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

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Welcome to Country

I would like to acknowledge the traditional custodians of our land, Australia and to recognise the contribution of elders past and present.

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DISCLAIMER

The Henry Halloran Trust is an independent body, which has supported this project as part of its programme of research. The opinions in this publication reflect the views of the authors and do not necessarily reflect those of the Henry Halloran Trust, its Advisory Board, or the University of Sydney.

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ACRONYMS

ABS	Australian Bureau of Statistics
LALC	Local Aboriginal Land Council
NSW ALC	NSW Aboriginal Land Council
DA	Development Application
LEP	Local Environmental Plan
LGA	Local Government Area
NSW	New South Wales
PNRP	Parramatta North Redevelopment Precinct
PNUT	Parramatta North Urban Transformation
NSW LEC	NSW Land and Environment Court
EP&AAct (1979)	Environment Planning and Assessment Act (1979)
SEPP	State Environmental Planning Policies

EXECUTIVE SUMMARY

In 1983, the NSW Government introduced the Aboriginal Land Rights Act (1983), which created Aboriginal Lands Councils (ALC's). This Act also established a system for granting land to Aboriginal communities across NSW, allied with their dispossession from their traditional lands. However, there are increasing concerns that in some situations the land given to Aboriginal communities is becoming a cost burden rather than a community benefit due to land use and strategic planning decisions.

This research shows that the NSW Planning system has increasingly operated in a way to reduce the value and utility of land held by Local Aboriginal Land Councils (LALC). This matter was highlighted in submissions from Aboriginal organisations in a 'Review of NSW Planning System' in 2011. It was raised again in 2015 at the 'Inquiry into Economic Development in Aboriginal Communities' and again in 2016 at the 'Inquiry into 'Regional Planning Processes'. Evidence presented to these Inquiries suggested that NSW LALC were disproportionately affected by restrictive land use zoning decisions, (their land was being down-zoned) and that planning authorities rarely consulted with Land Councils on strategic planning decisions.

In response to the matters raised during the 2015 Inquiry, the NSW Department of Planning initiated a statewide training program on the NSW planning system for LALCs, which commenced in 2016. Matters that arose during the previous Government Inquiries concerning strategic planning decisions and its adverse effect were again raised by LALC's throughout the training sessions.

Consequently, this research project draws on the information presented to these inquiries and the matters raised in the training sessions which contribute towards the experience of the four LALC's case studies reviewed as part of the project.

The four LALC's are drawn from different geographic locations and possess diverse landholdings, economic resources, and responsibilities. For these reasons, each one provides a different insight into the consequences of strategic planning decisions by Planning Authorities .

The case studies reveal that a large amount of Land Council time is taken up with trying to redress strategic planning decisions that have resulted in their land being technically downzoned. They also reveal the level of consultation or engagement that happens between the relevant planning authority and the LALCs concerning land use planning decisions.

An issue highlighted throughout the case studies is the strong commitment by LALC towards the restoration or maintenance of listed Heritage items. For Brewarrina it is the ancient Aboriginal stone fish traps linked with a Dreamtime story, for Darkinjung, it is the Heritage listed Parramatta Jail site, for La Perouse, it is the old Mission Church and Yarra Bay House. The case studies show that the long-term viability and protection of heritage items is impeded due to a failure by the relevant planning authority to engage with LALC on ways to ensure that listed items are maintained and restored.

The NSW Aboriginal Land Rights Act (1983) functions in a way that guarantees a high percentage of the Crown land granted to LALC is undeveloped, while the adjacent land has often been developed. This situation creates reluctance by the planning authorities to rezone land owned by LALC's to a higher use such as residential or commercial. This scenario was evident in the Darkinjung case study where the surrounding land was developed while Darkinjung's land was not. Council responded firstly, by refusing Darkinjung's DA and then rezoned the land from Scenic Protection to Environmental Management to stop any future development proposal.

The case studies substantiate a failure by different Government Planning Authorities to engage constructively with LALC's on strategic land use planning decisions; they also show that LALC's are rarely consulted on strategic development proposals even when it includes their land holding. It is clear that planning authorities need to re-examine their consultation protocols regarding the land holdings of Indigenous communities.

The 'NSW Aboriginal Land Council's submission on the 'Review of NSW Planning System (2011)' addressed the lack of consultation by planning authorities. They argued for the introduction of a mandatory notification system to LALC on strategic planning matters and development decisions when it affects their land holdings.

A lot of Aboriginal Reserves and Mission land which are now owned by LALC across NSW have been allocated the SP1 'Special Activities' land use zone in line with the Standard Instrument LEP' template. The La Perouse Case Study evidenced this situation, and it also identified the increasingly restrictive nature of this 'land use zone'. It reveals that while land use zones may be compatible in name with the previous zone they are often more restrictive regarding permissibility. One option would be for the Department of Planning and Environment to issue guidelines for Local Government Authorities on the use of SP1 and SP2 zones for LALC and any related land use definitions. The introduction of such guidelines would help to ensure consistency on the allocation of the two zones, and it would provide for a consistent interpretation of the zones purpose.

This research indicates that Land Councils were often unaware of planning amendments affecting their land use until after they were approved. This situation signifies the need for a higher level of due diligence by LALC's to participate with the planning system. The Department of Planning and Environment's, LALC training courses are an essential component towards building the capacity of LALC to engage more effectively with the NSW planning system.

Specific differences between regional and metropolitan LALCs regarding physical characteristics and revenue capacity are evident in the case studies. While some metropolitan LALC's have high-value land, and consequently access to greater economic resources others, primarily rural-based LALC's like Brewarrina, do not.

One initiative could be to establish special projects linked with Regional Plans and a funding stream for rural based Land Councils. Its purpose could be to support rural LALC in using their land holdings to diversify their income capacity through the creation of rural-based industries such as viable agriculture or food production, or

sustainable energy initiatives. These types of projects would also benefit the wider community.

Many LALC's have direct responsibility and obligations for significant heritage items and the case studies identify the financial liabilities associated with the protection and maintenance of these items. To ensure that listed heritage items can be either restored or maintained, planning authorities need to go beyond just listing the items and move towards the creation of longer-term sustainable pathways that support listed heritage items to be repaired and conserved.

One avenue is for the NSW Department of Planning and Environment and the Greater Sydney Commission to identify listed heritage items in the Regional and District Plans linked with a requirement for the relevant planning authority to work with LALC to develop a plan of management aimed at supporting the long-term protection of listed items.

More broadly, the research highlights the need for a greater awareness across the planning profession regarding public policy initiatives and legislation behind the transfer of Crown land to Aboriginal Land Councils. One option is for peak-planning organisations to develop programs that aim to educate the planning profession on this topic. Also, University planning programs can support a greater awareness of these issues by making it part of their education curriculum.

'Local Government NSW' (LGNSW) is the principal organisation representing the affairs of Local Government organisations across NSW. They play a vital role in land use planning and organisational development initiatives; they also have a long-standing interest in supporting reconciliation initiatives. For these reasons, they are in a unique position to promote awareness on the purpose of the Aboriginal Land Rights Act (1983) and the opportunities that exist for land use planning decisions to support LALC in delivering investment opportunities. They could do this by developing a program aimed at educating the planning profession and raising awareness through the Local Government Annual Conference as a way of fostering a greater understanding of the issues.

PROJECT BACKGROUND AND OUTCOMES

Introduction

The NSW Department Planning and Environment initiated a training project for NSW Local Aboriginal Land Councils (LALC) known as 'Planning for non-Planners' with support from the University of Sydney's, Henry Halloran Trust in 2016.

The training initiative was in response to matters raised during the NSW Government's 'Inquiry into Economic Development in Aboriginal Communities (2015)' and the Inquiry's subsequent findings.

Many of the LALC who participated in the initial training program, identified a lack of consultation by planning authorities, predominantly local government, on development and rezoning decisions. The Land Councils indicated that this was the case even when the development decision directly affected land owned by LALC or impacted on items of Aboriginal cultural heritage. LALC also pointed to perceived biases by planning authorities, regarding land-use planning decisions.

This research project aims to explore the matters raised throughout the training by examining the experience of four LALCs¹ about development or rezoning decisions. The project seeks to expand our general understanding of how planning authorities relate to LALCs and to gain some insight into the economic implications of the NSW zoning system on the land holdings of LALCs and the purpose of the NSW Aboriginal Land Rights Act (1983)².

The study will also draw on the obligation under the NSW Environment Planning and Assessment Act (1979) to consult with communities and key stakeholders when undertaking new Local Environmental Plans (LEP) or on a significant land use change.

Project Approach and Methodology

This project supports the University of Sydney's Strategy Plan 2016-2020 and its commitment to Aboriginal and Torres Strait Islander cultures in its strategy 'Wingara Mura – Bunga Barrabugu', ('A Thinking Path – To Make Tomorrow'). This strategy outlines the University's obligation to expand Aboriginal education, research, and engagement as a core activity of the University.

The project is informed by a wider scoping task associated with a state wide training program for LALCs on the NSW planning system by the NSW Department Planning and Environment with support from the University of Sydney's Henry Halloran Trust.

The second stage was a Literature Review, which examined all the relevant background information. In general, there's not a lot of academic research specifically on the impact of the NSW Planning System and LALC. So, the literature review also includes some grey documentation such as submissions to NSW Government Inquiries and relevant policy material on the NSW planning system and NSW Land Councils.

The third stage was to document the experience of four LALCs and the impact of the NSW Planning System on their land holdings and any adverse economic

¹ The LALC ranged from inner urban, outer urban, coastal, and rural.

² The intention of the Aboriginal Land Rights Act (1983) is to provide land and a financial compensation to support Aboriginal people to achieve economic, cultural, and social sustainability.

effects on land value. A specific focus was to evaluate any perceived biases regarding a land-use decision by planning authorities such as re-zonings or development decisions, along with the level of consultation by the relevant planning Authority with the Land Council.

The following Land Councils were identified for the case studies based on their ability to provide a broad spectrum of land use planning issues ranging from inner urban, outer urban, coastal, and rural experience.

1. Darkinjung Local Aboriginal Land Council covers an area from Gosford to Wyong (<http://www.darkinjung.com.au/>).
2. Deerubbin Local Aboriginal Land Council. Their area includes Parramatta to Blackheath (<http://www.deerubbin.org.au>).
3. Brewarrina Local Aboriginal Land Council includes the Brewarrina Town and Shire and the Barwon-Darling River systems. Over 60% of Brewarrina Town and Shire population identify as Indigenous (ABS census 2016) (<https://www.brelalc.org/about-us>)
4. La Perouse Local Aboriginal Land Council covers the area from La Perouse to Helensburgh along Sydney's southern coastline (<https://www.laperouse.org.au/>).

Project Aims

Much of the existing documented research on the NSW Planning System and Aboriginal Land Council's is anecdotal, so the project brings a sound body of case study research to this field.

This project draws on the aims and obligation of the Environment Planning and Assessment Act (1979) to consult when undertaking strategic planning policies in particular, any new LEP.

The research approach will encapsulate the purpose of the NSW Aboriginal Land Rights Act (1983), to provide Aboriginal Land Councils with opportunities to manage their land, assets, and investments to the benefit of their community³.

More broadly, the project aims to document the experience of LALC across different geographic locations ranging from inner urban, outer urban, coastal, and rural areas regarding a land use planning decision. Also to identify any evidence of inconsistencies that might arise regarding development or land use zoning decisions.

³ The key aims of the NSW Aboriginal Land Rights Act (1983) is to:

- a. provide land rights for Aboriginal persons in NSW,
- b. provide for representative Aboriginal Land Councils in NSW,
- c. vest land in those Councils,
- d. 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. provide for the provision of community benefits schemes by or on behalf of those Councils.

Part 1 Section 4 Definitions community benefit means a benefit or service provided for the benefit of Aboriginal persons, and may include, but is not limited to, the following:

- a. funeral funds,
- b. residential accommodation,
- c. education and training,
- d. scholarships and other assistance for education and training,
- e. cultural activities,
- f. child care,
- g. aged care services.

Key Research Questions

1. Examine land use management and zoning decisions concerning land held by a LALC.
2. Investigate any biases that may exist in connection with LALC and the development assessment and approval process, land-use zoning decisions or strategic land use verdicts.
3. Investigate whether land-use planning decisions have had any long-term unfavourable economic effects or reduced the value of the land granted to LALC.

LITERATURE REVIEW - NSW LOCAL ABORIGINAL LAND COUNCIL AND LAND USE PLANNING

This literature review is primarily concerned with Aboriginal land and the effect of the NSW planning system. The issue is informed by a broader debate around indigenous land rights, heritage, cultural and environmental management, along with sustainability and economic security issues, which are explored in the literature review.

This literature review will endeavour to summarise the related material, however, due to limited documented research on the NSW Planning System and Aboriginal Land Council's it will also include grey information such as Government Inquiries and submissions linked with the function or operation of LALC in NSW and land use decisions.

Indigenous Rights and Land Use

There is an assertion in global debate that all land use-planning decisions, in countries like Australia where first nations people were displaced should start with recognition of their historical connection to the land. This view recognises the history of displacement through colonisation and that the current land ownership setting carries specific tensions. This argument is tackled in the work of Libby Porter and Janice Barry's recent publication 'Planning for Coexistence? Recognising Indigenous Rights Through Land-use planning in Canada and Australia' (2016).

Porter and Barry's (2016) work examines planning issues connected with four Indigenous communities in Australia⁴ and Canada. Their book explores the theme of participation and consultation with indigenous people, land rights, and sovereignty. They argue for a shift in the current power relationship towards one where self-determining is the basis for addressing Indigenous peoples and land rights. It lays the groundwork for a discussion on land use planning issues and Aboriginal land rights, which is central to this research. However, their work has a national focus and does not deal with the complexities associated with the NSW land use planning system and how it intersects with the NSW Aboriginal Land Rights Act 1983, which are principal to this research project.

Susan Thompson and Paul Maginn (2012) 'Planning Australia' (2nd edition) includes Chapters by Rob Freestone's and Ed Wensing that explore a national perspective regarding urban and regional planning and Aboriginal land rights.

The chapter by Rob Freestone, 'Colonial inheritance: seeds of change and challenge' (2012 pp. 73-90), deals with the complicated and different legislative frameworks that interact with Aboriginal Land Rights and land use issues. The chapter emphasises the problems associated with protecting cultural heritage items and the multiple layers of legislation across different Government jurisdictions. Freestone makes the point that because of the sensitive nature of many cultural heritage items, information on them is not always publicly available, and as a result, most planning instruments do not adequately reflect the scope and depth of Aboriginal heritage and its lineage across Australia.

The chapter by Ed Wensing, 'Aboriginal and Torres Strait Islander Australia' (2012 p254-270) highlights the widely accepted practice that community members affected by a land use planning decisions should be able to participate

⁴ The Australian example is based on an Aboriginal community in the State of Victoria.

in those decisions associated with development proposals that impact on them or their landholdings. However, due to Australia's colonial past, which continues to shape planning practice across Australia this accepted level of participation rights that have not been extended to Aboriginal and Torres Strait Islander people, who have had minimal involvement in the planning process and its impact on their traditional country.

Indigenous Rights, Environmental, Heritage, and Cultural Management

There are numerous articles from both Australia and Canada on Indigenous land and environmental management issues. These works focus on topics such as waterways, fishing, indigenous hunting rights, and endangered species protection. Examples include Eri Leong (1998) 'Indigenous Australians and Dugongs in the Southern Great Barrier Reef: Legal Remedies'. This research is on the rights of Aboriginal and Torres Strait Islander people to use traditional hunting grounds in the Great Barrier Reef area and the killing of dugongs. There are similar examples from Canada such as Jay Istvanffy "A Guide to Aboriginal Harvesting Rights' (2011) and Istvanffy (2017).

There have been numerous studies on Indigenous land rights and cultural heritage; environmental management allied with mining, tourism, and forestry projects. These tend to focus on broader ecological, social or tourism effects as opposed to urban or rural land use impacts for Aboriginal communities.

One example is Toni Bauman's work on 'Indigenous Partnerships in Protected Area Management in Australia: Three case studies (2007). This report looks at three case examples with different conservation and environmental management models connected to National Parks and Reserves. It presents findings on the effectiveness of environmental conservation through mandated joint management arrangements against the voluntary partnership arrangements with Aboriginal people in managing conservation areas. It argues that the best model is to include Indigenous landowners from the onset in the development of conservation plans.

"Planning for Country Cross -cultural approaches to decision-making on Aboriginal land (2002)", Edited by Fiona Walsh and Paul Mitchell deals with aboriginal land enterprises and land management projects and the different factors that affect the way participation works. It points out that you need sufficient resources to carry out a plan that can bring about positive change.

Walsh and Mitchell (2002) classify the main concerns for isolated rural Aboriginal communities; people are usually poor, resources are scarce, costs are high, markets are remote, and there is little money available to invest in a local project. This situation raises questions around how to best utilise mining royalties to guarantee long term security such as investments in locally based industry for example commercial bush food and horticulture projects (p189-190).

Other research includes Petkova, Lockie, Rolfe, & Ivanova, 'Mining Developments and Social Impacts on Communities: Bowen Basin Case Studies' (2009). Their work investigates the social Impacts of mining developments on isolated rural communities with a large Aboriginal population. It addresses the cyclical nature of mining activities and its effect on local Aboriginal and non-Aboriginal communities, including issues around gender disparity. It found that while mining can generate significant social and economic impacts, this varied across communities depending on the nature and makeup of the established community structure, the history of the town's

development, its proximity to a larger rural township and the extent to which a non-resident workforce was involved. It discovered that while some mining towns had experienced lower levels of economic and social disruption due to mining projects, none had been able to leverage other development or economic opportunities, which reduced long-term welfare dependence, post the mining boom.

Several pieces of National legislation deal with the protection of Aboriginal and Torres Strait Islander cultural or heritage items. These form the backbone for the protection and management of Indigenous land rights, environmental issues, and cultural heritage. They include the Federal Crown Lands Act (1989), which enables covenants to be placed on Crown land to protect items of value to Aboriginal and Torres Strait Islander people. There is also the Australian Government Aboriginal and Torres Strait Islander Heritage Protection Act (1984) and the Native Title Act 1993.

Indigenous Land Rights, Sustainable Development, and Economic Security

Altman (2001) 'Sustainable Development Options on Aboriginal Land: The Hybrid Economy In The Twenty-First Century', deals with the different forms of market economies and their relevance for Aboriginal land in rural Australia. Altman examines the challenges around sustainable development in connection with Aboriginal lands holdings into the 21st century and argues for the development of a hybrid economic model that meshes Indigenous values with long-term financial planning outcomes. Altman's proposal is for Indigenous stakeholders and policy-makers to work on creating a new conceptual framework that is not limited to a market or welfare based economic model.

Aboriginal Land and The Planning System In NSW

Across NSW, the majority of Aboriginal culture and heritage matters are protected and managed within the NSW National Parks and Wildlife (NPW) Act (1974). This Act has a section primarily aimed at preserving cultural heritage items and artefacts (rock art, scarred trees, shell middens, and burial sites) primarily linked with the pre-1788 relics of the Aboriginal occupation in NSW. However, a new draft Act dealing with Aboriginal Cultural Heritage is in the making; referred to as the Aboriginal Cultural Heritage Bill, due to commence in late 2018. There has been extensive consultation, and information sessions held on the draft legislation, along with a series of workshops and submission opportunities.

On the matter of Aboriginal land and land use planning impacts, this literature review included NSW Government policy and legislative reviews related to this matter along with submissions made in response to such policies. The 'Review of NSW Planning System' (2011) was one. A submission by the 'NSW Aboriginal Land Council' (NSW ALC) to this review emphasised the difficulties for LALCs in dealing with the overly complicated nature of the Environment Planning and Assessment Act (1978), and a high level of dissatisfaction by Aboriginal communities with the operation of the Act. Their submission pinpointed the following critical areas of concern:

- Consultation and engagement with Aboriginal peoples;
- Aboriginal Culture and Heritage;
- Economic development of Aboriginal lands; and
- Former Aboriginal reserves and missions.

On the matter of consultation, the submission argues for a mandated requirement that planning authorities engage with Aboriginal peoples, linked with a notification system on strategic planning and development decisions that affect the land holdings of LALC's.

NSW ALC submission raised concern over inappropriate land use zoning decisions, often linked with former Aboriginal reserves and missions. They provided examples outlining why land use zoning decisions do not reflect the existing residential, or community nature of these sites, combined with the issues of subdivision arrangement. They argued for the NSW Environment Planning and Assessment Act (1979) to include a stated requirement for protecting Aboriginal culture and heritage items linked with NSW regional plans. Their submission also touched on the topic of land use planning and economic development, and the need to support financial independence and the overall principles that underpin the Aboriginal Land Rights Act (1983).

In 2016, the NSW Government undertook an Inquiry into 'Regional Planning Processes', and the NSW ALC (2016) submission, again raised many of the issues from previous presentations, and made the following recommendations:

- Regional planning interests should include a set of mandatory requirements for Planning authorities to consult and engage with local Aboriginal people.
- Regional planning processes should aim to integrate with the objectives of Aboriginal Land Councils.
- Local government should be required to consult with Aboriginal Land Councils on the strategic priorities when drafting new regional or local plans.
- That regional planning laws include mechanisms that take into account any impacts associated with existing Aboriginal culture and heritage issues.

Similar issues to those raised by NSW ALC regarding inappropriate land use zoning decisions were also evident in correspondence from Ulladulla LALC to Shoalhaven City Council (3.8.2011). Ulladulla Land Council expressed their apprehension regarding the Draft 2009 Shoalhaven LEP zoning decision for their land. They indicated that all the land they owned at King's point except for one lot (which had always been zoned residential) had been given very restrictive land use zoning control such as:

- E2 Environmental Conservation,
- E3 Environmental Management,
- RU2 Rural Landscape,
- RE1 Public Recreation.

Ulladulla LALC indicated that all the surrounding landholdings were zoned Residential, except theirs. The Land Council pointed out that they had historically had a constructive relationship with Council however they were incredibly disappointed by the complete lack of consultation with them on the Draft LEP.

A Decade of NSW Government Reports Aimed at Supporting Aboriginal Self Determination

Over the past decades, the NSW State Government has undertaken numerous inquiries, studies, and initiatives aimed at achieving better economic and social

outcomes for Aboriginal communities across NSW. There were numerous submissions by different organisations to the many Government inquiries, and some are addressed in this section.

The following NSW reports and policy proposals were allied with the Commonwealth Government's "Closing the Gap" 2015 initiative which included an intergovernmental strategy aimed at reducing Indigenous disadvantage by 'Closing the Gap' between life expectancy, health, education and employment outcomes.

The NSW Government 'OCHRE Plan' in 2011 aimed to improve education and employment outcomes for Aboriginal people in NSW and to enhance service delivery. It included extensive consultations with Aboriginal communities, stakeholders, and industry. This Plan had a yearly reporting system and saw the establishment of the NSW Ministerial Taskforce on Aboriginal Affairs.

The OCHRE plan and reporting process centred around supporting Aboriginal communities to influence and fully participate in social, economic, and cultural activities and to create opportunities for economic empowerment.

Allied with the OCHRE Plan initiative, the following reports were produced:

- OCHRE: Opportunity, choice, responsibility, and empowerment. (April 2013)
- OCHRE: one year on (2013-2014).
- OCHRE: two years on (2014-2015). Learning together, working together, walking together.
- OCHRE: three years on (2015-2016). Embedding new ways of working.
- OCHRE: four years on (2016-2017). Changing our perspective and practice as public servants.
- ORCHA Growing NSW's First Economic (December 2016)

The other substantial report undertaken by the NSW Government was the 'Inquiry into Economic Development in Aboriginal Communities (22nd October 2015)' ⁵. This Inquiry aimed at support opportunities for economic development in Aboriginal communities across NSW. Its stated aims were to support and promote:

- Capacity building within Aboriginal communities,
- Sustainable Aboriginal communities,
- Better utilisation of existing community structures,
- Economic development, and
- The establishment of sustainable Aboriginal owned enterprises.

The Inquiry (2015) identified ongoing issues over the land granted to Aboriginal communities under the NSW ALR Act (1989) and the effect of land use decisions. It emphasised that land given to LALCs was being downzoned, primarily to conservation or environmental protection zones⁶ (p72) and this was leading to limiting any future economic development opportunities for the land.

⁵ This Inquiry was overseen by the NSW Government Standing Committee on State Development.

⁶ The environmental and conservation zoning restrictions linked with land being granted to LALC has financial implication such as the need to upkeep the land.

