



PARRAMATTA RIVER ABORIGINAL LEADERSHIP: CASE STUDY

Shared Path Aboriginal and Torres Strait Islander Corporation
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Parramatta River Aboriginal Leadership: Case Study **Report**

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Background to the *Our Living River Project*.

The *Our Living River Project* has a goal of establishing a swimmable Parramatta river by 2025. An important part of this process is the engagement of a diverse number of stakeholders to gain a historical understanding of how the region has been used and managed but more importantly create a picture for the future of the river region and its use.

A key stakeholder group identified by the team are the Aboriginal communities living in the region as the Traditional Custodians. The purpose in activating an initiative to specifically engage the Aboriginal people in the area is to build a greater understanding of the historical and present custodian roles, to create a more culturally appropriate plan into the future and to build strong representation for policy development, advocacy and decision-making process.

The region focussed on throughout this project covers a large area, so a complete picture may be built. The catchment area is defined as Blacktown in the west, north to Bella Vista and Castle Hill, along the northern side of the river Ryde and Gladesville to the eastern point of Balmain. The southern boundary is north of the Cook's river encompassing Yagoona and Bankstown, Holroyd and Greystanes.

The focus for this Indigenous Leadership Engagement project will hold discussions for the entire region with a focus on the swimming areas identified in and about the Parramatta River. The emphasis will be from the west moving towards the east and focus will be shaped by the current and future investigations in areas like Duck Creek and Inner West Council region to avoid overlaps in knowledge. Aboriginal knowledge of creeks, flood plains and water run off that feed into the Parramatta River will support the overall action plan in the management of water quality. Greater understanding of water-based activities of Aboriginal communities will also provide insight into the future access to the river either in the form of swimming, water craft use or access to resources like the harvesting plants and marine animals.

As is now internationally recognised, Aboriginal nations manage land and waterways as living entities. As living entities, the rivers have a body and a spirit that require nourishment



and care. Aboriginal principals of biodiversity, water management, controlling river and surface water flow speed all integrate to create a whole template for sustainable preservation and protection for land and waterways. Aboriginal concepts of the Parramatta River extend beyond the project borders and modern understanding of the river. Aboriginal principals based in belief, traditions, customs and practices will develop a key list of priorities that will be shared, or at times, will compete with modern priorities in river and land management.

Introduction

There is a growing understanding, internationally and domestically, of the key relationship held between Indigenous People and the lands they live on and care for. Many Indigenous populations around the world and here in Australia hold unique knowledge of the land, waterways, and oceans that has been built up over tens of thousands of years. Aboriginal and Torres Strait Islander people acknowledge and refer to land, waterways and oceans as entities. An Entity meaning a being that is alive, capable of decisions, interacting with those around, distinct and independent (Aboriginal and Torres Strait Islander Social Justice Commissioner, 2018; Curran, 2018; Marshall, 2018; O'Donnell, 2018). Official recognition of the depth of intricate working knowledge that Aboriginal people hold over the land, waterways and oceans has led directly to the inclusion of key Traditional Custodians involvement in management and policy direction.

Of greater importance over recognition of Indigenous peoples' histories is a growing understanding and value of the critical, proactive action and influence Indigenous people had in creating environmental sustainability. Their knowledge of the interconnectivity of ecosystems and biodiversity is yet to be fully understood. Work to revitalise this information under the guidance of Indigenous populations will aid the creation of stronger policy, management systems and the implementation of protections and sustainability. *The Proposed Wild Rivers Declarations, 2008, The Aboriginal and Torres Strait Islander Social Justice Commissioner to the Minister for Natural Resources and Water*, has established many recommendations around native title, cultural access and use of water and economic development regarding rivers.

Modern academics like Bruce Pascoe and Bill Gammage have developed a rich source of information around the use of land and waterways to create agriculture and aquaculture ecosystems to support environmental diversity and sustainability in conjunction with Aboriginal society. Lore, culture, traditions and practice delivered through teaching of the Dreaming, contain water management, biodiversity, climate change and environmental science that all work towards supporting land and waterways to survive and thrive as they are their own individual entities, with a body and spirit, intricately linked and dependent (Pascoe, 2012; Gammage, 2014).



