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## Feedback to the NSW Travelling Stock Reserves Review

Submission by Dharriwaa Elders Group, Walgett, 7 July 2017.



*Above left: Pro UAV volunteers conducted surveys with Dharriwaa Elders Group (DEG) staff including Kim Sullivan (pictured above right) to trial the use of fixed wing aerial surveys to map Aboriginal Cultural Heritage Values of Travelling Stock Reserves (TSRs) in 2016. DEG believes that the values of TSRs must be defined so that appropriate decisions can be made about their future management.*

**The TSR network is Crown land owned by the people of NSW. The Dharriwaa Elders Group (“DEG”) is very concerned that the TSR network remains in public hands and accessible to Aboriginal people.**

DEG appreciates that the 1.2 The importance of travelling stock reserves and 1.4 Guiding Principles of the TSR State Planning Framework 2016-21 (“TSR SPF”) <sup>1</sup> acknowledge the historic and current importance of TSRs for Aboriginal people and the Local Land Services’

*“responsibility to protect and manage Aboriginal cultural heritage values. The opportunities that TSR provide for involving the Aboriginal community in caring for and working on Country are also acknowledged”.*

It is unclear what the link is between the current consultation paper, the TSR SPF<sup>2</sup> developed by the NSW LLS which manages a small proportion (i.e. 27%)<sup>3</sup> of NSW TSRs and future governance of TSRs as a whole (e.g. regional and NSW TSR plans). So this submission seeks to comment on both documents, and presumes (because of the above-quoted Guiding Principles) that DEG will be involved in future opportunities to ensure the interests of its members are heard and understood in any consideration of all the TSRs in its area of interest. WE hope the same consideration will apply to other NSW Aboriginal interest groups.

DEG is a small incorporated association of Walgett Aboriginal Elders that has operated formally since 2000. DEG has, when it could, recorded some of the Aboriginal Cultural Values (which include biodiversity values) of TSRs in our area of interest around Walgett, north to Angledool, west to Narran Lakes Nature Reserve, east halfway between Walgett and Collarenebri, south to the Macquarie and Castlereagh Rivers and Cuddy Springs.

DEG believes that the TSR network provides many valuable and mostly unquantified and unmeasured environmental, economic, cultural, Aboriginal Cultural and social benefits to NSW and Australia.

The DEG is an example of an active, respected and incorporated Association of Aboriginal people that is not a Local Aboriginal Land Council<sup>4</sup>, nor a Native Title Group<sup>5</sup> but which must be engaged in any negotiations about land management and especially TSRs. It is noted also, that the 2.2 Legislative and policy framework of the TSR SPF<sup>6</sup> excludes the Native Title Act.

**1. Any consideration of TSRs must include relevant Aboriginal organisations including Local Aboriginal Land Councils and Native Title Groups. NSW Office of Environment and Heritage can provide other NSW agencies with this advice for our region.**

DEG members when they can, over the 18 years of our organisation’s activities, visited and enjoyed special places on TSRs in our area. In many cases our members have been accompanied by young members of the community and engaged in knowledge sharing activities. DEG members

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<sup>1</sup> [http://www.lls.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0006/691431/NSW-TSR-State-Planning-Framework-2016-21-161216-1.pdf](http://www.lls.nsw.gov.au/__data/assets/pdf_file/0006/691431/NSW-TSR-State-Planning-Framework-2016-21-161216-1.pdf) (pages 3 & 4)

<sup>2</sup> [http://www.lls.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0006/691431/NSW-TSR-State-Planning-Framework-2016-21-161216-1.pdf](http://www.lls.nsw.gov.au/__data/assets/pdf_file/0006/691431/NSW-TSR-State-Planning-Framework-2016-21-161216-1.pdf)

<sup>3</sup> Page 3, NSW TSR State Planning Framework 2016 - 21

<sup>4</sup> As defined by NSW Aboriginal Land Rights Act 1983 (ALRA)

<sup>5</sup> As defined by Native Title Act 1993 (Cth)

<sup>6</sup> Page 8, NSW TSR State Planning Framework 2016 - 21

have been very dismayed and in some cases have explored their legal rights, when locked gates and other forms of blocking access to Aboriginal people's enjoyment of TSRs have been encountered in our district.

The DEG has not been consulted adequately when TSRs and other crown lands have been leased to private landholders. Placing adverts in local newspapers that very few purchase, and requiring written submissions before limited dates is not an adequate or practical process because it relies upon well-resourced respondents – which is not the case for Aboriginal organisations in NSW. DEG has come to realise that this process serves to exclude the voice of Aboriginal communities in these decisions.

