



FEATURE ARTICLE

# The effect of land use planning decisions on the landholdings and viability of NSW Local Aboriginal Land Councils

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This article explores research undertaken on the Effect of Land Use Planning Decisions on the Landholdings and Viability of NSW Local Aboriginal Land Councils (Miers 2018). It looks at the impact of the NSW planning system on the land holdings of four Aboriginal Land Councils (two in metropolitan Sydney, one in western Sydney and one in regional NSW) and the effect of land use zoning decisions on their objective towards economic sustainability.

**F**rank Walker, who was the NSW Attorney in the late 70s and Minister for Aboriginal Affairs in the early 80s, was committed to the introduction of a state-based Aboriginal Land Rights Act, which came into force in 1983. The Act ensured that the old Aboriginal missions and reserves were transferred into Aboriginal ownership. It also provided additional opportunities for Aboriginal communities to acquire land and funds through the establishment of a network of Local Aboriginal Land Councils across most of NSW and a State-wide NSW Aboriginal Land Council.

Concerns started to surface regarding the function and operation of the NSW Planning System and its impact on the overall objectives of the *Aboriginal Land Rights Act* (1983) and the impact of planning decisions on the economic sustainability of Aboriginal Land Councils. Many of these concerns were outlined during the review of the NSW Planning System in 2011 and again during the inquiries by the NSW Parliament's Standing Committee on State Development into 'Economic Development in Aboriginal Communities'<sup>1</sup>, and 'Regional Planning Processes in NSW'<sup>2</sup>. Information presented by Aboriginal Land Councils to these inquiries highlighted the following matters:

- a general lack of consultation and engagement by planning authorities with Aboriginal peoples,
- neglect for Aboriginal Culture and Heritage matters, and
- limited regard for supporting economic development opportunities on Aboriginal owned land.

In response to these matters in 2017, the NSW Department of Planning and Environment initiated a statewide training program for Local Aboriginal Land Councils (LALCs) on the NSW planning system. Throughout the training, the adverse effect of the planning system on Aboriginal Land Councils was again highlighted. In response, a research project was established to evaluate the impact of Land Use Planning Decisions on the Landholdings and Viability of NSW Local Aboriginal Land Councils (Miers, 2018)<sup>3</sup>. The research focused on the growing

concern that the land being transferred to LALCs under the *Aboriginal Land Rights Act* (1983) was becoming a cost burden rather than a benefit, due primarily to land use planning decisions which have the effect of 'downzoning' Aboriginal lands or restricting their use for conservation or related purposes only.

The research included a literature review and four detailed case studies. The following Land Councils formed the basis for the case studies: Darkinjung, Deerubbin, Brewarrina, and La Perouse. They were chosen based on their ability to provide a broad spectrum of land use planning issues ranging from inner urban, outer urban, coastal, and rural contexts. Each case study provided different insights into the effect of strategic planning decisions and the failure or inability of Planning Authorities to engage with LALC.

The study revealed that the majority of land granted to LALC is Crown land or reserve land, often zoned for environmental

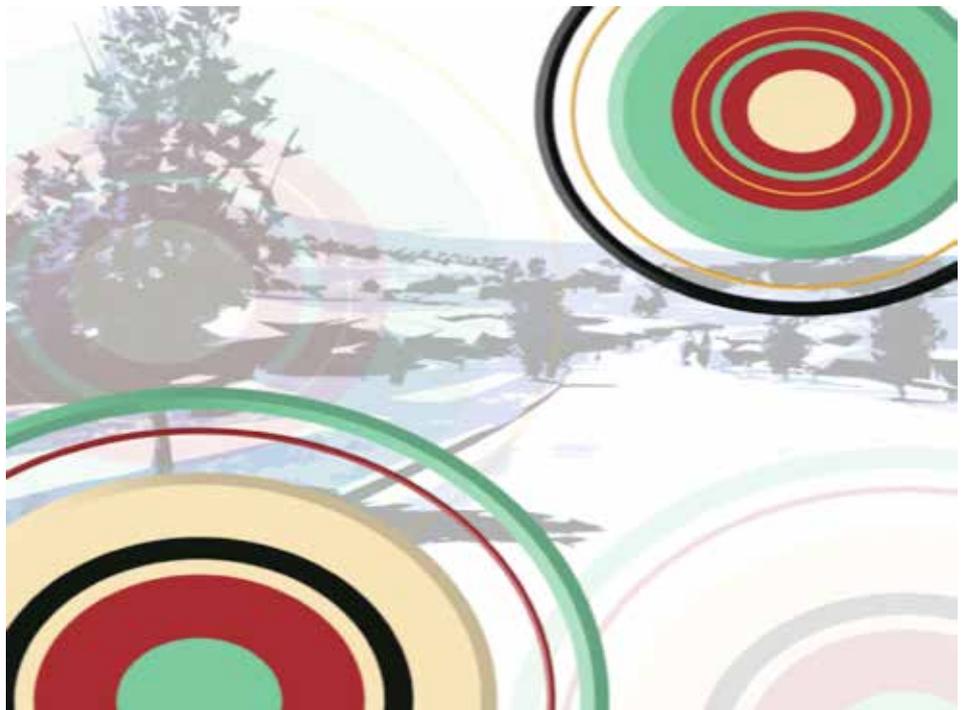


Figure 1: Artwork from cover of the Practitioner-in-Residence report of Stacey Miers 2019

conservation or restricted special use purposes, which as such, provides limited prospects to deliver any economic benefit without a rezoning.

