



**12 March 2021**

**Response to the NSW Western Sydney Planning Partnership's Draft  
Aerotropolis Precinct Plan (for Public Comment)**

Gandangara Local Aboriginal Land Council (GLALC) is providing the following response to the above public document, which has been informed by multiple technical papers, among them the *Draft Aboriginal and Non-Aboriginal Cultural Heritage Assessment* (prepared for Western Sydney Planning Partnership by Extent Heritage, October 2020), and the *Western Sydney Aerotropolis Aboriginal Engagement Outcomes Report* (prepared by GHD/Zion Engagement & Planning).

This formal submission introduces GLALC, explains our statutory role in relation to Aboriginal cultural heritage, and explains the importance of the development of the Western Sydney Airport to our Members and our community. It also sets out GLALC's expectations with respect to the development and operation much of the precinct infrastructure that touches upon our core statutory obligations as a Local Aboriginal Land Council. Finally, the submission addresses aspects of the consultation process that have fallen short of our due expectations regarding our position as *the* local statutory body corporate delivering on Aboriginal land and development affairs in the region.

*1) About Gandangara Local Aboriginal Land Council*

GLALC is a Local Aboriginal Land Council constituted under the *Aboriginal Land Rights Act 1983* (NSW) (the **Act**). Local Aboriginal Land Councils are statutory bodies corporate whose objects and functions are set out in the Act.

Section 51 of Act provides that Gandangara's objects are:

*to improve, protect and foster the best interests of all Aboriginal persons within the Council's area and other persons who are*

*members of the Council.*

Under section 52(4) of the Act, GLALC has the following functions in relation to Aboriginal culture and heritage:

- (a) to take action to protect the culture and heritage of Aboriginal persons in the Council's area, subject to any other law,*
- (b) to promote awareness in the community of the culture and heritage of Aboriginal persons in the Council's area.*

GLALC has concomitant functions in relation to the acquisition and management of land, and the provision of community benefits and business enterprise opportunities to its membership base and all Aboriginal persons within its jurisdiction as follows:

Under sections 52(2, 3, 5) and 52A(1) of the Act, GLALC has the following functions, among others:

- (2)(c) to submit proposals for the listing in Schedule 14 to the NPW Act of lands of cultural significance to Aboriginal persons that are reserved under the NPW Act;*
- (3)(b) to protect the interests of Aboriginal persons in its area in relation to the acquisition, management, use, control and disposal of its land;*
- (5)(c) to facilitate business enterprises (including by establishing, acquiring, operating or managing business enterprises), in accordance with this Act and the regulations and consistently with its Community Land and Business Plan;*
- A(1)(a) directly or indirectly to provide community benefits under the community benefits scheme*

GLALC was constituted in 1984 and has been serving the interests of its Members and all Aboriginal people in its area since then. Our Members are those adult Aboriginal people listed on our membership roll. GLALC has 723 adult Members.

