



New South Wales Aboriginal Land Council

Policy on the Approval of LALC Community Benefits Schemes (Residential Accommodation)

TABLE OF CONTENTS

1	Introduction	4
1.2	What housing schemes does this policy apply to? Rental accommodation only	4
1.3	When does this policy commence?	5
1.4	What is in this policy?	5
2	Interpretation.....	5
2.1	Definitions	5
2.2	Interpreting this policy	6
3	Statutory framework for the provision of housing under approved social housing schemes	6
3.1	What is a social housing scheme under the ALRA?	6
3.2	When may a LALC provide rental accommodation under the ALRA?	7
3.3	When must NSWALC’s approval be obtained?	7
3.4	When can NSWALC approve a social housing scheme?	7
3.5	Can NSWALC impose conditions on an approval for a social housing scheme?.....	8
3.6	Can NSWALC revoke an approval for a social housing scheme?	8
3.7	What if NSWALC does not approve a scheme, or revokes an approval?	8
3.8	If NSWALC refuses to approve, or imposes conditions, what rights of review or appeal does the LALC have under the ALRA?	9
4	Seeking NSWALC’s approval under the ALRA and this policy	9
4.1	How can NSWALC’s approval be sought?	9
4.2	When must a LALC seek NSWALC’s approval of aCommunity Benefits Scheme for the provision of residential accommodation?	9
4.2.1	“Existing social housing schemes” must be approved before 1 January 2013.....	9
4.2.2	LALCs must seek approval by 31 st October 2015	10
4.3	NSWALC’s supervision of LALC social housing schemes.....	10
4.4	How long does an approval last?	10
4.4.1	Limiting the approval period	10
4.4.2	Revocation of schemes.....	10
4.5	Material changes to a CBS (Residential Accommodation) that may require an amended approval.....	11
5	Can NSWALC be satisfied that the scheme meets the statutory requirements?.....	11
5.1	Statutory requirement A: Does the scheme comply with the ALRA and the ALR Regulation?	11

5.2	Statutory requirement B: Is the scheme consistent with any applicable policy of the New South Wales Aboriginal Land Council?	11
5.3	Statutory requirement C: Is the scheme consistent with the LALC's community, land and business plan?.....	12
5.4	Statutory requirement D: Is the scheme fair and equitable?	13
5.5	Will the scheme be administered in a responsible way?.....	13
5.6	Will the scheme be administered in a transparent way?.....	14
5.7	Statutory requirement 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?.....	15
5.8	Statutory requirement F : The need for the proposed benefits is not otherwise being adequately met.....	16
6	What action may NSWALC take where social housing schemes are not approved?	16
6.1	Action to assist the LALC to decide what to do with a scheme that is not approved (or where approval is revoked).....	16
6.2	Action if a LALC provides a scheme without NSWALC's approval	17
7	Interaction of the ALRA and NSWALC's approval with the <i>Aboriginal Housing Act 1998</i> (NSW) and the Aboriginal Housing Office	17
7.1	Does NSWALC have to consider a scheme even if the AHO is considering registration of the LALC as a housing provider?.....	18

Introduction:

- (1) Many Local Aboriginal Land Councils (“LALCs”) provide residential accommodation to their members and other Aboriginal people in their areas. This accommodation is made available to members and other Aboriginal people under residential lease agreements.
- (2) Under the *Aboriginal Land Rights Act 1983* (the “ALRA”) the provision of residential accommodation (including rental accommodation) is referred to as a “Community Benefits Scheme”. The ALRA says that a LALC may, in accordance with an approval of the NSW Aboriginal Land Council (NSWLAC), directly or indirectly, provide community benefits under community benefits schemes and provide, acquire, construct, upgrade or extend residential accommodation for Aboriginal persons in its area. For the purposes of this policy, such schemes will be referred to as a CBS (Residential Accommodation).
- (3) Further, NSWALC must only approve a CBS (Residential Accommodation) if it is satisfied that the scheme complies with specific requirements set out in the ALRA.
- (4) One of the statutory requirements that NSWALC must be satisfied of prior to giving approval is whether the scheme is consistent with any applicable policy of NSWALC.
- (5) Written policy is desirable to promote consistency in NSWALC decision making and to provide some greater predictability and certainty about how applications for approval will be treated by NSWALC.
- (6) In order to give guidance to NSWALC itself and to LALCs about how NSWALC will perform this approval function, NSWALC has made this policy which sets out some of the considerations that NSWALC will take into account when determining whether the statutory requirements have been fulfilled.

