

**Aboriginal Cultural Heritage in NSW: Why preservation is not just important but necessary.**

**Presentation and Speaking Notes**

**1. Slide 1: Opening presentation slide.**

**2. Slide 2: Introduction of Waratah Partners and Overview.**

- Kellyanne Stanford - Kellyanne is a descendant of the Yuin people and a former Director of the Country, Culture and Heritage Division in NSW (Office of Environment and Heritage). Kellyanne is a student at law and one of the partners of Waratah Partners Aboriginal Corporation.
- Norman Laing - Norman is a descendant of the Dunghutti people and the former Executive Director of the Country, Culture and Heritage Division in NSW (Office of Environment and Heritage). Norman is a lawyer and one of the partners of Waratah Partners Aboriginal Corporation as well as an Acting Commissioner of the NSW Land and Environment Court.

**3. Slide 3: Historical context.**

- The Indigenous cultures of Australia are the oldest living cultural history in the world; they have been estimated to date back at least 50,000 years with some arguing it being closer to 65,000 years.
- One of the reasons Aboriginal cultural heritage has survived for so long is its ability to adapt and change over time.
- As well as historically important, Aboriginal cultural heritage is of continuing significance, creating and maintaining continuous links with the people and the land.
- It is the interrelatedness, and manifestation of, both a previous and contemporary relationship that Aboriginal people have to traditional lands and waters, including those tangible elements and inhabitants such as people, plants and animals.
- It also includes the respect and use of those natural resources and processes throughout the landscape such as plants and animals for food sources, medicine, as well as conservation practices through biodiversity and land management.
- But is it not always, or necessarily, the tangible elements that creates or maintains Aboriginal peoples' connectedness to Country.
- Aboriginal people also place great value in the intangible aspects of the environment also – the landscape features, the places and the various and diverse objects that also contribute to, or have been part of, Aboriginal customs, stories, cultural traditions and practices that Aboriginal people have inherited from the past and aspire to sustain both now and in perpetuity.
- Places that hold great meaning and significance to Aboriginal people include:
  - Places associated with Dreaming stories depicting the laws of the land and how people should behave;

- Places that are associated with their spirituality;
  - Places where other cultures came into contact with Aboriginal people; and
  - Places that are significant for more contemporary uses.
- It was this affinity with their surroundings that goes a long way to explaining how Aboriginal people survived for so many millennia.
  - At the time of colonisation it is estimated that between 500-700 Indigenous nations co-existed, each with their own governance systems, languages, cultural practices, religions and traditions.
  - Within these nations were approximately 250-300 spoken languages, with approximately 600 dialects, each associated with a particular area of land - Country.
  - Archaeologists estimate that the population level was between 250,000 and 1 million people, and that it had been relatively stable for thousands of years.
  - The vast number and the diversity of Aboriginal cultural sites, objects and values across NSW is evidenced, in part, by the recording of over 67,000 sites and more than 10,000 archaeological and other Aboriginal heritage reports within the statutory Aboriginal cultural heritage information repository, the NSW Aboriginal Heritage Information Management System.

**4. Slide 4: What has impacted, and still is impacting, on Aboriginal cultural heritage?**

- Many people would argue that Aboriginal disadvantage is founded in the dispossession of their lands, the removal from Country and their families, the prevention of speaking languages and the practice of their cultures.
- From the earliest days of European contact Aboriginal languages and cultural practices were viewed as primitive and of little value.
- Indigenous people were displaced from their lands, moved into reserves, and killed in battles for their land, or by hunting parties and poisoning of waterholes. Many Indigenous people also died from introduced diseases.
- Aboriginal people were discouraged from speaking their ancestral languages and undertaking cultural practices - many were made to feel ashamed of doing so in public.
- Eventually the link between generations of traditional practices was broken, so that young children had little or no knowledge of ancestral stories, traditional languages and practices.
- Sadly in many instances, parents subsequently became partial speakers of their traditional languages and cultural knowledge with their grandparents being the only remaining speakers of languages and custodians of traditional knowledge that would have been passed on from generation to generation over hundreds of years.

