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Have your say

The NSW Government is seeking comments on the proposed approach to supporting the economic development of land owned by the Darkinjung Local Aboriginal Land Council.

This Consultation Paper sets out several initiatives for this to occur. Feedback is specifically sought on:

- proposal for a strategic plan to identify a pipeline of Darkinjung Local Aboriginal Land Council (Darkinjung) sites to achieve economic benefit for its members
- the proposed Darkinjung State Environmental Planning Policy
- the proposed Ministerial Direction
- other measures being proposed to support the identification of development opportunities on Darkinjung land

You can provide feedback on this Consultation Paper by:

- emailing: centralcoast@planning.nsw.gov.au
- writing to Department of Planning and Environment, PO Box 1148, Gosford, NSW, 2250

The Department will review all submissions and use this feedback to inform the preparation of the State Environmental Planning Policy that will be presented to the Minister for Planning for consideration.

Published submissions will include your name and the organisation on whose behalf you may be writing. Contact details, such as email and postal addresses, and telephone numbers are not published. The NSW Department of Planning and Environment reserves the right to not publish selected submissions (in full or part). Please read the privacy statement available on the Department’s website, www.planning.nsw.gov.au/privacy.
The Challenge
The Challenge

With the passing of the Aboriginal Land Rights Act 1983, the NSW Parliament transferred land rights to the Aboriginal people of NSW for the loss and dispossession of their land. Importantly, the Aboriginal Land Rights Act 1983 recognises that land is of spiritual, social, cultural and economic importance to Aboriginal people.

The Central Coast Regional Plan 2036 (the Regional Plan) includes a direction to strengthen the economic self-determination of Aboriginal communities (Direction 6). The Regional Plan recognises that encouraging Aboriginal people to gain economic benefit from their land will support broader regional development, biodiversity and social outcomes.

This consultation paper identifies how possible changes to the planning system may facilitate these outcomes for Darkinjung and address some of the impediments faced by Local Aboriginal Land Councils.

Local Aboriginal Land Councils across NSW face a number of issues when considering the economic use of their land including:

- Responsiveness of the planning system to the land claims framework
- Lack of effective consultation with Aboriginal communities and limited cultural awareness by staff in local and state government
- Restrictive zoning due to previous status as Crown Land
- Lack of understanding within government and the community of the roles and responsibilities of Aboriginal Land Councils
- Potential for politicised decision making

This consultation paper outlines actions available in the NSW planning system that may assist to overcome these issues as they apply on the Central Coast and better support the achievement of Direction 6 in the Regional Plan.

A suite of interrelated actions is proposed involving education, collaboration, revised processes and legal change.

The proposed suite of actions is considered a pilot to be conducted on the Central Coast in the first instance, with potential for extension to other Local Aboriginal Land Councils, once evaluated and if considered to be successful.

It is noted that the uncertainty, time and costs involved in planning processes raised by Local Aboriginal Land Councils is an issue raised by other proponents who navigate the planning system. However, it is often exacerbated by the limited capacity of many land councils. Local Aboriginal Land Councils may require additional resourcing and/or capacity building to navigate the planning system and to realise the economic benefits of their land.

Local Aboriginal Land Councils also have additional requirements under the Aboriginal Land Rights Act 1983 concerning land development.

November 2018
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Background Context
Aboriginal Land Rights in NSW

The Aboriginal Land Rights Act 1983 was passed by the NSW Parliament to facilitate the return of land in NSW to Aboriginal people through claims over Crown land. A network of Aboriginal Land Councils was established to acquire and manage land as an economic base for Aboriginal communities, as compensation for historic dispossession and in recognition of the ongoing disadvantage suffered by Aboriginal communities.

The preamble of the Aboriginal Land Rights Act 1983 recognises that:

- Land in NSW was traditionally owned and occupied by Aboriginal people,
- Land is of spiritual, social, cultural and economic importance to Aboriginal people,
- It is fitting to acknowledge the importance which land has for Aboriginal people and the need of Aboriginal people for land, and
- It is accepted that as a result of past Government decisions the amount of land set aside for Aboriginal people has been progressively reduced without compensation in NSW.

The Aboriginal Land Rights Act 1983 purposes are:

- to provide land rights for Aboriginal persons in New South Wales,
- to provide for representative Aboriginal Land Councils in New South Wales,
- to vest land in those Councils,
- to 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, and
- to provide for the provision of community benefit schemes by or on behalf of those Councils.

