



THE LAW SOCIETY
OF NEW SOUTH WALES

Our ref: IIC:RMup260226

26 February 2026

Ms Kiersten Fishburn
Secretary
NSW Department of Planning, Housing and Infrastructure
Locked Bag 5022
PARRAMATTA NSW 2114

By online portal

Dear Ms Fishburn,

A NEW APPROACH TO STRATEGIC PLANNING

The Law Society is grateful for the opportunity to provide feedback on the Discussion Paper, 'A new approach to strategic planning' (**Discussion Paper**). In principle, the Law Society is supportive of reforms that improve the clarity, consistency and effectiveness of strategic land use planning across NSW. This letter makes brief comments on the proposals set out in the Discussion Paper, with a specific focus on whether and how the proposed approach can be consistent with the requirements of the obligations of the NSW Government under the National Agreement on Closing the Gap and to the right to Indigenous self-determination.¹ The Law Society's Indigenous Issues Committee contributed to this submission.

Three-tier framework for strategic planning

We agree with the Discussion Paper's proposal for a three-tier structure for strategic planning in NSW to guide strategic land use planning and streamline processes to enable timely land activation across the State.

To ensure the effectiveness of this approach, there must be strong accountability mechanisms implemented to drive delivery and outcomes. Additionally, to ensure the benefits of a simplified structure flow to Aboriginal communities in practice, the State Land Use Plan and Region Plans should explicitly recognise and address systemic barriers to Aboriginal land activation, including by setting expectations for agencies to provide clear, consistent advice and timely decision-making. Further, and to this end, it is critical that the strategy and related reforms are designed in consultation with the Aboriginal community.

It is unclear from the Discussion Paper how Aboriginal people will participate in decision-making across the three tiers. In our view, it is necessary to include clear, formal decision-making structures, adequate resourcing and governance pathways to ensure that planning is consistent with the NSW Government's commitment under Priority Reform One of the National Agreement on Closing the Gap (to build and strengthen structures that empower Aboriginal and Torres Strait Islander people to share decision-making authority with governments)². Without these elements, genuine opportunities for shared decision-making may

¹ *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN Doc A/RES/61/295 (2 October 2007, adopted 13 September 2007) art 4.

² National Agreement on Closing the Gap, Priority Reform One: Formal Partnerships and Shared Decision-Making, <<https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap/6-priority-reform-areas/one>>.

be compromised or limited. As such, we suggest that minimum standards for engagement and implementation with the Aboriginal community be developed, accompanied by transparent accountability mechanisms across State, regional and local planning to ensure engagement allows for free, prior and informed consent. Further, to complement to such formal structures and standards, fostering strong and enduring partnerships between government, local councils and Local Aboriginal Land Councils will be crucial to enlivening the structures, and to achieving effective planning outcomes.

Proposed Statewide Land Use Priorities

The Discussion Paper sets out seven statewide land use priorities which are intended to drive planning at all levels. The first of these priorities is as follows:

Aboriginal Outcomes: Embedding co-design to recognise Country in planning outcomes. Success means that land use plans recognise Country and custodianship to support use and benefit opportunities for Aboriginal landowners to achieve social, cultural, environmental and economic self-determination.

We welcome the inclusion of Aboriginal Outcomes as a standalone statewide priority and support embedding co-design with Aboriginal people and communities in the planning strategy. However, to ensure that this priority is effective in practice, it must be implemented in a way that supports the right to self-determination, does not undermine the objects and intent of the *Aboriginal Land Rights Act 1983 (NSW) (ALRA)*, and advances economic development and prosperity for Aboriginal communities.³

Further, we suggest that the reference to “Aboriginal landowners” may not reflect the reality of many Aboriginal peoples’ and communities’ relationship to land in NSW, and risks excluding relevant Aboriginal peoples and communities from the planning process.

For Aboriginal and Torres Strait Islander peoples, Country is cultural, relational and spiritual⁴, and not necessarily defined solely by reference to land tenure.

In addition, there is a significant number of unresolved claims under the ALRA. At the end of 2019–20, approximately 60 per cent of claims had been awaiting determination for more than five years, and around 20 per cent for more than ten years.⁵ As of December 2025, more than 44,000 Aboriginal land claims in NSW remained undetermined.⁶ As a result, references to “Aboriginal landowners” exclude Aboriginal peoples and communities awaiting legal recognition of their land rights, despite the potential for planning decisions to affect the relevant land over which rights are sought.

³ National Agreement on Closing the Gap, ‘Socio-economic outcome area 8 - Strong economic participation and development of Aboriginal and Torres Strait Islander people and communities’, < <https://www.pc.gov.au/closing-the-gap-data/dashboard/outcome-area/economic-participation/>>.

⁴ See *Love v The Commonwealth of Australia; Thoms v Commonwealth of Australia* (2020) 270 CLR 152, [276]–[277] (Nettle J), [450] – [451] (Edelman J).

⁵ Audit Office of New South Wales, *Facilitating and administering Aboriginal land claim processes* (Performance Audit, 28 April 2022) 3.

⁶ National Indigenous Times, ‘NSW Aboriginal Land Council Marks 60,000th Land Claim with Call for Urgent Reform’ (Online, 27 January 2026) <<https://nit.com.au/27-01-2026/22339/corrective-not-symbolic-nswalc-calls-for-urgent-improvement-to-system-on-submitting-60000th-land-claim>>.



Equally, native title determinations do not necessarily result in land ownership, but rather, result in the recognition of rights and interests in the land. Such a “bundle of rights” may include a right of exclusive possession in respect of some native title determinations, but in other determinations, may simply be a set of non-exclusive rights to, for example, hunt, fish and gather food.⁷

Finally, in terms of home ownership, most Aboriginal and Torres Strait Islander people do not own their home, with home ownership rates significantly lower than the non-Indigenous population.⁸

For these reasons, we suggest that references to “Aboriginal landowners” be reframed to ensure that all relevant Aboriginal people and communities are included in planning processes, given the potential for land planning to significantly affect where they live, how the land around them is used, how their legally recognised rights with respect to land are impacted, and how their cultural and community interests are managed.

We also take this opportunity to emphasise the importance of incorporating cultural heritage, biodiversity and environmental considerations into the priorities alongside land activation, to ensure that these critical factors inform all three tiers of strategic planning.

Thank you for the opportunity to comment. Questions at first instance may be directed to Ursula Paetzholdt, Policy Lawyer, at (02) 9926 0130 or Ursula.Paetzholdt@lawsociety.com.au.

Yours sincerely,

Ronan MacSweeney
President

⁷ See National Native Title Tribunal, *Native title: an overview*, <https://www.nntt.gov.au/Information%20Publications/Native%20Title%20an%20overview.pdf>.

⁸ In 2021, 42 per cent of Aboriginal and Torres Strait Islander people owned their own home (with and without a mortgage), compared with 68 per cent in the non-Indigenous population: Australian Institute of Health and Welfare, ‘Tier 2 – Determinants of health 2.01 Housing’ (Web Page) <https://www.indigenoushpf.gov.au/measures/2-01-housing>.