



Eden Local Aboriginal Land Council Land and Economic Participation Solution Brokerage Accord

October 2017 – September 2019



1. PREAMBLE

- 1.1. Eden Local Aboriginal Land Council (Eden LALC) is a Local Aboriginal Land Council (LALC), established under the Aboriginal Land Rights Act 1983 (NSW) (ALRA) and is governed by a board of directors. Eden LALC exists to improve, protect and foster the best interests of all Aboriginal persons within the LALC's area¹.
- 1.2. The NSW Government entered into Solution Brokerage in response to long standing issues that Eden LALC continued to pursue as a result of the Regional Forestry Agreement (RFA) 1999.
- 1.3. Whilst the RFA 1999 has provided benefits to the Eden LALC they maintain that there are several unfulfilled commitments. As a result Eden LALC has been at loggerheads with the NSW Government, its agencies and authorities regarding these unfulfilled commitments; agreement on what they are and if they can be fulfilled.
- 1.4. Solution Brokerage exists to provide coordinated resolution of issues to bring about improved outcomes in Aboriginal communities. It requires NSW Government agencies to work with each other, and to collaborate with non-government organisations to find practical solutions to issues that are complex and fall between the gaps with no clear single agency responsibility².
- 1.5. With no predetermined process to work to, the parties agreed to progress through staged negotiations on the priorities linked to the RFA that remained relevant to Eden LALC's current economic and cultural aspirations.

2. KEY PRINCIPLES

- 2.1. Throughout the Solution Brokerage process, key principles have guided the negotiations and interactions of all parties. These same principles will underpin the Accord and its ensuing collaborations.
 - ♦ Aboriginal people and communities hold strong spiritual, cultural, social and economic relationships with Country and/or Place and are best placed to inform negotiations on the impact and issues arising from such relationships.
 - ♦ Aboriginal cultural knowledge is acknowledged and considered in all negotiations.
 - ♦ Decision making authority is present. Outcomes focussed and driven, rather than process driven.
 - ♦ Mutually agreed priorities.
 - ♦ Investment in long term change, even if success is not evident in the short term.
 - ♦ Commitment to active participation, effective coordination and support of aligned activities.
 - ♦ Local solutions, tailored to meet local needs while leveraging existing resources and expertise where possible.
 - ♦ Continuous improvement and adjustment where necessary.
 - ♦ Collaborative relationship between Government and Eden LALC.
 - ♦ Responsibility, accountability and transparency in decision making.

¹ Sec 51 *Aboriginal Land Rights Act 1983 (NSW)*

² Solution Brokerage factsheet – www.aboriginalaffairs.nsw.gov.au

- ◆ Adaptive and flexible approaches and a willingness to learn from other stakeholders.
- ◆ Commitment to work innovatively where necessary and appropriate, including realignment of resourcing.
- ◆ Respectful consultations and negotiations between government and Eden LALC and its members, with the free, prior consent of those members.
- ◆ Sufficient trust to ensure significant innovation and risk taking, both politically and financially.

3. PARTIES TO THE ACCORD

- 3.1. The State of NSW – through agencies specified in this Accord and its schedule(s).
 - 3.1.1. The State of NSW acknowledges that the matters dealt with in this Accord are binding on the relevant agencies. The State of NSW authorises NSW Government agencies to participate in good faith to meet the terms of this Accord.
- 3.2. Eden Local Aboriginal Land Council.
 - 3.2.1. Eden LALC enters into this Accord on behalf of its members, the Aboriginal people of the Eden local area and in partnership with the NSW Government and agrees to participate in good faith to meet the terms of this Accord.
- 3.3. Bega Valley Shire Council
- 3.4. New South Wales Aboriginal Land Council

4. DURATION AND AMENDMENT OF THE ACCORD

- 4.1. This Accord commences once it is duly endorsed and signed by:
 - 4.1.1. Eden LALC through its established approvals process.
 - 4.1.2. All relevant NSW Government Ministers or their delegate(s).
 - 4.1.3. Bega Valley Shire Council
 - 4.1.4. NSW Aboriginal Land Council
- 4.2. The Accord will operate for a period of not more than two (2) years.
- 4.3. By mutual agreement, parties to the Accord can amend this Accord and/or its schedule(s) through endorsement as set out in 4.1.
- 4.4. In the event obligations have not been fulfilled, any affected parties may seek an option to extend the accord.

