

a brief response dated 31 March 2009 from the Dharriwaa Elders Group

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

to the NSW Dept Environment and Climate Change's Discussion Paper

“Towards an Aboriginal Land Management Framework (NSW ALMF”) for NSW”



Dharriwaa Elders Group site management trainees with archaeologists Charles Parkinson and Lori Sciusco, and visiting elders group members have lunch during the Dharriwaa Elders Group's most recent archaeology training survey, March 2009. The location is within a region rich in Aboriginal cultural heritage evidence. Everyone was very happy to be a part of this activity.

Following is a hurried response to the NSW DECC discussion paper “*Towards an Aboriginal Land Management Framework (NSW ALMF” for NSW*” which quickly lists relevant issues the Dharriwaa Elders Group has thought about in its ten years of operation. We would have liked to prepare a simpler document containing recommendations and a summary but have not the time unfortunately. We hope the following response will be useful and offer our future time to discuss and help implement these issues in more detail. **We ask that our document be given weighty consideration as it will be one of the few submitted by locally-based Aboriginal groups in NSW.**

- 1) **Some general matters applicable to all NSW agencies.**
 - a) The Dharriwaa Elders Group (DEG) takes a leading interest in the protection of Aboriginal cultural heritage in the Walgett region. This includes an interest in the preservation of native vegetation, native animals and where they live.
 - b) **Importance of crown lands.** Crown land including the travelling stock routes and watering places are now important places where native vegetation remains, and evidence of Aboriginal sacred and everyday lives, are preserved. Around our area, bora grounds, burials sites and sites where people lived in traditional times are found on these lands.
 - c) **Development pressure.** Many places of high cultural significance are located on privately owned lands in our area, although they are threatened by pressure for development by agriculture and mining and unsustainable natural resource management (e.g. the mismanagement of water causing the waterholes, rivers and wetlands to dry up and depriving life to the living things that make up the rich biodiversity of the region). We believe that we are luckier than many in NSW, because the pressure for development on our lands is more recent, and therefore less places of high cultural value have been destroyed than in most other areas of NSW.
 - d) **DEG’s cultural heritage management.** We are conducting a project to record places that are important to us, and hope to develop and attract the resources to be able to protect and maintain them. No agency is pro-actively managing landscapes and places of high Aboriginal cultural value in our region. We are struggling currently with this role.
 - e) **The benefits of preserving Aboriginal cultural heritage values.** We believe that Aboriginal cultural heritage including biodiversity are public goods which benefit the spiritual, emotional, and social well-being of Aboriginal people and potentially all Australians. Economic benefits from eco-tourism, Aboriginal cultural tourism, scientific discoveries, biodiversity and the wellbeing of aboriginal people will be some of the future benefits of preserving and maintaining these places for the public good. We figure that in ten years or so, NSW will recognise the economic, scientific and social values of preserving and managing these places. So if the Dharriwaa Elders Group (and organised groups of Aboriginal people like it) can strategically keep a watching brief and provoke action when it is needed, then NSW may be lucky enough to keep our biodiversity alive until its value is recognised. That is the situation now. This situation could be improved, and the benefits discussed above brought forward, if Aboriginal people assist the NSW Government to implement a framework for land management that considers the issues discussed here.

