



NSW Aboriginal Land Council

Submission on the NSW Crown Lands Draft State Strategic Plan

August 2020

RECOMMENDATIONS:

Recommendation 1: Working to achieve Aboriginal Land Rights outcomes must be a focus of all Crown land initiatives, not limited to those under the 'Working with Aboriginal communities' priority area.

Recommendation 2: Aboriginal Land Rights must be seen as a public outcome and a way to deliver on the other key priorities in the plan to provide broader community benefits, including jobs growth, sustainable economic progress, stronger community connections and climate change resilience.

Recommendation 3: The NSW government must recognise and support the important contributions the Land Rights Network is making, and has the potential to further make, to the NSW community, economy and environment.

Recommendation 4: The plan should recognise the Aboriginal Land Agreement (ALA) mechanism and a redesigned Land Negotiation Program as key to returning land to Aboriginal people for social, cultural and economic outcomes, and delivering related initiatives.

Recommendation 5: Additional support should be provided beyond land transactions, to assist Aboriginal Land Councils to activate and manage land.

Recommendation 6: Co-management of lands is an important opportunity for shared outcomes. However, it must not be in lieu of the return of land to Aboriginal Land Councils even where continued public uses are seen to be needed.

Recommendation 7: Aboriginal Land Councils should be resourced to provide cultural and active landscape management of Crown and other public lands, including through cultural burning practices.

Recommendation 8: Best practice standards for co-management arrangements with LALCs should be developed for government and local councils, including principles for partnership/agreement making, shared information, resources and transparency.

Recommendation 9: The sales program for Crown land should revert to program of Aboriginal land transfers.

Recommendation 10: The intersection between land owned under the *Aboriginal Land Rights Act 1983* (NSW) (ALRA) and land subject to Aboriginal people's legal interest under Native Title could be articulated more clearly in the draft plan, and beneficial outcomes from both compensatory regimes should be promoted.

Recommendation 11: Any proposals relating to land lease communities for housing should be undertaken in partnership with Aboriginal Land Councils.

Recommendation 12: NSWALC seeks further engagement on a number of proposed initiatives before they are finalised to ensure they do not undermine Aboriginal land rights, including proposals to:

- Increase security of tenure for leaseholders
- Create a framework to assess and prioritise proposals
- Prioritise the use of Crown land for green and open space in urban areas
- Reduce red tape for government entities managing Crown land

Recommendation 13: Any proposals to reduce ‘red tape’ for entities managing Crown Land, need to be balanced with Aboriginal Land Rights, and culture and heritage rights of Aboriginal people as the original and ongoing custodians of the land.

Recommendation 14: The quadruple bottom line approach to Crown Land management should ensure Land Rights is supported as a key outcome. Additionally, the plan could be strengthened by including specific and measurable KPIs to support the delivery of land rights.

Recommendation 15: The use of Crown Lands for specific projects, such as the construction of roads, should have specific Aboriginal procurement and employment targets and these opportunities should be communicated to NSWALC and LALCs.

Recommendation 16: Crown lands data should be made freely available to NSWALC and LALCs.

Recommendation 17: In line with Closing the Gap commitments, and the United Nations *Declaration on the Rights of Indigenous Peoples*, the NSW government must work with Aboriginal Land Council on the basis of partnership, shared decision making and free, prior and informed consent.

Recommendation 18: Government should cease the practice of transferring land to LALCs with ‘limited title’, and appropriately resource surveying lands to be transferred to LALCs.

Introduction

The NSW Aboriginal Land Council (**NSWALC**) is the peak body representing Aboriginal peoples across NSW and with over 23,000 members, is the largest Aboriginal member-based organisation in Australia.

NSWALC is focused on building a better future for Aboriginal people by unlocking the full potential of our three greatest assets: the land we have reacquired, our culture and heritage, and our people. We want to change the narrative from welfare to self-sufficiency by securing our fair share of the growing NSW economy.

