The Law Society
OF NEW SOUTH WALES

Our ref: EPD/IIC:RMgl030626

3 June 2026

Department of Planning, Housing and Infrastructure
4 Parramatta Square, 12 Darcy St
Parramatta NSW 2150

Via Planning Portal

Dear Sir/Madam,

PROPOSED STATEWIDE COMMUNITY PARTICIPATION PLAN

Thank you for the opportunity to provide feedback on the proposed changes to the community participation process. The Law Society's Environmental Planning and Development and Indigenous Issues Committees contributed to this submission.

As a result of the *Environmental Planning and Assessment (Planning System Reforms) Act 2025* (NSW) (**Amending Act**), which amended the *Environmental Planning and Assessment Act 1979* (NSW) (**Act**), the responsibility for preparing a Community Participation Plan (**CPP**) shifted from local planning authorities to the Planning Secretary. As a result, rather than having localised CPPs determining timelines and thresholds for community engagement, there will be one statewide CPP.

The draft CPP states that it "is designed to clearly outline how and when the community can participate in planning decisions and processes, and when planning authorities exercise their relevant planning functions."[1] It provides a high-level outline of the processes and timelines for community involvement in the development of strategic planning documents and development requirements, along with some guidance to the community on how to provide feedback on the development of strategic plans or providing feedback on proposed developments.

There is merit in a single Community Participation Plan for consistency and predictability. We support the changes in the draft CPP where the standardisation of timeframes brings clarity and an extended timeframe. For example, the draft CPP proposes to introduce a minimum non-legislated 60-day public exhibition timeframe for draft regional or district strategic plans and local strategic planning statements.[2] We support this extension from 45 to 60 days, particularly for regional strategic plans which tend to be lengthy documents. Extended exhibition timeframes should result in a more meaningful consultation process.

[1] Department of Planning, Housing and Infrastructure, 'Draft Community Participation Plan' (April 2026) 5 <https://www.planningportal.nsw.gov.au/sites/default/files/documents/2026/Draft%20Statewide%20Community%20Participation%20Plan.pdf> ('Draft CPP').
[2] Department of Planning, Housing and Infrastructure, 'Community Participation Plan Discussion Paper' (Discussion Paper, April 2026) 7 <https://www.planningportal.nsw.gov.au/sites/default/files/documents/2026/Discussion%20Paper%20-%20Draft%20Statewide%20Community%20Participation%20Plan.pdf> ('Discussion Paper').

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However, we have concerns with several of the changes being made by the draft CPP, some of which will reduce important community consultation, and others which may introduce new complexities to development pathways. We set out our detailed comments below.

Proposed changes to notification and public exhibition of development applications

We oppose the reduced consultation requirements in relation to the development application assessment process.[3] The concept of exempting development from public exhibition and notification which complies with development controls is unworkable in our view. Interpretation of all development controls, and particularly controls under a Development Control Plan, are regularly disputed in our members' experience. A failure to notify in circumstances where an assessing planner has determined a development to be "compliant" will introduce a very real opportunity for legal error in decision making.

The reduced consultation requirements in relation to the development application assessment process are predicated on the basis that community engagement would be front-loaded in the early stages of planning. While early community engagement is supported, it should not replace the proper notification of impacted parties particularly at a later stage when the detail of intended developments and their likely impacts is better known. We therefore oppose the reduced consultation requirements in relation to the development application assessment process on the basis that they are contrary to fundamental principles of proper community engagement.

We understand the desire to improve timeframes and reduce the complexity of the development application process. However, we are of the view that reducing or eliminating community consultation will not assist in that regard, for two main reasons. Firstly, the consultation period can be undertaken concurrently with internal referrals, agency referrals, and development assessment. We are not aware of any evidence that it causes any independent delay. Secondly, the public interest remains a relevant consideration under section 4.15(1)(e) of the Act, which may be difficult to meaningfully evaluate in the absence of fulsome community consultation. Further, if a submission is volunteered despite there being no consultation required and it raises a significant impact, it would still likely need to be taken into consideration under section 4.15(1)(e) in any event. Having a defined consultation process sets appropriate parameters for consultation which prevents errors from occurring.

Proposed changes to notification and public exhibition of complying development certificates

We oppose the proposal to remove the requirement to provide written notice of the intention to issue a complying development certificate (**CDC**).[4] This notification fosters good community consultation, and it is also possible that a neighbour may raise a legal issue, such as a covenant, which would cause the certifier not to issue the CDC. Once the certifier issues the CDC, the certifier has no ability to revoke it. In our view, removing the pre-CDC notification has the potential to give rise to unnecessary litigation.

We support the retention of notice to council advising that the CDC has been determined.[5] However, in our view, the proposed "7-day pre-commencement of work notification"[6] is too short. The CDC process can be used to approve complex development. Dealing with invalidly issued CDCs is not uncommon in our members' experience. Although the three-month limitation periods under section 4.31 of the Act and Rule 50.10 of the *Uniform Civil Procedure Rules 2005* (NSW) (rule 59.10) will continue to apply, the actual occurrence of construction works and particularly demolition, as discretionary considerations, can stymie or limit relief available. We suggest consideration be given to a longer pre-commencement notice period, such as 21 days. In our view this would not significantly inconvenience complying development pathways and would better balance

[3] Ibid 11.
[4] Ibid 10.
[5] Ibid 10.
[6] Ibid 10.

community expectations by allowing a fairer opportunity for neighbours to consider the notice and take appropriate action, if required.

