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The Effect of Land Use Planning Decisions on the Landholdings and Viability of NSW Local Aboriginal Land Councils

Authored by Stacey Miers

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Title

**The Effect of Land Use Planning Decisions on the Landholdings
and Viability of NSW Local Aboriginal Land Councils**

Key Points

This research project set out to expand our understanding of how NSW planning authorities relate to Local Aboriginal Land Councils (LALC). It documents evidence presented to Government enquiries and the experience of LALC's of the effect of the NSW Planning System on their land holdings. A specific focus of the research has been to evaluate perceived bias regarding strategic planning decisions by planning authorities such as re-zonings or development decisions, and the level of consultation undertaken by relevant planning authorities with Land Councils.

Context

In 1983, the NSW Government introduced the Aboriginal Land Rights Act (1983), which aimed to provide Aboriginal people in NSW with land as partial compensation for dispossession from their traditional lands. The land would be delivered through a framework known as Aboriginal Lands Councils (ALC's). Conversely, the evidence presented to NSW Government Inquiries over some years has highlighted the fact that NSW LALC were disproportionately affected by restrictive land use zoning decisions (their land was being down-zoned) and that planning authorities rarely consulted Land Councils on these strategic planning decisions. In response to this evidence, the NSW Department of Planning and Environment initiated a training project for NSW Local Aboriginal Land Councils (LALC) to increase their knowledge of the NSW planning system.

This research project set out to investigate the matters raised during the Government Inquiries and through the land use planning training sessions. The aim was to gain some insight into the perceived adverse impacts of strategic planning decisions and their implications for the objectives of the NSW Aboriginal Land Rights Act (1983).

Author Stacey Lee Miers

Since the early 1980s, Stacey has been involved in the interface between town planning, social, and cultural impacts and is known for her participation in broad-based interdisciplinary projects that explore complex societal issues through land use planning.

Stacey has delivered Training & Development Courses for Local Aboriginal Land Councils Across NSW on the NSW Planning System since 2016. Participants in these training sessions often sought to clarify the reasoning or logic behind a strategic land use planning decision that had a restrictive effect on the Land Council's long-term cultural, social and economic viability.

In response, this research set out to investigate the impact of the NSW Planning System on the land holdings of NSW Aboriginal Land Councils and to explore ways of improving communication pathways between the NSW Department of Planning, Local Councils, and the Aboriginal Land Councils.

Sources

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Key Findings

The land use issues for LALC are threefold. Firstly, the NSW Aboriginal Land Rights Act (1983) provides Aboriginal people with land as partial compensation for their dispossession from traditional lands. However, under the Act the land granted to LALC is often undeveloped Crown land or is affected by other planning related matters. This means that the land is often-zoned environmental, conservation, scenic protection, or special use or has contamination or heritage restrictions. This appears to lead to reluctance by Local Planning authorities, particularly in high-value areas to rezone land to a higher use such as residential or commercial. Secondly, LALC have had their land downzoned or removed from up-zoning opportunities by the relevant planning authority. In addition, planning authorities failed to consult the Land Councils on strategic planning decisions that directly affected their land holdings. A significant proportion of Land Council resources are consumed trying to redress the adverse effect of these decisions.

Regional and metropolitan LALCs differ significantly. Land Councils located near Metropolitan Centres have potentially high-value land and consequent access to greater economic resources; while rural-based LALC's like Brewarrina do not. This disparity underlines the need for specific rural based initiatives linked to a funding stream that could support rural-based land council's industries such as viable agriculture or food production initiatives.

The protection and maintenance of listed heritage items is part and parcel of LALC core business. However, there are financial liabilities linked with the restoration or preservation of heritage items that are not recognised by local planning authorities. To ensure that listed heritage items are conserved, repaired, and maintained planning authorities need to go beyond just listing items and move toward a process of engaging effectively with LALC to create viable longer-term pathways so that listed items can be restored and maintained into the future.

The increasingly restrictive nature of the 'Standard Instrument LEP'

FURTHER INFORMATION

This paper is based on The Henry Halloran Trust Practitioner in Residence Project

The full paper from this project can be found on the Henry Halloran Trust Website:
<http://sydney.edu.au/halloran/programs/index.shtml>

Contact:

Sasha Sydney
Room 450 Wilkinson Building G04
The University of Sydney NSW 2006
T +61 2 9351 2771
E sasha.sydneyvonsomogy@sydney.edu.au



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land use zones, especially the 'Special Use Activity' zone was highlighted in the research. Historically, this land use zone has been applied to Aboriginal reserves and mission land. A specific alternative land use zone could be created that recognises both the historical nature of the site, the current use and any future aspirations that the LALC might have for the land.

Land Councils are often unaware of decisions associated with land use planning amendments until after a decision has been made, clearly there is a need for a higher level of due diligence by LALC's to engage more directly with the planning system.

Conversely, there is evidence that the planning profession, in general, has little understanding of the overall aims and purpose of the Aboriginal Land Rights Act (1983). Programmes raising awareness of the Act's purposes for planning should be delivered through organisations such as: 'Local Government NSW' (LGNSW), peak-planning organisations, and University planning programs to raise greater awareness of the issues.

Lastly, the introduction of the NSW Governments Department of Planning and Environment 'Darkinjung Delivery Framework Consultation Paper' (November 2018) which aims to bypass Council and create a development pathway for Darkinjung's Land Council is a significant planning initiative for the LALC's. Its proposed framework creates a State Environmental Planning Policy (SEPP) for LALC that includes a strategic land assessment process to identify key priority sites for rezoning. It includes an assessment threshold where higher value planning proposals by LALC will go to the Regional Planning Panel rather than the Council for approval and the introduction of a Ministerial Direction where a Planning Authority will need to ensure consistency with the LALC 'Development Delivery Plan'. This initiative should be monitored to ensure the LALC Delivery Framework is applied so that it can easily be extended to include other LALC across the State.

Implications for Practice

This research indicates that statutory planning authorities when undertaking strategic land use planning assessments need to take closer consideration of the potential impact of their decisions on the land holding of LALC. Planning authorities also need to find ways of supporting LALC to identify pathways to help them realise a level of economic sustainability into the future.

A recent initiative by the NSW Governments Department Planning and Environment 'Darkinjung Delivery Framework' Consultation Paper (November 2018) includes a proposal for the creation of a State Environmental Planning Policy (SEPP) for LALC which is an important policy initiative and should be monitored to ensure the SEPP can be extended to include all NSW LALC.