5. SCOPE OF THE ACCORD

- 5.1. The Accord will focus on key priorities identified and mutually agreed to by Eden LALC and the NSW Government during the Solution Brokerage negotiations. The priority areas are:
 - 5.1.1. Negotiation of an Aboriginal Land Agreement (ALA), including priority determination of identified existing land claims.
 - 5.1.2. Title transfer of an agreed area of land adjacent to Davidson Whaling Station.
 - 5.1.3. Development of a land capability assessment database to drive future land use and land dealing opportunities.

- 5.1.4. Collaboration opportunities with Government and non-Government agencies for land management, tourism, business development and capacity development for Aboriginal people in the Eden area as identified in the Eden LALC Community Land and Business Plan (CLBP).
- 5.2. In addition to the key priorities, parties will continue to employ the collaboration processes established through Solution Brokerage to address future opportunities and issues as identified in the Eden LALC CLBP.
- 5.3. Detailed actions under each priority are driven by Eden LALC's CLBP and current NSW Government priorities and opportunities aligned with the initial scope of Solution Brokerage.
- 5.4. Agreed deliverables under each priority listed at 5.1 are detailed in schedule 1.

6. REPORTING, PERFORMANCE MEASUREMENT AND EVALUATION

- 6.1. Reporting against the Accord is critical to ensuring progress and accountability for all parties. To provide a relevant mechanism for reporting and if required, escalation, the parties agree to continue to meet as the project implementation team for the duration of this accord. At a minimum parties agree to:-
 - 6.1.1. Report agreed actions and commitments to the Eden Whole of Government Group or its equivalent for NSW Government; and
 - 6.1.2. Report agreed actions and commitments to the board and membership of Eden LALC.
- 6.2. The project team will meet as part of the Eden Whole of Government Group and at a minimum agree to:-
 - 6.2.1. Meet not less than four times during the two years of operation of the Accord to report on progress, trouble shoot emerging issues and review and reflect on individual and collective efforts.
 - 6.2.2. Meetings will be held six monthly within the four week period prior to the RLE meeting for the corresponding period as follows:
 - October 2017
 - April 2018
 - October 2018 – This meeting will include a focussed review of the Accord
 - April 2019
 - 6.2.3. Report agreed actions, commitments outcomes and emerging issues to:
 - 6.2.3.1. The Board and Membership of the Eden LALC
 - 6.2.3.2. The South Eastern Regional Leadership Executive
 - 6.2.3.3. The relevant authority within Bega Valley Shire Council
 - 6.2.3.4. The relevant authority within the NSW Aboriginal Land Council
- 6.3. In addition to formal meetings, reasonable requests for updates and information can be made for the duration of the agreement. The preferred method for requests is via email with the requested timeframes to reflect the priority of the matter being addressed.

7. DISPUTE RESOLUTION Initial discussions

7.1.1. If any dispute arises under any provision of this Agreement (including the schedules and attachments to this Agreement) the parties must, within twenty business days of the dispute arising, meet in good faith and attempt to resolve the dispute.

7.2. Referral to dispute resolution

7.2.1. If the dispute is not resolved within twenty business days of the meeting convened pursuant to clause 7.1, 7 or such longer period as the parties may agree, the dispute will be determined by an independent expert appointed under clause 7.2.2 7.3. (Expert).

7.2.2. The independent expert will be jointly appointed by the parties or, failing agreement, the independent expert will be appointed by the Australian Disputes Centre upon application of either party.

7.2.3. Any Expert appointed under this clause must not be a current employee or contractor of the parties or any other person having an association with the parties or have any other conflict of interest.

7.2.4. Any Expert appointed under this clause 7 must have practised as an expert in the relevant field for no less than five years and be a member of any relevant professional body and must, where registration is available, be registered to make a determination as an expert in the field of the dispute.

7.2.5. The Expert may commission others for advice on any aspect of the dispute but must not delegate the determination of the dispute.

7.2.6. The parties may make written submissions to the Expert.

7.2.7. Any determination by the Expert must be made as an expert and not as an arbitrator and must be accompanied by reasons for the determination.

7.2.8. The parties agree that the Expert's determination will be final and binds the parties in the resolution of the dispute.