A number of rivers have been legally recognised and protected around the world, including the Atrato River in Columbia, and the Ganges and Yamuna Rivers in India. Two key case studies in this report will be the Whanganui River in New Zealand, and the Yarra River in Australia. The importance of these two case studies to the *Our Living River Project* is in the similarities in political circumstances and the expressions, adoption, and implementation of Traditional Custodial roles in the future of their rivers.

The Proposed Wild Rivers Declarations, 2008, The Aboriginal and Torres Strait Islander Social Justice Commissioner to the Minister for Natural Resources and Water (Aboriginal and Torres Strait Islander Social Justice Commissioner, 2018).

A report based in the Lockhart Basin and the Stewart Basin in Queensland in response to the 2005 Wild Rivers Act. The report argues against the use of the term ‘Wild Rivers’ as it is inappropriate referring to the long-standing connection to Country and Rivers the Aboriginal nations hold and Custodial roles they have maintained in the cultivation, protection and preservation of their lands.

The legislation and legal protections for Aboriginal and Torres Strait Islander peoples’ cultural beliefs would extend to the protection of land and waterways as entities with body and spirit. This continuation and free expression of cultural belief, custom, practice and connection are critical in the self-determination of communities and the establishment of stability. The legal protection of cultural beliefs would create greater understanding and representations of Aboriginal and Torres Strait Islander people within policy governing bodies.

The proposal insists on the critical nature of inclusion of Aboriginal and Torres Strait Islander people in the development of policy, design, implementation and all processes in the management of the rivers. The unique and extraordinary depth of Traditional Custodians knowledge of the zones gave them unique insight into historical, current, and future patterns required for planning.

The declaration calls for legal protections to legislate the continuation of cultural practices and economic development. This is critical in the establishment of stability within the community to begin to plan long term without financial instability caused by government and private enterprise interruptions like that of the mining industry. This stability would create opportunities for communities to begin to create collaborative, mutually beneficial relationships supporting the reestablishment of cultural collaboration in land and environment management and protection.



The declaration is clear in establishing the Indigenous human rights of access to water, clean environments, cultural use of water as well as economic development. The historic exclusion of Aboriginal and Torres Strait Islander people in Australia in many management systems including water and river management is of clear concern. Indigenous human rights are clear on the establishment of access, self-determination and representation and as key stakeholders and expert knowledge holders it is beneficial to all to make appropriate provisions to include Aboriginal and Torres Strait Islanders in the policy process, implementation and planning for future protection and preservation of environments.

The Whanganui River, North Island, New Zealand (WAITANGI TRIBUNAL , 1999)

The passing of the *Te Awa Tupua* Act was a major win in what has been acknowledged to be a 170-yearlong battle. The passing of this Act means a river in New Zealand has become the first landmark in the world to be recognised as a living entity, granting a river legal personality with legal protections around health and wellbeing. The Whanganui River has been granted a ‘legal personhood’ by the country’s parliament.

The Whanganui River Deed of Settlement signed in 2014 and legislation that was introduced in 2016 is a response directly acknowledging that New Zealand’s Maori Iwi people have maintained a strong identity and connection to what is referred to as a sacred and revered waterway. The river on the north island runs a 145km course from the mountains to the sea and presents a strong spiritual connection to the Whanganui Iwi. The recognition of the deep connection, traditions, customs and practice acknowledges the intricate relationship with the ancestral river and demonstrates the need for the Iwi people in the future of the Whanganui river.

Te Awa Tupua is based on the belief, customs, traditions and practice of the Maori Iwi people that the Whanganui river is indivisible and living whole, which includes all its physical attributes and spiritual elements from the mountains to the sea (Roy, 2017).