**2. DEG requests a halt and revocation of all leasing or permits granted over TSR network to private landholders until a sustainable and fair plan of management for TSRs has been devised.**

Because TSRs have remained publicly owned and generally have not been cleared and often incorporate watering points they have protected woodland vegetation corridors and important wildlife habitats across highly cleared landscapes in our region and around NSW. They also include many sites of Aboriginal Cultural Value because of their environmental values which became increasingly valuable after European occupation, when Aboriginal people's access to country was often limited to TSRs. As recognised in the TSR SPF *"Many TSR follow routes which were used traditionally by Aboriginal people to travel across country"*<sup>7</sup>.

- 3. DEG requests that systematic ecological and Aboriginal Cultural surveys are undertaken so that the values of the TSR network are understood and to provide a baseline to inform this Review. Resources must be applied to this important asset-valuation task.**
- 4. DEG requests that NSW Department of Industry -Lands work at a whole of government level to develop a framework of strategic management principles for the shared and sustainable use of the TSR network. A data register of all work undertaken to value NSW TSR Network and its individual TSRs must be created so that DEG can be confident that past surveys and other works to value TSRs (for example by NSW Office of Environmental Heritage) are taken into account in any future planning and decision-making regarding the future of NSW jewels. This information regarding a publicly-owned asset must be publicly available<sup>8</sup>. This data is a publicly-owned asset.**
- 5. The layer of data collected regarding Aboriginal Cultural Values must be managed securely and according to information security agreements negotiated with individual communities involved so that specific locations and items are protected. These proposed information security agreements will provide further opportunities for the participation of local Aboriginal communities in the management of their cultural values**

It would seem at first glance that the NSW TSR State Planning Framework 2016 – 21 prepared by the NSW LLS for the management of the TSRs under their responsibility has accommodated many of these concerns. An objective of that Framework is to *"identify and manage Aboriginal cultural heritage values in consultation with Aboriginal communities"*. But as we at Dharriwaa Elders Group know, whether stated aims are implemented to the satisfaction of local Aboriginal communities is

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<sup>7</sup> Page 11, NSW TSR State Planning Framework 2016-21

<sup>8</sup> DEG thanks those responsible for the data supplied for the first time to the public in the on-line maps provided for this Review. These maps will provide an invaluable resource for our organisation.

quite another matter and depends greatly on the degree of PARTICIPATION of Aboriginal communities in the management of their business, and the resourcing of monitoring for compliance, the gathering of quality data and other management activities. For this reason, comments are made here regarding the 3.2 Managing for Aboriginal Cultural Values from page 11 of the TSR SPF.

### **Some Comments on 3.2 Managing for Aboriginal Cultural Values from page 11 of the NSW TSR State Planning Framework 2016-21:**

*In managing TSR for Aboriginal cultural heritage values Local Land Services will:*

- *Train staff in Aboriginal cultural awareness and competency.*

#### **6. Training of staff in Aboriginal cultural competency is very important and must be resourced to be undertaken at a local level. NSW procurement policies must recognise the higher value of locally-delivered training.**

- *Manage cultural heritage values on TSR under the provisions of the National Park and Wildlife Act 1974, which provides statutory protection of all Aboriginal objects and places.*

The NPWAct relies on a passive process of limited penalties imposed if evidence is available of destruction of Aboriginal objects and places. Evidence is usually not available because active monitoring is not resourced to be undertaken. Therefore the NPWAct relies on the goodwill of developers – who usually derive significant financial benefit from its destruction. The NPWAct presides over a regime of managing proposals to destroy Aboriginal objects and places by often removing objects from their location under permit, which reduces their Aboriginal Cultural Values. The NPWAct provides for the protection of places but DEG is still waiting for the gazettal of two out of three extremely significant Aboriginal Places in the Walgett area to be gazetted since making nominations under this Act in 2002. The DEG is about to nominate many more. It is plain to us that there is inadequate resourcing of the NSW Office of Environment and Heritage's ("NSW OEH") service provision for their officers to respond to AP gazettal nominations currently. DEG's experience therefore proves that there is no REAL COMMITMENT from the NSW Government to the NPWAct and therefore for the protection of Aboriginal objects and places.

#### **7. The TSR SPF will therefore need to provide for more specific pro-active service provision to ensure that Aboriginal Cultural Values ("ACVs") are protected on TSRs, as the NPWAct which is currently not being actively implemented by NSW OEH, cannot be relied upon.**

- *Adhere to the Due Diligence Code of Practice for the Protection of Aboriginal Objects in New South Wales in undertaking activities on TSR.*

The Due Diligence Code of Practice does not necessitate PARTICIPATION of local Aboriginal communities and is not acceptable to DEG.