7.2.9. All costs incurred in connection with the determination of the dispute by the Expert must be paid as the Expert determines, but if no determination is made on this issue, then by the parties equally.

7.2.10. Other than where the Expert has engaged in fraud, the Expert will not be liable to either party in any respect in connection with the carrying out of the Expert's functions in accordance with this Accord.

7.2.11. Nothing in this clause will prejudice the right of a party to seek urgent injunctive or declaratory relief in respect of any matter arising out of this Agreement.

7.3. Continuation of obligations

- 7.3.1 The parties must continue to perform their obligations under this Agreement during the period of a dispute.

8. NOTICES

8.1 A notice under this Agreement must be:

- 8.1.2 In writing, directed to the representative of the other party as specified in the Agreement Details; and

- 8.1.3 Forwarded to the postal address or the email address of that representative as specified in the Agreement Details or the address last notified by the intended recipient to the sender.

8.2 A notice under this Agreement will be deemed to be served:

- 8.2.1 In the case of delivery in person - when delivered to the recipient's address for service and a signature received as evidence of delivery.

- 8.2.2 In the case of delivery by post - within three business days of posting.

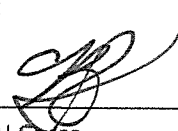
- 8.2.3 In the case of delivery by email, on receipt of confirmation by the recipient that the recipient has received the email.

- 8.3 Notwithstanding the preceding clause, if delivery or receipt of a communication is on a day which is not a business day in the place to which the communication is sent or is later than 5pm (local time in that place) it will be deemed to have been duly given or made at 9am (local time in that place) on the next business day in that place.

EXECUTION of Accord

This Accord is made on 19th October 2017

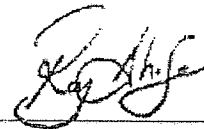
Signed for and on behalf of Eden Local Aboriginal Land Council by:



BJ Cruse

Chairperson of the
Eden Local Aboriginal Land Council

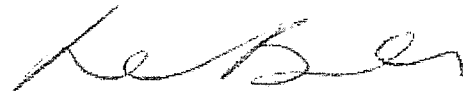
Signed for and on behalf of NSW Aboriginal Land Council



Roy Ah See

Chairperson of the
NSW Aboriginal Land Council

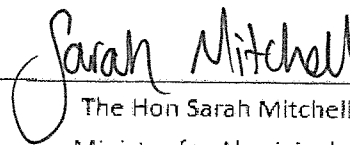
Signed for and on behalf of Bega Valley Shire Council:



Leanne Barnes

General Manager of the
Bega Valley Shire Council

Signed for and on behalf of the State of NSW by:



The Hon Sarah Mitchell MLC
Minister for Aboriginal Affairs

Appendix 1 – Detailed Commitments against Priorities

1. Negotiation of an Aboriginal Land Agreement

Description of commitment:

- The NSW Department of Primary Industry - Lands (DPI: Lands) will negotiate an Aboriginal Land Agreement (ALA) with Eden Local Aboriginal Land Council (Eden LALC) and the NSW Aboriginal Land Council (NSWALC).
 - The ALA is intended to bring an increase in economic prosperity for Eden LALC through the transfer of land assets and other related resources (as negotiated).
 - The agreement will satisfy the prior commitment to prioritise selected land claims under the Aboriginal Land Rights Act 1983 (NSW) (ALRA).
 - The ALA will not prevent Eden LALC from continuing to exercise rights under the ALRA.
 - Parties will utilise and build on the negotiation approach developed under Solution Brokerage.
 - Other NSW agencies will provide timely and relevant advice as required to support the negotiations.
 - Bega Valley Shire Council (BVSC) will be invited to participate in the process.

