

SUBMISSION TO THE EPBC ACT REVIEW

ANON-K57V-XFD7-6

Organisation

Wreck Bay Aboriginal Community Council (WBACC)

State or Territory

New South Wales

Attachment provided?

No

Do you give permission for your submission to be published?

Yes – with my name and/or organization (if provided)

SUBMISSION RESPONSES

QUESTION 12: Are heritage management plans and associated incentives sensible mechanisms to improve? How can the EPBC Act adequately represent Indigenous culturally important places? Should protection and management be place-based instead of values based?

The Board considered these questions (Questions 12 and 19), as well as the document entitled Chapter Seventeen, Indigenous Information, available with the Discussion Paper, and made the following points:

- Section 8 of the EPBC Act also needs to refer to the Land Grant (Jervis Bay Territory) Act 1986 as an Act not affected by the EPBC. Also, WBACC's legal advice is that the Land Grant Act takes precedence over the Native Title Act 1993. WBACC also suggests that its By-Laws under the Land Grant Act are tools that it currently has to place restrictions on areas of significance, to make an area a significant Aboriginal Place, but it is unclear how this works if that place is within the BNP, under the EPBC Act.
- Section 505A of the EPBC should require inclusion of members from each of the Jointly Managed Parks on the Indigenous Advisory Committee.
- WBACC would also like to see a National Framework supported by a network of Indigenous Land Management Facilitators, and would like the Jervis Bay Territory to have an Indigenous Land Management Facilitator and a seat at the Indigenous Advisory Committee table.
- WBACC is of the view that Caring for Country and Working on Country initiatives should be independent of Parks Australia, and not caught up with Parks' Australia's budget. Funding for these programs should only be directed to Traditional Owners/ Land Councils, through the National Indigenous Australian Agency, to ensure that money is spent on programs that directly benefit and further the land management skills of Traditional Owners/Land Councils.
- The Board notes that it is very difficult to get new listings of Indigenous Protected Areas.

- World Heritage Listing can affect the status of traditional owners in decision making and can affect traditional use. The obligations that Australia owes to the world can result in less voice for communities, despite the requirement for them to be involved in each step of a process. Uluru and Kakadu are treated differently to Booderee because Booderee does not have World Heritage Listing. Uluru and Kakadu need more recognition for their communities' viewpoints.
- Having said that, the lack of World Heritage listing means that in Booderee, there is no obligation to involve traditional owners in every step of the process. The Director of National Parks only has to "consult" traditional owners rather than involve them in decision making.
- In the area of Bilateral agreements and strategic assessments (section 49A) WBACC agrees that Indigenous peoples should have the right to give their free, prior and informed consent on decisions that have a direct or indirect impact on their lives – "consideration of the role and interests" is not enough.
- WBACC also finds it problematic that the Act refers to "Traditional Owners" throughout and under the Land Rights (JBT) Act that term has no meaning and can create confusion. WBACC would prefer the term "Registered Members" when referring to WBACC.
- Likewise, references to "indigenous people" (s.368) who are not traditional owners also creates confusion, with the possibility of non traditional owners/ registered members of WBACC being consulted with regard JBT lands.
- WBACC very much supports the need for better linkages with other Indigenous legislation, particularly in the area of indigenous cultural heritage. Currently there is no automatic ownership of objects for Aboriginal communities. Objects belong, under several different pieces of legislation, to the Director, or the Minister, or the ACT Chief Minister.
- WBACC also wants protection of burial rights within the Booderee National Park and wants the rights of interment in the JBT better defined.
- WBACC does think that protection and management should be place based instead of values based (eg. we want the EPBC to specifically recognise the JBT and the individual issues we have due to our anomalous jurisdictional status), however WBACC is also strongly of the view that there needs to be one piece of legislation that deals with indigenous heritage adequately and consistently across all places.
- WBACC makes the point that our vision is for sole management of Booderee – it is the part of our aboriginal land currently covered by the EPBC. We intend to move towards sole management by consolidating Park's functions into WBACC's over time.
- WBACC would like the EPBC Review to consider the role of Director of National Parks. The discussion paper questions do not seem to elicit any comment on the role of the Director.
- Our understanding is that under the EPBC, the position does not hold the level of authority that it did under the Australian National Parks and Wildlife Act, that preceded the EPBC, when the Director was independent and answerable to the Prime Minister. Now the role is not part of Parliament, is not really answerable to Parliament and can't

negotiate as an independent with other Commonwealth agencies for the rights of indigenous people.