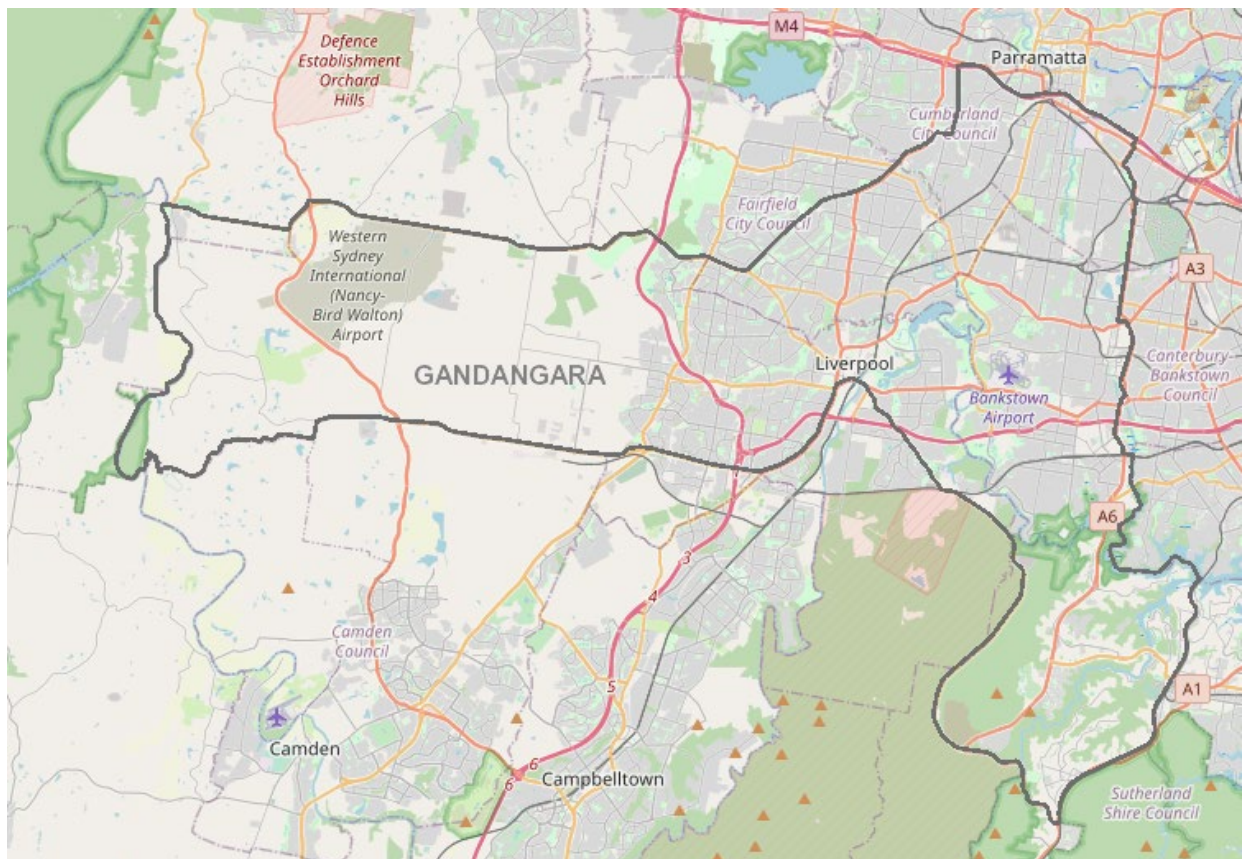
GLALC is directed by a Board of 10 elected Members. Our Board members must undergo mandatory governance training in accordance with section 65 of the Act. GLALC appoints a CEO under section 78A of the Act under which sits a corporate management structure.

Along with providing the services of a Local Aboriginal Land Council in accordance with our statutory functions, GLALC owns and operates a medical practice, Gandangara Health Services Ltd, and a transport business, Gandangara Transport Services Ltd. Both entities service Aboriginal people as well as the wider populace in need of social and community services.

Across its businesses, Gandangara LALC employs approximately 50 staff, and is a self-sufficient, financially independent business in its own right.

2) *Gandangara Local Aboriginal Land Council's geographical remit*

GLALC's boundaries extend across a large part of south-western Sydney, covering all the footprint of the Western Sydney Airport and spanning six Local Government Areas, in whole or in part (Liverpool, Fairfield, Cumberland City, Sutherland Shire, Parramatta and Canterbury- Bankstown).



GLALC is also a significant private landholder in south-western Sydney. In addition to its unimproved land, GLALC has a head office in Liverpool and operates a social housing scheme for Aboriginal people in need, comprising 28 residential houses across four local government areas. This social housing scheme is a community benefits scheme approved in accordance with section 52A of the Act.