The Land Rights Network is the key vehicle to deliver social, cultural and economic outcomes to Aboriginal communities and is the framework for achieving self-determination in NSW.

The NSW Aboriginal Land Rights Act

The *Aboriginal Land Rights Act 1983* (NSW) (**ALRA**) was enacted by the NSW Parliament to facilitate the return of land in NSW to Aboriginal peoples to go some way to redress the injustices of dispossession. In the Second Reading Speech for the ALRA, the then Minister for Aboriginal Affairs, stated:

‘...that land rights for Aboriginal people is the most fundamental initiative to be taken for the regeneration of Aboriginal culture and dignity, and at the same time it lays the basis for a self-reliant and more secure economic future for our continent’s Aboriginal custodians...’

The objects and purposes of the ALRA, and the Aboriginal land claim and Aboriginal land agreement (ALA) processes, are also significant in light of Australia's obligations under the United Nations *Declaration on the Rights of Indigenous Peoples* and the recently adopted National Agreement on Closing the Gap.

Draft State Strategic Plan

NSWALC welcomes the following elements of the draft plan:

- The recognition of Aboriginal Land Rights as key to achieving the social, cultural, economic and environmental objectives of the *Crown Land Management Act 2016*, and
- The inclusion of a key priority to work with Aboriginal communities to realise the potential of Aboriginal Land Rights.

We also support the government's commitment to seeking new ways of working with Aboriginal people that recognise Aboriginal people's legal rights, wisdom and contribution, including by:

- Making Aboriginal land transfers a priority and seeing them as an opportunity
- Contributing to the ongoing recognition of Native Title rights
- Exploring co-management of land to generate mutual benefits
- Collaborating with Aboriginal groups in each place to improve outcomes

However, while these proposals are supported, there are opportunities to further improve the draft plan to ensure stronger action and alignment by government to deliver social, cultural and economic outcomes from Aboriginal Land Rights. In particular, working to achieve Aboriginal Land Rights outcomes must be a focus of all Crown land initiatives; not just those under the 'Working with Aboriginal communities' priority area.

Furthermore, while the draft plan focuses on land claims as the key mechanism for returning land to Aboriginal people, the Government must work with NSWALC and LALCs to deliver social, cultural and economic outcomes through the Aboriginal Land Agreement mechanism and a redesigned Land Negotiation Program.

Aboriginal land rights are a public good

Aboriginal Land Rights must be seen as a public outcome itself and a way to deliver broader public benefits, including jobs growth, sustainable economic progress, stronger community connections and climate change resilience, to name a few. The draft plan could be improved by recognising that supporting Aboriginal land justice will help to deliver on the four priority areas. For example, returning Crown land to Aboriginal peoples:

- supports economic development and tourism initiatives, stimulating local and regional economies and provide jobs and training opportunities [Priority 1]
- enables residential housing developments, strengthening communities [Priority 3]
- addresses food supply and food security issues in remote towns [Priority 3 and Priority 2]
- contributes to sustainable land management and improved quality of life [Priority 2]
- provides environmental protection and climate change resilience [Priority 2]

Government should partner with Aboriginal Land Councils to achieve outcomes across all Crown land initiatives in the draft plan. It is also important to acknowledge that returning Crown land to Aboriginal

peoples does not necessarily restrict public access to or use of land. Where certain lands may be needed for joint access and/or multiple use, governments can work with Aboriginal Land Councils to ensure suitable arrangements can be accommodated. For example, lands have been returned to LALCs with public access easements.

It is positive to note the inclusion in the draft Plan of the Worimi Local Aboriginal Land Council Sand Dune Adventures business; illustrating successful tourism initiatives that Aboriginal people are operating as a result of land claims.

Use of Crown land to expand access to affordable housing

One of the outcomes under Priority two is to use Crown land to expand access to affordable housing. This point is further expanded upon on page 43 of the draft plan, which outlines how land lease programs could help offset the high cost of housing. It is important for the NSW Department of Planning, Industry and Environment (**DPIE**) to consider these initiatives in the context of delivering land rights outcomes.