The land use constraints are partly due to the function of the *Aboriginal Land Rights Act 1983* (NSW) which constrains land claims to undeveloped Crown land, while adjacent land has often been developed. There is therefore a reluctance by the planning authorities to rezone the land to higher uses such as residential or commercial.

The scenario outlined above is exemplified in the Darkinjung Case Study. Darkinjung's submitted a Development Application (DA) for vacant bush-land, which was zoned to permit mobile home parks. Council refused the DA proposal and then rezoned the land from Scenic Protection to Environmental Management to stop any future development proposals.

The study illustrates that planning authorities rarely consulted LALCs, even when the decision directly affects their land. The LALC then has to spend a lot of time and resources trying to redress strategic planning decisions. The study reveals that LALCs were often unaware of amendments to planning controls that affect their land because they were never informed.

In response to these issues, the NSW Government supported the introduction of State Environmental Planning Policy (SEPP) (Aboriginal Land) (March 2019) to provide LALCs with an unbiased development approval pathway. The new SEPP Policy is a significant initiative and should be monitored to ensure that all LALCs have an opportunity to benefit from the Policy over time.

A surprising outcome from the study is the responsibilities that many LALCs have for the maintenance or restoration of listed heritage places. For Brewarrina it is the protection and maintenance of the ancient Aboriginal stone fish traps; for Deerubbin, it is the Blacktown Native Institution and the Heritage listed Parramatta Gaol site; for La Perouse, it is the old Mission Church and Yarra Bay House. The protection or maintenance of heritage places also carries financial liabilities, which are not always assisted by the relevant planning authority's failure to engage with the LALCs on ways to ensure or support their protection.

It seems that Planning Authorities need to go beyond just listing heritage places and work with LALCs to develop longer-term sustainable pathways to ensure they are conserved and repaired. One option is for planning authorities to work with LALCs to identify listed heritage places for inclusion in a planning strategy, which may involve rezoning options.

The La Perouse Case Study highlights the increasingly restrictive nature of some 'Standard Instrument LEP' land use zones. The allocation of the 'Special



Figure 2: Mural, Redfern – commissioned by Stacey Miers

Use Activity' zone at La Perouse, which has historically been assigned to many Aboriginal reserves and mission lands, is one example that shows the encroaching restrictive nature of this zone. It demonstrated that while many zones may be compatible in name, they are increasingly restrictive regarding permissibility which is not compatible with the historic activities and use of these sites.

The study explored the effect of the 'sandstone curtain divide' characterising the divide between regional and metropolitan LALCs across NSW. Many of the rural-based LALC's like Brewarrina, own vast tracks of low-value land and so have limited opportunities to access any economic benefits compared with metropolitan LALC's in high land value area. One initiative could be to establish special projects linked with a funding stream for LALCs to support the development of rural-based industries.

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 and highlighting the role and function of LALCs with the relevant planning and teaching bodies could foster a greater understanding of the issues and support better outcomes ■

*Stacey Miers works on broad-based interdisciplinary projects that explore complex societal issues through the land-use planning interface. Her recent project set out to investigate the impact of the NSW Planning System on the land holdings of NSW Aboriginal Land Councils.*

#### Endnotes

- 1 Standing Committee on State Development (2016a) *Inquiry into economic development in Aboriginal Communities*. ISBN 9781922258250. Accessed 10 April 2019. <https://www.parliament.nsw.gov.au/lcdocs/inquiries/1691/Final%20report%20-%20030%20September%202016.pdf>
- 2 Standing Committee on State Development (2016b) *Regional Planning Processes in New South Wales*. ISBN 9781922258274. Accessed 10 April 2019. <https://www.parliament.nsw.gov.au/lcdocs/inquiries/2180/Report.pdf>
- 3 Miers, Stacey (2018) *The Effect of Land Use Planning Decisions on the Landholdings and Viability of NSW Local Aboriginal Land Councils*. ISBN: 978-0-6484296-4-7. Accessed 10 April 2019. [http://sydney.edu.au/halloran/publications/Miers\\_EffectOfLandUse.pdf](http://sydney.edu.au/halloran/publications/Miers_EffectOfLandUse.pdf)