Dubbo Public Consultation Workshop
– 6 November December 2013

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The following are recorded comments made by members of the public as part of the ACH Law Reform consultation process for Phase 3. The comments presented in this document are the exact written comments made on butcher’s paper on the day of the workshop by the participants during roundtable discussions, with the exception that references to individuals and company names have been removed. Names of individual participants making the comments were not recorded.
Preamble and definition

- This statement is overarching and covers the issues and vice versa at the end
- include "science" or include as part of the definition of knowledge
- replace "landscape" with "environment"
- add "overtime" at the end
- remove 'NSW' - "social fabric of Australia"
- exist in and are inseparable to the land water and natural resources of NSW
- remove "critical" (too subjective)

Negotiating Agreements and dispute resolution

- Skills + what rights community have to bring to the table
- stop people not from country doing site surveys that must be knowledge holders
- proponent to cover costs as above
- local government must use local site survey or knowledge holder
- community to have a voice @ the tale - training to negotiate
- communication filtering down to broader community
- are all of community going to feel a part of negotiation
- legal support - lack of it
- OEH or NSWALC to help with legal support - proponent to pay for legal support but community pick who they want to use - technical support to be funded by the proponent (anthropologist, archaeologists)
- Have one list/database which everyone refers to which says who speaks 4 country or can do site surveys. (include LALCs, LGAs etc.). Community to decide who will be on the list
- timeframes for negotiating
- resources for negotiating
- how flexible will the committee be for negotiating agreement
- financial resources to pay specialists
- how often does ACH committee meet ad 20 day turn around for negotiating agreements
- accessing AHIMS database to obtain information
- removal of objects from country
- Make AHIMS system more easily accessible. Too many steps now
- All objects to remain on country + recorded. Move only to be agreed location if needed
- with POM & Map tools be written for the agreement (agreement be stronger as the POM)
Tools and Mapping

- Relationship between maps + register
- maps could be divided by the types and level of activity in an area
- where are the gaps - need more time + money
- sufficient resourcing and time to do maps
- Need to think about resourcing committees to help values. So that it is driven by communities not mining + development
- have a map as a tool to do up front strategic planning well for better conservation outcomes
- Cultural values - unmapped areas (country) in Western NSW
- Mudgee council example of mapping values is good - council has locations but community has information
- mapping needs to be constantly updated
- issue of recording on private land
- already areas are mapped - don’t reinvent the wheel
- intangible layer
- community / person has information/ knowledge about this value
- maps needs to be used to involve community not exclude community - i.e. map is a tool of who to go to talk to about a site or area
- mapping intensities - capture areas with buffers e.g. CW CMA - principles and protocols - process of consultation to map areas - recognition of different types of things that are important e.g. animals - how new legislation interacts with other legislation e.g. planning, water, flora and fauna - issue of putting lines on maps - adaptive management of maps feedback loops for adjustment
- investment of time in capacity in local community
- Resourcing - resource intensive
- publication to deal with maps - book with defined areas
- capacity + skill w/t resourcing
- needs consistency
- reporting system should be standard across state
- local ownership of information of information - knowledge etc. to stay in community
- tools - looking for site etc. to make it easier
- sensitive sites should not be included on maps
- restrictions on access
- sensitivities -what information presented on map + what’s not - access to info etc.
- record site but not available to everybody
- community access to government register + levels of access / security - similar process than exists now
- ownership of maps - information should go back to owners
- transition to new system is key
- Archaeology - how does fit into new system
- recording - don’t need irrelevant material
- Timeframes - pressure to reduce times to allow development
- often cannot understand paperwork
- WRT building envelope - need to look at a broader area
Local ACH Committees

