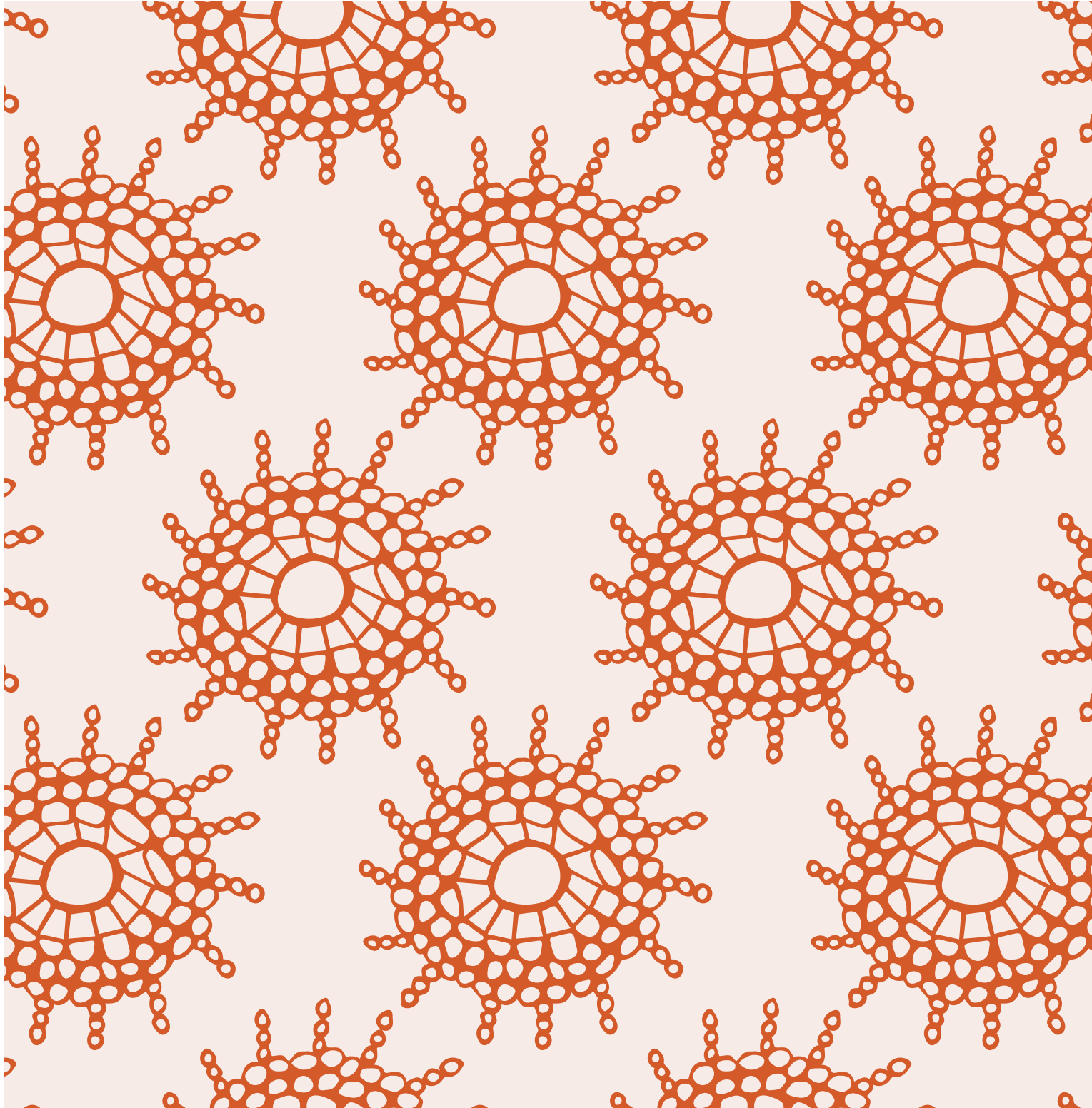


A RESOURCE KIT FOR
LOCAL GOVERNMENT

Collaborate NSW

**Local government and Aboriginal
communities working together**



collaboratensw.org

Collaborate NSW is a printable resource kit and website created by Local Government NSW, with the assistance of the NSW Office of Local Government, the NSW Aboriginal Land Council, Aboriginal Affairs NSW and NSW Planning and Environment to encourage the inclusion of Aboriginal communities in council decision-making, service development and delivery.

First Australians have an enormous cultural, social and economic contribution to make to our communities, and collaboration with local Aboriginal communities benefits all.

All NSW's councils are encouraged to use this resource as a first step to unlock this potential and to create common ground, strengthen local communities and work with other spheres of government to achieve reconciliation with Aboriginal Australians.

Cover Artwork: *Gathering of Berries*

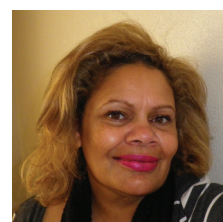
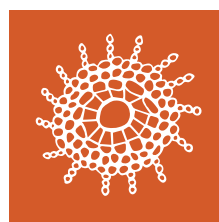
Artist Bibi Barba's circle-centred design 'Gathering of Berries' represents gathering of knowledge with tribes coming together – forms a strong graphic lead for Collaborate NSW. The small circles represent the berries that are offered to the gathering in return for knowledge. Knowledge is the key for survival.

Bibi was born in Roma, Queensland, and raised in Liverpool, Sydney, Australia. Her family descends from the Durumal (North Queensland), Birri-Gubba (Central Queensland) and Dangadi tribes (East Coast NSW). Inspired by her Grandmother's storytelling and her love of the land, Bibi's artwork has a sense of vivid storytelling, melding traditional indigenous design with contemporary style and innovative colour combinations.

"My designs and art works have many stories to tell, passed down from generation to generation. My art captures and nurture my grandmother's

stories of long ago, vibrate Songlines of childhood memories passed down from birth. My inspiration come from a family of strong women that encapsulated the essence of culture through the blood line. My grandmother is a very strong women and would often say 'feel your country, feel it, paint it'. My mother cherishes those stories to enable me and my family to build on the foundation of culture because art is the tool to create many possibilities and cross cultural boundaries."

The story 'Gathering of Berries' was passed down from Bibi's father, a Dunghutti man.



Contents

PART A – CONTEXT	3
Introduction	3
Background	3
Aim	3
Legislative and policy frameworks.....	3
The <i>Local Government Act 1993</i>	3
The <i>Aboriginal Land Rights Act 1983</i>	4
The <i>Native Title Act 1993</i> and the <i>Aboriginal Land Rights Act 1983</i>	5
The <i>National Parks and Wildlife Act 1974</i>	6
The <i>Constitution Act 1902</i>	6
Policy frameworks	6
Organisations for local government in NSW	7
Office of Local Government (OLG)	7
Local Government NSW (LGNSW).....	7
PART B – COUNCIL RESPONSIBILITIES	8
Supporting Aboriginal participation in local government	8
Organising briefing sessions for potential candidates	8
Training and supporting Aboriginal and Torres Strait Islander councillors	9
Mentoring	9
Aboriginal Advisory/Consultative Committees.....	9
Council Services.....	9
Promoting access to council services	10
Land use planning and management.....	11
Community Land Management.....	11
Co-management of illegal dumping on Aboriginal land	12
LALCs: development aspirations and planning issues	13
Aboriginal heritage and languages	15
Aboriginal heritage legislation	16
Helpful resources.....	18
Aboriginal languages	18
Economic development	19
Initiatives	20
PART C - STRATEGIC PLANNING AND COMMUNITY ENGAGEMENT	21
The Integrated Planning and Reporting Framework (IP&R)	21
The Community Strategic Plan (CSP).....	21
Delivery Program.....	22

Operational Plan.....	22
Resourcing Strategy	22
Strategic community engagement	22
Community Engagement Strategy	22
Potential channels and forums for community participation and engagement	23
Formal agreements between councils and Aboriginal peoples	24
NSW Reconciliation Action Plans (RAP).....	24
Statements of Commitment	24
Memoranda of Understanding	25
Leasing agreements and site deed agreements	25
Workforce planning and community engagement	25
Aboriginal council employees	25
Aboriginal employment programs and initiatives	25
PART D - KEY PROTOCOLS	27
Permissions	27
Concepts and definition	27
PART E - RESOURCES	34
Links to other relevant programs and legislation	34
Legislation	34
APPENDIX A - STRATEGIC PLANNING CHECKLIST FOR ENGAGING WITH ABORIGINAL COMMUNITIES	35
APPENDIX B - GUIDELINES FOR OPERATING SUCCESSFUL ABORIGINAL ADVISORY/CONSULTATIVE COMMITTEES	36
APPENDIX C - POLICY FRAMEWORKS	38
Australian Government	38
Closing the Gap.....	38
Indigenous Advancement Strategy	38
NSW Government	38
OCHRE: NSW Government's community-focused plan for Aboriginal affairs.....	38

PART A – CONTEXT

Introduction

Aboriginal culture is one of the oldest and longest surviving cultures that dates back at least 50,000 years. Currently there are about 500 different groups around Australia, each having their own distinctive beliefs and cultures. With this cultural depth, Aboriginal communities have a great deal to contribute to modern Australia.

More than one-third of Australia's 631,757 Aboriginal peoples live in NSW, making our state home to the largest Aboriginal population of any State or Territory in Australia. The 225,349 First Australians in NSW make an enormous cultural, social and economic contribution to our communities. Councils have important responsibilities to engage with Aboriginal communities in their area and ensure the provision of services.

Local councils can develop understandings of local Aboriginal culture and ways of doing business in order to involve Aboriginal peoples in council decision-making and service development and delivery.

Background

This document is an updated version of the 2007 *Engaging with local Aboriginal communities: a Resource Kit for Local Government*, developed by Local Government NSW (LGNSW) with the assistance of the NSW Aboriginal Land Council (NSWALC), NSW Office of Local Government (OLG), Aboriginal Affairs NSW and the Department of Planning and Environment. This update reflects current policies and legislation for Aboriginal peoples in NSW. In referring to Aboriginal peoples, this Guide refers inclusively to all Aboriginal Australians and Torres Strait Islander peoples, where appropriate.

Aim

All councils are encouraged to use the Guide as a starting point from which to strengthen engagement with local Aboriginal communities. It is designed to assist councils to work with local Aboriginal communities and organisations to develop locally-driven engagement strategies and methods, to provide opportunities for inclusive decision-making, and access the contribution of Aboriginal peoples to the development of sustainable local communities.

Legislative and policy frameworks

The following outlines the specific parts of relevant legislation and policy frameworks which impact on councils' work with Aboriginal peoples.

The main pieces of legislation impacting on Aboriginal peoples are:

- The *Local Government Act 1993* (NSW).
- The *Aboriginal Land Rights Act 1983* (NSW).
- The *Native Title Act 1993* (Cth).
- The *National Parks and Wildlife Act 1974* (NSW).
- The *Constitution Act 1902* (NSW).

The Local Government Act 1993

Section 7(d) identifies one of the purposes of the *Local Government Act 1993* to facilitate engagement by councils and councillors with the local community.

The guiding principles, set out in section 8(a), require council decision-making to:

- recognise diverse local community needs and interests
- consider social justice principles

- consider the long term and cumulative effects of actions on future generations.

Other sections of the *Local Government Act 1993* of particular relevance to this Guide include the requirement that councils prepare Community Strategic plans (s402) and undertake functions relating to integrated planning and reporting (s406), which should include planning and reporting on activities and engagement relating to Aboriginal peoples and equal opportunity employment.

At the time of going to print, the NSW Government was in the process of reviewing the *Local Government Act 1993*. Further information can be found on the OLG's reform website [here](#).

The Aboriginal Land Rights Act 1983

The preamble to the [Aboriginal Land Rights Act 1983](#) states that land in NSW was traditionally owned and occupied by Aboriginal peoples, and is of spiritual, social, cultural and economic importance to Aboriginal peoples. It recognises the need of Aboriginal peoples for land and acknowledges that land set aside for Aboriginal peoples in the past was progressively reduced without compensation.

The *Aboriginal Land Rights Act 1983* is important legislation because it recognises the rights of Aboriginal peoples in NSW and provides a vehicle for the expression of self-determination and self-governance. The purposes of the Act are:

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

The **NSW Aboriginal Land Council (NSWALC)** is a self-funded statutory organisation created under this Act, with a legislated objective to improve, protect and foster the best interests of all Aboriginal peoples in NSW. The NSWALC is made up of Aboriginal individuals elected to represent their region for fixed four-year-terms.