NSW ALC submission to the Inquiry (October 2015) focuses on the original intention behind granting land to Aboriginal communities, which was to improve their economic prosperity. However, this was being hampered by zoning and planning rules, which operated to 'down-zone' land connected with LALCs. They point out that this situation has eliminated any development potential for the land and it undermines the social and economic benefits of granting land in the first place. Also, the land becomes a cost burden rather than an opportunity.

NSW ALC submission (October 2015) argues that some local government authorities view the land owned by LALC as a public conservation asset (effectively seen as privately owned parklands) and this is driving them to 'down-zone' Aboriginal land to environmental and conservation (p73).

The Law Society of NSW Submission to the 'Inquiry (23rd October 2015) dealt with the broader issue of granting land to Aboriginal Land Councils. They outlined how the NSW State Government's Crown Lands Minister record of refusing land claims, which on appeals are found in favour of Land Council, is perpetuating significant inefficiencies in the system. They argue that this situation has seen longer delays in the transfer of land to LALC and leaves land underutilised for years on end.

The Law Society NSW Submission points out that LALC are disproportionately affected by restrictive Land use zoning classifications. They presented an example of the draft Penrith City LEP (2008), which had zoned large tracts of land owned by Deerubbin LALC as environmental conservation, or environmentally sensitive, which are highly restrictive zones, pointing out that in general these would not be considered appropriate for the privately owned property.

Literature Review Summary

As is evident from the literature review there are distinct strains of research covering a variety of topics linked to Aboriginal land rights. Topics include sustainable development, economic security, environmental management, heritage, and land use planning issues.

Porter and Barry's (2016) research explores the philosophical position that all land use activities should start with recognition of first nations people. Thompson and Maginn (2012) (Planning Australia, 2nd edition) which includes Rob Freestones, 'Colonial inheritance: seeds of Change and Challenge' and Ed Wensing, 'Aboriginal and Torres Strait Islander Australia' articles look at the broader debate around the effect of colonisation and the displacement of Indigenous peoples in Australia. These works identify the complexities of the numerous legislative frameworks that operate across Australia and how they impact on the rights of Aboriginal and Torres Strait Islander communities regarding community engagement and consultation around land-use planning decision.

Much of the literature on Aboriginal land rights looks at environmental management and cultural heritage matters, often connected with mining, tourism, forestry, waterway management, and national parks.

The other area of research is on economic opportunities. Lockie, Rolfe, & Ivanova (2006) touch on this in their analysis of the social and economic impacts of mining projects located near Aboriginal communities. They found that although mining has some economic and social benefits in the short term it did

not lead to a reduction in long-term welfare dependence nor did it improve long-term social disadvantage for towns populations connected to mining projects.

Altmand's (2001) work looks at economic sustainability outcomes for rural Aboriginal communities. It argues that its necessary to move away from a commercial market driven or welfare-based model, if the real aim is to address sustainability options for rural communities.

It's clear from the NSW Government reports and inquiries that there are significant issues that inhibit the objectives of the Aboriginal Land Rights Act. A primary point is the unproductive nature of wasted resources locked up through the land claims process, which is leading to long delays. This matter is primarily related to the time and resources consumed in dealing with land claims and Minister's refusals, which on appeal are granted. There are long delays with the transfer of land even after a decision is given.

The literature review also highlights a perceived bias, where land granted to LALC is being downzoned, primarily to environmental or conservation thus inhibiting any viable economic opportunities for the land into the future.

This literature review articulates the complexity of the NSW legislative system, by identifying that at one level, the NSW State Government is committed to progressing initiatives that support increased employment and enterprise opportunities for Aboriginal communities while other components of the legislative structure inhibit such opportunities.

OVERVIEW OF THE NSW ABORIGINAL LAND RIGHTS FRAMEWORK

This section provides a brief oversight of the NSW Aboriginal Land Rights Act (NSW ALR Act) (1983) and its operational framework. The NSW ALR Act (1983) replaced the Aborigines Act (1969)⁷, and as such the new Act (1983) inherited the responsibility of dealing with Mission and Reserve land, which had also been a component of the old Aborigines Protection Act (1909).

The NSW 'Aboriginal Land Rights Act' (1983) came into force ten years before the Commonwealth Government's 'Native Title Act' (1993), and there are significant differences between the two Acts which are summarised, in the following Table (1).

Table (1) The Difference - Native Title & NSW Aboriginal Land Rights Act	
Native Title Act 1993 (Commonwealth)	Aboriginal Land Rights Act 1983 (NSW)
Traditional owners recognised as native titleholders to their land.	Aboriginal people with a connection to the land or area – They do not need to establish native title or traditional ownership connections.
Native Titleholders are required to form Body Corporates (PBC) to represent and manage their land claims & interests.	Established Aboriginal communities form Local Aboriginal Land Councils under the ALR Act (1983). They become the representative body for Land claims.
Native title was the legal recognition of a traditional communal group or individual Aboriginal people to their traditional land and water.	The Aboriginal Land Rights Act (1983) established a compensation framework for historical dispossession and recognition of the ongoing disadvantage suffered by Aboriginal communities across NSW.

The 1983 ALR Act was very different than its predecessor, and one of its prime objectives was to provide compensation to Aboriginal people in NSW for the loss of land connected to colonisation and dispossession. It created a framework for Aboriginal people to acquire land, and to provide housing and support services for Aboriginal people. The Act transferred land held by the previous Act (1909) into Aboriginal ownership and established a system for granting Crown land through the following three-tiered framework:

Tier (1) the creation of the NSW Aboriginal Land Council (NSW ALC) – This body has a NSW State-wide function that includes funding and monitoring responsibilities. NSW ALC could also acquire land, provide advice to the Minister for Aboriginal Affairs, develop policy, promote Aboriginal culture, and heritage, and support the establishment and function of 'Local and Regional Aboriginal Land Councils'.

The financial compensation component of the Act was that 7.5% of NSW State Government land tax revenue was set-aside to a Statutory Investment Fund over a 15-year period. This funding stream ceased in December 1998 and at the time; the fund was worth \$281 million. By 2017, NSW ALC Annual Report

⁷ The Aborigines Act (1969) (amended in 1973) replaced the Aborigines Protection Act, 1909.

(2016-17) indicated that the total assets had grown to \$676m. Investments connected with these assets generated annual revenue of \$45m for that year 2016-17. Of this \$19m went to LALC (each of the 120 LALC received a grant of around \$143,000) leaving NSW ALC with \$16m in revenue for reinvestment or expenditure.

Tier (2) was the creation of a statewide system of corporate bodies known as Local Aboriginal Land Council's (LALC's). Each LALC is given the ability to acquire land, hold land title, manage and use land, run enterprises, own and upgrade housing for their members and provide other community support services. In 2017-18 there were 120 Local Aboriginal Land Councils across NSW.

Tier (3) established the Regional Aboriginal Land Councils (RALCs) - Their primary role was to provide financial and other assistance to LALCs aimed at community development programmes, enterprise development and to fund or assist with land claims or the purchase of land.

Amendments made to the NSW ALR Act (1983) in 1990 allowed LALCs to sell, mortgage or exchange their land under certain circumstances, this placed a stronger focus on the commercial development of land and assets, especially for those Land Councils with high-value land assets.

Local Aboriginal Land Councils

LALC's are a crucial component of the NSW ALR Act (1983), and they form part of a framework aimed at protecting, and promoting Aboriginal culture and heritage in NSW. The following Map (1) shows each region and the 120 LALC operating across NSW.



Map (1) NSW Aboriginal Land Rights – LALC (Source: NSW ALC)

Functions and Objectives of LALC

The objectives of each LALC are to improve, protect, and foster the best interests of Aboriginal people and their members. LALC are autonomous bodies governed by Boards who are elected by their membership, and they have the following functions.

- To direct and control the affairs of Land Councils under the *ALR Act (1983)* and the LALC 'Community Land and Business Plan'.
- Facilitate communication between the members and the NSW ALC.
- Review the performance of the Land Council in carrying out its functions and achieving its objectives.
- Any other function conferred by the Act.

LALC provide a variety of support services such as housing, legal affairs, employment, training, Childcare, health services, and funeral support. They also acquire property through the land grant framework in the *ALR Act (1983)*.

Economic Base of LALC

NSW ALC provides LALC's with an administration grant of around \$143,000 a year, for many, this grant is their primary funding source.

Those LALC who own higher-value land, predominantly those located along the eastern foreshores, can create additional financial capacity through the sale of land linked with investment strategies.

For rural-based LALC's their ability to build investment strategies is limited due to low land values and locational isolation. For this reason, rural Land Councils would need additional financial support if they were to realise the aims of the *ALR Act (1983)* and achieve financial independence.

Because the primary economic base of LALC is in the land they own, any adverse land use zoning decisions can create long-term adverse economic effects potentially reducing the land's value. This issue was highlighted in the NSW Government 'Inquiry into Economic Development in Aboriginal Communities (22nd October 2015).

NSW ALC submission to the Inquiry (October 2015) (p73) argues that zoning and planning rules were functioning in a way that was 'down-zoning' LALCs land holdings and thus hampered the original intention of *ALR Act (1983)* to support Aboriginal people to improve their economic prosperity and sustainability.

The matters highlighted in the NSW Government 'Inquiry into Economic Development in Aboriginal Communities (22nd October 2015) on the effects of the NSW planning system will be investigated in the case study section of this research.

SECTION 4 HOW THE NSW PLANNING SYSTEM INTERSECTS WITH THE ROLE AND FUNCTION OF ABORIGINAL LAND

Aboriginal Land Councils are involved and affected by the planning system because it is the primary tool used by Government to allocate a permissible land use for each piece of land in NSW, including the property owned by Aboriginal organisations.

This association between land use planning and NSW Land Councils featured in the NSW ALC submission to a 'Review of NSW Planning System' (2011). Their presentation identified the different ways in which the NSW planning system affects Aboriginal Land Councils, which often led to a negative experience. Their brief argued for improved consultation and engagement with Aboriginal peoples on planning matters, the need for a better system for protecting items of Aboriginal culture and heritage, stronger support for economic development opportunities and improved planning solutions for former Aboriginal reserves and missions.

Because of this identified connection between the planning system and its link with Land Councils, the following section provides a simple overview of the NSW planning system, with a particular focus on how it currently intersects with Land Councils.

The NSW Planning System

Because LALC's operate locally, they primarily engage with the land use planning system in response to a development proposal that affects items of cultural heritage or through undertaking a development proposal on their land or in response to land use-zoning decision.

The NSW Planning system operates under the NSW Environment Planning and Assessment Act (1979). The NSW (NSW) State Government is responsible for planning legislation, and it delegates some planning functions to Local Government. One way to think about planning is to divide it into two main activities, strategic and statutory:

- Strategic planning involves decisions about what goes where in an area – so what land is suitable for housing, industrial uses, recreation or environmental etc.
- Statutory planning consists of an interpretation of strategic planning documents on a day-to-day basis. At its core, it is the assessment of all development applications (See Appendix A Table 1 for a summary of the elements of the regulatory system).

Regional and District Plans

In the mid-2000s, the NSW Government commenced a planning reform process. These reforms included the creation of new Regional and District Plans. The role of these Plans would be to prepare for population growth, housing delivery, services, jobs, and infrastructure while maintaining a healthy environment into the future. A broader aim is for the Regional and District plans inform local strategic planning to ensure the delivery of quality services and infrastructure at a local level.

As shown in the literature review LALC's have shown a growing interest in this strategic level of land use planning. The NSW ALC submission in 2016 on the NSW Governments Inquiry into NSW Regional Planning Processes made the following recommendations:

- Regional planning interests should include a set of mandatory requirements for Planning authorities to consult and engage with local Aboriginal people.
- Regional planning processes should aim to integrate with the objectives of Aboriginal Land Councils.
- That Local Government is required to consult with Aboriginal Land Councils on strategic priorities when drafting new local environmental plans.

As evident in the following section, many of the principles and directions raised throughout the planning reform process by peak Aboriginal organisations were taken on board in the development of the new generation Regional Plans ⁸.

A New Regional Planning Framework for NSW

Each Regional or District plan aims to ensure the efficient delivery of quality services and infrastructure, besides, and all the new Regional Plans incorporate aims to support Aboriginal communities with opportunities for economic self-determination, revitalising, and the promotion of Aboriginal culture.

Regional Plans cover the whole of NSW except for the Sydney Metropolitan area. They are produced by the NSW Government Department of Planning and Environment based on the following regions:

- Central Coast Regional Plan 2036 (2016).
- Central West and Orana Regional Plan 2036 (June 2017).
- Far West Regional Plan 2036 (August 2017).
- Hunter Regional Plan 2036 (October 2016).
- Illawarra–Shoalhaven Regional Plan 2036 (November 2015).
- New England North West Regional Plan 2036 (August 2017).
- North Coast Regional Plan 2036 (March 2017).
- Riverina Murray Regional Plan 2036 (2017).
- South East and Tablelands Regional Plan 2036 (July 2017).

All the Regional Plans listed above include broad aims to support Aboriginal communities with opportunities for economic self-determination, revitalising, and the promotion of Aboriginal culture; however, some vary in their commitment. A summary of the stated guarantees to supporting Aboriginal communities within the Regional Plans is provided in Appendix B.

The Regional Plans that included a stronger level of assurances to working with Aboriginal Land Councils were the Illawarra–Shoalhaven Regional Plan (2036), the New England North West Regional Plan (2036) and the South East and Tablelands Regional Plan (2036). These Plans include a commitment to undertake a strategic assessment of the land held by LALC with the view towards supporting future opportunities for economic development.

⁸ See Appendix B for an outlined of the new Regional Plan.

The Greater Sydney Regional Plan and District Plans

The Greater Sydney Commission was created through the NSW planning reform process. One of its roles was to develop a new regional plan for greater Sydney, which is now known as “The Greater Sydney Regional Plan (A Metropolis of Three Cities – connecting people)” (March 2018).

The Greater Sydney Regional Plan acknowledges the connection between Aboriginal communities, Country, history, and culture. It includes a statement recognising that Aboriginal Land Councils operate across the greater Sydney region. That they use their land holding to benefit their communities and provide the following functions; housing supply, community and cultural support, commerce and enterprise initiatives and supporting increasing prosperity and social inclusion. However, it does not include any specific directions or actions for working with local Aboriginal Land Councils on strategic matters.

The “The Greater Sydney Regional Plan (A Metropolis of Three Cities – connecting people)” (March 2018) included a second tier-planning framework known as District Plans, and each Plan covered specified Local Government Areas as outlined in Appendix C. Each District Plan contained a list of ‘Actions with Outcomes’. Two of the stated Actions related to the interest of Aboriginal Land Councils as shown in Table 2 below.

Table (2) District Plan Stated Actions and Outcomes

- Action 13: Liveability: Conserve and enhance environmental heritage including Aboriginal, European and natural
- Outcome 13: Identification and protection of heritage elements
- Action 17: Liveability: Support the provision of culturally appropriate services.
- Outcome 17: Improved decision making with the Aboriginal community

Although the Greater Sydney Regional and the District Plans acknowledged the connection between Aboriginal people, Country, history and culture, they did not go as far as the Regional Plans and include specific directions and actions for working with Land Councils on future strategic assessment or in supporting economic development opportunities.

State Environmental Planning Policies

State Environmental Planning Policies (SEPP), address State level planning matters and are part of the NSW Planning framework. The practical effect of a SEPP is to override local planning controls for certain types of development that the State Government deems as in need of additional provisions. There is no specific Aboriginal SEPP, though some SEPPs include matters to do with the conservation of Aboriginal objects and places of heritage significance. Such as the SEPP ‘Kurnell Peninsula’ (1989), which includes Clauses on the ‘protection of heritage items and relics’ and a schedule of listed Aboriginal heritage items.

Local Environmental Plans

Local Environmental Plans (LEPs) form the principal–decision-making framework for all local land use control within each local government area (LGA). LEP’s are strategic documents that identify land for specific purposes through a land use-zoning framework linked with development standards for each piece of land and maps. These documents rarely include particular clauses to do with LALC’s, but they do sometimes include requirements relating to the conservation of Aboriginal objects and places of heritage significance. One example is the Snowy River Local Environmental Plan (2013). It has a

Clause (5.10) 'Heritage Conservation' with a specific objective (d) to conserve Aboriginal objects and Aboriginal places with heritage significance and it includes a list of each item.

Introduction of the Standard Instrument LEP (2006)

Another component in the NSW State Government planning reforms was the introduction of the Standard Instrument (Local Environmental Plans) (LEPs) Order in 2006. The Standard Instrument (2006) established a set of common planning controls and land use zones for all new LEPs across NSW after 2006. Technically, it specified the same zones and definitions for all development types across all NSW LEPs.

The majority of Local Governments established their Standard Instrument LEPs between 2011 and 2013. The early adopters were Sutherland Shire in 2006 followed by Liverpool in 2008. This introduction of the Standard Instrument (2006) is most evident from 2011 on.

The Law Society of NSW submission to the 'Inquiry Into Economic Development in Aboriginal Communities' (23rd of October 2015) identified that the introduction of the Standard Instrument (2006) had a particular impact on the land holding of some LALC's. It points out that LALC were disproportionately affected by restrictive Land use zoning classifications. One example given was the draft Penrith City LEP (2008) which had zoned large tracts of land owned by Deerubbin LALC as environmental conservation, or environmentally sensitive, both being very restrictive zones that would not generally be considered appropriate for privately owned land⁹.

It seems that one effect of the Standard Instrument (2006) was that the zones and land use controls were less flexible compared to the previous zoning controls or that land granted to LALC was being zoned for environmental or conservation purposes. Technically much of the LALC sites were being downzoned. The effect of this process has potential long-term sustainability impacts for some LALC's as will be highlighted in the following section of the research.

⁹ The loss of land value for LALC linked with the Standard Instrument was also outlined in a Submission by Deerubbin LALC to Penrith Council, and the Office of Environment and Heritage and the Department of Planning and Environment, which resulted in the proposed E2 zoning being deferred. The Penrith City LEP (2010) was redrafted and adopted on the 22.9.2010.

BACKGROUND SCOPING PROJECT THAT INFORMED THIS RESEARCH PROJECT

The case studies outlined in the following Section of this research task were informed via a statewide training project on the NSW Planning system delivered to LALC by Professor Peter Phibbs and Stacey Miers. A PowerPoint presentation and Training Manual (Phibbs and Miers, 2016) were also part of the Training project. The following NSW Aboriginal organisations participated in the initial training.

1. Awabakal LALC. Covers the Newcastle area and are based in Islington. (<http://www.awabakal.org/>).
2. Bahtabah LALC. Covers the Lake Macquarie area and are based in Blacksmith. (<https://www.facebook.com/belmontbahtabah>).
3. Brewarrina LALC. Covers the Brewarrina Shire area and based in Brewarrina. (<https://www.brelalc.org/about-us>).
4. Darkinjung LALC. Covers the Gosford and Wyong area and are based in Wyong. (<http://www.darkinjung.com.au/>).
5. La Perouse LALC. Covers the La Perouse to Helensburgh area, along Sydney's southern coastline, and they are based in La Perouse. (<https://www.laperouse.org.au/>).
6. Metropolitan LALC. Covers the Sydney Metropolitan Region and are based in Redfern. (<http://metrolalc.org.au/>)
7. Wanaruah LALC. Covers the Upper Hunter Valley area and based in Muswellbrook. (<https://www.facebook.com/wanaruah.aboriginalandcouncil/>)
8. Wonnarua Nation Aboriginal Corporation. This organisation represents the traditional people of the Hunter Valley region and they are based in Singleton. (<https://www.wonnarua.org.au/>).
9. Worimi LALC. Covers the Port Stephens area and are based in Nelson Bay. (<http://worimi.org.au/>)

The training included correspondence and discussions with other LALC and Aboriginal organisation; including the NSW ALC (The peak organisation for all LALC), Ulladulla LALC, Tamworth LALC, and Deerubbin LALC.

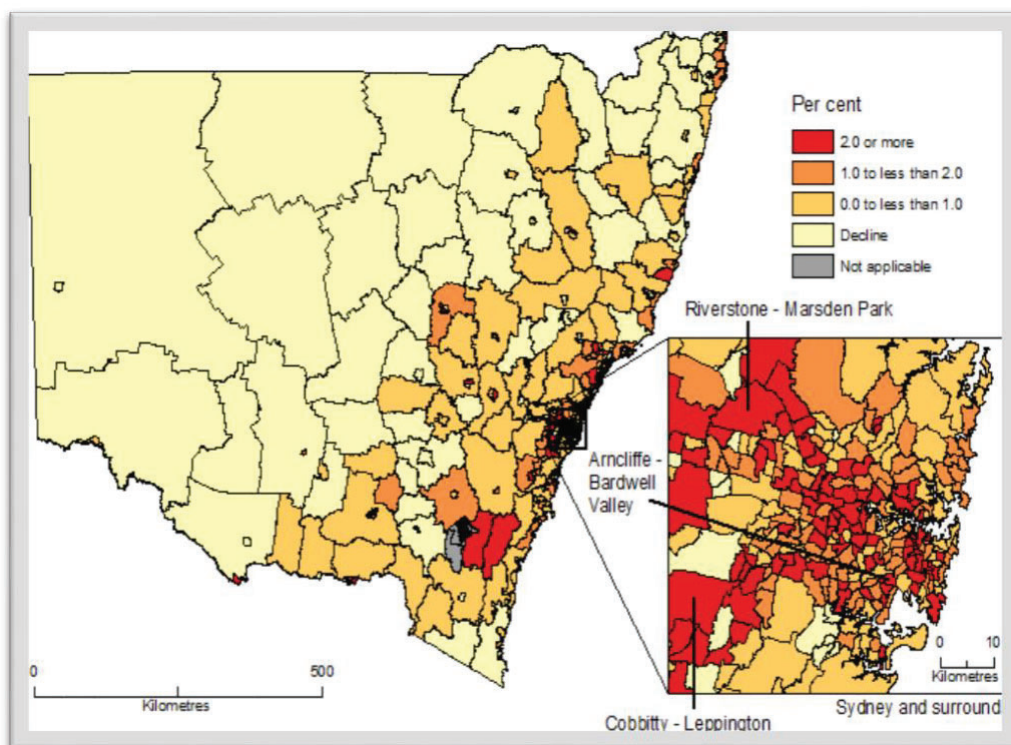
Throughout the training project, participants from the Aboriginal organisation identified a lack of consultation predominantly by Local Government Authorities on land use planning decisions. They specified that this was the case even when the land use or development decision directly affected Aboriginal land or significantly impacted on items of Aboriginal cultural heritage.

Land Councils raised concerns over practices connected with new LEP's, where their land was zoned RU2 Rural Landscape, RE1 Public Recreation, E2 Environmental Conservation, or E3 Environmental Management, while the surrounding properties were zoned Residential or Industrial. Indicating that land use zoning decisions are initiated without consultation. While not explicitly planning related but relevant regarding perception and practice, some LALC also expressed a concern, that Crown land was often transferred to other Government agencies, in order to prevent a land claim being made.

LALC and the Sandstone Curtain Divide

There are 120 LALC's across NSW (See Map 1) and each one has a specific connection to lands that include items of historical significance concerning culture or heritage. Through the Training project, it became evident that a primary factor for many LALC was access to economic opportunities, linked to location and population density. In 2016-17, the Australian population was over 24 million; NSW had the highest population of any State or Territory, with over 7 million. As evident in Map (2) the highest population densities are within the Greater Sydney region and people tend to cluster along the coast and its hinterlands areas as opposed to Rural NSW.

Map (2) Population Change Across NSW 2016-17



Source: ABS Regional Population Growth, Australia, 2016-17. Released by ABS on the 24/04/2018.

The locational and geographical impacts highlighted in Map (20) can create different economic opportunities and outcomes for LALC. Primarily linked with regional isolation, compared to high-value coastal areas or access to cities. However, there are some rural anomalies such as Land Councils who own land with mineral deposits or mining opportunities. Nevertheless, this economic divide can lead to significant economic disparities between rural and coastal Land Councils sometimes referred to as, 'the sandstone curtain divide'.

In the end, these locational and geological issues provide different economic opportunities for LALC, which in turn affect their capacity to develop housing, employment projects, or deliver services that benefit their communities. These issues will be explored further through the case studies.

LOCAL ABORIGINAL LAND COUNCIL CASE STUDIES

SCOPE AND PURPOSE

The case studies cover four LALC effected by different locational factors. Each one provides some insights into the effect of land use planning and zoning decisions, and how this has supported the ability of Land Councils to deliver a level of economic sustainability into the foreseeable future. Each case study includes a brief description of the social and cultural history of the Land Council. It then investigates a critical land use planning matter taking into consideration locational factors, land economics, and the impact of the NSW Planning System.