In all, GLALC covers:

- A district of 43,645 hectares centred on Liverpool, and stretching east to west from Auburn to the borders of Penrith, and from north to south from Parramatta to the Sutherland Shire

- 4,700 hectares of claimable land, all of which has been claimed (by GLALC or on behalf of GLALC by the NSW Aboriginal Land Council)
- \$75 million net assets
- Serving the interests of approximately 12,000 Aboriginal and Torres Strait Islander peoples in the Greater south-western Sydney region (ABS 2016).

### Claims to Crown Land

As a Local Aboriginal Land Council, GLALC's functions include the right to make claims to crown lands under Section 36 of the Act. Each Local Aboriginal Land Council in NSW has this right and function in virtue of the land rights granted to Aboriginal peoples in 1983, and in view of partial compensation for the historic dispossession of Aboriginal peoples from their lands by the Crown upon colonial settlement.

GLALC currently has an active, undetermined Aboriginal Land Claim (Claim ID 42491) on Lot 7004/DP93052 in the Luddenham village, on the western fringe of the Aerotropolis precinct. It is a contravention of the Act to develop, or deal in land that is under an active Aboriginal Land Claim.

Apart from Aboriginal Land Claims, which necessitate specific consultation, GLALC's jurisdictional terrain which encloses the majority of the Aerotropolis precinct, requires good faith negotiations with the Land Council as a primary Aboriginal stakeholder with statutory authority. This matter will be discussed further in the response below.

### **3) Response to Draft Aerotropolis Precinct Plan**

On the whole, the Plan is clear and detailed in regard to the three Precincts, their function and prospects.

#### Acknowledgement:

The introduction of the document acknowledges the "more than 60,000 years of continuous Aboriginal connection to the land that makes up NSW" (page 2). The expressive language continues to pay this respect by noting that:

"As part of the world's oldest living culture, the Traditional Aboriginal and Torres Strait Islander Owners and Custodians of the Australian continent and adjacent islands share a unique bond to Country — a bond forged through thousands of years of travelling across lands and waterways for ceremony, religion, trading and seasonal migration" (page 2).

While there is nothing necessarily contentious about this phraseology, the language sets up the next paragraph, which speaks to a broad inclusiveness of many ancient Aboriginal clans:

“The Aerotropolis area is custodially cared for by three Aboriginal groups: the Darug, Dharawal and Gundungurra. Others, such as the Eora, Darkinjung, Wiradjuri and Yuin maintain trade or other obligatory care relationships with the area. The Deerubin, Gandangara and Tharawal Local Aboriginal Land Councils also have local land holdings and responsibilities towards Aboriginal people living in the area” (page 2).

This Acknowledgement is ill-informed and incorrect on a number of levels. The land on which the Aerotropolis precinct lies is *only* custodially cared for by Gandangara Local Aboriginal Land Council as the appointed statutory custodian of the First Peoples of this local area. Although Native Title legislation recognises Traditional Owners and supersedes state-based Aboriginal Land Rights legislation (the Act), where there are no recognised Traditional Owners in a given jurisdiction under Native Title, all custodial responsibility officially defaults to the *local* Aboriginal Land Council.

Under s171 of the Act, a list of ‘Aboriginal Owners’ within a Land Council’s boundaries is kept by the Office of the Registrar – Aboriginal Land Rights Act (ORALRA). This list is different to the Membership Roll of the Land Council, as it details Aboriginal residents who have a specific cultural association with the land, and the proven nature of that association. Currently the ORALRA hold no list of ‘Aboriginal Owners’ in the GLALC Boundaries. The Membership of GLALC consists of Aboriginal people from diverse clans and families from around the country, many of whom were born or raised here but derive their lineage elsewhere.