Public exhibition of Division 8.2 reviews

Currently, review applications are to be exhibited for 14 days unless the CPP specifies otherwise. The draft CPP proposes:

- that an application for review that has not been amended pursuant to section 8.3(3) will be exempt from public exhibition. The consent authority will consider submissions made on the original application in determining the review. Notification to previous submitters may still be made.
- where an application has been amended under section 8.3(3), the public exhibition period is to be the same as the original application.[7]

We suggest that where an application for review has been made which reduces impacts, there should be a discretion not to require public exhibition.

Residential flat buildings and shop top housing

The draft CPP proposes that residential flat buildings and shop top housing developments will be exempt from standard public exhibition and notification where:

- residential flat buildings or shop top housing are permissible in the relevant zone, and,
- the development meets the controls under a local environmental plan, development controls plan and/or a state environmental planning policy, and,
- does not include a 4.6 variation.[8]

We oppose this proposal. As mentioned above, in our view, the concept of exempting development from public exhibition and notification which complies with development controls is unworkable due to the frequency with which interpretation of development controls is disputed, in our members' experience, and the real opportunity for legal error in decision-making resulting from the omission of the notification process.

Again, the lack of public exhibition and notification are contrary to fundamental principles of proper community engagement in our view. As also mentioned above, the consultation period can be undertaken concurrently with internal referrals, agency referrals, and development assessment; and the public interest remains a relevant consideration under section 4.15(1)(e) of the Act.

Savings and transitional arrangements

The changes made by the draft CPP should be subject to a blanket savings provision in relation to proposed developments which commenced under existing CPPs. The need for savings and transitional arrangements in relation to existing development applications, strategic plans and planning proposals is acknowledged in the Discussion Paper[9] and we would be pleased to review the relevant draft provisions.

Engagement with Aboriginal communities

Despite the Secretary's foreword to the draft CPP asserting that it "emphasises the importance of engaging respectfully with Aboriginal communities",[10] we note that there does not appear to be any specific consideration of how to engage with the Aboriginal community in the planning and development process. Instead, the draft CPP states that specific requirements for engagement by planning authorities with their community are to be found in the relevant authority's engagement strategy, which "will ensure that harder-to-reach audiences, including young people, people living with disabilities, the elderly, those living in rural areas, Aboriginal and

[7] Ibid 13.
[8] Ibid 13.
[9] Ibid 16.
[10] Draft CPP (n1) 4.

Torres Strait Islanders and culturally and linguistically diverse people, can engage effectively."[11] As noted in our previous submission on the Amending Act,[12] in the experience of our members, the Aboriginal community is often not consulted in respect of planning and development decisions, or if they are, they are often not meaningfully consulted. Some of our members report that this includes consultation that treats the views of an Aboriginal community as singular, and consulting only a small number of individuals of the community, rather than meaningfully consulting with the community, including with Local Aboriginal Land Councils and Aboriginal Community Controlled Organisations, and genuinely engaging with all of the community's views.

While we recognise the importance of engagement that is tailored to the local community and its needs, it is unclear whether local planning authorities are required to have engagement strategies, and, if so, whether these strategies will be required to deal with specific topics, such as thresholds for engagement with Aboriginal communities. It is unclear whether local planning authorities are even required to take into consideration the views of the Aboriginal community, and if so, what weight these are to be given. In our view, this lack of clarity is likely to have consequential effects for communities like Aboriginal communities, where culturally appropriate and tailored mechanisms are necessary to ensure that the community is meaningfully consulted. For these reasons, we suggest that the draft CPP should provide guidance for engaging with Aboriginal communities to ensure they are able to meaningfully participate in decision-making, including prescribing minimum standards for consultation with Aboriginal communities. In this respect, we refer to the final report into the inquiry into the destruction of the 46,000 year old caves at Juukan Gorge (***Juukan Gorge Report***) at [7.80], which provides useful instruction as to minimum consultation requirements.[13] For example, there should be clear processes implemented for identifying appropriate people to speak for cultural heritage that are based on principles of self-determination, and recognise native title or land rights statutory representative bodies where they exist, and mechanisms for review and appeal of decisions.[14] We also refer to international jurisprudence as to what constitutes free, prior and informed consent (**FPIC**) of Indigenous peoples, which under the United Nations Declaration on the rights of Indigenous Peoples, is required before adopting legislation or administrative policies that affect Indigenous people,[15] or undertaking projects that affect Indigenous peoples' right to land, territory and resources, including mining and other use or exploitation of resources.[16] This includes that the State provide information in "an understandable and publicly accessible format",[17] that trust and mutual respect be established and there is no form of coercion by the State or any party acting with its authority or acquiescence.[18]

In our view, the CPP presents an opportunity to set requirements consistent with these standards for consultation with Aboriginal communities statewide, to avoid discrepancies in the standard of consultation prescribed in engagement strategies prepared by local authorities.

