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### Evaluation | Accords negotiation

## *OCHRE* Local Decision Making Accords: Illawarra Wingecarribee Alliance Aboriginal Corporation

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Prepared for members of Illawarra Wingecarribee Alliance  
Aboriginal Corporation

**July 2018**

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*The Illawarra Wingecarribee Regional Alliance sits on the lands of the Dharawal, Yuin and Gandangara people. This includes Wodi, Elouera and other language groups in the area.*

*The research team from the Social Policy Research Centre acknowledges the traditional custodians of the land we work on and pay our respect to Elders past, present and future and all Aboriginal peoples in the region.*

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# Contents

<b>Executive Summary</b> .....	<b>1</b>
<b>1 Introduction</b> .....	<b>8</b>
1.1 Evaluation questions and methodology .....	8
<b>2 Background context for the Accord evaluation</b> .....	<b>11</b>
2.1 The Illawarra Wingecarribee Alliance Statement of Claim .....	11
2.2 Protocols, policies and procedures supporting LDM and the Accords negotiations .....	14
<b>3 Evaluation questions</b> .....	<b>16</b>
3.1 What was the history of the Alliance and how did this impact on the operation and outcomes of the negotiations? .....	16
3.2 Have any of the learnings from the negotiation of the Murdi Paaki Regional Assembly been applied to negotiation process and which learnings? What was the impact? .....	18
3.3 What were the governance structures for the government and Alliance parties in the negotiations? What were the strengths, weakness and challenges and how were they overcome? .....	19
3.4 What was the negotiation process? What were the strengths, weakness and challenges for the parties in the process and how were these overcome? .....	19
3.5 What were the positions held by the parties to the negotiation (e.g. seniority, paid or unpaid)? How many hours of their time was spent in preparing for and participating in the Accord negotiations? What did each party do during the process and feel responsible for? What were the challenges encountered in performing this role, including power to contribute and make decisions? .....	28
3.6 What were the personal outcomes for each party to the negotiation as a result of being involved in the negotiation? If there were personal outcomes, does the individual believe this will change their approach in similar circumstances? .....	34
3.7 Has the Accord negotiation process changed or influenced the relationships between parties involved and if so, in what ways? .....	34
3.8 What adjustments, resources or capabilities do the parties to the negotiation believe are required to improve the outcome including structure, process or roles (including administrative, policy, and/or legislative powers or processes)? .....	36
<b>4 Addendum: Accord Signing</b> .....	<b>38</b>
4.1 Finalising the negotiations .....	38
4.2 Accord signing.....	39
4.3 Strengths of the process.....	40
4.4 Weaknesses .....	41
4.5 Suggested improvements .....	41
<b>5 Conclusion</b> .....	<b>43</b>
Appendix A Summary of report validation process.....	44

# Glossary

DPC	Department of Premier & Cabinet
DoE	Department of Education
FACS	NSW Family and Community Services
IBA	Industry-based agreement
IWAAC	Illawarra Wingecarribee Alliance Aboriginal Corporation
LDM	Local Decision Making
LDMAC	LDM Advisory Committee
<i>OCHRE</i>	Opportunity, Choice, Healing, Responsibility, Empowerment – the community-focussed plan for Aboriginal people in NSW
RPA	Regional Partnership Agreement

# Tables

Table 1: IWAAC priority areas for action .....	11
Table 2: Priority Area 1: Education – outcomes and proposed actions.....	12
Table 3: Priority Area 2: Employment – outcomes and proposed actions.....	12
Table 4: Priority Area 3: Health – outcomes and proposed actions .....	13
Table 5: Priority Area 4: Housing – outcomes and proposed actions.....	13
Table 6: Priority Area 5: Police & Justice – outcomes and proposed actions.....	14
Table 7: Protocols, policies and procedures for supporting LDM & Accord Negotiations ..	14
Table 8: Timeframe for pre-Accord workshops.....	20
Table 9: Timeframe for formal Accord negotiations .....	23

# Executive Summary

NSW Aboriginal Affairs commissioned the Social Policy Research Centre (SPRC), UNSW Sydney, to evaluate the Illawarra Wingecarribee Alliance Aboriginal Corporation (IWAAC) Accord negotiation operating as part of *OCHRE* – Opportunity, Choice, Healing, Responsibility, Empowerment - the community-focussed plan for Aboriginal people in NSW. The key aim of the IWAAC evaluation was to assess whether the Accords negotiations were implemented as intended and what can be done to improve outcomes from similar negotiations in the future.

The evaluation of the IWAAC Accords negotiation was designed to answer eight questions. The methods selected to address them were qualitative interviews and focus groups with 26 stakeholders involved in the Accords negotiations and qualitative document analysis (minutes, letters, email correspondence, statement of claim, protocols). Summary findings are presented below under each of the key evaluation questions.

## **1. What was the history of the Alliance and how did this impact on the operation and outcomes of the negotiations?**

In 2010, a Regional Partnership Agreement (RPA) was established between Aboriginal community organisations in the Illawarra and Wingecarribee regions and Commonwealth, State and Local Governments. The RPA was the springboard for the submission of an expression of interest to the NSW Government to become one of three pilot initiatives to roll out Local Decision Making (LDM), an initiative of the *OCHRE* policy. The RPA was notified of its success in December 2013. This prompted the formation of an LDM Advisory Committee (LDMAC) (2014-15), which led to the formation of the IWAAC in April 2016, the formal governance structure to negotiate with the NSW Government to achieve LDM for the Illawarra and Wingecarribee Aboriginal Communities.

The IWAAC committee emphasised that the community consultations had dictated the priorities set out in the statement of claim and that they made great efforts to keep community informed of developments. However, the time taken to finalise the negotiations made it difficult to maintain community engagement and eroded confidence in the process. Other stakeholders acknowledged that because IWAAC was a new entity established in response to LDM, it had to work hard to build its credibility with community and echoed the point that community confidence had been eroded to a degree due to the delays in finalising the negotiations.

## **2. Have any of the learnings from the negotiation of the Murdi Paaki Regional Assembly been applied to negotiation process and which learnings? What was the impact?**

Stakeholders identified several lessons generated from the Murdi Paaki LDM Accords negotiation that were applied to the IWAAC Accords negotiations. The first lesson for the Department of Premier & Cabinet (DPC) was the critical importance of involving senior government staff who had the authority to make decisions. This was achieved and had a positive impact on the negotiations. The second lesson for DPC was ensuring that sufficient time was devoted to the negotiations. However, it was recognised that there is a risk in leaving the timeline so open-ended that negotiations grind to a halt.

A lesson for community negotiators was that they should take their time in the negotiations to ensure that they could articulate community priorities and negotiate outcomes. While the Committee achieved this, they experienced frustrations with the inflexibility of policy frameworks and the delays in finalising the negotiations.

A process-relevant lesson was the importance of briefing government negotiators before key meetings to ensure that they knew what they could offer in the negotiations. Another lesson was that more resources need to be invested in building regional alliances' capacity and strengthening their negotiation skills. Although IWAAC secured more financial resources, it was acknowledged as being insufficient.

### **3. What were the governance structures for the government and Alliance parties in the negotiations? What were the strengths, weakness and challenges and how were they overcome?**

The two key governance structures for the parties involved in the negotiations were the IWAAC committee and a negotiating team from the NSW Government. The NSW Government governance structure comprised a lead negotiator from the Department of Premier & Cabinet and agency representatives/negotiators responsible for oversight, management and service delivery relevant to the Statement of Claim priority areas. Strengths and weaknesses of the governance structures are reported under Question 5 below.

### **4. What was the negotiation process? What were the strengths, weakness and challenges for the parties in the process and how were these overcome?**

The three key phases in the Accords negotiation process were: pre-Accord planning (Dec. 2016-March 2017; pre-Accord workshops (March-April 2017); and formal Accord negotiations (June-Aug. 2017).

Strengths of the negotiation process identified by the IWAAC committee were:

- its potential to restore control/sovereignty and self-determination to Aboriginal communities.
- it facilitated negotiations with senior government officials who had authority to make decisions.
- the commitment demonstrated by some agencies involved.

Additional strengths identified by government and other stakeholders were:

- The funding received by IWAAC that allowed them to engage consultants and experts, thereby strengthening their position in negotiations.
- the involvement of key people and departments
- the structure and flexibility of the Accords negotiations
- "the goodwill of all involved".

Challenges of the negotiation process included:

- the time commitment involved,
- delays in completing the negotiations
- the inflexibility of policy frameworks

Implementation challenges identified included:

- the inflexibility of policy frameworks
- some desired outcomes and actions included in the statement of claim were beyond the remit of NSW government agencies' responsibilities.
- a perceived lack of commitment to finding solutions.
- how the IWAAC committee might be able to influence NGO service delivery
- different agencies involved in service delivery across the Illawarra and Wingecarribee regions.

**5. What were the positions held by the parties to the negotiation (e.g. seniority, paid or unpaid)? How many hours of their time was spent in preparing for and participating in the Accord negotiations? What did each party do during the process and feel responsible for? What were the challenges encountered in performing this role, including power to contribute and make decisions?**

The key parties to the negotiations were the IWAAC committee members, the DPC lead negotiator, and government priority area negotiators. Other key individuals involved include the consultant employed in an advisory role by IWAAC, the independent facilitator, government staff from Aboriginal Affairs and from DPC.

**IWAAC Committee:** The IWAAC Committee was tasked with negotiating with the NSW Government on behalf of the Illawarra and Wingecarribee Aboriginal communities. Prior to engaging in the Accord negotiations, the Committee undertook consultations with the Aboriginal communities in the two regions. These consultations determined the priorities and actions outlined in the Statement of Claim. Discussions about IWAAC's ability to influence the course of the negotiations identified several strengths:

- several government stakeholders referred to IWAAC's emphasis on forging an equal partnership
- IWAAC were assertive in telling government what they wanted to achieve
- efforts were made to accommodate IWAAC given that the committee was operating in a voluntary capacity
- IWAAC were strategic in how they used the resources that they had to engage advisors and a consultant

Stakeholder perspectives on the IWAAC committee varied. Some felt they worked very well and got "the right people in the community together in a very cohesive team". Others felt that they had not established their credibility with community or might not be representative of community.

Discussions about IWAAC's ability to influence the course of the negotiations identified several weaknesses:

- *Power imbalance:* The voluntary, unpaid status of the IWAAC committee members elicited divergent views. Some felt this reflected a lack of respect for committee members who were negotiating with senior government officials on sizable salaries. Others reflected on the



dilemma of paying committee members because community could question their motivations for being involved.

- *Establishing credibility:* As a relatively new entity tasked with negotiating with government to progress LDM, some stakeholders felt that IWAAC "doesn't have the credibility of the community". Others asserted that the committee's ability to establish its credibility had been undermined by the delays in finalising the Accords.
- *Resource limitations:* Time and resources limitations impeded IWAAC's ability to engage with the community to the extent that they should have.
- *Representativeness:* Some government stakeholders queried the geographic pairing of the Illawarra and Wingecarribee regions for LDM, commenting that the Aboriginal community in the Illawarra is significantly larger. Some questioned whether other local Aboriginal bodies would recognise IWAAC's authority to negotiate on behalf of the two Aboriginal communities:

**DPC:** DPC dedicated two staff to work on the IWAAC Accords. The DPC lead negotiator was recognised as investing time in building relationships between IWAAC and the government priority area negotiators, setting a respectful, solutions-oriented tone for the negotiations, and driving the process. A challenge identified by a stakeholder was that although DPC had oversight of the process, it could not control or influence how other agencies responded.