#### **8. A new regime for the protection of ACVs is required that is negotiated with Aboriginal communities and provides for the active PARTICIPATION of Aboriginal communities in the management of their ACVs.**

- *Ensure that identified Aboriginal cultural heritage sites, places and resources are managed in consultation with Aboriginal people.*

“Consultation” is a term that is used loosely and unfortunately can be implemented without quality, or in ways that are unacceptable to Aboriginal communities. Policies and training are not in place for employees of LLS nor NSW OEH nor other NSW agencies so that rigorous consultation actually occurs on the ground in NW NSW. Rigorous consultation is however, only the first step required for a process of active management of ACVs by Aboriginal communities. DEG offers to provide policy advice to the NSW Government regarding the implementation of PARTICIPATION, and how this can occur in appropriate processes that incorporate communities not just specially chosen or favoured individuals.

**9. Rigorous consultation and PARTICIPATION of Aboriginal communities is required for appropriate management of ACVs. Ongoing resourcing for the training of staff in acceptable processes and participation of communities are required.**

- *Ensure access to TSR for Aboriginal cultural purposes.*

**10. Access must be ensured for Aboriginal people to TSRs for many purposes that support the ongoing maintenance of TSR values.**

- *Develop a strategy to undertake Aboriginal cultural heritage assessments of reserves and to develop management plans for priority reserves in conjunction with Aboriginal communities.*

**11. DEG and other Aboriginal groups will need to approve this strategy and be resourced and facilitated to PARTICIPATE in the development of management plans.**

- *Acknowledge that there are many undetermined Aboriginal land claims on TSR and seek the required approvals for any works that may impact on these claims.*

**12. Unprocessed Aboriginal land claims must not be used by the NSW Government as an offset for Aboriginal communities for development proposals being made on other TSRs or crown lands.**

- *Undertake an Aboriginal Heritage Information Management Systems (AHIMS) search prior to offering long term permits.*

**13. The issuing of permits must not impact on Aboriginal people’s use of TSRs.**

**14. A whole-of-government data set must inform decision-making regarding long term permits which includes environmental data as this is an important component of ACVs. In addition, it must be recognised that the AHIMS represents limited data regarding ACVS as relies upon past (poor and severely limited) resourcing of Aboriginal Cultural Heritage surveys.**

- *Encourage TSR users to be aware of the cultural significance of TSR and raise awareness of requirements and opportunities for protection of Aboriginal objects.*

Organisations like DEG will not be as burdened by the need to educate the people of NSW about the wide ranging values of TSRs which are widely accepted by professionals if government shares a greater role in public education regarding TSRs. Balanced information must be available and pro-actively promoted to ensure a proper process in decision making regarding the future ownership and management of the TSR network.

**15. DEG requests that quality information and the values of the TSR network are provided and actively communicated to the public.**

**16. DEG offers advice on a fee for service basis to NSW Government regarding how to most effectively deliver information and messages to the Walgett Aboriginal community. DEG will provide greater value for money than current NSW agencies undertaking community engagement in NW NSW, because we are locally based and experienced in community communications. Similarly capable organisations must be sought in other communities.**

- *Where required ensure permit conditions include clauses related to existence of undetermined Aboriginal land claims. This and considerations of other relevant NSW legislation should apply.*

- *Explore and identify opportunities for Aboriginal involvement in management of TSR—including works crews, site assessments and co-management.*

**17. DEG offers to provide advice to the NSW Government regarding the implementation of Aboriginal community PARTICIPATION, and how this can occur in appropriate processes that incorporate communities not just specially chosen or favoured individuals.**

In its 4.3 Classification of primary land use / management categories<sup>9</sup>, the NSW TSR State Planning Framework affirms that “*Aboriginal cultural heritage access is maintained and sites protected.*” This expressed aim is excellent, but depends on “*where identified Aboriginal cultural heritage values and sites are present on a TSR*” – which assumes a process that has not been resourced to occur, and does not explain how it will be determined “*Where impacts on cultural heritage sites cannot be mitigated a more conservation orientated category should be allocated.*”

**18. DEG offers to PARTICIPATE with the NSW Government to ensure that this noble aim can be implemented to the satisfaction of the Walgett Aboriginal community. Learnings could be shared with other communities.**

DEG awaits with hope and optimism to discuss and negotiate the proposed “community consultation plan” outlined as the first task in the Local Land Service’s 5.2 Aboriginal community engagement<sup>10</sup> strategy in relation to the TSRs it manages.

