



New Planning System
GPO Box 39,
Sydney NSW 2001

To whom it may concern,

The New South Wales Aboriginal Land Council (**NSWALC**) is the peak body representing Aboriginal peoples in NSW. It is the largest Aboriginal member based organisation in Australia. Established under the *Aboriginal Land Rights Act 1983* (NSW), NSWALC is an independent, self-funded non-government organisation that has an elected governing council and the objective to “*improve, protect and foster the best interests of all Aboriginal persons within New South Wales*”.

NSWALC provides support to the network of 120 elected and autonomous Local Aboriginal Land Councils (**LALCs**) across NSW also established under the *Aboriginal Land Rights Act 1983*. Aboriginal Land Councils are significant land holders across the state and have functions under the *Aboriginal Land Rights Act 1983* in respect to the management and development of lands as well as the protection and promotion of Aboriginal culture and heritage. The key goals of LALCs are outlined in their Community Land and Business Plans (**CLBPs**).

NSWALC has been actively engaged in the NSW Planning System review process. NSWALC remains concerned regarding the content of the White Paper and particularly the sections relating to community participation and the strategic planning framework, specifically concurrences and referrals as well as development assessment, particularly relating to compliance. NSWALC contends that significant changes are needed to the planning laws in NSW in order to achieve equity, transparency and accountability in the NSW Planning System to facilitate the goals and aspirations of Aboriginal peoples. It is evident in the content of the White Paper and Planning Bill that this has not been achieved.

Community participation

The centrepiece of the White Paper’s approach to community participation (as set out in Part 2 of the Planning Bill) is the Community Participation Charter. The Charter sets out seven principles – partnership, accessibility, early involvement, right to be informed, proportionality, inclusiveness and transparency. The Charter is to be given practical effect through Community Participation Plans which are prepared by planning authorities in consultation with the community.

Head Office

Ground Floor, 33 Argyle Street
Parramatta NSW 2150
PO Box 1125
Parramatta NSW 2124
Tel: 02 9689 4444
Fax: 02 9687 1234
DX 28308 Parramatta 2150

Western Zone

2/36 Darling Street
Dubbo NSW 2830
PO Box 1196
Dubbo NSW 2830
Tel: 02 6885 7000
Fax: 02 6881 6268
DX 4009 Dubbo 2830

Northern Zone

Suite 2-26, Park Avenue
Coffs Harbour NSW 2450
PO Box 1912
Coffs Harbour NSW 2450
PO Box 696
Armidale NSW 2350
Tel: 02 6659 1200
Fax: 02 6650 0420
DX 7557 Coffs Harbour 2450

Eastern Zone

Level 5, 33 Argyle Street
Parramatta NSW 2150
PO Box 1125
Parramatta NSW 2124
Tel: 02 9689 4444
Fax: 02 9689 4503
DX 28308 Parramatta 2150

Southern Zone

Suite 110, Corporate Level
Riverside Plaza
Monaro Street
Queanbeyan NSW 2620
PO Box 619
Queanbeyan NSW 2620
Tel: 02 6124 3555
Fax: 02 6297 3541
DX 24202 Queanbeyan 2620

NSWALC strongly supports a legislative basis for community consultation in the planning system. Nevertheless, significant concerns regarding community participation processes have been identified within the White Paper including:

- Issues with the Community Participation Charter

NSWALC is concerned to ensure that the White Paper and Planning Bill accommodates the recommendations that NSWALC has previously made in submissions to the Green Paper and Issues Paper in regards to participation of LALCs and Aboriginal peoples in the planning process. The Community Participation Charter must be enshrined in legislation, must incorporate best practice minimum standards to allow governments, proponents and communities to implement the Charter and must specifically recognise and provide for Aboriginal peoples. The NSW Government is referred to the United Nations Declaration on the Rights of Indigenous Peoples for guidance on best practice principles as well as NSWALC's previous submissions.