- how is the committee supported - resources - identified positions (financial resources also)
- Who do they (committee) report to transparency (up and down reporting to)
- must report back to community via clear requirements that set standards
- Informative information/ fact sheet media to all Government Dept.
- simplify terminology
- definition of technical/site work (contemporary qualifications)
- definition of cultural knowledge holder (traditional way)
- who speaks for country/ how is it determined? (local knowledge)
- members need cultural authority
- must represent + communal / community needs
- endorsement by TO, Elders, local Aboriginal community
- Aboriginal working parties/LALC reps
- membership criteria - representation of knowledge holders - nomination process (community vote)
- flexible composition to meet local needs
- must not be ‘stacked’ or over representative of one portion of the community
- one stop shop (be able to contact right people)
- Accountability and reporting to the community - newsletter - paper
- must report back to community of recommendations
- process for obtaining
- any plans + maps developed must be dev. With TO's community
- important for maps + plans must be consulted by developers, government + anyone doing ground disturbance
- Local decision making for the community
- to keep LALC boundaries
- Boundaries of ACH Committees - No LGA - Like LALC Boundaries
- Want to be tribe
- companies giving back the paton [patent?] responsibilities / ownership to Indigenous people
- more say in animals/ plants/ waterways in/ on country
- concern that committee paid will do it for wrong reasons
- is the committee going to be an incorporated body?
- cultural protocols (prove connection to country) adhere to and here to - local community welcome to country (by local elder from country recognised by community)
- Able to have more say in when/ where cultural burn off
- repatriation - returning artefacts back to correct country
- who owns it? Is it the committee
Penalties, offences and appeals

- enforcement of penalties needed
- previous company record (e.g. frequency of disruptions)
- Context based around severity of incident (compensation significance)
- more focus on protection than destruction - not necessarily a $ value
- strong enforcement of penalties
- Avoidance (conservation negotiation) → Protection (self-explanatory) → Compensation (last resort. Offset e.g. biodiversity model)
- definition between negligence + wilfulness
- understanding from industry about Aboriginal cultural heritage values
- definitions - development, activity, heritage significance (who defines?)
- balance of protection between flora and fauna + ACH + penalties - cultural significance, natural significance (water), scientific significance
- monitoring / overview of ACH in local/ regional landscape - cultural health index
- too much subjectivity around classifying objects - need people with professional + cultural knowledge
- strong transition process between stages e.g. Tools/management
- qualifications
- Competency assess
- too many - in or reflect + enhance current federal legislation
- GPS system - more precision
- unreliable GPS/ data (AHIMS)
- how resourced / policed?
- precise boundaries set
- sustainable future + ability to negotiate / offset ACH
- putting onus on project agreement - more give + take from business + communities

Dispute resolution

- resources available to get people together to facilitate
- Conducted in reasonable
- cost involved in going to court
- End result is to avoid arbitration
Open comments

• When will the draft legislation be available?

• Will the NPWS database be available to the new Act – who will have responsibilities for it?

• We need Aboriginal people to have a say on fire management practices. RFS need to talk with Aboriginal people to make sure plants are managed well and the land is preserved. No need for the fire disasters of the last month if our burning practices are followed.

• If the ACH reform is to finish on the 14 February 2014 – wasn’t it supposed to link with the Planning reforms that were to be finalised by December 2013?

Top concerns (from 1 individual):
• Resources for the concept science – not to be excluded
• Intellectual property rights

Top Issues to raise include (from 1 individual)
• Definitions of: Elders, Native Title Holder, Traditional Owner, Native title claimant
• Capacity building and training
• Successive planning for all groups

Top 5 concerns (from 1 individual):
• Boundaries – LALC keep within your area
• Cultural training
• Local knowledge holders
• Repatriation
• GPS mapping – more exact

Top 5 issues (from 1 individual):
• Penalties for those who cross boundaries
• Sponsored training
• Research – people who know artefacts
• Returning artefacts back to country
• Training – training and more training

Top 5 solutions (from 1 individual):
• Preservation
• Avoidance
• Negotiation
• Sorry
• Compensation – offsets
Top concerns (from 1 individual):

- Establishment of Local ACH Committees – nomination process needs to have endorsement of the local community
- Knowledge holders may not necessarily line up with the member criteria that is currently stated on page 15
- Commitment of time and resources to the local ACH Committees once they are established e.g. co-ordination support and training.

Top concerns (from 1 individual):

- Nomination process concludes with the community vote
- Ensure that the existing groups dealing with ACH e.g. Aboriginal reference groups that have been working with CMAs and NPW are consulted and included

Top solutions (from 1 individual):

- Inclusion across the community – don’t just go with LALCs Not everyone is aligned with LALC
- Draw from the learning to date – don’t reinvent the wheel.

Top concerns (from 1 individual):

- Selection of committee members
- Availability of the committee
- ACH boundaries
- Selection of the extend of a breach i.e. penalties.