DEG’s concerns have been voiced over the years in the too few opportunities provided to speak to government re the importance of TSRs to our community in submissions made:

- 30 June 2004 to NSW Agriculture on the subject.
- 29 February 2008 to Western Lands Commissioner in response to the Review of the Western Lands Act 1901
- 31 March 2009 to the NSW Dept. Environment and Climate Change discussion paper “Towards and Aboriginal Land Management Framework for NSW

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<sup>9</sup> Page 15, NSW TSR State Planning Framework 2016-21

<sup>10</sup> Page 22, NSW TSR State Planning Framework 2016-21

DEG staff attended a TSR conference in Orange 2011 convened by NSW National Parks Association regarding management of TSRs – the only gathering of interests to discuss the future and management of NSW TSRs that we have been invited to participate in. A submission was made from that organisation to NSW Government representing those present. It is good that the TSR State Planning Framework 2016-21

*“will aim to integrate these consensus points into the objectives and management principles of both the state planning framework and regional TSR management plans”.*<sup>11</sup>

In 2016, DEG undertook a small project to trial the mapping of TSRs for their Aboriginal Cultural Values using fixed wing UAVs. Since 1999, DEG members have been actively working to describe and protect the Aboriginal Cultural Values of TSRs.

**Evidenced by these advocacy and activity efforts, it should be understood that the Dharriwaa Elders Group is extremely concerned and knowledgeable about the management of TSRs in its area of interest.**

DEG staff have learnt that the remnant vegetation within the TSR network often provides the best example of ecosystems and communities that are not well represented in National Parks and other NPWS estate with approximately 80% of TSRs containing vegetation communities of high or very high conservation status<sup>12</sup>. This is only one reason why DEG appeals to the NSW Government to recognise, value and protect the jewel of the TSR network to NSW, Australia and the World.

#### **Some Comments on NSW Travelling Stock Reserves Review Public consultation paper.**

- The TSR network should be assessed beyond an individual and regional basis. The connectivity across regions is an important value.
- 19. Data compilation for the values of the TSR network as a network containing some of the highest quality, connected remnants of vegetation in Eastern Australia must be valued as well as data regarding the values of the individual reserves.**
  - 20. Evidence must be supplied to support the four defined landuse categories. Other landuse categories will be proposed during these consultations.**
  - 21. The excellent land use principle stated in the TSR SPF *“No ecological connectivity is to be fragmented in this process”*<sup>13</sup> requires that state-wide planning is required so that connectively is considered between regions.**
- The four categories do not identify opportunities for natural resource management works such as revegetation projects, seed collection, Aboriginal values management, erosion control, carbon sinks and reconnecting gaps in landscape linkages. As well as providing important benefits for the environment and other TSR uses, these opportunities would provide social, cultural, spiritual and economic benefits for Aboriginal communities. These opportunities will not be available in the future for Aboriginal communities when they have greater capacity to exploit them – if they are gone or their values impaired.
- 22. A category should be created that recognises the benefits of future natural resource management.**

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<sup>11</sup> Page 5, NSW TSR State Planning Framework 2016-21

<sup>12</sup> NSW State of Environment Report 2006 Chapter 6.2 [http://www.epa.nsw.gov.au/soe/soe2006/chapter6/chp\\_6.2.htm](http://www.epa.nsw.gov.au/soe/soe2006/chapter6/chp_6.2.htm)

<sup>13</sup> Page 11, NSW TSR State Planning Framework 2016 – 21.

- The criteria for assessing impacts on TSRs should include ‘no impact on landscape scale conservation values’. The term ‘not significantly deteriorate’ is not an acceptable criterion. We have seen this kind of approach used by those seeking to take more water from the Murray Darling Basin and therefore from the environment.
- 23. No deterioration is acceptable, and besides which governments rarely devote adequate resources to measure and then negotiate with Aboriginal communities regarding what “significant deterioration” might be – so it is simply unacceptable.**
- The emphasis on economic benefits of state significant development (SSD) and state significant infrastructure (SSI) projects will cause an imbalance against social and environmental values (including Aboriginal Cultural Values). Besides, we in Walgett know that social and environmental values ultimately have economic values, particularly when they are in deficit and taxpayers have to foot the bill for ever-increasing health, law and justice costs caused by inattention to social and environmental values. DEG does not accept that because powerful interests persuade governments today that some values are more worthy than those that will be destroyed, that the values considered more beneficial by less powerful interests i.e. Aboriginal communities, are not worthy of preserving.
- 24. Precautions should be taken to preserve jewels of the state like the TSR network so that all their values can be fully enjoyed in the future.**
- 25. TSRs should not be removed for mining and gas projects.**
- It is unclear when, or if, the community will have an opportunity to comment on the important environmental values of the TSR network or provide input into an assessment of their value as State Significant Land under the new Crown Land Management Act 2016.
- 26. DEG requests a proposal from NSW Government re how it will be supported to continue and expand its current role managing ACVs in the TSR network in its area of interest. This role is desperately in need of resourcing and includes the activity areas of advocacy, community communications, policy development and advice to governments, identifying and conserving Aboriginal Cultural Values and maintaining those values through community education and Elders’ knowledge sharing objectives.**
- 27. DEG requests a role in the monitoring, evaluation, reporting and improvement of future management plans of TSRs in our area of interest.**