**Government priority area negotiators:** A challenge for the government priority area negotiators related to making commitments that were undermined by other decisions made within their agencies.

**IWAAC's expert advisor:** IWAAC's engagement of an expert advisor was recognised as an important strategy for trying to create a level playing field. Despite receiving some payment, it was widely recognised that the advisor undertook a significant amount of additional unpaid hours to support the committee.

**Independent facilitator:** The independent facilitator was jointly chosen by IWAAC and the lead government negotiator. The facilitator's role involved facilitating the discussion between the committee and government negotiators. Stakeholder feedback was that he was well suited to the role, having experience in government, a good understanding of LDM, and an understanding of Aboriginal processes.

**Aboriginal Affairs NSW:** Aboriginal Affairs NSW played a key role in overseeing the negotiations. This included: developing Accord protocols and policies; organising meeting dates; developing and distributing meeting agendas and minutes; communicating with the parties to inform them of the names and roles of people they would be negotiating with from each agency; determining the NSW government and the Alliance's readiness to commence Accord negotiations and communicating that to all involved in the negotiations. Aboriginal Affairs NSW staff attended the negotiations as observers.

## **6. What were the personal outcomes for each party to the negotiation as a result of being involved in the negotiation? If there were personal outcomes, does the individual believe this will change their approach in similar circumstances?**

Few stakeholders involved in the negotiations reported any personal outcomes.

## **7. Has the Accord negotiation process changed or influenced the relationships between parties involved and if so, in what ways?**

The consensus view, from both government and IWAAC, was that trust had been built between the parties through the Accords negotiations. However, several commented that it would be eroded if there was no action arising from the negotiations. In acknowledging the improving relationships between committee members and Government, one stakeholder emphasised that this did not necessarily equate to an improved relationship with community. Ultimately, the relationship between the Illawarra and Wingecarribee Aboriginal communities would only improve if the communities saw improved outcomes arising from the negotiations.

Government negotiators generally felt that the Accords negotiation process was respectful of Aboriginal ways of business and cultural protocols for several reasons:

- the process was flexible
- protocols were developed to outline how the negotiations should proceed
- government negotiators attended cultural awareness training
- community requests to change meetings were accommodated

IWAAC committee members felt that elements of the process were not respectful. Factors that they felt conveyed a lack of respect included:

- the fact the IWAAC committee members were operating on a voluntary, unpaid basis as distinct to the government negotiators who participated in a paid capacity;
- the belief that only IWAAC, and not government, was compelled to demonstrate that they were 'Accord ready'. However, this was contradicted by another stakeholder who commented that "the same impost [was] on the NSW government".

## **8. What adjustments, resources or capabilities do the parties to the negotiation believe are required to improve the outcome including structure, process or roles (including administrative, policy, and/or legislative powers or processes)?**

Stakeholders offered a range of suggestions to improve outcomes from the Accords negotiations. These include:

- Improve resourcing for the regional alliances
- Improve vetting of statement of claim priorities
- Develop protocols
- Government needs to really listen to community needs and wants
- Government needs to be clarify what it means by "restoring community control"
- Regional alliances need to focus on communicating with community and building relationships with government
- Allow time for negotiations but ensure negotiations adhere to an agreed timeline.
- Priority areas should be costed so that government knows how much it will cost to achieve a particular outcome

- Invest in cultural awareness training for government
- Maintain ongoing relationships between IWAAC and DPC after the Accords are signed to ensure that the process stays on track.

### **Addendum: Accord signing**

This report also includes an addendum that presents findings from follow up interviews conducted after the Accords were signed on 14 May 2018 by the NSW Minister for Aboriginal Affairs and the Illawarra Wingecarribee community. Phone interviews were conducted with eight government stakeholders and one IWAAC committee member in June 2018. Key findings were:

#### **Reasons for the time lag between the official end of negotiations and the signing of the Accords:**

- Although official negotiations were completed by October 2017, many priority areas had some unresolved issues that were 'parked' during the negotiations, but still required resolution.
- Difficulties finalising the priority area Accord documents due to disagreements about the contents.
- Differing views between Aboriginal Affairs NSW and DPC about which agency was responsible for finalising the negotiations.
- Some priority areas were more difficult to resolve than others.
- Internal governance issues within IWAAC.
- Christmas shut-down/holiday period delayed progress.

### **Accord signing**

The consensus among government stakeholders who attended the signing of the Accords was that it was a positive event. Many felt that the criticisms of the process were not unexpected as achieving community consensus is always challenging. Some stakeholders noted that the requirement for IWAAC to sign confidentiality agreements meant that community felt excluded from the process.

### **Strengths of the process**

- Significant investment of time and energy by DPC and Aboriginal Affairs NSW in working with community and government and building relationships.
- Efficient systems and processes developed.
- Co-designing protocols and processes with IWAAC.
- IWAAC worked cohesively and used its resourcing strategically.
- The commitment and responsiveness of the lead government negotiator.
- The flexibility of the process.
- Goodwill on both sides to try to reach solutions.
- A positive example of how government can work well with Aboriginal communities.

- Puts the onus on Aboriginal communities to identify issues and solutions and forces government to think differently.

### **Weaknesses of the process**

- Issues that were out of scope for LDM negotiations, due to being federal responsibilities, were not excluded early on.
- Performance measures of outcome indicators were not included in the final commitments.
- The process was very protracted, leading to frustration and a loss of momentum.
- Perceived limited communication about the reason for the delays.
- Capacity gaps within IWAAC and government.
- Perceived limitations with respect to updating, circulating and seeking endorsement of final versions of minutes and agreed actions.
- The omission of some commitments that agencies had agreed to in the final Accords.

### **Suggested improvements**

- The Accords should be finalised in a shorter timeframe.
- Ensure government agencies understand what they are agreeing to when they commit to LDM.
- Second a government officer into the committee to build capacity within the committee and within government.
- Government needs to invest in IWAAC to ensure it can continue to represent community during implementation.
- Assessments of statements of claim need to ensure that the issues included fall within scope of NSW government responsibilities.
- More and improved communication with community during the process to ensure that people know what is being covered in the negotiations.
- Have two senior DPC lead negotiators to keep the process on track.
- The process should be streamlined by creating a panel of government negotiators to work in different LDM sites.

# 1 Introduction

NSW Aboriginal Affairs commissioned the Social Policy Research Centre (SPRC), UNSW Sydney, to evaluate the Illawarra Wingecarribee Alliance Aboriginal Corporation (IWAAC) Accord negotiation operating as part of *OCHRE* – the community-focussed plan for Aboriginal people in NSW. In 2013, IWAAC was selected to undertake the initial implementation of Local Decision Making (LDM). LDM aims to devolve decision-making power from government to Aboriginal communities at a local level. The key aim of the IWAAC evaluation was to assess whether the Accords negotiations were implemented as intended and what can be done to improve outcomes from similar negotiations in the future.

## 1.1 Evaluation questions and methodology

The evaluation of the IWAAC Accords negotiation was designed to answer eight questions:

1. What was the history of the Alliance and how did this impact on the operation and outcomes of the negotiations?
2. Have any of the learnings from the negotiation of the Murdi Paaki Regional Assembly been applied to negotiation process and which learnings? What was the impact?
3. What were the governance structures for the government and Alliance parties in the negotiations? What were the strengths, weakness and challenges and how were they overcome?
4. What was the negotiation process? What were the strengths, weakness and challenges for the parties in the process and how were these overcome?
5. What were the positions held by the parties to the negotiation (e.g. seniority, paid or unpaid)? How many hours of their time was spent in preparing for and participating in the Accord negotiations? What did each party do during the process and feel responsible for? What were the challenges encountered in performing this role, including power to contribute and make decisions?
6. What were the personal outcomes for each party to the negotiation as a result of being involved in the negotiation? If there were personal outcomes, does the individual believe this will change their approach in similar circumstances?
7. Has the Accord negotiation process changed or influenced the relationships between parties involved and if so, in what ways?
8. What adjustments, resources or capabilities do the parties to the negotiation believe are required to improve the outcome including structure, process or roles (including administrative, policy, and/or legislative powers or processes)?

The methods selected to address these questions were qualitative interviews and focus groups and qualitative document analysis.

### Interviews and focus groups

Aboriginal Affairs provided the SPRC with the names and contact details of individuals who were involved in the Accord negotiations to invite to participate in the evaluation. A total of 25 individuals participated in either a face to face group discussion or a phone interview.

Twelve IWAAC committee members participated in two focus group discussions. The first in June 2017 was with eight participants including the IWAAC expert advisor and a representative from Aboriginal Affairs NSW. The second focus group discussion was conducted with eight individuals, only two of whom had participated in the June focus group. Further interviews were held in October 2018.

Phone interviews were conducted with thirteen government representatives and other stakeholders involved in the IWAAC Accords negotiations. These included:

- The IWAAC Accords facilitator
- The IWAAC expert advisor
- Two representatives from the Department of Premier & Cabinet (DPC)
- Three representatives from Aboriginal Affairs NSW
- Two representatives from Housing NSW (one each representing the Illawarra and Wingecarribee regions)
- One representative from NSW Health
- One representative from NSW Industry
- One representative from NSW Department of Education and Training
- One representative from NSW Police

All interviews were recorded, transcribed in full and analysed thematically using the data analysis software, NVivo.

## Document analysis

Aboriginal Affairs provided the SPRC with all the documents that were included in the document analysis component. Most of the documents were produced by the NSW Department of Premier & Cabinet and Aboriginal Affairs and several were produced by IWAAC. They document the processes involved in the administration of the Accords negotiations. These include documents pertaining to:

- *Accord readiness and commencement:* IWAAC's statement of claim; letters from Aboriginal Affairs NSW to relevant government department Deputy Secretaries informing them that IWAAC is ready to commence negotiations and letters from relevant government departments nominating lead negotiators.
- *Correspondence:* including emails; departments responsible for cross-cluster issues
- *Formal Accord negotiations:* meeting minutes; formal Accord dates.
- *Independent facilitator:* contracts, correspondence.
- *Pre-Accord planning meetings:* agendas and minutes from Pre-Accord negotiation protocols meetings, IWAAC confidentiality policy, DPC LDM update.
- *Pre-Accord workshops:* agenda and minutes for meetings relevant to the five priority areas; and survey responses from workshop participants.

The documents were reviewed and analysed in NVivo.

The findings are reported under each interview questions and are drawn from the qualitative interview and focus group data and the analysis of the supporting documents.

## **Caveats**

This report should be read with a number of caveats in mind. First, this report focuses on the Accords negotiation process and does not consider broader issues with respect to Local Decision Making. Second, the report only includes the perspectives of stakeholders involved in the negotiations and therefore does not include broader community perspectives on the process. Third, Aboriginal Affairs NSW provided the research team with the names of key stakeholders that were to be invited to participate in interviews. Fourth, the key evaluation questions that guided the data collection were developed by Aboriginal Affairs NSW. Fifth, the document analysis was based on the documents given to the research team by Aboriginal Affairs NSW. The analysis highlighted that some documents were missing. For example, one document indicated that Department of Premier and Cabinet (DPC) met with the housing lead negotiator before they met with IWAAC for the formal Accord negotiations, but there were no documents that indicated whether they met with other government stakeholders for the other priority areas. Further, no minutes from the formal Accord negotiations were provided.