1.1 What housing schemes does this policy apply to? Rental accommodation only

- (1) The terms Community Benefits Scheme and residential accommodation are wide enough to cover all schemes under which a LALC provides “residential accommodation” for Aboriginal persons. That is, they are wide enough to cover schemes under which the accommodation is leased from the LALC under a tenancy agreement.
- (2) This policy, is **only** concerned with the approval of community benefits schemes for the provision of **rental accommodation**— that is, where the LALC itself leases housing to tenants, with or without the assistance of any external manager or agent such as a real estate agent.
- (3) Approval is not required for those LALCs who operate a community benefits scheme involving the provision of residential accommodation to members under lease agreements where the LALC is:
 - a) A registered Aboriginal housing organisation (within the meaning of the Aboriginal Housing Act 1998), or
 - b) A registered community housing provider (within the meaning of the Community Housing Providers National Law (NSW)).

1.2 When does this policy commence?

- (1) This policy is made pursuant to s.113 of the ALRA, and in accordance with s.114 of the ALRA.
- (2) This policy will have effect and be applied from the date when it is published in the Gazette.

1.3 What is in this policy?

This policy has 5 main sections. These are as follows:

- Section 3 “Statutory framework for the provision of housing under an approved CBS (Residential Accommodation) – discusses the statutory framework for the approval of a LALC benefits scheme in relation to the provision of residential accommodation.
- Section 4 “Seeking NSWALC’s approval” – describes how and when applications to NSWALC for approval of LALC benefits schemes in relation to the provision of residential accommodation should be made.
- Section 5 “Can NSWALC be satisfied that the scheme meets the statutory requirements?” – provides guidance at a broad level about considerations that NSWALC will take into account when determining whether it can approve a scheme.
- Section 6 “What action may NSWALC take where CBS (Residential Accommodation) schemes are not approved?” – outlines the sorts of action that NSWALC may take in cases where it does not approve a scheme (or approval is revoked) but the LALC continues to provide the housing.
- Section 7 “Interaction of the ALRA and NSWALC’s approval with the *Aboriginal Housing Act 1998* (NSW) and the Aboriginal Housing Office” – describes ways the two statutory regimes and approval/registration processes interact. –.

2 Interpretation

2.1 Definitions

- (1) Words and expressions used in this policy have the same meaning as they have in Division 4 of Part 2 of the ALRA.
- (2) Further, references to section numbers (e.g. s.42G) are references to sections in the ALRA (except where the section number is followed by the name of another Act).
- (3) In addition, the following words and expressions used in this policy have the following meanings:

AHA: means the *Aboriginal Housing Act 1998*

AHO: means the Aboriginal Housing Office

ALRA: means the *Aboriginal Land Rights Act 1983*

ALR Regulation: means the *Aboriginal Land Rights Regulation 2014*

LALC: means a Local Aboriginal Land Council

Material change: means a change that will affect the statutory basis on which the scheme was approved or its viability (see clause 4.5 for further information).

NSWALC: means the New South Wales Aboriginal Land Council

2.2 Interpreting this policy

- (1) Importantly, this policy is not law and should not be read as such.
- (2) If anything in this policy appears to be in conflict with anything in the ALRA or ALR Regulation (or any other law) then it must be read, if possible, so that it does not conflict.
- (3) If the meaning of anything in this policy is open to doubt, it should be read so as to give best effect to the purposes that are evident throughout this policy (and consistently with the ALRA and ALR Regulation).