NSWALC provides support to the network of 120 autonomous **Local Aboriginal Land Councils (LALCs)** across the state, each with similar statutory objectives to NSWALC in regards to their own local communities. Each LALC is governed by a Board of representatives, who are also elected every four years.

Both NSWALC and LALCs have similar functions to protect and promote Aboriginal culture and heritage, acquire and manage land, facilitate business enterprise, provide community benefit schemes, and represent the interests of members.

There are over 23,000 members of LALCs in NSW. A comprehensive list of LALCs across NSW, along with a map of their boundaries, can be found [here](#).

Issues for Councils: *Aboriginal Land Rights Act 1983*

The following is general advice only and should not be considered a replacement for specialist advice on the Act, which may be necessary depending on individual council circumstances. It is recommended that the first point of contact should be the NSWALC or the relevant LALC.

- Other initial sources of specialist advice may include the [Office of the Registrar of the *Aboriginal Land Rights Act 1983*](#), or [Aboriginal Affairs NSW](#). The function of the Registrar of the *Aboriginal Land Rights Act 1983* is set out in s165 of the Act, and includes registering land claims, maintaining the register of Aboriginal owners, approving the rules of Aboriginal Land Councils, issuing compliance directions, investigating complaints and mediating disputes. Aboriginal Affairs has a monitoring and compliance role, undertakes legislative reviews of the *Aboriginal Land Rights Act 1983* and appoints investigators and administrators.
- It is in the interests of councils to form productive working relationships with Aboriginal communities to develop joint approaches to the exercise of council responsibilities and service delivery
- LALCs generally hold Aboriginal land in freehold
- Land held by Aboriginal Land Councils and not used for residential or commercial purposes or that is culturally significant may be exempted from rates and charges
- Councils have the same service provision responsibilities to people residing on Aboriginal land as they do to other residents
- The *Aboriginal Land Rights Act 1983* differs, in fundamental respects from Commonwealth Native Title legislation and from other State level land rights legislation, such as the Northern Territory's *Aboriginal Land Rights Act 1976*
- Councils have a critical role to play in working with Aboriginal communities in the protection of culture and heritage. This is an important part of developing sustainable local communities.

The *Native Title Act 1993* and the *Aboriginal Land Rights Act 1983*

Accessing and managing lands or Country is of critical importance to Aboriginal peoples. In NSW there are two key mechanisms by which Aboriginal peoples can have their rights in land formally recognised – *Land Rights* and *Native Title*. Both systems formally recognise and provide for Aboriginal peoples' rights, but the two systems operate under different laws and differ in the rights they can provide. Native title and land rights can sometimes exist on the same land. Refer to [NSWALC's guide](#).

	Land Rights in NSW	Native Title
What is it?	The <i>Aboriginal Land Rights Act 1983</i> (ALRA) provides for the return of certain Crown lands to Aboriginal peoples as compensation for dispossession and the resulting ongoing disadvantage suffered by Aboriginal peoples.	The recognition of the traditional and customary rights and interests Aboriginal peoples have in lands.
How long has it been around?	A non-statutory NSWALC was established in 1977 as an Aboriginal lobby on land rights. The ALRA was passed by the NSW Parliament in 1983.	Native title was first recognised by the courts in the 1992 Mabo decision. Legislation then followed with the Commonwealth passing the <i>Native Title Act 1993</i> in 1993 and the NSW Parliament passing the <i>Native Title (New South Wales) Act</i> in 1994.
Is traditional connection required?	Traditional connection does <u>not</u> need to be established for a land claim to be granted. The ALRA also contains provisions for culturally significant lands to be returned to peoples with a connection to the place.	Native title will <u>only</u> be determined to exist where Aboriginal peoples have established to the Federal Court that they have maintained a continuing connection with an area through an acknowledgement of traditional laws and customs.
Who can make a claim?	ALCs constituted under the ALRA.	A native title claim group's nominated representatives, known as 'the Applicant'. The word Applicant is used even though this will usually be a group of peoples, not an individual.

	Land Rights in NSW	Native Title
What land can successfully be claimed?	Crown lands that are not lawfully being used or occupied, not needed or likely to be needed for residential, conservation, or other essential public purposes and not the subject of a registered native title claim or determination.	Vacant Crown land, National Parks, State Forests, Crown Reserves, some types of non-exclusive leases, land covered by permissive occupancies and licenses, inland waters and the sea.
Does it mean ownership?	Yes, generally freehold title to land is granted, though sometimes land may be required to be leased back to the Government if required for conservation purposes.	In some cases it can mean rights akin to full ownership. More often, native title is recognised to co-exist alongside other rights and interests in the same area. This can mean access and usage rights are legally recognised, including for camping, hunting, fishing and other cultural activities.
Who holds the rights?	Aboriginal Land Councils constituted under the ALRA.	The native title holders or a Prescribed Body Corporate (PBC) holds the title in trust or as an agent
How many claims in NSW?	Since 1983, there have been approximately 36,000 land claims lodged, with approximately 2,500 of these successfully granted. However, there are still approximately 26,000 to be determined.	There have been a number of determinations that native title exists in NSW and many Indigenous Land Use Agreements (ILUAs) registered. A number of other section 31 deeds have been reached.

The National Parks and Wildlife Act 1974

This Act is a broad piece of legislation that covers a range of different areas including reserving lands, managing certain reserved lands, the protection of Aboriginal objects and places (on both public and private land), the protection of fauna and the protection of native vegetation.

It nominates the Office of Environment and Heritage (OEH) lead agency on Aboriginal Cultural Heritage protection in NSW by delegating the power to regulate impacts on Aboriginal objects and places to the OEH Director-General.

A reform process was underway at the time of printing. Further information on the process is available [here](#).

The Constitution Act 1902

The NSW Government was the first state or territory to give in-principle support for a federal referendum to recognise Aboriginal peoples in the nation's Constitution. The NSW Constitution Act:

- acknowledges and honours the Aboriginal peoples as the State's first people and nations
- recognises that Aboriginal peoples, as the traditional custodians and occupants of the land in NSW
 - have a spiritual, social, cultural and economic relationship with their traditional lands and waters, and
 - have made, and continue to make a unique and lasting contribution to the identity of the State.

LGNSW also supports Constitutional recognition of Aboriginal and Torres Strait Islander Australians, and encourages all NSW councils to adopt their own position in support.

Policy frameworks

Councils need to be aware of a number of policy frameworks that relate to Aboriginal peoples. More detail of NSW government and Australian government policy frameworks is available in Appendix C.

Australian Government

- Closing the Gap.
- Indigenous Advancement Strategy.

NSW Government

- *OCHRE*: NSW Government's community-focused plan for Aboriginal Affairs.
- Local Decision Making.

More information on these Policy frameworks is available in Appendix C.

Organisations for local government in NSW

Office of Local Government (OLG)

The [OLG](#) is responsible for councils across NSW. The office has a policy, legislative, investigative and program focus in matters ranging from local government finance, infrastructure, and governance, performance, collaboration and community engagement. The office strives to work collaboratively with the local government sector and is the key adviser to the NSW government on local government matters.

The OLG has responsibility for administering the *Local Government Act 1993* which provides the legislative framework reflecting modern community expectations and gives councils broad powers to plan for and provide services to local communities.

Local Government NSW (LGNSW)

[LGNSW](#) is the peak body for councils in NSW, representing NSW general-purpose councils and associate members including special-purpose county councils and the NSWALC. In essence, LGNSW is the organisation for all things local government in NSW. LGNSW facilitates the development of an effective community based system of local government in the State. LGNSW respects and acknowledges the unique culture, societies, history and traditional lands of Aboriginal peoples in NSW, and upholds policies recognising Aboriginal peoples retain distinct cultural identities whether they live in urban, regional or remote areas of Australia. The Association also supports initiatives that bring about reconciliation between Aboriginal peoples and the wider community, along with the constitutional recognition of Aboriginal peoples.

PART B – COUNCIL RESPONSIBILITIES

Local councils may interact with Aboriginal peoples on a range of levels including as residents, ratepayers, business owners, land holders, and consumers. It is important that the specific cultural needs of Aboriginal peoples are planned for in all council functions and service activities.

Local councils have important roles and responsibilities regarding Aboriginal peoples. This includes the need to:

- consult and negotiate comprehensively with Aboriginal peoples about their needs and aspirations.
- ensure council services and infrastructure are adequate and equitable in meeting the needs of Aboriginal peoples and their communities.
- ensure that services are developed in a way that is culturally appropriate and develops the potential of Aboriginal peoples.
- engage with Aboriginal peoples to ensure that local decisions address the issues and concerns of Aboriginal peoples.
- promote a partnership approach with local Aboriginal peoples.
- work with Aboriginal communities to promote the protection and awareness of Aboriginal culture and heritage in line with the wishes of local Aboriginal peoples.
- work with Aboriginal peoples to promote economic development opportunities and Aboriginal employment strategies.
- encourage Aboriginal peoples to participate in local government leadership.

Embedding practices in all council functions and service activities which are inclusive of the social and cultural needs of Aboriginal peoples will lay the foundation for fostering positive relationships between the Aboriginal and wider community.

Supporting Aboriginal participation in local government

Aboriginal peoples in NSW are under-represented in local government. Previously, statistics showed 1.9 per cent of all councillors identified as Aboriginal or Torres Strait Islander despite making up at least 3 per cent of the NSW population as a whole.

Aboriginal peoples have a great deal to contribute to the cultural, social and economic development of a community and councils can better service their communities if they harness the insights and talents of Aboriginal peoples.

It is in every council's interest to encourage and support Aboriginal peoples to stand for council, apply for positions within council, and contribute their unique perspectives and networks to the local government process.

There are myriad ways in which councils can act to boost the participation of Aboriginal peoples in local government. Actions range from encouraging individuals to run as candidates, the provision of customised support for successful candidates, mentoring programs or the implementation of collaborative mechanisms to facilitate input into policy and decision-making.

Organising briefing sessions for potential candidates

Councils can play an active part in running information sessions for Aboriginal peoples wanting to stand for election to local government.

These sessions can inform Aboriginal peoples about:

- The role and purpose of local government, along with information about the relevant local government area.

- Councillors' roles, responsibilities and expectations.
- The electoral process, and support available to successful candidates.
- Council policies in relation to Aboriginal peoples who are residents and ratepayers (e.g. engagement, respect, specific employment programs, advisory committees, relevant CSP objectives etc.).
- Council services provided to Aboriginal peoples who are residents and ratepayers.
- Any mentoring programs available, and the personal experiences of existing councillors.
- Specific policies and strategies to assist Aboriginal residents and ratepayers (e.g. Aboriginal Advisory Committee details, Aboriginal Liaison Officer contact, Aboriginal employment strategy/pathways).

Councils may also consider involving local Aboriginal representatives or liaison officers to co-develop and present cultural awareness programs for councillors and professional staff.

The OLG has a [guide](#) available for prospective councillors.

Training and supporting Aboriginal and Torres Strait Islander councillors

All successful council candidates should receive free training from their council and the NSW Government. Councils should also provide tools to help councillors carry out their role, and help meet expenses for costs such as:

- Further training and professional development.
- Attendance at conferences.
- Travel on council-related business.
- Telephone for official council calls.
- Care for dependents such as children.

Mentoring

Both Aboriginal and non-Aboriginal councillors have the opportunity to serve as mentors to candidates for council. Mentor responsibilities include:

- providing the candidate with access to information, including council publications and business papers, the procedures and protocols of council, and engagement with the broader community.
- assisting the candidate in understanding the realities of political life and the election process.
- respecting the confidentiality of the candidate.
- acting as a suitable role model for the candidate.

LGNSW may be able to assist councils to establish a mentoring program for councillors or mayors interested in accessing this type of support.

Aboriginal Advisory/Consultative Committees

These Committees are established by council resolution under section 355 of the *Local Government Act 1993*, and also provide:

- an opportunity for key issues to be identified and a common approach to their resolution negotiated within resources available.
- A formal avenue through which Aboriginal peoples can raise issues of concern.

Council Services

The specific cultural needs of Aboriginal peoples should be incorporated in planning for council functions, services and responsibilities, including revenue raising, service provision, statutory planning and regulatory functions, and employment.

