



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: IIC/RIC/RHvk: 1966002
Your ref: SSP Crown Land

31 August 2020

Professor Richard Bush
Crown Land Commissioner
NSW Department of Planning, Industry and Environment
PO Box 2155
DANGAR NSW 2309

By email: cl.enquiries@crowland.nsw.gov.au

Dear Commissioner,

Draft State Strategic Plan for Crown Land

The Law Society of NSW writes in respect of the Draft State Strategic Plan for Crown Land ("Draft Plan"). The Law Society's Indigenous Issues and Rural Issues Committees have contributed to this submission.

The Law Society is pleased to see Aboriginal ownership and interest in Crown land acknowledged in the Draft Plan and considered as delivering value not only for Aboriginal people, but for the people of NSW. The Law Society supports the vision set out at p28 of the Draft Plan which seeks to:

Empower Aboriginal people to play a central role in delivering this vision. Aboriginal land rights are key to the achievement of the social, cultural, economic and environmental objectives of the Act. We will adopt land transfers to, and partnerships with, Aboriginal people as a core method of securing the benefits that are the plan's objectives. The department will seek new ways of working with Aboriginal people that recognise their legal rights, wisdom and contribution.

We understand that as the Draft Plan is set out in broad terms, it consequently does not provide detail on the matters discussed. The Law Society's comments below are directed at matters that have not been dealt with in detail and are provided for consideration in the implementation of the strategies set out in the Draft Plan.

1. The Law Society notes that the issue of Aboriginal economic development was the subject of Legislative Council inquiry in 2016. The Standing Committee on State Development made a number of practical recommendations in its *Report into the Inquiry into Aboriginal Economic Development* pertinent to the Draft Plan:
 - The Crown lands claims process must be further reformed. The recent Aboriginal Land Agreement negotiation framework is to be applauded, however, there needs to be consideration of further prioritising of claims, utilisation of private sector processing of claims, and funding for processing of the claims to allow Aboriginal communities to leverage their assets. To

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- accompany this there needs to be a process for reviewing zoning of land acquired by Aboriginal communities.
- The land council system must be strengthened and reformed. It needs additional funding for capacity building of its participants, performance of its objectives and activities. There is a need to have more flexible governance arrangements in some areas and a strengthening of governance in others including conflict of interest.¹

The NSW Government response to the inquiry report accepted (or accepted in principle) all but one recommendation (which was noted).² The Law Society suggests, if it has not already been undertaken in this process, revisiting the progress of the implementation of these recommendations.

2. The Law Society is strongly supportive of prioritising Aboriginal land transfers, and agrees with the view in the Draft Plan that this should be seen as an opportunity. We note that in its report, the Standing Committee on State Development stated at [4.65]:

The committee expects that any negotiation and agreement to transfer Crown land to local councils include representatives from the local Aboriginal land council network. During the inquiry the committee heard about the strained relationships between local Aboriginal land councils and local governments. The committee anticipates this frustration may be exacerbated during discussions about these matters and encourages the Department of Industry–Lands to ensure there is genuine and meaningful consultation. Clearly, land councils will need resources and support to engage thoroughly in all of these negotiations and to support timely outcomes.

Report recommendation 35, “That the NSW Government provide resources to local Aboriginal land councils to support their participation in negotiations concerning the transfer of Crown land to local councils” was accepted by the NSW Government, which noted that funds had been committed to support Aboriginal Land Agreements.

In our view, Aboriginal Land Agreements should continue to be supported as a means to address the backlog of claims.

We note that some of the “strained relationships” referred to above may not have been resolved, and as such seek further clarification in respect of the proposal in the Draft Plan on how co-management will be further explored.

3. The Law Society is aware of concerns expressed by Local Aboriginal Land Councils (LALCs) in respect of dealings in respect of lands awaiting transfer to LALCs. For example, Crown land may be claimable under the *Aboriginal Land Rights Act 1983* (NSW) (ALRA), but may be targeted for flora and fauna corridors, or other limitations which will impact on future development of that land.

While these are not actions that occur under Crown land legislation, they are relevant to the management of Crown land, and should be contemplated in this process. The Law Society’s view is that where Crown land is considered claimable under the ALRA, it should not be subject to adverse dealings. Further, there should be clear systems in place to avoid impacts on land awaiting transfer to LALCs.

¹ Standing Committee on State Development, *Inquiry into economic development in Aboriginal communities* (Report No 40, 30 September 2016) viii.

Available: <https://www.parliament.nsw.gov.au/lcdocs/inquiries/1691/Final%20report%20-%2030%20September%202016.pdf>.

² NSW Government, *Growing NSW’s First Economy: Our Response* (Government Response, 1 May 2017). Available: <https://www.parliament.nsw.gov.au/lcdocs/inquiries/1691/Government%20response%20-%20received%201%20May%202017.pdf>.

Zoning concerns were discussed in detail in the Report into the Inquiry into Aboriginal economic development.³ We reiterate our suggestion to revisit these discussions and recommendations in this process, including:

Recommendation 32

That the Department of Planning and Environment continue to:

- amend the regional planning processes to include consultation with local Aboriginal land councils and Aboriginal groups in the formation of regional plans, and establish new requirements concerning local environmental plans
- develop a solutions brokerage project focusing on Aboriginal community lands and infrastructure
- develop capacity building activities to encourage Aboriginal individuals and organisations to have a better understanding of the state's planning system including working with the University of Sydney to customise its Planning for Non-Planners course, potential cadetship positions and mentoring opportunities.

and:

Recommendation 34

That the Department of Planning and Environment review planning legislation to better accommodate the aspirations envisaged in the *Aboriginal Land Rights Act 1983*.

4. The Draft Plan refers to native title interests, as well as land rights pursuant to the ALRA, and notes at p 24 that “the complicated and unresolved intersection of the legal rights of the state, Aboriginal Land Councils and native title claimants and rights holders are delaying benefits for all.” The Law Society suggests providing more granular detail in the Draft Plan (or subsequent implementation documents) on the practical strategies that will be employed to address this tension, and detail the support that will be provided to the relevant stakeholders to do so.

We note recommendations made in the *Report into the Inquiry into Aboriginal economic development* relevant to this issue, including recommendations 36 and 37.

Finally, the Law Society submits that the general management of Crown land matters (including simple dealings such as road closures, licences and leases) must be adequately resourced and staffed to ensure timely administration.

Thank you for the opportunity to provide comment. Questions may be directed to Vicky Kuek, Principal Policy Lawyer, at victoria.kuek@lawsociety.com.au or 9926 0354.

Yours sincerely,



Richard Harvey
President

³ Standing Committee on State Development (n 1) [4.32] – [4.52].