Method

This report is part of the Henry Halloran Trust Practitioner in Resident (PIR) programme. The research is derived from the reports cited in the literature review on the history of Aboriginal Land Rights. It is also informed through the author's experience in running training programs on the NSW planning system for Aboriginal Lands Councils. The material for the report has been derived from the documented cases, the training programs, and desktop research.

The case studies were selected as a research tool to illustrate many of the proposition highlighted in the NSW Government 'Inquiry into Economic Development in Aboriginal Communities (22nd October 2015)' ¹⁰ regarding LALC's and their experience of the NSW planning system and the author's professional experience in running training with LALC across NSW.

Each case study has been structured based on the following approach:

- A brief overview summary of the main points,
- Background information on each Land Council,
- The context and main issues
- Review and the lessons learnt (¹¹Lincoln and Guba 1985)
- Reflection and Policy Recommendations.

Each case study has been framed in a standard format to enable the reader to understand the essential points and to discern how they illustrate a policy setting or practice that disadvantages Aboriginal Lands Councils.

Each case has some generic characteristics in common and some contingent factors that are unique to their particular situation and planning related issue.

Some of the common factors in the cases studies may relate to the introduction of the Standard Instrument Template or the way individual Land Councils approach the DA process as a function of their organisational structure. Other factors will be contingent on the locational advantage, heritage issues, and environmental constraints. In the end, all these matters can affect a land use planning decision.

The case studies aimed to investigate some of the identified failures of the NSW planning system that emerged in the NSW State Government 'Inquiry into Economic Development in Aboriginal Communities (22nd October 2015)'. These

¹⁰ This Inquiry was overseen by the NSW Government Standing Committee on State Development.

¹¹ Lincoln, Y.S. & Guba, E.G. (1985) *Naturalistic Inquiry*. Beverly Hills, CA: Sage, in Creswell, J.W. (1998) *Qualitative Inquiry and Research Design: Choosing Among Five Traditions*, Thousand Oaks, CA: Sage p:36

failures spoke to how the planning process had disadvantaged or failed Aboriginal Lands Councils in their aspiration to protect and maintain heritage items or in their aspirations to achieve economic sustainability. The history of these failures is evident from the narrative presented in submissions to the Inquiry, which are addressed in the Literature review section of this report. The description presented through the Inquiry highlighted deficiencies either from the Lands Councils' approach or from the regulation or attitude of the authority.

The scale and time frame of PIR research precludes fieldwork and interviews, which would provide further support for the arguments raised here on the relationship between LALC's and the NSW Planning system. A broader research project would be a logical step to build on this report.

Darkinjung LALC Case Study – Main Issues

Darkinjung LALC has been active in land use development since 2005 and has appealed against planning decisions to the NSW Land and Environment Court (NSW LEC) on many occasions.

In 2011, they commissioned consultancy work to build a Manufactured Home Park on land they owned on Lake Munmorah in Halekulani. Under Wyong Council's LEP 1991 Darkinjung's land was Zoned (7b) Scenic Protection, and caravan/mobile home parks were permissible with consent. They submitted a Development Application (DA) proposal to Wyong Council in 2012, for a Manufactured Home Park comprising 251 mobile home sites.

Over a period of three years, Wyong Council continued to raise concerns with Darkinjung over its DA proposal. Some amendments were made and these resulted in the reduction of mobile home sites to 178, the onsite facilities were removed and a revised 'Social Impact Assessment Study' was provided.

Darkinjung DA went on exhibition in 2014 and was refused by Wyong Council based on the following grounds: significant ecological impacts to flora and fauna and the wetland environment, traffic generation, inadequate infrastructure and social impacts.

Darkinjung's land was adjacent to an existing caravan park, which had approximately 193 mobile home sites and there were numerous other parks nearby. If the matters used by Council in their refusal were of significant concern one can only ask why had similar facilities been given approval?

During the 3-year period that Wyong Council negotiated with Darkinjung over its DA proposal, they also embarked a new Local Environmental Plan (LEP). During this process, they also rezoned Darkinjung land to Environmental Management E3. Under this new zone, caravan and manufactured home parks were prohibited. Council failed to consult Darkinjung during the drafting and exhibition of the LEP even though it substantially affected their land and reduced its value by downzoning it.

After many years of negotiation with Council and an appeal to the NSW LEC, Darkinjung's DA was given approval, however, with a reduced number of mobile home sites to 99. In addition, Darkinjung agreed to provide land linked with an environmental offset based on evidence from the Council that the development would affect the habitat of the Powerful Owl. No solid planning or legal explanation was established for why the rezoning took place¹².

¹² See appendix E for a Timeline on the Halekulani Development Approval Process.

Darkinjung LALC Background Information

Darkinjung LALC was formed under the NSW Aboriginal Land Rights Act (NSW ALR Act, 1983) in 1984. Its located on the Central Coast of NSW, bounded by the Hawkesbury River in the South, the Pacific Ocean to the East and Watagan Mountain range to the West. Darkinjung shares its borders with Bahtabah LALC and Metropolitan LALC.



Map (3) Darkinjung's Area (Map Source: NSW ALC)

People of Aboriginal or Torres Strait Islander heritage made up 3.8% of the Central Coast population, which is higher than the NSW average at 2.9% ¹³. Darkinjung's is one of the largest landholders in the Central Coast region with approximately 3,497ha of land located between Newcastle and Sydney. For this reason, it's a key organisation regarding future land and housing developments opportunities within the region. Darkinjung's role as an important landholder is recognised in NSW Central Coast Regional Plans (2036), which includes a commitment (p27) to strategically assess Darkinjung's landholdings to identify priority sites and create a pipeline of projects. ¹⁴.

Darkinjung's Experience in the Land Development Space

Darkinjung LALC's focus has been on improving the health and well-being of its community through; supplying affordable housing (22 homes and 15 under construction), creating a rent to buy scheme, development of a funeral fund including the repatriation of ancestral remains, identification and protection of

¹³ Australian Bureau of Statistics. 2016. Central Coast Population Data.

¹⁴ See Appendix B for a Summary on the stated aims to support Aboriginal communities with opportunities for economic self-determination, revitalising, and the promotion of Aboriginal culture linked with each NSW Regional Plan.

cultural sites, environmental management projects along with employment and trainee sponsorships initiatives¹⁵.

To deliver these proposals, Darkinjung has been active in land use planning space since mid-2000. It has produced new residential subdivisions for sale combined with other commercial projects. In March 2016, they completed a 109-lot subdivision known as the Menindee Ridge estate at Blue Haven.

Darkinjung has also undertaken appeals to the NSW Land and Environment Court (NSW LEC). One example was Darkinjung's appeal against the Australian Walkabout Wildlife Park in 2015 to protect items of Aboriginal heritage (See Summary of Darkinjung's Appeal to the NSW LEC in Appendix D). These activities have provided the organisation with a solid understanding of the land use planning system as will become evident through this case study.

The focus of this case study is Darkinjung's development known as 'Halekulani Guruwarang Waters'. The development proposal was for a manufactured mobile home park development (consisting of nearly 4 ha) at Halekulani on Lake Munmorah. Each stage of the development application process is provided in the subsequent section.

Land Use Planning Context- Darkinjung Guruwarang Waters Halekulani Project

On the 18th June 2012, Darkinjung LALC lodged a Development Application (DA) with Wyong Council to construct a manufactured mobile home park¹⁶ at Halekulani adjacent to Lake Munmorah. The DA consisted of 251 mobile home sites and 20% of the sites were to be retained for Darkinjung members. The DA was submitted under Wyong Local Environmental Plan (1991), the land was zoned (7b) Scenic Protection¹⁷ and 'Home Occupation and Caravan Parks' were permissible¹⁸.

Map (4) shows Darkinjung's site, which is marked by the red dot and is located between two other caravan/manufactured home parks on Lake Munmorah. Directly adjacent to Darkinjung's site is the 'Bevington Shores Lifestyle Village Estate', which has approximately 193 mobile home sites. The other is 'Sunny Lake Shores Estate' located north of Darkinjung land.

¹⁵ See Darkinjung Local Aboriginal Land Council Annual Report 2017 for details on support services. (<http://www.darkinjung.com.au/ContentFiles/Darkinjung/Documents/Annual%20Reports/2017%20Low%20Res%20Annual%20Report.pdf>)

¹⁶ The address is 1103 Macleay Drive Halekulani

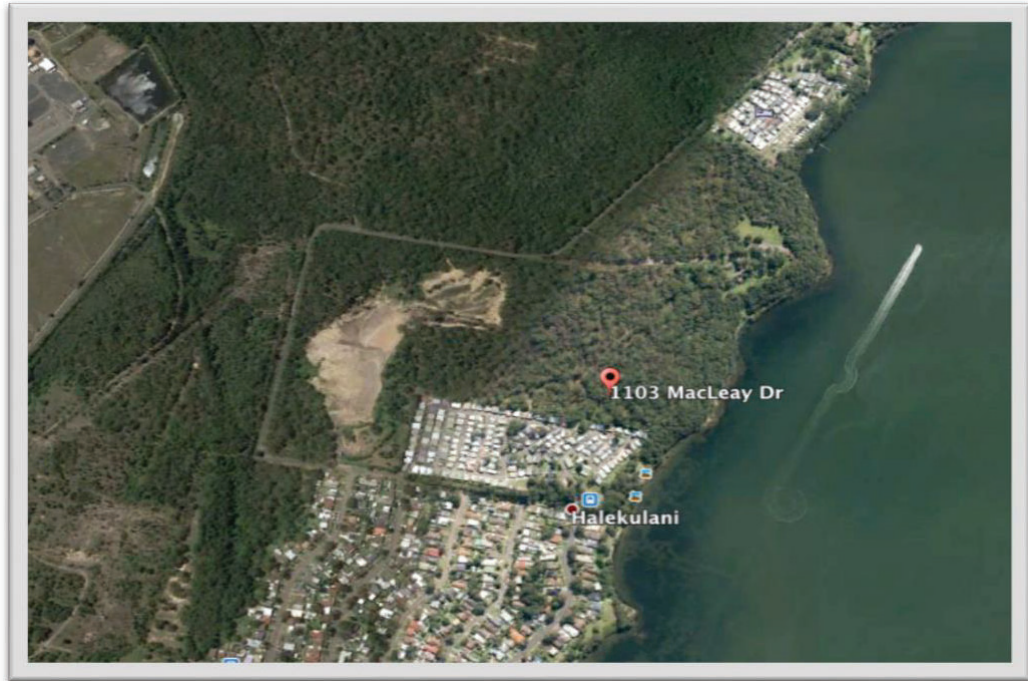
¹⁷ The objectives of the Zone 7 (b) (Scenic Protection Zone. To restrict the type and scale of development which will be carried out on land possessing scenic values and that is unlikely to: (a) prejudice the present scenic quality of the land within this zone, or

(b) generate significant additional traffic or create or increase a condition of ribbon development on any road, relative to the capacity and safety of the road, or

(c) prejudice the viability of existing commercial centres, or

(d) have an adverse impact on the region's water resources.

¹⁸ Definition of Caravan Park, manufactured home and movable dwelling from the Standard Instrument (Principal Local Environmental Plan 2016). A caravan park means: land (including a camping ground) on which caravans (or caravans and other moveable dwellings) are, or are to be, installed or placed. A movable dwelling homes means the follows: (a) any tent, or any caravan or other van or other portable device (whether on wheels or not), used for human habitation, or (b) a manufactured home, or (c) any conveyance, structure or thing of a class or description prescribed by the regulations (under the [Local Government Act 1993](#)) for the purposes of this definition.



Map (4) Darkinjung's Land Marked by Red Dot Source: image Google Earth June 2018.

Darkinjung's DA went on exhibition in July 2012, and it received over 2,000 objections to the proposal. Council wrote to Darkinjung raising some concerns and requested additional information.

In March 2014, Darkinjung submitted an amended DA, which reduced the on-site dwellings to 178 and the entire northern end of the development proposal was removed. The development also became an over 50 living facility based on feedback from the Council and community objections.

The amended DA received 997 submissions, and 53 were in support. Wyong Council refused Darkinjung's revised DA based on the following grounds: significant ecological impacts to flora and fauna and the wetland environment, traffic generation, inadequate infrastructure and social impacts (See Appendix E, for details on each stage in the DA process).

Land Use Survey on Existing Manufacture Homes Developments Adjacent or Near Darkinjung's DA

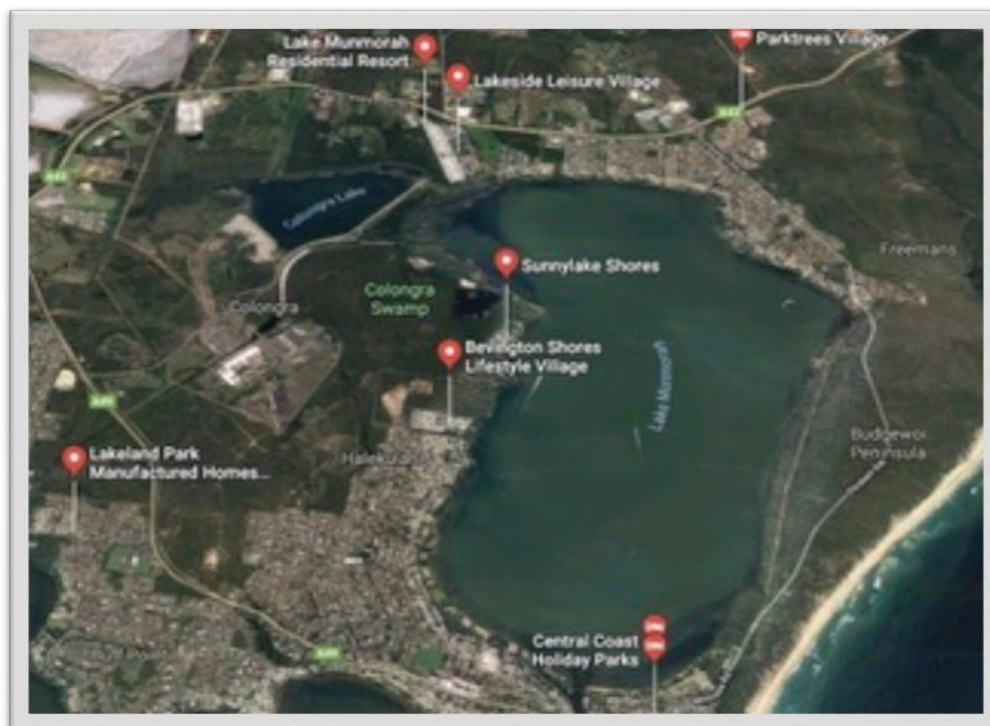
In response to the substantial level of objections, this research has included a land use survey to identify if there were other caravan or mobile home park in the vicinity of Darkinjung's DA proposal.

The data collected from the land use survey is outlined in Tables 3, and 4, and Map 5. Table 3 lists all the existing 'Caravan Parks' located near Darkinjung's land. Table 4 identifies the 'Manufactured Home Parks' located nearby. While Map 5 shows the location of all the caravan or manufactured home parks located on or near Lake Munmorah.

The survey found seven existing caravan and manufactured home parks located near Darkinjung's land. 'Bevington Shores Lifestyle Village', adjacent to Darkinjung land and 'Sunny Lake Shores' approximately 600-meter to the south. Walu Caravan Park is around 500 meters away and the rest are a few kilometres away.

Table (3) Caravan Parks – In The Same Vicinity as Darkinjung’s Site	Approximate Distance From Darkinjung’s site
Walu Caravan Park, 32 Walu Ave, Halekulani NSW www.walucaravanpark.com.au	500 meters
Central Coast Budgewoi Holiday Parks 2a Weemala Street Budgewoi NSW http://cchp.com.au	2000 meters Owned by Central Coast Council
Table by Stacey Miers. Data Source: collated in June 2018 from Ingenia Holidays, Visit NSW, Google Earth and Central Coast Council, Financial Reports 13 May 2016 to 30 June 2017 p29 and Central Coast Council Holiday Parks website (https://cchp.com.au).	

Table (4) Manufactured Home Parks – In The Same Vicinity Darkinjung’s Site	Approximate Distance From Darkinjung’s site
Bevington Shores Lifestyle Village 186 Sunrise Ave Halekulani NSW www.bevingtonshores.com.au	150 meters
Sunny Lake Shores 2 Macleay Drive Budgewoi NSW www.sunnylakeshores.com.au	600 meters
Lake Munmorah (over 50 development) Address: Saliena Av Lake Munmorah NSW www.lakemunmorahresort.com.au	3000 meters
Lakeside Leisure Village 51 Kamilaroo Ave, Lake Munmorah NSW www.lakesideleisurevillage.com.au	3000 meters
Lakeland Park Manufactured Homes 314 Buff Point Ave, Buff Point NSW https://gatewaylifestyle.com.au/	3000 meters
Many of these Mobile Home Parks had heated indoor pools, tennis courts, bowling greens, gymnasiums, and community halls. Table Stacey Miers, sources: Ingenia Holidays, Visit NSW, and Google Earth in July 2018.	



Map (5) Caravan and Manufactured Home Parks near Lake Munmorah.
Source: image Google Earth June 2018

Map (5) shows the caravan and manufactured home parks that are located on or near Lake Munmorah with a red dot. It indicates a pattern of caravan and manufactured home park developments similar to Darkinjung's proposal, which had been approved near or adjacent to the Lake.

The land use survey also revealed that the previous Council (now Central Coast Council) owned four caravan/manufactured home parks in the area, which generate profits back to Council¹⁹. These facilities now operate under one management authority branded as the Central Coast Council/Central Coast Holiday Parks²⁰. The following Table (5) provides a list of the four parks owned by Council.

Table (5) Central Coast Council/Central Coast Holiday Parks

1. Budgewoi Holiday Park at 2A Weemala Street Budgewoi (budgewoi@cchp.com.au)
2. Canton Beach Holiday Park Oleander Street Toukley (canton@cchp.com.au),
3. Norah Head Holiday Park 22-23 Victoria Street Norah Head (norah@cchp.com.au)
4. Toowoona Bay Holiday Park Koongara Street Toowoona Bay (toowoona@cchp.com.au)

Table Sources: Central Coast Council Holiday Parks website (<https://cchp.com.au>), Central Coast Council, Financial Reports 13 May 2016

¹⁹ See Central Coast Council, Financial Reports. 13 May 2016 to 30 June 2017 (p 29) on profits from Caravan Parks. <https://www.wyong.nsw.gov.au/getattachment/About-Council/plans-publications-strategies/Annual-Report/Annual-Report-2016-17-Audited-Financial-Statements.pdf.aspx> (Accessed, July 14th 2018).

²⁰ Central Coast Council/Central Coast Holiday Parks website. (<https://cchp.com.au>). (Accessed during June and July 2018)

to 30 June 2017 p29. Central Coast Council Holiday Parks website (<https://cchp.com.au>), Miers; Phone conversation with Central Coast Council who confirmed they owned the Caravan Holiday Parks listed in Table 3.

All four of Council's caravan/manufactured home parks listed in the Table (5) are in the vicinity of the lakes and Budgewoi Holiday Park is located opposite Darkinjung DA proposal on the foreshore of Lake Munmorah.

The land use survey highlighted many facts. It revealed a consistent pattern of caravan/manufactured home parks being approved by Wyong Council near or adjacent to the Lakes. It also identified that Wyong Council owned and ran caravan/manufactured home parks, for profit and therefore had a conflict of interest in dealing with Darkinjung DA proposal. Council's involvement and connections in the caravan and manufactured home parks industry might also explain why Darkinjung DA received such an unprecedented level of objections. It is unlikely that some of the existing caravan/manufactured home parks would not have generated many of the ecological and social concerns raised regarding Darkinjung's refusal yet they were all approved.

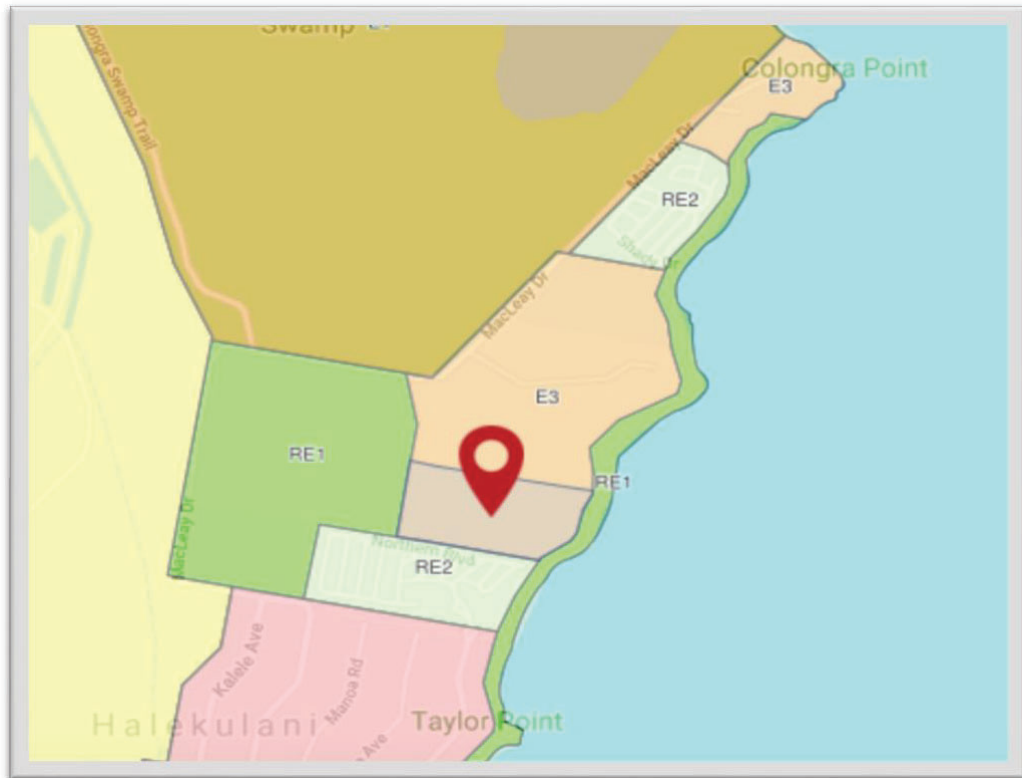
2013 Wyong Council - A New Local Environmental Plan

Wyong Council established another barrier to Darkinjung DA proposal via its new Wyong Local Environmental Plan (LEP)²¹, in December 2013. This new LEP amended the zoning controls for Darkinjung's land and rezoned it E3 Environmental Management. The principal objective of this zone is to protect, manage, and restore areas with special ecological, scientific, cultural, or aesthetic value. Multi-dwelling housing, residential flat buildings, and seniors housing were prohibited. As a result, Darkinjung 2012 DA was now a prohibited use, which meant that if their DA was refused the only option was to go to the NSW LEC. This rezoning also decreased Darkinjung's previous land value through a process referred to as downzoning²².

Interestingly, although Darkinjung's land was rezoned E3 Environmental Management the land to the North and South of Darkinjung site was zoned RE2 Private Recreation. This ensured that the current caravan and manufactured home parks located either side of Darkinjung's land maintained their current land value and permissibility. This is evident in Map (8), which shows Wyong LEP 2013 Zoning Map for Darkinjung's land and the surrounding area.

²¹ The new LEP was part of a NSW wide land use planning initiative known as the Standard Instrument Template (NSW Department of Planning and Environment).

²² Downzoning occurs when a change is made to an LEP or another environmental planning instrument that reduces the future development potential of a site. It related to the criteria used by the NSW Valuer General regarding land valuation benchmark. The primary benchmark for individual valuations is to calculate the rate of change from one year to the next based on the following factors: zoning, heritage restrictions or other use constraints, size shape and feature, nearby development infrastructure (Source: Valuer General Department).



*Map (8) Wyong LEP 2013 Zoning Map - red dot identifies Darkinjung's land
(Map Source: NSW Planning Portal)*

As can be seen from the Wyong LEP (2013) zoning map, Darkinjung's land (which is identified by the red dot) is zoned E3 Environmental Management; where land to the North and South of Darkinjung site is zoned RE2 Private Recreation.

The objective of the RE2, Private Recreation Zone offers opportunities for tourism development compatible with the natural environment. This includes camping grounds; caravan parks; community facilities; eco-tourist facilities; function centres and registered clubs, along with a variety of other permissible uses. The current caravan and manufactured home parks located either side of Darkinjung's site maintained their current land value and permissible use.