Councils need an understanding of their local Aboriginal peoples and cultural ways of doing business in order to develop mechanisms to involve Aboriginal peoples in council decision-making and service development.

While appropriate service design and equitable service delivery is important, accessibility to services is critical to Aboriginal peoples. Services offered must be meaningful and realistically provided; they must also be responsive, relevant and flexible for Aboriginal peoples.

There are four social justice principles for Aboriginal peoples which councils should take into consideration. They are:

- **Equity** – Aboriginal peoples are entitled to receive the same services as non-Aboriginal people. The disadvantage experienced in some Aboriginal communities (including discrete Aboriginal communities) means councils need to carefully consider any special requirements such as outreach services.
- **Rights** – The Australian Constitution grants Aboriginal peoples exactly the same rights as non-Aboriginal people. At a local government level, councils should develop strategies to both ensure; Aboriginal communities have the same access to services as other Australians, and are encouraged and supported to be active participants in council decision-making processes.
- **Access** – Service accessibility is critical to Aboriginal peoples. Accessibility is not just about location and design; it is about the development of an environment that positively promotes services to Aboriginal peoples.
- **Participation** – The active participation of Aboriginal peoples in council affairs as elected representatives, council employees or members of council committees provides councils with direct, effective access to specific knowledge, perspective and linkages with their communities.

It is important that councils actively develop a collaborative approach to addressing the needs of Aboriginal communities and their economic and social development. **The Strategic Planning Checklist** (Appendix A) sets out specific issues for councils to consider when undertaking strategic planning, ensuring the appropriate inclusion of Aboriginal communities in the process.

Resources and fact sheets may be developed, distributed through local Aboriginal community-run organisations and networks such as LALCs, Aboriginal Medical Services, Aboriginal Education Consultative Groups (AECGs), Aboriginal legal services, and made available on council's website.

Promoting access to council services

The best way to promote Aboriginal access to services is to seek advice from Aboriginal peoples themselves. The following suggestions may be useful to start discussion:

- The employment of Aboriginal peoples as council staff is an important recognition of local communities and provides councils with expert knowledge. This does not replace the necessity for structured consultation and negotiation with local communities. No one person can represent all the views of local communities.
- Establishing relationships with Aboriginal peoples and local Aboriginal organisations including Aboriginal Land Councils, Aboriginal Medical Services and Aboriginal Education organisations.
- The incorporation of Aboriginal protocols (such as displaying the Aboriginal flag) demonstrates to Aboriginal communities that their issues are an integral part of council business.

- Aboriginal cultural awareness training for all council employees and councillors helps ensure there is a shared understanding around key issues of importance, clarifying and dispelling myths, and helping to ensure council policies and procedures meet the needs of every sector of the community.
- Establishing an effective and responsive complaints management procedure, and ensuring the staff develops good conflict resolution skills, helps strengthen credibility with Aboriginal peoples.

Land use planning and management

Councils have a valuable opportunity to engage with local Aboriginal communities when developing the strategic land-use planning documents, particularly Local Environmental Plans (LEPs). Councils may carry out local environment studies to identify and focus on important issues such as the needs of Aboriginal peoples and the protection of Aboriginal cultural heritage values. It is important that councils engage with their Aboriginal communities as early as possible in the process, allowing sufficient time for feedback to be incorporated appropriately.

It is important that Aboriginal owned land is not automatically viewed as environmental or community land. Identifying which land is to be protected for the preservation of Aboriginal Culture and Heritage is a decision for Aboriginal communities. LALCs and their members undertake an analysis of their land and determine what purposes the land will hold for them to achieve the cultural, social and economic benefits for their communities.

Local government should work with LALCs prior to making decisions on zoning which may not be in alignment with the aspirations of the local Aboriginal community. It is recommended that councils work in collaboration with LALCs to develop a formal mechanism for Aboriginal communities to engage with this process.

Councils should also work in partnership with any LALC exploring the possibility of subdivision of Aboriginal lands. LALCs will need to obtain permission from the State body, the NSWALC, for subdivision. Council can seek further information about subdivision of Aboriginal lands from the NSWALC.

Aboriginal heritage and its significance to Aboriginal peoples should also be addressed at the earliest possible stage of land-use planning. The OEH is currently [reviewing legislation for Aboriginal culture and heritage](#). Aboriginal cultural heritage assessments, in consultation with Aboriginal communities, inform the preparation of draft environmental planning instruments.

The benefits of these studies are threefold: they are the best opportunity to identify and develop options for the protection of Aboriginal heritage; they provide a more productive forum to engage with Aboriginal stakeholders; and they can help ensure they have a meaningful input to the decision-making process.

It is important to note that good practice land-use planning applies equally to the location of municipal activities or facilities in relation to Aboriginal communities. These activities should be reviewed to avoid, minimise or manage existing conflicts. Some examples where conflicts have arisen include sewage treatment plants being built adjacent to an Aboriginal mission or waste management centres near Aboriginal villages.

Community Land Management

Community Land, under s35 of the *Local Government Act 1993*, requires Plans of Management. It is important that Aboriginal communities are given the opportunity to be engaged in the formulation and review of Plans of Management.

[Practice Note No 1: Public Land Management](#) sets out the requirements for community land that has been declared an “area of cultural significance” under s36D of the *Local Government*

Act 1993 and special requirements for land of Aboriginal significance. Land of Aboriginal significance includes:

- Land where there is physical evidence of Aboriginal occupation.
- Land that is important to traditional or contemporary Aboriginal culture.
- Land that contains buildings and/or places Aboriginal peoples were forced to occupy, such as missions, reserves, commons and camping places; or where significant events such as massacres have occurred or cemeteries for Aboriginal peoples have been established.

There is a requirement for councils to consult with traditional custodians to identify such land. Aboriginal peoples must be involved with the development of Plans of Management for such land. Refer to the [NSWALC fact sheet](#).

Co-management of illegal dumping on Aboriginal land

Illegal dumping is the depositing – dumping, tipping or otherwise – of waste larger than litter onto land or into water. Aboriginal lands are highly susceptible to illegal dumping, especially when they are often located in remote areas.

The illegal dumping of waste has the potential to impact both Aboriginal and non-Aboriginal communities through:

- the destruction of bushland, poisoning of soil and alteration or blocking of natural watercourses.
- placing bushland at risk and preventing vegetation from regenerating and animals from returning.
- harm to culturally significant or sacred sites.
- potential health risks as a result of dangerous objects (e.g. sheet metals and nails) or by attracting vermin and mosquitoes.

The clean-up and disposal of illegally dumped waste is expensive. An integrated approach between local government, land managers and local communities should be established to tackle the identified illegal dumping problem.

Under the Waste Less, Recycle More initiative, the NSW Environmental Protection Authority has established the [Aboriginal Land Clean Up and Prevention \(ALCUP\)](#) program. ALCUP is an illegal dumping grants program to manage illegal dumping on privately owned Aboriginal land. The ALCUP Program supports LALCs to work with a range of partners and supporters to protect their cultural and natural resources from illegal dumping through clean up, prevention and deterrence. Funding of between \$5,000 and \$50,000 is available to LALCs for individual projects of one year's duration.

The Environment Protection Authority has also partnered with councils to fund [Regional Illegal Dumping Squads](#) – regionally-based teams that specialise in combating illegal dumping and land filling. Activities undertaken by these squads include identifying and patrolling illegal dumping hotspots, investigating illegal dumping incidents, organizing clean-ups and taking action against offenders, and tracking down illegal landfills.

The OEH has published two handbooks outlining the causes of illegal dumping and strategies to combat it:

- Crackdown on Illegal Dumping a Handbook for Local Government.
- Illegal Dumping Prevention and Clean Up: a Handbook for Aboriginal Communities.

Both can be found [here](#).

LALCs: development aspirations and planning issues

The *Aboriginal Land Rights Act 1983* acknowledges the strong relationship between Aboriginal peoples and the land. It provides a system through which LALCs can be vested freehold title to land or obtained through land claims, purchase or bequest. The *Aboriginal Land Rights Act 1983* establishes LALCs as autonomous bodies tasked with the responsibility of economic, social, cultural and environmental land management, and are fundamental in achieving Aboriginal autonomy and self-determination.

The planning and development of land is a source of potential income for LALCs, making residential and commercial development key aspirations of these bodies. It is important that local government works with LALCs to understand their future land use aspirations, and help fulfil their *Aboriginal Land Rights Act 1983* responsibility to encourage economic and social independence of the local Aboriginal community.

Residential developments can be important for the social well-being of an Aboriginal community. Commercial enterprises, such as childcare centres, medical centres and education and training facilities service both local Aboriginal peoples and the broader community and contribute to the local economy. They provide opportunities for Aboriginal employment and can result in a steady stream of income for Aboriginal peoples, as well as a reliable source of revenue for LALCs that enables investment in social and cultural community benefit schemes.

Local government land use and planning decisions can raise large barriers to a LALC successfully completing the residential and commercial developments it seeks to achieve.

Genuine and meaningful engagement with Aboriginal peoples and peak Aboriginal organisations is essential in the development of future plans and strategies regarding Aboriginal peoples' economic development. Early engagement and long term relationship building between LALCs and local councils should be encouraged.

Councils would be wise to engage with LALCs prior to the drafting of planning instruments, in order to:

- access up-to-date information regarding determined and pending land claims
- gain an understanding of the LALCs' community land and business plan which provides a view to the aspirations of local Aboriginal communities for the development of their lands.

Councils should also be aware of planning and development issues facing LALCs, including:

- mistaken beliefs that LALC land-use interests lie solely in cultural, conservation and other environmental purposes, and failure to recognise LALCs are also stakeholders in a region's economic development.
- land-ownership based zoning, which ties up council resources in processing land rezoning requests, while subjecting LALCs to delays in development applications, along with additional expenses on consultancies, assessments and even legal cases.
- increased critical examination of development applications by council and the general public, causing further approval delays and requests for additional paperwork as a condition of consent. As a result, LALCs incur a higher cost of investment and higher risk than other developers.

Case Study

A Local Aboriginal Land Council's experience lodging a development application

To aid the on-going delivery of services such as affordable housing, education campuses, employment schemes, and funeral funds, a coastal LALC lodged a development application for a caravan park, proposing 250 dwellings.

The local council received in excess of 2,000 submissions regarding this proposal. Many of the submissions were of a racial nature, objecting to the development on the grounds it would increase Aboriginal relocation to the area and increase public nuisance. A number of submissions also questioned the LALCs ability to manage the site. A similar development in the same area as the proposed caravan park received less than 50 submissions. The number of submissions regarding the LALC application is evidence of increased public scrutiny of LALC developments due to public perception of Aboriginal peoples and communities.

In order for the Council to consider the application, the LALC was required to amend the proposal to include 20 per cent less dwellings all of which had to be revised to cater for an over-50s population. This amended proposal prompted council to receive over 1,000 additional submissions.

Despite the amendments, the Council refused the proposal citing that it was not in the public interest. The LALC has sought to appeal this finding. Public perception has caused lengthy delays and increased costs to the LALC – an estimated \$500,000 and one year more just to address the conditions of approval. If approved, the amendments to the proposal will result in decreased economic and social return for the Aboriginal community.

LALCs are often the largest landholders within a local government area, which means a proactive council approach to LALC consultation is beneficial for both parties. LALC developments, subdivisions and/or rezoning can have important implications in future planning and land use in the local government area. Effective consultation and collaboration between councils and LALCs at an early stage minimises misunderstandings and helps remove barriers to sustainable land management.

Collaboration with the Aboriginal community in the development of land use plans and rezoning requests can maximise effective service delivery for the whole community, and promote positive change on the path to the economic and social independence of an Aboriginal community. Local governments should work with LALCs to develop a communication strategy for early engagement on future developments and land-use planning. The opportunity for LALCs to present at public meetings or local government events fosters positive change in the perception of Aboriginal communities amongst the broader local community.

The Illawarra/Shoalhaven Regional Plan (2015) in the following case study demonstrates an example of proactive LALC consultation, which is helping to achieve strong, healthy and well-connected communities.

Case Study

A proactive approach to Aboriginal community consultation

The Illawarra Shoalhaven Regional Plan (ISRP) applies to the Kiama, Shellharbour, Shoalhaven and Wollongong Local Government Areas. It presents a framework for strategic policy, planning and decision-making to guide the sustainable growth and development of the region over the next 20 years, thanks to a proactive consultative approach and collaborative relationships with local Aboriginal communities.