3 Statutory framework for the provision of housing under approved community benefits schemes (residential accommodation)

3.1 What is a Community Benefits Scheme (Residential Accommodation) under the ALRA?

- (1) Under the ALRA, a CBS (Residential Accommodation) is any residential accommodation that is acquired or provided by or on behalf of a LALC for Aboriginal persons in its area. (ss. 52A (1)). This includes the construction, upgrading and extension of any such accommodation.
- (2) The ALRA used to provide a special category of community benefit schemes called social housing schemes, including 'existing social housing schemes' where a LALC was providing residential accommodation as at **30 June 2007**. These schemes now all fall within the definition of a CBS (Residential Accommodation)
- (3) NSWALC understands a CBS (Residential Accommodation) to be the operation or proposed operation of all of the essential components of a LALC's residential accommodation for members and other Aboriginal persons in its area. In relation to residential accommodation schemes for rental accommodation (which are the subject of this policy), this will include:
 - the properties that will be leased;
 - the policies and practices of the LALC about things such as:
 - how the housing is allocated;
 - how the rents are set and the other terms under which the housing will be provided;
 - the collection of rents and enforcement of tenancy agreements,
 - the services to be provided by the LALC, including essential repairs and maintenance,

- how all the expenses of the scheme (including those required for maintenance and repairs, rates, charges and insurances, building new houses, employment costs for any LALC staff who administer the scheme, fees for any external providers who assist the LALC) will be met (including by the collection of rents, external grants and assistance from the AHO or other external sources, and all other income streams),
 - any arrangements with external service providers, including real estate agents, which the LALC may use to assist with the operation of the scheme.
- (4) When a LALC seeks approval for a housing related community benefits scheme, it will be seeking approval for the whole of that scheme. NSWALC's approval of a CBS (Residential Accommodation) will be an approval of the whole scheme as described by the LALC.

3.2 When may a LALC provide rental accommodation under the ALRA?

The ALRA says that a LALC may provide or continue to provide rental accommodation to its members and/or other Aboriginal people:

- (a) only under a community benefits scheme; and
- (b) only with NSWALC's approval.

(ss.52A(1) and cl. 60 of Schedule 4).

3.3 When must NSWALC's approval be obtained?

- (1) Generally, a LALC must obtain NSWALC's approval for its CBS (Residential Accommodation) *before* it provides accommodation under the scheme. Otherwise, it would be providing the accommodation without NSWALC's approval contrary to the ALRA (s.52A (1)).

3.4 When can NSWALC approve a social housing scheme?

- (1) The ALRA says that NSWALC *must not* approve a social housing scheme *unless* it is satisfied that:
- (a) the scheme complies with the ALRA and ALR Regulations;
 - (b) the scheme is consistent with any applicable policy of NSWALC;
 - (c) the scheme is consistent with the community, land and business plan (if any) of the LALC;
 - (d) the scheme is fair and equitable and will be administered in a responsible and transparent way;
 - (e) the proposed scheme is not likely to prevent the LALC from being able to meet its debts as and when they fall due;
 - (f) the need for the proposed benefits is not otherwise being adequately met.
- (see ss.52A(2)).

3.5 Can NSWALC impose conditions on an approval for a CBS (Residential Accommodation)

- (1) Section 119(1) of the ALRA allows NSWALC to impose conditions on any approval given under the Act NSWALC may also impose a time within which a condition must be complied with (section 119(2)).
- (2) One example of a condition that NSWALC may impose is where a LALC has indicated that they will increase rents over a 12 month period to ensure that the income of the scheme is sufficient to meet all costs of the scheme. NSWALC may approve the scheme on the condition that the LALC demonstrate that it has increased rents within the specified timeframe ie 12 months from approval. Another example of a condition that NSWALC may impose is a condition to ensure that the LALC continues to fund the scheme in the manner it proposes in its application for approval. This could mean that if a LALC identifies an income stream (such as rental income from commercial lands) that it plans to use in the scheme to make it financially viable, NSWALC may require, as a condition of its approval, that this income stream continue to be applied to the scheme during the term of the approval.

3.6 Can NSWALC revoke an approval for a Community Benefits Scheme (Residential Accommodation)?

- (1) One of NSWALC's functions is to consider and approve the provision of community benefits schemes by or on behalf of LALCs. While there is no specific legislative requirement for NSWALC to supervise a LALC community benefit scheme, this policy establishes a framework whereby LALCs will need to report to NSWALC periodically on the operation of their CBS (Residential Accommodation) so that NSWALC can assure itself that the scheme is being operated in accordance with the approval provided by the NSWALC.