There is some apparent contradiction in the way Council seems to have made its rezoning decision. Primarily, the fact that 'Bevington Shores Lifestyle Village' (mobile home park), directly adjacent to Darkinjung's was zoned RE2 Private Recreation, so why was Darkinjung's site not given the same consideration? Secondly, why did the Council not discuss the rezoning proposal with Darkinjung knowing their land and DA proposal would be severely affected?

The LEP rezoning created some additional barriers for Darkinjung DA for the following reasons:

- They couldn't submit a new DA due to the rezoning.
- They had no legal right of appeal to the LEC against the rezoning decision.
- They could apply to Council for a rezoning application, but it was unlikely to succeed based on the Council's existing position.
- They could appeal to the NSW LEC on the DA, an expensive pathway.

Initially, Darkinjung continued working with Wyong Council up until 2014 when their DA was finally refused and they initiated an appeal to the NSW LEC.

Consultation Requirements Under the EP&AAAct (1979)

Even though Councils are legally obliged to consult with stakeholders and the community on the development of any strategic planning matters under the Environmental Planning and Assessment Act (1979)²³, Wyong Council ignored this obligation and did not discuss their rezoning decision with Darkinjung during the drafting or exhibition of their 2013 LEP.

Besides, Council involvement in the business of caravan/mobile home parks meant that they should have initiated an independent assessment process or at least shown a higher level of due diligence in how they dealt with Darkinjung DA proposal and rezoning.

2016 Ministerial Direction allied to 'Caravan Parks and Manufactured Home Estates'

Significantly on the 14 April, 2016 the NSW Minister for Planning issued a Section 117(2) Local Planning Directions, under the Environmental Planning and Assessment Act 1979. This direction (3.2) allied to 'Caravan Parks and Manufactured Home Estates'. Its objective is to provide (a) for a variety of housing types, and (b) opportunities for caravan parks and manufactured home estates. In line with the 117 directions relevant planning authorities must:

- Identify suitable zones, locations and provisions for caravan parks in a planning proposal
- Retain provisions that permit development for the purposes of a caravan park to be carried out, and
- Retain the zonings of existing caravan parks, or in the case of a new principal LEP zone the land in accordance with an appropriate zone under the Standard Instrument (Local Environmental Plans) Order 2006 that would facilitate the retention of the existing caravan park.

If this direction had been in place at the time of Wyong 2013 LEP, Council would have been required to zone Darkinjung's land to an equivalent zone, which was RE2 Private Recreation.

Darkinjung's Appeal to the NSW Land & Environment Court Against Wyong Council

In response to Council refusal, Darkinjung appealed to the NSW LEC against Wyong Council in October 2014. In December 2015 after a lengthy mediation process, an agreement was reached between Darkinjung LALC and Wyong Council. The total legal and consultancy fee for Darkinjung linked with the DA process was \$453,848.97 by September 2015, and this amount did not include staff costs. The end approval comprised thirty-nine 'Conditions of Consent' to be met by Darkinjung and the mobile home sites were reduction from 113 to 99. The final layout is in the following Masterplan Map (6).

²³ Environmental Planning and Assessment Act 1979. Objects of Act (i) to provide increased opportunity for community participation in environmental planning and assessment.



Map (6) Site Masterplan Guruwarang Waters Halekulani Lifestyle Village (Source: Darkinjung LALC)

Environmental Offset Requirement

The NSW LEC process included a condition for the provision of land by Darkinjung as an environmental offset, primarily related to the protecting of habitat for the Powerful Owl²⁴. Part of the identified 'environmental offsets' land was still owned by the Crown and linked to negotiated between Darkinjung LALC, the Department of Industry, Crown Lands, and the Council through the 'Aboriginal Land Agreement' process²⁵.

The 'environmental offset' land consisted of 8.3ha much larger than Darkinjung's proposed development site. This requirement appears to be an onerous obligation based on years of planning practice. It is something that is typically associated with a "Planning Agreement" where the developers receives additional land value uplift and offers opens space or conservation offsets as part of the planning benefit and increased land value. It's hard to imagine that a similar requirement would have been made of a private developer, especially if their land had actually been downzoned resulting in a reduced value.

Because the 'environmental offset' land was linked to negotiations under an 'Aboriginal Land Agreement framework' its ownership had not been transferred to Darkinjung by early 2018 when the DA approval was due to expire. In response, the Land Council undertook legal advice and initiated

²⁴ The dedication of land had to be in the immediate vicinity of the proposed development.

²⁵ The 'Aboriginal Land Agreement' process includes Council and at the time, it would have been Wyong Council but it was later amalgamated into the Central Coast Council.

correspondence with the now amalgamated Central Coast Council and they agreed to defer the conservation-offset handover until the Construction Certificate (CC) stage.

Proposed Changes in the Planning Landscape

In November 2018, the NSW Government's Department of Planning and Environment placed on public exhibition (for 28 days) the Darkinjung Delivery Framework Consultation Paper. This initiative is said to be a pilot project, which will be evaluated after 18 months to determine its capacity to be extended to other LALC across NSW.

Formal consultation on this initial proposal will be undertaken with the following stakeholders: NSW Aboriginal Land Council, NSW Aboriginal Affairs, the Community Environment Network and the Urban Development Institute of Australia - Central Coast Chapter. Once the delivery framework is finalised consultation with the broader Central Coast community will occur at several stages of the planning and development process.

This initiative also supports the Central Coast Regional Plan 2036 Direction and Actions which aim to accelerate land release and housing supply on the central coast to meet a projected housing supply target of 41,500 new homes by 2036 (p46). Darkinjung has a land portfolio of approximately 3,700 hectares in the region making it the largest non-government landowner on the Central Coast and as such it is a crucial player for the Government to achieve the housing supply and employment lands targets outlined in the Central Coast Regional Plan 2036.

The Darkinjung Delivery Framework Consultation Paper includes the following components:

(1) A State Environmental Planning Policy (SEPP) which consists of a strategic assessment of Darkinjung's LALC landholdings to identify priority sites for rezoning will be undertaken. The evaluation will consider factors such as physical characteristics, biodiversity, heritage, local and regional planning strategies, and infrastructure. Planning authority will also be required to consider Darkinjung's Development Delivery Plan as part of any future development decisions.

(2) An alternative approval pathway will be created for developments based on the following criteria:

- A DA made by Darkinjung with a Capital Investment Value over \$5,000,000
- Where more than 50 submissions are received,
- Where 40 days have elapsed since the DA was lodged with Council.

In these situations the development approval authority will be the Hunter Central Coast Regional Planning Panel rather than Central Coast Council.

(3) The introduction of a Ministerial Direction linked to Darkinjung Development Delivery Plan based on the following criteria:

- The planning authority would need to ensure consistency with the Darkinjung Development Delivery Plan.
- Where a planning authority is considering a planning proposal, they will need to look at the potential to include any nearby land owned by Darkinjung into the plan.

(4) Gateway Determination to Support for the following Darkinjung Development proposals, which would deliver up to 1,500 dwellings and employment land to support 900 jobs:

- Lake Munmorah – Rezoning land fronting the Pacific Highway and Kanangra Drive at Lake Munmorah to environmental and residential zonings,
- Wallarah Rezoning- this land fronts the Link Road at Wallarah and the proposal is for the land to be rezoned for ecological and industrial.
- Bushells Ridge/Doyalson – Rezoning land at Bushells Ridge and Doyalson to enable low density and large lot residential development, environmental conservation and a potential neighbourhood centre.

The planning proposals listed above have already been approved for Gateway Determinations to be finalised in 2019.

This proposal by the Department supports the Central Coast Regional Plan 2036 Direction and Actions to strengthen the economic self-determination of Aboriginal communities and to work with Darkinjung LALC to strategically assess its landholdings and identify priority sites to create a pipeline of projects. It also helps to meet the Regional Plans and accelerate land releases and housing supply targets of 41,500 new homes by 2036 (p46).

The 'Darkinjung Delivery Framework Consultation Paper' proposal (November 2018) is an important initiative in this land use planning for LALC land. It includes strong links to the regional planning framework and a strategic assessment process to identify key LALC sites to create rezoning opportunities. However, Land Councils across NSW have advocated over many years for the introduction of an inclusive LALC specific SEPP, and they will want to ensure that the proposed 'Delivery Framework' and SEPP can be extended for their inclusion.

Summary and Lessons Learnt

Darkinjung had a good understanding of the land use planning system when it lodged its DA with Wyong Council for a manufactured home estate. There were also several existing caravan/manufactured home parks located adjacent to Darkinjung's site. Prior to submitting, its DA Darkinjung commissioned a number of consultancy reports, including a detailed 'Social Impact Assessment' to ensure that any potential social impacts were addressed upfront. However, from the onset, Wyong Council was unsupportive of Darkinjung's development proposal.

Council's refused Darkinjung DA based on the following issues: significant ecological impacts to flora and fauna and the wetland environment, traffic generation, inadequate infrastructure and social impacts. After lengthy negotiation through the NSW LEC, the main concern related to the protection of habitat for the Powerful Owl. One can only ask if this was such a significant concern why had so many other caravan/manufactured home parks been approved in the same locations without the same concern being raised?

Regarding Council decision to downzone Darkinjung's land, I would have to point out that based on my experience and decades working in planning practise a decision to downzone land is a rare occurrence. This is what happened regarding Darkinjung land at Halekulani. Indicating a less than fair process regarding the rezoning decisions.

At a broader level, this case study points to many deficiencies regarding the planning authority's capacity to meet its consultation requirements under the EP&A Act (1979). Hopefully, the new directions and acknowledgment in the Central Coast Regional Plan (2036) to support local Aboriginal people and to undertake a strategic assessment with the LALC will create a stronger level of consultation by the local planning authorities.

Woefully, in the end, Darkinjung LALC DA process took over four years, numerous studies, and various amendments. The Council thwarted the Land Council's original aspiration to build a manufactured home park that would also provide accommodation for elders at every stage, and the total cost associated with gaining DA approval blew out to over half a million ²⁶.

The NSW Governments Department Planning and Environment 'Darkinjung Delivery Framework' Consultation Paper (November 2018) has responded to this situation by working with Darkinjung to fulfil its aspirations to develop its land holdings. This framework includes the creation of a State Environmental Planning Policy (SEPP) for the Land Council linked with a strategic land assessment process and an independent approval pathway, so it's an important policy initiative for NSW Land Councils and should be monitored.

²⁶ The following list of studies and amended reports were provided to Council: concept design and development assessments, an application under Section 68 LGA approval to operate a caravan/mobile home park, BASIX certificate, Bushfire Protection Certificate, Concept Engineering Plans, Ecological Issues and Assessment Report, Landscape Report, Habitat Tree Diagrams, Potable water servicing, Roadwork's Site Analysis Plan, Sewer Servicing, Soil and Water Management Plan, Vegetation and Fauna Management Plan.

Deerubbin LALC Case Study - the Main Issues

Deerubbin LALC made a land claim on the old Parramatta Jail in Sydney's west and adjoining land in February 2012. Transfer of the Jail and the land to Deerubbin was initially delayed based on a refusal by the Minister for Crown Lands, and a Court appeal, which eventually found in favour of Deerubbin LALC in December 2014.

During this period the NSW State Government, through its development arm 'Urban Growth NSW' started investigating redevelopment opportunities for Parramatta North, which included Deerubbin's Land Claim. Throughout 2013 and 2014, 'Urban Growth' released the initial report and draft Masterplan for the Parramatta North Redevelopment Precinct (PNRP). The Masterplan included the historical walled area that incorporates Parramatta Jail, the Linen Service, and the surrounding land.

During this time, Urban Growth NSW undertook consultation and workshops on the proposed plans, which included Drop-in sessions, advertisements in local newspapers and newsletters.

The Government made a firm commitment that one of the public benefits created from the additional planning benefits and the sale of government owned land in the North Parramatta Urban Renewal Precinct would go towards the restoration of the significant heritage building in North Parramatta precinct including the Jail and the surrounding heritage wall.

Deerubbin's land claim was included in the North Parramatta Urban Renewal Precinct initially, which is evident in all the related planning documents; however, by June 2015 Deerubbin's Land was removed from the plan as evident in SJB Report on the Parramatta North Urban Transformation-Draft State Environmental Planning Policy.

This situation meant that Deerubbin's land claim and Parramatta Jail were also removed from any of the rezoning and heritage restoration benefits. The end outcome of this was that it also devalued Deerubbin's land in the North Parramatta precinct and reduced the LALC's capacity to maintain the heritage items for which they carried responsibility with the transfer of the site to their ownership.

In response Deerubbin LALC commenced negotiations with the Greater Sydney Commission that resulted in a signed Principles of Engagement Agreement between the two parties. Deerubbin also commissioned a draft Preliminary Planning Report (November 2017) for the Former Parramatta Jail site and the adjoining Land to reinstate some of the landuse planning benefits outlined in earlier studies, which is a bit like trying to reinvent the wheel.

Deerubbin Background Information

Deerubbin LALC formed soon after the 1983 Aboriginal Lands Right Act as the Darug LALC; however, they changed their name to Deerubbin in 1996. Its region covers a large of part of western Sydney, running from Parramatta to Blacktown and parts of the Blue Mountains.



Map (7) Deerubbin LALC Region (Map Source: NSW ALC)

The Parramatta River was occupied for thousands of years by the Wangal, Wallumattagal and Burramattagal Aboriginal clans. However, it was the Burramattagal clan that lived in what is now known as Parramatta, thought to be the Anglicised version of Burramattagal.

Soon after the First Fleet arrived in 1788, farming settlements near the Parramatta River and battles between Local Aboriginal tribes and new settlers, led to the displacement and institutionalisation of many local Aboriginal people from the area.

The region has a history of Aboriginal occupation; dispossession, institutionalisation and more recently land compensation. These events saw the establishment of the Blacktown Native Institution, explicitly created to house Aboriginal people, now owned by the Deerubbin LALC. These institutions were built all over NSW and played a crucial role in the history of colonial assimilation and race relations in Australia. Nearby the Blacktown Native Institution site is also the location of the first land grant in Australia's history given to two Aboriginal men, Colebee and Nurragingy, by Governor Macquarie in 1816²⁷. Since its establishment Deerubbin has been focused on the acquisition of land through the land claim system, however, more recently it has moved towards exploring development opportunities, which is echoed in its Parramatta Jail site land claim, which is the focus of this case study.

²⁷ The Blacktown Native Institution: 1821-26. (<http://www.bniproject.com/history/>).

Deerubbin LALC Current Strategic Direction- Focused on Land Use Planning

Deerubbin's LALC 'Community Land and Business Plan (2016-2019)' signalled the organisation's shifting direction from land acquisition towards land and economic development which is evident in the organisation's future priorities:

1. The adaptive reuse at the Parramatta Jail and adjoining land,
2. The development of Aboriginal housing in western Sydney,
3. The development of a cemetery and funeral project,
4. Negotiation of biodiversity-offset credits linked with the Western Sydney airport project and Deerubbin LALC land zoned as environmental,
5. The development and disposal of land to fund other projects,
6. Development of sand extraction and related infrastructure on the South Maroota Lands (Preliminary development application lodged with Hillside Council).

Planning Context Deerubbin LALC & Parramatta Jail

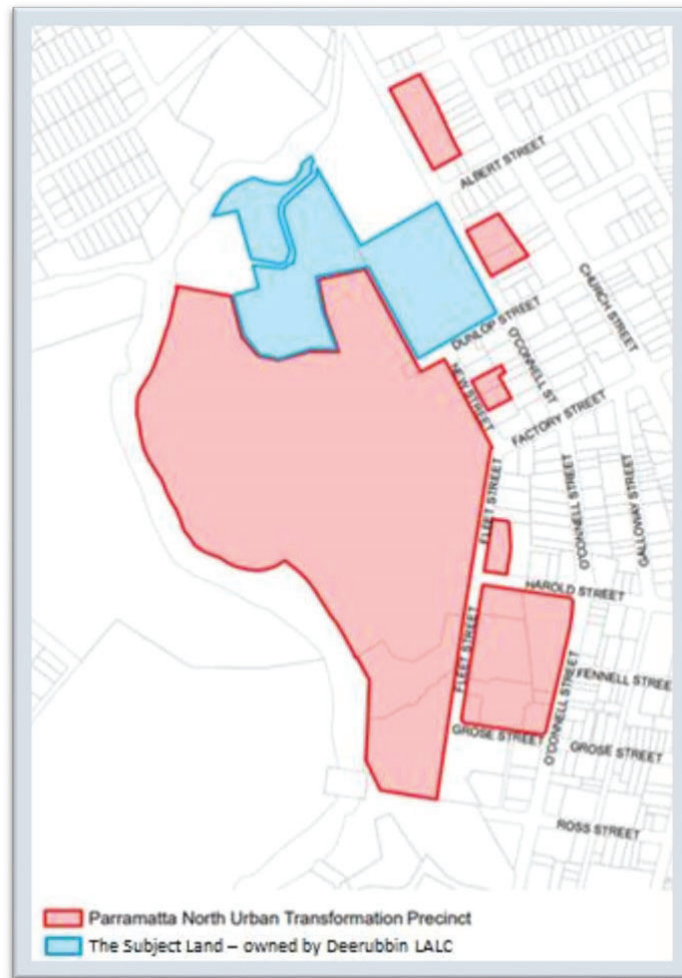
Deerubbin LALC owns Parramatta Jail and some adjacent land, which form the foundation of this case study in connection with the NSW Government major urban redevelopment project known as the Parramatta North Urban Transformation (PNUT) Area.

In February 2012, Deerubbin LALC submitted a land claim for Parramatta Jail and some adjoining land, but the Minister of Crown Lands refused the initial land claim, which was later overturned on appeal in December 2014²⁸.

Deerubbin's land claim included an area of 6.45 Hectares located near the Parramatta River, which formed the northern part of the PNUT precinct. The following Map (8) shows the land claim in Blue and the rest of the North Parramatta Urban Transformation Precinct in Red²⁹.

²⁸ Claim under the Aboriginal Land Rights Act 1983

²⁹ The red area became the 'Parramatta North, Urban Transformation Precinct but prior to 2015 the Blue area and the adjacent Linen Service lot were included in the Parramatta North, Urban Transformation Precinct.



Map (8) – Deerubbin LALC Land Claim outlined in Blue. The rest of the North Parramatta Urban Transformation Precinct is shown in Red.

Image Source: Preliminary Planning Report (2017). Former Parramatta Jail and Adjoining Land Report. Deerubbin Local Aboriginal Land Council p4.

The Formation of the Parramatta North Redevelopment Area

The initial Parramatta North Redevelopment project commenced in early 2013. At this stage Deerubbin's, land claim (Parramatta Jail and surrounding lands) was incorporated in all the background studies commissioned by 'Urban Growth NSW'. The Jail site was a major feature of the Parramatta North Urban Transformation, Heritage Snapshot' Study in December 2014. Its inclusion in all the initial studies is evident in the following Map (9) by Urban Growth NSW, which shows the original 'North Parramatta Urban Renewal Precinct' and the former jail site is a central component of the Cumberland Precinct.



Map (9) 'Parramatta North Renewal Precinct. Source: Urban Growth NSW. November 2014. North Parramatta Urban Renewal Precinct. Reframing Parramatta North.

From the beginning, Urban Growth NSW Development Corporation was responsible for the Parramatta North Redevelopment Precinct³⁰. Its duties included; the initial planning and technical studies, along with the consultation and development of the Masterplan Framework. As evident in the Map (8) the Masterplan included the Cumberland Precinct³¹.

Urban Growth NSW published the 'Parramatta North, Urban Transformation, Heritage snapshot' in 2014. This report highlighted all the significant heritage building and items that would benefit from the Masterplan and revitalisation project. This report stipulates that Urban Growth NSW is committed to retaining and conserving all the significant heritage buildings and landscapes within the 'PNUT' area ³² as identified in the Map 10 below.

³⁰ <http://www.urbangrowth.nsw.gov.au>

³¹ The Cumberland Precinct included Deerubbin's land claim.

³² Parramatta Goal, Linen service site dating back to 1842- located within the Jail Heritage walls, Cumberland Hospital East campus precinct in use since 1821, The female factory and asylum 1818, Norma Parker Centre/Kamallla (originally a Catholic orphanage in 1841).



Map (10) Parramatta North, Urban Transformation Significant Heritage Sites.
Source: 'Parramatta North Urban Transformation, Heritage snapshot' page 7

By July 2014, the Minister for Planning had agreed that the Parramatta North Area be considered as a 'State Significant Site' for potential rezoning, and a consultation program with the affected landholders commenced³³.

The Parramatta North, State Significant Site Assessment Report (2014) outlined the Government's commitment to restoring the heritage buildings within the PNUT precinct (28,000 square metres) through a system of adaptive reuse linked to a funding model generated from the rezoning and sale of government land³⁴.

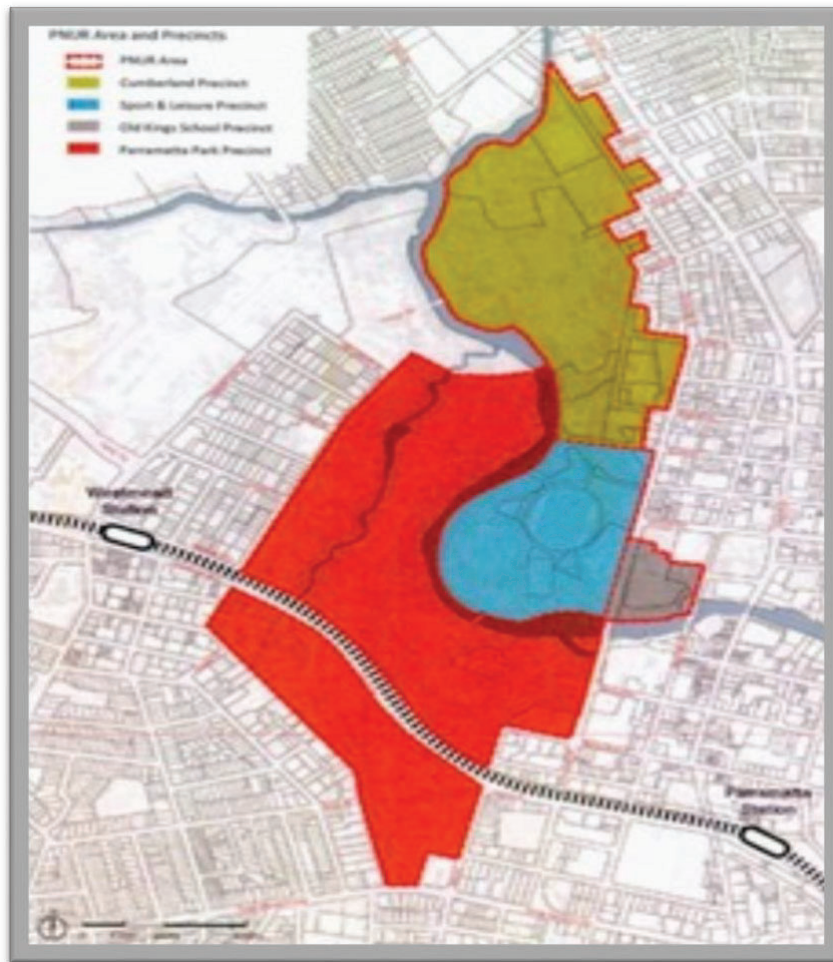
Nonetheless, Parramatta City Council's submission on the PNUT project (December 2014 p21-22) raised significant concerns regarding the operation and application of the heritage restoration and implementation program. It points out in its submission that its support for the land use planning uplift yield within the PNUT precinct incorporates a clear commitment by the State Government to incorporate a 'Heritage Restoration' program and some

³³ Department of Planning and Environment. 2014. Parramatta North Urban Renewal Area. Site State Significant Site Assessment Report.

³⁴ The restoration of heritage building in the PNUT area through funds generated from rezoning and the sale of land was reiterated by Urban Growth in an article by Fitzgerald in the Parramatta Advertiser (September 4, 2014).

additional clarification on how the heritage funds will be used, in the short and long term.

The Draft 'State Environmental Planning Policy (PNUT) (2014), included four main Precincts as shown in the following Map (11). The Cumberland Precinct is shown in Green, the Sport and Leisure Precinct is in Blue, the Parramatta Park Precinct is shown in Red and the Old Kings School Precinct in Grey.



Map (11) Parramatta North Urban Renewal Area and Precincts.
Source: Draft SEPP (PNUR) 2014 Report Framework, SJB Planning
(p.23)

Urban Growth NSW submitted its 'State Significant Site' Study for the Parramatta North Area to the NSW Department of Planning and Environment in October 2014. The proposal covered 40ha and comprised the Four Precincts shown in Map 9.