The Te Awa Tupua Act specifically provides for the Whanganui River to have ‘all the rights, powers, duties, and liabilities of a legal person,’ which are exercised on behalf of the river by Te Pou Tupua, the human face of the Whanganui River. This means that the Te Pou Tupua, can initiate legal proceedings to protect the Whanganui River if the River is damaged or if any of its tributaries are compromised.



The Yarra River, Victoria, Australia (O'Bryan, 2018).

The Yarra River Protection Act 2017 (*Wilip-gin Birrarung murrong*) has been developed in collaboration with the traditional owners, the Wurundjeri people. In the language of the Wurundjeri people the title 'Wilip-gin Birrarung murrong', which means 'keep the Birrarung (Yarra) alive'

The Act treats the Yarra River as one living and integrated natural entity reflecting the Aboriginal concepts of the river. The preamble goes further than the Act by noting that the river is alive, has a heart and a spirit, and is part of their Dreaming. The importance of recognising the river in this manner allows the entirety of the river to become part of a strategic plan and implementation process regarding the future development and use of the river (O'Bryan, 2018).

The strategic plan will require that statutory decision-makers along the Yarra be informed by the cultural principles highlighting Aboriginal cultural values, heritage and knowledge, and the importance of involving traditional owners in policy planning and decision-making. These principles include general, environmental, social, cultural, recreational and management principles.

Under the Act, a Council has been established made up of twelve community and skill-based members, two of whom are required to be elected by the Wurundjeri people. It will be under this council, the Birrarung council, that local Aboriginal people have a legislated mandatory voice in river management and policy. The council is outside government influence and has dual roles in overseeing protection policies around the Yarra and to advocate for the protection and preservation of the river. This has the desired effect of making the council an independent voice of the river, without embedding legal rights.

International Law and Building Human Rights for Rivers

The essay series leading the discussion for the International Water Project Blog review explores the legal parameters. The exploration of Canada, New Zealand and Australia's Indigenous populations role in the future management of resources raises key concerns (Curran, 2018; Marshall, 2018; O'Donnell, 2018, O'Bryan, 2018). The fundamental understanding that Indigenous people held preservation and protection of natural assets at the core of traditional culture and practice is with odds with the international western law movement around preservation and protection. Indigenous populations harvested resources, planned for environmental change and secured the health of the ecosystem around them. In the western system many of the conservation and protections are based around limiting



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resource access, and when implemented, impact negatively on Indigenous people continuing to access their cultural practices and rights, like water and fishing (Curran, 2018; Marshall, 2018; O'Donnell, 2018, O'Bryan, 2018).

It is universally understood that the traditional custodial role of Indigenous people needs to be prioritised by the law and in fact many resources have to be handed back into the care of Indigenous people like the *Te Awa Tupua* Act. But the concerns raised is for greater awareness of the potential negative impacts on the independence of communities and their freedom to continue their practice of culture, traditions and customs (Curran, 2018; Marshall, 2018; O'Donnell, 2018, O'Bryan, 2018).

Analysis

Although there are many similarities in the colonisation of Australia and New Zealand in terms of political establishments and historical settlements there remains a significant difference due to the existence of Maori treaties. It is universally accepted that strong beliefs, traditions, customs, practices and connection to ancestral lands and waters existed and has continued in both the Aboriginal and Torres Strait Islander populations as well as the Maori Iwi populations. This clear but significant difference would appear to create stronger legislation in the New Zealand model.

A major difference in the legal decisions of the *Te Awa Tupua* Act and the Yarra River Protection Act 2017 is that although the Yarra recognises the river as a living entity, it does not go as far as granting 'legal personhood' as seen in the New Zealand Act. This has the impact of impeding the Yarra River's rights and liabilities, meaning the Birrarung Council are only advocates for the river and not its legal guardians capable of legal action on its behalf. The Whanganui river has all the rights, powers and liabilities of a person exercised by the human face of the river Te Pou Tupua.