- (2) NSWALC may revoke its approval of a CBS (Residential Accommodation) (section 119(4)).

This may be done where NSWALC considers that a scheme no longer fulfils the statutory requirements or where a condition of the NSWALC approval is breached or not satisfied by the LALC and no extension of time is given for the LALC to remedy this situation. For example, NSWALC may have to revoke an approval if an approved scheme fails to generate sufficient income to enable the LALC to meet the requirements of s. 52A(2)(e) of the ALRA.

- (3) Another example of when NSWALC may have to consider revoking an approval is if it could no longer be satisfied that the LALC could run the scheme transparently, for example, where the LALC does not comply with NSWALC's policy or its own policies

3.7 What if NSWALC does not approve a scheme, or revokes an approval?

- (1) A LALC can only operate a CBS (Residential Accommodation) if it is approved by NSWALC. A LALC will contravene the Act if it operates a scheme without approval. Some consequences for this are provided for in the ALRA.
- (2) Part 6 of this policy provides some guidance on steps that NSWALC may take, or encourage the LALC to take, if a LALC provides or continues to provide social housing without approval.

3.8 If NSWALC refuses to approve, or imposes conditions, what rights of review or appeal does the LALC have under the ALRA?

- (1) If a LALC is unhappy with a decision made by NSWALC, it can contact the NSWALC to discuss its concerns within 30 days of the decision.
- (2) If a LALC disagrees with a decision made by NSWALC, the LALC can ask the Registrar appointed under the ALRA to mediate, conciliate or arbitrate any dispute with NSWALC.
- (3) If a LALC believes that NSWALC's decision is unlawful it may seek the review of a decision of NSWALC by the Land and Environment Court (pursuant to s. 20 of the *Land and Environment Court Act 1979*).

4 Seeking NSWALC's approval under the ALRA and this policy

4.1 How can NSWALC's approval be sought?

- (1) It is the responsibility of a LALC operating or proposing to operate a CBS (Residential Accommodation) to seek NSWALC's approval for that scheme.
- (2) It is the responsibility of a LALC applying for NSWALC's approval to demonstrate to NSWALC that it has satisfied the criteria that NSWALC must have regard to in order to approve the scheme.
- (3) NSWALC will publish an application form for LALCs to use to apply for approval of its CBS (Residential Accommodation). This application form will be intended to assist a LALC to identify the elements of the scheme or schemes that it is seeking approval for.
- (4) NSWALC will also publish procedural guidelines that will provide greater detail on the sorts of evidence that a LALCs should provide to NSWALC to obtain its approval.

4.2 When must a LALC seek NSWALC's approval of a Community Benefits Scheme for the provision of residential accommodation?

4.2.1 Community Benefit Schemes (Residential Accommodation)" must be approved before 1 January 2016

- (1) Under this policy, any LALC that operates a CBS (Residential Accommodation) that is **not** a registered housing organisation (within the meaning of the Aboriginal Housing Act 1988) or a registered community housing provider (within the meaning of the Community Housing Providers National Law (NSW)) or a LALC that has previously obtained NSWALC approval for the operation of a community benefit scheme for the provision of residential accommodation under NSWALC's SHAPE process, will be required to obtain NSWALC approval for the operation of that scheme before the 1st January 2016.
- (2) Any LALC who is providing, and intends to continue to provide residential accommodation under an existing community benefit scheme will need to obtain NSWALC's approval of that scheme *before 1 January 2016* otherwise it cannot lawfully continue to provide that accommodation from 1 January 2016.

4.2.2 LALCs must seek approval by 31 October 2015

- (3) Allowing for the time which will be required for NSWALC to consider the many requests that it will receive for approval, NSWALC will require that all LALCs wishing to continue to operate an existing CBS (Residential Accommodation) apply for approval *no later than 31st October 2015*.
- (4) Applying by this date may also allow some time before 1 January 2016 for any LALCs whose schemes are not approved to make alternative arrangements for the ongoing provision of the housing.