- Once this intergenerational link to language, country and culture is broken - an unwritten culture may disappear very quickly.
- Loss of languages and the connection to Country is also closely linked to policies of assimilations and the Stolen Generations and is still impacting on Aboriginal people today.
- Thousands of Aboriginal cultural heritage sites have been damaged or destroyed in NSW in recent years due to mining, housing and infrastructure development and growth.
- According to the *2011 State of Indigenous Cultural Heritage Report*, there were some five instances of regulated cultural heritage destruction a week in NSW throughout the period between 2004 and May 2009.
- The rate of permits being issued has slowed slightly since amendments to the permit system were put in place in 2010, to approximately three per week.
- However, the permit changes allow for destruction of cultural heritage over a longer period of time.
- The continuing impacts on Aboriginal cultural heritage are strongly felt by Aboriginal people. Their identity is inextricably bound up in their culture. Thus, protection of cultural heritage contributes in a positive way to their identity and wellbeing.
- Currently, some Aboriginal people in NSW do not have access to parts of their country and cultural heritage, this has a negative impact on their identity and wellbeing and it limits the ability to pass on traditional knowledge and to maintain cultural practices.
- However, I have witnessed firsthand, and reviewed research conducted by CAEPR, which demonstrates that an active role in the management of Country and cultural heritage can result in a range of socio-economic, cultural, and reconciliation outcomes, it can support cultural practices, revitalise and maintain language and can also greatly assist with environment management issues such as fire management, threatened species and pest control.
- Reforming the current management regime for Aboriginal cultural heritage has significant potential to contribute positive change among Aboriginal peoples environmental management in NSW.

##### **5. Slide 5: What is Aboriginal cultural heritage?**

- In NSW the primary piece of legislation for the protection and regulation of Aboriginal cultural heritage is the National Parks and Wildlife Act 1974 (NPW Act) and is administered by the Office of Environment and Heritage - also referred to as OEH.
- There are various references to Aboriginal cultural heritage within the Act.
- Section 5 of the NPWA provides that an Aboriginal Object is:

*'... any deposit, object or material evidence (not being a handicraft made for sale) relating to the Aboriginal habitation of the area that comprises NSW, being habitation*

*before or concurrent with (or both) the occupation of that area by persons of non-Aboriginal extraction, and includes Aboriginal remains’.*

- Aboriginal objects are physical evidence of the use of an area by Aboriginal people.
- They are also referred to as 'Aboriginal sites', 'relics' or 'cultural material'.
- Aboriginal objects include:
  - Physical objects, such as stone tools, Aboriginal-built fences and stockyards, scarred trees and the remains of fringe camps;
  - Material deposited on the land, such as middens;
  - The ancestral remains of Aboriginal people;
- Note: Handicrafts made by Aboriginal people for sale are **not** 'Aboriginal objects' under the NPW Act.
- Section 84 of the NPWA provides for the declaration and protection of 'Aboriginal Places'.
- Aboriginal Place is a statutory term, meaning any place declared to be an Aboriginal place the Minister administering the NPW Act, by order published in the NSW Government Gazette, because the Minister is of the opinion that the:

*‘...place is or was of special significance with respect to Aboriginal culture’.*
- Aboriginal places may be areas of land that may or may not have Aboriginal objects, that is, they may have no physical evidence of Aboriginal occupation or use.
- An Aboriginal place may be an area that has spiritual, natural resource usage, historical, social, and educational or other type of significance to Aboriginal people of NSW.

## **6. Slide 6: What is the future of Aboriginal cultural heritage in NSW?**

- Since the 1980's, a number of significant NSW Government reviews undertaken into Aboriginal heritage laws have continuously, and consistently, recommended that the system governing Aboriginal heritage be reformed.
- The Aboriginal people of NSW have continually requested a stronger role in decision-making and management of Aboriginal heritage.
- The current legislation provides no decision-making role for Aboriginal people regarding impacts to Aboriginal heritage, however it does provide a role for Aboriginal people in the community consultation that must be undertaken before the NSW Government issues an AHIP.
- The process for consultation with Aboriginal communities regarding harm to Aboriginal objects and places is outlined in the *National Parks and Wildlife Regulation 2009* (reg. 80C).

- Practitioners in heritage, law, the development sector and mining sectors and environmental advocates have also recommended creation of a stand-alone legislation that more appropriately and effectively deals with consideration and management of Aboriginal heritage, streamlines processes and interactions with other statutes and simplifies the consultation process with Aboriginal communities.
- Consultation with Aboriginal individuals and groups is not an easy task, but is essential for those parties seeking an AHIP for their proposed activities. Parties seeking an AHIP are continually confronted with a level of uncertainty about who, within the Aboriginal community, are able to legally and legitimately 'speak for Country'.
- The development of the *Aboriginal Land Rights Act 1983* (ALRA) partly addressed the request of Aboriginal people regarding management of their land and protection of their heritage.
- In 2001, amendments to the ALRA provided LALCs with the function to submit proposals for lands of cultural significance to be reserved under the NPW Act (s52(c)) with further amendments in 2006 providing for promoting awareness of culture and heritage (s52 (4)(b)).
- Unfortunately the ALRA contains no enabling provisions to support the 'protect and promote' functions to occur and the NSW Government has only received a relatively small number of proposals for reservation of lands of cultural significance under the NPW Act since the amendments were enacted.
- Despite repeated recommendations made to the NSW Government through at least 7 formal inquiries and reports, separate legislation and an Aboriginal heritage commission, or equivalent, has yet to be established and with Aboriginal people today still being unable to exercise the right to self-determination regarding the maintenance and protection of their heritage.
- The protection and regulation of the Aboriginal heritage continues to be entrenched within the same legislation that is primarily for the protection of flora and fauna.
- More recently, in 2010, in response to decades of advocacy by many Aboriginal people, community groups, industry, developers and heritage professionals that have called for change, and in conjunction with its amendments to the *NPW Act*, the then Labor government committed to the development of stand-alone legislation for Aboriginal cultural heritage.
- The Government committed to legislative reform within 2 years of the announcement in June 2010 and established the first Aboriginal Culture and Heritage Reform Working Party (Working Party) to undertake a review process and developing options for the future protection and regulation of Aboriginal culture and heritage in NSW.
- However, in October 2011 the NSW Liberal Government announced a revised process for reforming the laws affecting Aboriginal heritage. This revised process included the previous Working Party being disbanded and a new Working Party being constituted in May 2012 with the responsibility of providing options for consideration by the Government by October 2012.