The absence of Native Title holders in the Greater Sydney region is known through the conclusions drawn by Justice Madgwick in *Gale v Minister for Land & Water Conservation for the State of New South Wales* [2004] FCA 374. In this light, the assertions of various Aboriginal stakeholder groups to be Traditional Owners of the Aerotropolis jurisdiction must be taken on with caution by any state or federal planning body. We make no personal comment as to the self-identification of various Aboriginal stakeholder groups in this process, those who identify as Darug, other than to say that the custodians of the area comprising the Western Sydney Airport and Aerotropolis can only be, in an official and legal capacity, the Local Aboriginal Land Council in question. With respect to the Aerotropolis precinct, this responsibility is almost wholly that of GLALC, with the part of the north-western precinct falling within Derrubin Local Aboriginal Land Council’s boundaries.

On that note, the ‘local land holdings’ referred to in the Acknowledgement above is incorrectly attributed to Tharawal Local Aboriginal Land Council whose jurisdictional boundaries fall beneath the southern boundary of GLALC’s at the Greendale border. The ‘responsibilities’ of GLALC (and Derrubin) to Aboriginal people living in the area, as noted by the Acknowledgement, is significant under Western law, and under traditional lore, a point that will be discussed in relation to the Precinct Plans further below.

The text of the Acknowledgement, in short, appears to be attempting an inclusivity that lacks substance, and that precludes recognition of the distinctly important role of GLALC in the matter. To indicate that custodial care of the Aerotropolis precincts falls to the ‘Darug,

Dharawal, Gundungurra, Eora, Darkinjung, Wiradjuri and Yuin peoples, by virtue of occupation or trade, is to express nothing at all, other than a relatively misguided effort to include all proponents who registered for consultation with the Aboriginal Focus Group in the early stages of Aerotropolis planning. Indeed 'Gundungurra' does not refer to a clan group within the South-Western Sydney boundaries, but is noted by historians as an associated name with the Blue Mountains lands.

We have responded to this point at length because the Acknowledgement at the beginning of the Draft Plan sets the stage for how Aboriginal people and Aboriginal culture is addressed throughout the remainder of the document. Words matter, and carry meaning. We would like to see the opening Acknowledgement revised in consideration of the above.

### Design Principles

We appreciate the 'landscaped approach' to planning the Airport city, one that "recognises Aboriginal cultural values in terms of design, heritage and urban systems" (page 6). In fact, of the eight Key Drivers, this approach is listed as number 1: "Connecting to Country." The Draft plan states that 'Cultural Design Principles' – in terms of design, heritage and urban systems – will guide the planning of the Wianamatta-South Creek precinct, as well as the other two precincts.

Yet there is little information in the Draft Plan as to how these principles will inform the planning. Indeed, the Draft Plan reverts to vague (and incorrect) language to describe the influence of "Traditional Owners and Custodians" who "have maintained a connection with the land and draws on their belief that by caring for Country will care for us" (page 13). As stated, there are no registered Traditional Owners in the South-West Sydney area – if there were, the Commonwealth Department would find itself negotiating ILUA's for the purchase of the Aerotropolis land. What needs to be recognised is the local and state-based responsibilities of the relevant LALCs (GLALC and Derrubin) with respect to the Key Driver of 'Connecting to Country.'

On page 30 of the Draft Plan, the Key Driver is explained in more detail:

Appreciating Country means Country is cared for during design and development. Wianamatta-South Creek Corridor is a place of fertility that provides a distinctive variety of topographic environments, ecologies, climates and geology. The sacred waters and undulating land provide a connection to Country and the way the land was managed prior to European occupation. Connecting and integrating the Wianamatta-South Creek Corridor with the area's broader character, place and social environment will drive planning and design. Precinct planning will be guided by Cultural Design Principals and local leaders in the Aboriginal community. Future natural, economic or cultural landscapes will preserve and embody Aboriginal values and identities."

The opportunities for Working on Country and Caring for Country initiatives on the

Wianamatta-South Creek Corridor are exciting and important. The land care obligations and duties of GLALC prescribed under the Act encompass the protection and preservation of the environment through traditional ecological knowledges. GLALC has made several public submissions on documents in relation to this objective, such as the *NSW Open Spaces Charter*, the *NSW Crown Lands Strategic Plan*, and the *Cumberland Plains Conservation Plan*. GLALC's potential to provide a business case for a joint-Rangers program with the Aerotropolis authorities to realise the promise of "appreciating Country", as described in the excerpt above, is significant, but it requires targeted and meaningful consultation.