Direction 1.5 of the ISRP seeks to “strengthen the economic self-determination of Aboriginal communities”. This direction appreciates the role of the effective use of Aboriginal land assets in revitalising Aboriginal languages and culture, generating opportunities and increasing the Aboriginal community’s capacity. The ISRP presents an effective model for local government consultation with Aboriginal communities, involving:

- an assessment of land held by the region’s LALC to identify priority sites that may present economic opportunities
- investigation of how LALC land assets can best be planned, managed and developed for the benefit of the Aboriginal community
- identification of commercial land use, Aboriginal housing and employment opportunities.

Local government in this area will work with the LALC to create a pipeline of potential projects, facilitating future economic returns LALCs can reinvest in assistance programs for the Aboriginal community.

Direction 3.4 of the ISRP aims to “protect the region’s cultural heritage”, important to the communities’ identity, and a crucial contribution to the visitor economy. It acknowledges that Aboriginal communities in the region have retained strong cultural connections to the landscape, and requires Council’s growth management strategies to conform to heritage legislative processes including:

- directions given under planning legislation,
- the *National Parks and Wildlife Act 1974*, and
- guidelines and principles for heritage protection, issued by NSW Heritage Council.

This proactive approach will yield a region with strong, healthy and well-connected communities.

A series of factsheets about the NSW planning laws, produced by the NSWALC, highlight the importance of consulting with Aboriginal communities during various stages of the planning development process. They include:

- Using the law to protect Aboriginal culture and heritage: Consultation.
- Introduction to NSW Planning Laws.
- Introduction to Local Environmental Plans.
- Planning laws and Aboriginal culture and heritage.
- Local councils and public land.
- Land zoning and Local Environmental Plans.

These fact sheets can all be accessed [here](#).

Aboriginal heritage and languages

Councils can improve planning and service delivery to Aboriginal communities by having a better understanding of important Aboriginal heritage places within the local council area. The key tool for this is an Aboriginal Heritage Assessment, which identifies and recognises Aboriginal heritage values within a local government area. The valuables may be tangible (physical items such as rock art, stone tools or middens) or intangible (areas without physical evidence but with particular meaning for the Aboriginal community, such as a ridgeline mentioned in a song to guide people through an area as they travelled to a ceremony).

Aboriginal heritage assessments are an opportunity for councils and local Aboriginal peoples to build and maintain positive working relationships. Involving Aboriginal peoples collaboratively in

identifying and mapping Aboriginal heritage values can inform planning for protecting and celebrating the unique Aboriginal cultural heritage values of the area, as well as assist council's decision-making on the development and location of services and infrastructure.

When formulating a LEP, councils should proactively consult Aboriginal communities of the area, and consider the question: "How can Aboriginal cultural heritage be protected and celebrated, and Aboriginal peoples' cultural connections and wellbeing be supported now and into the future?"

Issues for councils: heritage assessments

Councils can maintain ties to Aboriginal heritage and promote Aboriginal language in the local area by:

- Identifying significant sites of Aboriginal heritage and protecting these sites as Aboriginal heritage conservation zones in the area's future planning and development.
- Plan for ample open spaces and parklands.
- Consider Aboriginal place-naming and street naming to pay homage to the Aboriginal heritage of certain regions.
- Consider the adoption of Aboriginal dual names for geographic features within the area that already have names.
- Develop materials to promote and celebrate Aboriginal cultural heritage values where appropriate.

The guide [Aboriginal Cultural Heritage Regional Studies: an illustrated approach](#) can assist councils to formulate an Aboriginal heritage assessment project.

Aboriginal heritage legislation

There are 3 key pieces of NSW legislation relating to the protection of Aboriginal heritage:

- The *National Parks and Wildlife Act 1974*.
- The *Heritage Act 1977*.
- The *Environmental Planning and Assessment Act 1979*.

The Integrated Development Assessments (IDA) process has been established to link the approvals required under these legislations to the development consent process.

The National Parks and Wildlife Act 1974

The [National Parks and Wildlife Act 1974](#) is the primary legislation for the protection of some aspects of Aboriginal cultural heritage in NSW. Part 6 provides specific protection for Aboriginal objects and declared Aboriginal places by establishing offences of harm, which includes destroying, defacing or damaging an Aboriginal object or place, or moving an Aboriginal object from the land. There are a number of defences and exemptions to the offence of harming an Aboriginal object or place.

The OEH has published a [Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW](#) to assist individuals and organisations to exercise due diligence when contemplating activities which could harm Aboriginal objects or places. Anyone who uses due diligence to determine that their actions will not harm Aboriginal objects or places has a defence against prosecution for the strict liability offence if they later harm an object or place.

The Code also provides a process to determine whether the activity requires an application for an Aboriginal Heritage Impact Permit (AHIP). An AHIP – which must be supported by an Aboriginal Cultural Heritage Assessment Report, including evidence of consultation with Aboriginal peoples – can be issued by the OEH Chief Executive when harm to an Aboriginal object or place cannot be avoided. Further information on applying for an AHIP can be found [here](#).

The Heritage Act 1977

Items of Aboriginal cultural heritage value, including Post Contact sites, can also be protected by inclusion in the State Heritage Register under the [Heritage Act 1977](#) (NSW).

The [State Heritage Register](#) is a listing of items (places, buildings, works, relics, moveable objects, precincts or land) of state heritage value. The Register was established to protect those items listed by requiring approval to carry out works on those items, and makes it illegal to:

- demolish a building or work.
- “damage or despoil” a place, precinct or land, or any part thereof.
- move, damage or destroy a relic or moveable object.
- excavate any land for the purpose of exposing or moving a relic.
- carry out any development in relation to the land on which the building, work or relic is situated, the land that comprises the place, or land within the precinct.
- alter a building, work, relic or moveable object.
- display any notice or advertisement on the place, building, work, relic, moveable object or land, or in the precinct.
- damage or destroy any tree or other vegetation on or remove any tree or other vegetation from the place, precinct or land.

The Heritage Council is the approval body for heritage items listed on the State Heritage Register or subject to an interim heritage order made by that body. Minor works to State Heritage Register items may be exempt from the need for approval under standard exemptions published in the Gazette, and available [here](#).

The *Environmental Planning and Assessment Act 1979*

The [Environmental Planning and Assessment Act 1979](#) requires that land use planning and development approval bodies such as local councils consider any environmental impacts, including potential Aboriginal heritage, economic and social impacts, before granting an approval so it is important that careful consideration be given to each of these areas.

Development Assessment

Councils are required to conduct a comprehensive assessment of all Aboriginal heritage impacts before granting consent to a development application. Decisions made at the development application stage will be more robust if informed by a higher, strategic level of assessment that ideally has been incorporated in land use planning. Such an assessment also offers opportunities for councils to streamline their assessment and approvals process.

Councils are required to consider the impacts of any development proposal on Aboriginal heritage and Aboriginal communities as part of an Environmental Impact Assessment (EIA) of a development application. The EIA ensures that all environment impacts are thoroughly considered before an application is lodged. Development activities that will directly or indirectly harm an Aboriginal object or declared Aboriginal place also require OEH consent that takes the form of an Aboriginal Heritage Impact Permit (AHIP).

Integrated Development Approvals

An Integrated Development Approval (IDA) is required if the action requires approvals under more than one piece of legislation, such as:

- The *Heritage Act 1977* (for actions including demolition, damage or despoliation, excavation, development, display of notices or advertisements, or alteration of any item or part item with state heritage value), and
- The *National Parks and Wildlife Act 1974* (actions impacting on an Aboriginal object, place, land, activity or person).

To obtain an IDA, the proponent must provide adequate information to state agencies so they can provide general terms of approval to the consent authority, or indicate approval will not be given before development consent is granted. The OEH is responsible for issuing AHIPS under s90 of the *National Parks and Wildlife Act 1974* and the Heritage Council (or the OEH Heritage Division under delegation) is responsible for approvals under S57 of the Heritage Act.

All AHIP applicants are required to undertake consultation with Aboriginal peoples who hold cultural knowledge relevant to determining the cultural significance of Aboriginal objects and/or places relevant to the proposed project area. More information is available in the [Aboriginal cultural heritage consultation requirements for proponents 2010](#).

OEH recommends that this process also be used where a proponent may be uncertain about whether or not their proposed activity may have the potential to harm Aboriginal objects or places.

Helpful resources

The OEH has produced a suite of documents about protecting and regulating Aboriginal cultural heritage:

- Information on the protection and regulation of Aboriginal cultural heritage including due diligence can be found [here](#).
- Information on Aboriginal Heritage Impact Permits (AHIP) can be found [here](#).
- Information on investigation, assessing and reporting on Aboriginal cultural heritage can be found [here](#).
- Information on the minimum standards for archaeological investigation undertaken under the *National Parks and Wildlife Act 1974* can be found [here](#).
- Information about the requirements for consulting with Aboriginal peoples who can provide information about the significance of Aboriginal cultural heritage as part of the heritage assessment process can be found [here](#).
- [How the Aboriginal Heritage System Works](#) – an introductory guide which outlines how Aboriginal heritage legislation is administered, how Aboriginal peoples participate in decision-making, how proposals are reviewed and how protection is enforced.

The NSWALC has also produced a series of [factsheets](#) pertaining to Aboriginal heritage site protection through the *National Parks and Wildlife Act 1974*:

- Aboriginal Heritage Protection under the *National Parks and Wildlife Act 1974* (NSW).
- New Fines and Offences for the Destruction of Aboriginal Heritage.
- Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW.

Aboriginal languages

Aboriginal languages are a fundamental element of the Aboriginal culture, which reaffirm Aboriginal identity, spirituality and connection to Country. More information on Aboriginal languages, and be found at the [Our Languages website](#). Local government can help maintain ties to Aboriginal heritage and promote Aboriginal language by:

- Supporting arts and cultural events that celebrate and share Aboriginal cultures and languages.
- Providing community spaces for Aboriginal cultures and languages to be shared and taught.

The NSW Government is also committed to recognising Aboriginal cultural heritage by registering original place names given by Aboriginal peoples, so they sit side by side with existing European names. Since June 2001 the Government has supported a dual naming policy for geographical features and cultural sites, which represents a meaningful contribution to the process of reconciliation in NSW.

Local government can help maintain ties to Aboriginal heritage and promote Aboriginal language by:

- Identifying significant sites of Aboriginal heritage and acknowledging these sites as Aboriginal heritage conservation zones in the area's future planning and development.
- Planning for ample open spaces and parklands.
- Considering adoption of Aboriginal dual names for geographic features within the area that already have names.

- Considering Aboriginal place-naming and street-naming to pay homage to the Aboriginal heritage of certain regions.

Councils can also build and maintain productive partnerships with local Aboriginal communities by ensuring there is respectful and careful negotiation with these communities prior to the use of Aboriginal names for newly proclaimed public places, roads or new land developments. Assistance to Councils in this area can be obtained from a wide range of sources, outlined below.

The [Geographical Names Board of NSW](#) manages the dual naming policy, and preferences traditional Aboriginal place names or names with Aboriginal origin wherever possible.

[Aboriginal Language and Culture Nests](#) have been established within some NSW schools to enable Aboriginal peoples and communities to reclaim, revitalise and maintain their traditional Aboriginal languages.

The [NSW State Library Indigenous Services](#) works with Indigenous communities across NSW concerning the preservation and management of Indigenous documentary heritage resources. The team promotes Library services and collections to Indigenous communities, and provides advice on Indigenous matters.

[NSW Museums and Galleries](#) supports small to medium galleries, museums and Aboriginal cultural centres in NSW to maximise their impact and help create strong and thriving local communities.

Economic development

Economic development involves the development of human capital, improvements to infrastructure and living conditions, and is reflected in better health, quality of life and economic opportunity. Economic growth is only one aspect of the process of economic development in that systematic, long-term government investments in transportation, housing, education, and healthcare are necessary to ensure sustainable economic growth.

Economic development supports the growth of strong sustainable communities – it can result in better incomes for families and communities, address entrenched disadvantage and improve health and wellbeing. Financial security and prosperity also enhances self-esteem, which can be positive for families, improving family interaction and reducing social alienation.

Local councils can play an important role in building Aboriginal economic development in their communities. Working in partnership with Aboriginal communities, all levels of government, industry and NGOs, local councils can create opportunities for Aboriginal communities to thrive.