The report included changes to the planning controls, which involve amendments to the Parramatta Local Environmental Plan 2011, Parramatta City Centre Local Environmental Plan 2007, and draft amendments to Parramatta's Development Control Plan 2011. The key features of the stated planning amendments are listed below:

- 4,100 new dwellings close to Parramatta CBD, transport, parklands, and local services.

- Restore all the identified heritage buildings and recognise their social and historical importance, through 28,000 square metres of heritage identified for adaptive reuse.
- 4,000 new jobs (including 3,000 during construction)
- Increase to building height ranging from 4 through to 30 storeys.
- A village centre of around 4,000 square metres of floor space
- Increase in commercial gross floor space of 34,000 square metres

This proposal went on exhibition in November 2015, and the NSW Department of Planning and Environment (DOPE) received 166 public submissions. In response, Urban Growth commenced preparing a revised report based on feedback from the consultation.

A Policy Shift Mid 2015 – What's In & Out of The PNUT Area

In February 2015, Melanie Kembrey in an article in the Sydney Morning Herald (18 August 2014) signalled hesitancy by the NSW State Government regarding Deerubbin's Land Claim and the inclusion of the Parramatta Jail in the PNUT area. Kembrey quotes Geoff Lee, the State Member for Parramatta in the NSW Parliament who says that Deerubbin LALC might find the Jail a liability and he hoped they would negotiate with the State government. The article points out that the jail is a massive asset in the heart of Parramatta, but that its heritage listing means it cannot be demolished and its annual maintenance costs are estimated to exceed \$500,000.

Deerubbin wrote to the NSW Premier in March 2015, advising the Government of the Court decision regarding their 2012 Land Claim, pointing out that Parramatta Jail and the adjoining land would be officially transferred from the Crown into Deerubbin ownership by December 2016.

As is evident from the timeline it took years for the land claim process to be resolved for Parramatta Jail ³⁵. The impact of long delays regarding the land claim process was outlined by the Law Society of NSW in its submission to the 'Inquiry into Economic Development in Aboriginal Communities (22nd of October 2015). It highlighted that the majority of appeals against the Minister for Crown Land refusals, were resolved in favour of the Land Council, and that the process was costly, and created long delays connected with the transfer of land.

In June 2015, Urban Growth released its revised Draft State Environmental Planning Policy for the PNUT area ³⁶. In this proposal, Deerubbin landholding including, Parramatta Jail had been removed from the PNUT area. However, the Linen Service, which was located inside the Parramatta Jail heritage walls, remained in the plan as indicated in Map (12). The land areas within the PNUT are shown in green and Deerubbin's land is in white.

Map (12) June 2015 -Proposed PNUT Area In Green

³⁵ See appendix M for a detailed timeline on the Deerubbin case study.

³⁶ SJB Planning undertook the review in 2015 of the Draft State Environmental Planning Policy. Parramatta North Urban Transformation Area (2014).



Source: Updated Draft SEPP 9th June 2015. Parramatta North Urban Transformation Draft State Environmental Planning Policy (PNUT) 2014. Response to Submissions. SJB Planning (p10).

Conversely, one month later in July 2015, the NSW Department of Planning and Environment released an updated version of the PNUT area³⁷ and in this version, Parramatta Jail, the Linen Service, and the adjoining land had been removed from the Masterplan. The Report points out that planning for this area would be undertaken at a later stage.

A footnote in the executive summary of the Report (July 2015) indicates that 28,000 square metres linked with the adaptive reuse of heritage items had been reduced to 20,000 square meters. This reduction was the removal of the Jail and the adjoining land owned by Deerubbin. The Report acknowledges that

³⁷ PNUT area, State Significant Site Assessment (SSSA) Report July 2015.

Deerubbin LALC had written to Urban Growth over their removal but the Report made no further comment³⁸.

The following Map (13) shows the land holding removed from the PNUT area (Technically the Cumberland Precinct component of the Masterplan). Deerubbin land is in red the blue area is State government-owned land occupied by the State Emergency Services (SES). The NSW Linen Service is in yellow; it supplies clean linen to hospitals and care facilities across NSW³⁹.

Map (13) Cumberland Precinct Removed from the PNUT Area



Source: Deerubbin LALC Draft Preliminary Planning Report for Parramatta Jail and Adjoining Land

What becomes evident is that between 2013 and May 2015 all the strategic plans, technical studies, and draft Masterplan for the PNUT area included the historic Parramatta Jail, surrounding heritage wall, the adjoining land, and the NSW Health Linen Service. However, at some point in mid-2015, there was an unspoken decision by Urban Growth NSW to remove Deerubbin's land from the PNUT Masterplan area.

Consultation and the PNUT Area

The strategic decision-making process for the PNUT area also indicates a lack of discussion by the planning authority with Deerubbin LALC throughout the redevelopment process, in spite of them being a significant landholder.

³⁸ Department of Planning and Environment. July 2015. Parramatta North Urban Transformation Area. State Significant Site Assessment Report (p 39).

³⁹ The site is owned by the Health Administration Corporation and occupied by Health Care NSW Linen Service.

Deerubbin's exclusion from any of the formal consultation is evident in the fact that Urban Growth negotiated signed agreements with all the landowners within the PNUT except Deerubbin. All the landowners who had signed an agreement with Urban Growth to realise the urban renewal benefits within the precinct are listed in Table 6 below. Deerubbin's exclusion from these agreement negotiations raises questions, particularly given their ownership of the Parramatta Jail site.

Table (6) List of Landowners' in the North Parramatta Urban Transformation Areas who signed an agreement with Urban Growth

- Crown Land
- Housing Commission NSW
- NSW Health
- Land and Housing Corporation
- Corrective Services
- Disability Services
- Parramatta Park Trust
- The NSW State Government
- Ventures NSW (The Parramatta Stadium Trust)

Source: DOPE Parramatta North Urban Renewal Area, State Significant Site Assessment Report State (July 2015 page 11)

Deerubbin's Response To Being Removed from the Parramatta North Urban Transformation Area

Deerubbin LALC wrote to Urban Growth requesting its land be included in the PNUT area in July 2015. Also, Deerubbin initiated a consultation process with the Greater Sydney Commission and in August 2017, signed a Principles of Engagement Agreement with the Greater Sydney Commission⁴⁰.

Deerubbin commissioned a Draft 'Preliminary Planning Report' (November 2017) for the former Parramatta Jail and adjoining land. In December 2017, Deerubbin made a submission on the Draft Western District Plan to the Greater Sydney Commission. They highlighted the need to create future opportunities for the adaptive reuse of Parramatta Jail. They also outlined Deerubbin's desire to create a parallel-integrated development with the adjoining PNUT area and they included a preliminary 'Planning Assessment Report' (2017), seeking amendments to Parramatta LEP (2011).

Deerubbin Summary and Lessons Learnt

The process outlined in this case study raises some serious questions concerning the broader public benefits arguments put forward in connection with the redevelopment of North Parramatta area by the Planning Authority, in particular the heritage restoration benefits. In addition, questions remain if the funds generated from the rezoning and land sales will ever be used to support the restoration of the Heritage Jail, the surrounding heritage wall, or the Linen Service precinct.

This case study also identifies that some of the issues raised by the Law Society in its submission to the NSW Governments 'Inquiry into Economic Development in Aboriginal Communities' (22nd of October 2015) played out in Deerubbin land

⁴⁰ Deerubbin Local Aboriginal Land Councils Region. 22.8.2017. Principles of Engagement Between. Deerubbin Local Aboriginal Land Council and the Greater Sydney Commission.

claim and the delays associated with the process. The delay in resolving the land claim was the reason given by the Planning Authority for removing Derrubbin's land from the planning benefits.

A more general concern is that Derrubbin's land in North Parramatta and Parramatta Jail will remain underdeveloped for a substantial period as a result of the situation that evolved in the Parramatta North redevelopment project.

The overall planning process indicates the need for a higher level of due diligence when it comes to significant strategic planning proposals, who benefits and who loses in particular when LALC are key landowners.

A major purpose of the NSW Aboriginal Lands Rights Act is to facilitate economic self-sufficiency. With this in mind it does seem that the State Government should have ensured that the Planning Authority was more inclusive in dealing with the LALC as opposed to taking a path that excluded them from the redevelopment opportunities.

Brewarrina LALC Case Study Overview of the Main Issues

As a rural LALC Brewarrina has different, development opportunities primarily related to its history, population makeup, social and economic factors, demographics, location, and land value compared with the other Land Councils outlined in these case studies.

A significant issue for Brewarrina LALC is that it has few potential income streams. The sale or utilisation of land would deliver limited income opportunities due to low land value and a general lack of opportunities in the region. There is a significant shortage of private rental and social housing. The Land Council has around 70 rental properties managed under an agreement with NSW ALC, which do not generate any rental surpluses.

Brewarrina LALC with major landholdings has cost liabilities associated with remediation work, a problem shared by many. Brewarrina LALC is also concerned about the management and protection of the Nationally Listed Heritage stone river fish traps at Brewarrina. Some potential strategies for generating income are outlined later in the case study.

This case study along with the others identifies a failure by the local planning authority to consult with LALC on significantly strategic planning issues, even though they are often substantial landowners. For Brewarrina this was evident in the Council's decision to bid for a nuclear waste dump along with the development and implementation of the 'Brewarrina Local Environmental Plan' (2012) without discussing it with the LALC.

Brewarrina Background Information

Brewarrina Town and Shire are located in north western inland NSW on the Barwon-Darling River around 800km by road from Sydney via Dubbo. The following NSW Map (3) shows the main cities and regional towns across NSW including Brewarrina an inland rural town near the NSW/Queensland border.



Map (14) NSW Towns and Cities. Source: Ausemade Maps

The Shire of Brewarrina runs from the Queensland border, bounded by the Shires of Walgett, Warren, Bogan, and Bourke. It is home to the Ngemba, Murri Warri, Euahlayi, Weilwan, Ualari and Barranbinya peoples and over 60% of its population base are recognised as first nation's people. This percentage is extremely high compared with a national figure of 2.8 per cent of the population who were identified as first nation's people in the 2016 Census (ABS Census 2016).

The Brewarrina Local Aboriginal Land Council (Brewarrina LALC) formed after the passage of the NSW Aboriginal Land Rights Act in 1983. It's involved in a variety of community ventures. These range from Aboriginal housing, health services, education and employment, through to social services and childcare. The organisation's members are active in initiatives around social justice, cultural and heritage preservation, and self-determination.

Planning Context - Brewarrina LALC

Brewarrina LALC has substantial landholdings, much, of which have significant historical and cultural meaning for both the local and broader NSW Aboriginal community. It has two mission sites; one has 27 houses and is affected by asbestos contamination with a process in place to decontaminate the site. The

second is the old Brewarrina Mission Site⁴¹ (State Heritage listed), which comprises around 270 hectares of land. A recent grant from NSW ALC of \$50,000 has been used to remove the asbestos from that land. Also, the Land Council has:

- 70 dwellings and 65 of these are rental properties managed under an agreement with Mid-Lachlan Aboriginal Housing Management Cooperative Ltd,
- One commercial property,
- One property leased to a preschool linked with a community benefit venture (on a peppercorn rent),
- Twenty vacant lots mostly zoned RU1 primary industry or RU5 Village.

The organisation does not derive any surplus income from its property holding due to associated maintenance, and management costs, combined with low land values, and limited rental income.

Sites of Cultural Significance

Although they do not own all the sites listed below Brewarrina LALC is committed to protecting, supporting, and promoting the following local heritage items, which have been recognised as having substantial cultural and heritage value.

- 'Brewarrina Mission and Reserve Site',
- 'Brewarrina Stone Fish Traps' (State Heritage listed),
- Ochre River Pits,
- 'Massacre Memorial Site'⁴²,
- Aboriginal Cultural Museum on the Barwon River,
- Cuddie Springs Prehistoric Fossils and Archaeological Dig,
- 'Dreaming River Serpent' – (Based on a local Aboriginal belief that a serpent-like creature lives along the Barwon-Darling River, burrowing into the riverbank, wakes and travels along the river.

Brewarrina Mission Site

The Aboriginal Protection Board first established the old 'Brewarrina Mission and Reserve Site' in 1886. It operated from 1886-1966 and was the first and longest-running Reserve stations in NSW. This site is connected with the 'Stolen Generation' and the removal of Aboriginal children from their homelands. The site includes a cemetery and is a 'State Significant Site' under the NSW State Heritage Register.

The Problem of Asbestos Contamination for LALC

The old Brewarrina Mission land comprises around 270 hectares, however the site contamination with asbestos is linked with the operation of the old Mission. At the end of its operation, many of the buildings were torn down. However, remnants of asbestos building materials remained. A recent grant from NSW ALC of \$50,000 and a fee waiver by Brewarrina Council for waste tipping cost has seen the asbestos removed.

⁴¹Also, know as Barwon Mission, Brewarrina Mission, and Brewarrina Aboriginal Station.

⁴²A local tribe was moving along the dry watercourse towards Narran Lake when they were massacred. A memorial has been created at the site on the Goodooga Road near Hospital Creek, 15 kilometres from Brewarrina. Although the Massacre is not disputed – there are numerous versions on what led to the murders. One version is on the Brewarrina Shire Council website. Hospital Creek Massacre Site.
<http://www.brewarrina.nsw.gov.au/tourism/attractions-activities/hospital-creek-massacre-site.aspx>.

Brewarrina also has another mission site, which has 27 houses and is affected by asbestos contamination. A joint venture pilot project has been initiated between the NSW Government and 'Waste Aid' to decontaminate this site. This project is focused on the removal of asbestos from Aboriginal land in communities like Brewarrina, it employs and trains locals in the techniques of safe asbestos removal⁴³.

Asbestos contamination is a concern for many LALC across NSW. Some of the contamination is linked with mission or reserve land. However, other sources are linked to the dumping of waste products containing asbestos on isolated LALC sites.

Contamination creates both environment and financial liability for LALC. It can affect the land value and development opportunities. The land can sit vacant for decades due to limited financial options to fund its removal. This matter was highlighted in the NSW Aboriginal Land Council's 2016-2017 Annual Report (page 14). It points out that asbestos decontamination is a significant cost factor for many NSW LALC and identified 99 LALCs who have approximately 466 land claims with potential contamination issues.

Brewarrina Mission and the Cemetery

The old Brewarrina Mission has a cemetery, which has cultural heritage value for many of the local Aboriginal tribes, who see it as a 'place of belonging'. It's also important to Aboriginal people across NSW for reasons of historical and spiritual connections, as many children were born there and many people died and are buried at the site⁴⁴.

The Cemetery is in need of repairs; one of Brewarrina LALC long-term aims is to create a meeting/resting place near the old Cemetery connected with a healing centre and museum. For this to happen, a detailed survey of the site is needed to identify the gravesites and clean up the pathways in and around the Cemetery.

The Brewarrina Mission and Rural Agricultural Initiative

The Brewarrina mission site includes lands zoned rural agricultural and historically the site had water pumps and produced agricultural products. The LALC would like to see the agricultural component of the land reinstated with a focus on the production of traditional indigenous food. Mayes (Oct 2018) points out in 'Unsettling Food Politics. Agriculture, Dispossession and Sovereignty in Australia' that the development of Indigenous agriculture food practice would open up new spaces for thinking about food in contemporary Australia and would allow for opportunities to improve on the imported colonial agriculture practices in the production of food in the Australian landscape. Once established a project like this could expand by selling alternative traditional food products to restaurants across Australia.

Housing Shortages

Housing shortages and the absence of housing opportunities is a problem for the area. For the Aboriginal community, their main housing option is social housing. However, there is only a small amount and minimal private rental. There is one motel and a caravan park owned by Brewarrina Shire Council for visitors or workers.

⁴³ Source: <http://wasteaid.org.au/projects/>.

⁴⁴ The majority of Land Council's offer a Funeral Fund. Some offer direct support or access support through NSW ALC Community Benefit Scheme - Funeral Fund: (<https://www.brelalc.org/bre-mission>)

Brewarrina LALC and Housing Support

Brewarrina LALC has 70 rental properties and of these 65 tenancies are under a head lease arrangement with NSW ALC, which is about to expire. NSW ALC has a subleasing management arrangement for these properties with Mid-Lachlan Aboriginal Housing Management Cooperative Ltd. So, although Brewarrina LALC owns the properties they do not receive any income from this management arrangement, due to maintenance costs and low rental income.

Brewarrina LALC is not a registered community-housing provider, as this is currently beyond the organisation's capacity. However, they do want to ensure that any future management arrangement sees their housing stock maintained and refurbished to an adequate standard. Brewarrina LALC is keen to deliver additional housing on its land, but this would need to be done through a partnership arrangement, due to financial restraints.

Future Housing Initiative

The NSW State Government Budget (2018-19) announced a commitment to allocate \$33.1 million over four years towards the development of an Aboriginal Housing Strategy. This reform is a 10 year initiative called 'Strong Family, Strong Community: a strategic framework for Aboriginal social housing in NSW'. Hopefully, this project will address the issue of housing shortages, especially in regional communities, combined with finding ways to build capacity for rural Land Councils who have land but not finance volume to deliver new housing stock.

The NSW ALC has also announced that they are currently investigating the option to become a registered community-housing provider with an aspiration to manage and deliver new dwellings on vacant land owned by Local Aboriginal Land Councils⁴⁵. The NSW ALC already has a strong connection with the rural-based Land Councils and this initiative should provide additional opportunities to maintain and deliver new housing.

Brewarrina LALC Office

Presently Brewarrina LALC main income is the grant it receives from NSW ALC of \$143,000. It has three main areas of expenditure, wages, office administration, and the rent it pays to Brewarrina Shire Council (approximately \$20,000 a year) for its current premises. The Land Council is proposing to submit a Development Application (DA) for a new office on land it owns in the Brewarrina Town Centre. Once approved this will remove the financial burden of paying rent and give the organisation access to \$20,000 in additional funds into the foreseeable future.

Brewarrina Shire & The Proposed Nuclear Waste Processing Facility

One land use planning decision that received a lot of media coverage in Brewarrina, and was met with substantial opposition from the local Aboriginal community, was the proposal for a 'National Radioactive Waste Management Facility' to be located in Brewarrina. The local Aboriginal community's resistance is as evident on the Facebook sites, 'No Nuclear BundaBunda on Ngemba Land -bad poison' and 'NO Nuclear dump' at Brewarrina⁴⁶.

Brewarrina Shire Council submitted a proposal to the National Government in late 2017 for the area to be chosen for the National Radioactive Waste Management Facility. The Aboriginal community raised concerns over why no

⁴⁵ This announcement was made at the Affordable Housing Conference, June 2018.

⁴⁶ Source: Facebook No Nuclear BundaBunda on Ngemba Land -bad poison and Facebook - NO Nuclear dump' at Brewarrina'.

formal consultation had taken place prior to Council bid as the development proposed was on historical tribal land.

Protection of Aboriginal Heritage Items- Brewarrina Stone Fish Traps

The Brewarrina stone fish-traps are a sophisticated design system of dry-stone walls (fish traps) located in the Barwon Darling River, built by local tribes from this region, and they are one of the world's oldest human-made structures, connected to a dreamtime story known as Baiame's Ngunnhu linked with their creation⁴⁷. They were designed to withstand the high-water flows of the Barwon River to catch fish and indicate an advanced knowledge of the rivers hydrology and fish ecology. In 2005, the fish traps were placed on Australia's National Heritage register⁴⁸.

Brewarrina LALC doesn't own the stone fish traps; however, they are concerned that the traps are under threat from ecological impacts and general neglect and are keen to ensure they're maintained. The following image is of the fish traps in their historic form⁴⁹.

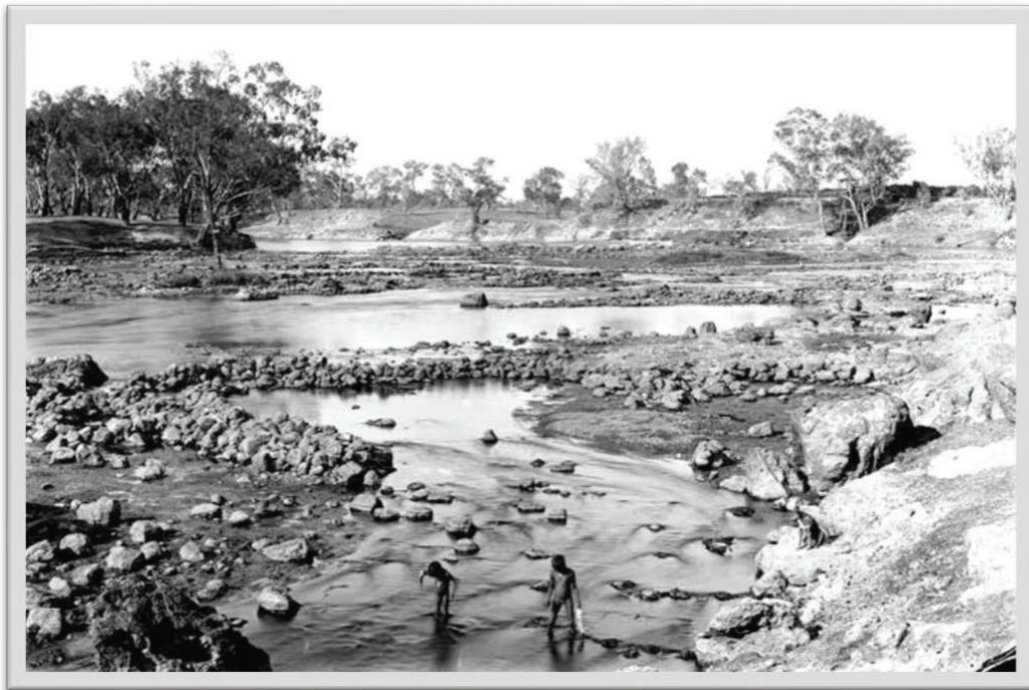


Image (1) Brewarrina Stone Fish Traps. (Photographer unknown)

⁴⁷ (<https://www.youtube.com/watch?v=g2ZqaBW0W4Q>)

⁴⁸ Fish traps listed as a National and NSW State Heritage item
(<http://www.environment.gov.au/heritage/places/national/brewarrina> and
<https://www.environment.nsw.gov.au/heritageapp/ViewHeritageltemDetails.aspx?ID=5051305>).

⁴⁹ABC Bush Telegraph. Thursday 15 May 2014. Brewarrina fish traps
<http://www.abc.net.au/radionational/programs/archived/bushtelegraph/brewarrina-fish-traps/5452872>



Images (2) & (3) These photos were taken in May 2018 and they show evidence of the bulrushes and weed infestation affecting the fish traps. (Image Source: Stacey Miers 24th May 2018)

The following environmental management issues outlined in Table 7 were identified in connection with the long-term survival of the stone fish-traps.

Table (7) Environmental Management Issues
Many of the stones have been moved or damaged from vehicles crossing or accessing the river.
The fish traps are being affected by river water extraction systems upstream connected with the agricultural industry, in particular, the cotton industry. Resulted in ever-decreasing river flow and at times it runs completely dry.
The fish traps have suffered due to a weir being installed just a few metres upstream from the fish traps by the Brewarrina Shire Council. The weir's concrete slab halts the river's natural water flow and affects the downstream flow where the traps are located. The weir was built to supply water for upstream agricultural land use.
Increased water-based pollutants in the river system connected with to upstream agriculture industries (primarily cotton) encourage the growth of bulrushes and other weeds have embedded themselves in the fish traps along with other waste products.
Brewarrina LALC has advocated for the stonefish traps to be listed as a world heritage item to ensure their survival.

Brewarrina Shire New LEP

Brewarrina Shire Council covers an area of 19,000 square kilometres, which includes the towns and villages of Brewarrina, Goodooga, Weilmoringle, Angledool, and Gongolgon. Brewarrina is the central town and it was a principle inter-tribal meeting place for Aboriginal people and as such; it holds great historical meaning for Aboriginal people from the region.

Land use planning is the responsibility of Brewarrina Shire Council Environmental Services Department. This Department is also responsible for public health, animal control, and weed and litter management.

In 2016, Brewarrina Shire Council received fourteen Development Applications worth \$3,645,500⁵⁰. The Council employs one principal staff member to oversee all the organisational strategic planning and development application reports. As a result, strategic planning and lands use matters are often contracted out.

Brewarrina LALC have no concerns regarding their land and any land use zoning decision connected with Brewarrina Local Environmental Plan (LEP) (2012). However, they had not been consulted on the development of the LEP and indicated that it would be rare for them to be consulted on either a minor or major land use-planning decision, even when it impacts on Aboriginal heritage items. As identified through the training program with LALC this is not a rare occurrence.