#### Care for Aboriginal Culture and Heritage

More concerning for GLALC is the apparently negligent way in which care for Aboriginal artefacts has been managed during the Airport planning and earthworks.

As noted above, under section 52(4) of the Act, GLALC has the following functions in relation to Aboriginal culture and heritage:

- (c) to take action to protect the culture and heritage of Aboriginal persons in the Council's area, subject to any other law,*
- (d) to promote awareness in the community of the culture and heritage of Aboriginal persons in the Council's area.*

Under the Office of Environment and Heritage's *Guidelines for Proponents* in Aboriginal Consultation Requirements (2010), section 4, Local Aboriginal Land Councils are recognised as having a pre-eminent role in the consultation process (and in channelling and networking with other Aboriginal stakeholders) for the identification and repatriation of any Aboriginal artefacts found during site surveys or salvages. This is one of the core elements of GLALC's operations, as an aspect of our statutory custodianship of the land. As part of this duty, GLALC has engaged as a Registered Aboriginal Party on many surveys and salvages in our jurisdiction and successfully signed Care and Control Agreements for the safe-keeping of found Aboriginal objects to be stored and curated in our Keeping Place.

The bulk earthworks at Western Sydney Airport was a once-in-a-generation opportunity to identify and repatriate Aboriginal artefacts and objects to prevent their destruction. Regrettably GLALC was not included in conversations with archaeologists or heritage advisors on the care of the artefacts found, despite our efforts to connect with the personnel responsible. None of this is derived from monetary motivations – GLALC is a self-sufficient and profitable business. Rather it is derived from a feeling of deep dissatisfaction that the normal (state based) processes of artefact repatriation have been subsumed by the federal objective of creating a possible Keeping Place to house the more than 43,000 artefacts found, with no guidance as to who will control and manage such a venture (we have addressed this matter separately in an official letter regarding the consultation for this objective in 2020).

In this light, the Draft Plan's promise to "retain Aboriginal heritage items and significant places in public open space and respect and enable conservation of non-Aboriginal heritage items" (p 36) effectively disregard's GLALC's obligations to do precisely that, on our own

terms and in consultation with us. This is critical as there are cultural prohibitions around what can be exhibited in 'public open space' and how it can be curated, and by whom. This element of the Draft Plan needs to seriously consider GLALC's legal and custodial responsibilities to realise the above objective.

This issue becomes doubly important when the preservation and exhibition of Aboriginal cultural heritage items is capitalised on for the purposes of education, enterprise or tourism, particularly within the Agribusiness Precinct:

"Precinct planning will facilitate and encourage Aboriginal people to access and connect with the land. This will enable opportunities for education, employment and business opportunities and a connection with Country. Precinct planning will build on successful agricultural operations and develop new agribusiness opportunities while protecting and embracing important vegetation within the landscape" (page 56).

We wish to be involved in further targeted discussions about binding Partnership opportunities we can mutually leverage in this regard.

The method of protection of the "historical archaeological remains, places of Aboriginal cultural heritage significance and heritage items" and the "tangible" and "intangible" items of Aboriginal cultural heritage (page 60) requires accountable structures in place, but the Draft Plan does not hint at how this critical work will be undertaken and by whom. The Plan states that "Aboriginal heritage sites, such as modified trees and grinding grooves, together with unusual and preserved landforms, will be protected" (page 60), yet the means and method of protection are not stated.

The *Draft Aboriginal and Non-Aboriginal Culture and Heritage Assessment Report* from Extent Heritage (October 2020) identifies 138 valid AHIMS sites in the three precinct areas, most of which are artefact scatters now disturbed by the top-soil removal during early Airport earthworks. The record of 'protection' of Aboriginal sites at the Aerotropolis is therefore not encouraging. The issuing of seven AHIPs within ten years to developers on the Western Sydney Airport site (i.e. consent to destroy or to harm Aboriginal objects) is also noteworthy.

