POLICY EVIDENCE SUMMARY October 2024

Improving partnerships with First Nations Australians for better urban policy and planning

Based on AHURI Final Report No.430: Voicing First Nations Country, culture and community in urban policy

What this research is about

This research examines the relationship of First Nations peoples in Australia to urban policy, and is designed to centre First Nations sovereignty, authority, knowledge, governance and agency as the starting point toward a more responsible relationship.

The context of this research

First Nations peoples—particularly Traditional Custodians whose Country is now a built-up urban area—see it as important to engage in urban policy and decision-making about development, planning, design and infrastructure provision. Even though their experience of urban policy processes is generally poor, Traditional Custodians remain engaged because their connections to and responsibility for Country continues, and urban policy is a mechanism for helping to fulfil obligations to care for Country.

All urban areas in Australia are Country, the unceded lands, waters and skies of First Nations peoples. First Nations perspectives are therefore of foundational importance to urban policy.

The key findings

Urban places are sites of dispossession but also of ongoing cultural connection

Urban places—from large metropolitan areas to small towns in regional areas—are sites of intensive dispossession at the same time as being dense networks of community and ongoing cultural practice, responsibility and connection. Access to Country is of critical importance for connection and cultural continuity, yet is often made impossible due to the density of population settlement, private property and the miasma of legislation, policy and regulation imposed on Country. Recognition of this foundational importance of First Nations peoples' ongoing connections for Country is largely missing in urban policy as policy is constructed within and exercised from a settler standpoint.

First Nations people are not stakeholders, but rights holders and sovereign authorities. Yet urban policy practices still assume a stakeholder engagement approach, often relying on consultation and abstract recognition statements. The voices, rights and knowledges of First Nations people about Country are often marginalised, treated in a tokenistic way or disrespectfully, and included in ways that cause division or overlooked entirely.

Urbanisation is a geography of property relationships

Urban areas, particularly large metropolitan conurbations, are structurally difficult geographies for achieving recognition of native title or other land rights restitution due to the intensity of extinguishment by private freehold tenures and public works. Urbanisation is assumed by settler society to fatally disrupt First Nations cultural authenticity. This trope endures within policy thinking today, where First Nations interests are often narrowly defined, linked only to areas such as cultural heritage sensitivity or representation in place-making design and landscape features.

There is importance in thinking beyond the limiting confines of native title, especially in relation to understanding ongoing First Nations obligations and rights to lands and waters, which—regardless of whether a formal land claim exists or has succeeded—does not change the underlying connection and authority of First Nations people for their Country.

First Nations relationships to place are fundamentally different from Western world view

First Nations and Indigenous thinkers conceptualise place and relationships to place in ways that centre relational obligations to Country, ancestors and kin. These responsibilities and relationships exist back to ancestors from the past and toward future generations, this has been called the *'seven generations model of planning'.*

> 'The vital obligation of caring for Country and ancestral connection cannot be simply incorporated or included as they fundamentally sit at odds with the 'Western world view''.

By contrast, the worldview in which urban policy is steeped sees land as an asset to be developed for future wealth creation. Values of connectedness, care for Country and obligation to ancestors and future kin sit in stark contradiction to this paradigm. The vital obligation of caring for Country and ancestral connection cannot be simply incorporated or included as they fundamentally sit at odds with the 'Western world view'.

The power in urban policy, planning and development decision-making lies with governments and developers—not with First Nations communities or Traditional Custodians. Tensions arise from the opposing priorities of caring for Country derived from the sovereign obligations of Traditional Custodians and the pressures of urban development.

Forms of recognition in urban policy are often fractured, complex and shallow

A diverse range of **recognition frameworks** or **'contact zones'** operate across different jurisdictions in Australia. Virtually all of these recognition frameworks require that First Nations people organise themselves into bodies that are recognisable by settler governance, such as Trusts and Corporations. This results in a situation where *'Western democratic or legislative tools'* dictate the forms of organisation and governance to First Nations and often don't allow for *'divergent opinions to sit nicely together, or even in tension with one another'.* Significant tension can result where these *'legislative tools'* have been developed without sharp recognition of the important difference between Traditional Custodians, who can speak for Country, and other First Nations organisations and communities.

Forms of recognition: Victoria

In Victoria, a number of legislative mechanisms are available to First Nations peoples to gain recognition through cultural heritage legislation, through native title or under the *Traditional Owner Settlement Act 2010.* Victoria is also negotiating a Treaty with First Nations peoples under the *Treaty Negotiation Framework*.