Aboriginal peoples can be major contributors to their local economies but often do not have the support and opportunity to make this a reality. Councils are in a unique position to support Aboriginal economic growth via:

- **Business support and procurement**

Aboriginal businesses not only build economic independence for Aboriginal peoples, they contribute economically and socially to the whole community. As major procurers of goods and services in their local areas, councils are well placed to support local Aboriginal businesses. Many councils continue to build the economic strength of their communities, both Aboriginal and non-Aboriginal, through an Aboriginal procurement policy or procurement targets in their [Reconciliation Action Plan](#). Aboriginal businesses are easily located via [Supply Nation's Indigenous Business Direct portal](#).

- **Economic development and planning approvals**

Local councils should take into account the potential for enhancing local Aboriginal economic development outcomes when zoning land and in the development approvals process.

- **Aboriginal resource development**

Councils are well placed to work in partnership with Aboriginal communities and organisations to support the utilisation of Aboriginal resources. Examples include:

- Inclusion of days of significance for Aboriginal communities in the council events calendar, along with the identification of opportunities to celebrate Aboriginal community achievements and enhance the reconciliation process.
- Promotion of Aboriginal arts and cultural expression through council publications, art galleries and council facilities.
- The inclusion of local Aboriginal history in museums and other places of interest. Such strategies have huge potential to educate the community about important Aboriginal historical events and culture and offer great potential as tourist drawcards. However it is critical that Aboriginal culture should only be presented with the express permission and sanction of the Aboriginal communities in question.
- Support of Aboriginal business ventures through the provision of leadership and specialist advice.
- Maximising the opportunity to secure funding to promote Aboriginal specific programs, either directly through council operations or through leadership and sponsorship.

Initiatives

A range of initiatives may be of interest to councils.

NSW Aboriginal Land Council (NSWALC)

The [NSWALC Economic Development Policy](#) outlines the broad strategies and initiatives that the organisation will pursue to drive economic development towards wealth creation and wellbeing for Aboriginal peoples in NSW.

NSW Government

The **Department of Industry's Training Services NSW** has an [Aboriginal Services Unit](#) which offers a number of programs focused on Aboriginal training, employment and business development. Key resources include:

- **The Elsa Dixon Aboriginal Employment Program**, which provides salary subsidies to State and local government to support permanent employment, skill development, work experience and traineeships for Aboriginal peoples.
- **New Careers for Aboriginal Peoples**, which aims to increase the participation of Aboriginal peoples in the labour market.
- **The Way Ahead for Aboriginal Peoples**, which provides free mentoring services for Aboriginal apprentices and trainees who need additional support in the workplace.

The [NSW Public Sector Aboriginal Employment Strategy 2014-17](#) sets out the key initiatives for the NSW Government to attract and retain Aboriginal staff, support career development and progression and improve workplace cultural competency.

The [Aboriginal Participation in Construction Policy](#) led by ProcurePoint (formerly NSW Procurement) requires 1.5 per cent of the total estimated value of a contract be invested in supporting Aboriginal participation.

The [Aboriginal Economic Prosperity Framework](#) is an important component of *OCHRE*. Aboriginal Affairs is the agency responsible for progressing this economic reform agenda that will better coordinate effort across government and ensure stakeholders work together effectively to support Aboriginal peoples' greater participation in the NSW economy.

PART C - STRATEGIC PLANNING AND COMMUNITY ENGAGEMENT

Local councils in NSW are required to develop, consult and deliver on a range of plans and strategies, all of which include issues with the potential to impact on Aboriginal communities. These key strategic planning instruments require an integrated consideration of social, environmental and economic issues, and must be based on social justice principles of equity, access, participation and rights. Community engagement and consultation – including engagement and consultation with local Aboriginal communities - is the best way to ensure these planning instruments are a genuine reflection of the needs, aspirations and objectives of the various communities within the local government area.

The Integrated Planning and Reporting Framework (IP&R)

Designed to bring together the various statutory and reporting processes undertaken by councils, the IP&R Framework requires all councils to develop a minimum 10-year strategic and corporate planning framework.

NSW Government amendments to the *Local Government Act 1993* embed IP&R principles across a broader range of council activities. The amended legislation also prescribes clear responsibilities and accountabilities for councillors in the development of their council's IP&R framework.

The amended legislation also prescribes the “community participation principle”, which places a responsibility on councils to actively engage with their local communities through the use of the IP&R framework.

The IP&R framework is supported by the following principles, with councils to:

- identify and prioritise key local community needs and aspirations and consider regional priorities.
- identify strategic goals to meet those needs and aspirations.
- develop activities, and prioritise actions, to work towards the strategic goals.
- ensure that the strategic goals and activities to work towards them may be achieved within council resources.
- regularly review and evaluate progress towards achieving strategic goals.
- maintain an integrated approach to planning, delivering, monitoring and reporting on strategic goals.
- collaborate with others to maximise achievement of strategic goals.
- manage risks to the local community or area or to the council effectively and proactively.
- make appropriate evidence-based adaptations to meet changing needs and circumstances.

Further information about IP&R can be found on the [OLG IP&R webpage](#).

The Community Strategic Plan (CSP)

The CSP represents the highest level of strategic planning undertaken by a local council for its local government area. It is a 10-year blueprint identifying the main priorities and aspirations for the future of the local government area. All other plans developed by the council as part of the IP&R Framework must reflect and support the implementation of this CSP.

Building the CSP takes time and must involve a whole-of-community engagement process. It must be based on the social justice principles of access, equity, participation and rights; as well as the quadruple bottom line (social, environmental, economic and civic leadership

issues). At the end of each council term a report is prepared which examines progress towards the identified outcomes on the plan.

Delivery Program

This four-year Program turns the strategic goals of the CSP into actions that are the responsibility of the council. It is the key go-to document for councillors and council staff, identifying all of the key activities the council has committed to undertake over its four-year term. All plans, projects, activities and funding allocations of the council must be directly linked to the Delivery Program.

A new Delivery Program is required after each ordinary election of councillors. It is drafted and placed on public exhibition before being adopted by the council for commencement on 1 July following the election. The Delivery Program is reported on to the council by the General Manager at least every six months. If any significant amendments are proposed, the council must re-exhibit it, explaining the proposed changes and inviting community comment.

Operational Plan

The Operational Plan spells out the detail of the Delivery Program, identifying the individual projects and activities that will be undertaken in a specific year to achieve the commitments made in the Delivery Program. It must include the council's annual budget, along with the Statement of Revenue Policy, which includes the proposed rates, fees and charges for that financial year. Operational Plan responsibilities are linked to team planning and the staff performance system.

Resourcing Strategy

The community's aspirations and objectives, outlined in the CSP, cannot be achieved without sufficient resources – time, money, assets and people – to implement them. The Resourcing Strategy consists of three interrelated elements:

- Long-Term Financial Planning.
- Asset Management Planning.
- Workforce Planning.

Of these, Workforce Planning is a crucial part of councils seeking to properly represent and reflect the Aboriginal peoples and communities in their local government area. The role of workforce planning in building a consultative organisation engaged with Aboriginal communities is addressed in a later section of this document.

Strategic community engagement

Community Engagement Strategy

Councils are required to prepare a Community Engagement Strategy to inform the planning of all council activities. The Community Engagement Strategy sets out how the council will engage at key stages during the preparation of the CSP and related Delivery Program, Operational Plan and Resourcing Strategy, as well as all other council activities. It should identify the 'who, when, how and where' as well as considering what information will be required to support the engagement process.

The community engagement undertaken as part of the strategic planning process must be much more than a single community meeting or satisfaction survey. It should be targeted and appropriate to the specific planning being undertaken. It is an ongoing conversation between the council and its communities.

Local government is encouraged to develop relationships with Aboriginal peoples including LALCs, as statutory bodies representing the rights and interests of Aboriginal peoples, and to meaningfully engage with them.

The Strategic Planning Checklist (Appendix A) sets out specific issues for councils to consider when undertaking strategic planning, ensuring the appropriate inclusion of Aboriginal communities in the process.

The Australian Centre of Excellence for Local Government (ACELG) has established an online database of community engagement resources, which includes a report on [Community Engagement in Rural-Remote and Indigenous Local Government in Australia](#) that discusses engagement practice within communities and offers a toolkit to assist practice in this area.

Potential channels and forums for community participation and engagement

Existing channels and forums may also assist councils to ensure the design and development of their strategic planning process is appropriately inclusive and consultative. However it should be noted that advisory and consultative committees do not replace other existing Aboriginal forums and decision-making structures.

Aboriginal Advisory/Consultative Committees

Many councils choose to establish their own Aboriginal Advisory/Consultative committees to facilitate the participation of Aboriginal peoples in council decision-making. These committees are established by council resolution under section 355 of the Local Government Act 1993, and also provide:

- an opportunity for key issues to be identified and a common approach to their resolution negotiated within resources available
- A formal avenue through which Aboriginal peoples can raise issues of concern.

You can find a set of Guidelines for Operating a Successful Aboriginal Advisory or Consultative Committee at Appendix B.

Aboriginal Community Working Parties

Aboriginal Community Working Parties (CWPs or similar bodies) are established in many local government areas within NSW. The CWP works with all levels of government in promoting and achieving Aboriginal economic and cultural development. They are an important source of community information and provide an efficient structure for the development of specific council initiatives. NSW councils have an interest in contributing to the work of CWPs.

Some NSW councils have opted to work with CWPs as an alternative to establishing their own Aboriginal Advisory/Consultative committees. Where this approach is adopted, it is important to recognise that council has little or no control of the agenda or operations. CWPs' terms of reference are not limited to matters relevant to councils, and so council's business may not be a priority for the CWP. For this reason it is critical that an effective communication mechanism, such as a written agreement, is negotiated between the council and the CWP, setting out the roles of the parties, the communication process, and the process when communication problems arise.

Aboriginal liaison/community development officers

Councils in NSW have found the employment of Aboriginal Liaison Officers/Community Development Officers to be particularly effective in developing strong linkages with local Aboriginal peoples. These Officers can play a critical role in building community engagement, and have the potential to:

- Create links between Aboriginal peoples and council.
- Ensure mainstream services to the general community are accessible and culturally appropriate for Aboriginal peoples.
- Assist and enhance the Reconciliation process.
- Develop a local cultural protocols document.
- Lead and facilitate projects that are Aboriginal-specific, giving greater awareness to the broader community of Aboriginal peoples and their culture.

- Develop Aboriginal networks, including Aboriginal Land Councils and Aboriginal Elders, as sources of advice for councils.
- Break down barriers between Aboriginal peoples and non-Aboriginal people.
- Build partnerships between council and Aboriginal peoples through Local Agreements.
- Clarify what services council can and should provide to the Aboriginal peoples.
- Encourage Aboriginal peoples to work closely with council.
- Provide sound knowledge of access pathways to Aboriginal organisations.
- Facilitate consultative committee meetings on a regular basis.
- Assist in Aboriginal Heritage Impact Assessments, interpretation of heritage values, and explanation of legislation relating to Aboriginal heritage.

[Local Government Aboriginal Network](#), supported by LGNSW, brings together Aboriginal Liaison/Community Development Officers, and Aboriginal and non-Aboriginal councillors in NSW. It acts as an information exchange and discussion forum on local government issues relating to Aboriginal communities, business and the wider community.

The Network is designed to:

- discuss current issues in local government which affect Aboriginal peoples.
- maintain a mechanism for support of Aboriginal workers and councillors in local government, along with those involved in Aboriginal Affairs that deal with local government.
- create a venue for information exchange on existing and new programs and services in local government that are relevant to Aboriginal peoples.
- advocate and enhance the interests of rights of Aboriginal peoples in local government.
- investigate initiatives to attract Aboriginal candidates to, and to advise those intending to, stand as candidates for local government elections at a local level.
- promote reconciliation and best practice between Aboriginal peoples and non-Aboriginal people in local government.
- break down barriers, answer questions and provide feedback to council staff, public and external stakeholders.
- deal with sensitive issues associated with Aboriginal peoples, residents and staff
- promote council best practices with other delegates.

Formal agreements between councils and Aboriginal peoples

Councils may decide to enter into a formal agreement with Aboriginal peoples to clarify their commitment to engage. These agreements may include Reconciliation Action Plans, Statements of Commitment or Memoranda of Understanding.