A lack of consultation on the Brewarrina LEP (2012) may be due to factors such as; the work was contracted out to a consultant who felt no obligation to meet

⁵⁰ Brewarrina Shire Council, 2016/17 Annual Report. 2017.

the requirements of the legislation. Another reason may be due to the general isolation of the region and complaints would rarely go beyond the Shire Council itself. However, NSW Councils are required under the EP&A Act (1979) to consult with communities on the development of new LEPs, and as a significant landholder, one would imagine that some form of consultation should have taken place.

The Department of Planning Far West Regional Plan (2036) completed in 2017 acknowledges the importance of consultation with Aboriginal people particularly regarding heritage protection and it outlines the following Actions:

- To undertake an Aboriginal cultural heritage assessment to inform local land use strategies and to identify any appropriate heritage management mechanism.
- Protect manage and respect Aboriginal objects and places in accordance with legislative requirements.
- Consult with Aboriginal people during strategic planning to identify and protect items of heritage values and recognize their contribution to the character and landscape of the region (Far West Regional Plan 2036, p54).

Because the Actions outlined in this new regional plan include strategic assessments and a requirement to consult with Aboriginal people during strategic planning this should see a stronger level of commitment by local planning authorities to engage with local Aboriginal landholders more inclusively on future strategic planning issues.

Consideration of Future Land Use Initiatives

Due to limited, economic opportunities in rural communities Land Councils are actively involved in exploring future sustainable land use options, however, these can often only be achieved through access to additional funding or partnership arrangements. Brewarrina LALC has identified the following opportunities outlined in Table (8) for their region. Each one of these initiatives are seen to provide the chance to delivery greater prospects for both the Aboriginal and broader community of Brewarrina.

Table (8)- Future Development Options

Development of Local Abattoir

The development of a local abattoir for the treatment of kangaroo, emu, and goats meat.

Local Greening and Agricultural Initiative

The development of an agricultural industry on the rural land at the old mission site, which adjoins the river and has access to water resources. It's hard to get fresh food in Brewarrina and as a result, it is an expensive commodity. This project could focus on the development of pre-colonial agricultural farming options. There is interest in growing traditional indigenous food products for sale to restaurants across NSW. This project would benefit the whole community of Brewarrina.

Development of Tourism Initiatives - Support Aboriginal Culture

The development of economic tourism initiatives linked with Aboriginal history such as the stone fish-trap site, the giant wombat (Dinosaur) at Cuddie Springs (a Dreamtime story), the dreaming river serpent and an acknowledgment of the local Aboriginal Tribe's massacre site (Goodooga Road, Hospital Creek, Brewarrina).

Supporting Solar Energy Initiatives

Power costs in the area are very high and the LALC has a short-term goal to provide solar power to all Brewarrina LALC rental housing. A long-term goal is the development of Solar Farms through joint venture initiatives.

Brewarrina Mission Site

The development of a Cultural Museum and meeting place which includes a depiction of pre and post-colonial history in Australia.

Brewarrina Summary and Lessons Learnt

Around 60% of Brewarrina population are descendants of First nation's peoples, compared with a national average of 2.8 % (2016 ABS Census). It's an isolated rural community with scarce access to resources, costs are high, markets are remote, people are poor, and there is little money to invest in local projects. Walsh and Mitchell "Planning for Country Cross -cultural approaches to decision-making on Aboriginal land (2002)" (p189-190) point to similar issues being faced by rural-based Aboriginal communities in central Australia.

An absence of housing options is a significant problem for Brewarrina; the LALC is interested in exploring ways to deliver additional housing on its land through partnership arrangements. The NSW Government 10-year reform initiative 'Strong Family, Strong Community: a strategic framework for Aboriginal social housing in NSW' hopefully will address the issue of housing shortages and housing management, for regional towns with significant Aboriginal populations and a lack of employment opportunities.

The need for a broader framework that goes beyond the protection of important heritage items such as the Brewarrina fish traps and includes long term maintenance plans is also evident. One option is to create a program to train and employ local Aboriginal communities in the maintenance and protection of significant Aboriginal heritage items. Items of considerable heritage value could be identified through the NSW Regional Planning framework linked to with a strategic plan and funding program.

As highlighted in the case study Brewarrina LALC is interested in developing projects connected with their land holding such as housing, agriculture, cultural heritage and tourism initiatives but they lack fiscal resilience to fund such projects. A primary, issue for many regional Land Councils is how to create longer-term economic viability and better social outcomes with limited resources. Altman (2001) explored these issues and argued for the creation of a new economic framework that goes beyond the current limitations of a market or welfare model towards a viable economic standard that has sustainability at its core.

Brewarrina LALC has a relationship with their Local Council; however, there was a consistent lack of consultation with the community on important land use planning decisions. This situation is especially concerning as NSW Councils are required under the EP&A Act (1979) to consult with the communities on strategic development issues such as LEP's and Regional Plans.

The lack of consultation by Council highlights the need for a stronger requirement for planning authorities to consult directly with Land Councils on strategic land use planning decisions. Especially if they are a major landholder, and in locations where there is a significant Aboriginal population base.

La Perouse LALC Case Study - Overview of Main Issues

The La Perouse LALC is located in metropolitan Sydney and this case study looks at an area owned by the Land Council situated along the harbour foreshore at La Perouse known as Frenchman's Beach. The area is historically linked with the old La Perouse Aboriginal Mission, which is referred to as the La Perouse Aboriginal Precinct in this case study.

In the 1880's, an Aboriginal Mission was established on Frenchman's Beach, homes and a Church were built. In 1921, the homes and the Church were moved from the beachfront dunes to higher ground. New funding options in the 1970s saw the old houses replaced with new homes and in 1984, the land was granted to La Perouse LALC under the Aboriginal Land Rights Act 1983 along with the adjoining Yarra Bay House and the adjoining land.

The La Perouse Aboriginal Precinct runs along the Frenchman's Bay Beach harbour foreshore. It consists of three different land use-zoning controls across a 4-hectare site. In many ways, these land use zones reflect the Precinct's history⁵¹.

As evident in Image 1 the La Perouse Aboriginal Precinct is an interconnected area along the Frenchman's Bay Beach harbour foreshore and includes the following:

1. Yarra Bay House⁵² and the surrounding area. Yarra Bay House was built in 1903 and operated as a boys' home till the mid-1950s. The area was zoned Special Uses under the 1951 County of Planning Scheme. The Special Uses zone allowed public buildings, cultural, medical, educational, cemetery, abattoirs, defence, and public utilities. Under the current 2012, Randwick LEP it is zoned SP1 Special Activities, however this zone is more restrictive than previous zones and only the following uses are permitted with consent: environmental protection works, flood mitigation or roads ancillary to the developments purpose.
2. The old Mission area (3 hectares), which includes the houses and a Historic Church⁵³, was zoned special uses under the old 1951 County of Planning Scheme (1951). However, under all consecutive land use planning controls it's been zoned residential.
3. There is a lawn area located between Yarra Bay House and the residential part that was zoned Open Space under the 1951 County of Cumberland. This definition included; Parks, Recreation Areas, foreshore reservations, places of natural beauty or advantage. It is zoned Public Recreation (RE1) under the 2012 Randwick LEP⁵⁴. An objective of this zone is to enable land to be used for public open space or recreational purposes; this is although the Land Council owns the land.

Of explicit concern is that the 'Standard Instrument' zones although similar in name to many of the previous zones which offered a wider varied of permissible

⁵¹ A detailed timeline of the area history is provided in Appendix O.

⁵² Yarra bay House is a State Listed Heritage Item

(<https://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=2310236>)

⁵³ The Mission Church is a State heritage listed item.

⁵⁴ See: Appendix I Randwick Local Environmental Plan 1998 (Consolidation) Land Use Table - Zone No 6A (Open Space Zone) and Zone No 6B (Private Open Space Zone), Appendix J Randwick Local Environmental Plan 1998 (Consolidation) Land Use Zone No 5 (Special Use and Appendix K Randwick Local Environmental Plan 2012.

uses are more restrictive. This, in turn, limits the future capacity of land and its value for La Perouse LALC.

An additional concern is why the lawn area owned by La Perouse LALC was zoned public recreation as opposed to private open space, this decision not only alienates the land from the LALC it enables Council to hire the land out for functions as outlined in the detailed case study.

The area zoned residential includes the old heritage listed Mission Church, which needs restoration work. However, the fact that it's zoned residential inhibits any future productive or commercial use of the Heritage Church. A change in the zoning to commercial or tourist use would help to create financial opportunities that would in turn support the Church's restoration.

La Perouse's LALC concerns relate to its land use history, which in turn affects value and future viability. However, they also share a generic concern expressed by other LALC over the lack of consultation by the relevant planning authorities on land use planning decisions.

La Perouse Background Information

La Perouse is situated around 14 kilometres south of the City of Sydney on the northern headland of Botany Bay. There was an established Aboriginal community living on the land at Botany Bay when the British established the first colonial settlement in 1788.

To this day, the La Perouse Aboriginal community have maintained their connection to the area, and members of the La Perouse Local Aboriginal Land Council (LALC) are descendants of the original Aboriginal inhabitants. La Perouse LALC was established under the 1983 NSW Aboriginal Land Rights Act in 1984 and the following Map (15) shows La Perouse LALC boundaries.



Map (15) La Perouse LALC Region (Map Source: NSW ALC)

The Land Council's regional boundaries include the suburbs of La Perouse, Woollahra, Waverley, Randwick, Sutherland Shire, and parts of the City of Sydney, and Bayside LGA. According to the 2016, ABS Census 6.6 % of the region's population was Aboriginal.

Planning Context - Frenchman's Bay Aboriginal Precinct

La Perouse LALC has been working with the NSW Department of Planning and Environment since 2015 on a strategic assessment project to identify its future land needs and how these might inform the future land use planning controls. As part of this process, the Land Council discovered some discrepancies regarding their land use planning controls, which have the potential to affect their economic viability into the future.

La Perouse Land Council owns two central land holdings in the La Perouse area. One known as 'Hill 60' is approximately 12 hectares. It's bounded by an old Chinese market Gardens to the north, parkland to the west and housing along Yarra Road to the south, to the east of the site is a public school.

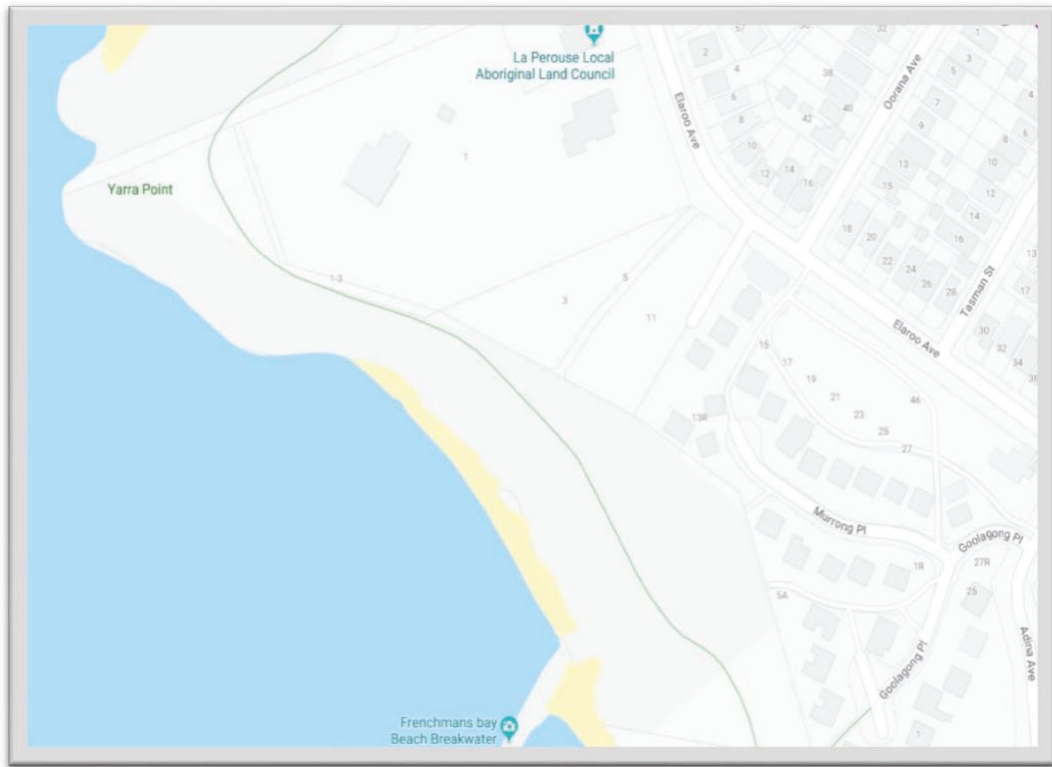
The other site is land situated between Frenchman's Bay Beach and Elaroo Avenue, which is approximately 4 hectares. This area is the primary focus of this case study, which will be referred to as the 'Frenchman's Bay Aboriginal Precinct'. The area is outlined in Image (4) and Map (16).

Case Study Area - Elaroo Avenue and Frenchman's Beach Reserve

The 'Frenchman's Bay Aboriginal Precinct' is traditionally linked with the old La Perouse Aboriginal Mission Reserve and the whole area is owned by La Perouse LALC. The 'Frenchman's Bay Aboriginal Precinct' runs from Elaroo Avenue down to the Frenchman's Beach. The site is bookended by Yarra Bay House, at the north end ⁵⁵, and at the south end is the old historic housing development and the heritage listed Mission Church⁵⁶. A triangular lawn area connects the two bookends as shown in Image 1. There is an old Crown Land 'right of way' (at number 5 Elaroo Ave) which runs down to the beach through the lawn area, this is used mostly by Council vehicles to access Frenchman's Bay Beach and is evident in the following as Map (16).

⁵⁵ This area includes the Yarra Bay Houses a State heritage listed Item which houses the La Perouse Aboriginal Land Council's head office; a medical centre and a child care facility.

⁵⁶ The Heritage Listed Church is located at 46 Adina Avenue on the corner of Elaroo and Adina Avenue's.



Map (16) La Perouse Aboriginal Land Council Properties (Source: Goggle Maps)



*Image (4) La Perouse Aboriginal Precinct-Land owned by La Perouse LALC
(Source: Goggle Earth)*

History of the Frenchman's Bay Aboriginal Precinct

In 1885, an Aboriginal Reserve was established at Frenchman's Bay Beach, it included housing and a Mission Church built directly fronting the Beach. During 1929 and 1930, the Church and homes were moved from the beachfront dunes to higher ground. However, many of the early, dwellings remained until the late 1940s when Randwick Council slowly converted the foreshore section of the reserve into public recreation.

During the 1960s and 70s, the neglected 1930 housing stock was replaced. The area now comprises 29 single dwelling houses, ranging in lot sizes from 470m² to 820 m². The Heritage listed Mission Church (corner of Adina and Elaroo Avenue's), is in need of costly repairs. In 1984, ownership of the land included in the Aboriginal Reserve and Yarra Bay House was transferred to La Perouse LALC (Appendix H documents the continuous Aboriginal community occupation of the land between Elaroo Ave and Frenchman's Beach before and post colonisation).

Frenchman's Bay, Aboriginal Precinct - Three Site

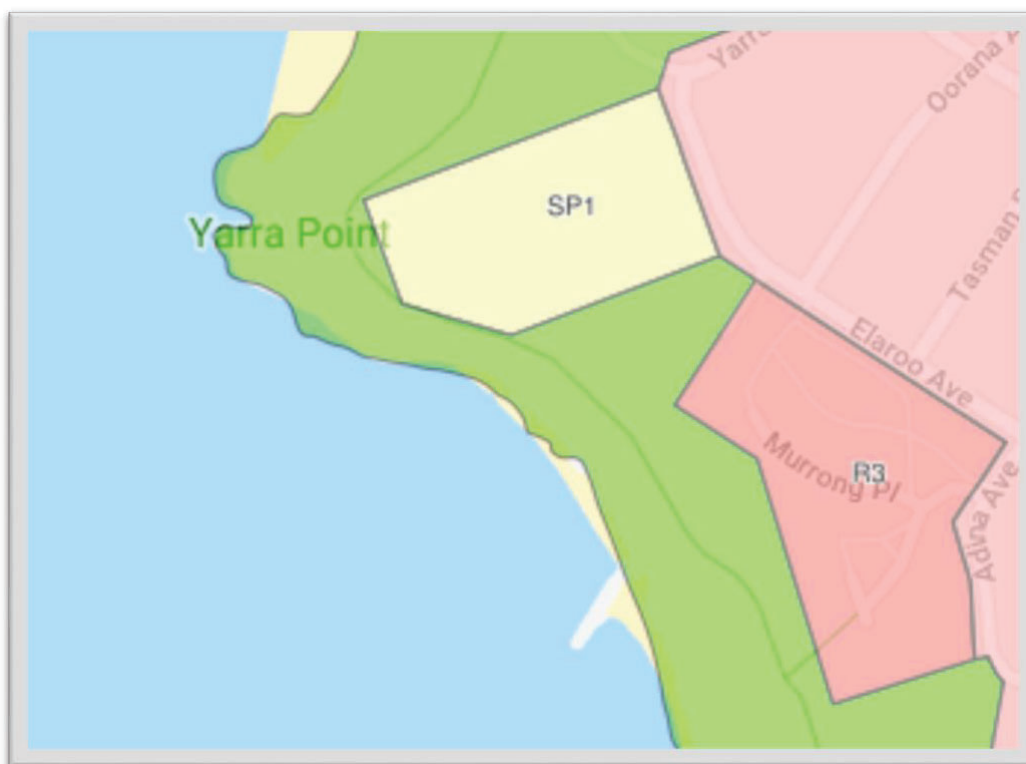
This section explores the history of the land use controls across the 'Three-Site Areas', which are owned by La Perouse LALC and makeup the interconnected Frenchman's Bay Aboriginal Precinct. Table 8 includes the address and current land-use functions for each of the three sites.

Table (8) The 3 Site Area's that encompass the Frenchman's Bay Aboriginal Precinct

Site Area (1)	1&1A Elaroo Avenue La Perouse. Yarra Bay House built in 1903, which operated as boys home till the mid-1950s and is a State Heritage listed Item. It is the La Perouse LALC head office. Other community facilities are located at the Site such as; the Aboriginal Community Health Centre and Gujaga Long Day Child Care Facility (DP: 777908)
Site Area (2)	The lawn area at 7-11 Elaroo Ave La Perouse connecting Yarra Bay House and LALC Housing area (DP: 728436 & DP: 728436).
Site Area (3)	Historical Aboriginal Reserve Area now comprises 29 single dwelling houses and the Heritage Listed Mission Church (DP: 752015).

Map 17 shows the land use zoning controls for each 'Site Area' within the Frenchman's Bay Aboriginal Precinct based on the 2012 Randwick LEP. Site Area (1) is zoned Special Purpose Zones (SP1) (Special Activities) and is shown in yellow. It comprises Yarra Bay House and other Community Facilities. Site Area (2) is zoned Public Recreation (RE1) shown in Green. Site Area (3) is zoned Medium Density Residential (R3) in dark pink⁵⁷.

⁵⁷ See Appendix G for a detailed zoning map of the whole for La Perouse peninsula from the Randwick Council's 'Local Environmental Plans 2012.



Map (17) Randwick LEP (2012) Zoning Map, Area owned by La Perouse LALC
(Source: NSW Planning Portal)

Site Area (1) Yarra Bay Point, Yarra Bay House & Community Facilities

Site Area (1) (1 Elaroo Avenue La Perouse)⁵⁸ includes Yarra Bay House built in 1903, and it is a listed heritage item. In the mid-1950s, it housed 'Yarra Bay Boys Home' run under the Child Welfare Department of NSW. It now houses the La Perouse LALC Head Office. The Aboriginal Community Health Centre and Gujaga Long Day Child Care Centre are also located in the area. The following Table 9 offers a chronology of the land use zoning controls for the site since the 1950s.

Table (9) Land Use Site Area (1) Yarra Bay House & Community Facilities

Planning Scheme & Year	Land Use Zoning Controls
1951 County of Cumberland Planning Scheme.	Special Uses – Public buildings, cultural, medical, educational, cemetery, abattoirs, defence & public utility area
1978 Randwick Planning Scheme	Special Uses
1998 Randwick LEP (consolidated)	No 5 Special Uses
2012 Randwick LEP	SP1 Special Activities (Community Land) as opposed to SP2 Infrastructure
Yarra Bay House & Community Facilities (DP: 777908)	

⁵⁸ Address: 1 & 1A Elaroo Avenue, La Perouse, 2036. Lot/Section/Plan no: 2/-/DP777908

Table 9 shows that under the County of Cumberland Planning Scheme (1951), the site was zoned 'Special Uses'. This zoning continues under the Randwick Planning Scheme 1978, and again, under the Randwick LEP (1998) it was zoned 'Special Uses' (No 5).

A major review of the NSW planning system saw the implementation of the 'Standard Instrument Principle Local Environmental Plan (LEP) in 2006 (format and definitions)⁵⁹. The Randwick LEP (2012) was based on the 'Standard Instrument' format and assigned Special Activities ('SP1) (Community Facility) Zone to Site Area 3.

Even though Special Activity (SP 1) zone in the Randwick LEP, 2012 is similar in name to the previous land use controls, the objectives and permissibility are more restrictive compared with the previous controls. This is evident from the following zoning descriptions, which states what developments, were permitted with consent between the different controls.

Under the Randwick LEP 1998 instrument (Special Uses: No 5) you could build the following with consent: animal establishments; bed and breakfast accommodation; boarding houses; car parks; cemeteries; child care centres; clubs; communication facilities; community facilities; dwellings; dwelling houses; earthworks; educational establishments; health consulting rooms; helicopter landing sites; home activities; hospitals; markets; multi-unit housing; outdoor advertising; penitentiaries; places of worship; plant nurseries; public transport and recreation. Conversely, under Randwick LEP 2012 (Special Activities (SP1) zone, only the following developments were permitted with consent; environmental protection works; flood mitigation works; roads and any development that is ordinarily incidental or ancillary to the existing developments purpose. How individual interpret the meaning of the clause can also cause confusion.

The Standard Instrument (LEP, order 2006) includes two 'Special Purpose' Zones; one is SP1 (Special Activities), and the other was SP2 (Infrastructure). Although the zones are similar, the objectives of the two zones are different. The Objectives of the SP2 (Infrastructure) zone supports the provision of infrastructure and related uses along with protecting land used for community purposes'; while the Objective of the SP1 (Special Activities) is primary "to facilitate development that is in keeping with the special characteristics of the site or its existing or intended special use, and to minimises any adverse impacts on surrounding land"⁶⁰. Based on the site's historic, its relationship with the adjoining land use and current activities the SP2 (Infrastructure) zone would be a more compatible land use zone choice.

Site Area 2 – Triangular Lawn Area Linking Yarra Bay and LALC Homes

Site Area 2, is the triangular lawn area (two parcels of land) at 7-11 Elaroo Ave La Perouse as shown in Maps1, 2 and 3. The land runs from Elaroo Ave down to the waterfront and forms the link between Site Area 1 and Site Area 3 as outlined in Table 10. The following Image shows the site from the street. The Aboriginal Land Council's main community facilities are on the southern end of the lawn and its housing stock and historic Mission Church are to the north. A

⁵⁹ 'Standard Instrument' (Local Environmental Plan) Order (2006)-Randwick Council 2012 LEP Zoning reflects the 'Standard Instrument and associated color-coded land use zoning system which as provided in Appendix G.

⁶⁰ See Appendix C for the detailed Clauses, objectives, and development controls for SP1, Special Activities and SP2, Infrastructure.

Crown land right of way runs down the site providing access down to Frenchman Beach as highlighted in Map 16.



Image (5): Stacey Miers: Site Area 2 - Grassed Lawn between 7-11 Elaroo Ave

History of the Site and Land Use Zoning Decisions

The triangular lawn area has historically been connected with the Aboriginal Reserve and does not contain any remnant bushland or natural vegetation. It also provides the physical linkage between Yarra Bay House and the LALC homes.

The Council had previously used the site for landfill and as a result, it had some contamination issues. In the 1980s, Council initiated a program to clean up the site. The lawn area was remediated to a recreational standard and land at the end of Murrong Place⁶¹ was remediated to a residential standard. The sites zoning history is as highlighted in the following Land use Table 10.