- The Working Party provided its final report to the NSW Government in October 2012 with 23 recommendations that sought ‘a fair and equitable balanced model for all stakeholders involved in the process’.
- The recommendations were grouped into six key themes; a new administrative structure, processes to consider Aboriginal cultural heritage early in the planning processes, local decisions by local people (who speaks for Country), streamlined conservation and regulation processes, and funding for Aboriginal cultural heritage conservation outcomes.
- In 2013, in response to the Working Party recommendations, the Government released a proposed model for stand-alone legislation that delivers a more culturally appropriate, efficient and effective process for heritage protection than currently provided by the *NPW Act*.
- The model proposed by the Government also took into consideration the stand alone Aboriginal heritage legislation of other jurisdictions as well as recommendations arising from the NSW Governments review of the *Aboriginal Land Rights Act 1983* and the then reform of the *Environmental Planning Act 1979*.
- The consultation process for the proposed model was completed in March 2014 but with no Government announcements about next steps, the reform process continues to progress unhurriedly - despite decades of bipartisan consensus to create stand-alone Aboriginal cultural heritage legislation.
- As of this year, 2015 and some 76 years since the NSW Government commenced discussions about the Aboriginal cultural legislation, there still remains a legislative void in the recognition and practical implementation of various governments’ commitments and, importantly, Aboriginal peoples’ aspirations for the self governance of their heritage.

**7. Slide 7: Why is protection and management of Aboriginal cultural heritage important and necessary?**

**Summary and Wrap up**

- Aboriginal culture is an intrinsic part of the fabric that is the shared heritage of the overall Australian identity.
- For Aboriginal people in particular, culture and heritage is a fundamental component to not only a community’s collective, but also ones own individual wellbeing.
- Culture and heritage is inherently important because it is a source of pride and belonging and, in some circumstances, a basis of which where a source of economic and social empowerment is derived.
- This empowerment is often from, or based upon, an Aboriginal person’s individual, or a community’s, physical and spiritual connection to what is often referred to as ‘Country’.
- Connection to Country links individuals to a community, to a place, to culture and to language – for some Aboriginal people it also leads to reconnecting to family – this all provides for the spiritual and cultural wellbeing of Aboriginal people and can assist

with healing past traumas and providing a sense of belonging, identity and be a source of cultural and social pride.

- In short, Aboriginal cultural heritage relates to the connection and sense of belonging that people have with the landscape and each other.
- Aboriginal cultural heritage consists of places and items that are of significance to Aboriginal people because of their traditions, observances, lore, customs, beliefs and history.
- Aboriginal cultural heritage comprises of both physical (tangible) or non-physical (intangible) elements provides evidence of the lives and existence of Aboriginal people before European settlement through to the present.
- It includes things made and used in traditional societies, such as stone tools, art sites and ceremonial or burial grounds but may also include more contemporary and/or historical elements such as old mission buildings, massacre sites and cemeteries.
- Cultural heritage is not simply confined to sites or objects; it also includes peoples' memories, storylines, ceremonies, language and 'ways of doing things' that continue to enrich local knowledge about the cultural landscape. It involves teaching and educating younger generations.
- It is also about learning and looking after cultural traditions and places, and passing on knowledge. It is enduring but also changing and provides crucial links between the past and present and therefore represents an essential part of the identities of Aboriginal people and all Australians.
- Aboriginal culture is an intrinsic part of the fabric that is the shared heritage of the overall Australian identity, its preservation is not just important but necessary – it is something that should be protected, promoted and celebrated by everyone.

## **8. Slide 8: Thank you and Questions**