Traditional Custodians of lands and waters in Victoria in urban areas also must engage with a complex range of legislation and policy impacting their Country. In the past this has often fostered tension within communities by not recognising the importance of ensuring that the people who speak for and control decisions about cultural heritage and Country are the Traditional Custodians. A significant program of reform in Victoria was advanced through the 'right people for right Country' approach which led to the *Aboriginal Heritage Act 2006.* This established a system for recognising Registered Aboriginal Parties (RAPs) who are required to demonstrate their Traditional Custodian connection and obligation.

Wurundjeri Woi-Wurrung experiences and expectations of urban policy (Victoria)

Wurundjeri people continue to be engaged in urban policy and planning processes through the Wurundjeri Woi-Wurrung Cultural Heritage Aboriginal Corporation. The Corporation is a way for the Wurundjeri Woi-Wurrung community to engage with other stakeholders such as government agencies. With very limited resources, Wurundjeri Corporation experienced a very ad hoc and reactive approach as local councils and other land development stakeholders approached the Corporation for input on everything from rezoning decisions to tree removal. This prompted the Corporation to establish a specific Subcommittee to manage decision-making about urban planning and policy that impacts Wurundjeri Woi-Wurrung Country and values.

One aspect the Subcommittee provides is a mechanism to connect community members together on matters for input and decision and to share knowledge. This also builds capacity in understanding urban policy and planning, and shares knowledge across generations.

Wurundjeri Corporation and the members of the Subcommittee experience many barriers to engagement and significant frustration including funding, resourcing and respect. Of significant concern are the timeframes when government departments engage with Wurundjeri Corporation. There is great frustration at the persistent way that urban practitioners come to Wurundjeri too late, with too much of the agenda already decided.

Wurundjeri people spoke about the prospect that the current Treaty negotiations in Victoria may catalyse some new possibilities and begin to shift power, potentially enabling Wurundjeri Corporation to have more control over processes.

Forms of recognition: NSW

In NSW, a similarly complex range of legislative mechanisms construct the 'contact zone'. Of particular importance is the impact of the Local Aboriginal Land Council system (LALCs) established under the *NSW Aboriginal Land Rights Act 1983* (ALRA) as a system of organisations without mandated requirement to include Traditional Custodians or governance approaches. This means there is not necessarily an institutional relationship between a LALC and the Traditional Custodians of the LALC area—with consequences for complexities and potential conflict about who can speak for Country in particular places.

There are also many First Nations people, including Traditional Custodians, who are not involved or represented by any organisation. These people are thus profoundly disenfranchised from any process, their interests are quite literally 'invisible' and they are unable to participate in any engagement mechanism because the settler-state has organised the contact zone around a recognition framework of organisations which do not necessarily take account of the Traditional Custodians' connections to and responsibilities for Country.

There is no Treaty negotiation underway in NSW and no legislative framework for implementing the principle of self-determination. The OCHRE Plan (opportunity, choice, healing, responsibility and empowerment) in NSW provides the overarching policy framework for Aboriginal Affairs, aiming *'to support strong Aboriginal communities in which Aboriginal people actively influence and participate fully in social, economic and cultural life'.*

While some elements of the OCHRE Plan are consistent with the principle of self-determination and have crept into other policy areas, there has been little attempt to position the principle of self-determination across the breadth of NSW Government legislative and policy actions.

Dharug experiences and expectations of urban policy (NSW)

Dharug community members engage in urban policy because of the vital importance of helping to heal Dharug Ngurra (Country) and creating ways for Dharug people to access Country, seen as fundamental to custodial role of looking after Country. Dharug community members have had meaningful influence on development decision outcomes which has helped provide a strong 'visibility of Dharug presence and story in the landscape'.

Taking on such work is important, but this can often lead to burn out. At the same time, Dharug Custodians may not feel fully equipped with the appropriate skills and resources they feel they need to do these multiple roles. This can result in significant cultural, social, economic and financial harms that further burden interpersonal relationships and wellbeing.

The timescale in which the development industry and policy makers work was perceived as inappropriate for community engagement. Rushed government processes sit at odds with the experience of community members who need time to understand the impacts on Dharug Ngurra, the proposed project, as well as find each other, come together and assess why community needs to be involved in the project and on what basis.