## 2 Background context for the Accord evaluation

To contextualise the findings, some background information is presented on:

- IWAAC's Statement of Claim; and
- the policies, processes and procedures supporting LDM and the Accords negotiations.

### 2.1 The Illawarra Wingecarribee Alliance Statement of Claim

The Illawarra Wingecarribee Alliance Statement of Claim is an 11-page document produced by IWAAC. It describes IWAAC as representatives of the Aboriginal communities of the Illawarra and Wingecarribee areas. It notes that IWAAC was established to support the Illawarra and Wingecarribee communities in the development of an Accord with the NSW Government within the context of *OCHRE* and the Local Decision Making (LDM) initiative. The statement of claim sets out the five priority areas for action developed in consultation with the Illawarra and Wingecarribee Aboriginal communities as listed in Table 1.

**Table 1: IWAAC priority areas for action**

1. Education
2. Employment
3. Health
4. Housing
5. Police & justice

The statement of claim notes that the "[d]esired outcomes and related actions" for consideration in the Accord were developed in consultation with the communities and that "[t]his statement represents our initial position on these issues". The statement of claim describes the context, the desired outcomes the community wants the Accords to deliver and includes proposed actions to achieve those outcomes for each of the five priority areas. These are presented below.



**Table 2: Priority Area 1: Education – outcomes and proposed actions**

<b>Priority Area 1: Education</b>
Desired outcomes: <ul style="list-style-type: none"><li>• Children are more engaged with school and feel culturally and educationally supported at school</li><li>• More early childhood (pre-school) education services</li><li>• Improved language literacy and numeracy achievement for children at school</li><li>• Improved school retention and completion rates</li><li>• Proactive, well-resourced and culturally aware teachers</li><li>• Improved relations and more formal partnerships between schools and communities.</li></ul>
Proposed actions to achieve these outcomes: <ul style="list-style-type: none"><li>• New school suspension policy for Aboriginal children</li><li>• Alternate learning centres for Aboriginal students</li><li>• Aboriginal community-based students support programs for Aboriginal students</li><li>• Review NAPLAN results for Aboriginal students in IWAAC region, assess cultural suitability of NAPLAN and use of Personalised Learning Plans in schools to identify need for literacy and numeracy support programs for Aboriginal children</li><li>• Scope the establishment of an Aboriginal school;</li><li>• Build Aboriginal parents' capacity to support their children's learning</li><li>• Intense literacy and numeracy programs for Aboriginal children in preschool-Year 2 and Years 6-7.</li></ul>

**Table 3: Priority Area 2: Employment – outcomes and proposed actions**

<b>Priority Area 2: Employment</b>
Desired outcomes: <ul style="list-style-type: none"><li>• More and committed employment opportunities in the public and private sectors</li><li>• Pathways to employment tailored to locally needed skills</li><li>• Culturally-supportive employment services</li><li>• More Aboriginal owned and operated businesses.</li></ul>
Proposed actions to achieve these outcomes: <ul style="list-style-type: none"><li>• A skills audit to determine the skills/qualifications of Aboriginal employees, the range of Aboriginal enterprises and local opportunities for new skills and business</li><li>• Building enterprises to develop local responses to <i>OCHRE</i> Construction industry-based agreement (IBA)</li><li>• Cultural tourism enterprises</li><li>• NSW government employment</li><li>• NSW government procurement</li><li>• Job Networks.</li></ul>

**Table 4: Priority Area 3: Health – outcomes and proposed actions**

<b>Priority Area 3: Health</b>
Desired outcomes: <ul style="list-style-type: none"><li>• Healthier people</li><li>• Culturally appropriate services delivered by Aboriginal practitioners</li><li>• Full range of health services available</li><li>• More accessible health services.</li></ul>
Proposed actions to achieve these outcomes: <ul style="list-style-type: none"><li>• School health checks</li><li>• Hospital liaison officers</li><li>• Drug &amp; alcohol rehabilitation centre</li><li>• Elders' health programs</li><li>• Healthy eating and lifestyle programs</li><li>• Expanded Aboriginal health units.</li></ul>

**Table 5: Priority Area 4: Housing – outcomes and proposed actions**

<b>Priority Area 4: Housing</b>
Desired outcomes: <ul style="list-style-type: none"><li>• High standard social housing for Aboriginal people of all ages</li><li>• Fair provision of social housing</li><li>• More Aboriginal people own their home.</li></ul>
Proposed actions to achieve these outcomes: <ul style="list-style-type: none"><li>• Housing audit to identify range and suitability of existing Aboriginal and other social housing available</li><li>• Housing strategic plan including proposal for new housing, maintenance and equitable allocation</li><li>• New hostel/s for short and long-term accommodation for Aboriginal families and young people</li><li>• Review incidence and nature of homelessness and available local services and resources develop culturally-appropriate services for Aboriginal people.</li></ul>

**Table 6: Priority Area 5: Police & Justice – outcomes and proposed actions**

<b>Priority Area 5: Police &amp; Justice</b>
<p>Desired outcomes:</p> <ul style="list-style-type: none"> <li>• Improved race relations and dialogue between local police and justice agencies and Aboriginal people</li> <li>• Reduced conviction and detention rates for Aboriginal people</li> <li>• More Aboriginal frontline officers in police and justice agencies.</li> </ul>
<p>Proposed actions to achieve these outcomes:</p> <ul style="list-style-type: none"> <li>• Community police &amp; justice committee</li> <li>• Police advisory committee</li> <li>• Wingecarribee Aboriginal Community Liaison Officer (ACLO)</li> <li>• Illawarra ACLOs</li> <li>• Aboriginal frontline officers</li> <li>• Aboriginal legal service funding.</li> </ul>

## 2.2 Protocols, policies and procedures supporting LDM and the Accords negotiations

The Accord negotiation process was developed as a framework and mechanism for devolving decision making from government to communities over time. A range of documents and templates were developed by Aboriginal Affairs NSW to support LDM and the Accords negotiations. These included the documents listed in the table below:

**Table 7: Protocols, policies and procedures for supporting LDM & Accord Negotiations**

<p>1. <i>Local Decision Making - Verifying Regional Alliance Readiness</i>: this document included check box <i>Criteria for Accord Readiness</i></p>
<p>2. <i>An Accord Negotiation Protocol</i>: this document articulated:</p> <ul style="list-style-type: none"> <li>○ negotiation steps</li> <li>○ negotiation principles;</li> <li>○ participants' roles and responsibilities;</li> <li>○ negotiation protocols: this included <ul style="list-style-type: none"> <li>▪ the requirement to sign a confidentiality agreement<sup>1</sup>;</li> <li>▪ confining discussion to relevant issues only;</li> <li>▪ that only IWAAC and government officials should discuss the issues;</li> <li>▪ that items should be reviewed, agreed and documented before being completed;</li> <li>▪ off topic discussions should be raised in other business;</li> <li>▪ parties should not act on commitments until minutes are endorsed and confirmed; and</li> <li>▪ all parties will have opportunity to complete a survey following the workshop, concerns or issues should be raised with the independent facilitator.</li> </ul> </li> </ul>

<sup>1</sup> "Participants will sign a confidentiality form. If breached, parties agree that the participant will no longer be allowed to participate in the negotiation process".

- consensus decision making: that decisions will be made in a culturally-appropriate way following Aboriginal custom with agreement “to park issues that cannot be resolved with an agreement that they be reviewed at a later date as well as allowing for breakouts to caucus and discuss issues separately and take issues on notice.”

3. *IWAAC Confidentiality Policy*: This policy document states that its purpose is “intended to regulate the release or retention of material by IWAAC representatives and NSW government representatives, including staff and consultants engaged by or for both organisations for the purpose of the Accord process.” It notes that committee members may release information that ‘has not been ruled by the Committee to be confidential, but may not release information that has been ruled to be confidential. It appears that the default position is that information can be released publicly, unless explicitly declared confidential:

“The Committee will periodically decide whether any or all of its agendas, minutes, or papers, or those of its sub-committees will be made public. Where no express decision has been recorded the assumption shall be that the material is not confidential.”

Agendas and minutes for all meetings were taken and recorded by Aboriginal Affairs NSW.

## 3 Evaluation questions

### 3.1 What was the history of the Alliance and how did this impact on the operation and outcomes of the negotiations?

This section begins by describing the history of the Alliance by drawing on the *Rule book of the Illawarra Wingecarribee Alliance Aboriginal Corporation* (no date) document which describes how IWAAC became involved in the local decision making (LDM) process. This document was developed by the IWAAC committee with the assistance of an independent consultant.

In December 2010, Aboriginal community organisations in the Illawarra and Wingecarribee formalised their Regional Partnership Agreement (RPA) with Commonwealth, State and Local Governments. The RPA described how the regions would cooperate to achieve improved outcomes for Aboriginal and Torres Strait Islander people in their regions. In 2013, Aboriginal organisations in the region subsequently submitted an expression of interest to the NSW Government to become one of three pilot initiatives to roll out a new initiative under the *OCHRE* policy called Local Decision Making (LDM). The document outlines the intent behind LDM:

[It] is an Aboriginal community Government initiative that aims to change the relationship between Aboriginal communities and greater decision-making powers in relation to how government programs and services in Aboriginal communities are conceived, developed and implemented. In order to do this, a negotiated agreement will be established, which will be the Accord. The Accord is the vehicle for re-setting this relationship and ensuring that decision-making between government and communities occurs collaboratively and in partnership.

The rule book describes how the Accord is to be developed through a negotiated decision-making process with outcomes discussed, negotiated and agreed to by both parties. It notes that successful negotiation of this kind "requires considerable time and effort to be invested in the process by both parties". The rule book describes how the RPA developed terms of reference and an LDM Advisory Committee (LDMAC) after it was selected to participate in the LDM initiative in December 2013. A key task for the LDMAC was "to decide on the most suitable long-term regional representative structure to work with government through the LDM".

Through 2014 and 2015, the LDMAC undertook community consultations with Aboriginal leaders, Aboriginal community organisations and the wider Aboriginal community (including 10 community forums and 3 community workshops) to get input and feedback on issues relevant to LDM, service priorities and governance (Attachment 1, The rule book). The outcome of the consultations was the establishment of "a new incorporated body to be created specifically for LDM purposes". This led to the establishment of IWAAC as the governance structure to lead community LDM negotiations.

The LDMAC developed *The rule book of the Illawarra Wingecarribee Alliance Aboriginal Corporation* (no date) which set out:

- the objectives of the corporation
- powers of the corporation
- membership of the corporation
- register of members and former members
- AGMs and GMs

- Directors of the Corporation.

The IWAAC was registered as a corporation in November 2015.

The community consultations undertaken by LDMAC prior to the establishment of IWAAC formed the basis of the Statement of Claim that IWAAC formalised in early 2016. The IWAAC board submitted a draft statement of claim to the Department of Premier & Cabinet in April 2016. This was finalised and approved by the Board and “represents the Illawarra and Wingecarribee Aboriginal community’s opening position on service issues and priorities to be negotiated in the upcoming LDM process”.

The second part of this evaluation question is: **how did the history of the Alliance impact on the operation and outcomes of the negotiations?** This was addressed through the stakeholder discussions that touched on issues of representation, credibility and the impact of delays in the negotiation process.