Under the Aboriginal Land Rights Act 1983, Aboriginal Land Councils can make claim to certain Crown lands. Claimable land includes Crown lands that are not lawfully used or occupied, do not comprise land which are needed or likely to be needed as residential lands, and are not needed, nor likely to be needed, for an essential public purpose.
Planning in NSW

The Environmental Planning and Assessment Act 1979 established the framework for land use planning decisions in NSW.

The objects of the Environmental Planning and Assessment Act 1979 include to:

- promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State’s natural and other resources,
- facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- promote the orderly and economic use and development of land,
- promote the delivery and maintenance of affordable housing,
- promote the sharing of the responsibility for environmental planning and assessment between the different levels of government in the State.

The Environmental Planning and Assessment Act 1979 establishes a hierarchy of planning instruments which control the development and use of land and inform the assessment and decision-making framework. The Act also sets out the way that the community is informed of, and participates in, planning and development decisions.

Local councils prepare local environmental plans (LEPs). LEPs place land into land use zones and establish the land uses that can occur in different zones and the level of assessment and approval required for that development.

A tiered approach to development assessment and approval exists with consent typically being required from local councils for local scale development, and by regional bodies or State level bodies for regional scale development.

Where a LEP does not permit a proposed development, land owners can request local councils to consider changing the LEP by preparing a planning proposal.

Recent changes to support strategic planning include a requirement for Local Strategic Planning Statements in each local government area.

Regional Plans

The directions of the nine Regional Plans applying to NSW (outside Greater Sydney) create the opportunity to review how LALC landholdings can be best planned, managed and developed for the benefit of the local Aboriginal community. The directions are designed to allow Aboriginal people to gain greater economic benefit from their land and increase opportunities for economic independence.

As part of this, the Department is working with LALCs to identify their landholdings and map the level of constraint at a strategic scale for each site. This information can inform practical options for the potential commercial use of land, such as Aboriginal housing and employment opportunities.
The NSW Ombudsman set out the need for reform as follows:

NSW has the largest Aboriginal population in Australia – comprising 31% of the national total – and it is growing rapidly. Fostering economic development for Aboriginal people promises dividends for the broader state economy and is critical to changing the prospects of Aboriginal people now and in the future.

Disappointingly, Aboriginal people in NSW have not enjoyed the same benefits as other citizens from years of strong economic growth in the state. On a range of key economic measures – engagement in post-school education and training; labour force participation; welfare as a primary source of income; household incomes; and home and business ownership – Aboriginal people lag behind non-Indigenous Australians.

Increasing the economic prosperity of Aboriginal people is critical to improving social outcomes in other areas, including health, education, child protection and community safety.

The broader economy also profits, through tax payable, reduced government expenditure and increased consumption. Deloitte Access Economics modelling estimates that if the gap in employment outcomes was overcome, the result would be an improvement of $7.4 billion to the NSW economy, including 41,696 jobs created, by 2031.

NSW Ombudsman report 2016

The NSW Standing Committee on State Development Inquiry into economic development in Aboriginal communities (2015-16) considered a range of matters including the relationship between Aboriginal land rights and the planning system in NSW.

The Inquiry heard that since the establishment of the Aboriginal Land Rights Act 1983, Local Aboriginal Land Councils have faced difficulty in converting claimed land into economic development opportunities. One reason for this is that when land is successfully claimed, there is no change made to the planning framework applying to that land to allow it to be developed. This means Local Aboriginal Land Councils must navigate the planning system to have land zoning and planning controls reconsidered and to have development applications approved, as is the case for other land owners wishing to undertake development.

The land claims process established under the Aboriginal Land Rights Act 1983 provides the vehicle for claiming land for Local Aboriginal Land Councils and having it used for the benefit of Aboriginal communities.

However, Local Aboriginal Land Councils operate under different rules and have different responsibilities than others seeking to develop their land. Local Aboriginal Land Councils are not-for-profit entities whose whole objective is to improve the lives of Aboriginal people in their region.

Local Aboriginal Land Councils are a unique and significant land owner and are more than just a cultural advisor and custodian of environmental lands. By nature of the land claim process, claimed land may have constraints to development, however Local Aboriginal Land Councils have legitimate development aspirations for some of their land.