> 'Engagement practices within urban policy and development industry very often fail to realise or recognise cultural protocols. This most frequently manifests as having the wrong people speaking for Country or asking one First Nations person to speak on behalf of entire communities or other Nations.'

A common experience is that some understanding of the importance of engagement with Traditional Custodians has percolated the industry, but this occurs as an afterthought. Engagement practices within urban policy and development industry very often fail to realise or recognise cultural protocols. This most frequently manifests as having the wrong people speaking for Country or asking one First Nations person to speak on behalf of entire communities or other Nations. The NSW ALRA was identified as having produced and is sustaining many of those challenges and tensions.

Forms of recognition: Commonwealth

The Native Title Act 1993 (Cth) (NTA) provides recognition in Australian law that First Nations people have a system of law and custom relating to land that existed prior to the colonisation of Australia by the British. Native title rights and interests are inalienable—meaning that they cannot be transferred to new ownership—and typically include the right to access land, hunt, gather, take resources for bush medicine, and other traditional uses. While the law recognises that native title can exist, the requirements for proof are significant and the NTA extinguishes native title where freehold title has been conferred. This means that land over which native title rights and interests can be claimed under the NTA is limited. In urban areas the extent of freehold land title is most intense. This has made native title rights and interests very difficult for First Nations peoples to have recognised in many urban areas of Australia.

International instruments

There are two international human rights instruments that focus explicitly on the rights and interests of Indigenous peoples. These are the:

- International Labour Organization (ILO) *Convention No. 169 Indigenous and Tribal Peoples Convention* (ILO 1989)
- United Nations Declaration of the Rights of Indigenous Peoples (UNDRIP) (United Nations 2007).

The capacity of these two instruments to elevate First Nations human rights is curtailed as Australia is not a signatory to the ILO Convention No. 169; and UNDRIP 'creates no binding legal obligations in domestic legal systems'. Instead, UNDRIP is a declaration that sets out the minimum standards to which nation-states should adhere and be measured against.

In becoming a signatory to UNDRIP, Australian governments (federal, state/territory and local) can no longer make decisions that affect First Nations peoples' rights and interests by imposition. Rather, they have a duty to consult on the basis of free, prior, and informed consent, especially when First Nations peoples' rights and interests will be affected.

Traditional Custodians have little actual power to veto decisions that impact their Country

Even where stronger recognition frameworks for Traditional Custodians exist, considerable tensions and challenges emerge. Practitioners in Victoria spoke about the statutory role that RAPs have, and yet have little actual power to veto particular developments or decisions that impact their Country. It is therefore widely understood among RAPs that the cultural heritage protection framework is actually 'just a license to damage cultural heritage, and Traditional Owners are often forced into causing damage to property to enable projects and pieces of work.'

> '...the Native Title Act does not enable native title holders to prevent any further loss or extinguishment of their hard-won native title rights and interests.'

Similarly, even where recognition of native title rights and interests might occur, the Native Title Act does not enable native title holders to prevent any further loss or extinguishment of their hard-won native title rights and interests.

Pressure on First Nations people participating due to lack of resources and unrealistic expectations

The expansion of government and corporate interest in engaging with Traditional Custodians has intensified pressure on Custodians. Often Traditional Custodian groups are small numbers of people, sometimes disparately located from each other, and universally poorly resourced. Where custodians have no recognised or established organisational body, everything is being done squeezed in between other commitments and everyday life. This establishes a significant resource differential: Government and private organisations have all the capacities derived from large institutions, budget lines, salaried staff, equipment and infrastructure, whereas Traditional Custodians, often without formal organisations, frequently have none of these things.

Related to these pressures are the often unrealistic expectations imposed upon First Nations communities generally. For Traditional Custodians, this is experienced as being 'expected to be the experts on everything'. Practitioners who identify as First Nations are often assumed to have a sole interest in an Indigenous-identified role and focus. At the same time, the experience of both First Nations practitioners and Traditional Custodians is a lack of understanding and respect for cultural protocols particularly concerning who can speak for Country. This often imposes particular burdens on First Nations urban practitioners working within settler organisations attempting to create change. Such activity is exhausting work, producing a heavy cultural load.

What this research means for policy makers

What is needed

Taking First Nations authority and cultural continuity obligations seriously requires:

- resourcing in terms of access to Country
- having power and control over decision-making
- modes of governance that are respectfully aligned with First Nations approaches
- timeframes that respect intergenerational obligations and cultural loads.

Shifts in these directions are to the benefit of everyone in Australian society.