The current proposal outlines that planning authorities will have to develop Community Participation Plans that are consistent with the Charter. Of concern to NSWALC is the unenforceability of compliance with the Community Participation Charter. Although Part 2 of the Planning Bill addresses community participation, this is negated by Part 10 of the Bill which states that the majority of community participation provisions are not mandatory. In addition, it is concerning that there are no mechanisms available to challenge Community Participation Plans if they do not align with the Community Participation Charter.

To make certain that community participation is central to the new Planning Act NSWALC recommends that the Community Participation Charter is binding. This ensures some level of public accountability.

- Online delivery of planning services and information

As previously recommended by NSWALC, the increased focus of utilising technology is supported, however this should not be at the expense of other forms of communication and engagement which must include:

- Face to face meetings and workshops
- Letters to households, neighbours, interested groups, key stakeholders including Aboriginal Land Councils and affected parties
- Advertisements in newspapers

- Reduced community participation at the development stage

Community rights to have input into or object to development at the project specific level will be reduced under the proposed Planning Bill. The White Paper states that 'Once the community has participated in the development of the strategic plan for the area, planning authorities can streamline most development without the need to further consult with communities'. As such community engagement mechanisms will be limited to upfront strategic planning phases such as in the development of Regional Growth Plans, Subregional Delivery Plans and Local Plans. The shift to upfront community consultation is problematic as community rights to be consulted or to object to decisions will be significantly reduced once the strategic planning processes are completed.

Developer's rights to review and appeal decisions are expanded under the White Paper and Planning Bill. This particularly relates to spot rezoning applications, where approval is not given to code based development applications within 25 days. On the contrary, there is no community appeal rights to a

code based development that is approved that exceeds the agreed criteria and merit appeal rights against major projects are also lost under the Planning Bill.

Aboriginal peoples must be provided with early and meaningful opportunities to influence planning decision which may affect rights and instruments as a standard component of both plan making and development assessment processes. It is inappropriate for the Government to expect the public to be involved in a series of individual consultation processes on state, regional, sub regional and local plans and code development only in upfront stages and with no community review or appeal rights. NSWALC has consistently recommended that there is a need to reinstate genuine public participation in the NSW Planning System with specific recognition of Aboriginal peoples, communities and Aboriginal Land Councils as key stakeholders with particular needs in respect to consultation. This has not occurred in the White Paper or Planning Bill.

Strategic planning

The White Paper (and Part 3 of the Planning Bill) propose a series of principles to inform strategic planning outcomes and processes. In addition there are further details regarding the four level hierarchy of strategic planning instruments. NSWALC has a number of concerns relating to the new strategic planning proposals:

- NSW Planning Policies:
 - The White Paper does not include any concrete details on the content of these policies and how competing objectives and conflicts will be prioritised, or how the consistency of lower level plans will be measured and certified;
 - The Policies are not disallowable statutory instruments and therefore not subject to parliamentary scrutiny. In addition they are not subject to judicial review. As a result there is a lack of accountability and community confidence will be significantly undermined by the removal of the rights to challenge Policies.
- Subregional Delivery Plans:
 - These plans will be prepared by 'Subregional planning boards'. It is not clear how these boards will be resourced, and how much input local councils and others will be able to have. Of particular concern to NSWALC are the proposals noting that land can be rezoned at the subregional planning stage, in addition to proposals that will remove the communities ability to have a say on individual developments. Additionally, subregional planning boards will not be required to have expertise in Aboriginal issues.
- Local Plans:
 - The White Paper's approach to zoning, reducing the number of land use zones available, and development guides require further explanation and should be based on sound research.
 - The new system should minimise the risk of top down determinism, where local preferences are shoe-horned into pre-determined State set priorities.
 - Spot rezoning and new developer review rights will affect the effectiveness of Local Plans and have the potential to undermine strategic planning processes.

NSWALC's previous submissions have recommended that planning policies and instruments, including Regional Growth Plans, Subregional Delivery Plans and Local Plans should include mechanisms to assist LALCs in unlocking the economic development potential of their lands through a coordinated approach between local government authorities and in partnership with LALCs. In addition, NSWALC

recommended that strategic planning initiatives should not undermine the compensatory mechanisms of the *Aboriginal Land Rights Act 1983*. The *Aboriginal Land Rights Act 1983* is the only form of compensation given to Aboriginal peoples in NSW as a result of dispossession.

