



BACKGROUND BRIEFING

Development of a new NSWALC Policy on Assessment and Approval of Local Aboriginal Land Council Land Dealings

Due to recent amendments to the *Aboriginal Land Rights Act 1983* ("ALRA") set to come into force on 31 March 2010, a new draft policy on assessment and approval of LALC Land Dealings has been developed. These amendments stem from a New South Wales Taskforce review into the operation of the ALRA established in 2004 that revealed several areas in need of reform, particularly in relation to the land dealings provisions.

Previously, land dealings policy was made in relation to sections 40B and 40D, which will no longer be in service when the new amendments come into force.

Under section 40B, NSWALC could only refuse to approve a lease or change of use on the grounds that the terms or conditions of the lease were inequitable to the LALC, or the change of use would be detrimental to the interests of other Aboriginal Land Councils.

Under section 40D, LALCs had to obtain NSWALC approval to sell, exchange, mortgage or otherwise dispose of land vested in it. This section gave NSWALC a broad discretion to assess and approve land dealings, but without much guidance.

The amendments that come into force in March 2010 include a new, clearer assessment procedure for land dealings as contained in the new section 42G of the ALRA.

The amendments also create a two certificate approval process in relation to LALC land dealings. Under this new system, LALCs must apply to NSWALC for approval of almost all LALC land dealings (s42F). If NSWALC approves a LALC land dealing, then it is to issue the LALC with a dealing approval certificate and if required, a registration approval certificate (s42K).

Under the new scheme NSWALC will only approve a proposed dealing where the following conditions in section 42G are satisfied:

- A proper application for approval has been made in accordance with the ALRA and the ALR Regulations;
- The LALCs members have passed a resolution in accordance with section 42G(5);
- The proposed land dealing is in accordance with that resolution; and
- NSWALC does not consider that the application should be refused because it is, or is likely to be, contrary to the interests of the members of the LALC or other Aboriginal persons within the area of the LALC (section 42G(2) & (3)).

This last consideration imposes a broad discretion on NSWALC. In order to give guidance to NSWALC, LALCs and persons dealing with LALCs about how NSWALC will exercise its discretion, NSWALC has developed a Land Dealings Policy.

THE LAND DEALINGS POLICY

The draft Land Dealings Policy:

- Sets out some discretionary considerations in relation to the assessment and approval of LALC Land Dealings that NSWALC will take into account, pursuant to section 42G of the ALRA, including:
 - The transparency and probity of decisions to deal with LALC land;
 - The consistency of the land dealing with the LALC's Community and Business Plan;
 - How the proceeds of the land dealing will be held and used;
 - Any cultural concerns of the land subject of the dealing; and
 - Commerciality of the land dealing.
- These considerations are outlined in more detail in the Policy document, which provides specific examples of what NSWALC will be looking for when assessing and approving land dealings.
- These policies are not law and should not be read as such. The Land Dealings policy aims to provide guidance but does not contain an exhaustive list of all the considerations that may be taken into account in a particular case.
- The ultimate aim is to support LALCs to operate independently and provide persons that deal with LALCs with certainty, while still maintaining high levels of accountability in all LALC land dealings.

STATUTORY REQUIREMENTS

Before a section 113 policy can come into effect, the ALRA requires NSWALC to:

- Refer the s113 policy to each LALC for comment,
- Consider any submissions made by any Local Aboriginal Land Council *within 30 days of the referral of the policy*, and
- Obtain the approval of the Minister to the Policy network on proposed policy changes.

The revised policy will take effect on its publication in the Gazette or on a later day specified in the policy.