4.3 NSWALC's supervision of LALC Community Benefits Scheme (Residential Accommodation)

- (1) NSWALC will supervise the operation of a LALC CBS (Residential Accommodation) to ensure that the scheme is being operated in accordance with NSWALC approval.
- (2) NSWALC will supervise LALC CBS (Residential Accommodation) by:
 - (a) regularly monitoring the performance of the scheme, and
 - (b) periodically reviewing the scheme.
- (3) NSWALC will generally impose a condition on an approval that the LALC concerned must cooperate with NSWALC's monitoring and review of the scheme.

4.4 How long does an approval last?

- (1) Generally, NSWALC's approval of a social housing scheme will not be time restricted.
- (2) If a scheme is approved, then that scheme will have approval unless and until the approval is revoked.

4.4.1 Limiting the approval period

- (3) However, this may not always be the case. In some cases, NSWALC may decide to impose a time restriction on an approval if it considers that there are reasons why this is desirable.

4.4.2 Revocation of schemes

- (4) If, as a result of monitoring and/or review of a LALC CBS (Residential Accommodation), NSWALC considers that the scheme is being operated in a manner contrary to terms of the approval, or that the scheme no longer meets the requirements for approval, NSWALC may revoke its approval.
- (5) NSWALC will not, however, revoke its approval of a CBS (Residential Accommodation) without first:
 - (a) discussing its concerns with the LALC, and
 - (b) giving the LALC notice of its intentions.

The exception to this would be if the particular circumstances required that NSWALC act urgently.

4.5 Material changes to a CBS (Residential Accommodation) that may require an amended approval

- (1) The details of an approved scheme will be set out in the NSWALC approval.
- (2) If the approved scheme changes in any “material” way, it may no longer be covered by the approval. In this case the LALC will need a new approval or an amendment to the existing approval.
- (3) It may not always be straightforward, however, to know whether a change to an approved CBS (Residential Accommodation) is so “*material*” that a new or amended approval is required. A change will be “material” if it affects the statutory basis on which the scheme was approved or its viability. Whether this is so in any particular case will involve a consideration of:
 - the approved scheme (as set out in the approval document); and
 - the nature and extent of the proposed changes to that scheme.
- (4) Some examples of “material” changes to an approved CBS (Residential Accommodation) requiring a new or amended approval may include, but is not limited to:
 - Changes to the income of the scheme
 - Changes to the liabilities of the scheme and the viability of the scheme such as increased borrowings and whether such changes will prevent a LALC from meeting its debts as and when they fall due;
 - Changes to the manner in which the scheme is managed eg from external management to internal management.

5 Can NSWALC be satisfied that the scheme meets the statutory requirements?

5.1 Statutory requirement A: Does the scheme comply with the ALRA and the ALR Regulation?

- (1) As well as being satisfied that the particular requirements of section 52A are met, NSWALC must be satisfied that the scheme complies generally with the ALRA and the ALR Regulations.
- (2) An example of how a scheme may not comply with the ALRA and/or ALR Regulation is where the operation of the CBS (Residential Accommodation) is supported financially by the proceeds of a LALC investment and that investment itself was not authorised.

5.2 Statutory requirement B: Is the scheme consistent with any applicable policy of the New South Wales Aboriginal Land Council?

- (1) NSWALC will apply this policy when considering whether it can be satisfied that the statutory requirements are met.

- (2) In addition, NSWALC must be satisfied that the scheme is consistent with any other NSWALC policy that may be applicable. For example, in some circumstances NSWALC's policy on the approval of LALC land dealings may be applicable to an aspect of a scheme (for example, a development application may be required to construct a new garage and a development application is now a land dealing requiring NSWALC and LALC members' approval).

