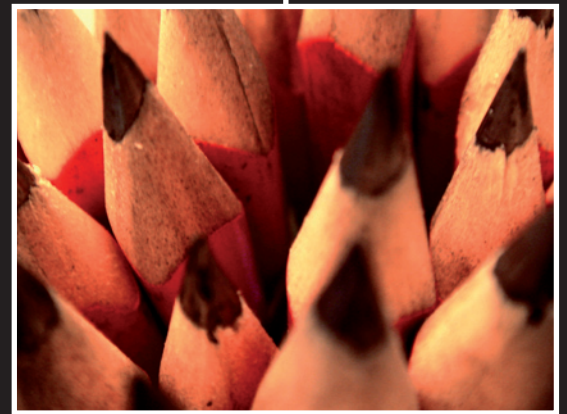


Preparing a Community, Land and Business Plan

GUIDE FOR LOCAL ABORIGINAL LAND COUNCILS



NEW SOUTH WALES
ABORIGINAL LAND COUNCIL

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1.1 Introduction

The preparation and implementation of a community, land and business plan is mandatory under Division 6 of the amended NSW Aboriginal Land Rights Act (1983) (“ALRA”). Failure by the Land Council to approve a community, land and business plan, or failure by the Land Council to comply with a community, land and business plan, is considered a substantial breach of the requirements of the ALRA and can result in Administration.

The purpose of the community, land and business plan (“the plan”) is to describe the aims of the Land Council and to develop strategies by which these can be achieved. It is an essential planning tool as it identifies key strategies and the reasons behind them. It takes into account the ‘bigger picture’ – why the Land Council exists and what the members’ are working towards.

The plan will give the Land Council board and staff a clear understanding of members’ expectations and set clear benchmarks to be met over the period of the plan. It is essential the plan is realistic and reflects the wishes of the community.

The plan is also a key document that can support the Land Council’s applications for funding from Government agencies or through commercial arrangements.

The purpose of this document is to give guidance to the Land Council on developing a plan. This document provides a format to assist the Land Council prepare a plan. This document should assist the Land Council understand its obligations and responsibilities in relation to the legislative requirements under the 2006 amendments to the ALRA.

In preparing this document NSWALC is not seeking to restrict the information the Land Council can include in the plan. The order of the document, the headings used and the information to be included should vary depending on the size and nature of each Land Council. However, much of the essential information provided in this document should be provided in each Land Council plan.

Developing a plan is a large task and the Land Council may require assistance. NSWALC looks forward to working with the Land Council to help them meet this challenge.

1.2 Background

Since 2005 NSWALC has worked towards developing a format to help the Land Council create a planning tool to allow members a structured opportunity to set the direction of their Land Council. As a result the concept of creating a ‘Community Business Plan’ was developed in an effort to ensure income generating land dealings were consistent with the overall aims and strategies for the Land Council, as determined by its members.

The ‘Community Business Plan’ was not mandatory under the ALRA. However, NSWALC did request a ‘Community Business Plan’ from any Land Council wishing to deal with land under ss38D, 40B and 40D.

Under the 2006 amendments to the ALRA, it is mandatory for all Land Councils to prepare and implement a community, land and business plan, unless the Land Council has been granted an exemption from NSWALC.

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NSWALC may consider the Land Council exempt from preparing a plan if it is satisfied that, having regard to the limited operations of the Land Council, compliance is not appropriate.

The community, land and business plan differs in its expectations from the 'Community Business Plan'. The plan must now develop objectives and strategies around a number of different activities and ventures proposed by the Land Council, as specified in the ALRA.

1.3 Statutory Framework

The planning process must be undertaken within the regulatory framework established by the ALRA. For ease of reference, provided below are some provisions of the ALRA stating the role of the Land Council.