Top issues (from 1 individual):

- Consistent information and procedures
- Clarity and policies
- Change in legislation with it be better than what’s there

Top solutions (from 1 individual):

- Aboriginal people determine the outcome of heritage
- Consistent representation (site work)
- Correct consultation and boundaries
- One stop shop – information centre
- Knowledge of sites within projects before final decision is decided. So projects have a chance to change their design.
Top concerns (from 1 individual):

- The fact that archaeology is barely mentioned/acknowledged. The archaeological resource is finite, owned by all and although capturing cultural values is very important, archaeology should not be ignored.
- Resourcing to get mapping tools to a state where they can be useful to the committee and allow a useful PoM to be create such that agreements can be negotiated

Top issues (from 1 individual):

- Ensure new Act makes clear provision to protect and manage the archaeology resource not just cultural values
- Mapping needs significant resourcing for rest of model to work.

Top solutions (from 1 individual):

- Definitely need a new Act stand alone for Aboriginal heritage
- Process theoretically works, BUT so many aspects of the detail may trip it over (e.g. ACH committee composition; mapping and lack of resourcing; negotiating agreements and role of agencies in this) etc.

Top concerns (from 1 individual):

- Don’t go back – go forward. 2010 regulations change due diligence etc. made things efficient – stay there
- Forget mapping – it will be out of date as soon as it is finished.

Top issues (from 1 individual):

- An Aboriginal heritage act is needed but make it forward looking – not backward looking. Make it an Act that will fit Aboriginal and development – needs 30 years from now
- Stick with current technology – don’t go back to books and maps etc. stick with a web-net based system. Most Aboriginal people at meetings this are old. Younger people are smart phone users and can use technology.

Top concerns (from 1 individual):

- Enforce penalties
- Mapping similar
- Recording awareness
- Penalties
- Committee local and include all Aboriginal groups
Top issues (from 1 individual):

- Public awareness
- Training
- Simple process that works

Top solutions (from 1 individual):

- Glad to move forward from flora and fauna

Top issues (from 1 individual):

- Mapping made simpler for easier access
- Contact should be made with Aboriginal people
- Be transparent
- Penalties – be enforced especially LGA
- Public awareness

Top concerns (from 1 individual):

- Training
- New system to make it easier for AHIMS access
- Process to record – same over the wider community
- Knowledge holders be employed for sites not anyone including Native Title or Traditional Owners who have never been involved with the Country of concerns.

Top solutions (from 1 individual):

- Hoping these reform will move forward and our aims are included in the final report of recommendations.

Top issues (from 1 individual):

- Mapping to be simpler process for recording/checking sites
- Committee to work with all Aboriginal groups
- Recording concerns – public awareness
- Penalties to be enforced especially for LGA
- Maps to be printed off with DP no. etc.
- OEH work with LALCS mapping teams.
Top concerns (from 1 individual):

- Public awareness and understanding
- Training
- Simple process that works to record sites
- LGA/OEH/LALC/Corp work together to protect
- Acknowledge holder not just to people to be registered

Top solutions (from 1 individual):

- Need to acknowledge other organisations – not just TO’s
- Happy to move forward from flora and fauna

Top issues (from 1 individual):

- Penalties – no point in having them if they’re not going to be enforced
- Inclusive – committees need to include people who have knowledge – not just TO’s or LALCs etc.
- Tools – needs to be consistent
- Mapping – needs to be updated constantly. Look at mapping proactively ($ for mapping/recording to be done) not just as a reaction on the development.

Top concerns (from 1 individual):

- Protection and avoidance needs to be a priority nor destruction as a first option
- Protection needs to be provided for cultural knowledge.
- Government departments need to have common tools and mapping – very different at the moment between community, CMA, NPWS, archaeologists.

Top solutions (from 1 individual):

- Significance levels needs to be redefined. There’s too much emphasis on scientific values and high medium/low values and cultural values are forgotten or seen as lower.
- No one group should have a louder say than other people on the committees should have equals who all have an equal valid voice.
- Committees need to have members who are conduits for their stakeholder groups. Its not about what they as individuals think they are merely the voice between to disseminate information.

Top issues (from 1 individual):

- Resourcing of community and committee people
• Role of professionals
• Unethical proponents of developments
• Consider the linkage between – land, people, language

Top concerns (from 1 individual):
• Resourcing committees
• Penalties, unethical people/practice
• Ensure GIS is compatible with other maps (overlay)
• Incorporate language into cultural heritage considerations.

Top solutions (from 1 individual):
• Cultural history of NSW is ACH register
• ACH is of economic value to NSW
• NSW can lead Australia in cultural heritage reform
• The NSW Government should consider additional support to the commonwealth in the Aboriginal language program initiatives (link land, people, language)