Actions:	Roles and Responsibilities:	Key Performance Indicators/Milestones:	Timeframe:
Support for Eden LALC to identify and refine existing land claims.	Aboriginal Affairs: DPI: Lands: Provide access to databases and maps relevant to Eden LALC land claims already in system.	Eden LALC has accessed relevant information to make an informed decision regarding priority land claims for progression.	Completed
List of all desired land parcels for consideration in agreement.	Eden LALC: DPI: Lands: Provide advice of other relevant parcels for consideration by Eden LALC.	Scoping of land parcels completed and relevant information exchanged to ensure informed consideration prior to agreement.	Completed
Negotiate matters for inclusion in ALA.	Eden LALC: Lands and other agencies as required.	Meetings held at mutually agreeable times to progress negotiations. Records of meetings kept.	Short – 3-6 Months

Finalisation of ALA.	DPI: Lands: Lands and other agencies as required.	Execution of an ALA.	Short – 3-6 months
	Eden LALC: As required		
	DPI: Lands: As required		
	Other Agencies: As required		
Transfer of land and other negotiated items completed or agreed schedule for transfer.	Eden LALC: As required	Land titles are transferred and/or an agreed timeframe is established for the transfer of titles and other resources negotiated.	Determined in Aboriginal Land Agreement
	DPI: Lands: As required		
	Other Agencies: As required		
Capacity Support	Aboriginal Affairs: Capacity Support	As required and identified by Eden LALC, Aboriginal Affairs staff support capacity development opportunities.	Ongoing for duration of the Accord

2. Development of Land Capability Assessment Database

Description of commitment:

- Agencies will collaborate with Eden LALC to develop a land management plan for existing and future land holdings
- The management plan will be directed by the Eden LALC Community Land and Business Plan as well as current priorities as determined by Eden LALC and its members
- Completion of this commitment will satisfy Eden LALC's request through the RFA for the NSW Government to support economic development opportunities
- Agencies will provide relevant expertise, information and resourcing as outlined in the agreed actions, to assist Eden LALC to prepare a comprehensive plan to improve the economic outcomes derived from land dealings and land management
- Parties will utilise and build on the negotiation approach developed under Solution Brokerage

Actions:	Roles and Responsibilities:	Key Performance Indicators/Milestones:	Timeframe:
Determine scope and purpose of management plan as it relates to land dealings and economic advancement of Eden LALC.	Eden LALC: Aboriginal Affairs: Planning & Environment:	Scoping document that clearly defines the project outcome(s).	September 2017
Source Project Funding to complete management plan	DPI: Lands: OEH: NPWS: BVSC: Aboriginal Affairs:	Relevant advice provided in a timely manner. Relevant advice provided in a timely manner. Relevant advice provided in a timely manner. Relevant advice provided in a timely manner.	Completed
Advisory Committee to LALC and Contractor.	Aboriginal Affairs:	Funding to engage suitably qualified contractor to complete planning and compilation of information. Active support and participation by agencies identified.	Until completion (September 2017)

DPI: Lands:	Agencies provide relevant advice and data sets to LALC to ensure accurate and informed decisions and recommendations are made.	Active support and participation by agencies identified.	
Planning & Environment:	Agencies provide relevant advice and data sets to LALC to ensure accurate and informed decisions and recommendations are made.	Active support and participation by agencies identified.	
BVSC:	Agencies provide relevant advice and data sets to LALC to ensure accurate and informed decisions and recommendations are made.	Active support and participation by agencies identified.	
Completion of required steps to finalise and submit Development Application for Hoskins St industrial development.	Eden LALC: Engage suitably qualified contractor(s) and manage completion to comply with DA. Lodge DA. Include Hoskins St development into the land management plan.	Approved DA and associated plan to manage land holding to realise economic benefit as directed by LALC members.	February 2018
Completion of land management plan.	Eden LALC: Project plan development and implementation.	Plan that clearly identifies opportunities and required actions to realise economic benefit through considered and deliberate land management practices taking into account all relevant planning and land management requirements as well as fiscal and legislative responsibilities.	February 2018
Capacity Support	Aboriginal Affairs: Project support and monitoring.		
	Aboriginal Affairs: Capacity Support	As required and identified by Eden LALC, Aboriginal Affairs staff support capacity development opportunities.	Ongoing for duration of the Accord

3. Transfer of land adjacent to Davidson Whaling Station

Description of commitment:

- During the Regional Forestry Agreement (RFA) negotiations an area of land around the Davidson Whaling Station was included in negotiation discussions involving Eden LALC.
- As a result of a pre-existing agreement not being communicated, the parties discussing this particular transfer were not aware that it was unachievable in the agreement.
- Given the cultural importance of the land, and in consideration of the spirit that Eden LALC entered the RFA negotiations, the Office of Environment and Heritage (OEH) supports the freehold title transfer of an agreed parcel of land to Eden LALC.
- Parties agree to work towards the revocation of the agreed parcel from the Davidson Whaling Station Site.

