youth with their cultural identity, no resources have been offered for this activity from NSW governments in Walgett in the last 15 years. Commonwealth education and employment programs have been devoted to this activity in Walgett since 2013 and previously before 2006.
- vii. Documentation, mapping and collection preservation activities so that all evidence gathering and communications with agencies are based on agreed datum and the work of the organisation is preserved and used in the future. Off-site backup of data.
- viii. Contributions to support regional and state peak-body meetings. Regional and State peak committees will need to be controlled and financed by the local committees. **The new system of local committees will not work if they are regionally or state controlled.** Here the philosophies of the community-controlled Aboriginal Health sector are instructive. The Walgett AMS meets regionally with the Bila Muuji AMSs and with the NSW Aboriginal

community controlled health sector through the AH&MRC<sup>14</sup>. Local committees will need the resources to contribute membership fees to the regional and NSW peak bodies. They will also have their own travel and accommodation costs in attending regional and sometimes state meetings.

- ix. Consultancy fees for use of a shared pool of available archaeologists, legal advisors, policy developers, GIS trainers, environmental scientists who would be available to work for local Aboriginal groups according to local priorities .

## **6. Intellectual property and information security**

A custom-made funding agreement with local committees will be needed to define ownership and security of intellectual property, both of the community and organisation, and the government. It would need to recognise the existing intellectual property and resources of the funded organisation and the project and define a succession plan for the project and its knowledge and physical assets.

- a. **Information security.** The security of valuable Aboriginal heritage location information will have to be carefully considered and planned for, as powerful interests would prefer that these places are not documented and do not exist. The reluctance of local Aboriginal people to provide site location information to the NSW Office of Environment and Heritage AHIMS database and councils is because there have been instances, which are remembered by DEG members, where places have been destroyed once they have been identified. Poor monitoring for compliance of the NSW NPWS Act and lack of activities and policies of local councils that prevent illegal acts of destruction, have led to this situation. The NSW ACH Reforms will need confidentiality and data security policies to ensure that NSW Govt is not responsible for any future illegal destruction of Aboriginal cultural values, by ensuring that the security of location information is preserved to the maximum extent possible.
- b. Information technology allows for sophisticated levels or layers of access to information to occur, as discussed in the discussion booklet. Information provided by local Aboriginal committees must not be managed by a government agency, but an independent body with expertise, policies and values trusted by Aboriginal communities. Telecommunications now allow for information to be shared and combined from many sources. The information should reside within the Local Aboriginal committees' databases, and be shared live, in secure layers

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<sup>14</sup> <http://www.bilamuujihallservices.org.au/about-us.htm>, <http://www.ahmrc.org.au/>

**from multiple local committee databases.** The Local Aboriginal Committees will have a need for secure, off-site backups of data. This should be facilitated by the state or regional peak bodies under written agreement.

Access to potentially identifiable data for statistical and research purposes, outside secure and trusted institutional environments should only occur where: legislation allows; it is necessary to achieve the approved purposes; and meets written agreements with data sources. Risks of indirect as well as direct location identification should be carefully managed when data is disseminated outside secure and trusted institutions. This management must involve strict data use licensing conditions, reducing detail, perturbing data, and seeking the consent of appropriate individuals and representative organisations to release potentially identifiable data. Once the approved purpose of the project is met, the related datasets should be destroyed, or if retained, the reasons for and necessity of retention documented, and a review process set up. If such retention was not part of the initial approval process, re-approval of the decision to retain is required. Archiving of statistically integrated data sets should be restricted to confidentialised datasets.