Further, it is unclear how the CPP and individual engagement strategies will interact, and we would suggest that this lack of clarity as to where the requirements for ensuring culturally safe and appropriate consultation will be

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[11] Ibid 6.
[12] The Law Society of NSW, '*Environmental Planning and Assessment (Planning System Reforms) Act 2025* (NSW)' (Online Submission, December 2025) <https://www.lawsociety.com.au/sites/default/files/2026-04/Ltr%20to%20Mnst%20for%20P%20%26%20P%20S%20-%20EP%20%26%20A%20%28Planning%20System%20Reforms%29%20Act%202025%20%E2%80%93%208.12.25.pdf>.
[13] Commonwealth Joint Standing Committee on Northern Australian, *A Way Forward: Final report into the destruction of Indigenous heritage sites at Juukan Gorge,* October 2021, online: https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024757/toc_pdf/AWayForward.pdf;fileType=application%2Fpdf.
[14] Ibid [7.80].
[15] United Nations Declaration on the Rights of Indigenous Peoples, GA Res 61/295, UN Doc A/RES/61/296 (2 October 2007, adopted 13 September 2007) article 19.
[16] Ibid article 32.
[17] Inter-American Court of Human Rights, *Case of the Saramaka People v Suriname*, Judgment of August 12, 2008 (Interpretation of the Judgment on Preliminary Objections, Merits, Reparations, and Costs), 6.
[18] See Inter-American Court of Human Rights, *Case of the Kitchwa Indigenous People of Sarayaku v Ecuador (Merits and Reparations),* Judgment of 27 June 2012, [177], [179], [186]–[187].

set out (or if they are required to be set out), may result in inconsistent and/or insufficient consultation with Aboriginal communities. It is essential that there are clearly specified, culturally safe and culturally tailored mechanisms for consultation with Aboriginal people, and adequate timeframes to engage with Aboriginal people's views, knowledge and aspirations for Country, and whether Aboriginal cultural heritage might be affected by the relevant planning or development proposal.

Additionally, the draft CPP provides standardised exhibition timelines, which are determined by reference to the scale and impact of a plan or development. These timeframes of the draft CPP cannot be altered by any engagement strategies.[19] We are concerned that the timeframes set out in the draft CPP are not sufficient to ensure meaningful engagement with the Aboriginal community. While we acknowledge that statewide consistency between exhibition timeframes is desirable, we suggest that there may be circumstances where the timeframes prescribed are not appropriate to meaningfully consult the community.

We remind the government of its obligations under the National Agreement on Closing the Gap, including the commitment under Priority Reform 1, to build and strengthen structures that empower Aboriginal and Torres Strait Islander people to share decision-making authority with governments to accelerate policy and place-based progress against Closing the Gap.[20] For the reasons set out above, we suggest that the draft CPP in its current form is not likely to be able to embed structures which facilitate meaningful and genuine consultation with the Aboriginal community, and therefore would not be consistent with Priority Reform 1. We recognise that these statewide strategies must be complemented by local-level implementation and, in this respect, we note the success of the Mara Ngali formal partnership agreement between Tamworth Aboriginal Community Controlled Organisations and Tamworth Regional Council to work together on Closing the Gap.[21] However, we are of the view that, to ensure consistency statewide, documents such as the draft CPP must provide requirements for consultation with Aboriginal and Torres Strait Islander communities.

The implications of inadequate structures for genuine consultation and engagement with the views of Aboriginal and Torres Strait Islander communities include the destruction of cultural heritage and the significant loss and distress that this causes. Destruction of cultural heritage is a considerable ongoing concern, noting the recent destruction of an Aboriginal rock shelter on Wiradjuri country, a known and mapped cultural site, to build power lines for the NSW Central West Orana Renewable Energy Zone.[22] Additionally, in our members' experience, identification of cultural heritage sites currently relies upon the Aboriginal Heritage Information Management System, which is often not geographically accurate and does not comprehensively represent and document all Aboriginal cultural heritage.

[19] Draft CPP (n 1) 6.
[20] National Coalition of Aboriginal and Torres Strait Islander Peak Organisations and Council of Australian Governments, *National Agreement on Closing the Gap* (30 July 2020) ('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>.
[21] NSW Government, 'Historic "Mara Ngali" agreement brings Closing the Gap to local government for the first time', *Aboriginal Affairs NSW News* (14 May 2025) <https://www.nsw.gov.au/living-nsw/aboriginal-outcomes/news/historic-mara-ngali-agreement-brings-closing-gap-to-local-government-for-first-time>.
[22] See Lani Oataway, 'Wiradjuri community devastated by destruction of rock shelter by ACEZEZ', *ABC News* (27 May 2026) <https://www.abc.net.au/news/2026-05-27/wiradjuri-community-say-acerez-shelter-destruction-inexcusable/106722794>.

Any questions in relation to this letter should be directed to Gabrielle Lea, Senior Policy Lawyer, at gabrielle.lea@lawsociety.com.au or on (02) 9926 0375.

Yours sincerely,

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President