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Mr Geoff Woods  
Western Lands Commissioner  
PO Box 1840  
Dubbo NSW 2830  
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Thank you for providing the opportunity to respond to the Review of the Western Lands Act 1901. The response on behalf of the Dharriwaa Elders Group is as follows:

### **Road Access**

We have local incidences of Western Lands Leaseholders blocking access to rivers and other places of interest to the Dharriwaa Elders Group and the Walgett Aboriginal community, by locking gates on crown roads or other roads. It seems that some have assumed they have the right to consider these roads and rights of way, as their private property and that they have the right to prevent access through them. **We request that the law recognise no leaseholder be allowed to prevent access to Aboriginal people on western lands, or through western lands, and this be monitored and enforced.**

### **Conversion to Freehold Title**

Aboriginal communities do not have the resources to respond to individual applications from leaseholders applying to convert their western lands leases to freehold land, or other lease management issues administered under the Western Lands Act. **It is our opinion that any conversion of crown lands to freehold reduces our access and rights to use the land, and so we object to any conversions. We request that an advocate be employed to monitor requests for these conversions on behalf of Aboriginal interests; and that the relevant local Aboriginal communities participate in the decision making, so that our interests are represented when decisions to convert to freehold are made.**

When leases are being converted to freehold, there should be an opportunity for Aboriginal communities to lease or own the land, using measures at least as cheap as described in 1.5.3(e) Relaxation of Conversion Provisions. If a leaseholder requests that a western lands lease be converted to freehold, the local Aboriginal community and the NSW Aboriginal Land Council, on its behalf, should be asked first if it would like to be the leaseholder, before it is converted, and then completely out of the reach of claims under the NSW Aboriginal Land Rights Act.

### **Aboriginal Representation on the Western Lands Advisory Council**

We agree that there should be two representatives of Aboriginal interests on the Western Lands Advisory Council, and that they should be given the resources to consult with relevant Aboriginal communities when matters arise affecting them. **We request that these representatives are selected for their probity, good character, communication skills and experience with NSW Aboriginal communities in the Western District, using a rigorous process.** They must be required to work for the benefit of all Aboriginal people in NSW and not just particular families. Too often we have lame duck Aboriginal representatives who are happy to receive TA to travel to meetings who happily sign our rights and interests away to their flatterers.

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### **Objects and Schedules of the Act**

We request that closer scrutiny be given to the issue of licences for the use of western lands to remove minerals and timber, in the Western Lands Act. We enthusiastically support the Object “(e) to ensure that land in the Western Division is used in accordance with the principles of ecologically sustainable development referred to in section 6 (2) of the Protection of the Environment Administration Act 1991” and request that the Act be amended so that this object could be enforced more strongly than it is now.

The PEA Act specifies that ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes, which can be achieved through:

(a) the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

In the application of the precautionary principle, public and private decisions should be guided by:

- (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and
- (ii) an assessment of the risk-weighted consequences of various options,
- (b) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,
- (c) conservation of biological diversity and ecological integrity - namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,
- (d) improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services

If this Object of the Western Lands Act was enforced more strongly then opal mining would not be allowed to proceed within or near the RAMSAR wetland Narran Lakes, which is threatened currently.

It is very important that such a change of land use trigger a comprehensive review of environmental factors in accordance with Part 5 of the EP&A Act. However, in our experience this has not been enough to ensure the ecological sustainability of the proposed change of land use in the case of opal mining in OPA 4 in the Narran Lakes wetland. A Review of Environmental Factors was undertaken, which recommended that there was a high likelihood that threatened species and areas of high conservation value would be threatened by the proposed opal mining, and that if the precautionary principle was applied, more studies would need to be done before allowing opal mining to proceed. The NSW Dept of Primary Industries has ignored this finding.

**Because of this experience we believe that the Department of Lands, before giving its consent to a proposed change of land use, must consider the proposed change using information supplied by Species Impact Statements and other studies that have more standing under the law, and which cannot be ignored by mining interests.** We ask this because it is unlikely that local Aboriginal communities will ever have the resources to comment on or respond to these matters, but will be

greatly affected by their outcome, usually in the negative. **These negative impacts on Aboriginal communities will also affect potential future NSW industries of eco tourism, climate change industries and those reliant on Aboriginal cultural values in the future.**

We strongly support the inclusion of the Object “(f) to promote the social, economic and environmental interests of the Western Division”, and would like to have the opportunity to advise the Minister and the Western Lands Advisory Council how this object could be achieved in the interests of the social, economic and environmental interests of NSW Aboriginal communities. **We believe the words should be amended to read “to promote the social, economic, and environmental interests and Aboriginal cultural heritage values of the Western Division”**

**There needs to be provisions in the Western Lands Act, perhaps by amending the covenants, reservations and exceptions set out in Schedule 1 of the Western Lands Act which makes sure that the Crown cannot remove minerals or other natural resources from Western Lands if the process threatens the ecological sustainability of the lands.** The provisions we propose should bring the Western Lands Act into line with other state and federal acts which protect biodiversity, threatened species and Aboriginal cultural heritage. The proposed provisions also have to make sure that approval is applied for each and every “action” that would threaten the Objects of the Act mentioned above, e.g. the principles of ecologically sustainable development, and the social, economic,<sup>1</sup> environmental interests and Aboriginal cultural heritage values of the Western Division. Those trying to protect threatened species and areas of high conservation value should not have to rely on the inadequate provisions of the NSW National Parks and Wildlife Act. The NSW Department which administers that Act is unable to monitor compliance in the Western Lands with its existing resources, and once these sensitive areas are damaged they will be lost forever. There are no second chances.

We agree that there will be a major restructuring of agricultural industry in the Western Lands and therefore the Western Lands Act should provide for the protection of biodiversity and areas of high conservation value, because these are precisely the areas that will provide new, climate change industries for our region in the future. The Aboriginal communities in the Western Division believe that we can develop new industries that will rely on Aboriginal knowledge regarding natural resources and their management. These new industries which may support our future generations will be destroyed before they start if the other provisions we have suggested above are not considered.

Yours sincerely

George Rose OAM, **Speaker for and on behalf of the Dharriwaa Elders Group**

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<sup>1</sup> An examination of a proposal for opal mining in the Narran Lakes area using economic criteria would clearly show that the economic value of retaining the internationally significant wetland is far greater than that of opal mining which is largely unregulated and therefore unable to be quantified in terms of economic value.