Members of the IWAAC committee acknowledged that it was not always easy to get everyone in the community on board with the LDM process, but they emphasised that the community consultations had dictated the priorities set out in the statement of claim. They also spoke of how committee members tried to keep the community informed by reporting back to their service networks and organisations and by hosting open meetings. Nevertheless, the delays in finalising the negotiations and achieving the outcomes sought made it very difficult to maintain community engagement and undermined confidence in the process.

Until you get runs on the board, people are always going to be suspicious. You’ve got to get results, otherwise people are just not interested.

In correspondence from IWAAC to DPC and Aboriginal Affairs NSW in May 2017, the committee noted concerns about “losing momentum” due to the delays in scheduling the negotiations, their obligation to provide updates to community and the fact that they “are continuously defending the LDM process”.

One stakeholder acknowledged that the committee had a lot of work to do to establish its credibility and echoed the committee’s comments that this had been eroded to a degree due to the delays in the negotiation process. Unless the community saw some evidence of outcomes or improvements deriving from the negotiations, he added, that credibility would only be eroded further. This stakeholder also made the point that the IWAAC committee did not have the time or resources to engage with the community to the extent that they should have. Nevertheless, he commented that IWAAC assembled a very cohesive team that included a combination of good leadership, sound judgement and discipline and that they were effective in holding government to account and taking time out in meetings when necessary.

One government representative commented that because IWAAC was established in response to LDM and was therefore a relatively new entity, it “doesn’t have the credibility of the community”. This was echoed by another government representative who reported that feedback from the community was that IWAAC was not the most representative organisation, which he felt could have implications later on.

The key frustration for me is well, my fear that organisation is not representative of the population down here and that we may end up with an Accord with IWAAC that's not recognised by our local Land Councils and other Aboriginal groups down here.

This stakeholder also commented on the geographic coverage of the LDM and the perceived imbalance in giving the Illawarra and Wingecarribee committee members equal input, when the Aboriginal population of the Illawarra was significantly greater than that of the Wingecarribee region: "Illawarra would absolutely dominate probably 20:1 sort of thing."

### 3.2 Have any of the learnings from the negotiation of the Murdi Paaki Regional Assembly been applied to negotiation process and which learnings? What was the impact?

Participants identified several lessons generated from the Murdi Paaki LDM Accords negotiation that were applied to the IWAAC Accords negotiation experience.

The first key lesson for DPC was the critical importance of having senior government staff at the negotiating table who had the authority to make decisions and affect change within their agencies. This led to concerted effort by DPC to ensure that the right people with sufficient authority were involved in the negotiations.

The second lesson for DPC was ensuring that sufficient time was devoted to the negotiations. This resulted in the scheduling of pre-Accord meetings and workshops. There appears, however, to be a fine line between allowing sufficient time for parties' positions to be finalised and leaving the timeline so open-ended that negotiations grind to a halt, which many stakeholders felt had occurred at different stages.

A key lesson for the community negotiators from the Murdi Paaki negotiations was that they should take their time in the negotiations to ensure that they could articulate community priorities and negotiate outcomes. This was noted by the Committee, who expressed growing frustration with the fact that the process had become more protracted than they had expected. Other lessons for the community were the importance of being disciplined, speaking with one voice, having disputes/debates elsewhere, and being clear in their demands.

A process-relevant lesson from the Murdi Paaki negotiations was the importance of briefing government negotiators beforehand "to make sure that they are prepared before they come to the table and they know what the negotiation envelope is and what they can put on the table." Another lesson was that more resources needed to be invested in building regional alliances' capacity and strengthening their negotiations skills. However, while more financial resources were invested in the IWAAC, it was acknowledged as being insufficient. A government stakeholder commented that increasing the level of funding that regional alliances receive was not an option. Therefore, it was important to consider other ways of building regional committees' capacity, including through secondment models.

### 3.3 What were the governance structures for the government and Alliance parties in the negotiations? What were the strengths, weakness and challenges and how were they overcome?

The two key governance structures for the parties involved in the negotiations were the IWAAC committee and a negotiating team from the NSW Government. A core negotiation panel comprising four members of the IWAAC committee was endorsed by the committee in April 2016. The NSW Government governance structure comprised a lead negotiator from the Department of Premier & Cabinet and agency representatives/negotiators responsible for oversight, management and service delivery relevant to the statement of claim priority areas.

Before the Accord negotiations commenced, the lead negotiator from DPC was involved with helping local agencies prepare for LDM and assisted IWAAC with their community consultations. After the statement of claim was developed, the NSW Government was required to identify agency representatives that would participate in negotiations relevant to the statement of claims priority areas. The lead negotiator worked with agency representatives for each of the priority areas to discuss what they could do, what they could not do and why. The priority area government negotiators then developed their position (commitments) to take to IWAAC as part of the formal Accord. Some of the desired outcomes and proposed actions were deemed to be cross cluster issues, that is, they required a response from more than one government agency. The DPC lead negotiator asked each relevant agency what they could commit to address the claims and they mapped out under each action what each department could commit to.

### 3.4 What was the negotiation process? What were the strengths, weakness and challenges for the parties in the process and how were these overcome?

This section begins by describing the Accords negotiation process by drawing predominantly on the documents reviewed and some stakeholder feedback. The three key phases in the Accords negotiation process were:

- pre-Accord planning
- pre-Accord workshops
- formal Accord negotiations

#### 3.1.1 Pre-Accord planning: Dec. 2016- April 2017

Between December 2016 and April 2017, several pre-Accord planning meetings were arranged by Aboriginal Affairs NSW and DPC and attended by participants from IWAAC, Aboriginal Affairs NSW, DPC, an independent facilitator engaged by IWAAC and Aboriginal Affairs NSW and, from January 2017, an advisor to IWAAC. The purpose of the pre-Accord stage was to provide an opportunity<sup>2</sup>:

- to build trust

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<sup>2</sup> From DPC update on the pre-Accord meetings (09/02/17)



- to negotiate and confirm the strategic objectives for each priority area identified by IWAAC
- to allow IWAAC and government to share information and data on each priority area.

The agenda for the initial ‘kick off’ meeting (09/12/16) covered:

- An overview of the Accords process
- Role of the facilitator
- Negotiation protocols – agreed approach
- Cultural awareness training
- Scheduling Accord negotiations – draft dates for distribution
- Accord results framework.

No minutes for this meeting were received.

The purpose of the second meeting (19/01/17) was to “[d]etermine the protocols for the upcoming Accord Negotiations between IWAAC and the NSW Government.” Minutes from the meeting indicate that there was agreement from IWAAC and the NSW Government that both parties “are coming to the negotiation table as equals.” The minutes also outline the phases of the Accord negotiations which included:

- five half days for pre-Accord meetings (1 half day per priority)
- that parties will meet following pre-Accord negotiations to debrief and schedule formal negotiations
- a results framework to consider “How we measure success” and to be included in a pre-Accord agenda.

A DPC update on the pre-Accord meetings (09/02/17) notes that over 20 senior NSW Public Servants attended cultural awareness training delivered by IWAAC.

The pre-Accord planning meeting minutes (22 Feb. 2017) highlight several issues about the negotiations process including IWAAC’s concern about their advisor being unable to speak during the negotiations. The minutes also note a comment from the independent facilitator concerning the value of the cultural awareness training led by IWAAC, noting that it was the first time that government had sat down and listened to IWAAC and because IWAAC had set the agenda.

### 3.1.2 Pre-Accord workshops

Pre-Accord workshops with IWAAC and government representatives from the five priority areas were held in March and April 2017.

**Table 8: Timeframe for pre-Accord workshops**

Priority	Date	Time
<b>Police &amp; Justice</b>	Thursday 9 March 2017	9:30am – 1:30pm
<b>Education</b>	Wednesday 15 March 2017	9:30am – 1:30pm
<b>Health</b>	Friday 17 March 2017	1:30pm – 5:00pm
<b>Housing</b>	Friday 24 March 2017 – rescheduled to 29/03 <sup>3</sup>	9:00am – Midday
<b>Employment</b>	Thursday 30 March 2017 – rescheduled to 07/04	9:30am – 1:30pm

<sup>3</sup> From 20170417 - DPC Update LDM - Post Pre-Accord Meetings

## Education

The priority area of education was the focus of the first pre-Accord workshop on 15 March 2017. It was attended by the independent facilitator, IWAAC negotiators and observers, a DPC negotiator and observer, five Department of Education (DoE) negotiators, and Aboriginal Affairs NSW observers. The minutes indicate that the meeting participants discussed the proposed actions to achieve the education outcomes that IWAAC had included in its statement of claim and several sticking points in the discussions.

The first sticking point concerned IWAAC's proposal concerning the development of a new local school suspension policy for Aboriginal students. Feedback from the DoE was that schools are expected to follow current policy and guidelines but that they had autonomy to work with families around suspensions. DoE also noted that the suspension period could be negotiated with families to which IWAAC responded that most families would be unaware that this was possible. In response, DoE committed to running information sessions with families. The response to IWAAC's proposal for an in-school suspension policy was that there was no provision within the current policy to allow for this, but that schools had the autonomy and flexibility to make arrangements for this if resources permitted.

The response to IWAAC's proposal for alternate learning centres for Aboriginal students was that DoE does not fund alternate learning centres but that "there are some suspension centres and behavioural schools."

The minutes highlight a tension between IWAAC's desire for locally-tailored policies and DoE's constraints in delivering them, while at the same time noting government negotiators' emphasis on schools' autonomy that enables them to go some way towards being responsive to local needs. In keeping with the information sharing goals of the pre-Accord workshops, the minutes note that DoE agreed to provide IWAAC with data.

A one-page survey was developed to enable participants to provide feedback on the workshop. Eleven surveys were completed by participants in the education workshop, five from IWAAC<sup>4</sup> and six government representatives. Open-ended responses to the question: *Do you think workshop will assist you to prepare for formal negotiations? Please comment why/why not* indicate that IWAAC and government views differed a great deal. Comments from government suggest that participants felt that the workshop was well run and that IWAAC articulated their position well. Conversely, comments from IWAAC were more critical of the process and the position taken by the education negotiators, although one comment commended the inclusion of a particular government negotiator.

## Health

The priority area of health was discussed in a pre-Accord workshop on 17 March 2017. It was attended by the independent facilitator, IWAAC negotiators, an IWAAC observer, the IWAAC advisor, a DPC negotiator and observers, NSW Health negotiators, Aboriginal Affairs NSW negotiators and observers. The proposed actions to achieve the health outcomes that IWAAC had

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<sup>4</sup> Although several IWAAC committee members completed the survey at this workshop, a decision was subsequently made by IWAAC that they would only complete one survey as a group in order to present a united voice on proceedings.

included in its statement of claim were discussed, with the minutes noting that there was agreement to discuss or scope four of the six actions further. One of the actions “was agreed to go through to negotiations”, while another was deemed not in scope, because it was a federally funded action concerning Aboriginal health units. Only three feedback surveys were completed, all by government two of which were positive about how the workshop would benefit the subsequent formal negotiations.

## **Police and Justice**

The priority area of police and justice was discussed in a pre-Accord workshop on 9 March 2017. It was attended by the independent facilitator, IWAAC negotiators and an IWAAC observer, the IWAAC advisor, a DPC negotiator and observers, one NSW police negotiator, Aboriginal Affairs NSW observers and DPC observers. This was the first workshop that included only one government negotiator, as all others had at least two negotiators. The minutes suggest that most actions were either agreed or agreed to be discussed further. No feedback surveys from participants in the police and justice workshop were provided to the research team.