NSW Reconciliation Action Plans (RAP)

Reconciliation Australia is an independent, national not-for-profit organisation promoting reconciliation by building relationships, respect and trust between the wider Australian community and Aboriginal peoples. The [Reconciliation Action Plan \(RAP\) program](#) is a framework for organisations to realise their vision for reconciliation.

Through the program, organisations develop a RAP—a business plan that documents the actions an organisation commits to undertake to contribute to reconciliation in Australia. A RAP will enable organisations to commit to implementing and measuring practical actions that build respectful relationships and create opportunities for Aboriginal peoples.

Statements of Commitment

A statement of commitment recognises the traditional Aboriginal peoples of the local area and is a guide in developing partnerships with local Aboriginal peoples. The Mayor, General Manager and key Aboriginal leaders usually sign the statement of commitment.

Previous examples of council Statements of Commitment include:

- [Lake Macquarie City Council](#)
- [Kempsey Shire Council](#)
- [Byron Bay Council](#)

Memoranda of Understanding

Memoranda of Understanding (MOU or MoU) are more complex negotiated agreements about how councils will work with Aboriginal peoples. They can be broad or very specific in the material they cover but must be respectfully negotiated in order to be successful. One example is the MOU negotiated and implemented by [Byron Bay Council](#).

Leasing agreements and site deed agreements

A number of councils have leasing agreements and site deed agreements with their LALCs while other councils have MOUs in place regarding land matters. These agreements are significant as they mark a reconciliatory point in the relationship between Local Government and LALCs. For example, [Wollongong City Council](#) passed a resolution in 2015 to work with five different custodial groups to finalise a Joint Management Agreement protecting the Sandon Point Aboriginal Place. Blue Mountains City Council and its Aboriginal Advisory Council jointly developed an [Aboriginal Land Management Plan](#) to protect and interpret Aboriginal cultural heritage sites, and the natural area values that are important in maintaining a cultural connection to Country.

Workforce planning and community engagement

Workforce planning by local government is usually incorporated in a Workplace Management Strategy, which addresses the human resourcing requirements of the council's Delivery Program. It is recommended that all councils should consider developing an Aboriginal Employment Strategy or Reconciliation Action Plan as part of this process, to set out targets for Aboriginal employment. A good Strategy or Plan will look well beyond entry level roles to map pathways by which Aboriginal peoples can become planners, administrators and managers.

Aboriginal council employees

A diverse workforce that accurately reflects community demographics means better representation, improved communication, increased understanding of the range of issues in the local government area – and ultimately, the provision of services that best meet the needs of these communities.

The employment of Aboriginal peoples is an effective way to tap into significant expertise and demonstrate a commitment to working effectively with Aboriginal peoples, whether Aboriginal peoples are employed in designated or generic positions.

Despite their knowledge it cannot be assumed that an individual Aboriginal staff member can speak on behalf of all Aboriginal peoples. They can provide advice about appropriate networks; facilitate access to information and provide advice about appropriate negotiation mechanisms.

Aboriginal employment programs and initiatives

A number of programs are available to assist NSW councils to increase employment opportunities for Aboriginal peoples. These programs include:

- [Closing the Gap through Place-Based Employment: National Local Government Indigenous Employment Position Paper](#)
Local Government Managers Australia National (LGMA) and the Australian Centre of Excellence for Local Government (ACELG), have developed a National Indigenous Employment in Local Government Position Paper to encourage and facilitate increased

Indigenous workforce participation in local government. The Position Paper is designed to underpin the Strategies and Strategic Actions outlined in ACELG's [Future-Proofing Local Government: National Workforce Strategy 2013-2020](#).

- **[Elsa Dixon Aboriginal Employment Program \(EDAEP\)](#)**

This Program aims to promote diversity, innovation and service responsiveness in the NSW workforce by reducing barriers to employment and improving promotional opportunities for Aboriginal peoples. It encourages the permanent employment and professional mobility of Aboriginal peoples in NSW public service agencies and local government authorities; provides special incentives for the employment of Aboriginal peoples with a disability; and promotes innovation in achieving vocational outcomes for Aboriginal peoples.

- **Council staff cultural awareness training**

There are many commercial Aboriginal awareness training packages available, including [customisable training available from LGNSW](#). Most include the capacity for local input. Aboriginal liaison/community development officers and other local Aboriginal leaders will have the expertise to assist councils in providing local input.

The following are some of the issues a council may want to include in a local program for NSW councillors and council employees:

- Local Aboriginal historical events and their impact on contemporary Aboriginal peoples.
 - Local places of Aboriginal significance.
 - Local Aboriginal heritage.
 - Identification of local nations and clans.
 - Important demographic data.
 - Local Aboriginal organisations, their roles, their leadership.
 - Local Aboriginal peoples and communities, their make-up, issues and leadership.
 - Contemporary Aboriginal culture, including art, music and drama.
 - Effective communication with Aboriginal peoples (including culturally sensitive problem solving).
 - Council policies and procedures relating to engagement with Aboriginal peoples and the provision of services.
- **Effective anti-discrimination and anti-harassment strategies**
Section 344(1) (b) of the *Local Government Act 1993* requires councils to promote equal employment opportunity for women, members of racial minorities and persons with disabilities in councils. Putting effective anti-discrimination and anti-harassment strategies in place in the workplace is good practice which is good for business.

A productive and cohesive workplace helps to:

- increase the pool of potential employees, ensuring council is able to recruit the best person for the job.
- build the morale and productivity of council employees, building loyalty and reducing staff churn.
- minimise complaints, disruptions and legal wrangles.
- add to council's bottom line and further build its reputation in the community.

The [Australian Human Rights Commission](#) has developed a range of resources to support employers to deal effectively with discrimination and harassment in the workplace so that everyone involved with your business is treated fairly and with respect.

PART D - KEY PROTOCOLS

Permissions

Getting permission is essential before starting work on any council project that impacts directly on Aboriginal peoples. Aboriginal peoples have a strong sense of owning their history and knowledge and being in control of their future. This ownership has often been ignored in the past.

Getting permission involves forming strong partnerships with Aboriginal organisations. They can give advice on the correct protocol for gaining consent. Permission will rarely be refused if the purpose of the work is clearly understood and the way of undertaking the work is properly negotiated. Where it is refused, the reason may relate to issues that are sacred or taboo, related to a death custom, or is specifically women's or men's business.

Concepts and definition

The following concepts and definitions may assist in understanding some of the terminology commonly used by Aboriginal peoples and can be used as a starting point for seeking further information.

Aboriginal person

The *NSW Aboriginal Land Rights Act 1983* defines an Aboriginal person as a person who:

- is a member of an Aboriginal race of Australia
- identifies as an Aboriginal person and
- is accepted by the Aboriginal community as an Aboriginal person.

Note that the term Aborigine has negative connotations for many Aboriginal peoples. Some people prefer the term Indigenous when referring to individuals or communities. The terms can be used interchangeably, but it is wise to check individual preferences.

Always capitalize the "A" in Aboriginal or "I" in Indigenous. Lower case refers to aboriginal person or indigenous people in any part of the world.

Torres Strait Islander

A Torres Strait Islander is a person/descendent from the Torres Strait Islands. There are many Torres Strait Islanders living in NSW.

Nation, Tribe, Clan, Mob

These are all terms referring to a culturally distinct group of Aboriginal peoples associated with a particular, culturally defined area of land or country. A number of "tribes" or "clans" comprise a larger grouping of Aboriginal peoples that identify as a "Nation".

Mob is a term that being increasingly used by Aboriginal communities as a generic term.

Aboriginal peoples will often refer to themselves as being Koori, Goori or Murri. These are terms drawn from Aboriginal languages.

- Goori – is usually used by Aboriginal peoples in northern NSW coastal regions.
- Koori – is usually used by Aboriginal peoples in parts of NSW and Victoria.
- Murri – is usually used by Aboriginal peoples in north-west NSW and Queensland.

Care needs to be taken to check with local communities about local acceptable terminology.

Country

A term used by Aboriginal peoples to refer to the land to which they belong and their place of Dreaming. It has a much broader context than the standard English definition.

Community

For Aboriginal peoples a community is first and foremost about country, extended family ties and shared experience. It is about interrelatedness and belonging. Aboriginal peoples may belong to more than one community. For example it can describe where they come from, where their family is or where they work.

It is important to understand that as a result of the dislocation of Aboriginal peoples a community may comprise Aboriginal peoples of different areas. What non-Aboriginal people see as one community may not be seen as such by Aboriginal peoples.

Traditional Custodian or Owner

“Traditional Custodians” and “Traditional Owners” are terms that can be used interchangeably, however particular communities have specific preference about which term to use. Both terms refer to the Aboriginal peoples who are descendants of the original inhabitants of the land. They have a spiritual, cultural, political and often, physical connection with a particular part of the land.

Traditional Owners may be identified as being registered Aboriginal owners (see below), native title claimants or holders, or have organised themselves into incorporated (or unincorporated) groups. However, there may be several Aboriginal Corporations and groups asserting that they represent the Traditional Owners of that area. Preference must be given to Aboriginal groups with legally recognised rights and interests (that is, Aboriginal Owners and native title claimants and holders) on involvement in cultural and heritage matters.

Aboriginal Owners

Aboriginal Owners are Aboriginal peoples who have been registered as having cultural association with certain lands (usually conservation reserves that are Aboriginal owned or earmarked for Aboriginal ownership under Part 9 of the *Aboriginal Land Rights Act 1983*).

Aboriginal Owners have proven their cultural association through descent from the land’s original inhabitants and cultural connection through culture, custom, stories, lore, etc. The Registrar, Aboriginal Land Rights Act 1983 maintains the Register of Aboriginal Owners, and he or she must be satisfied with the applicant’s genealogical and anthropological proof of cultural association. Aboriginal Owners (and Traditional Owners generally) can also be members of the relevant LALC. Not all areas have registered Aboriginal Owners.

The Commonwealth Native Title Act 1993 – claimants and holders

This *Commonwealth Native Title Act 1993* gives registered native title claimants and native title holders specific rights to be consulted on land uses or activities that may impact on their native title rights and interests. Native title are the rights and interests to lands and/or waters held by the community, a group, or an individual based on their traditional laws and customs that are recognised by the Australian law.

Registered native title claimants have, in the opinion of the National Native Title Tribunal, passed the administrative registration test. The registration test is that claimants have clearly identified the claimed area, the groups and individuals involved in that claim, the nature and extent of the claimed native title rights and interests and the factual basis for the claim. The claim makes a prima facie case that there is physical connection to the claimed lands and there has not been extinguishment of the claimed native title (for example through the grant of freehold title to a third party).

Native title holders have been determined by the Federal Court (or High Court) to have particular rights and interests in the lands and/or waters subject to the determination. The determination may be made with the consent of the Government or through litigation. In addition to the right to be notified or consulted enjoyed by native title claimants, native title holders may also have rights to compensation.

Kinship

A term to capture large extended family groups often spread over different communities and geographic areas. Kinship groups are strong and trace their origins back to traditional owners. Kinship is of fundamental importance in Aboriginal society.

Elder

An Aboriginal Elder is someone who has gained recognition as a custodian of knowledge and lore, and who has permission to disclose cultural knowledge and beliefs.

In some instances Aboriginal peoples above a certain age will refer to themselves as Elders. It is important to understand that in traditional Aboriginal culture age alone does not necessarily mean that one is recognised as an Elder. Aboriginal peoples traditionally refer to an Elder as “aunty” or “uncle”. However it is recommended that non-Aboriginal people check the appropriateness of their use of these terms.

Culture

Consists of accepted and traditionally patterned ways of behaving shared by a community. It includes land, beliefs and spirituality, language, ways of living and working, artistic expression, relationships and identity.

Land Rights

To Aboriginal peoples, land is not only about hunting and gathering, it is also the basis of spiritual life. The aim of the land rights movement is to counteract the land disposition of Aboriginal peoples that occurred with European occupation.

The Aboriginal Land Rights Act 1983 gave the right for LALCs to make claims on vacant land held under the Crown Lands Act 1989. The Aboriginal Land Rights Act also gave rights to Aboriginal peoples to seek agreement with any landowner on access to land to hunt fish or gather.

Native Title

The Native Title Act 1993 (Commonwealth) gave legal recognition to the existence of native title; reversing the concept of “terra nullius”, the legal premise that European occupation was based on, namely that the land was empty.