The Inquiry recommended further investigation by the Department into planning system changes to facilitate Aboriginal economic development. This consultation paper considers potential planning changes.
Central Coast
Central Coast Regional Plan 2036

The Department has released Regional Plans for nine regions across NSW (outside Greater Sydney). The Regional Plans provide the overarching strategic land use planning direction for each region over the next 20 years. They inform planning for future housing need, jobs, infrastructure, and the environment, and guide strategic planning occurring within each local government area.

Link to Regional Plans: http://www.planning.nsw.gov.au/Plans-for-your-area/Regional-Plans

Previous regional plans for the Central Coast (such as the Central Coast Regional Strategy 2008) had limited actions concerning the Aboriginal community with actions primarily restricted to the protection of Aboriginal cultural heritage. This has changed with the latest iteration of regional planning.

The Central Coast Regional Plan 2036 set a Direction to increase the economic self-determination of Aboriginal Communities, and support the implementation of OCHRE (Opportunity, Choice, Healing, Responsibility and Empowerment, the NSW Government plan for Aboriginal Affairs).

The Regional Plan includes actions to support OCHRE’s implementation by working collaboratively with Central Coast Council and Darkinjung to identify how its land can best be planned, managed and developed. A strategic assessment of Darkinjung landholdings is proposed to identify priority sites to create a pipeline of projects with economic development potential for the Darkinjung.

Darkinjung Local Aboriginal Land Council

The Darkinjung Local Aboriginal Land Council is the Local Aboriginal Land Council for the Central Coast and is one of 120 Local Aboriginal Land Councils (LALCs) established under the Aboriginal Land Rights Act 1983. Darkinjung is registered as a charity with the Australian Charities and Not-for-profits Commission.

Darkinjung holds a portfolio of approximately 3,700 hectares making it the largest non-Government landowner on the Central Coast. As a large landholder, Darkinjung is key to achieving the social, economic and environmental goals of the Regional Plan.

Under the Aboriginal Land Rights Act 1983, Local Aboriginal Land Councils are required to prepare community, land and business plans that set out the aims of the LALC and strategies under which these aims can be achieved.

The Aboriginal Land Rights Act 1983 provides for community benefits schemes to be established by LALCs. Darkinjung’s community benefit schemes include a funeral fund, an affordable housing scheme and the Darkinjung Barker Campus, a small primary school for Aboriginal children living in the Darkinjung area.

Menindee Ridge at Blue Haven is a 109 lot residential subdivision constructed over four stages, with the final stage completed in March 2016. Darkinjung has marketed and sold 98 lots with the remaining 11 lots being developed by Darkinjung for inclusion in its affordable housing program and other community benefit schemes.
These examples illustrate the important role Darkinjung plays in both improving social and economic outcomes for the Aboriginal community while also meeting the development needs of the Central Coast.

Darkinjung has aspirations for the development of its land but faces numerous challenges. To respond to these challenges Darkinjung and the Central Coast is considered a good candidate to pilot further proactive action to address identified planning issues.

The Aboriginal Land Rights Act 1983 allows the NSW Government and LALCs to enter into voluntary and legally binding agreements to resolve land claims, reducing the need for costly and lengthy land claim determinations. These are called Aboriginal Land Agreements. An Aboriginal Land Agreement process is currently underway on the Central Coast involving Crown Lands, Central Coast Council and Darkinjung. This process is proceeding separately and independently from this consultation paper however its outcomes could affect the amount of land owned by Darkinjung.

“Darkinjung is the largest private land owner on the Central Coast. Our land is our asset base. Our land is our cultural connection. Our land is our wealth. Our land creates responsibility. Our land creates opportunity!”

Darkinjung Local Aboriginal Land Council’s community, land and business plan for 2016-2019 recognises the importance of land to achieving its aims.
Darkinjung Delivery Framework
Addressing the issues outlined in this paper requires a suite of responses.

Eight distinct but related elements have been identified for the Darkinjung Delivery Framework:

- Memoranda of understanding
- Audit and strategic assessment of Darkinjung land
- Darkinjung Development Delivery Plan
- Proposed State environmental planning policy
- Proposed Ministerial Direction
- Continued proactive resolution of Darkinjung planning matters
- Strategic conservation planning
- Capacity building
Memoranda of Understanding

The Department of Planning and Environment proposes entering into a memorandum of understanding (MOU) with Darkinjung to formally identify how the two organisations will work together on the Darkinjung Delivery Framework to create the pipeline of Darkinjung development projects identified in the Regional Plan.