- f) **NSW legislation must recognise these benefits.** The retention and management of Aboriginal cultural heritage and natural resources, and the spiritual, emotional, economic and social well-being of Aboriginal people should be recognised in the Objects of all relevant NSW Acts, and preserved and managed by these Acts, and the NSW ALMF for future generations of all Australians. The DEG would like to advise Ministers and relevant Advisory Councils as how these objectives could be achieved in the interests of the social, economic and environmental interests of north-west NSW Aboriginal communities. Where this object is included in legislation (e.g. in the NSW Water Management Act), attention must be focussed on how to enable this provision. For example in reality, our community has had no input into local Water Sharing Plans.
- g) **Need for new financial models to assist Aboriginal land management.** There will be a major restructuring of agricultural industry in the Western Lands and therefore relevant legislation should provide for the protection of biodiversity and areas of high conservation value, because these are precisely the areas that will provide new, climate change industries for our region in the future. We believe that new industries can be developed with our participation, that rely on Aboriginal knowledge regarding natural resources and their management. These new industries which have the potential to support our future generations will be destroyed before they start if the provisions we suggest are not considered. Economic opportunities from the sustainable use of land, for Walgett Aboriginal communities, must be developed. First, the community manages very little land and the land it owns is managed by regional community housing organisations for housing and associated infrastructure e.g. drinking water, sewage, garbage disposal etc. The only reason these small parcels of land are being managed at all is because some resources are generated by housing rental income and government infrastructure funds. The Walgett Aboriginal community needs to be supported to develop new financial models for sustaining Aboriginal lands, and then the resources to purchase them, or manage crown lands under NSW Lands trust. Biobanking and carbon trading are two methods that the community needs to examine in order to develop sustainable management of country in the future. Community royalties from the exploitation of natural resources, including the development of patents for genetic materials (e.g. native vegetation seeds), mining, forestry, airspace rights, water rights etc should be provided for in all NSW legislation. Native vegetation seedbanks must not be contaminated by genetically engineered plants. The DEG is concerned about the lack of work opportunities for Aboriginal people in our country towns due to the shortage of unskilled jobs, lack of skills training and industrial change in agriculture in NSW. Aboriginal cultural heritage and natural resource management is a role that could be taken on the ground by local Aboriginal groups working under the supervision of community elders and with the advice of scientists. Works could be undertaken for government and private landholders.
- h) **LALCs must be better resourced** by NSW ALC so that the NSW Aboriginal Land Rights Act (“NSW ALR Act”) can be enforced and used by Aboriginal groups around NSW to protect, access and manage Aboriginal cultural heritage in NSW. Currently we are being blocked from our community taking advantage of this Act, and we believe that our community and the nation is suffering and will suffer as a result.

i) **Need for formal relationships between local Aboriginal communities, NSW government and NSWALC, which support their capacity.** For local cultural heritage matters to be undertaken on the ground in north west NSW the NSW¹ Aboriginal Land Council and NSW government agencies must have formal mechanisms to work with Aboriginal elders groups and other prominent cultural heritage management groups, particularly when LALCS are inactive in this area. The role of local Aboriginal cultural heritage and natural resource management groups should be recognised by NSW govt, and not supplanted by the activities of Aboriginal advisory committees set up by NSW agencies. Ideally these advisory bodies should contain representatives from local groups, who are tasked to feedback committee business to their local group in the community – and represent their local group in their work on the committee. Currently we find that our ten year old organisation has to fight for representation on these committees as individuals are usually asked to nominate. We believe this is inappropriate and a continuation of a token responsibility being taken on by individuals who most often don't have the necessary resources to truly represent their community. Consequently decisions continue to be made about Aboriginal cultural heritage behind closed government doors without communities knowing they might have had an opportunity to intervene or participate.

Practices like this are also counter-productive. It would be more productive for government agencies to consult with the existing groups in communities – rather than attempt to set up new ones. Representatives of Aboriginal interests on Advisory Councils should be given the resources to consult with relevant Aboriginal communities when matters arise affecting them. We request that these representatives are selected for their local representative status, probity, good character, communication skills and experience with NSW Aboriginal communities in the relevant area, using a rigorous process. They must be required to work for the benefit of all Aboriginal people in NSW and not just particular families. Too often we have lame duck Aboriginal representatives who are happy to receive TA to travel to meetings who happily sign our rights and interests away to their flatterers. Representatives of local groups, nominated by resolution, are more likely to have the capacity to feedback and feed forward community advice to government advisory committees. Where local groups do not exist, NSW agencies have to take on the responsibility to support community capacity to develop them. Without local Aboriginal groups taking local responsibility to work with NSW government in the management of lands significant to Aboriginal people, the aims of the NSW ALMF will probably fail.