## **Housing**

The priority area of housing was discussed in a pre-Accord workshop on 29 March 2017. It was attended by the independent facilitator, IWAAC negotiators and an IWAAC observer, the IWAAC advisor, a DPC negotiator and observers, three housing negotiators, Aboriginal Affairs NSW observers and DPC observers. The four proposed actions to achieve the housing outcomes that IWAAC had included in its statement of claim were discussed and agreed to by all parties, although it was noted that all needed to be scoped further. The minutes again highlight the different spheres of policy responsibility with IWAAC’s statement of claim including issues that fell outside the NSW Government’s housing remit (e.g. by referring to hostels which are a federal responsibility). Eight feedback surveys were completed, six of which were from government and two from IWAAC and all largely positive about the workshop.

## **Employment**

The priority area of employment was discussed in a pre-Accord workshop on 7 April 2017. It was attended by the independent facilitator, IWAAC negotiators, the IWAAC advisor, IWAAC observers, a DPC negotiator and an observer, Department of Industry negotiators, Aboriginal Affairs NSW negotiators and observers, and Treasury observers. The minutes record that the meeting participants discussed the proposed actions to achieve the employment outcomes that IWAAC had included in its statement of claim. One of the actions referred to *job network*, which is funded by the Australian Government and again highlights how some of IWAAC’s proposed actions fell outside the NSW government policy portfolio. At the same time, the minutes note NSW government negotiators’ commitments to discussing such issues with the Australian Government. Only four feedback surveys were completed, all by government and all of which were positive about how the workshop would benefit the subsequent formal negotiations.

### 3.1.3 Post pre-Accord workshops

Following the pre-Accord workshops, DPC prepared an update in April 2017 (*20170417 - DPC Update LDM - Post Pre Accord Meetings*) on the pre-Accord preparations and meetings undertaken and next steps in the Accords negotiations process. It notes that key themes emerged from the pre-Accord workshops held concerning the police and justice, education and health priorities:

- the importance of improved and expanded government and community collaboration
- the need for a whole-of-government response to many of the issues identified by IWAAC

The document notes that formal Accord negotiations were scheduled for April and May 2017, however these dates were not adhered to. These were to be led by DPC Illawarra on behalf of the NSW Government. The document also mentions implementation for the first time noting that the Illawarra Shoalhaven Leadership Executive (ISLE) will oversee the implementation of agreed actions from the Accord and be engaged in the development of the implementation plan “which will be a schedule to the Final Accord.”

The formal Accord negotiations were scheduled to take place between June and early August 2017. In the period following the workshops, several formal steps had to be completed before the formal negotiations could commence:

- A briefing document developed by Aboriginal Affairs NSW staff (dated 13 May 2017) informed the head of Aboriginal Affairs NSW that IWAAC was ready to commence Accord negotiations. It stated that it was now the responsibility of Aboriginal Affairs NSW to notify DPC and relevant Secretaries that IWAAC was Accord ready and request NSW Government to appoint lead negotiators.
- Between 13-18 May letters were sent by Aboriginal Affairs NSW to DPC, DoE, Department of Industry, NSW Health, FACS, and NSW Police asking them to provide the name and contact details of nominated departmental negotiator/s "and confirmation that they have the delegated authority to work openly and collaboratively with the Alliance to achieve positive outcomes".

### 3.1.4 Formal Accord Negotiations:

A *Formal Accord Commencement Meeting* was held on 31 May 2017 with the IWAAC Committee, DPC representatives, Aboriginal Affairs NSW representatives, the independent consultant and facilitator. The timeframe for the formal Accord negotiations is in Table 3-2 below:

**Table 9: Timeframe for formal Accord negotiations**

Priority	Date	Time
Housing	Friday 23 June	10am – 1pm
Employment	Thursday 29 June	10am – 1pm
Education	Tuesday 18 July	10am – 1pm
Health	Friday 21 July	12:30 – 3:30pm
Police & Justice	Friday 4 August	10am – 1pm

DPC met with the government housing priority negotiator priority area negotiators before they met with IWAAC for the formal Accord negotiations. The aims of the meetings were to discuss:

- Negotiation Protocols for Formal Accord Negotiations
- interim work completed and steps going forward
- Prepare and discuss NSW Government response to IWAAC's statement of claim.

There were no documents indicating whether DPC met with government representatives for the other priority areas. The research team was not provided with minutes from the formal Accord negotiation meetings.

The second part of this evaluation question asks: **What were the strengths, weakness and challenges for the parties in the process and how were these overcome?**

## Strengths

IWAAC, government and other stakeholders all identified strengths of the Accords negotiation process. The key strength identified by IWAAC committee members was its potential to restore control/sovereignty and self-determination to Aboriginal communities. The key word here is 'potential' – the more time that passed without any tangible progress, the less faith people had that anything would change.

The discussions with IWAAC committee members wavered between a sense of hopefulness that the Accords negotiations may signal the start of something new and a sense of pessimism/cynicism that they have heard similar promises before from government, but that nothing had changed. On balance, the general sentiment was leaning slightly more towards hopefulness than hopelessness, and a sense that the Accords heralded a new approach. However, this sense of hopefulness was tempered by the expectation that any change would be gradual and likely not felt for another generation.

I get the impression that they're hovering between this, we know we have to listen to them, but what are we going to actually have to do. I think that's where they're at. But they are listening and that's a big thing. My personal belief is gradual change is more permanent anyway, and we are sort of snowballing along, rolling along, rolling along and we seem to be fighting the same battles, but on a different level each time. But I think this really does have the potential to change things, because they know we're not just going to go there, have our say with them and they're going to say, "Oh yeah, great stuff," tick the box, we're going to do this anyway. They are actually negotiating and hopefully, hopefully with a lot of the stuff that's taken place so far, that will bring about change.

I think for me one of the big things that is evident for me, is now where there are blockages or barriers or we seem to be at an impasse, historically where people would just throw their hands in the air and walk away, that's not happening. We're working through it.

It's hard educating our mob too, because like you go back, you know, 1967, you know, we're allowed to vote and then you've got the Land Council come along and we have land rights. Then we had Mr Rudd saying, "I'm sorry," you know Stolen Generation, and we all cried and that was the end of it. But I see it now, we've finally got self-determination in a special way where we're getting to change policies, you know, to make that difference and it's hard getting through to our people at the moment. LDM has a significant role in our lives for the next generation. We get to say what's going on in education for a change. You know, it's usually the government telling us where it's wrong and how we're doing so badly.

Now the wheels have turned, we've got a big say here and it's just getting through to - the Illawarra is such a diverse community."

A second strength identified by IWAAC committee members was that the process facilitated negotiations between the committee and senior government officials who had the authority to make decisions:

What's unique about this process is that you actually get to sit down face to face with decision makers for those negotiations. Normally you go through a reporting line, you know, up a food chain. Almost in some cases near the top of that food chain. So it's usually the barriers come from that middle management level, so through this process you're bypassing that level.

A third strength identified by the committee was the commitment demonstrated by some of the agencies involved in the negotiations:

Some agencies that have come to the table... who have gone over and above what we've requested.

Additional strengths identified by government and other stakeholders related to resourcing, the involvement of key individuals, the structure of the negotiations and the commitment of those involved.

The funding received by IWAAC was viewed as a strength because it allowed them to employ an advisor to assist them with developing their statement of claim and engage experts to strengthen their position in the negotiations:

Those people were articulate, those people challenged government, had corporate history and have kind of pushed us into that uncomfortable space where government had to cede a bit, which was good.

Another key strength identified was the involvement of key people and departments in the negotiations. This included the composition of the IWAAC committee and the role played by Aboriginal Affairs NSW and DPC. One stakeholder commented that IWAAC assembled a very cohesive team with good leadership, sound judgement and discipline - "a very good tag team". Others commented on the important bridging role that Aboriginal Affairs NSW filled between IWAAC and government and how DPC set a respectful, solutions-oriented tone for the negotiations:

Being clear to us as government that the presumption is we are there to meet IWAAC's claims about what needs they want met and how for their community and that it is, as much as possible, about equals sitting at a table.

A further strength was the structure of the Accords negotiations including the pre-Accord discussions and the inbuilt flexibility of the process.

The structure of the pre-Accord discussion and the negotiation meant that there was the opportunity to air things, to consider them, go away and consider action before the negotiations themselves started.

Additionally, the inclusion of the pre-Accord meetings in the structure of the negotiations was identified as being important for putting community at ease with the process.

So what the pre-Accord did, would say to everyone, "This isn't so scary. There's a lot of stuff we can do together as colleagues. But this is the process we'll go through and when we have a dispute, this is how we'll work disputes out, and when we have issues that we want to escalate, this is how we'll escalate them." So it was a general agreement to the rules around negotiation that made everyone comfortable when the hard stuff came later on.

A final strength identified was "the goodwill of all involved", reflected in positive engagement on all sides with a focus on getting a good solution.

## Challenges

A key challenge of the process identified by all stakeholders was the time commitment involved, which was linked to a lack of progress in completing the negotiations. The inflexibility of policy frameworks and perceived longer-term implementation challenges were also noted.

The time commitment that the Accords negotiation process demanded was noted as being particularly challenging for the IWAAC committee who were all involved in the negotiations in a voluntary, unpaid capacity. IWAAC committee members had to devote significant time to attend meetings and undertake a huge amount of reading and preparation for each priority area workshop and negotiation, whilst juggling paid work and life commitments.

I think the time impost on them is a big challenge, and they're doing it voluntarily, and you know, competing priorities, whether it be work, family, community priorities.

Many stakeholders expressed some frustration that the negotiation process was more protracted than they had expected. Several spoke of meetings being cancelled and rescheduled, with one stakeholder reporting driving considerable distance to a meeting that had, in fact, been cancelled. In some instances, stakeholders reported that the frequent cancellations resulted in long gaps between meetings and then no follow up:

I don't know how long the run up was to get to the first meeting that I went to, but between that and then the negotiation itself, and it's been several months since the negotiation, and there's been no further communication with me. So I don't know how the whole thing's sort of wrapping up.

Members of the IWAAC committee also expressed frustration at the perceived inaction of government in the negotiations. They described how they felt pressured to demonstrate that they were 'Accord ready' early on, but that this was followed by government delays of several months. This was considered very disrespectful of committee members' time given their voluntary status.

Whilst I think the premier's memo had been excellent leverage for us in relation to ongoing commitment it didn't filter sufficiently enough in relation to substantive support through the various government agencies in relation to being able to hit the ground running once they had received our statement of claim. They just were not prepared. I think Blind Freddy can tell governments, I think, [they] have been in this game long enough to know that the priority areas are going to be housing, health, education, employment.

A consequence of the delays, as expressed by one stakeholder, was that as the negotiations become more protracted, hope that any progress would be achieved dissipated. This could take a personal toll on the individuals involved and run the risk, he suggested, that a new government could argue that the LDM process had been ineffective and abandon it.

You've seen the blood, the sweat and the tears and the time that the community members have taken to get it to this stage. So the personal, let alone the collective, failure that would go with that happening would be just profound and it happens every time any of these community organisations fall over.

Perhaps a more concerning consequence of the delay was community disillusionment with and disengagement from the process. Several committee members spoke about LDM as being similar to other efforts by government to engage with Aboriginal communities and ultimately resulting in little change – repeated failures to deliver on promises:

People have said, you know, you hear so often and it happens everywhere, 'We've had these meetings ten years ago. Things didn't happen. There were all these promises.'