Discrete Aboriginal Communities

For the purposes of this Guide, Discrete Aboriginal Communities refers to Aboriginal missions or reserves which are owned and managed by LALCs. In effect this is private land, with the Discrete Aboriginal Communities originally established as villages by Christian missionaries. In the late 1880s these areas were progressively taken over by the colonial government and run as stations or reserves.

There were three types of spaces formally set aside by the government specifically for Aboriginal peoples to live on:

- Aboriginal reserves.
- Aboriginal missions.
- Aboriginal stations.

NSW Government Aboriginal Cultural Protocols and Practices Policy Plan

Aboriginal peoples are the original owners of the land and it is important that this special position of Aboriginal peoples is recognised and incorporated into official protocol to enable the wider community to share in Aboriginal culture and facilitate better relationships between Aboriginal peoples and the general community.

The purpose of this policy, which can be downloaded from the [Department of Premier and Cabinet website](#), is to assist NSW Public Sector agencies to observe the appropriate protocols for the recognition of Aboriginal peoples at official events or at events where the NSW Government is a major sponsor.

Official events and ceremonies engage the attention of participants, observers and the broader community. These events also symbolise the values of community and the way individuals envision themselves.

By incorporating Aboriginal cultural practices/ceremonies into official events Council:

- recognises and pays respect to Aboriginal peoples, cultures and heritage.
- communicates Aboriginal cultural practices to the broader community to promote respect and understanding.
- demonstrates that Aboriginal cultures are living through maintenance and practice of ceremonies and protocols.
- demonstrates recognition of Aboriginal peoples unique position which can assist in building relationships and partnerships.

Ownership copyright, cultural and intellectual property

Copyright and the protection of intellectual property are vital issues for Aboriginal peoples. They are the custodians of their culture and have the right to own and control their cultural heritage.

In the past, non-Aboriginal people have appropriated Aboriginal stories, language, songs, dance and knowledge (intangible heritage). Aboriginal peoples have not been recognised as the owners of this knowledge. In some cases non-Aboriginal authors, who have benefited from the knowledge given to them, have claimed copyright and profited from the information. This has also occurred in relation to stolen material culture and symbolism used for commercial purposes without permission.

Any access to and use of Aboriginal cultural information must have permission from relevant individuals or organisations. Rights to use Aboriginal material may be held by an individual, but most cultural material belongs to the traditional owners of that knowledge. Regardless of physical ownership or intellectual property, traditional owners must always be consulted and involved in any decisions making concerning Aboriginal material culture and knowledge.

Councils are advised to identify the appropriate community or individuals who should be consulted from the outset of any project. Councils are advised to reach formal agreement with the owner/s of the knowledge before commencing a project that uses Aboriginal material. Best practice is to involve owners in the ongoing decisions making process and in future maintenance of the project. In some cases this should be in the form of a written contract. Aboriginal peoples should be afforded proper legal representation in any such contract negotiations.

Copyright and moral rights are complex issues and not always clear in relation to Aboriginal culture. Councils and Aboriginal peoples should seek specific legal advice when these issues arise. The Arts Law Centre of Australia can provide further advice on these issues through its [Artists in the Black](#) program.

Repatriation

The [United Nation's Declaration on the Rights of Indigenous Peoples](#) states in Article 12 that:

"Indigenous peoples have the right to manifest, practice, develop and teach their spiritual and religious traditions, customs and ceremonies; the right to maintain, protect, and have access in privacy to their religious and cultural sites; the right to the use and control of their ceremonial objects; and the right to the repatriation of their human remains".

Local government should recognise the value and importance of preserving, revitalising and strengthening Aboriginal culture and do so by facilitating not only for the return of Aboriginal ancestral remains and secret sacred objects (repatriation) but also to support Aboriginal and Torres Strait Islander visual arts, languages and cultural activities.

Fee for service

Aboriginal knowledge is complex and specialised, and is owned by Aboriginal peoples. As in Western culture, specialised knowledge is not something that is usually given away for free.

Aboriginal peoples who choose to work for councils in any capacity, including performing a traditional dance, giving a speech or traditional welcome, providing artwork or participating in a project, are entitled to be paid for their time and expertise.

Aboriginal Affairs NSW has developed guidelines for government agencies to consider when engaging Aboriginal peoples in cultural performances, or when conducting a Welcome to Country or other Aboriginal cultural protocol. These can be downloaded from the [Department of Premier and Cabinet website](#).

Naming the deceased

In NSW, Aboriginal communities may have different protocols regarding naming deceased Aboriginal peoples than that which is often raised with northern Australian Aboriginal peoples. The best way for councils to use the appropriate protocol for their area regarding naming the deceased or showing photographic images is to consult the LALC in the area.

In many Aboriginal communities in northern Australia it is offensive to refer to a deceased person by name or show photographic images of the person during the mourning period, unless agreed to by the relevant family. Many organisations are now using cultural warnings to avoid causing offence to the families of deceased persons.

Gender protocols

Aboriginal society still regards some information as specific and sacred to either men or women. This knowledge is sacred and recorded in a way that only men or only women can access. It is likely that a council will be unable to distinguish between men's and women's business. Councils need to be aware that such issues exist and seek advice from Aboriginal peoples about when they are likely to arise and how to manage such issues.

Aboriginal and Torres Strait Islander flags

The Aboriginal flag and the Torres Strait Islander flag were proclaimed as Flags of Australia under section 5 of the Flags Act 1953 in July 1995.

The Aboriginal Flag



The black top half of the flag symbolises Aboriginal peoples. The red bottom half represents the earth, and the yellow circle in the centre represents the sun. Mr Harold Thomas, an Aboriginal Elder, holds the copyright for the flag.

The Torres Strait Island Flag



This flag has three horizontal panels; the top and bottom are green and the middle one blue. The panels are divided by thin black lines. The green represents the land, the blue represents the sea, and the black represents the Torres Strait Islander peoples. In the centre is a white dari (dancer's head dress), which is a symbol of the Torres Strait Islander peoples. Underneath the dari is a white five-pointed star. This represents the island groups in the Torres Strait and the white represents peace. Mr Bernard Namok of Thursday Island created this flag. Copyright is held by Island Regional Council.

The order in which flags should be flown is (from the left)

1. Australian flag.
2. State Flag.
3. Aboriginal and/or Torres Strait Islander flags (should be flown on separate flag poles).
4. Council flag.

Always make sure that Aboriginal and Torres Strait Islander flags are reproduced hung and depicted in the correct way and are used for business relating to Indigenous communities.

Permission needs to be sought if councils intend reproducing either Aboriginal or Torres Strait Islander flags for commercial use. Further information is available from the [Department of Prime Minister and Cabinet website](#).

Welcome to Country

A "Welcome to Country" is where an Aboriginal custodian welcomes people to their land at the beginning of a meeting, event or ceremony. An appropriate person such as a recognised Elder within the local area needs to conduct this welcome. Welcome to Country enables Traditional Custodians to give their blessing for the event. It is an important mark of respect for Aboriginal peoples.

Acknowledgement of Country

Acknowledgement of Country is where other people acknowledge and show respect for the Traditional Custodians of the land on which the event is taking place. It is a sign of respect. The following is considered appropriate wording for this acknowledgement:

"I would like to acknowledge that we are here today on the land of the (insert local clan) people. The (insert local clan) are the Traditional Custodians of this land and form part of the wider Aboriginal nation known as the (insert name of Nation). I would also like to acknowledge the present Aboriginal and Torres Strait Islander peoples who now reside within this area."

It should be noted that the acknowledgement includes Aboriginal peoples whose origins are from other places, as per the NSW Government's Policy on Aboriginal Cultural Protocols and Practice, downloadable from the [Department of Premier and Cabinet website](#).

Signage

Councils are also encouraged to include Welcome to Country signs welcoming visitors and locals into towns and signposting major features that include some kind of acknowledgement of the traditional owners of that area. For example, "Welcome to _____ Country - Traditional lands of the _____ People".

Smoking ceremonies

Smoking ceremonies are undertaken in Aboriginal communities in order to cleanse a space. The Smoking Ceremony is a purification ritual and is always undertaken by Aboriginal

peoples with specialised cultural knowledge. Aboriginal peoples may request a Smoking Ceremony in a workplace where a death or other traumatic event has occurred. This request is of tremendous significance to them and should be respected. Failure to do so may cause significant distress. More information is available in the NSW Government's Policy on Aboriginal Cultural Protocols and Practice, downloadable from the [Department of Premier and Cabinet website](#).

Significant dates for Aboriginal communities

Cultural Days of significance:

- The Apology, 13 February - anniversary of former Prime Minister Kevin Rudd's Apology to Australia's Aboriginal Peoples.
- Harmony Day, 21 March - International Day for the Elimination of Racial Discrimination.
- National Close the Gap Day, 22 March - campaign for Indigenous health equality.
- Sorry Day, 26 May - commemorating the Stolen Generation.
- Reconciliation Week, 27 May to 3 June - marking two significant events, the 1967 Referendum (27 May 1967); and the Mabo decision (3 June 1992).
- NAIDOC Week, date changes annually (1st to the 2nd Sunday in July) - celebration of Aboriginal and Torres Strait Islander peoples, culture, history, and achievements.
- National Aboriginal and Islander Children's Day, 4 August - a celebration of children.
- Indigenous Literacy Day 3 September - Indigenous Literacy Foundation, raising national literacy levels.

NAIDOC Award entitlement

Clause 20(ii) of the Local Government (State) Award 2014 provides employees who are Aboriginal and Torres Strait Islanders with an entitlement to a single day's holiday during NAIDOC week. The purpose of this Award holiday is to enable Aboriginal and Torres Strait Islanders to participate in National Aboriginal and Islander Day celebrations.

An eligible employee can give less than seven days' notice of their intention to take the single day during NAIDOC week, and such leave shall not be unreasonably refused. LGNSW encourages councils to remind employees of the entitlement and to establish procedures for application and approval of the taking of the holiday appropriate to each council's circumstances.

PART E - RESOURCES

Links to other relevant programs and legislation

- [Cr Pat Dixon Training Support Program](#) LGNSW provides four \$1000 scholarships for Aboriginal candidates to undertake a training course related to their work in local government. Rural and regional candidates are also eligible for accommodation and travel assistance.
- [NSW Aboriginal Communities Water and Sewerage Program](#)
- [Waste aid program](#)
- [Promoting Diversity](#)
- [The Australian Institute of Aboriginal and Torres Strait Islander Studies](#)
- [Aboriginal Affairs NSW](#)
- [The Aboriginal Language Map](#)
- [Department of Prime Minister and Cabinet – Indigenous Affairs](#)
- [NAIDOC](#)
- [Reconciliation Australia](#)
- [NSW Aboriginal Land Council](#)
- [Australian Human Rights Commission: Aboriginal and Torres Strait Islander Social Justice](#)
- [NSW Office of Environment and Heritage \(Aboriginal Heritage Assessment\)](#)
- [National Native Title Tribunal](#)

Legislation

NSW Government

- [Aboriginal Land Rights Act 1983](#)
- [National Parks and Wildlife Act 1974](#)
- [Local Government Act 1993](#)
- [Crown Lands Act 1989](#) (note currently under review)
- [Fisheries Management Act 1994](#)
- [Disability Inclusion Act 2014](#)
- [Aboriginal Housing Act 1998](#)
- [Heritage Act 1977](#)

Australian Government

- [Racial Discrimination Act 1975](#)
- [Australian Human Rights Commission Act 1986](#)

APPENDIX A - STRATEGIC PLANNING CHECKLIST FOR ENGAGING WITH ABORIGINAL COMMUNITIES

These questions may prove useful to help ensure proactive and positive engagement with local Aboriginal communities during the strategic planning process.