It is important that the remaining sacred sites (three carved/scarred trees, and one grinding groove site) are preserved and protected under the care of GLALC (see *Draft Aboriginal and Non-Aboriginal Cultural Heritage Report*, page 40). Additionally, GLALC's local Elders, who are also members of the Land Council have identified Aboriginal objects that are not recorded on the AHIMS database, rare deposits that have no plan of protection.

The Principles for the protection of Aboriginal culture in the Agribusiness precinct sound fine, but there must be specific and targeted enterprise planning done in consultation with GLALC to ensure that the principles are actually realised. The Objectives to realise the principles are described, particularly in the context of environmental conservation (page 62). Under RC01 Reference is made to the National Parks and Wildlife Act (1974), but since



the Aboriginal Land Rights Act (1983) cross references the former Act and is responsible for implementing LALC's Aboriginal Culture and Heritage statutory obligations, we wish the Draft Plan also to acknowledge the role of LALCs under the ALRA.

The Draft Plan continues to list specific requirements in this regard, which is appreciated. Comments on these will be listed below (from page 62):

- RC1 Ensure development is compatible with the Aboriginal heritage significance of the place and does not detract from the features and values of the Aboriginal heritage place or object.

The opportunity exists to include GLALC and its large Membership base in consulting on design and development planning in this regard.

- RC2 Ensure development adjacent to or within the vicinity of an item or place of Aboriginal heritage significance has minimal impacts and is appropriately sited to retain the curtilage or setting of the Aboriginal item or place. Consider surrounding landscapes, topography, views and connections with other Aboriginal sites. Consider uses such as passive open space, environmental conservation and riparian corridors.

This will depend upon the type of Aboriginal heritage object or artefact, or indeed landscape feature. Noting that under the National Parks and Wildlife Act, and 'Aboriginal object' includes an object that is still in use, there needs to be some discussion about specific and rare features identified in the Extent Heritage *Draft Report* (pages 40-41) and may include 'resources' used in gatherings. Scarred trees in areas of remnant vegetation require specific land care, which every LALC is staffed to undertake.

Additionally, the preservation of the grinding groove will be best served through curation with clear landmarks, that can be woven into an artefact curation walk designed by GLALC. This is one of many concepts that should be discussed in targeted consultation sessions with GLALC to ensure that the LALC is able to undertake its rightful duty to protect and preserve Aboriginal heritage objects in its jurisdiction. 'Passive open space' can indeed present a risk of destruction of objects if these are not landmarked and appropriately secured.

- RC3 Development should avoid, and design in and around, specific Aboriginal heritage site types such as modified trees (carved or scarred) and grinding grooves to protect the connection to other places and landscape that are significant to Country.

See comment above.

- RC4 Avoid development in areas of High Aboriginal Heritage Sensitivity and minimise development in areas of moderate sensitivity.

This objective is appreciated but we prefer to see it enshrined in a binding form of prohibition to developers, particularly given the liberality of AHIPs granted (consent to destroy Aboriginal objects) within the past ten years.

- RC5 Conserve archaeological sites, including Aboriginal places and objects of significance, where places of significance should be ground-truthed through consultation and mapping.

The method of conservation needs to be discussed in a deliberate and targeted manner with GLALC.

- RC6 Undertake any interpretation and story-telling in consultation with, and walking on Country with, the traditional custodians and Local Aboriginal Land Councils (LALCs).

An important objective that needs to be undertaken with GLALC and DLALC.

- RC7 Preserve remnant vegetation clusters to care for Country.

We wish to see a co-managed (with GLALC) Aboriginal Rangers Program implemented to provide employment and training for Aboriginal people to become certified in conservation and land management.