Central Coast Council and Darkinjung have also recently entered into an MOU. The potential for a three-way agreement between the Council, Darkinjung and Department is recognised and will be further considered.

Audit and strategic assessment of DLALC land

As at November 2018, Darkinjung owns approximately 3,700 ha across the Central Coast.

An audit and strategic assessment of Darkinjung landholdings is proposed to identify land with development potential. The assessment would consider factors such as:

- Darkinjung’s aspirations for its land
- Physical characteristics including flooding and bushfire
- Native title considerations
- Biodiversity values
- Heritage
- Other nearby land uses including potential links and potential conflicts
- Strategic context including relationship to other current and proposed development identified in local and regional planning strategies
- Infrastructure and the potential sequencing of development

The analysis of these factors will inform the prioritisation, staging and sequencing of economic development opportunities on Darkinjung landholdings.

The initial stage of this audit will focus on land owned by Darkinjung on which development proposals have already been identified. Subsequent stages will consider the remainder of Darkinjung-owned land.

Darkinjung Development Delivery Plan

To formally recognise the development pipeline a Darkinjung Development Delivery Plan will be prepared.

The Darkinjung Development Delivery Plan provides the ongoing link between the requirements of the Aboriginal Land Rights Act 1983, such as preparation of community, land and business plans, and the planning and development decisions that occur under the provisions of the Environmental Planning and Assessment Act 1979.

Once prepared, the Darkinjung Development Delivery Plan would be endorsed by the Planning Secretary to give it standing in planning and development decision making. An initial version would be prepared in 2019 to reflect Darkinjung’s current development proposals. Subsequent versions would be prepared by Darkinjung, in consultation with Central Coast Council and the Department of Planning and Environment, and endorsed by the Planning Secretary. Potential exists to coordinate the development of subsequent versions with the community, land and business plan process under the Aboriginal Land Rights Act 1983.

The Darkinjung Development Delivery Plan could include:

- The policy rationale for Aboriginal Land Rights in NSW as the underpinning basis for Darkinjung development
- Link to the Central Coast Regional Plan 2036
- Identified development of Darkinjung lands to be progressed in the life of each Darkinjung Development Delivery Plan (e.g. 3-5 years)
- Program of work (e.g. what is required under the planning legislation to advance development proposals)

The Darkinjung Development Delivery Plan is a strategic plan to guide planning and development decisions on Darkinjung land. Proposals would still be subject to assessment at the planning proposal and development application stage.
State Environmental Planning Policy

To formally recognise the Darkinjung Development Delivery Plan in planning decision making, a State Environmental Planning Policy (SEPP) is proposed. The SEPP would map Darkinjung’s land and require the Darkinjung Development Delivery Plan to be considered in development decisions where Darkinjung is the proponent on that land.

In recognition of the regional significance of certain Darkinjung development it is also proposed to introduce thresholds for development to be declared regional development meaning that decisions would be made by the Hunter Central Coast Regional Planning Panel rather than Central Coast Council. These thresholds would be included in the proposed SEPP and could include:

- Development applications made by Darkinjung with a Capital Investment Value of greater than $5,000,000
- Where more than 50 submissions are received during public exhibition
- Where 40 days have elapsed since lodgement of the Development Application

Ministerial Direction

A Ministerial Direction is also proposed to link the Darkinjung Development Delivery Plan to the planning proposal process. The Ministerial Direction would apply when a planning proposal authority prepared a planning proposal affecting land owned by Darkinjung.

The planning proposal authority would need to ensure consistency with the Darkinjung Development Delivery Plan.

Where a planning proposal in the vicinity of Darkinjung land was prepared, the planning proposal authority would also need to consider the potential inclusion of the Darkinjung land.

Support for current planning actions

Central Coast Council is currently progressing three Darkinjung planning proposals being:

- Lake Munmorah – Rezoning land fronting the Pacific Highway and Kanangra Drive at Lake Munmorah to environmental and residential zonings,
- Wallarah – Rezoning land fronting the Link Road at Wallarah to environmental and industrial zonings.
- 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.

These planning proposals provide the opportunity for up to 1,500 dwellings and employment land to support 900 jobs demonstrating the importance of Darkinjung to achievement of the Regional Plan’s goals. The economic development from these proposals would also provide ongoing benefits to the Aboriginal community.