QUESTIONS TO ASK	STATUS
What is known about the Aboriginal communities in the local area and what do we still need to learn?	
What has been council's past experience in addressing the issues for Aboriginal constituents? What has and has not worked?	
Has council considered the impact on Aboriginal communities of all its policies and programs?	
Is there an understanding of what constitutes Aboriginal cultural heritage, and a shared understanding of how it should be protected and managed?	
Do all Aboriginal communities have adequate and equitable access to council services? Does this include discrete Aboriginal communities? How do we know?	
Who are the local key Aboriginal leaders and other stakeholders who can advise council? Do "silent" communities have a voice?	
Is there a capacity for strategic resource partnerships with other councils in developing a common approach?	
What are the best methods of engaging Aboriginal communities in determining council priorities?	
What are the priority issues for Aboriginal communities?	
Of these issues, which are the important ones for council to address within the next planning cycle?	
What is the best method for council to use in partnership with Aboriginal communities to progress these issues within the constraints of the resources available?	
To progress these issues what do Aboriginal communities need in terms of information and resources to make an effective contribution? What is a realistic timeframe to develop a strategic approach? What time constraints do councils and Aboriginal communities have?	
What will be the decision-making process and how will Aboriginal communities participate?	
How will the decision-making be documented with achievable and measurable outcomes, in a meaningful way for Aboriginal peoples?	
How will the decisions be meaningfully communicated to Aboriginal communities?	
How will Aboriginal communities participate in the evaluation of policies and decisions made that impact directly on their communities?	

APPENDIX B - GUIDELINES FOR OPERATING SUCCESSFUL ABORIGINAL ADVISORY/CONSULTATIVE COMMITTEES

Aboriginal Advisory/Consultative Committees offer a proactive and collaborative method of facilitating genuine and meaningful participation in council decision-making by local Aboriginal communities. To operate successfully, they should be based on two key principles:

- **Dignity and Respect.** It is critical to ensure that Aboriginal peoples are treated with dignity and respect. Tangible recognition of Aboriginal history, heritage, culture and protocols is paramount. Baseline advice is provided below, but it is important for individual councils to have a good understanding of their communities at the local level.
- **Focus.** Positive engagement requires mutual understanding and shared objectives. To make sure all participants are on the same page, it is recommended that all issues, including priorities, limitations and benefits to the community, are clearly articulated. Care needs to be taken to cross check that all participants have understood these issues. Similarly, any limitations and constraints on outcomes need to be clearly articulated. There may be legal, financial or policy restraints that will limit what is practically achievable.

Terms of Reference

These should include a clear statement of the objectives of the committee, link to the goals of the council's Delivery Program, and align with council decision-making practices. Basic governance and accounting standards must be in place, and activities subject to critical oversight, as for other committees established under section 355 of the *Local Government Act 1993*. Terms of Reference should be negotiated with key Aboriginal leaders of the Committee, as determined by open and transparent communication.

Leadership

It is recommended that the Committee be chaired by a council representative who is acknowledged and respected by Aboriginal communities, and perceived as a person with strong ability to influence council policy.

Membership

Council membership should include elected representatives and key senior council employees who have an interest and are committed to participating in the process to enhance outcomes for the Aboriginal community.

Community membership needs include key Aboriginal and non-Aboriginal leaders who have an interest in and commitment to Aboriginal matters. Membership should also encompass the diversity of opinions and issues within Aboriginal communities. It should also be flexible. Aboriginal communities do not elect representatives in the same way as councils, so there should be sufficient flexibility to allow different Aboriginal peoples to attend meetings, depending on which issues are on the agenda.

Meeting times

Meeting frequency and times should be fixed and regular. However, it is important that the schedule allows Aboriginal representatives opportunities to go back to their communities and canvass opinions.

Meeting venues

Venues for meetings will need to be negotiated with community representatives. In many areas council offices may be entirely appropriate - and may well be expected by community members. However, in some areas there may be strong cultural and historical reasons why this is not the case, so it is wise to ascertain members' preferences for meeting venues.

There is also the potential to meet within Aboriginal communities, sending a strong symbolic message while allowing council committee members to see local conditions and gain a greater first-hand understanding of issues to be discussed. However, such opportunities need to be by community invitation.

Resourcing

When seeking the input of Aboriginal communities it is essential to have a well-resourced committee, particularly in relation to administrative support. Council should also consider the resource requirements for community members. For example, assistance with transport or childcare may be critical in supporting the participation of the right people and commitment.

Agendas

Agendas for meetings should be open and reflect the issues raised by committee members. They should be distributed well in advance of scheduled meetings to allow sufficient time for Aboriginal representatives to consult with their communities. Time investment in this stage of committee meetings will facilitate the smooth operation of the committee and help ensure discussions are productive, thereby saving councils time in the long run.

Meeting procedures

It is highly recommended that the committee negotiate a Meeting Code of Practice with Aboriginal representatives. Ensuring Aboriginal committee members have a direct say in how the meeting will be managed is a concrete demonstration that their views will be given weight, and helps build ownership and commitment. Where possible the Code of Meeting Practice should be consistent with the OLG's [Model Code of Conduct](#) for councils.

Decision-making

Transparency is key, and community members must be clear from the start on how the committee deliberations will impact on council decision-making. The creation of false expectations will significantly damage the process, undermining true collaboration and damaging future community relations.

While it is acknowledged that decision-making processes and the impact the Committee can have on outcomes may vary from issue to issue, transparency must be maintained. The reasons for the difference should be clearly articulated and understood, so participants know and understand when decision-making is to take place, how their contribution will be incorporated, and how it will be acknowledged.

APPENDIX C - POLICY FRAMEWORKS

Australian Government

Closing the Gap

In 2008, the Council of Australian Governments (COAG) set targets in health, education and employment to measure improvements in the health and wellbeing of Aboriginal and Torres Strait Islander peoples. The [Closing the Gap](#) agenda was developed in response to concerns raised with governments by Aboriginal peoples and non-Aboriginal people, including the Close the Gap Campaign and a series of National Indigenous Health Equity Summits.

The targets are:

- close the gap in life expectancy within a generation (by 2031)
- halve the gap in mortality rates for Indigenous children under five (by 2018)
- 95 per cent of all Indigenous four-year-olds enrolled in early childhood education (by 2025)
- close the gap between Indigenous and non-Indigenous school attendance (by 2018)
- halve the gap in reading, writing and numeracy achievements for children (by 2018)
- halve the gap for Indigenous students in Year 12 (or equivalent) attainment rates by 2020 and
- halve the gap in employment outcomes between Indigenous and other Australians by 2018.

A [progress report](#) on these targets is released by the Australian Prime Minister on an annual basis. The latest copy of the report can be found [here](#).

Indigenous Advancement Strategy

On 1 July 2014 the Commonwealth Government replaced more than 150 funded programs and activities with five program areas under the [Indigenous Advancement Strategy](#). These areas are:

- [Jobs, land and economy](#) – focused on gaining employment, fostering businesses and supporting the generation of economic and social benefits via effective use of land assets.
- [Children and schooling](#) – school attendance, improving education outcomes and supporting families.
- [Safety and wellbeing](#) – ensuring Aboriginal peoples enjoy similar levels of physical, emotional and social wellbeing as other Australians.
- [Culture and capability](#) – supporting Aboriginal peoples to maintain their culture, participate equally in economic and social life while building the capacity of Aboriginal service delivery organisations.
- [Remote Australia strategies](#) – strategic investments in local, flexible solutions based on community and Government priorities. Support for remote housing strategies focused on achieving results in Government priority areas.

More information can be found [here](#).

NSW Government

OCHRE: NSW Government's community-focused plan for Aboriginal affairs

A copy of OCHRE can be found [here](#).

In 2012 and 2013 some 2,700 Aboriginal peoples in NSW stated that Aboriginal language and cultures, education and employment and capability were important priorities for Aboriginal peoples. The NSW Government responded with OCHRE (Opportunity, Choice, Healing, Responsibility, Empowerment).

OCHRE acknowledges that past government policies and practices impacted on Aboriginal peoples in ways that disconnected people from their culture and traumatised individuals, families and communities. As such all *OCHRE* initiatives are underpinned by a commitment to healing.

Councils have the potential to contribute to this process by working with Aboriginal Affairs and local Aboriginal peoples in this area. For example, councils may seek to participate in *OCHRE* Healing Forums being delivered in 2016 and 2017 by Aboriginal Affairs, the Healing Foundation and interested Aboriginal peoples. These one-day events bring local communities together with government and non-government agencies to identify local/regional issues and opportunities to improve the way they work together.

Key *OCHRE* initiatives include:

- Connected Communities – where schools work in partnership with Aboriginal leaders in the local community to improve education outcomes for young Aboriginal peoples.
- Opportunity Hubs – which provide young Aboriginal peoples with clear pathways and incentives to stay at school and transition into employment, training or further education.
- Industry-Based Agreements – partnerships with peak industry bodies to support Aboriginal employment and enterprise.
- Language and Culture Nests – to revitalise and maintain languages as an integral part of culture and identity.
- Local Decision Making – where Aboriginal peoples are given a progressively bigger say in what services are delivered in their communities, and how they are delivered.
- An Aboriginal Economic Prosperity Framework – that drives the long-term and sustainable economic prosperity of Aboriginal peoples and their communities across NSW.
- A Deputy Ombudsman (Aboriginal Programs) – to provide independent oversight over Aboriginal programs

OCHRE initiatives of relevance to local government include Solution Brokerage and Local Decision Making.

Solution Brokerage is a key accountability arrangement under *OCHRE* and a creative approach to solving complex and long-standing cross government issues that impact on Aboriginal peoples in NSW.

Premier's Memorandum 2015-02-Solution Brokerage gives administrative power to the Head of Aboriginal Affairs to “declare” an issue for solution brokerage where it is deemed to: “fall between the cracks” with no agency having a clear mandate to resolve it; have whole-of-government implications; and are otherwise identified by the Secretaries Board.

Once an issue for solution brokerage has been declared, an “Officer In Charge” is appointed to manage the development and implementation of a Response Plan within a 6 month period.

Solution brokerage incorporates a three tiered approach that enables Response Plans to be individually tailored to the complexity and scale of a particular issue. Tier One is activated for local or community-specific issues, Tier Two for more complex local or regional issues and Tier 3 for major policy reform, including state-wide issues.

Councils may have a contributory role to play a role in Solution Brokerage. They may identify a problem and submit it to Aboriginal Affairs for consideration. They can serve on cross-agency project teams led by Aboriginal Affairs, or contribute resources to deliver the project.

Local Decision Making (LDM) sets out a pathway for Aboriginal peoples to have more control in the delivery and coordination of government services. Regional Aboriginal decision-making bodies known as Regional Alliances negotiate Accords with State Government agencies which not only set out how community and government will work

together to address community priorities, but include actions, timeframes, resources, responsibilities and ways to measure success.

It is a phased process through which Aboriginal peoples will gain more control of government services in their communities, moving along a pathway of self-governance and building management skills, decision making power and authority.

As LDM continues to develop, councils will need to ensure they work closely with Regional Alliances to play a constructive and supportive role in this important initiative.

LDM is being implemented across six locations in NSW:

- Far Western NSW - Murdi Paaki Regional Assembly.
- Illawarra South East - Illawarra and Wingecarribee Local Decision Making Advisory Committee.
- North Coast - Regional Aboriginal Development Authority.
- Central West - Three Rivers Regional Assembly.
- Central Coast - Barang Central Coast Aboriginal Community Organisations Network.
- New England North West - Northern Region Aboriginal Alliance.

LDM is underpinned by negotiated Accords, which formally define the relationship between Government and communities and identify the ways community and government must work together to address community priorities. They include agreed priorities, actions, timeframes, resources and responsibilities.

If regional alliances or Local Decision Making alliances identify priorities that require the participation of local councils or other organisations they may request their participation. This includes, councils being invited to participate in Accord negotiations.

It is worth noting though that the accountability arrangements, as specified in the Policy and directions contained in the Premier's Memorandum, extend to NSW Government departments and agencies only, so the participation of local councils is dependent upon their good will, and any commitments negotiated would not be subject to the accountability arrangements/or directions set out in the Premier's Memorandum.

For further background, please refer to the Aboriginal Affairs website [here](#). The website also has a number of relevant research documents relevant to local councils, including [community portraits](#) which provide a range of information about the Aboriginal peoples of NSW. Each portrait presents a statistical picture of the Aboriginal population, including its households, income, and education. It also summarises changes in key areas between recent Australian Censuses of Population and Housing.

OCHRE also includes the **NSW Aboriginal Economic Development Framework (AEDF)**, which will co-ordinate activities across government to ensure stakeholders work together effectively to achieve genuine improvements in Aboriginal economic development in NSW. As part of the AEDF, the NSW Government and industry partners are working together through Industry-Based Agreements (IBAs) to identify and develop more jobs and business opportunities for Aboriginal peoples. While this work is still in the early stages, local government can play a role in supporting Aboriginal peoples' greater participation in the NSW economy. More information on economic initiatives can be found in the Economic Development section under Part B.