⁶¹ Lot 29 DP 251284

Table (10) Land use Site Area (2) triangular lawn area linking Yarra Bay House and LALC Homes (DP: 728436 & DP: 728436)

Planning Scheme	Land Use Zoning Controls
1951 County of Cumberland Planning Scheme	Open Space- Parks, Recreation Areas, foreshore reservations, places of natural beauty or advantage.
1978 Randwick Planning Scheme	Zoned Open Space (a) Recreation Existing as opposed to Open Space (b) Recreation Private.
1998 RLEP	Zoned 6A- Open Space as opposed to 6B- Private Open Space
2012 Randwick LEP	RE1- Public Recreation as opposed to RE2- Private Recreation

Table 10 reveals that under the 1951 County of Cumberland Planning Scheme, which had one 'Open Space' category the lawn area was zoned as such. In the late 70s, the Randwick (1978) Planning Scheme introduced two 'Open Space' categories: Open Space 6A (Recreation Existing) and Open Space (a) (Recreation Private). It was under this scheme that the lawn area was first zoned Open Space (a) 'Recreation Existing'. By 1984, the lawn area was granted to La Perouse LALC as part of its larger land claim⁶². Still, Council's 1998 Randwick LEP selected the 'Open Space 6A' as opposed to 6B- 'Private Open Space'.

Again, under the current Randwick LEP (2012) (linked with the new Standard Instrument LEP) the site was zoned RE1- Public Recreation as opposed to the RE2- Private Recreation and although the objectives of these two zones are similar⁶³, they do denote a clear distinction between something that is the public realm as opposed to land that is not.

This situation has also led to some general confusion over the public hire of the lawn for events, which came to the attention of La Perouse Land Council when Council first erected a sign on the lawn area calling it 'Frenchman's Bay Reserve' (as seen in Image 5). Also wedding events started appearing at the site because Council had included the area in its recreational and public spaces for hire list ⁶⁴, probably based on the land's zoning status as Public Recreation (RE1). Council also mow the site and use it as an access point to Frenchman's Beach.

A formal consultation and negotiation process between Randwick Council and the La Perouse LALC would be a good place to start to discuss how to resolve this matter. The negotiation could address the specifics of the site's hire and any financial consequences, responsibilities over maintenance and any change to the sites zoning. The Land Council have indicated a preference for one side of the lawn area to be wholly or partly integrated into the adjacent Special Use

⁶² See Appendix E Timeline of land ownership and occupation of the current Frenchman's Bay Aboriginal Precinct.

⁶³ See Appendix G for the objectives and permissibility related to RE1 Public Recreation and Zone RE2 Private Recreation from the Randwick 2012 LEP Table.

⁶⁴ Private ceremonies in Randwick's public places (<https://www.randwick.nsw.gov.au/facilities-and-recreation/using-a-public-space>)

zone, thus creating a more unified precinct, which is a matter that could be included in the negotiations.

It's hard to imagine why some form of consultation didn't take place during the development of a new 2012 LEP with the Land Council. Though, Councils were under a lot of pressure to develop and implement the new LEP framework linked with the 'Standard Instrument' requirements and this may have created tight timeframes and led to inadequate consultation with key landholders.

Site Area (3) Housing Development

Since 1885, the land located at the western end of the 'Frenchman's Bay Aboriginal Precinct' has historically been used for housing⁶⁵. Under the old 1951 County of Cumberland Planning Scheme, this area was zoned Special Uses. Yet, under all consecutive land use planning controls, it was zoned residential.

Table (11) Land use Site Area (3) Housing Development (Plan no: 5195 - DP752015) 21 Murrong Place, La Perouse

Planning Scheme	Land Use Zoning Controls
1951 County of Cumberland Planning Scheme.	Special Uses
1978 Randwick Planning Scheme	2(d) - Residential
1998 LEP	2B - Medium Density
2012 Randwick LEP	R3 - Medium Density Residential

It area is presently zoned Medium Density Residential (R3) under the Randwick LEP (2012) and Table 11 delineated the sites land use history. The area is currently zoned for medium density, although all the housing stock is low-density housing. Any move towards higher density housing on the land is very likely to create a level of opposition from the adjoining landowners, as it would affect their waterfront views.

The La Perouse Mission Church, which is a State Significant listed Heritage Item⁶⁶ is also, zoned R3 Residential. However, it will never be redeveloped for housing due to its heritage status. It seems that a more compatible zone for the Mission Church would be a commercial or tourist (SP3) zone. This would create opportunities to lease the building or develop tourism-based activity, which in turn could deliver some financial income to pay for the Churches conservation and maintenance.

Summary and Lessons Learnt

This case study indicates that although the zoning controls for 'Site Area (1)' reflect the previous controls in terms of name, each new planning instrument has become more restrictive in the land use controls. Site area (1) provides a number of essential services for this community, however the limitation of the land use controls means that there are no options to develop additional services on the site, which contravenes the Objectives of the NSW ALR Act.

As evident in the La Perouse Case Study the nature of the 'Standard Instrument LEP 'template' Special Activities land use zone has become increasingly restrictive. One option for La Perouse and other Land Council is to advocate for

⁶⁵ See Appendix H for a detailed Timeline history of the precinct.

⁶⁶ Office of Environment and Heritage

(<https://www.environment.nsw.gov.au/heritageapp/ViewHeritageItemDetails.aspx?ID=5061399>)

those sites zoned SP1 Special Activities to be transferred to SP2 Infrastructure; this would broaden the site potential usability. In addition, the Department of Planning and Environment should issue guidelines for Local Government Authorities on the use of SP1 and SP2 zones regarding LALC, this would ensure consistency on the zones purpose.

As pointed out, La Perouse LALC has responsibility for the restoration and maintenance of two heritage buildings, Yarra Bay House and the old Mission Church. The old Mission Church is currently zoned 'Medium Density Residential (R3)' and needs costly restoration work. One option is to change the land use zone to tourism or commercial this could potentially deliver financial income to fund the conservation and maintenance of the Church into the foreseeable future.

Given that the three site areas are in one ownership and this is unlikely to change into the foreseeable future a more connected land use approach such as a precinct plan for the 'Frenchman's Bay Aboriginal Precinct' would be a way forward. It may help with establishing a more consultative and integrated land use approach and contribute to delivering better land use outcomes for the La Perouse Aboriginal community..

At the very least, this case study has identified the need for a more inclusive consultation process by Randwick Council regarding La Perouse LALC land holding and any future LEP process.

More generally this case study highlights the following matters. One, it shows why it's crucial for Aboriginal Land Councils to monitor and engage with the planning system, the development of new LEP's and any potential impact on their existing land holdings. Secondly, it shows how land use-zoning decision effect issues such as financial viability and the restoration or maintaining of heritage items. Thirdly, it emphasizes why LALC need to be consulted in the development of local strategic land use controls. Fourthly, it identifies that there have been some unintended consequences linked to the implementing the 'Standard Instrument' for LALC, with more restrictive land use controls, especially in the Special Use categories.

REFLECTION AND POLICY RECOMMENDATIONS

Background Information

This research project was informed by a scoping task associated with a NSW State-wide training program for LALC on the NSW planning system. The training initiative was a project by the NSW Department Planning and Environment with support from the University of Sydney's, Henry Halloran Trust.

The training was in response to issues raised throughout the NSW Government's 'Inquiry into Economic Development in Aboriginal Communities (2015) and the subsequent findings, many of which were planning related. The Inquiry focused on the accomplishments of the Aboriginal Land Rights Act (1983) to provide financial support and land to support Aboriginal people in their journey towards achieving economic sustainability and self-determination.

A primary compensatory instrument in the Aboriginal Land Rights Act (1983) is the granting of land to Aboriginal people through the establishment of an Aboriginal Land Council framework. However, throughout the Inquiry (2015) one of the barriers identified as inhibiting Aboriginal people from achieving economic sustainability and self-determination was the use of restrictive land use planning decisions on land granted to Aboriginal Land Councils.

In response to the matters raised through the Inquiry (2015), the NSW Department Planning and Environment established a state-wide training program for LALCs on the planning system. Many of the Land Councils who participated in the training sessions again raised concerns over perceived irregularities related to land use planning decisions and their land holdings, which in effect reduced land value and any future usability. This research set out to examine these issues in more detail by exploring land use planning decision linked with four individual Land Councils. Each Land Council was chosen based on its ability to reflect the diversity of the NSW LALC system and locational factors such as; urban, outer urban and rural.

Observations

The NSW Government's 'Inquiry into Economic Development in Aboriginal Communities (2015) identified some of the issues that inhibit the objectives of the NSW Aboriginal Land Rights Act (1983) from being met connected with land use planning processes.

A primary issue was the lengthy delays associated with the determination of land claims under the Aboriginal Land Rights Act (1983). These delays primarily related to a land claim, which was initially refused by the Minister for Crown Lands, which ultimately resulted in favour of the Land Councils. This course led to long intervals between the initial land claim refusal and the appeal process. The submissions highlighted the unproductive nature of this process, which locked up the resources of both Land Councils and Government Departments through lengthy and repeated procedures. The result being that land is often left underdeveloped and unproductive for long periods.

The Deerubbin case study, looking at the Parramatta Jail site connection to the North Parramatta redevelopment precinct, is a clear demonstration of the issues highlighted during the Inquiry (2015). The Minister for Crown Lands refused the initial land claim, but on legal appeal, the grant was upheld. As a result, the transfer of the land title was delayed. The consequence being the Parramatta

Jail site (owned by Deerubbin LALC) was locked out of the land-use planning and heritage benefits connected with the PNUT precinct. This led to a situation where the Parramatta Heritage Jail and its surrounding wall are likely to remain underdeveloped into the foreseeable future.

It's also clear from the Deerubbin case study that a large amount of resources went into the land claim appeal and land transfer process. It would also be fair to say that significant Government resources also went into the land claim process and the initial master plan studies for the PNUT precinct that included and subsequently removed the Parramatta Heritage Jail from the urban transformation initiative (See Appendix E for more detail on the process).

As the case studies show, and is particularly evident regarding Deerubbin's land in the Parramatta North Precinct, State planning authorities need to re-examine their consultation protocols with Indigenous communities to better understand and support the aspirations of LALC and the land grant system.

One of the issues highlighted through all the case studies was the responsibility of LALC's regarding the restoration or maintenance of listed Heritage items. Linked with this was the financial viability to protect and maintain heritage items into the future⁶⁷. Most of the case studies included concerns and obligations related to significant heritage items. For Brewarrina LALC it was the protection of ancient Aboriginal heritage items linked with Dreamtime stories, for Darkinjung it was the Heritage listed Parramatta Jail site, for La Perouse its old Mission Church and Yarra Bay House. It seems that the responsibilities for LALC in their commitment to restoring or maintaining heritage items are often forgotten.

NSW Aboriginal Land Rights Act (1983) operates in a way that ensures a high percentage of land claims relate to under-developed land, often left vacant, while neighbouring land sites are progressively developed⁶⁸. Thus, you have a situation where the area has experienced urban development while the land granted to LALC remained open space or bushland. This situation seems to create reluctance by planning authorities to give development approval when LALC's aspire to develop their land.

This situation was highlighted in the Law Society submission to the NSW Governments 'Inquiry into Economic Development in Aboriginal Communities (22nd of October 2015). They identify the effect of recent LEP amendments⁶⁹ by Local NSW Councils, which have resulted in large tracts of underdeveloped land granted to LALC being zoned as environmental or conservation thus removing any value from the land and any future viable use.

This scenario is evident in the Darkinjung case study. The land surrounding Darkinjung's site had been developed primarily as caravan/mobile home parks prior to Darkinjung, being granted the adjoining undeveloped land. Wyong Council not only refused Darkinjung DA to build a caravan/mobile home park, they rezoned the land to environmental to further prohibit the development proposal.

NSW Local Government authorities hold the primary responsibility for the development of strategic land use planning policies in NSW, primarily the development of new Local Environmental Plan (LEP) and land use zones. The

⁶⁷ These concerns were also raised in the NSW Aboriginal Land Council submission to the Inquiry into Regional Planning Processes (2016).

⁶⁸ See Appendix P - Aboriginal Land Rights Act 1983 and Claimable Land.

⁶⁹ In line with the 'Standard Instrument' 2006 requirements

Darkinjung case identifies a failure by the Local Government Authorities to meet their obligations to consult with key stakeholders when undertaking a new LEP, especially if their land is affected by a rezoning proposal.

Evidence of the failure by different Government Planning Authorities to engage constructively with LALC's in strategic land use planning decisions was apparent throughout each of the case studies. Indicating that LALC's are often not consulted on the development of a new LEP even when it includes a proposal to downzone their land.

This situation highlights the need for a stronger requirement on Local Government and Planning authorities to consult directly with LALC on the development of the strategic land-use planning policies. It will also render the land use zoning process more equitable concerning indigenous land rights.

The 'NSW Aboriginal Land Council' submission on the 'Review of NSW Planning System (2011) addressed this issue. They argued for a mandatory notification system for planning authorities to engage with LALC on strategic planning matters and development decisions that affect their land holdings.

The use of the 'Special Activities' (SP1) land use zone for Aboriginal reserves and missions, the increasingly restrictive nature of the SP 1 zone and a lack of clarity on how the zones and associated clauses might be interpreted were underlined in the La Perouse Case Study. One option is to advocate for those sites owned by LALC and zoned SP1 Special Activities to be transferred to SP2 Infrastructure; this would broaden the lands potential usability. Also, the Department of Planning and Environment should issue guidelines for Local Government Authorities on the use of SP1 and SP2 zones regarding LALC. This would ensure consistency on how the zones are allocated and provide a clearer interpretation of the clauses with the zones in the future.

The NSW Government's Department Planning and Environment 'Darkinjung Delivery Framework' Consultation Paper (November 2018) is an important policy initiative. It includes a framework for the creation of a State Environmental Planning Policy (SEPP) for LALC's linked with a strategic land assessment process, combined with an independent planning approval pathway for LALC. This is an important policy initiative in the planning space and should be monitored.

Future Policy Consideration

This research indicates that planning authorities, need to take closer consideration of statutory land use planning controls and their impact on the land holding of LALCs. They also need to find ways of supporting LALCs with identifying pathways that will help them in realising a level of economic sustainability.

LALC's also need to show a higher level of due diligence in engaging with the planning system, and this was obvious in the case studies where LALC's were unaware of zoning amendments until after they are approved.

The Department of Planning and Environment's, Planning for Non-Planners course, delivered to LALCs across the State in collaboration with Sydney University has been an important starting point towards supporting a more informed level of engagement between LALCs and staff from the NSW Department of Planning and Environment so continuation of this project is essential.

The case studies stress the specific differences between the regional and metropolitan character of LALCs regarding funding and income capacity. LALCs, who have access to high-value land, predominantly those located along the eastern foreshores, have access to increased opportunity for creating and building financial capacity through the sale or development of their land linked with investment strategies. However, for rural-based LALCs like Brewarrina the sale of land is unlikely to generate any high-value outcomes. Although they do have land opportunities that could be used to develop an agricultural industry, they need additional financial support if they are to achieve economic sustainability.

One option is for the State Government to provide similar support to that outlined in the 'NSW State Government Budget' (2018-19) for drought-affected farmers, which was a \$50,000 interest-free loan for up to seven years. This kind of initiative could be established for rural-based Land Councils to develop viable agriculture-based projects that could support the development of an Indigenous-farming sector and bring the benefit of fresh fruit and vegetables to isolated communities.

A proportion of LALCs has direct responsibility or obligations for significant listed heritage items, and the case studies identify the financial liabilities associated the restoration or maintenance of these. It seems that the Government needs to go beyond just listing significant cultural and heritage items and move towards the development of longer-term sustainable pathways to ensure that listed heritage items can be restored and maintained.

The NSW Department of Planning and Environment and the Greater Sydney Commission should work with LALCs to identify listed heritage items for inclusion in NSW Regional and District plans. The Plan could comprise a plan of management listed items, a review of the current land use zoning controls and a funding program.

The NSW Department of Planning and Environment should review the increasing restrictive nature of the 'Standard Instrument LEP' template land use zones particularly the 'Special Activities' zone, which is often allocated to Aboriginal reserves and missions. They should either expand the zone so that it better reflects the history and land use activities of old Aboriginal reserve precincts or create a specific zone for this purpose.

The NSW Government's Department Planning and Environment 'Darkinjung Delivery Framework' Consultation Paper (November 2018) which includes a framework for the creation of a State Environmental Planning Policy (SEPP) for LALC's linked with a strategic land assessment process, combined with an independent planning approval pathway for the LALC is a significant policy initiative for LALC and it should be monitored to ensure that all NSW LALC's benefit from the initiative.

The 'Local Government NSW' (LGNSW) is the principal organisation representing the affairs of Local Government organisation across NSW. They also play a vital role in land use planning and sustainable development for local communities. The organisation has a longstanding interest in Aboriginal Affairs and in supporting reconciliation initiatives. They are in a unique position to promote awareness about the intersection between the purpose of the Aboriginal Land Rights Act (1983) in granting of land to LALCs and the opportunities that exist for land use planning decisions to support those land assets in delivering investment opportunity. They could do this by developing a

program aimed at educating the planning profession and raising awareness at the Local Government level. Also, this matter could be incorporated into the LGNSW Annual Conference as a way of fostering a greater understanding of the issues.

More broadly, it seems that raising awareness and appreciation of the public policy initiatives and legislation behind the transfer of Crown land to Aboriginal Land Councils with the planning profession is needed. One option is for peak-planning organisations to develop programs aimed at educating the planning profession. University planning programs should support a greater awareness of these matters.

APPENDIXES

Appendix A Table Outlining the Environment Planning and Assessment Act (1979) Framework

Table 1 Environment Planning and Assessment Act (1979)	
Local Planning Framework	State Planning Framework
<p>Local Environmental Planning Instruments (LEP)</p> <p>The Local Environmental Plans set out the core legal controls regarding land used and developed in a local government area.</p> <p>Prepared by Councils in consultation with the community and elected representatives. Approved by the Minister for Planning and Environment.</p>	<p>Regional Plans</p> <p>Regional Plans deal with future population needs, housing, jobs, infrastructure, healthy & environment, cultural & heritage matters.</p> <p>The “Greater Sydney Regional Plan. A Metropolis of three cities-connecting people” (2018). This overreaching plan is linked with District Plans and is overseen by the Greater Sydney Commission under the Minister for Planning.</p> <p>NSW Regional Plans. These include:</p> <ul style="list-style-type: none"> Central Coast Regional Central West and Orana Regional Far West Regional Hunter Regional Illawarra–Shoalhaven Regional New England North West Regional North Coast Regional Riverina Murray Regional South East And Tablelands Regional. <p>These are overseen by the Department Planning and Environment and signed off by the Minister.</p>
<p>Development Control Plans</p> <p>Prepared & approved by Council’s after consultation with the community and stakeholders - non-statutory controls.</p> <p>The Development Control Plan (DCP) contains detailed planning and design guidelines for consideration in preparing a Development Application. Note that these plans have less legal standing than Local Environmental Plans.</p>	<p>State Environmental Planning Policies (SEPP)</p> <p>SEPP’s can be specific or broad.</p> <p>Prepared by the Department of Planning and Environment.</p> <p>Approved by the Minister</p>
Source: Authors	

Appendix B Summary of aims within each Regional Plan supporting opportunities for economic self-determination and revitalizing for Aboriginal Communities

- Central Coast Regional Plan 2036 (2016).

The Central Coast Regional Plan 2036 (2016) recognises the rich Aboriginal heritage of the area and the strong connection between Aboriginal people and the region. It identifies that the NSW Government and the Central Coast Council will work with the Local Aboriginal Land Council Darkinjung to determine how its land can best be planned, managed, and developed into the future.

- Central West and Orana Regional Plan 2036 (June 2017).

The Central West and Orana Regional Plan 2036 report contain directions to support the economic self-determination of Aboriginal communities with a focus on revitalising and promoting aboriginal language and culture. It includes a commitment to consulting with Aboriginal communities on cultural heritage issues.

- Far West Regional Plan 2036 (August 2017).

The Far West Regional Plan 2036 contains commitments to enhancing the economic self-determination of Aboriginal communities through promotion to support aboriginal language and culture. It makes particular reference to working with the local Aboriginal Land Council to help the development of tourism-based businesses and to identify any constraints that affect the potential commercial use of the Aboriginal land holdings. It identifies significant Aboriginal Heritage items such as Mungo Man and Mungo Lady and the Brewarrina Aboriginal Fish Traps.

- Hunter Regional Plan 2036 (October 2016).

The Hunter Regional Plan 2036 included broad directions to support the economic self-determination of local Aboriginal communities and in consultation with these communities identify and protect items of heritage value.

- Illawarra–Shoalhaven Regional Plan 2036 (November 2015).

The Illawarra–Shoalhaven Regional Plan 2036 includes directions to strengthen the economic self-determination of Aboriginal communities and to work with Aboriginal Land Councils to conduct a strategic assessment of their landholding to identify priority sites where future economic opportunities can be supported.

- New England North West Regional Plan 2036 (August 2017).

The New England North West Regional Plan 2036 contains directions on strengthening Aboriginal community resilience and to working with the local Aboriginal Councils to conduct a strategic assessment of the landholdings to identify priority sites for future economic or housing opportunities. This plan also contains actions linked to mapping areas of Aboriginal heritage.

- North Coast Regional Plan 2036 (March 2017).

North Coast Regional Plan 2036 (March 2017) has a focus on Tourism and Aboriginal culture. It points to the rich Aboriginal cultural history connected to the Bundjalung, Gumbaynggirr, Dunghutti, Biripi and Yaegl peoples of that region. This plan contains a commitment to preparing destination management plans and other tourism-focused strategies that recognise culturally appropriate

Aboriginal tourism opportunities. A commitment to working with Aboriginal people to build a relationship based on trust and integrity, and to tap into the unique local knowledge held by these communities. Other directions aim to support local growth management strategy, which will be undertaken in consultation with Local Aboriginal Land Councils and will seek to foster closer cooperation.

- Riverina Murray Regional Plan 2036 (2017).

The Riverina Murray Regional Plan 2036 incorporates directions to improve the economic self-determination of Aboriginal communities and protect Aboriginal heritage within the regions. Additional actions include working with Local Aboriginal Land Councils to conduct a strategic assessment of landholdings and identify priority sites that have economic development potential. The report also commits to undertaking consultation with local Aboriginal communities, including the Yorta Yorta, Wiradjuri, Wamba Wamba, Barapa Barapa, Wadi Wadi, Muthi Muthi, Latji Latji, Barkandji and Nyampa peoples.

- South East and Tablelands Regional Plan 2036 (July 2017).

The South East and Tablelands Regional Plan 2036 incorporates directions aimed at strengthening the economic self-determination of Aboriginal communities. The plan includes a commitment to working with Local Aboriginal Land Councils in undertaking a strategic assessment of landholdings to identify priority sites with those with economic development potential. The report commits to its current work with Eden Local Aboriginal Land Councils and several State agencies to progress an Aboriginal Land Agreement (the first in NSW) and the development of a land capability database.

Example - Central Coast Regional Plan 2036 (2016) Goals

Stated Goals (5) to work with and support the Local Aboriginal Land Council. The details of the Goal are shown in the following Table, which list each of the Regional Plans Goals.

Table - Goals - Central Coast Regional Plan

1. Identify opportunities in the Northern and Southern Growth Corridors and update local plans to foster economic development.
2. Secure long-term planning and infrastructure outcomes by updating the North Wyong Shire Structure Plan.
3. Align housing and employment land with development-enabling infrastructure through the implementation of an Urban Development Program, Employment Land Development Monitor, and review of developer contributions.
4. Support the Darkinjung Local Aboriginal Land Council in the strategic assessment of its landholdings to identify priority sites for further investigation of economic opportunities.
5. Address land use needs west of the M1 Pacific Motorway to provide integrated and adaptable planning outcomes for natural assets, productive lands, and rural lifestyles.
6. Support Central Coast Council in aligning local plans with the Regional Plan, and develop and implement a local planning toolkit to inform the preparation of local planning strategies.

Reference: NSW Department of Planning & Environment Central Coast Regional Plan 2036. October 2019.