j) **Aboriginal Advisory Groups need a formal role.** Members of Aboriginal advisory groups often feel that their work is not listened to and that they are wasting their time. While government good intentions created these committees, many are content that they merely exist, and are not happy to let them grow in knowledge and responsibility. This will have to change for the NSW ALMF to succeed.

k) **NSW Government must assist Aboriginal communities to guard against corrupt practices.** NSW Government agencies should become aware of the family and other relationships of their Aboriginal employees and make sure that they are not somehow

¹ This is the area we know about, but what is good for NW NSW could also suit other areas of NSW

impeding the work of the agency. Our organisation has come across many situations where corrupt or inept Aboriginal employees have affected:

- i) How agencies perceive local Aboriginal organisations
- ii) Who agencies talk to in Aboriginal communities
- iii) Who agencies recommend for contracts
- iv) Who agencies recommend for involvement in advisory bodies
- v) Who agencies participate with in projects
- vi) Who agencies listen to in community arguments or disputes

l) **Cultural awareness training** is important for all staff and some NSW agencies are more advanced in this regard than others. In our region we have the unfortunate experience of agencies employing Aboriginal liaison officers for the first time who are expected to deliver Aboriginal cultural awareness training to their colleagues. Their efforts are probably better than no effort at all, but the agencies are able to tick the box that they have carried out this training, when in fact, very little knowledge has been exchanged. Our members have been reluctant to participate in these activities, yet the video resource we have produced to welcome non-Aboriginal professionals coming to work in Walgett has been strangely ignored by most agencies. It is good to make sure that cultural awareness training is undertaken by all staff – but more efforts need to be made to accredit and improve the training that is undertaken in our region.

m) **Resources that we have found would benefit Aboriginal land management activities** by local Aboriginal groups, and which could be shared across NSW include:

- i) A Geographic Information System software and computer hardware to house it which is resourced by topographic, crown land and aerial photo data, and which is easy to be used by contains generic data so that data can be shared to and from NSW Govt agencies
- ii) training in the use of the above software
- iii) on-ground palm pilots or similar devices that contain GPS and can be used to upload on-ground data to local server
- iv) provision of region-wide training and information sharing opportunities for local groups
- v) a pool of available archaeologists, legal advisors, policy developers, GIS trainers, environmental scientists and the money to employ them, who would be available to work for local Aboriginal groups according to local priorities
- vi) regional representation of local Aboriginal groups for the purpose of advising CMAs, NSW DECC, NSW Lands, NSW Dept of Primary Industries
- vii) regional policy support for local Aboriginal groups to respond to government inquiries (like this one) and policy and planning development. This activity would involve facilitating local groups to meet together and discuss issues, familiarisation with NSW laws and policies and access to legal advice, and assisting with the drafting of documents developed by the local groups.
- viii) software development for:
 - (1) Systems that can be used for on-ground management and activity monitoring, for example which send an alarm or email when satellite imaging notices a change in the landscape that may indicate a bushfire, vegetation clearing, mining activity
 - (2) Systems that integrate NSW DECC AHIMS site cards into the above GIS

- n) **Aboriginal people must have access to ANY country in their area of interest**, for any purpose, under the auspices of a local body with appropriate public liability insurance provided the landholder (private or otherwise) is given the courtesy of notification.