5.3 Statutory requirement C: Is the scheme consistent with the LALC's community, land and business plan?

- (1) A scheme will be clearly consistent with the LALC's approved community, land and business plan if the proposal to operate the particular scheme is described in the plan (as one of the LALC's objects or proposed programs).
- (2) NSWALC appreciates, however, that community, land and business plans are long term broad strategic documents which may describe the LALC's objects and intended programs with varying degrees of detail.
- (3) To determine whether it is satisfied that this requirement is met, NSWALC will need to consider, in addition to the full details of the scheme, the LALC's approved community, land and business plan.
- (4) When determining whether it is satisfied that this requirement is met, NSWALC will consider questions such as:
 - Does the community, land and business plan identify rental accommodation as one of the needs of the LALC's community, and is meeting that need, by operating a community benefits scheme for the provision of residential accommodation, identified as one of the LALC's objects?
 - Does the community, land and business plan identify the community benefits scheme for the provision of residential accommodation as one of the programs that the LALC intended to operate?
 - If the community, land and business plan describes a CBS (Residential Accommodation) which is to be provided, is the scheme being considered by NSWALC at odds with the one described in the plan in a material respect?
 - Does the community, land and business plan indicate that the LALC had plans to use the relevant land for a purpose other than the housing?
 - Does the community, land and business plan demonstrate that the LALC had planned not to provide rental accommodation?
- (5) A community benefits scheme for the provision of residential accommodation will not be approved if it is clearly inconsistent with the LALC's community, land and business plan.
- (6) An example of when a proposed community benefits scheme for the provision of residential accommodation may be clearly inconsistent with a LALC's community, land and business plan is if the plan clearly indicated that the LALC did not want to operate such a scheme.

5.4 **Statutory requirement D: Is the scheme fair and equitable?**

- (1) NSWALC's consideration of whether a scheme is fair and equitable, involves consideration of:
 - (a) Which LALC members and other Aboriginal people are eligible to participate in and benefit from the scheme (who is eligible to have a tenancy)?
 - (b) How the housing is allocated amongst those who are eligible (including how waiting lists are managed and how limited housing resources are allocated)?
 - (c) How the LALC acts towards its tenants and consideration of such things as the terms of the tenancy and respecting and upholding tenant's rights)?
- (2) NSWALC must be satisfied that the scheme is fair and equitable in all significant respects.
- (3) When determining whether it is satisfied that this requirement is met, NSWALC will particularly consider whether the LALC has demonstrated that it has developed and is applying, or will apply, appropriate policies and practices for achieving fairness and equity in these respects. For example, does the LALC have appropriate procedures for:
 - applicants to apply for housing, and in doing so to identify their particular needs for the LALC's housing;
 - determining whether or not an applicant will be granted admission to a waiting list for the scheme and where they will be placed upon that waiting list;
 - allocating housing; and
 - determining the rent payable under the tenancies?

A LALC can most easily demonstrate this by reference to written policies and procedures that it has adopted and is applying, or will apply.

- (4) In relation to fairness between the LALC and its tenants, NSWALC will consider whether the scheme respects and upholds tenant's rights. For example, NSWALC may consider whether, under the scheme, tenants are being, or will be:
 - offered a residential tenancy agreement that outlines rights and responsibilities;
 - provided with, and have a chance to review and correct, a condition assessment of the property;
 - made fully aware of the key terms of the tenancy, such as their obligation to pay rent at the agreed level, the agreed term of the lease and the ways in which the lease can be terminated;
 - advised about how the LALC receives and deals with complaints regarding the tenancy; and
 - advised about how they may complain to an external body about the tenancy.

5.5 **Will the scheme be administered in a responsible way?**

- (1) Whether a scheme will be administered in a responsible way involves NSWALC considering whether matters such as:

- seeking access to available funding and assistance sources;
- repairing damage to the properties, including that caused by tenants;
- maintenance of the properties, including plans for funding such maintenance;
- collecting rental arrears; and
- keeping necessary records,

are being undertaken by the LALC or where there is a clear intention to undertake these activities.

- (2) NSWALC's consideration of this requirement will include consideration of:
 - (a) the scheme itself, including written policies and procedures for implementing the scheme; and
 - (b) the LALC and how it is operating the scheme, or how it has performed its functions generally in the past and can be expected to operate the scheme.
- (3) A LALC that can demonstrate that it has appropriate systems in place, and a history of sound administration, is unlikely to have difficulty with this requirement. However, a LALC that has a continuing history of poor administration, particularly in relation to management of its residential accommodation scheme, is likely to have to satisfy NSWALC to a greater degree that its scheme will be administered responsibly.