It is essential that LALCs are engaged in strategic planning. The current proposals in the White Paper do not adequately recognise or accommodate LALC involvement in strategic planning.

Streamlining referrals and concurrences

NSWALC has serious concerns regarding how the White Paper and Planning Bill address Aboriginal culture and heritage. Section 6.2 of the Planning Bill states that Aboriginal Heritage Impact Permits are not required for the carrying out of public priority infrastructure, State infrastructure development or State significant development and accordingly the provisions of or made under any Act that would prohibit an activity without such approval do not apply.

NSWALC is critical of the large number of Aboriginal Heritage Impact Permits that have been issued, with the current Aboriginal Heritage Impact Permit system leading to unacceptable rates of damage and destruction of Aboriginal cultural heritage. The current Aboriginal Heritage Impact Permit system is heavily weighted in favour of development. Nevertheless, the proposals within the Planning Bill that bypass the need for these permits and the limited protection they provide are alarming.

In previous submissions, NSWALC has recommended that a clear response is provided by the NSW Government in respect to how the planning system will protect and manage Aboriginal culture and heritage, that legislation is enacted to enable Aboriginal peoples and relevant planning authorities to consider, maintain and protect Aboriginal heritage in planning processes and that planning instruments include Aboriginal heritage where appropriate. The White Paper fails to address any of these concerns and act on any of these recommendations.

In addition, the White Paper reduces the requirements to obtain inter-agency concurrences and approvals. It should be noted that these concurrences and approvals are usually imposed to ensure compliance with related laws. This is of considerable concern to NSWALC in relation to the protection of Aboriginal culture and heritage and NSWALC recommends that concurrence requirements are reinstated for Public Priority Infrastructure, State Infrastructure and State Significant developments and are retained for any proposal involving Aboriginal culture and heritage values. We are concerned that the 'one stop shop' proposed prioritises speed of approval over expertise.

Development Assessment

The White Paper and Part 4 of the Planning Bill sets out the approach to development assessment. It is proposed that development applications will be streamed into five assessment tracks – exempt and complying, code assessment, merit assessment, impact assessment and prohibited development, however the predominant assessment track is code assessment.

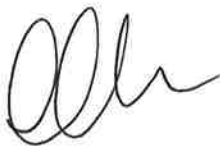
The objective of the White Paper that 80% of developments can be code-assessed is of concern to NSWALC, particularly in regards to the potential increase of significant, negative and cumulative impacts on Aboriginal culture and heritage. In previous submissions, NSWALC has discussed in depth the significant and cumulative impacts that the current planning system has on the protection of Aboriginal

culture and heritage. The NSWALC submission to the Green Paper includes substantial discussion regarding the broad scope of developments and activities to be exempt from routine development assessment processes. It includes discussion regarding the bypassing of usual development consent processes and associated notification and consultation procedures which can result in increased risk of damage or destruction of Aboriginal culture and heritage. The proposals in the White Paper and Planning Bill do not address these concerns. NSWALC recommends that codes must be excluded from areas with Aboriginal culture and heritage significance and do not apply to State Significant Development.

While NSWALC has consistently made recommendations to the NSW Government regarding the planning review process, neither the White Paper nor the Planning Bill address any of NSWALC's recommendations. Overall, the proposals outlined in the White Paper and Planning Bill will have detrimental impacts on the Aboriginal Land Council network and as such NSWALC does not support proposals within the White Paper and Planning Bill.

If you have any queries regarding the contents of this letter, please contact Sharon Close on sharon.close@alc.org.au or (02) 9689 4479.

Kind Regards

A handwritten signature in black ink, appearing to read 'Clare McHugh', written in a cursive style.

Clare McHugh

Director, Policy and Research Unit

Date: 21/6/13