2) NSW Catchment Management Authorities (“CMAs”)

- a) For the CMAs to meet the objectives of the Catchment Management Plans successfully for Aboriginal communities, more effective project management activities need to be undertaken by individuals or organisations that are experienced with working in Aboriginal communities
- b) CMAs need resources to implement on-ground participation and consultation with local Aboriginal communities
- c) CMAs development of water sharing plans must be done with the participation of relevant local Aboriginal communities. Currently we have heard very little about their development from the two CMAs we deal with.
- d) CMAs need to develop more practical ways of working with Aboriginal cultural values, including making sure that they are recognised and respected in the preparation of Property Vegetation Plans, and any other instruments which have the capacity for changing, threatening landscapes.
- e) PVPs development processes must be improved so that areas of high Aboriginal cultural value are determined before PVPs are approved.
- f) PVPs must be monitored so that places of high Aboriginal cultural value are not destroyed.

3) NSW Dept of Primary Industries

- a) Monitoring and compliance is a huge issue with this department, as with all others. There is very little communication with Aboriginal communities from this department.
- b) If the department is to place responsibility on mining proponents to make sure they do not threaten threatened species or places of Aboriginal cultural significance, there needs to be some form of education of proponents, and professional advice available to them which they can use to determine places and things they shouldn't be destroying.
- c) The Dept needs a system of obtaining advice regarding how and who to consult with in Aboriginal communities. Currently a few under-supervised Aboriginal Liaison Officers are expected to undertake community liaison which has proven to be beyond them.
- d) Natural resources currently unvalued by this department (for example when mining is to proceed in the same location) need to be valued and understood by this department as resources upon which future primary industries will be based. The value of natural resources for Aboriginal people needs to be recognised by this department, and reflected in its laws.

4) NSW Lands

- a) There is very little communication with Aboriginal communities from this department. We are concerned that crown lands are being offered for conversion into freehold title with little or no representation / objection from Aboriginal people. Simply advertising in the local paper is not good enough. NSW Lands should pro-actively seek out the

relevant Aboriginal communities and actively seek their opinion before any further crown land is lost. Aboriginal communities do not have the resources to respond to individual applications from leaseholders applying to convert their western lands leases to freehold land, or other lease management issues administered under the Western Lands Act. It is our opinion that any conversion of crown lands to freehold reduces our access and rights to use the land, and so we object to any conversions. We request that an advocate be employed to monitor requests for these conversions on behalf of Aboriginal interests; and that the relevant local Aboriginal communities participate in the decision making, so that our interests are represented when decisions to convert to freehold are made. When leases are being converted to freehold, there should be an opportunity for Aboriginal communities to lease or own the land, using measures at least as cheap as described in 1.5.3(e) Relaxation of Conversion Provisions². If a leaseholder requests that a western lands lease be converted to freehold, the local Aboriginal community and the NSW Aboriginal Land Council, on its behalf, should be asked first if it would like to be the leaseholder, before it is converted, and then completely out of the reach of claims under the NSW Aboriginal Land Rights Act.

- b) Monitoring and compliance is a huge issue with this department, as with all others. In our area crown roads are often illegally blocked by landholders not wishing Aboriginal people to use them. This prevents access of Aboriginal people to fishing and other areas of crown lands. NSW Lands seem incapable of monitoring the situation in our area. A local Aboriginal body needs to be commissioned by government to carry out these monitoring duties – a vital part of law enforcement and compliance. We also request that the law recognise no leaseholder be allowed to prevent access to Aboriginal people on western lands, or through western lands, and this be monitored and enforced.
- c) In our area NSW Lands are in the process of remapping and defining areas of crown lands. NSW Lands mapping systems need to be improved, and then shared with local Aboriginal groups so we know where crown land is and where we can legally go. Lack of crown land clarity, lapsing crown roads due to underuse and resumption by landholders creates another unneeded confusion for local Aboriginal groups.
- d) Crown Reserves are under-gazetted in our region, and when reserves are gazetted (rarely) for Aboriginal people it is very difficult to maintain the trusts to manage them. NSW Lands must pro-actively seek out working relationships with local Aboriginal organisations so they have the capacity to manage crown reserve trusts and gazette new ones.
- e) We request that closer scrutiny be given to the issue of licences for the use of western lands to remove minerals and timber, in the Western Lands Act. The Protection of the Environment Administration Act 1991 specifies that ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes, which can be achieved through:
 - i) the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, public and private decisions should be guided by:
 - (1) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and
 - (2) an assessment of the risk-weighted consequences of various options,