5.6 Will the scheme be administered in a transparent way?

- (1) Whether the scheme will be administered in a transparent way involves consideration of whether:
 - (a) the rules or criteria for determining important matters such as how limited housing resources are allocated are visible; and
 - (b) whether the application of those rules, and other decision making in relation to the scheme, will be open and transparent.
- (2) NSWALC's consideration of this requirement will include consideration of:
 - (a) the scheme itself, and in particular any written policies and procedures for implementing the scheme; and
 - (b) the LALC and how it is operating the scheme, or how it has performed its functions generally in the past and can be expected to make decisions about and otherwise operate the scheme.
- (3) A LALC will most easily be able to satisfy NSWALC that this requirement is met if:
 - (a) its scheme has well documented policies or procedural documents clearly setting out the basis on which decisions will be made for matters such as allocation of its limited housing, and rent setting, and how complaints will be managed and responded to;
 - (b) those documents have been discussed with and are available to members and other potential tenants;
 - (c) it has good record keeping practices; and
 - (d) it has a good history of open and transparent, objective decision making.

5.7 Statutory requirement 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?

- (1) This requirement requires NSWALC to consider whether the operation of a CBS (Residential Accommodation) scheme could prevent the LALC from being able to meet its debts when they fall due.
- (2) This will require consideration of the expenses and income of the scheme as well as the overall financial position of the LALC.
- (3) For NSWALC to consider this , a LALC must include with its application for approval a credible budget for the scheme in which:
 - (a) all reasonably foreseeable expenses of the scheme, including reasonable repairs and maintenance requirements are provisioned for; and
 - (b) all income projections are realistic.
- (4) Whether the budget for the scheme is realistic may be ascertained by reference to such things as:
 - (a) whether easily foreseeable items of expenditure involved in the provision of residential accommodation have been adequately provided for;
 - (b) whether the rent setting is realistic; and
 - (c) in the case of existing schemes, the past income and expenditure of the scheme.
- (5) The expenses of providing a rental accommodation scheme, where the housing is already constructed, will include:
 - rates and charges;
 - insurances;
 - employment costs for any LALC staff who administer the scheme;
 - fees for any external providers who provide all or part of the scheme on behalf of the LALC; and
 - a reasonable level of repairs and maintenance.
- (6) Income from the scheme will generally be derived from rent payable by the tenant and collected by the landlord or managing agent; and may also include external funding and subsidies from the Aboriginal Housing Office or from other government or non-government agencies or other income streams of the LALC.
- (7) In addition, it may be that a LALC chooses to apply income derived from sources such as:
 - the profit from specified commercial operations, or
 - the interest earned on an investment fund

to meet the expenses of a scheme. In relation to such income sources, however, NSWALC will only treat them as being attributable to the scheme if it is clear that the income from that source:

- (a) legally must (such as where there is a trust deed); or

- (b) reliably will,
be applied to the scheme.
- (8) Where an intended income source has been identified but the availability of the income has not yet been confirmed – such as where a funding application has been made but not determined – NSWALC may be satisfied that the income is likely to be obtainable. Having regard to that anticipated income, NSWALC may be satisfied that the scheme’s income *will be* equal to the expenses. In these circumstances, however, NSWALC may impose a condition on any approval to the effect that the approval is to be reviewed at a time when the availability or otherwise of the income will be confirmed.

If NSWALC cannot satisfy itself that the scheme is not likely to prevent the LALC from being able to meet its debts as and when they fall due, then NSWALC must refuse to approve the proposed scheme.

5.8 Statutory requirement F: The need for the proposed benefits is not otherwise being adequately met

In relation to any scheme the LALC will have to demonstrate that there is a need for the housing and that it is not otherwise being adequately met by, for example, the general rental market or other social housing providers. If NSWALC cannot be satisfied that there is an unmet need for the proposed housing scheme, it must refuse to approve the proposed scheme (s.52A (2) (f)).