Well I'm 65 and I've been sitting at these meetings for I don't know how long, and we're telling the government over and over and over how to fix it. But nobody's listening.

Correspondence between the IWAAC committee, DPC and Aboriginal Affairs NSW indicates that the committee's concerns about the delays in progressing the negotiations were flagged in May 2017. The correspondence expressed concern that government was not according the process the same level of commitment as the IWAAC committee - "that we are losing momentum" and that government representatives "do not respect nor value the LDM process as IWAAC does".

The inflexibility of policy frameworks was identified by IWAAC committee members as a major challenge of the LDM process. They recognised that governments were not used to working with communities and that this process was very new for them. At the same time, they expressed frustration that government was trying to work with IWAAC within the current policy framework and structure but "we want something outside of it". This was evident in the education negotiations where IWAAC were arguing for a school suspension policy for Aboriginal students but were told that there already was a school suspension policy and an Aboriginal-specific policy was not an option (see Section 3.4).

When we come up with these plans they've got to work with us to make them changes. If that means change in legislation so be it... First of all they told us it's not about money it's about changing the policy to get a better outcome. Well, we tried to do that. But they can't ask us to do that and say, oh, but, no, but this is our policy. They have to - they have to change too; not only us.

The inflexibility of policy frameworks was linked with perceived implementation challenges in achieving many of the outcomes articulated in IWAAC's statement of claim. With respect to the priority area of education, committee members commented that they did not expect that government would increase staff numbers to support the type of service delivery they wanted and that the school suspension policy would be difficult to address. This was particularly concerning for the committee members, because they felt that improving educational engagement and outcomes was foundational and critical and would affect all the other priority areas.

An additional policy challenge noted by a government stakeholder was the fact the some of the outcomes and actions that were included in IWAAC's statement of claim were beyond the remit of NSW government agencies' responsibilities, with some falling under Australian Government responsibilities. This was noted as being a frustration for the committee, with another stakeholder commenting that this should have been picked up by Aboriginal Affairs NSW before their statement of claim was finalised and sent to the agencies involved in the negotiations.



Other perceived implementation challenges were linked with a lack of commitment to finding solutions:

We've had people say, no we can't do that. I know [name] said well that's not good enough you've had this for 12 months why haven't you come up with something else. They didn't propose any alternative just said no, without proposing any. When we said that's just not good enough, they went okay we'll talk about it then and then come back with something. They could have done that within that 12-month period already and save a bit of grief.

I was told from the start and everyone else there's no extra bucket of money it's about getting the policies right to deliver the outcomes. Yet when we went into the Accord oh no you can't do that. Why tell us that in the first place. They don't want to chuck an extra bucket of money, they don't want you to change the policy, so why are we sitting here then?

An additional implementation challenge identified by the IWAAC committee concerned how they might be able to influence service delivery by NGOs:

The biggest missing link in this whole process is the NGO buy in. Because so many government services now are contracted out to the NGO sector. How do we get that buy in and how do we influence that NGO sector?

A final implementation challenge identified by a government stakeholder related to the fact that different agencies were involved in service delivery across the Illawarra and Wingecarribee regions, which would make implementation more challenging.

### 3.5 What were the positions held by the parties to the negotiation (e.g. seniority, paid or unpaid)? How many hours of their time was spent in preparing for and participating in the Accord negotiations? What did each party do during the process and feel responsible for? What were the challenges encountered in performing this role, including power to contribute and make decisions?

The key parties to the negotiations were the IWAAC committee members, the DPC lead negotiator, and government priority area negotiators. Other key individuals involved include the consultant employed in an advisory role by IWAAC, the independent facilitator, government staff from Aboriginal Affairs and from DPC.

This section commences by presenting more general comments concerning the parties involved in the negotiations. These are followed by findings concerning each key party involved in the negotiations and address the multiple questions above. The reported findings are drawn from the parties concerned and from comments made by other stakeholders.

#### 3.1.5 General comments concerning the parties involved in the negotiations

The consensus view was that the right people from the NSW Government were involved in the negotiations, as all were senior government officials with the authority to make decisions. It was recognised that this was achieved in large part due to the efforts of the lead government negotiator

from DPC. A comment from one stakeholder was that the LDM process is very much dependent on the people involved as evidenced by their commitment to the process, seeing the value of the work, and investing in relationships.

Some stakeholders noted that IWAAC identified early on that an individual involved in the negotiations did not have the necessary authority and that this individual was replaced.

A negotiation with a junior person who says, "I don't know. I'll go away and check," or "I don't have the authority to do that," or "We can't do that because the rules say we can't," that's a frustrating negotiation and that's a waste of everybody's time. So [name] arranged to have the right people at the table to make those kind of ad hoc decisions.

One stakeholder commented that one of the reasons that the IWAAC Accords negotiations attracted the high-level government negotiators who had the requisite authority to make decisions was related to the Illawarra and Wingecarribee's proximity to Sydney, where many were based. This contrasted with the situation in the Murdi Paaki LDM where it was reportedly more difficult to engage city-based senior government staff.

An additional challenge that government negotiators faced related to a lack of understanding that different levels of government have different areas of responsibility, although it was recognised that this was a widespread misunderstanding, not just IWAAC's. This was apparent to some negotiators who commented that some of the outcomes and proposed actions that the IWAAC committee had included in their state of claim were not NSW Government responsibilities, but rather Commonwealth.

There was an issue there, and it's not just with IWAAC and Aboriginal people, it's with the general population, not understanding what level of government's responsible for what. They're just merging it all into 'It's the government's job you should do it.' It doesn't work that way.

### 3.1.6 IWAAC committee

The IWAAC Committee was tasked with negotiating with the NSW Government on behalf of the Illawarra and Wingecarribee Aboriginal communities. Prior to engaging in the Accord negotiations, the Committee undertook consultations with the Aboriginal communities in the two regions. These consultations determined the priorities and actions outlined in the statement of claim.

It was widely recognised that involvement in the Accords negotiations demanded a substantial investment of time from IWAAC committee members, all of whom were acting in an unpaid, voluntary capacity alongside paid work and family commitments. The committee had the option of taking sitting fees from the funding they received from government but chose not to. Instead, they employed a secretary with some of the funding they received (\$79,000 in 2017 which was an increase over the previous year). Although the time investment had lessened somewhat since the beginning, committee members commented that they had to undertake some IWAAC-related tasks daily: "You'd be reading, taking a phone call, writing, emailing something at least daily."

Discussions about IWAAC's ability to influence the course of the negotiations identified several strengths and weaknesses.

## Strengths:

- Several government stakeholders referred to IWAAC's emphasis on forging an equal partnership – "They've made it clear to government that this is an equal partnership" – with another commenting that the partnership was "pretty equal".
- IWAAC were assertive in letting government know what they wanted out of the negotiations. One stakeholder who had knowledge of how other LDM negotiations had progressed felt that IWAAC were more assertive in the negotiations than other regional committees:

"So, they had a counter position to government which I think is what made the negotiations so strong from their side. I think in some of the other sites it's just some of the alliances maybe have been a little bit more passive in just getting government to come to the table with what they're going to give them or what they're going to offer. Whereas IWAAC was coming with a very strong position of 'This is what we want from you.'"

- Feedback from government stakeholders was that efforts were made to accommodate IWAAC given that the committee was operating in a voluntary capacity. This included allowing IWAAC to set meeting dates and being responsive to requests to change dates. A comment from one stakeholder was that while this presented some challenges for government, it was a "good lesson for white bureaucrats".
- One stakeholder expressed the view that despite their limited resources, IWAAC did "an incredibly good job at levelling the playing field" by being strategic in how they used the resources that they had to engage advisors and a consultant. An additional comment was that IWAAC were "really smart in the way they worked".
- Stakeholder perspectives on the IWAAC committee varied somewhat. On the one hand, some felt that the IWAAC committee worked very well and that they got "the right people in the community together in a very cohesive team". They were described as being very disciplined, holding government to account and taking time out to clarify their thoughts when necessary - "9.5 out of 10". This contrasts somewhat with other people's view that IWAAC had not established its credibility with community or might not be representative of the communities (see Section 3.1).

## Weaknesses

*Power imbalance:* The voluntary, unpaid status of the IWAAC committee members was a fraught issue that elicited some divergent views. On the one hand, several stakeholders felt that this reflected a lack of respect for the committee members who were negotiating with senior government officials on sizable salaries:

I think it's time that the government realised our time's valuable too. Why should we all work for nothing? I guarantee you the government won't work for nothing.

This was highlighted in email correspondence from IWAAC to DPC and Aboriginal Affairs NSW in May 2017 where the committee expressed disappointment that government representatives were not available when committee members made themselves available: "Please don't forget we are all volunteers in this venture unlike the paid government reps". Subsequent correspondence suggests that DPC representatives were responsive to those concerns and committed to "prioritising LDM". Yet, as highlighted by one stakeholder, DPC have limited power over other agencies' commitment.

On the other hand, others reflected on the dilemma of paying committee members because

community could question committee members' motivations for being involved and feel that they were "in it for the money rather than for the pursuit".

Another stakeholder felt that it was not possible for the IWAAC committee and government negotiators to meet as equal partners given the "full array of power, control, information and authority of the New South Wales Government". Nevertheless, he felt that more consideration should be given to how the process could be made more equitable.

*Establishing credibility:* Unlike similar alliances operating in other regional areas, the Illawarra Wingecarribee Alliance Aboriginal Committee was not a pre-existing entity, but rather was established as the community governance body tasked with negotiating with government to progress LDM. Many stakeholders recognised that this presented challenges for IWAAC, with one stating that because IWAAC was a new entity it "doesn't have the credibility of the community".

Others acknowledged that IWAAC had a lot of work to do to establish its credibility and recognised that it was not easy to get everyone in the community on board with a process like LDM. For this reason, stakeholders emphasised the importance of making progress on some outcomes to show community that the process had value.

You're not ever going to get everyone on board. Sometimes you've got to pick the ball up and run with it and that's what - since that meeting that's sort of what we done. ... You need to get going and once it's - once it's up and running people will come on board.

Until you get runs on the board, people are always going to be suspicious. You've got to get results, otherwise people are just not interested.

However, many recognised that the committee's ability to establish its credibility had been undermined by the delays in finalising the Accords. A comment from another stakeholder suggested that this lack of progress would undermine any succession planning for the committee and ultimately the future success of LDM in the region:

I think if they see in our implementation plan after the Accord, oh, this is going somewhere, we might be able to get young people on board with those goals to move forward.

*Resource limitations:* Another factor that was recognised as hampering IWAAC's ability to build credibility was the fact that it did not have the time or resources to engage with the community to the extent that they should have. A comment from several stakeholders was that IWAAC would have benefitted from having more time and resources, financial and in-kind support, to assist them progress their negotiations. Additionally, IWAAC felt that they lacked power in the negotiations because government had all the data/information:

They won't give us the information unless we sit down and meet with them to discuss some things because it's highly sensitive information and they don't want it misused or misrepresented. So, a tad patronising.

*Representativeness:* Two government stakeholders queried the geographic pairing of the Illawarra and Wingecarribee regions for LDM. Comments related to why the Shoalhaven was excluded and why the Illawarra and Wingecarribee committee representatives had almost equal input into the negotiations when the Aboriginal community in the Illawarra region "would absolutely dominate probably 20:1". A further concern about the representativeness of IWAAC was whether other local

Aboriginal bodies would recognise its authority to negotiate on behalf of the Illawarra and Wingecarribee Aboriginal communities:

My fear is that organisation is not representative of the population down here and that we may end up with an Accord with IWAAC that's not recognised by our local Land Councils and other Aboriginal groups down here.