² NSW Western Lands Act

- (a) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,
- (b) conservation of biological diversity and ecological integrity - namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,
- (3) improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services
- f) If this Act, and Object of the Western Lands Act, was enforced more strongly then opal mining would not be allowed to proceed within or near the RAMSAR wetland Narran Lakes, which is threatened currently.
- g) It is very important that such a change of land use trigger a comprehensive review of environmental factors in accordance with Part 5 of the EP&A Act. However, in our experience this has not been enough to ensure the ecological sustainability of the proposed change of land use in the case of opal mining in OPA 4 in the Narran Lakes wetland. A Review of Environmental Factors was undertaken, which recommended that there was a high likelihood that threatened species and areas of high conservation value would be threatened by the proposed opal mining, and that if the precautionary principle was applied, more studies would need to be done before allowing opal mining to proceed. The NSW Dept of Primary Industries has ignored this finding. Because of this experience we believe that the Department of Lands, before giving its consent to a proposed change of land use, must consider the proposed change using information supplied by Species Impact Statements and other studies that have more standing under the law, and which cannot be ignored by mining interests. We ask this because it is unlikely that local Aboriginal communities will ever have the resources to comment on or respond to these matters, but will be greatly affected by their outcome, usually in the negative. These negative impacts on Aboriginal communities will also affect potential future NSW industries of eco tourism, climate change industries and those reliant on Aboriginal cultural values in the future.
- h) There needs to be provisions in the Western Lands Act, perhaps by amending the covenants, reservations and exceptions set out in Schedule 1 of the Western Lands Act which makes sure that the Crown cannot remove minerals or other natural resources from Western Lands if the process threatens the ecological sustainability of the lands. The provisions we propose should bring the Western Lands Act into line with other state and federal acts which protect biodiversity, threatened species and Aboriginal cultural heritage. The proposed provisions also have to make sure that approval is applied for each and every “action” that would threaten the Objects of the Act mentioned above, e.g. the principles of ecologically sustainable development, and the social, economic,³ environmental interests and Aboriginal cultural heritage values of the Western Division. Those trying to protect threatened species and areas of high conservation value should not have to rely on the inadequate provisions of the NSW National Parks and Wildlife Act. The NSW Department which administers that Act is unable to monitor compliance in the Western Lands with its existing resources, and once these sensitive areas are damaged they will be lost forever. There are no second chances.

³ An examination of a proposal for opal mining in the Narran Lakes area using economic criteria would clearly show that the economic value of retaining the internationally significant wetland is far greater than that of opal mining which is largely unregulated and therefore unable to be quantified in terms of economic value.

5) NSW Native Title Services Corporation

- a) We are unfamiliar with the way this agency works. We should be very familiar with the way it works as the Dharriwaa Elders Group is an association of Aboriginal elders. Native title is very important for the human rights of Aboriginal people and the protection of human rights and so far this is being denied our members.
- b) The DEG first heard about the Gamilaraay Nation Agreement from government when we attended NSW Alcohol Summit meetings. Members were insulted that such an “Agreement” had been made without any consultation with the DEG, a long-standing Aboriginal community organisation located in Gamilaraay country, or its members.
- c) Since then members have attended three meetings, at which two DEG members thought they were elected as local reps. One received correspondence for a while and attended one regional Gamilaraay meeting. Since then he has dropped off the radar and has heard no more. The second rep. who was elected at one of the Walgett meetings never heard from the organisation again. Since this time we have discovered that an employee of the NSW Government, now living 3 hours away from Walgett, has been attending meetings as the Walgett representative without any of our member’s knowledge. NTS Corp has a long way to travel before it regains the trust of DEG members.