Appendix C District Plans and the Correlated Local Government Areas


Table - Six Districts Plans and Local Government Areas					
<u>Central</u>	<u>North</u>	<u>West Central</u>	<u>West</u>	<u>South West</u>	<u>South</u>
City of Sydney	Hornsby	Blacktown	Blue Mountains	Camden	Georges River
Bayside	Hunters Hill	Cumberland	Hawkesbury	Campbelltown	Canterbury-Bankstown
Burwood	Ku-ring-gai	Parramatta	Penrith	Fairfield	Sutherland
Canada Bay	Lane Cove	The Hills		Liverpool	
Inner West	Northern			Wollondilly	
Randwick	Beaches				
Strathfield	Mosman				
Woollahra	Willoughby				
Waverley	Ryde				
	North Sydney				

Appendix D Darkinjung's Appeal to the NSW LEC Against Australian Walkabout Wildlife Park

Darkinjung Local Aboriginal Land Council v Minister for Planning and Infrastructure & Anor; Australian Walkabout Wildlife Park Pty Limited (ACN 115 219 791) at Trustee for the Gerald and Catherine Barnard Family Trust v Minister for Planning and Infrastructure & Anor November 2015. This case related to an approval by the Planning and Assessment Commission to extend the Rocla, Calga Sand Quarry which threatens to destroy the cultural landscape in the area, linking to an Aboriginal Women's site in the vicinity of the quarry.

Appendix E Timeline History of Darkinjung's DA Process

Table 1- Timeline - Halekulani Development Approval Process	
Timeline	Activities
2011-2012	Darkinjung commissioned pre DA consultancy studies and a detailed 'Social Impact Assessment' study.
2012 June	Darkinjung lodged DA with Wyong Council DA (DA/493/2012) for a Caravan/Manufactured Home Park comprising 251 on land adjacent to Lake Munmorah in Halekulani. DA submitted under Wyong LEP 1991 Land was Zoned (7b) Scenic Protection - caravan/mobile home parks were a permissible use with consent. (DA included Lot 589, DP 728958, Lot 627, DP 727733, & Lot 616, DP 821112)
2012 July	DA went on exhibition. 2,157 objections to DA. Wyong Council wrote to Darkinjung raising a number of concerns and requesting additional information.
2013 December	Wyong Council new LEP, December 2013. New LEP rezoned Darkinjung land to Environmental Management E3 and caravan and manufactured home parks became a prohibited use.
2014 February	Darkinjung responded to the overdevelopment and traffic concerns, by provided additional information and amended the DA. Entire northern end of the development was removed from the DA and set aside as vegetation offset (1405 Macleay Drive Lot 616) Development became 50 + living as requested by Council. Removal of onsite facilities. Mobile dwelling sites reduced to 178. Amended easement encroachment. Revised Social Impact Assessment Statement.
2014 27 August	Amended DA proposal received 997 submissions and only 53 in support. Wyong Council refused DA based on the following: significant ecological impacts to flora and fauna and the wetland environment, traffic generation, inadequate infrastructure and social impacts.
2014 October	Darkinjung lodged an appeal to the NSW Land & Environment Court (LEC) against Wyong Council's refusal.
2015 April to September	LEC Mediation Process Additional reports were submitted in response to amendment: BASIX certificate, bushfire protection certificate, ecological assessment report, landscape report, local government regulations assessment, site analysis plan, habitat tree diagram, concept engineering plans, potable water and sewer services.
2015 December	LEC Court Mediation, Process Reached an Agreement Dwelling lots reduced from 113 lots to 99. 39 Conditions of Consent.

	<p>One condition was for conservation-offsets, located within the immediate area of the proposed development and concerns related to the Powerful Owl habitat protection (This represented a total of 8.3ha nearly three times larger than the proposed development site). "The parcels of land identified for conservation offset are" Lot 588 DP 728958, Lot 628 DP 727733, two parcels of Crown land adjacent to the Subject Land and Lot 616 DP 821112 land owned by the Applicant. </p>
2016 3 May	DA approved by the LEC Court.
2018 May	<p>LEC Order of Consent Approved.</p> <p>DA Approval due to Expire In August 2018</p> <p>Darkinjung LALC Legal Team wrote to Council requesting a deferral to CC regarding the most contentious of the DA conditions – the conservation offset provision.</p> <p>The offset land was part negotiations linked to an Aboriginal Land Agreement and it had not been given to Darkinjung at that point in time.</p>
2018	<p>All other condition had been satisfied.</p> <p>Cost of DA Approval for Darkinjung</p> <p>The total legal and consultancy fee costs for the DA process in September 2015 was \$453,848.97.</p>

Appendix F Timeline History of Deerubbin and the North Parramatta Redevelopment Decision

The Table presents a Timeline on decisions associated with the Parramatta North, Urban Transformation (PNUT) Area, and Deerubbin LALC Land Claim

Table - Timeline - 'Parramatta North, Urban Transformation (PNUT) Area and matter linked to the Parramatta Jail site and the surrounding Aboriginal land claim

Timeline	Activities
2012 February	Deerubbin Local Aboriginal Land Council land claim -under the Aboriginal Land Rights Act (1983) in relation to Parramatta Jail and surrounding lands by Deerubbin LALC. Claim refused by the Minister of Crown lands.
2013 February	Urban Growth NSW Development Corporation Oversight -Parramatta North Redevelopment Precinct Initial planning & technical studies, consultation, & draft Masterplan framework. The Masterplan precinct included the historical walled area that incubates Parramatta Goal, the Linen Service and surrounds land.
2013 November & December	Urban Growth NSW undertaken consultation and workshops on the proposed plans for the North Parramatta Urban Renewal Precinct. Parramatta Jail and the surrounding land included.
2014 July & August	Urban Growth NSW undertakes additional consultation that includes Drop-in sessions, advertisements in local newspapers and newsletters.
2014 July	Department of Planning and Environment. 2014. Parramatta North Urban Renewal Area. Site State Significant Site Assessment Report.
2014 December	NSW Land and Environment Court uphold Deerubbin's Land Claim - transferred by December 2016.
2014 December	Urban Growth NSW published PNUT Heritage Snapshot'. It included the Parramatta Jail, Linen Service and surrounding lands.
2014 July	Minister for Planning agrees to consider the PNUT area as a 'State Significant Site'. Proposal includes Parramatta Jail and the surrounding lands.
2014 August	Draft State Environmental Planning Policy for PNUT area. Draft Included former Parramatta Goal, surrounding land and the NSW Linen Service.
2014 October	Urban Growth NSW 'State Significant Site' for PNUT area Study to NSW Department of Planning the Environment. Proposal included Parramatta Goal site, surround land, and other heritage building. Included clause that funds generated through the redevelopment project will be used to restore all the identified heritage buildings. Report identified 28,000 square metres of heritage for adaptive reuse.

2014 November	Urban Growth NSW. Reframing Parramatta North. Parramatta North Urban Renewal. Parramatta Jail Included
2014 December	Urban Growth. Parramatta North Urban Transformation. Heritage Snapshot. Report published and includes Parramatta Jail.
2014	Draft State Environmental Planning Policy. Parramatta North Urban Transformation (PNUT) area 2014
2015 March	Deerubbin LALC writes to the NSW Premier advising of the Land and Environment Court decision and the transfer of the Parramatta Jail site and surrounding lands to Deerubbin by December 2016
2015 June 9th	SJB Planning. June 2015. Parramatta North Urban Transformation. Draft State Environmental Planning Policy (PNUT) 2014 Response to Submissions. Deerubbin LALC land holding removed from the PNUT area. Linen Service Site still included for rezoning.
2015 July	Deerubbin LALC writes to Urban Growth requesting that Parramatta Jail and surrounding lands be reincorporated in the PNUT area, Cumberland Precinct.
2015 July	Department of Planning and Environment Parramatta North, Urban Transformation (Area, State Significant Site Assessment Report (July 2015) Department of Planning and Environment, released revamped State Significant Site Assessment Report for the PNUT area. Recommends that a planning proposal for Parramatta Goal, the surrounding land, and the Linen Service, be undertaken at a later stage.
2015 July	State Environmental Planning Policy Amendment (Parramatta North) 2015 – This policy was repealed the day after commencement.
2016 July	Greater Sydney Commission announcement-Parramatta North-Heritage Building Repairs Begin Includes the following heritage issues: Cumberland Hospital buildings Norma Parker Centre An investigation of evidence on Aboriginal and early European presence in the area.
2017Aug	Principles of Engagement Agreement Signed Between. Deerubbin Local Aboriginal Land Council and the Greater Sydney Commission.
2017 November	Deerubbin Local Aboriginal Land Council Preliminary Planning Report (November 2017). Draft Report Former Parramatta Jail and Adjoining Land



Table Created by Stacey Miers based on the following sources: Deerubbin Local Aboriginal Land Council Preliminary Planning Report November 2017, Department of Planning & Environment. 2014. Parramatta North Urban Renewal Area. Site State Significant Site Assessment Report, Department of Planning & Environment. 2015. Parramatta North Urban Renewal Area. Site State Significant Site Assessment Report, North Parramatta Mixed Use Master Plan. 2004. SJB Planning. June 2015. Parramatta North Urban Transformation Draft State Environmental Planning Policy (PNUT) 2014 Response to Submissions 9 June 2015 Parramatta North Urban

Transformation Response to Questions. Greater Sydney Commission. Parramatta North Heritage repairs begin (July 28, 2016)

Appendix G Deerubbin's submission to the Greater Sydney Commission on the Draft Western District Plan (December 2017)

Deerubbin submission to the Greater Sydney Commission on the Draft Western District Plan (December 2017), argued for zoning amendments to the Plan and acknowledged that the following research studies would need to be undertaken before any amendments could be made to Parramatta LEP 2011 concerning their landholding.

List of Research For Deerubbin's Planning Proposal in North Parramatta

1. Biodiversity and sustainability
2. Ecological assessment report
3. Economic factors
4. Flooding and water quality;
5. Geotechnical and contamination;
6. Heritage – aboriginal heritage, built heritage and archaeology; 
7. Heritage - cultural landscape report
8. Landscape report
9. Social factors- social significance report
10. Traffic and transport;
11. Urban design and design excellence;
12. Utilities and infrastructure 

Source: Deerubbin LALC Draft Preliminary Planning Report for Parramatta Goal and Adjoining Land 2017.

Appendix H Timeline History of Frenchman's Bay Aboriginal Precinct

Timeline –La Perouse Occupation and Land Ownership

Timeline	Events
Pre 1778	Established Aboriginal Community
1788	The British and French arrived in Botany Bay.
1885	Frenchman's Bay La Perouse - 3 ha of land declared as a Reserve for the use of the Aboriginal people.
1890's	Original homes & Mission Church built close to the beach.
1903	Yarra Bay House built –provided accommodation for various Government Department and a boy's home until 1984.
1920s	Randwick Council wrote to the Aborigines Protection Board requesting that the houses at the Reserves be removed.
1928	Petition signed by 53 reserve residents published in the Sydney Morning Herald against removal.
1929-31	The homes & Mission Church were moved from the beachfront dune area to higher ground. Randwick Council converted the foreshore section of the reserve into a public recreation area.
1960	Randwick Council attempts to close the reserve. The NSW State and Federal governments, opposing the closure.
1966	A joint Parliamentary Inquiry into the Welfare of Aboriginal people focused on La Perouse. The NSW Government Inquiry came up with the 'Endeavour Project', which was never enacted.
1972	New homes built on the Reserve
1973	Reserve handed over to NSW Aboriginal Lands Trust
1984	Land Claim Filled – ownership of the Reserve land and Yarra Bay House passed to the La Perouse LALC

Sources: Condensed information from Office of Environment and Heritage -La Perouse Mission Church and Randwick Council Reports by Stacey Miers

Appendix I Standard Instrument-Principal Local Environmental Plan 2006

Standard Instrument Zones—Principal Local Environmental Plan 2006

Rural Zones	Special Purpose Zones
RU1 Rural Zones	SP1 Special Activities
RU1 Primary Production	SP2 Infrastructure
RU2 Rural Landscape	SP3 Tourist
RU3 Forestry	Recreation Zones
RU4 Primary Production Small Lots	RE1 Public Recreation
RU5 Village	RE2 Private Recreation
RU6 Transition	Environment Protection Zones
Primary Production	E1 National Parks and Nature Reserves
RU2 Rural Landscape	E2 Environmental Conservation
RU3 Forestry	E3 Environmental Management
RU4 Primary Production Small Lots	E4 Environmental Living
RU5 Village	Waterway Zones
RU6 Transition	W1 Natural Waterways
Residential Zones	W2 Recreational Waterways
R1 General Residential	W3 Working Waterways
R2 Low Density Residential	
R3 Medium Density Residential	
R4 High Density Residential	
R5 Large Lot Residential	
Business Zones	
B1 Neighbourhood Centre	
B2 Local Centre	
B3 Commercial Core	
B4 Mixed Use	
B5 Business Development	
B6 Enterprise Corridor	
B7 Business Park	
B8 Metropolitan Centre	
Industrial Zones	
IN1 General Industrial	
IN2 Light Industrial	
IN3 Heavy Industrial	
IN4 Working Waterfront	

Note: Version for 5 August 2016 to date (accessed 30 November 2016 at 13:18)

Appendix G Randwick LEP 2012 Land Use Table - Zone SP1 Special Activities and Zone SP2 Infrastructure

Randwick Council Local Environmental Plan 2012 Land Use Table - Zone SP1 Special Activities and Zone SP2 Infrastructure

Zone SP2 Infrastructure

1 Objectives of zone

- To provide for infrastructure and related uses.
- To prevent development that is not compatible with or that may detract from the provision of infrastructure.
- To facilitate development that will not adversely affect the amenity of nearby and adjoining development.
- To protect and provide for land used for community purposes.

2 Permitted without consent

Recreation areas

3 Permitted with consent

Environmental protection works; Flood mitigation works; Roads; The purpose shown on the [Land Zoning Map](#), including any development that is ordinarily incidental or ancillary to development for that purpose

4 Prohibited

Any development not specified in item 2 or 3

Zone SP1 Special Activities

1 Objectives of zone

- To provide for special land uses that are not provided for in other zones.
- To provide for sites with special natural characteristics that are not provided for in other zones.
- To facilitate development that is in keeping with the special characteristics of the site or its existing or intended special use, and that minimises any adverse impacts on surrounding land.

2 Permitted without consent

Recreation areas

3 Permitted with consent

Environmental protection works; Flood mitigation works; Roads; The purpose shown on the [Land Zoning Map](#), including any development that is ordinarily incidental or ancillary to development for that purpose

4 Prohibited

Any development not specified in item 2 or 3

Appendix K Randwick LEP 2012 Land Use Table-RE1 Public Recreation and Zone RE2 Private Recreation

Randwick Council Local Environmental Plan 2012 Land Use Table - RE1 Public Recreation and Zone RE2 Private Recreation

Zone RE1 Public Recreation

1 Objectives of zone

- To enable land to be used for public open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.
- To protect, manage and restore areas with high biodiversity, ecological and aesthetic values, including buffer areas and habitat corridors.

2 Permitted without consent
Environmental facilities;
Environmental protection works;
Flood mitigation works; Roads

3 Permitted with consent
Animal boarding or training establishments; Boat launching ramps; Boat sheds; Building identification signs; Business identification signs; Car parks; Child care centres; Community facilities; Heliports; Horticulture; Information and education facilities; Jetties; Kiosks; Markets; Passenger transport facilities; Plant nurseries; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Respite day care centres; Restaurants or cafes; Water recreation structures

4 Prohibited

Any development not specified in item 2 or 3

Zone RE2 Private Recreation

1 Objectives of zone

- To enable land to be used for private open space or recreational purposes.
- To provide a range of recreational settings and activities and compatible land uses.
- To protect and enhance the natural environment for recreational purposes.
- To protect, manage and restore areas with high biodiversity, ecological and aesthetic values, including buffer areas and habitat corridors.

2 Permitted without consent
Environmental protection works

3 Permitted with consent
Animal boarding or training establishments; Building identification signs; Business identification signs; Car parks; Child care centres; Community facilities; Environmental facilities; Flood mitigation works; Helipads; Horticulture; Information and education facilities; Kiosks; Markets; Passenger transport facilities; Plant nurseries; Recreation areas; Recreation facilities (indoor); Recreation facilities (major); Recreation facilities (outdoor); Registered clubs; Respite day care centres; Restaurants or cafes; Roads; Take away food and drink premises

4 Prohibited

Any development not specified in item 2 or 3

Appendix L Randwick LEP 1998 (Consolidation) Land Use Table- Zone No6A (Open Space Zone) and Zone No6B (Private Open Space Zone)

Randwick Local Environmental Plan 1998 (Consolidation)	
Land Use Table - Zone No 6A (Open Space Zone) and Zone No 6B (Private Open Space Zone)	
<p>Zone No 6A (Open Space)</p> <p>The objectives are:</p> <p>(a) To identify publicly owned land used or capable of being used for public recreational purposes, and</p> <p>(b) To allow development that promotes, or is related to, the use and enjoyment of open space, and</p> <p>(c) To identify and protect land intended to be acquired for public open space, and</p> <p>(d) To identify and protect natural features that contribute to the character of the land, and</p> <p>(e) To enable the sustainable management of the land.</p> <p>(2) Development for the purpose of the following does not require development consent:</p> <p>Public utility undertakings; Recreation; Works (but not buildings) involved in landscaping, gardening or bushfire hazard reduction</p> <p>(3) Development for the purpose of the following requires development consent:</p> <p>Buildings ordinarily incidental or ancillary to landscaping, gardening or bushfire hazard reduction; Car parks; Child care centres; Clubs; Communication facilities; Community facilities; Earthworks; Helicopter landing sites; Markets; Outdoor advertising; Public transport; Recreation facilities; Restaurants; Roads</p> <p>(4) Any development not included in subclause (2) or (3) is prohibited.</p>	<p>Zone No 6B (Private Open Space)</p> <p>The objective is to:</p> <p>Enable private recreation facilities to be provided on privately owned land.</p> <p>(2) Development for the purpose of the following does not require development consent:</p> <p>Public utility undertakings; Recreation; Works (but not buildings) involved in landscaping, gardening or bushfire hazard reduction</p> <p>(3) Development for the purpose of the following requires development consent:</p> <p>Buildings ordinarily incidental or ancillary to landscaping, gardening or bushfire hazard reduction; Car parks; Child care centres; Clubs; Communication facilities; Community facilities; Earthworks; Helicopter landing sites; Markets; Outdoor advertising; Public transport; Recreation facilities; Restaurants; Roads</p> <p>(4) Any development not included in subclause (2) or (3) is prohibited.</p>

*Appendix M Randwick LEP 1998 (Consolidation) Land Use Zone No5
(Special Use)*

Randwick Local Environmental Plan 1998 (Consolidation)

Land Use Table - Zone No 5 (Special Use)

(1) The objectives of Zone No 5 are:

- (a) to accommodate development by public authorities on publicly owned land, and
- (b) to accommodate development for educational, religious, public transport or similar purposes on both publicly and privately owned land, and
- (c) to enable associated and ancillary development, and
- (d) to allow for a range of community uses to be provided to serve the needs of residents, workers and visitors, and
- (e) to allow for the redevelopment of land no longer required for a special use.

(2) Development for the purpose of the following does not require development consent:

Bushfire hazard reduction; Public utility undertakings; Recreation; Roads

(3) Development for the purpose of the following requires development consent:

Animal establishments; Bed and breakfast accommodation; Boarding houses; Car parks; Cemeteries; Child care centres; Clubs; Communication facilities; Community facilities; Dwellings; Dwelling houses; Earthworks; Educational establishments; Health consulting rooms; Helicopter landing sites; Home activities; Hospitals; Markets; Multi-unit housing; Outdoor advertising; Penitentiaries; Places of worship; Plant nurseries; Public transport; Recreation facilities; Restaurants

(4) Any development not included in subclause (2) or (3) is prohibited.

Randwick Local Environmental Plan 2012

Land Use Zone R3 Medium Density Residential

1 Objectives of zone

- To provide for the housing needs of the community within a medium density residential environment.
- To provide a variety of housing types within a medium density residential environment.
- To enable other land uses that provide facilities or services to meet the day-to-day needs of residents.
- To recognise the desirable elements of the existing streetscape and built form or, in precincts undergoing transition that contribute to the desired future character of the area.
- To protect the amenity of residents.
- To encourage housing affordability.
- To enable small-scale business uses in existing commercial buildings.

2 Permitted without consent

Home occupations; Recreation areas

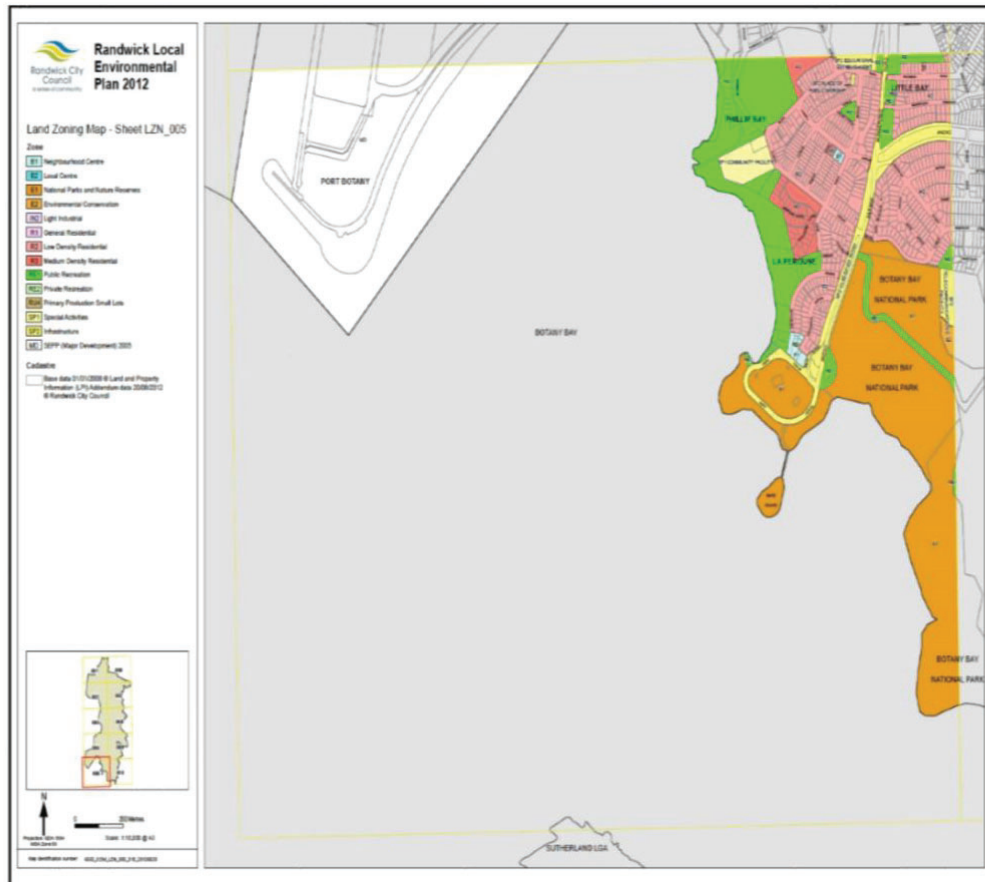
3 Permitted with consent

Attached dwellings; Bed and breakfast accommodation; Boarding houses; Building identification signs; Business identification signs; Business premises; Car parks; Centre-based child care facilities; Community facilities; Dual occupancies; Dwelling houses; Group homes; Home businesses; Hostels; Hotel or motel accommodation; Multi dwelling housing; Neighbourhood shops; Office premises; Passenger transport facilities; Places of public worship; Recreation facilities (indoor); Recreation facilities (outdoor); Residential flat buildings; Respite day care centres; Restaurants or cafes; Roads; Semi-detached dwellings; Seniors housing; Serviced apartments; Shops

4 Prohibited

Funeral homes; Any other development not specified in item 2 or 3

Appendix O Zoning Map Botany Bay & La Perouse Area Randwick LEP Zoning 2012



Aboriginal Land Rights Act 1983 No 42

Current version for 1 July 2018 to date (accessed 8 September 2018 at 09:34)

[Part 2 Division 2](#) Section 36

36 Claims to Crown lands

(1) In this section, except in so far as the context or subject-matter otherwise indicates or requires:

claimable Crown lands means lands vested in Her Majesty that, when a claim is made for the lands under this Division:

- (a) are able to be lawfully sold or leased, or are reserved or dedicated for any purpose, under the [Crown Lands Consolidation Act 1913](#) or the [Western Lands Act 1901](#),
- (b) are not lawfully used or occupied,
- (b1) do not comprise lands which, in the opinion of a Crown Lands Minister, are needed or are likely to be needed as residential lands,
- (c) are not needed, nor likely to be needed, for an essential public purpose, and
- (d) do not comprise lands that are the subject of an application for a determination of native title (other than a non-claimant application that is an unopposed application) that has been registered in accordance with the Commonwealth Native Title Act, and
- (e) do not comprise lands that are the subject of an approved determination of native title (within the meaning of the Commonwealth Native Title Act) (other than an approved determination that no native title exists in the lands).

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