This was echoed by another government stakeholder who commented that members of the community told him that there were other community members they would have liked to have seen involved in the negotiations:

I don't feel they've got the backing of the entire community, no.

### 3.1.7 Department of Premier & Cabinet

DPC dedicated two staff to work on the IWAAC Accords – one in a full-time capacity and the other for between 20-50% of his time. The DPC lead negotiator's role was to work with IWAAC and prepare them for LDM and work with all the head negotiators of each of the priorities. The work with the government negotiators was recognised as particularly important for ensuring that they approached the negotiations in a respectful way and that senior agency staff participated in the negotiations.

The DPC lead negotiator was recognised as investing time in building relationships between the IWAAC committee and the government priority area negotiators, with several stakeholders emphasising how DPC set a respectful, solutions-oriented tone for the negotiations, drove the process and made sure that other government negotiators took the process seriously:

I think we can't underestimate that DPC setting that tone and certainly being clear to us as government that the presumption is we are there to meet IWAAC's claims about what needs they want met and how for their community and that it is, as much as possible, about equals sitting at a table.

The critical role played by the DPC lead negotiator was echoed by another government stakeholder who commented on how he ensured that the process stayed on track, was well organised and conducted respectfully:

Making sure that there was involvement by everyone... and where we did have the hiccup he took steps to just rectify it immediately... I honestly believe if someone like himself, who was so dedicated to getting it done, wasn't in charge I don't think it would be finished yet.

However, a challenge identified by one stakeholder was that although DPC had oversight of the process, it could not control or influence what each agency did.

### **Government priority area negotiators**

Several government negotiators spoke of spending a significant amount of time reading and undertaking or collating research and data relevant to their priority area prior to meeting formally with the IWAAC committee. A stakeholder identified a challenge for the government priority area negotiations. This concerned government negotiators being unaware of other decisions being undertaken within their agencies that occasionally undermined some commitments they had made to the IWAAC committee:

The government often had these left hand/right hand problems where the negotiators for that agency from government were unaware that another part of their agency were maybe defunding or changing funding arrangements or something like that. In the middle of the negotiating process that then really upsets the apple cart for the community because they think that government's double playing the community.

One government priority area negotiator commented that IWAAC did not take anything in writing to the meeting which made it difficult to discuss the details and clarify what problems they were hoping to solve.

Another priority area covered two government agencies. The lead negotiator from one of the agencies commented that it was some time before a representative from the other agency participated in the discussions. However, he explained that he had the delegated authority to negotiate on behalf of both agencies and always consulted with the other agency before making any commitments.

Other key individuals involved in the negotiations included the consultant employed in an advisory role by IWAAC, the independent facilitator, government staff from Aboriginal Affairs NSW and from DPC.

### **IWAAC's expert advisor**

IWAAC's engagement of an expert advisor to assist them with the negotiations was recognised as an important strategy for trying to create a level playing field in the negotiations with government. The expert advisor's role was to provide strategic advice on governance issues and prepare the IWAAC committee for the negotiations by helping them to 'distil their own thinking'. This distillation was outlined in IWAAC's statement of claim, which was informed by almost 18 months of community consultations. One stakeholder commented on the advisor's effective negotiation skills that enabled him to push government "into that uncomfortable space where government had to cede a bit, which was good." Another stakeholder commended the advisor's role in recognising the need for a 'time out' on occasions to give the committee the opportunity to clarify their position. Although paid to act in an advisory role, it was widely recognised that the advisor undertook a significant amount of additional unpaid hours to support the IWAAC committee:

The amount of money we pay him, I mean really, your hearts got to be in it mate for the right reasons, that's how I feel.

### **Independent facilitator**

The independent facilitator was jointly chosen by IWAAC and the lead government negotiator. The facilitator's role involved facilitating the discussion between the committee and the government negotiators. Stakeholder feedback was that he was well suited to the role, having experience in government, a good understanding of LDM, and an understanding of Aboriginal processes. According to one stakeholder, the independent facilitator was: "quite confident in challenging government but also community in a respectful way." Another stakeholder comment concerned the facilitator's role in ensuring that IWAAC's position was heard:

[The facilitator] did a really good job of equalising the power as well where government wasn't listening, intervening and making sure that the dialogue was kind of reset and that IWAAC had the chance to articulate their views.

Email communication from DPC emphasised both DPC and IWAAC's support for retaining the independent facilitator when a competing obligation arose: "Both parties believe that he has played a key role in safeguarding equitable and transparent processes to date."

### **Aboriginal Affairs NSW**

Aboriginal Affairs NSW played a key role in overseeing the negotiations. This included: developing Accord protocols and policies; organising meeting dates; developing and distributing meeting agendas and minutes; communicating with the parties to inform them of the names and roles of people they would be negotiating with from each agency; determining the NSW government and the Alliance's readiness to commence Accord negotiations and communicating that to all involved in the negotiations. Aboriginal Affairs NSW staff attended the negotiations as observers.

Aboriginal Affairs NSW worked with the IWAAC committee in the pre-negotiation stage to advise on the policy framework and the principles of LDM and explain what they needed to do to get ready for the Accords, support that was highly valued by the committee.

### **3.6 What were the personal outcomes for each party to the negotiation as a result of being involved in the negotiation? If there were personal outcomes, does the individual believe this will change their approach in similar circumstances?**

Few stakeholders involved in the negotiations reported any personal outcomes.

One government stakeholder found his involvement in the Accords negotiations to be a very positive experience because it was an opportunity to get a better understanding of how the community feels: "*Personally it was really good for me from a personal level, it was excellent.*"

Another stakeholder felt that IWAAC's involvement in the negotiations was of benefit to the Illawarra and Wingecarribee communities, because it gave them an understanding of how political decisions are made and an opportunity to influence decision-making through involvement in discussions - a contrast to the model of influence through protest that they are used to:

Our people don't really understand how decisions are made and they're used to a kind of protest power movement I suppose, of influencing by protesting to society until society listens to them.

### **3.7 Has the Accord negotiation process changed or influenced the relationships between parties involved and if so, in what ways?**

The long-standing mistrust between Aboriginal communities and government came up in several stakeholder discussions. The consensus view, from both government and IWAAC, was that trust had been built between the parties through the Accords negotiations. However, several commented that it would be eroded if there was no action arising from the negotiations.

But in the end, for the community and for me, to tell you the truth, delivery is the only thing that matters really. There's no use having a piece of paper unless you use it and that things change for the better of community and the government gets a better ability to do it.

We had no trust, but at least we're talking. But until we get the runs on the board, there will still be that distrust until they act on it. But at least we're talking to try and do something.

Several stakeholders spoke of how relationships had been built through the process and that committee members were comfortable raising issues with the lead negotiator and picking up the phone and contacting government staff directly or emailing them about non-IWAAC related issues. Another government stakeholder commented on how their Accord negotiation with the committee was very positive:

It was certainly a very positive end, as I said, you know, lots of hugs and shaking hands and keep in touch and thank you very much. So, I think we went into it with respectful relationships anyway, but we left feeling very comfortable with each other.

In acknowledging the improving relationships between the committee members and government, one stakeholder emphasised that this did not necessarily equate to an improved relationship with community. Ultimately, the relationship between the Illawarra and Wingecarribee Aboriginal communities would only change for the better if the communities saw improved outcomes arising from the negotiations.

Another government stakeholder felt that relationship between his agency and the committee had improved through the negotiations. He described how he had asked several colleagues to support and advise him in a meeting with the committee, but that the committee vetoed their attendance, which made the negotiations more challenging. A misunderstanding following the meeting also caused tension, however, DPC stepped in to arrange conciliation. This led to a resolution and allowed the committee and the priority area negotiator to finalise negotiations:

We had a process, there was a speedhump I suppose in the journey. We sought to fix that. We did, being respectful of each other and now we've got an outcome.

An additional benefit of the negotiations noted by this government stakeholder was that discussing the priorities and actions laid out in the statement of claim provided an opportunity for the committee to learn how certain agency decisions are made.

Government negotiators generally felt that the Accords negotiation process was respectful of Aboriginal ways of business and cultural protocols. They spoke of how the process was flexible; how protocols were developed to outline how the negotiations should proceed (including the addition of a section on 'community consensus decision making'); how government negotiators attended cultural awareness training; and how requests to change meetings were accommodated. At the same time, despite best efforts to make the process 'culturally safe', one government stakeholder acknowledged that the process is 'bureaucratic' and that some government staff lack cultural competency. Another stakeholder spoke of how the intent of the Accords was respectful, but that this had not always been upheld as the process proceeded, with government assuming more control over the process.

IWAAC committee members felt that elements of the process were not respectful. Factors that they felt conveyed a lack of respect included: the fact the IWAAC committee members were operating on a voluntary, unpaid basis as distinct to the government negotiators who were all there in a paid capacity; and the belief that only IWAAC, and not government, was compelled to demonstrate that they were 'Accord ready'. However, this latter point was contradicted by a government stakeholder who commented that "the same impost [was] on the NSW government. They had to submit



evidence of their readiness and their criteria that they had to meet."<sup>5</sup> Notwithstanding the shared obligation to demonstrate 'Accord readiness', the delays in progressing the negotiations left many with the view that the NSW Government was not, in fact, 'Accord ready'.

### 3.8 What adjustments, resources or capabilities do the parties to the negotiation believe are required to improve the outcome including structure, process or roles (including administrative, policy, and/or legislative powers or processes)?

Stakeholders offered a range of suggestions to improve outcomes from the Accords negotiations. These include:

- **Improve resourcing for the regional alliances** if both parties to the negotiations are to be truly equal partners. This includes financial, administrative and capacity building supports. This was considered particularly important because the Alliance will need to have ongoing input into the design, implementation and monitoring of negotiated actions. This tied in with the need to consider succession planning for the committee (see Section 3.5) but would be very challenging if communities see little progress arising from the negotiations.
- **Improve vetting of statement of claim priorities** to ensure that they fall within the remit of the NSW government and that the priority actions and outcomes can be implemented. If not clarified early on, the negotiations will prove challenging.
- **Develop protocols** to ensure that the negotiation process is structured, including dispute resolution, to help ensure that negotiations are conducted respectfully.
- **Government needs to really listen to community needs and wants** and display a genuine commitment to doing things differently and having respect for Aboriginal culture.
- **Government needs to be clear on what it means by "restoring community control"**: the endpoint of LDM is to give communities control over government programs and service delivery and funding but "it is illogical at this stage or even a mid-state stage to expect community to be ready to take all that stuff on." The onus is on government to be clear on what government and community need to do in order for this to happen.
- **Regional alliances need to focus on communicating with community and building relationships with government**: communication with community is critical to inform them of developments and delays, whilst acknowledging that it will not be possible to get everyone on board.

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<sup>5</sup> A letter from NSW Department of Premier & Cabinet to Aboriginal Affairs NSW (dated 20/07/16), outlines the efforts taken to prepare for the Accord negotiations by the Illawarra Wingecarribee Local Decision Making Sub Group over the previous two years to prepare to the negotiations with IWAAC including: working with IWAAC to develop local cultural training for agency Accord negotiators; multiple subgroup meetings; several line agency presentations to IWAAC from representatives of the 5 priority areas agencies. It concludes by stating that "this summary demonstrates the readiness of the NSW Government to commence negotiations and highlights that the process will be underpinned by a shared sense of purpose and respect for local Aboriginal culture."