> 'A deeper exploration of a system geared towards reciprocity and two-way power-sharing with First Nations is required.'

This signals the need to shift from a culture of consultation and engagement in urban policy and planning toward genuine partnership and power-sharing. A deeper exploration of a system geared towards reciprocity and two-way power-sharing with First Nations is required. Consideration should be given to co-governance models such as co-ministers and co-mayors, which have been successfully used in other contexts.

Start meaningful genuine relationship building early

Practices being advocated by First Nations people focus on starting early, long before a 'project' or specific process requires engagement. Trust must be built over time, unlinked to a particular agenda, output or key deliverable. Such practices will inevitably sit in tension—sometimes in direct conflict—with the pressures, timelines and expectations of urban policy and planning worlds.

Dedicated resource structures for First Nations—and especially for Traditional Custodians—that are secure, ongoing and transcend piecemeal project-by-project funding are also essential.

There are several practical areas for immediate attention:

- building stronger, more intentional governance around relationships that can survive the churn of staff movements and departmental restructures will help sustain relationships and ameliorate the experience of constantly needing to deal with someone new
- coordinating with other agencies and institutions on timeframes, projects and budgets will help lift the burden of policy engagement from Traditional Custodians and use existing institutional resources to build better links
- ensuring that the input provided by Traditional Custodians is actually implemented will begin to help relieve frustration and marginalisation.

Each of these areas is the responsibility of urban policy and planning professions and institutions.

Protecting Indigenous Cultural and Intellectual Property rights

First Nations peoples' knowledges and cultural practices are often seen as important sources of knowledge (including towards solving problems colonialism has created) which can invite more extractive and harmful practices. First Nations peoples have the right to free, prior and informed consent about how their Indigenous Cultural and Intellectual Property (ICIP) and knowledges can be used. Providing free, prior and informed consent is not a one-off event but an ongoing process of renewal through ongoing and sustained relationships. Understanding this is an important responsibility of non-Indigenous practitioners and industry.

Non-Indigenous policy practitioners and institutions must take responsibility

There is readiness among some non-Indigenous urban policy and planning practitioners to work in more meaningful and genuine relationships with First Nations people and Traditional Custodians.

First Nations people expect policy professionals and institutions to take greater responsibility for obligations to care for Country and attend to intergenerational justice and cultural continuity. An essential expectation is honouring that there are much wider philosophies and intellectual worldviews that surround First Nations knowledges and ways of being, knowing and doing. In this sense, First Nations communities, and Traditional Custodians in particular, can be acknowledged and respected as the first planners. This will require actual power-sharing and a commitment to intergenerational thinking.

> 'It is the responsibility of non-Indigenous professionals within industry and government related to urban policy to invest in their own education and approach learning with curiosity.'

It is the responsibility of non-Indigenous professionals within industry and government related to urban policy to invest in their own education and approach learning with curiosity. A core principle and practice of showing respect is showing up to relationship building and engagement with a level of competence, and not burdening First Nations people with the task of educating others.

A major shift recommended for further building cultural capacity within non-Indigenous urban policy and planning circles is prioritising **walking Country with Traditional Custodians**. Currently, most policies are informed by desktop research and technical studies reliant on Western knowledge and science. A spiritual and emotional connection created while walking Country, and the accountability this practice develops in partnership with Traditional Custodians, brings the opportunity to create more informed outcomes that prioritise Country, community and culture.

Planning as an avenue for cultural healing and repair

The colonial system has been used to subjugate First Nations peoples from the time of contact and urban policy continues this legacy today. It is now time to actively consider how urban policy and planning can be used as a tool for healing and repair. This requires moving beyond a role conceived as a neutral translator. Engagement can be used to create new opportunities—but it begins with honest discussion about whether the process will lead to actual sharing of power.

Practitioners in urban policy, planning and development processes have a responsibility to attend to the material shifts required toward genuine partnership and power-sharing, and concomitant transformations in the distribution of resources and actual political authority toward First Nations self-determination.

Methodology

This research analysed policy texts from international, national and Victoria and NSW; held three yarning circles with First Nations urban practitioners based in NSW and Victoria; held yarning circles with Dharug custodians (NSW) and with Wurundjeri custodians (Victoria) about urban policy and planning impacts on their respective Country; and held yarning circles with non-Indigenous urban practitioners. Yarning Circles are an Indigenous methodology for respectful knowledge-sharing; they create a culturally safe space for sharing knowledge and accommodating storytelling.

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