6) NSW Dept of Environment and Climate Change

- a) Monitoring and compliance is a huge issue with this department, as with all others. We cannot understand why this department doesn’t devote more resources to our region – which has more surviving old growth native vegetation, threatened species and places and practices of high Aboriginal cultural value than most other regions of NSW. If the department itself is unable to station its staff in the regions, then formal contractual relationships need to be made with local Aboriginal groups to undertake the work they are unable to perform. We believe that the NSW DECC has been unable to prevent the loss of threatened species, threatened ecological communities and many areas of high Aboriginal cultural value, in our region because they aren’t monitoring the region. The laws require evidence which is not being collected, and so little prevention of destruction is gained through legislative penalties. For example, we, and many others, believe opal mining in OPA 4 will threaten threatened species, ecological communities and places of Aboriginal cultural value. Yet NSW DECC will not survey the largely unsurveyed areas, so mining proponents and the NSW government base decisions about allowing mining to proceed based on inadequate information. Consequently it is argued that opal mining will not have an adverse impact⁴. Because minimal relationships are maintained by NSW DECC with local Aboriginal communities, their dwindling knowledge is not used or considered to have any standing, in places where no other knowledge has been developed. We believe that if the precautionary principle is applied⁵, it is NSW DECC’s job to survey what the government is about to expose to danger. If they are unable to do the job – they need to train and resource Aboriginal communities to do it for them.
- b) We urge this department to take a more pro-active role in protecting landscapes and places of Aboriginal cultural value.

⁴ As found by the Parsons Brinkerhoff Australia Pty Ltd report of 2006. “Threatened Biodiversity Survey and Assessment of Significance: Barfield and Kurrajong, Opal Prospecting Area 4, Lightning Ridge”. Prepared for the NSW Department of Mineral Resources.

⁵ in accordance with the principles of ecologically sustainable development referred to in section 6 (2) of the “Protection of the Environment Administration Act 1991”

- c) We urge NSW DECC to speed up the processing of gazettals of Aboriginal Places. We nominated two places for gazettal in 2002 and only one is being researched now – in 2009, with limited resources. Aboriginal Place gazettals are one of the few protections for places of high Aboriginal cultural value, and their slow processing damages the credibility of NSW DECC with Aboriginal people.

7) NSW Rural Lands Protection Boards

- a) The NSW Rural Lands Protection Boards (RLPBs) have never had the resources to take on the custodial responsibilities for Aboriginal cultural heritage on the lands they are responsible for. Our RLPB has little knowledge of the wealth of cultural heritage under their feet. Aboriginal people should have a greater role in the management of these crown lands.
- b) The DEG proposes that a joint management venture between NSW Aboriginal Land Council and Rural Lands Protection Boards be implemented. This venture could be self-supporting, funded by the tourism industry and landholders benefiting from the stock routes and other RLPB places.
- c) The NSW travelling stock routes and other crown land reserves currently controlled by the RLPBs should be under the joint control of the NSW Aboriginal Land Council and the RLPBs.
- d) NSW Aboriginal Land Council and the RLPBs must be resourced to manage this responsibility better than they have been managed in the past.
- e) The Rural Lands Protection Act should not jeopardise the management of Aboriginal cultural heritage and potential claims under the NSW Land Rights Act.
- f) Revenue to cover the costs involved in the management of NSW travelling stock routes and other crown land reserves should be raised from those who benefit directly from their use. Landholders adjacent to the reserves, landholders whose stock use the reserves and tourism operators who will benefit from the protection of these areas in the future should contribute to the management costs of these lands. A tax⁶ could be introduced to assist this process.

8) NSW Water

- a) The DEG is unfamiliar with this department. We would like more opportunities to influence the quality of water and fairer water allocations in our region.

⁶ e.g. a “bed tax” from all motel, hotel, caravan park visitors, a tourists’ “arrival tax” collected at regional NSW airports, and other revenue raising measures should be investigated.