- The role is essentially just another role in the department of the Environment, subservient to the Minister of the Environment, which is not necessarily the most appropriate department for the furtherance of indigenous rights.
- The Minister rather than the Director submits Plans of Management for Jointly Managed Parks to the Parliament; submissions for funding are done by the Department, not the Director.
- The Act does not make clear how the Director role is measured by traditional owners; how does the Director role work with traditional owners in a fair minded way to support economic and social outcomes?
- At the moment the role seems to be an administrative mechanism to purchase services from Parks Australia and to deal with Joint Boards.

General response

Conflict between EPBC and Aboriginal Land Grant (JBT) Act 1986 in relation to Cultural Heritage - in the Jervis Bay Territory, State or Territory based legislation for the protection of cultural heritage, assumed by the EPBC Act, is missing. There is the ACT Heritage Act, but it is limited in that it does not cover the marine environment. The EPBC Act needs to be expanded in relation to the JBT, to take on the role of protecting the whole of the environment, including the marine environment, and WBACC needs to have more power/influence within that construct. Under the Land Grant Act, WBACC can apply to make an area an Area of National Significance but has never exercised this right.

Role of WBACC wardens (established under the Aboriginal Land Grant (JBT) act 1986 – they should be Rangers under the EPBC Act. The rights to transition the compliancy function to WBACC are not currently in the EPBC Act – only the BNP can perform the ranger duties. The By-Laws of the Land Grant Act have been written to reflect the EPBC, so it should not be difficult to transition to using WBACC wardens, but the EPBC Act needs to change to allow that to happen.

See relevant clauses from the Land Grant Act below.

Relevant Extracts from the *Aboriginal Land Grant (Jervis Bay territory) Act 1986*.

Section 6. Functions of the Council include:

(cc) “to protect and conserve natural and cultural sites on Aboriginal Land.”

(cd) “to engage in land use planning in relation to Aboriginal Land.”

(ce) “to manage and maintain Aboriginal Land.”

Section 7.

(1) “...the Council has ... power to do all things necessary or convenient to be done for or in conjunction with the performance of its functions.”

Section 47.

(1) “In the performance of its functions the Council shall have regard to the preservation of the environment.”

(2) “Where the Council proposes to carry out works or projects that could have a significant effect on the environment, the Council shall give the Minister particulars in writing of the works or project.”

(3) “In this section, **environment** includes all aspects of the surroundings of a natural person, whether affecting the person as an individual or in the person’s social groupings.”

Section 52A.

(1) The By-Laws don’t apply to land within Booderee National Park.

(2) The Council may make by-laws for a wide range of activities, protections, controls and regulations over Aboriginal Land – most of which are relevant to the controls which will be included within a Land Use Plan.

A. Aboriginal Land Grant (Jervis Bay Territory) By-Laws 2016

Section 5. Definitions

“Aboriginal Land” doesn’t include Booderee National Park.

“Management Plan” means a planning instrument approved by the Council from time to time, for the management of Aboriginal Land and all its resources.

“Town Plan” means a plan established by the Council to govern land use, activities and any other matters within a township, as determined by the Council from time to time.

“Township” – a group of dwellings denoted on a plan ... of the town declared by the Council to be the current official Town Plan.

Section 13.

(1) “The Council must develop, introduce and maintain a Town Plan for each township on Aboriginal Land.”

(2) When making or varying a Town Plan, the Council must notify residents, invite representations and give due consideration to representations.

Division 5.2 – Regulatory Provisions

Section 17.

(1) An offence in this Division does not apply to an activity that

(a) is included in a Management Plan, or

(b) is carried out by the Council, or

(c) is authorised by a permit mentioned in (2) ...

(2) The Council may issue a permit ... authorising a person to carry out an activity prohibited under Division 5.2.

Section 19.

The Council can issue a permit for an activity if it can be done in accordance with a Management Plan.

Sections 20 – 63 prohibit activities on Aboriginal Land. Regulation for many of these activities would be incorporated within the Land Use Plan. In particular, Section 21 (excavating, building and works) and Section

61 (approval for building and construction work) specifically relate to a requirement for development approval through issuing of a permit by the Council.

Section 75.

(1) The Council can only issue permits under certain conditions. One condition (b) relates specifically to the prohibited activities in Division 5.2. For these activities, the circumstances described in Section 77 apply.

Section 77. Circumstances that must apply before Council can issue a permit include:

(1) The activity must be consistent with a Management Plan in force. Or, if no management plan, consistent with the Council functions to “6(cc) protect and conserve natural and cultural sites on Aboriginal Land”, “6(cd) engage in land use planning”, “6(ce) manage and maintain Aboriginal Land”.

(2) The activity must not be likely to “(b) unduly damage Aboriginal Land”, “(c) unduly interfere with the preservation or conservation of biodiversity or heritage on Aboriginal Land”, “(d) unduly interfere with the protection of other features or facilities on Aboriginal Land” etc.