- RC8 Retain and respect potential heritage conservation corridors that represent a range of landforms and environments, as well as curtilage, view lines and amenity, in consultation with local stakeholders.

The retention of the corridors is important, but where scarred trees cannot be adequately protected we wish to hold discussions about means of repatriation.

### Cultural Tourism and Facilities

GLALC is a thriving business in the niche market of cultural tourism in the South-Western Sydney region, with dedicated community transport and the operation of cultural tours, and a new Cultural Centre and Keeping Place in the Liverpool CBD. GLALC is a primary stakeholder in the process of planning and development in the tourism market.

We note in the Draft Plan that certain social, community and cultural infrastructure is planned for the three precincts in the Aerotropolis. This includes the following objectives:

- SCO1 Provide local, state and regional social, community and cultural infrastructure to support research/ innovation, health, training and education (including tertiary and vocation education training institutions and secondary school level), and support workers, visitors, tourists and residents.
- SCO2 Provide social infrastructure to meet the needs of different worker groups, given different job types create different needs for the workforce.
- SCO3 Provide welcoming, safe and accessible social infrastructure which meets the needs of the community.
- SCO4 Integrate and co-locate social infrastructure with green infrastructure to create better health and wellbeing for the community.
- SCO5 Provide for cultural celebration in place naming, artwork and installations,

cultural design and dedicated gathering spaces for the Aboriginal community (p 164).

Additionally, the conservation requirement (RC1) to “ensure development is compatible with the Aboriginal heritage significance of the place and does not detract from the features and values of the Aboriginal heritage place or object” presents another opportunity to align with principles of cultural tourism.

We appreciate the specific objectives detailed in the Draft Plan as follows:

- The provision of Aboriginal cultural infrastructure facilities in multiple precincts
- The provision of an Aboriginal Arts and Cultural Centre
- The provision of land dedicated to Aboriginal planting and management (page 148, and page 164).

However, in the *GHD/Zion Aboriginal Engagement Summary Report* that informed the Draft Plan, many Aboriginal stakeholders voiced their desire to see opportunities developed for Aboriginal people and communities in a holistic way that included multiple facets of life such as: cultural celebration, employment and procurement, infrastructure and facilities, education, land management, health, housing and cultural tourism (pages ii-iii).

The Social and Community Objectives of the Draft Plan (SCO nos. 1—4) listed in the Draft Plan should reflect the holistic vision of Aboriginal involvement in the Aerotropolis as expressed in the *Aboriginal Engagement Summary Report*. That is, rather than relegating Aboriginal peoples’ socio-cultural inclusion to an ‘Aboriginal’ garden and Aboriginal cultural centre, each Social and Community Objective (health, employment, education, green spaces etc.) can include the commitment to the Draft Plans first Key Driver: Connecting to Country.

#### **4 Conclusion**

GLALC would like to see a Western Sydney Airport Planning commitment to all of the above objectives and how Aboriginal stakeholders will be involved. GLALC particularly wishes to partner with the relevant Aerotropolis authorities to co-manage the following:

- 1) Community/cultural transport – a designated bus stop and space for Gandangara Transport Services to partner in its cultural tours
- 2) Cultural design of the developments in the precincts
- 3) Targets for Aboriginal employment in all areas of industry and business in the Airport
- 4) A Keeping Place and Cultural Centre owned and operated by GLALC and connected to our CBD location including the care and curation of the found artefacts
- 5) Rangers programs for Caring for Country
- 6) Underpinning the above is the need for specific and targeted consultation sessions with GLALC as the statutory body corporate representing the traditional custodians of the Airport land.

The Draft Plan could incorporate more of the findings of the *GHD/Zion Aboriginal Engagement Summary Report* especially more serious planning about centralising Aboriginal culture into every aspect of the Airport City. This is best achieved through the holistic visions

proposed in that document and which are also delivered by GLALC in all its enterprises and through its entities.

We welcome further discussions with you in the future.

Kind regards,



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Gandangara Local Aboriginal Land Council



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