In the legal frameworks encompassing the protections of the rivers, the Yarra protection principles include not only Aboriginal cultural values but a wider range of post-colonisation values of diversity and heritage. In contrast, the *Te Awa Tupua* Act is built upon the Maori concepts of their ancestral cultural relationship and understanding of the river. The diversity in the Yarra protection principles is reflected further in the makeup of the Birrarung Council of twelve community-based people two of whom are directly appointed by the Wurundjeri people, making them a minority in the council. This lies in stark contrast with the Te Pou Tupua, which is geared to represent the river and not the community at large and has reserved six of the 17 members for Maori representatives.



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Both Rivers are found on non-contested lands of Traditional Custodians with ancestral relationships with the rivers. This will be largely different to any model investigated for the Parramatta River as the Parramatta River passes through the land of several nations. In the urban environment of Sydney there would be strong argument for the diversification of cultural values to represent not only the Aboriginal Traditional Custodians but for all the community who are invested in the protection and preservation of the river.

The Proposed Wild Rivers Declarations Submission by the Aboriginal and Torres Strait Islander Social Justice Commissioner to the Minister for Natural Resources and Water (November 2008) makes clear arguments for the highlighted overarching role of Aboriginal Custodians to lead policy and implementation of programs for the future protection and preservation of rivers. The parameters of historical knowledge balanced with traditions, customs, beliefs and connections call for legal protection for the continuation of cultural practices to continue connection to ancestral lands as well as protection through legal recognition of beliefs around body and spirit of land and water entities.

Implications for Parramatta River, Sydney, NSW, Australia.

The Sydney region is a highly developed modern city formed around the harbour with the Parramatta River remaining a significant feature as well as transport pathway. As a modern city there are many representatives required to reflect the diversity of the current and future community. This leaves Aboriginal people at a large disadvantage in the design of legal representation and bodies to shape policy. As the Traditional Custodians of the land and waterways the Aboriginal communities have the longest connection and working relationship with the area and therefore should be a priority inclusion in any research, review or design of policy.

Working with the Aboriginal communities to create a platform for the entire river region to be represented through the eyes of the Aboriginal community will enable the entire region to access a cultural lens to overlay and identify key locations suitable for water-based activities. Even though Sydney is a modern city, many of the significant sites remain (midden sites, carvings, burial sites, points of conflict, breeding areas, flood overflow zones and more). The region is well known to Aboriginal people and even changes made to landscape have not affected recall of location use, history and impact. The proper creation of a cultural lens means the sites activated under the project will be best suited and have limited impacts on the river and marine life.

As an established priority stakeholder for the protection, preservation and planning around future use of the river and local lands, the designs of representative bodies requires serious consideration before implementation and design development. This will restrict the practice



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of *bolt on* representation that can be easily bypassed, or worse, sourced when feedback is favourable. The establishment of values of projects need to be focussed on Aboriginal custom and culture and referenced by modern post settlement values, ecological preservation, water management, and biodiversity. The requirements of having Aboriginal custom and culture at the core ensures the continued connection and practice of culture that will build value on modern techniques of water access, management, pollution and environment. This is a key element outlined in the *Proposed Wild Rivers Declaration 2008*, to support Aboriginal communities continue their role as custodians and develop economic opportunities.

The two contrasting models explored in New Zealand and Australia create different representation models, legal rights and value systems. In reference to the *Our Living River Project*, the creation of representation models, legal rights and value systems will be of significant importance due to the number of Aboriginal communities working collaboratively to sustain the river, Native Title Acts and government bodies involved in the process. It is difficult to see the stronger legal framework of the New Zealand model actioned in the Australian legal system and in the Sydney context as it now stands. This is not to say it is not a model to strive for. A strength opportunity here is the creation of community capacity to enact economic development opportunities aligned to the project to give greater decision-making control to Aboriginal people. Economic development and business opportunities like festivals, net making for swimming areas, information sign posting, and tourism operations are just some of the ways to ensure greater representation of Aboriginal people in the representation models and legal frameworks. There are a number of Indigenous-led cutting-edge technology projects that could compliment a range of protection activities around the river and its tributaries.