Section 51 of the ALRA states the objects of all Land Councils are:

*'...to improve, protect and foster the best interests of all
Aboriginal persons within the Council's area and other persons
who are members of the Council.'*

Section 52 of the ALRA sets out the specific functions of the Land Council as:

- (1) A Local Aboriginal Land Council has the functions conferred or imposed on it by or under this or any other Act.
- (2) Land acquisition
A Local Aboriginal Land Council has the following functions in relation to the acquisition of land and related matters:
 - a) in accordance with this Act and the regulations, to acquire land and to use, manage, control, hold or dispose of, or otherwise deal with, land vested in or acquired by the Council;
 - b) functions relating to the acquisition of land and any other functions conferred on it by or under Part 4A of the NPW Act;
 - c) to submit proposals for the listing of land in Schedule 14 to the NPW Act of lands of cultural significance to Aboriginal persons that are reserved under the NPW Act;
 - d) to negotiate the lease by the Council or by the Council and one or more other Aboriginal Land Councils of lands to which section 36A applies to the Minister administering the NPW Act;
 - e) when exercising its functions with respect to land that is the subject of a lease, or proposed lease, under Part 4A of the NPW Act, to act in the best interests of the Aboriginal owners of the land concerned;
 - f) to make written applications to the New South Wales Aboriginal Land Council for the acquisition by the New South Wales Aboriginal Land Council of land on behalf of, or to be vested in, the Local Aboriginal Land Council.
 - g) to make claims to Crown lands.
- (3) Land use and management
A Local Aboriginal Land Council has the following functions in relation to land use and management:
 - a) to consider applications to prospect or mine for minerals on the Council's land and to make recommendations to the New South Wales Aboriginal Land Council in respect of such applications;

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- b) to protect the interests of Aboriginal persons in its area in relation to the acquisition, management, use, control and disposal of land.
- (4) Aboriginal Culture
A Local Aboriginal Land Council has the following functions in relation to Aboriginal culture and heritage:
 - a) to take action to protect the culture and heritage of Aboriginal persons in the Council's area, subject to any other law;
 - b) to promote awareness in the community of the culture and heritage of Aboriginal persons in the Council's area.
- (5) Financial stewardship
A Local Aboriginal Land Council has the following functions in relation to financial management and business planning:
 - a) to prepare and implement, in accordance with this Act, a community, land and business plan,
 - b) to manage, in accordance with this Act and consistently with its community land and business plan, the investment of any assets of the Council;
 - c) to facilitate business enterprises, in accordance with this Act and the regulations and consistently with its community, land and business plan.
- (6) Other functions prescribed by regulations
A Local Aboriginal Land Council has any other functions prescribed by the Regulations.

Section 52(A) of the ALRA sets out the functions of the Land Council in relation to Community Benefits Schemes as:

- (1) A Local Aboriginal Land Council may, in accordance with an approval of the New South Wales Aboriginal Land Council:
 - a) directly or indirectly, provide community benefits under community benefits schemes, and
 - b) without limiting paragraph (a), provide, acquire, construct, upgrade or extend residential accommodation for Aboriginal persons in its area.
- (2) The New South Wales Aboriginal Land Council must not approve a community benefits scheme of a Local Aboriginal Land Council unless it is satisfied that:
 - a) the proposed scheme complies with this Act and the regulations; and
 - b) the proposed scheme is consistent with any applicable policy of the New South Wales Aboriginal Land Council ; and
 - c) the proposed scheme is consistent with the community, land and business plan of the Local Aboriginal Land Council ; and
 - d) the proposed scheme is fair and equitable and will be administered in a way that is responsible and transparent; and
 - e) the proposed scheme is not likely to prevent the Local Aboriginal Land Council from being able to meet its debts as and when they fall due; and
 - f) the need for the proposed benefits is not otherwise being adequately met.

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- (3) A Local Aboriginal Land Council must ensure that any community benefits scheme under which community benefits are provided by or on its behalf:
 - a) complies with this Act and the Regulations;
 - b) is consistent with any applicable policy of the New South Wales Aboriginal Land Council; and
 - c) is consistent with the community, land and business plan of the Local Aboriginal Land Council.
- (4) A Local Aboriginal Land Council may provide community benefits under a community benefits scheme to persons within the areas of other Local Aboriginal Land Councils and may provide community benefits in conjunction with one or more other Local Aboriginal Land Councils.