The draft plan states that realising the potential of land leases, will require proactive partnerships with industry, other NSW government departments and local government councils. However, the draft plan neglects to include Aboriginal Land Councils as an important stakeholder and potential partner. Instead, the draft plan refers to Aboriginal land claims as if they were a hindrance to development. This approach is outdated, unnecessarily adversarial, and fails to recognise the potential housing benefits that could be achieved through the return of Crown land to Aboriginal peoples. There are many examples of LALCs that have developed or are looking to develop their lands for residential housing for the broader community as well as the Aboriginal community.

In addition, NSWALC has established an Aboriginal housing capability, NSWALC Housing Ltd (NHL), to deliver housing. NHL has gained registration at Tier 2 level within the National Regulatory System for Community Housing and is pursuing a growth strategy that can be accelerated through accessing Crown land. The establishment of NHL provides the government with an additional strong partner to work with to deliver housing outcomes for Aboriginal peoples and the wider community.

Co-management arrangements

The draft plan should further promote and better support Aboriginal Land Councils in Crown land management. Currently opportunities for co-management arrangements vary considerably across the state depending upon different government staff and local governments' willingness to engage with Local Aboriginal Land Councils. The draft plan refers to developing material on local councils' obligations under Native Title. A similar suite of resources should be created for co-management to facilitate a more consistent and equitable approach. This material should include best practice standards that all government and local governments should be required to uphold in relation to co-management and the protection of culture and heritage. The standards should include key principles for partnership/agreement making, including shared information, resources, transparency. We would be happy to develop such a guide in partnership with DPIE.

In addition, it is important that co-management is not seen as a replacement to land claims and the ALA process. Co-management arrangements should exist alongside land claims and be part of the suite of mechanisms offered to Local Aboriginal Land Councils under the redesigned Land Negotiation Program (such as, capital funding, training, employment and business opportunities). Where co-management arrangements are appropriate, Local Aboriginal Land Councils should be adequately resourced so that they can provide cultural and active management of landscapes, including through cultural burning practices.

Claimable Crown Land and divestment of Crown Land

A review of annual reports between 2014-2015 and 2018-2019 found there has been at least 145 sales of Crown land totalling \$23.98 million in value. In addition, 330 properties were acquired from Crown Lands by other agencies for government purposes for a total value of \$29.1 million. The sales and transfers highlight how Crown Lands divestment has reduced the amount of claimable land in the Crown Land estate. Where sales are concerned, such unused and unneeded Crown lands are the lands envisaged by the Parliament, in enacting the ALRA, that would be available for transfer to Aboriginal Land Councils.

If the Government is serious about “making Aboriginal land transfers a priority and seeing them as an opportunity”, as a start the sales program for Crown land should revert to program of Aboriginal land transfers. The revenue generated by the sales program, while insignificant from a whole of government budgetary perspective, is very significant from an Aboriginal Land Council perspective. At a minimum, timely notification of land sales must be provided to Aboriginal Land Councils (including NSWALC). Email addresses for LALCs are publicly available on NSWALC’s website.

Supporting land rights

NSWALC seeks further engagement with DPIE on a number of proposed initiatives outlined in the plan that may undermine Aboriginal land rights including proposals to:

- Increase security of tenure for leaseholders
- Create a framework to assess and prioritise proposals
- Prioritise the use of Crown land for green and open space in urban areas
- Reduce red tape for government entities managing Crown land

Increase security of tenure for leaseholders

The proposal to increase security of tenure for leaseholders will negatively impact on Aboriginal interests, by further limiting lands available for claim and transfer, as well as alienating Aboriginal peoples from lands of cultural significance. In seeking to provide more certainty for leaseholders, it is important that Aboriginal peoples’ unique relationship with the land is recognised. When lease agreements come up for renewal, Aboriginal peoples should be given an opportunity to take up the lease.