- Allow **time for negotiations** but ensure negotiations **adhere to agreed timeline**.
- **Priority areas should be costed** so that government knows how much it will cost to achieve a particular outcome
- Invest in **cultural awareness training for government**
- **Maintain ongoing relationships between the committee and DPC** after the negotiations have been signed to ensure that the Accords process stays on track.

## 4 Addendum: Accord Signing

On 14 May 2018, the IWAAC Accords were signed by the NSW Minister for Aboriginal Affairs and the Illawarra Wingecarribee community.

Thirteen stakeholders in government who had been involved in the Accord negotiations and who had been interviewed in the first stage of the Accords evaluation were invited by email to participate in a follow up interview after the Accords were signed. A reminder email was sent a week after the initial invitation and eight agreed to participate in a follow up phone interview. The interviews were recorded with participants' consent and transcribed in full. The follow up interviews covered the following topics:

- How the negotiations were finalised.
- Thoughts on the Accords negotiation process - strengths, weaknesses, suggested improvements.
- Final reflections.

### 4.1 Finalising the negotiations

The formal Accord negotiations between the IWAAC committee and the lead negotiators for each priority area were all scheduled to take place between June and August 2017. However, some were not completed until October. Many of the interviewed stakeholders noted the time lag between the negotiations and the signing of the Accord in May 2018. The reasons offered to explain the time lag are described below.

- *Tying up loose ends*: Although the official negotiations were completed by October, many of the priority areas still had some unresolved issues that were 'parked' during the negotiations, but still required resolution. To address these outstanding issues, DPC acted as the conduit between the lead negotiators for each priority area and IWAAC, with support from AA, by getting input and feedback on proposed resolutions from both parties until consensus was reached. A meeting was held with DPC, Aboriginal Affairs NSW and IWAAC in November to attempt to cover the issues that had been parked. By the end of the meeting, agreement had been reached on all but one issue.
- *Difficulties finalising the priority area Accord documents*: Finalising the Accord documents took longer than expected for several reasons. First, although it was assumed that the November meeting had resolved all but one issue, one stakeholder commented that "*when we brought the whole Accord together and brought it back to IWAAC, a lot of what had been resolved kind of bubbled to the surface again*" which meant that additional conversations were necessary. Second, although the final draft documents were reportedly based on information that had been circulated to meeting participants for review some weeks prior, some agency representatives disputed some of the content. In some cases, this resulted in changing some of the language used; in other cases, some agency representatives disputed some of the commitments linked to their agency. Perspectives on how this transpired differed. Some suggested it was due to a lack of some government agency representatives' sustained engagement with the Accords process and the content of the meeting minutes "*until the eleventh hour*". Other participants were adamant that the Accord document included things

that had not been agreed to. One stakeholder commented that the final document his department received for endorsement included an Aboriginal employment target that he said had not been discussed. This was not problematic because his department was already meeting the target. However, had it been discussed, he would have pushed for a more ambitious target. Where agencies disputed commitments or language, Aboriginal Affairs NSW was responsible for sending the draft documents back and forth between IWAAC and government agencies until both parties were satisfied with the content.

- *Differing views between Aboriginal Affairs NSW and DPC with respect to who had responsibility for liaising with government to finalise the negotiations:* DPC intentionally distanced their agency from the task of finalising the negotiations but intervened when necessary and continued to broker agreements with different agency leads. The rationale for stepping back from finalising the negotiations was to allow Aboriginal Affairs NSW to develop systems and processes. However, there was acknowledgement that Aboriginal Affairs NSW may have expected DPC to do more post-negotiation. Consequently, Aboriginal Affairs NSW had to undertake a larger role in finalising the negotiations than anticipated by following up with government negotiators for approval. At the same time, DPC reportedly maintained an open-door policy with Aboriginal Affairs NSW and supported them when appropriate.
- *Some priority areas were more difficult to resolve than others:* The priority areas of justice and health were noted as taking longer to resolve because they were more complex due to including some cross-cluster issues that required a response from more than one agency.
- *Internal governance issues within IWAAC* that needed to be addressed between December and January.
- *Christmas shut-down/holiday period:* This was an additional factor that slowed the negotiations down: *“Everyone took a deep breath after the negotiations. Christmas, south coast in summer is a pretty quiet place for lots of people and a lot of the community weren’t around and the government officers weren’t around in many ways, but it just took a little while to then just pull everything together.”*

Despite the delays in finalising the Accords, some felt that a process of this kind requires a flexible timeframe due to the challenges of ensuring that government and community can work together meaningfully.

## 4.2 Accord signing

The consensus among stakeholders who attended the signing of the Accords on 14 May 2018 was that it was a positive event. Reasons offered to support this view were:

- The choice of location for the signing (where one of the local land councils operate)
- The presence of Aboriginal organisations/bodies that had not had prior involvement in the negotiations, with one commenting *“so that tells me locally there’s been some acceptance of the process.”*

When asked about the criticism directed at the process as reported in the media (NSW Government, Media Update LDM Accord, 14 May 2018) - the lack of community consultation - many felt that the criticisms were not unexpected and that achieving consensus in any community is a challenge whether Indigenous or not. One stakeholder felt that the criticism of IWAAC's lack of consultation with community was attributable to the fact that they had to sign confidentiality agreements about the negotiations. Her view was that this could have been avoided if government had advised IWAAC that they could talk about the process without going into the specifics of the discussions. This was echoed by another stakeholder:

I think I would have communicated more with broader community during the process and ... we should have thought about a common strategy during the process. Negotiations were confidential. We didn't say anything.

As noted in Section 2.2, Aboriginal Affairs NSW developed protocols, policies and procedures to guide the negotiations. The confidentiality policy notes that committee members may release information that "has not been ruled by the Committee to be confidential", but may not release information that has been ruled to be confidential. It appears that the default position was that information could be released publicly, unless explicitly declared confidential. It has not been possible to determine how this policy was enacted over the course of the negotiations, but participant feedback suggests that participants felt it prevented IWAAC committee members from disclosing information about the negotiations to community, resulting in other Aboriginal community organisations voicing dissatisfaction with the process.

Greater investment in resourcing IWAAC to enable them to engage more with community and better advice and communication from government about the process and progress were noted factors that could have promoted community engagement with the process.

## 4.3 Strengths of the process

Stakeholders identified several strengths of the Accords negotiation process.

- Significant investment of time and energy by DPC and Aboriginal Affairs NSW in working with community and government and building relationships. This was critical for building trust and to ensure that government understood what was required of them: *"You're not here to make up the numbers, you're not here to cause problems, you're here actually to really negotiate what community are saying"*.
- Efficient systems and processes developed.
- Co-designing protocols and processes with IWAAC: *"Culture was at the heart of it"*.
- IWAAC worked cohesively and used its resourcing strategically.
- The commitment and responsiveness of the lead government negotiator who was *"very good at really ensuring that the government people there understood this was about a constructive process of engagement and was about thinking creatively about how we might do things differently to get a better result."*
- The flexibility of the process.

- Goodwill on both sides to try to reach solutions.
- A positive example of how government can work well with Aboriginal communities.
- Puts the onus on Aboriginal communities to identify issues/problems and solutions and forces government to think differently *“I think there were times where kind of, we came to the table with one idea and we left with... a different way of getting that same outcome”*.

## 4.4 Weaknesses

Stakeholders identified several weaknesses of the process.

- Issues that were out of scope for LDM negotiations, due to being federal responsibilities, were not *“knocked back by Aboriginal Affairs in the statement of claim assessment because they were Commonwealth stuff and we had no jurisdiction”*.
- Performance measures of outcome indicators were not included in the final commitments.
- The negotiation process was very protracted, leading to frustration and a loss of momentum and perceived limited communication about the reason for the delays.
- Capacity gaps within IWAAC and government.
- Perceived limitations with respect to updating, circulating and seeking endorsement of final versions of minutes and agreed actions.
- The omission of some commitments that agencies had agreed to in the final Accords.

## 4.5 Suggested improvements

Stakeholders were asked to reflect on the Accords negotiation process and whether there were any suggestions or improvements they would offer other groups engaging in LDM negotiations. Suggestions offered included:

- The Accords should be finalised in a shorter timeframe; *“people were exhausted before the end of the process”*.
- Ensure government agencies understand what they are agreeing to when they commit to LDM.
- Second a government officer into the committee to build capacity both within the committee with respect to working with government and within government with respect to working with community.
- Government needs to invest in IWAAC to ensure that it can continue to represent the community during implementation.
- Assessments of statements of claim need to ensure that the issues that are included fall within scope of NSW government responsibilities.
- There should have been more communication with community during the process to ensure that people knew what was being covered in the negotiations.

- The process would benefit from having two senior DPC lead negotiators to keep the process on track.
- The LDM process should be streamlined by creating a panel of “*crack team negotiators working for government with community*” in different LDM negotiations.

## 5 Conclusion

Aboriginal Affairs NSW (2012) *Getting it Right: The Findings of the Round Two Overall*, the evaluation found that the Accords process was completed as well as could be expected but took longer than was anticipated. Stakeholders from both the NSW government and IWAAC were of the view that the right people were present at the negotiations, that the process, while frustrating for some, was able to deliver Accords that truly reflected the needs and aspirations of the Illawarra and Wingecarribee Aboriginal communities. The pre-Accord process and the appointment by IWAAC of an advisor appear to be key factors underpinning the success, as was the dedication and commitment of IWAAC committee members. The process took its toll on participants and was very challenging in terms of time and resource commitments, however these were bound to be complex and difficult negotiations. Although there was a feeling, especially among IWAAC committee members, that they had been through these sorts of discussions with government before, the LDM approach was acknowledged by all sides to be a genuinely new and innovative approach to negotiation with Aboriginal communities in NSW. Thus, it was quite likely that the negotiations would be complex and would take some time to complete.

The Accord negotiations highlighted some structural issues which are likely to affect LDM as it progresses. The main issue is the need for Regional Alliances to fully engage in the negotiations while at the same time being responsive to the needs and issues arising in the communities they represent. This is very challenging for Alliance members and adds to the demands on their time and resources. The fact that the negotiations were confidential, and that they took considerable time, added to these tensions. There is also not consensus in the Illawarra and Wingecarribee Aboriginal communities about LDM, and some sectors of the community oppose LDM. Disagreement and division is very common in any community, whether Aboriginal or not, and has been part of the process from the outset. It does, however, cause additional tension for IWAAC and is a further drain on resources.

A second structural issue is the Commonwealth/State boundary. Some of the challenges faced by Aboriginal communities can only be addressed by action at the State and Commonwealth levels of government. As LDM does not involve the Commonwealth, there are some limitations in terms of what the process can achieve for communities.

Despite these tensions and challenges there is a common belief amongst participants from both sides that the Accord process has been successfully completed and that IWAAC is well placed to manage the implementation of the Accords.



## Appendix A Summary of report validation process

Date	Action	Comments
1 August 2018	Draft report and draft summary sent to IWAAC	
8 August 2018	Draft presented to IWAAC	The findings were presented to IWAAC.
9-13 August 2018	Revision to report (content)	Updated to reflect community feedback – including some language and text changes highlighted in blue. Some changes from external reviewers.
14 August 2018	Updated and revised report sent for confirmation from community members involved in the evaluation and approved for publication	TBC
15 August 2018	Presentation to the Minister	TBC