

Professor Peter Phibbs
Director, Henry Halloran Trust

December 13th 2018

The Manager,
Department of Planning and Environment,
PO Box 1148, Gosford, NSW, 2250

Dear Madam/Sir

Re: Darkinjung Delivery Framework

We are writing in relation to the Darkinjung Delivery Framework Consultation paper. The Halloran Trust, a research Trust at the University of Sydney, funded through philanthropy, has been working with the Department of Planning on improving the capacity of local aboriginal land councils (LALCs) through a training project (mentioned on page 18 of the paper) over a number of years. We have also held on a number of public events on the experience of LALCs which have involved staff from Land Councils in 2017 and 2018. It became clear to us through this process that the NSW Planning system was failing LALCs, and also not meeting the aspirations of the NSW Land Rights Act.

As a result, we commissioned Ms Stacey Miers, an experienced NSW land use planner to explore this issue in more detail by examining some planning case studies with LALCs across NSW. Her final report was recently completed and is available from:

http://sydney.edu.au/halloran/publications/Miers_EffectOfLandUse.pdf

Whilst the report documents in some detail the problems experienced by Darkinjung, other land councils have experienced similar issues. Our view that the issues experienced by Darkinjung also impacts other LALCs is the basis for this submission.

1. We strongly support the use of alternative planning arrangements to provide better outcomes for LALCs. The business as usual approach is failing. In saying that we consider that what is needed is alternative administrative arrangements. We think LALCs are happy to meet the normal planning thresholds for DAs and Planning proposals. They just want those thresholds to be fairly applied.
2. State Environmental Planning Policy (SEPP) - The proposed SEPP would remove some significant land use development barriers for Darkinjung; however, we would like to ensure that the proposed SEPP is framed so that it's easily extended to other LALCs across NSW. Hence, it would become a LALCs SEPP and other LALCs could be included in the SEPP if they met some conditions (mirroring the process in SEPP70.)

3. We would like to ensure the criteria for inclusion into the LALCs SEPP does not create significant barriers for LALCs. Whilst this will require further consideration by the Department perhaps a starting point might be:
 - LALC has completed a Local Strategic Planning Land Assessment
 - LALC has a Community, Land and Business Plan in place;
 - LALC is able to demonstrate the community benefits of proposed planning proposals potentially through a Development Delivery Plan.

4. Alternative Approval Pathway - The proposal in the “Delivery Framework” to bypass Local Councils on outstanding planning proposal matters is an essential step towards taking politics and any sense of discrimination out of the process. However, we feel this could be introduced via a Ministerial direction and could be extended to all LALCs. We would suggest that all development applications from LALCs be referred to an independent authority such as Local Planning Panel where they exist or a Joint Regional Planning panel elsewhere.

5. Ministerial Direction - The proposed Ministerial Direction where a planning proposal authority would need to ensure consistency with the Darkinjung Development Delivery Plan is supported however, we feel it should be framed so that it can be extended to all LALCs into the future (through the LALCs SEPP).

6. Independent of LALCs being included in a LALC SEPP, we would suggest that for any planning proposal to be approved it should contain **evidence** of consultation with a LALC, where LALC land is impacted.

Sincerely,

Professor Peter Phibbs

Ms Stacey Miers (Practitioner-in-Residence)