Prioritising the use of Crown land for green and open space in urban areas

The prioritisation of Crown land for green and open space in urban areas will likely have unintended consequences for Aboriginal land claims. It is important that returning land to Aboriginal communities is seen as a priority even where continuing public use and access is seen as needed. Returning land to Aboriginal Land Councils can accommodate a range of uses, including environmental and social outcomes. Government should seek to work with Aboriginal Land Councils to maximise quadruple bottom line outcomes including the delivery of Aboriginal Land Rights.

Reduce red tape for government entities managing Crown land

Although NSWALC appreciates the desire to minimise red tape, we seek to ensure that this is balanced with Aboriginal peoples’ rights as the original custodians of the land. It is important that any reforms do not reduce Aboriginal peoples’ land rights, or our rights to protect Aboriginal cultural heritage and manage Country.

Assessment framework

We note that the draft plan mentions a quadruple bottom line approach to Crown Land management (environmental, social, economic, and cultural) and the development of an assessment framework based on this (page 28). This approach should ensure land rights is supported as a key outcome. Additionally, the plan could be strengthened by including specific and measurable KPIs to support the delivery of land rights.

Land activation

There are significant opportunities for government to support LALCs to activate and manage lands. The draft plan could include further initiatives related to this.

Additionally,

- Government should cease the practice of transferring land to LALCs with ‘limited title’, and appropriately resource surveying lands to be transferred to LALCs,
- Crown Lands data should be made freely available to NSWALC and LALCs.
- the use of Crown Lands for specific projects, such as the construction of roads, should have specific Aboriginal procurement and employment targets and these opportunities should be communicated to Aboriginal Land Councils.
- When the government makes decisions to vest Crown land to government agencies or not-for-profits/NGOs to provide services it is important to also realise that many LALCs are capable of providing these services. For example, a consortium of LALCs from the West and Far West have partnered with an NGO to deliver a government disability program – Ability Links.¹

Aboriginal Land Rights Act and Native Title

The intersection between land owned under the ALRA and land subject to Aboriginal people’s legal interest under Native Title could be articulated more clearly in the draft plan. While the draft plan summarises some of the key differences between the two pieces of legislations, it does not explain that Native title and land rights can exist on the same land. It would be helpful if the draft plan outlined and promoted opportunities and beneficial outcomes from both land rights and native title.

Consultation process

While COVID-19 has created a challenging environment for undertaking consultations, the recent process could be improved. We thank DPIE for hosting a session for LALCs, but provide some brief feedback on opportunities to improve. Webinar sessions limit attendance, particularly where there is limited access to technology. We note sessions were advertised as ‘information sessions’ rather than feedback sessions, which may have further limited attendance. In addition, 7-10 minutes to type in responses is not conducive to obtaining in-depth feedback. Some participants felt uncomfortable typing in this online format and would have preferred the opportunity to ask questions verbally. We note there was an [online submission form](#), however this contained limited questions and a narrow range of options to responding. NSWALC recommends that the DPIE consider how they could improve consultation and engagement mechanisms that align with the principles of free, prior and informed

¹ Western Alliance Ability Links are made up of 3 Aboriginal organisations Deniliquin, Broken Hill and Orange Local Aboriginal Land Councils and Intereach - [https://www.abilitylinksnsw.org.au/link/providers/aboriginal#:~:text=Ability%20Links%20NSW%20\(ALNSW\)%20is,the%20centre%20of%20decision%20making.](https://www.abilitylinksnsw.org.au/link/providers/aboriginal#:~:text=Ability%20Links%20NSW%20(ALNSW)%20is,the%20centre%20of%20decision%20making.)

consent as outlined in the United Nations Declaration on the Rights of Indigenous Peoples, as well as supporting Closing the Gap commitments to partnership.

We trust that the issues raised in this submission will be addressed and we look forward to working in partnership with government to deliver land rights.

Thank you for the opportunity to provide this submission. We would be happy to provide further information. Please contact NSWALC on 02 9689 4444 or policy@alc.org.au.