The *Proposed Wild Rivers Declaration 2008*, also raises the challenges of modern Australia's understanding of the role of Aboriginal and Torres Strait Islander communities with terms like 'Wild Rivers'. We understand through our communities and modern academics like Pascoe (2014) and Gammage (2012), that agriculture and aquaculture were key to the establishment of successful and sustainable Aboriginal society prior to 1788. Sources also describe the landscape at the time of white settlement where large agricultural fields of grain and yams, amongst other productions, started near the Drummoyne area and extended west and north. The Parramatta River was a key travel route to access trade and continue culture and was a key factor in colonial farmers being shown, and creating, croplands up the river in the Parramatta region. Aquaculture was also a key element of the river with large scale eel farming, rocky outcrops for shell fish and obstacles placed strategically in the river to slow the speed of flow of the water, creating habitats for the balanced production of water environments. Large productions of rock pools, intricate weaving of large nets, manufacture of tools (clay bricks, hooks, spears etc) and cooking facilities (large ovens like those near eel farms) all created a complex and overlapping industrial, economic, social network and communal culture.



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The complex intrinsic connection between Aboriginal culture and land and waterways is tied directly to belief systems that hold land and waterways as living entities with their own body, spirit and free will. This creates a key starting point for all policy and decision making within Aboriginal communities as the creation or alteration of anything must consider the effect on land and waterways and their 'thoughts' on this impact. This creates conflict in the modern era of policy making and needs to be considered to allow the inclusion and roles of Aboriginal people in the future planning for the river. Decision making processes and parameters may not easily align with other members of the wider Australian community and will require translation and negotiation to draw out the full value of Aboriginal knowledge.

The use of language as seen in The Yarra River Protection Act 2017 (*Wilip-gin Birrarung murrn*) and the *Te Awa Tupua* Act is an important consideration. Are the Acts to be known by language name (New Zealand model), known by English and Aboriginal language (dual naming with English giving priority like Yarra model) or known by Aboriginal language and English (dual naming with priority given to Aboriginal language)? This is a critical factor in the establishment of the priority of values and demonstrating inclusion. The revitalisation of language should be a key consideration and priority on a project of this nature. In specific reference to the *Our Living River Project*, the Parramatta River flows through the country of many different language holders meaning sections of the river may be held under different names so challenges exist in the activation of Aboriginal language use.

The identification and inclusion of leadership is of significant importance to the overall success of the *Our Living River Project*. The number of Aboriginal communities and balance of representation of people in governance, decision-making policy groups, advisory bodies, and advocates needs consideration. The treatment of the Parramatta River region as a whole entity is crucial, with the identification and continued work on identifying those responsible for segments that will support the creation of collaborative leadership and Aboriginal custom of mutual benefit through balanced view of the entire river region.

Conclusion

Our Living River Project Aboriginal leadership focus will create the foundations for the blueprint to support the ongoing engagement of Aboriginal communities. It is critical to acknowledge that this project will be the starting point in a long process for the foreseeable future in the region.

The *Our Living River Project* offers a unique opportunity for the Aboriginal communities living on and around the Parramatta River region to engage and begin the process of creating a culturally sensitive plan for the river. The creation of a cultural lens to activate the most appropriate sites, provide input into the design and implementation of management groups



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can embed core Aboriginal values and offer economic development opportunities throughout the region. As the research into relevant models and literature show, other regions around the world have initiated models of preservation based on Traditional Custodian values with differing interpretations and implementations of how it looks, feels and operates.

The *Our Living River Project* offers an opportunity to establish a clear process of engagement and implementation of a greater vision. Aboriginal Community Engagement at the beginning of the project enables input into the development of future programs, engagement, policy decision-making, highlighting this as a unique opportunity for the Aboriginal communities on and around Parramatta River region to consider their future involvement and opportunities.



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