Section 52(B) of the ALRA sets out the functions of the Land Council in relation to Social Housing Schemes as:

- (1) This section applies to a community benefits scheme in relation to the acquisition and provision by or on behalf of a Local Aboriginal Land Council of residential accommodation for Aboriginal persons in its area and to the construction, upgrading and extension of any such accommodation (a social housing scheme).
- (2) The New South Wales Aboriginal Land Council must not approve a social housing scheme under section 52A unless:
 - a) it is satisfied that the income (including any subsidiaries and grants) from any existing social housing scheme provided by or on behalf of the Local Aboriginal Land Council or of the proposed scheme is or will be sufficient to meet all the expenses of the scheme concerned, including long term maintenance requirements; and
 - b) it has considered the likely impact of the proposed scheme on the overall financial situation of the Local Aboriginal Land Council.
- (3) A Local Aboriginal Land Council may provide a social housing scheme by using the services of another body or agency, or with the assistance of another body or agency, approved by the New South Wales Aboriginal Land Council either generally or in relation to a particular social housing scheme.
- (4) Section 40B(2) applies to a lease by a Local Aboriginal Land Council (whether or not for a period exceeding 3 years) if the lease is for the purposes of the provision or management of a social housing scheme.

Section 52(C) of the ALRA sets out the functions of the Land Council in relation to Trusts as:

- (1) A Local Aboriginal Land Council may, with the approval of the New South Wales Aboriginal Land Council, establish or participate in the establishment of, a trust for the purpose of providing a community benefits scheme.
- (2) The New South Wales Aboriginal Land Council must not give an approval for the purposes of this section unless it is of the opinion that the proposed action by the Local Aboriginal Land Council:
 - a) complies with the Act and the regulations;
 - b) is consistent with any applicable policy of the New South Wales Aboriginal Land Council; and
 - c) is consistent with the community, land and business plan of the Local Aboriginal Land Council; and

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- d) is not likely to prevent the Local Aboriginal Land Council from meeting its debts as and when they fall due.
- (3) Regulations may be made for or with respect to financial and reporting obligations for trusts established by Local Aboriginal Land Councils.

Section 52(D) of the ALRA sets out the functions of the Land Council in relation to the duty of the Land Council not to transfer land or other assets to Council members, board members, staff or consultants as:

- (1) A Local Aboriginal Land Council must ensure that no part of the income or property of the Council is transferred directly or by way of dividend or bonus or otherwise by way of profit to the members of the Council, Board members or any members of staff of or consultant to the Council.
- (2) Nothing in this section prevents:
 - a) the provision of a benefit in good faith to a Council member, Board member, member of staff or consultant in accordance with this Act;
 - b) the payment in good faith of remuneration to any such member, Board member, member of staff or consultant.

At each stage of the planning process, the members, board and staff must consider if the actions they are considering are within the Land Council's role under the ALRA. If not, the actions of the Land Council may be beyond the legal capacity of the Land Council.

One way to protect the Land Council from appearing to be undertaking activities that are outside of the legal capacity of the Land Council is to be clear in the intention of each item included in the plan.

If holding workshops as part of the planning process, running through these key provisions of the ALRA may assist members in understanding the goals and strategies that the Land Council can undertake.

1.4 Why Prepare a Community, Land & Business Plan?

Planning is a key part of the good management of an organisation. It establishes how the organisation will commit its resources, time and focus over the coming years.

The advantages of preparing a plan include the following:

1. It allows the Land Council members to agree on the goals of the Land Council and the strategies to achieve them.
2. It develops these goals and strategies within a framework that considers the functions and responsibilities of the Land Council within the constraints of the ALRA.
3. It encourages the Land Council to set goals and strategies that are realistic and achievable by taking into account the financial and physical resources available to the Land Council.
4. It provides an opportunity for members, staff and board of the Land Council to step back from the day-to-day operations to consider why the Land Council exists and what the members are working towards achieving.

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5. It provides the staff and board with a clear understanding of what is required of them in their respective roles and provides a framework under which members can assess their performance.
6. It communicates the direction of the Land Council and what the Land Council's contribution in terms of services and products will be. Interest will be generated from individual members, staff, board and stakeholders, as well as Government, non-Government and funding providers.

1.5 Challenges

While this document provides the framework for developing the plan, the success of the process will depend upon:

1. Commitment of staff, board and members from the developing stages through to implementing and measuring the plan's performance.
2. The process will take time to achieve the end result. Be aware of time constraints and set reasonable timelines for developing the plan to make sure you stay on track.
3. Getting the Land Council members to support the idea of the plan and to more importantly participate in the process may require encouragement. It is important for members to openly discuss and to consider the ideas of others to ensure everyone is actively working together.
4. Gaining a consensus on the plan from the members will be challenging, as each member will have their own views and expectations on what the Land Council should be working towards and how it may best achieve these outcomes. Active participation is the first step towards gaining an agreement from the members on the plan.