## **7. Recommendations:**

1. Aboriginal Cultural Heritage (“ACH”) must be defined by Aboriginal people. ACH includes remnants of past material culture and habitation as well as significant places, landscapes, practices and events that were and are still important for creation and sustaining life. ACH includes places and events of high Aboriginal Cultural Value today, and in the recent past.
2. The precious knowledge that gives ACH places, events, practices and objects “Aboriginal Cultural Values” must be nurtured.
3. The health of landscapes and the lives that are supported by them is important for the maintenance of the ACVs of ACH places, practices and objects. Clusters of related ACH places should be recognised, and a holistic view of ACH which incorporates landscapes and biodiversity must be embedded in the new legislation.
4. Aboriginal Cultural Values can only be maintained by local Aboriginal communities living in or near country, supported by government and others. The proposed local committees will need to be given legislative authority to lead ACH priorities in their area.
5. ACH committees will need to be “custom fit” for each community.
6. Walgett Aboriginal community ACH decision-making should be made by family clan groups who speak for different places.
7. Boundaries should be determined according to the country attached to the local clan groups who are practically resourced to meet together regularly.
8. In some communities the Local Land Council would be the more appropriate body to support a local committee. In other communities there may be another body which already operates, or could operate an ACH committee.
9. Regional alliances of the locally-controlled committees will be required to assist resourcing and advocacy activities for the local committees. At all times state and regional peaks should act according to direction from the local committees.
10. Healing and inclusion activities must be supported by the ACH committees.
11. The roles and functions of the local committees should be legislated so that relationships between them and other agencies like NSW Aboriginal Land Council, native title groups and Local Land Services are defined. We require further information about how the ACH Reforms will determine these relationships.

12. The role of local ACH Aboriginal committees should be recognised formally by NSW govt, and not supplanted by the activities of Aboriginal advisory committees set up by NSW agencies
13. Aboriginal local ACH committees must have access to ANY country in their area of interest, for any purpose, provided the landholder (private or otherwise) is given the courtesy of notification.
14. Aboriginal communities define and should decide ACH matters. If there is no agreement between developers and the local committee the action should not be allowed to proceed. The local committee should have the right to veto a development that will impact their cultural heritage.
15. There needs to be a right of appeal for local committees when Plans of Management agreed by local committees are rejected by the Minister for Planning.
16. The 20 day period to negotiate between developers and committee is not adequate and if negotiations break down there needs to be mediation. There should be no time limit for mediation and if there is no agreement the action should not proceed.
17. Local committees need to have a right to take direct action against developers for harming ACH rather than having to rely on the poorly-resourced non-local NSW OEH to act.
18. A developer will need to meet face to face with the local committees in order to understand how to negotiate in good faith. Local committees will need to discuss and define what “good faith negotiations” and develop protocols for negotiating with developers.
19. Adequate time will need to be allowed for local committees to research and consult in order to come to a decision in the best interest for their community.
20. Training resources will need to be devoted to develop conflict resolution and negotiation skills, personal and community growth.
21. Staff retention and succession planning will be very important for the local Aboriginal organisations hosting the committees, and must be supported.
22. Pro bono legal and advocacy resources will need to be available to assist local committees to make considered decisions, and negotiate fairly, using the legal remedies and frameworks available.
23. To ensure independence, and that the local committees act in the best interest of their local Aboriginal community, resourcing of the proposed local committees must not be made directly by parties like governments and developers. A third, independent party bound by terms of reference should receive legislated royalties from developers, which would then be issued to support the operations of the local committees in response to submissions made from local

committees. This body would also regulate the local committees and ensure their independence and appropriate conduct.

24. Funding of the local committees should be according to project agreements and should reflect normal government costs for supporting employees, their office and on-costs, training and project-specific costs. Projects should be granted to local Aboriginal heritage organisations with existing networks and resources, over 3 year terms. Reporting requirements should reflect the risk of projects and relative capacity of organisations.
25. NSW procurement policies would need to prefer local Aboriginal organisations for Aboriginal cultural management projects.
26. The ability of the local committees to function well will depend on their adequate resourcing.
27. Resourcing of an ACH committee in Walgett would support staffing, on-costs, operating overheads including vehicles and insurances, staff training, conducting surveys on country, maintaining a watching brief over ACH, advocacy and liaison activities, education activities, documentation, mapping and collection management, off-site data storage, support for regional and state peaks and attendance, consultants.
28. A custom-made funding agreement with local committees will be needed to define ownership and security of intellectual property, both of the community and organisation, and the government.
29. The NSW ACH Reforms will need confidentiality and data security policies to ensure that NSW Govt is not responsible for any future illegal destruction of Aboriginal cultural values, by ensuring that the security of location information is preserved to the maximum extent possible.
30. ACH information should reside within the Local Aboriginal committees' databases, and be shared live, in secure layers from multiple local committee databases. Secure, off-site backups of data should be facilitated by the state or regional peak bodies under written agreement.