6 What action may NSWALC take where LALC residential accommodation schemes are not approved?

6.1 Action to assist the LALC to decide what to do with a scheme that is not approved (or where approval is revoked)

- (1) If NSWALC does not approve a CBS (Residential Accommodation), it will take steps to guide and assist the LALC to decide what it should do. The aim will be to guide and assist the LALC to avoid breaching the ALRA by providing housing under the unapproved existing scheme after the 31st of December 2015.
- (2) In some cases, for example, a LALC’s best alternative to providing a CBS (Residential Accommodation) itself may be to lease its existing housing stock to another housing provider which is better placed to provide the housing. In such cases NSWALC may be able to assist in identifying an appropriate housing provider that could be used.
- (3) It should be noted that if a LALC was to lease its housing stock to an external provider in this way, this would be a “land dealing” for the purposes of Division 4 of Part 2 of the ALRA. As such, the lease would need NSWALC’s approval in accordance with s.42E of the ALRA. LALCs should refer to Division 4 of Part 2 of the ALRA, as well as NSWALC’s policy on land dealings, in this regard. It may also be a form of community benefit scheme requiring approval under s.52A of the ALRA. There would not, however, be any need for the LALC to make two separate approval applications and have the lease approved through two different

assessment processes. NSWALC would treat the application for land dealing approval as also being an application for approval as a community benefits scheme.

6.2 Action if a LALC provides a scheme without NSWALC's approval

- (1) A LALC which continued to provide a CBS (Residential Accommodation) without approval from NSWALC would be breaching the ALRA and acting beyond its lawful authority.
- (2) In these circumstances, NSWALC will consider taking one or more of the following steps:

Cessation of funding

- (a) If the LALC is operating the scheme in breach of the ALRA, and is a party to a Funding Agreement with NSWALC, NSWALC may be required to cease funding of the LALC.

Registrar's compliance direction

- (b) NSWALC may request the Registrar to issue a direction to the LALC under section 235 of the ALRA to comply with the ALRA. If a direction was issued and the LALC failed to comply with it, the Registrar could refer the matter to the Court for determination (section 236). The Court could, after hearing the matter, give directions to the LALC to determine the matter. If the LALC contravened such a direction, it would be guilty of an offence and could be required to pay a fine (section 237).

Consent to administration

- (c) NSWALC may consent to the appointment of an administrator to the LALC (section 222). Such an appointment may be made if a LALC is operating a CBS (Residential Accommodation) in contravention of the requirement for that scheme to be approved by NSWALC.
- (d) The ALRA provides an Administrator that has been appointed on this ground with the authority to approve a LALC dealing that is necessary for the purposes of either obtaining NSWALC approval for the operation of the scheme, gaining registration as an Aboriginal housing organisation within the meaning of the Aboriginal Housing Act 1998 or gaining registration as a community housing provider within the meaning of the Community Housing Providers National Law (NSW)

- (e) Liaison with Registrar and Minister regarding dissolution

NSWALC may encourage the Registrar to issue a report to the Minister recommending dissolution if one of the circumstances in s.91 (1) of the ALRA appears to exist. Section 91(1)(i) provides that the operation of an unapproved CBS (Residential Accommodation) is a possible trigger for dissolution.

7 Interaction of the ALRA and NSWALC's approval with the *Aboriginal Housing Act 1998 (NSW)* and the Aboriginal Housing Office

It is important to recognise that NSWALC's approval of a housing scheme under the ALRA is an entirely separate process to the Aboriginal Housing Office's ("AHO") process for

registration of the LALC as a housing provider under the AHA. The ALRA does however exempt LALCs from seeking NSWALC approval for the operation of their CBS Residential Accommodation if the LALC is registered with the AHO as an Aboriginal housing provider under the AHA.

7.1 Does NSWALC have to consider a scheme even if the AHO is considering registration of the LALC as a housing provider?

- (1) NSWALC's role in approving LALC community benefits scheme for the provision of residential accommodation is entirely independent of the AHO's role in registering and providing assistance to LALCs as housing providers.
- (2) This NSWALC policy is entirely separate to any AHO policy and is required for a different purpose.
- (3) The AHA, and the AHO established by that Act, is concerned, amongst other things, with the registration of LALCs and other bodies as housing providers for the purpose of providing financial assistance to those LALCs.
- (4) The ALRA, however, is concerned with whether a LALC's CBS (Residential Accommodation) should be allowed to operate having regard to the specific criteria set out in that Act. There are some legislative linkages however between these processes as per the following clause.
- (5) NSWALC's approval, under the ALRA, of a LALC's CBS (Residential Accommodation) **is not required** if the LALC is a registered Aboriginal housing organisation within the meaning of the Aboriginal Housing Act 1998 (s. 52A (1A)(a)).