Actions:

Describe and agree on the parcel of land being considered.

Eden LALC: Joint site visit

OEH: NPWS: Joint site visit

Development of submission to the Minister for the Environment.

Eden LALC: Provision of relevant historical and current evidence to support submission (includes Eden LALC letter to minister for the Environment, narrative of oral history as relevant to this site, documentation on the original transfer).

OEH: NPWS: Provision of relevant historical and current documentation to support submission (includes Eden LALC letter to minister for the Environment, narrative of oral history as relevant to this site, documentation on the original transfer).

Surveying (if and when required).

Finalisation of submission.

Key Performance Indicators/Milestones:

Agreed portion of land identified and described to ensure clarity as commitment progresses. Completed

Agreed portion of land identified and described to ensure clarity as commitment progresses.

Submission that provides clear reasoning and is well evidenced to support the transfer of the agreed parcel of land to Eden LALC as a freehold parcel. June 2017

Submission that provides clear reasoning and is well evidenced to support the transfer of the agreed parcel of land to Eden LALC as a freehold parcel. September 2017

<p>Communications and project planning.</p>	<p>All:</p>	<p>Eden LALC, NPWS and AA are updated regularly on the progress of the agreed actions and any arising issues.</p>	<p>Ongoing until finalisation</p>
<p>Capacity Support</p>	<p>Aboriginal Affairs:</p>	<p>Capacity support</p>	<p>Ongoing</p>
		<p>As required and identified by Eden LALC, Aboriginal Affairs staff support capacity development opportunities.</p>	

4. Collaboration

- 4.1. Training and development opportunities for the Eden LALC workforce, particularly in relation to land management activities.
- 4.2. Support to progress access to areas of National Parks for tourism and cultural activities

Description of commitment:

- NSW National Parks and Wildlife Services (NPWS) and the Eden LALC have a successful track record of working together on mutually aligned projects. To enhance and support the continuation of this relationship, parties will negotiate agreement on two current priority matters that relate to the RFA negotiation process, those being:
 - Training and staff development needs for Eden LALC staff; and
 - Access to areas of National Parks for Cultural Tourism and Cultural practice needs
- Parties will utilise and build on the negotiation approach developed under Solution Brokerage
- Other NSW agencies will provide timely and relevant advice as required to support the negotiations.

4.1. Training and Development Capacity Support

Actions:	Roles and Responsibilities:	Key Performance Indicators/Milestones:	Timeframe:
Access to training opportunities for Eden LALC staff.	Eden LALC:	Training needs for Eden LALC staff are supported through partnership approach to scheduling, delivery and ongoing professional development needs of land managers across the agencies. Opportunities for additional relevant training (e.g. Tourism training, Sites training) are offered to Eden LALC to support the capacity development of the Eden LALC workforce to meet their current and future business needs.	Ongoing
OEH: NPWS:	Collectively consider training needs, costs and available resources to deliver mutually beneficial training to land management staff.	Training needs for Eden LALC staff are supported through partnership approach to scheduling, delivery and ongoing professional development needs of land managers across the agencies.	Ongoing

Advise Eden LALC of opportunities to participate in in house training programs. Opportunities for additional relevant training (e.g. Tourism training, Sites training) are offered to Eden LALC to support the capacity development of the Eden LALC workforce to meet their current and future business needs.

4.2. NPWS Access and Usage for Cultural Tourism and Cultural Practice

Actions:	Roles and Responsibilities:	Key Performance Indicators/Milestones:	Timeframe:
Eco Pass	<p>OEH: NPWS: Provide advice and support for lodgement of an Eco Pass.</p> <p>Eden LALC: Complete and lodge an Eco Pass application for all areas desired for access for Tour operations and cultural activities.</p>	<p>Timely provision of advice and support.</p> <p>Successful completion of Eco Pass application to enable Eden LALC to offer tours in areas of National Parks (as they relate to Eden LALC business).</p>	July 2017
		<p>Timely provision of advice and support.</p> <p>Successful completion of Eco Pass application to enable Eden LALC to offer tours in areas of National Parks (as they relate to Eden LALC business).</p>	