The planning proposals have received Gateway determinations, undergone initial agency consultation and are expected to be exhibited in 2019.

(For more information on these and other planning proposals, see the Department’s tracking system here: http://leptracking.planning.nsw.gov.au/)

The Department is taking a proactive role in the resolution of issues associated with these proposals in response to requests from Darkinjung and the Council and as supported by Direction 6 in the Regional Plan.
Strategic Conservation Planning

The Department has commenced strategic conservation planning on the Central Coast. This includes Strategic Biodiversity Certification under the State’s Biodiversity Conservation Act 2016 and Strategic Assessment under the Commonwealth’s Environment Protection and Biodiversity Conservation Act 1999 for identified development impact areas in the region.

Strategic conservation planning aims to facilitate both the conservation and development outcomes in the Central Coast Regional Plan 2036 and is one of several projects being undertaken for high growth locations in NSW.

Strategic conservation planning for the Central Coast is anticipated to be completed in 2020. The broad process includes:

- Scoping and data collection
- Impact assessment
- Conservation planning
- Application for statutory approvals – NSW and Commonwealth
- Implementation program

Strategic conservation planning will assist landscape scale planning across the region, moving beyond site by site impact assessment of biodiversity and taking on a strategic, outcomes focused approach with the goal to:

- Protect a network of conservation areas and biodiversity corridors
- Protect unique biodiversity and vulnerable species
- Facilitate development timelines
- Reduce development costs

Strategic conservation planning will be useful to balance the impact of proposed development on Darkinjung lands with broad conservation outcomes across the region. Due to the number and location of its land holdings and potential land holdings, Darkinjung also has an opportunity to contribute significantly to the conservation outcomes for the region.

The inclusion of Darkinjung lands in the region’s strategic conservation planning is important to provide upfront environmental and investment certainty and facilitate the generation of economic outcomes across Darkinjung lands. This would improve Darkinjung’s ability to deliver broader regional development, biodiversity and social outcomes in the region, consistent with the goals of the Central Coast Regional Plan 2036.

Ongoing capacity building

The Department will continue to look for opportunities to build the capacity of Darkinjung to undergo planning and development.

Opportunities will also be pursued to help local and State government and the development industry better understand the role of Local Aboriginal Land Councils and Aboriginal issues as they affect planning.

Darkinjung collaborated with the Department and University of Sydney in the development of the Aboriginal communities and the NSW planning system training course. The course has now been delivered to over 30 LALCs across NSW. The course is aimed at building the capacity of LALCs as landowners to understand and engage with the NSW planning system. The Darkinjung contribution provided valuable insight to the experience of LALCs attempting to navigate the planning system and the barriers faced by LALCs in trying to leverage economic benefit from their land holdings.
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Next Steps
Next Steps

The consultation paper will be on public exhibition for 28 days. During the consultation period the Department will be consulting with a range of stakeholders including the NSW Aboriginal Land Council, NSW Aboriginal Affairs, the Community Environment Network and the Urban Development Institute of Australia - Central Coast Chapter.

Once finalised, the Darkinjung Delivery Framework will establish an ongoing program for the development of Darkinjung land which will occur over many years. Consultation with the broader Central Coast community will occur at several stages of planning and development, including:

- When individual sites are brought forward, as planning proposals (rezonings) or for specific development proposals
- When local planning strategies are prepared which will affect land owned by Darkinjung, including:
  - Future reviews of the Regional Plan;
  - The Central Coast strategic conservation planning project which has recently commenced; and
  - Local planning strategies prepared by Central Coast Council.

Within 18 months of the commencement of the Darkinjung Delivery Framework, the pilot will be evaluated to determine whether it could be extended to other areas of NSW.
Glossary
Glossary

ALR Act - Aboriginal Land Rights Act 1983 (NSW)
DCP - Development Control Plan
DDDPP - Darkinjung Development Delivery Plan
DDF - Darkinjung Delivery Framework
Darkinjung - Darkinjung Local Aboriginal Land Council
EP & A Act - Environmental Planning and Assessment Act 1979 (NSW)
LALC - Local Aboriginal Land Council
LEP - Local Environment Plan
MOU - Memorandum of Understanding
NSWALC - New South Wales Aboriginal Land Council
OCHRE - Opportunity, Choice, Healing, Responsibility and Empowerment
SEPP - State Environmental Planning Policy
References
References


